OXFORDSHIRE
STRATEGIC RAIL FREIGHT INTERCHANGE

Explanatory Memorandum (clean)

Regulation 5(2)(c)

Rev 2

On behalf of
Oxfordshire Railfreight Limited

October 2026

THE OXFORDSHIRE STRATEGIC RAIL FREIGHT INTERCHANGE AND HIGHWAYS ORDER 202X

EXPLANATORY MEMORANDUM

October 2026

Regulation 5(2)(c) Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (as amended)

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1. INTRODUCTION

1.1 This explanatory memorandum has been prepared on behalf of Oxfordshire Railfreight Limited ("the Applicant") to explain the context of, and provisions in, the Draft Development Consent Order ("DCO"). It is required by Regulation 5(2)(c) Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (as amended) and explains the purpose and effect of the provisions in the draft DCO.

1.2 The explanatory memorandum forms part of the application documentation for the Oxfordshire Strategic Rail Freight Interchange and Highways Order 202X, made pursuant to section 37 of the Planning Act 2008. The application seeks approval of a draft DCO for a new rail freight interchange, warehousing, highway improvements and associated infrastructure on land adjacent to the Chiltern Main Line Railway, southwest of Junction 10 of the M40 motorway, east of the former Upper Heyford Air Base and to the west of the B430, in Cherwell District in the county of Oxfordshire ("the Proposed Development").

1.3 Notwithstanding the submission of the application, the Applicant continues to engage with various stakeholders to inform the detail of the proposed drafting of the DCO including in relation to the draft Requirements and Protective Provisions.

1.4 The draft DCO has taken into account guidance produced by the Planning Inspectorate including 'Nationally Significant Infrastructure Projects: Advice on the Preparation and Submission of Application Documents'[1] and Advice Note Fifteen: Drafting Development Consent Orders[2]. This draft memorandum has been updated for Deadline 1 of the Examination of the DCO and has been prepared to explain the purpose and the effect of provisions in the draft DCO.[3]

1.5 The terminology used in this document is consistent with the glossary set out in the Project Overview Document (which forms part of the Consultation Report Appendices 31–44, Document number 5.1K, APP-049).

1.6 The Applicant is Oxfordshire Railfreight Limited, a company set up by Mountpark to promote and develop the Proposed Development. If approved, the development will be delivered by Mountpark – a leading developer with a proven track record in delivering high quality logistics developments across the United Kingdom, Ireland and Europe.

2. DCO OVERVIEW

2.1 The DCO is the document that identifies and governs the development. It contains wide ranging powers to enable delivery of the development in recognition that the development applied for is nationally significant (being, as a matter of law, a nationally significant

1 Updated September 2026

2 Updated March 2025

3 As required by Regulation 5(2)(c) Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 SI 2009/2264 as amended

infrastructure project) which should be brought forward as soon as possible in the national interest.

2.2 Its scope can broadly be divided into six categories:

a) It identifies the development that it is authorising and controls that development by applying requirements, which are similar to planning conditions attached to a planning permission.

b) It authorises and governs the highway works to be undertaken as part of, and in connection with, the development.

c) It contains other orders, such as highway orders and footpath diversion orders, required for implementation of the development – avoiding the need for them to be obtained separately.

d) It provides powers of compulsory acquisition over land and interests in land in order that difficulties in reaching agreement on such acquisition do not frustrate delivery of the development.

e) It includes protective provisions for parties, such as utility companies, whose assets may be affected by the development; and

f) It contains miscellaneous other provisions with the objective of ensuring there is no obstacle to delivery of the development.

2.3 The DCO is essentially in two parts – the provisions in the first part (called 'Articles') set out all of the operative provisions and the schedules in the second part provide the detail.

2.4 The Main Site consists of the area to be occupied principally by the Rail Terminal and warehousing and the Central Hub and incorporating the Heyford Park Link Road and Principal Access. It is located between the B430 and the former Upper Heyford Airfield (Heyford Park) immediately to the south of the Chiltern Main Line. The location of, and context for, the Main Site can be seen on the Location Plans Order Limits (Document number 2.4, AS-006), the Parameters Plan (Document number 2.5, AS-008) and the Illustrative Masterplan (Document number 2.6, AS-009).

2.5 All of the land affected by the Proposed Development is referred to in the draft DCO as the 'Order limits'. The Order limits are shown by a red line on the Location Plans Order Limits (Document number 2.4, AS-006) and they fall entirely within Cherwell District and the County of Oxfordshire.

2.6 The different elements of the Proposed Development are identified on the Components of Development Plan (Document number 2.13, APP-099) and are described later in this document.

3. SCOPE OF THE DCO

3.1 The purpose of the DCO is to authorise the construction and use of the strategic rail freight interchange and the highway NSIPs, together with associated development.

3.2 The DCO for which approval will be sought is entitled "The Oxfordshire Strategic Rail Freight Interchange and Highways Order". The reference to highways in the DCO title is in recognition of the fact that the DCO application will seek approval of three separate Nationally Significant Infrastructure Projects (NSIPs) in one DCO. These are:

(a) a rail freight interchange including warehousing which meets the criteria set out in Section 26 of the Planning Act 2008 (as amended) ("the 2008 Act");

(b) the alteration of a motorway exceeding the thresholds set out in Section 22 of the 2008 Act; and

(c) the alteration of an All-Purpose Trunk Road exceeding the thresholds set out in Section 22 of the 2008 Act.

3.3 The three separate NSIPs are set out below.

Rail Freight Interchange – NSIP 1

3.3 The Proposed Development meets the criteria set out in Section 26 of the 2008 Act because it will, when constructed:

(a) be in England, and be more than 60 hectares in area[4];

(b) be capable of handling goods from more than one consignor to more than one consignee and be capable of handling at least 4 trains per day[5];

(c) be part of the railway network in England[6];

(d) include warehouses to which goods can be delivered from the railway network in England either directly or from another form of transport[7]; and

(e) not be part of a military establishment[8].

The works which comprise the rail freight interchange NSIP will be carried out within the areas identified as Works Nos 1 to 9 on the Works Plans (Document series 2.2/AS-004).

Highway NSIPs

3.4 There are two highway NSIPs which form part of the Proposed Development, which are detailed below.

***Alteration of Motorway* - NSIP 2**

4 Section 26(3)
5 Section 26(4)
6 Section 26(5)
7 Section 26(6)
8 Section 26(7)

3.5 Some of the proposed works to Junction 10 of the M40 motorway meet the criteria set out in Section 22 of the 2008 Act because:

(a) the alteration of the M40 highway is wholly located in England[9];

(b) National Highways is the highway authority for the highway[10]; and

(c) the area affected by the alteration of highway will be greater than 15 ha[11].

3.6 These works will be carried out within the areas identified as Work Nos. 14A and 14B on the Works Plans (Document series 2.2/AS-004). Were the Junction 10 NSIP works to be provided separately (i.e. as an NSIP in their own right, outside of this Order), they would also need to be delivered with Work No. 18.

***Alteration to All Purpose Trunk Road* - NSIP 3**

3.7 The proposed works of alteration to the A43 trunk road near Junction 10 of the M40 motorway (being an All-Purpose Trunk Road) meet the criteria set out in Section 22 of the 2008 Act because:

(a) the alteration of the A43 highway is wholly located in England[12];

(b) National Highways is the highway authority for the A43[13]; and

(c) the area affected by the alterations is greater than 12.5ha[14].

3.8 These works will be carried out within the areas identified as Work Nos. 15A, 15B and 16 on the Works Plans (Document series 2.2/AS-004). Were the A43 NSIP works delivered separately (i.e. as an NSIP, outside of this Order), they would also need to include Work No. 17.

3.9 Highway works are required at J9 of the M40 but these do not exceed any NSIP thresholds.

Associated Development

3.10 Associated development[15] comprises development which is not an integral part of the NSIPs but is required to facilitate them. In this instance it includes some highway mitigation works which, even though substantial (such as the Ardley Bypass (Work No. 20) and Middleton Stoney Relief Road (Work No. 23)), are not part of NSIPs 2 and 3. It also includes the

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9 Section 22(3)(a)

10 Section 22(3)(b). National Highways is the strategic highway company.

11 Section 22(3)(c). The area of development for the construction of motorway is set out in Section 22(4)(a).

12 Section 22(3)(a).

13 Section 22(3)(b). National Highways is the strategic highway company.

14 Section 22(3)(c). The area of development for the alteration of a highway with a speed limit greater than 50mph is set out in Section 22(4)(b).

15 Section 115.

Central Hub facility and extensive green infrastructure including strategic landscaping and areas to be dedicated to biodiversity.

3.11 Section 115(1) of the 2008 Act provides that development consent may be granted for:

(a) Development for which development consent is required; and

(b) Associated development.

3.12 Associated development is defined in section 115(2) as:

(a) development which is associated with the development for which development consent is required – this is addressed in the Guidance to the 2008 Act[16] discussed below;

(b) does not consist of or include the construction or extension of one or more dwellings (which the authorised development does not); and

(c) which is carried out in one or more areas as set out in section 115(3), (4) or (4A). For the purposes of the authorised development, the associated development is located in England (section 115(3)(a)).

3.13 The Guidance sets out the principles for the Secretary of State to take into account when determining whether or not development should be treated as associated development. In particular, it states:

(a) The definition of associated development requires a "*direct relationship between associated development and the principal development. Associated development should therefore either support the construction or operation of the principal development, or help address its impacts*";

(b) Associated development should not be an aim in itself but should be subordinate to the principal development;

(c) It is expected that associated development will, in most cases, be typical of development brought forward alongside the relevant type of principal development or of a kind that is usually necessary to support a particular type of project, for example (where consistent with the core principles above), a grid connection for a commercial power station.

3.14 The Guidance goes on to give examples of general types of associated development, such as access arrangements, landscaping, noise barriers and working sites and examples of associated development specific to individual types of major infrastructure projects. The following are of relevance to highways NSIPs:

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

16 Planning Act 2008: Guidance on associated development applications for major infrastructure projects.

(b) Infrastructure associated with cycle/pedestrian access;

(c) Off-site landscaping, habitat creation and other environmental works;

(d) Off-site drainage works;

(e) Alteration/diversion/stopping up of local roads, accesses and other rights of way;

(f) Off-site diversion of statutory undertakers' equipment.

3.15 There is no requirement under the 2008 Act to distinguish between development for which development consent is required and associated development. Further, there is potential for overlap between the two. Even where NSIPs are separately defined, the list of works included as part of those NSIP works packages inevitably includes some associated development alongside them. Listing "associated development" as a separate part of the Schedule is therefore not strictly accurate. For these reasons, Schedule 1 does not specifically categorise the authorised development into NSIPs and associated development.

3.16 This approach to the holistic inclusion of the whole of the development as the "project" rather than separately identifying associated development is consistent with the drafting of other DCOs, follows pre-application Section 51 advice and acknowledges the comments of Examining Authorities in recent examinations. The Applicant has followed recent drafting examples in taking this approach, see the A122 (Lower Thames Crossing) Order 2025 and The Cambridge Waste Water Treatment Plant Relocation Order 2025.

Contents of the proposed development

3.17 The Proposed Development is outlined in Schedule 1 of the draft DCO by reference to the areas identified on the Works Plans (Document series 2.2/AS-004). The Proposed Development is also described in Chapter 2 of the Environmental Statement (Description of Development) (Document number 6.2/APP-170).

3.18 The draft DCO will seek consent for, in summary, the following works:-

- A Rail Freight Terminal served via new connections to the Chiltern Main Line Railway (part of the Strategic Rail Freight Network), including container storage, HGV parking and associated buildings;
- Works within the Landfill area adjacent to the Chiltern Main Line Railway to allow a rail connection and Principal Access into the Main Site;
- Works to the Ardley Tunnel to provide W8 gauge through the tunnel;
- Up to 603,850 sq.m. (approx. 6.5 million square feet) of distribution and logistics (use class B8) floorspace, including ancillary office accommodation, plus up to 201,283 sq.m. of additional floorspace in the form of mezzanines;
- Demolition of existing structures and new earthworks to create development plateaus to accommodate distribution buildings and associated yard and parking areas,

drainage attenuation features, and extensive perimeter earthworks bunding which will form part of the screening (landscape and visual mitigation) of the proposed development;

- Improvements to Junction 10 of the M40 involving works on the A43 east of the M40, new slip roads to and from the M40, and including an Ardley Bypass to the east of Ardley which will also form a new site access road to the Main Site;

- A Heyford Park Link Road which runs from Camp Road south-east of Heyford Park and south of the proposed development to a new junction on the B430;

- A Middleton Stoney Relief Road around the north-eastern side of the village connecting from a new junction on the B430 to the existing B4030 which links over the M40 to Bicester;

- The Principal Access to the Main Site will be from the new Ardley Bypass and from a new roundabout on the B430 in the north-eastern corner of the Main Site, south of the railway line. This primary access will serve all HGV traffic accessing the site. A secondary access into the Main Site for bus, pedestrian and cycles will be via the Heyford Park Link Road at the southern end of the Main Site;

- Highway works to be carried out in connection with the improvement of J9 of the M40 motorway;

- Additional off-site highway works to be carried out at the junction of Camp Road and Chilgrove Drive, Middleton Road, the B430 west of the Main Site, Quarry Cottages, Middleton Stoney Crossroads and Aves Ditch and including potential improvements to the A4095/B4030 roundabout[17];

- Measures to enable and encourage sustainable travel, including improvements and new links to existing Public Rights of Way, and provision of new foot and cycle links to and within the site, as well as connections to enable bus provision to serve the Main Site via the secondary access to the site from the Heyford Park Link Road;

- Retention and redevelopment of the Grade II listed Threshing Barn at Ashgrove Farm as part of a 'hub' of shared and communal facilities for employees and other users of the Main Site, as well as the retention of the Ashgrove Cottages for rail and estate management related activities;

- Retained key landscape features and new landscaping and planting, including on the proposed earthwork bunds within the Main Site, as part of a comprehensive landscaping and green infrastructure scheme across all elements of the proposed development, including habitat creation to deliver a net gain in biodiversity;

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17 The A4095/B4030 roundabout works are currently included within the Proposed Development but ongoing discussions are being held with Oxfordshire County Council whereby the Applicant will instead provide a financial contribution towards works proposed at the junction to be delivered by the Council or others. This will be secured through a Section 106 Agreement once the level of contribution has been agreed with the Council.

- Associated infrastructure and engineering works including surface and foul drainage, and utilities, including a foul drainage outfall.

Work No. 16A

3.19 The DCO includes Work No. 16A as a potential alternative to Work No. 16. This is identified in Inset 1.2 on Sheet 1 of the Works Plans (Document 2.2A/AS-004) and allows for the Applicant to deliver those works described as Work No. 16A in Schedule 1 in circumstances where works to the A43/B4100 Baynard's Green junction are to be delivered by third parties. Requirement 8 deals with the delivery of the relevant works, including the timing for their provision. Were Work No. 16A to be constructed in the circumstances described above then Work No. 17 would not be required.

3.20 The Applicant is aware that works are proposed by third parties to this junction should their proposed developments obtain planning approval [18] . Furthermore, the Applicant understands that the highway improvements proposed by both developers would be delivered by both or either of the developers even in circumstances where only one of the developments is approved. In the event that these developments (or either one of them) is approved, the Applicant notes that detailed technical highway approvals would need to be pursued and agreed with National Highways and Oxfordshire County Council as the relevant highway authorities. It is possible that those highway works might be commenced before the Applicant needs to commence its proposed works at this junction and in those circumstances, the Applicant would only need to deliver minor amendments to those third party works, which would require no land acquisition powers.[19] It is therefore considered appropriate that the DCO enables either scenario to proceed. The highway works and the alternative scenario are explained in further detail in Chapter 3 (Transport) of the Environmental Statement (Document number 6.3/APP-171).

Ancillary Matters

3.21 The draft DCO will also include powers for some ancillary matters as permitted by section 120 of the 2008 Act.

3.22 The draft DCO includes the following ancillary matters. These provisions will authorise the carrying out of actions to facilitate the development which are not, of themselves, development:

(a) powers to compulsorily acquire land or rights in order to ensure that the authorised development can be delivered in a timely fashion;

(b) highway orders such as traffic regulation orders and speed limit orders; and

(c) the creation of new public rights of way and new private means of access.

18 Planning applications were refused by the local planning authority, and are now the subject of appeals at inquiry.

19 Plots 1/4, 1/10 and 1/11 on the Land Plans (Document series 2.1/AS-003) would not need to be acquired.

4. THE PARAMETERS OF DEVELOPMENT

4.1 The Parameters Plan (Document number 2.5/AS-008) identifies the parameters of the Proposed Development on the Main Site. This plan is the basis upon which the work in the Environmental Statement has been carried out.

4.2 The plan sets out the location of the various elements of the Proposed Development within the Main Site. It also identifies the maximum floorspace within each zone, the maximum overall floorspace, the finished floor levels and building height range and the height and location of the strategic bunding. The extent of the structural green infrastructure to be provided is also identified. These provide the "Rochdale Envelope" for the purposes of the environmental assessment of the development on the Main Site. This is in line with Planning Inspectorate Guidance "Nationally Significant Infrastructure Projects: Pre-Application Advice on Environmental Impact Assessment"[20].

4.3 Article 4 of the draft DCO ensures that the authorised development accords with the Parameters Plan and provides a maximum height limit for the reprofiling of waste in the Ardley landfill site and also, as is common practice, provides for some vertical deviation of the highway works, railway works and bridges.

4.4 The precise design of the authorised development, which is not detailed on the Parameters Plan, will be submitted to the local planning authority for approval following the approval of the DCO (if it is approved) – in similar fashion to reserved matters being approved following an outline planning approval.

4.5 The approval of the detail of the highway works is governed by Parts 2 and 3 of Schedule 14 of the DCO which are largely the equivalent of section 278 agreements under the Highways Act 1980 in respect of the strategic road network (National Highways) and the local highways (Oxfordshire County Council) respectively. The design of those works will need to be in accordance with the general arrangement drawings approved as part of the DCO approval.

4.6 The authorised development will be controlled by the following provisions of the draft DCO:

- Articles 4 (*Parameters of authorised development)* and 54 (*Governance of requirements and governance of protective provisions relating to highway works*);
- the description of the works in Schedule 1 and the limits of deviation shown on the works plans;
- the requirements in Schedule 2, which are subject to ongoing discussion with the relevant authorities and statutory undertakers; and
- in respect of the highway works, the highway general arrangement plans and the protective provisions relating to the highway works (Parts 2 and 3 of Schedule 14).

4.7 The provisions of draft Articles 4 and 54 function so that detail to be approved following the grant of the DCO must remain within the parameters upon which the environmental assessment was based. Permitting the approval of details subsequent to the making of the Order, and the ability to change details approved, as provided for in Article 54(2), is in

20 Updated September 2026.

accordance with paragraph 17 of Advice Note Fifteen: Drafting Development Consent Orders.

5. THE DRAFT ORDER

5.1 This section of the memorandum explains each Article of, and Schedules to, the DCO. The drafting of the Articles will be refined as the application proceeds through examination but it has also been amended in response to feedback from consultation and the Planning Inspectorate. For that reason, the Article numbers have changed since statutory consultation.

5.2 Commentary on the Articles notes where similar provisions have been included in other approved DCOs. In particular, regard has been had to other SRFI DCOs, being, The Daventry International Rail Freight Interchange Alteration Order 2014[21], The East Midlands Gateway Rail Freight Interchange and Highway Order 2016[22], The Northampton Gateway Rail Freight Interchange Order 2019[23] and The West Midlands Rail Freight Interchange Order 2020[24]. Regard has also been had to recently made highways DCOs including The A122 (Lower Thames Crossing) Development Consent Order 2025.[25]

5.3 In accordance with relevant guidance the commentary to the Articles also, where appropriate, identifies the provisions in the 2008 Act which authorise the inclusion of such powers within a DCO.

Deemed consent

5.4 It will be seen that the DCO includes several provisions for deemed consent and approvals. These critical provisions have been included to facilitate the efficient and timely delivery of the Proposed Development. These provisions include safeguards to ensure that adequate information is provided to support the granting of the consent or approval. Where such information has been supplied but no reply has been received, consent is deemed to have been given, allowing the development to proceed without delay or the need for negotiation with third parties. This approach is considered appropriate given the national importance of the Proposed Development and the timeframe for delivery. There is precedent for this in many DCOs, including the recently made Cambridge Waste Water Treatment Plant Relocation Order 2025[26].

5.5 In particular, deemed consent under the Articles only applies where the application is accompanied by all relevant information and includes a statement that deemed consent will apply. An application which does not provide sufficient information for a determination will

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21 S.I. 2014 No. 1796.

22 S.I. 2016 No. 17.

23 S.I. 2019 No 1358 (as corrected by The Northampton Gateway Rail Freight Interchange (Correction) Order 2020 (S.I. 2020 No. 1670) and as amended by the Northampton Gateway Rail Freight Interchange (Amendment) Order 2023 (S.I. 2023 No 418)).

24 S.I. 2020 No. 511 (as corrected by The West Midlands Rail Freight Interchange (Correction) Order 2020 (S.I. 2020 No. 1163) and as amended by the West Midlands Rail Freight Interchange (Amendment) Order 2023 (S.I. 2023 No. 1132) and as further amended by the West Midlands Rail Freight Interchange (Amendment No. 2) Order 2025 (S.I. 2025 No. 481).

25 S.I. 2025 No 462.

26 S.I. 2025 No 452.

not trigger the start of the determination period, and an application which does not include the required statement will not be subject to deemed consent. A strategic rail freight interchange is materially complex to deliver and depends on multiple approvals from a range of statutory bodies, and its delivery cannot be held in abeyance because of a failure to respond. Further, the approving authorities have been involved in pre-application discussions for a number of years and are participating in the Examination, so applications for approval will be made in circumstances where the approving body has pre-existing, detailed knowledge of the Proposed Development.

5.6 Network Rail has also agreed deemed consent, which features in its precedent protective provisions. The Applicant acknowledges that approving bodies may have concerns with this approach, but it is in their power to prevent deemed consent from applying by acknowledging any application for approval or consent and confirming that it is being considered. Further, where deemed consent applies, the Applicant is required to give the approving authority notice that deemed consent will apply in the absence of a response.

Requirements

5.7 The Requirements in Schedule 2 refer to various strategies and management plans. Schedule 2 secures compliance with these documents.

Part 1 - Preliminary

Preamble

5.8 The DCO begins with a preamble, as with all statutory instruments. The Applicant has made amendments to the Preamble since submission of the application and has therefore removed the square brackets to reflect that the Examining Authority panel consists of three members.

Article 1 (Citation and commencement)

5.9 This Article sets out the name of the Order and states the date on which it comes into force. It will not be completed unless and until the DCO is approved.

Article 2 (Interpretation)

5.10 This Article comprises, in the main, the definition of terms used throughout the DCO.

5.11 Definitions of note are:

(a) “authorised development” refers to the development described in Schedule 1 (authorised development) and any other development authorised by the DCO as well as any works carried out under the requirements. The Applicant considers the reference to requirements to be necessary, because, in order to comply with the requirements, the Applicant may need to carry out works such as investigative ground works, monitoring and surveys, not all of which constitute development within the meaning of Section 32 of the 2008 Act.

(b) The definition of "undertaker" expressly refers to Oxfordshire Railfreight Limited and in respect of part (b) of that definition, includes (in respect of the Main Site and Work No. 31 (Biodiversity and Landscaping Enhancement Area (Woodland Planting) only), those persons who have the benefit of the DCO in accordance with Section 156 of the 2008 Act. Limb (b), therefore, is specific to the Main Site and Work No. 31 only and not the entire Order Limits. The effect of this is that the benefit of the DCO as it applies to land within the Order Limits but outside of the Main Site and Work No. 31 rests with Oxfordshire Railfreight Limited in its entirety.

This means that for the Main Site, which mainly consists of the rail freight interchange and warehousing (and not the highway works), and Work No. 31, 'undertaker' includes those with an interest in the land. In respect of the Main Site, this is because there will ultimately be several bodies with an interest in the operation of the rail freight and the occupation of the warehousing and therefore the Applicant needs to ensure that they may benefit from the DCO. In respect of Work No. 31, this land is to be retained by the current landowner and therefore cannot be personal to Oxfordshire Railfreight Limited.

It should be noted that Article 7 restricts the benefit of the order in relation to the exercise of the compulsory acquisition powers and the carrying out of highway works to Oxfordshire Railfreight Limited only, as explained in **paragraph 5.27** below.

(c) "Commence" is defined in the draft DCO as:

"commence" means, unless the context indicates otherwise, to carry out any material operation, as defined in section 155 of the 2008 Act (when development begins), forming part, or carried out for the purposes, of the authorised development other than operations consisting of—

(a) site preparation, site security, and clearance works;

(b) environmental surveys and monitoring;

(c) archaeological investigation;

(d) removal of hedgerows, trees and shrubs listed in Schedule 13;

(e) investigations for the purpose of assessing ground conditions;

(f) diversion or laying of services required for the purposes of construction;

(g) placement of construction plant and equipment;

(h) display of construction site notices; and

(i) works for the protection and redevelopment of the threshing barn as shown on the listed building drawings.

and "commencement" and "commenced" are to be construed accordingly;

Carving out activities from the definition of 'commence' means that the undertaker can carry out what are, in effect, preliminary works, without having to discharge the requirements. The Applicant considers these activities to be either non-intrusive or low impact and therefore it is appropriate for these to be carried out without the undertaker having to provide detail to the local planning authority and await approval.

In some cases, the activities may be required to inform the requirement submissions themselves, in particular, the environmental surveys and monitoring, so that applications to discharge requirements (which require the provision of details) are properly informed. Excluding these activities also allows them to be carried out before pre-commencement requirements are discharged, thereby minimising the overall construction timetable.

There is precedent for this in many DCOs, including The Sizewell C (Nuclear Generating Station) Order 2022.[27] The Applicant updated the drafting of this definition before submission of the application following feedback from the Environment Agency, and since submission following discussions with Oxfordshire County Council, as described in more detail in the DCO Schedule of Changes (Document number 3.5, Examination library reference to be confirmed) submitted at Deadline 1. In particular, ecological mitigation works have been removed from the carve-outs, the reference to the "erection" of construction plant and equipment has been replaced with "placement".

Notwithstanding that these activities may be carried out without commencing the authorised development, any relevant articles will still need to be complied with, for example:

(i) Article 23 (authority to survey and investigate the land) provides controls with respect to the surveying, monitoring and investigating of land. This includes a requirement for the Applicant to provide notice to landowners and occupiers and to provide written evidence of authority to enter the land if required. There are also restrictions on the location of trial holes (as per paragraph (4)). Paragraph (5) requires the Applicant to compensate for any loss or damage arising as a result of the exercise of this power;

(ii) The removal of any trees or hedgerows would still be subject to Articles 49, 50 and 51. These Articles restrict the removal of trees, hedgerows and shrubs to those specified in Schedule 13 or where removal is for the purposes of the authorised development and necessary for the reasons set out in the Articles. The fact that the works would not trigger commencement does not change that.

(d) Definitions of the "main site" and "highway works" have been added so that provisions are easily applicable to those elements of the development.

(e) "maintain" is defined as "includes inspect, repair, adjust, alter, clear, refurbish or improve, provided such works do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement and any derivative of "maintain" is to be construed accordingly". The Applicant considers that this is a reasonable and appropriate definition to ensure that such activities that might need to be undertaken as a matter of course, or during maintenance of the development, are captured. The references to "adjust" and "alter" are considered necessary as during maintenance, it may transpire that changes are required in order

[27] S. I. 2022 No. 853.

to ensure the continued operation. There is precedent for this in The A122 (Lower Thames Crossing) Order 2025.

The reference to "improve" is considered necessary because, as part of ongoing maintenance, the Applicant may consider it necessary or beneficial to replace elements of its works with newer or more efficient apparatus. There is precedent for the use of 'improve' in The Cambridge Waste Water Treatment Plant Relocation Order 2025 and The A428 Black Cat to Caxton Gibbet Development Consent Order 2022.

The Applicant considers it necessary to include reference to 'alter' in addition to 'improve' because the Applicant considers 'alter' to have a different effect than 'improve'. 'Alter' is relevant to works which may require changes during maintenance.

The definition of "maintain" is caveated by the requirements that the maintenance must relate to the authorised development and that such maintenance operations must not give rise to any materially new or materially different environmental effects. There is therefore a limit on the allowable range of activities. This is considered to be in line with the Planning Inspectorate's Advice Note Fifteen guidance on such drafting.

(f) The DCO uses the terms "Order limits" and "Order land". "Order land" refers to land and interests which are subject to the powers of Part 5 of the draft DCO as described in the book of reference and shown on the land plans. The term "Order limits" means the limits shown on the works plans represented by a red line within which the authorised development may be carried out. "Order limits" covers all land within which the development may be carried out, including the "Order land", as well as other land which is not subject to Part 5 powers, such as land in respect of which no compulsory acquisition or temporary possession powers are needed.

(g) "Owner" is defined by reference to the Acquisition of Land Act 1981 and the definition in that Act is a person satisfying specified criteria 'from time to time'. For this reason, the drafting does not include express reference to successors in title as such persons are captured by the wording 'from time to time'.

(h) While not a defined term in Article 2, the phrase "successor in function" is used throughout the Order. The use of "successor in function" is well established having been used in many made Orders, see for example The National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024.[28]

5.12 The remainder of Article 2(1) is consistent with many other DCOs and sets out further matters relating to interpretation.

5.13 Article 2(3) provides that all distances, directions and lengths referred to in the Order are approximate, thus allowing for some tolerance between final measurement and those listed

[28] S. I. 2024 No. 393

in the Order. This wording ensures that such works will still be authorised by the Order, save that such works are still limited by the limits of deviation in Article 4.

5.14 Article 2(11) provides that in the order, references to "materially different environmental effects" in comparison with those reported in the environmental statement must not be construed so as to include the "avoidance, removal or reduction of an adverse environmental effect or positive environmental effect, or the increase of an assessed positive environmental effect", that was reported in the environmental statement as a result of the authorised development. This wording was included in the recently made A122 (Lower Thames Crossing) Order 2025. It is intended to ensure that any changes to the DCO which result in betterment are not prohibited.

Part 2 – Principal Powers

Article 3 (Development consent granted by the Order)

5.15 This Article provides development consent for the authorised development to be carried out and used within the Order limits subject to the provisions of the DCO.

5.16 The Article includes the reference to "use" because, although section 157 of the 2008 Act authorises the use of buildings in respect of which development consent is granted, there is no similar provision related to land. Further, whilst "use" is also expressly included in Articles 5 (for the rail infrastructure and warehousing) and 44 (for the railway), in those Articles, the "use" provision relates only to some specific works and not the "authorised development" in its entirety.

5.17 The Applicant has not included the wording "within the Order limits" at the end of Article 3(1). This is because it may be necessary for the Applicant to use powers outside of the Order limits, particularly in relation to the powers to survey land (Article 23) and to carry out protective works to buildings, structures and trees (Article 24). It is noted that this approach was endorsed by the Secretary of State in The A303 (Amesbury to Berwick Down) Development Consent (Correction) Order 2021[29] in which an order was made to remove the wording "within the Order limits" from Article 4.

5.18 Article 3(2) provides that any enactment applying to land within, adjoining or sharing a common boundary with the Order limits has effect subject to the provisions of this Order. Whilst the Applicant has carried out a review of local legislation, there may be acts or other enactments which could impede the authorised development. There is precedent for this in The A122 (Lower Thames Crossing) Order 2025.

Article 4 (Parameters of authorised development)

5.19 This Article identifies the parameters and limits of deviation within which the authorised development must be carried out by reference to various plans which identify those parameters and limits of deviation.

29 S.I. 2021 No. 346.

5.20 The Article permits exceptions to the application of the limits of deviation where the local planning authority or the relevant highway authority (on matters related to their respective functions) is satisfied that it would not result in any materially new or materially different significant effects on the environment that have not been assessed in the Environmental Statement.

5.21 This approach accords with the guidance set out in Planning Inspectorate's Advice Note Fifteen and is accepted as an appropriate way to provide for flexibility and address uncertainty, for example, ground conditions and to allow refinement through detailed design. Given the scale of the Proposed Development, it would not be feasible for the design to be fully fixed at this stage. If the DCO is granted the design will be refined following the making of the Order. The Requirements in Schedule 2 will provide a mechanism for approval of that design and the limits of deviation will provide the necessary flexibility. A similar approach has been adopted in made DCOs such as the Lake Lothing (Lowestoft) Third Crossing Order 2020[30] and the Great Yarmouth Third River Crossing Development Consent Order 2020[31].

5.22 The Applicant has considered pre-application s51 advice in respect of the limits of deviation in Article 4(2) for the highway works and whether this should be dealt with in the protective provisions but has not amended the wording. The Applicant's drafting is consistent with precedent, for example, Article 4 of The Northampton Gateway Rail Freight Interchange Order 2019. It is considered appropriate to include this provision outside of the protective provisions as the protective provisions apply in specified circumstances only. There may be instances where the Applicant needs to deviate from the limits of deviation yet does not engage the protective provisions.

Article 5 (Authorisation of Use)

5.23 This Article is included to expressly authorise the use of Work Nos.1 - 9, pursuant to section 157 of the 2008 Act. It authorises the operation and use of the rail freight interchange development and ensures that ancillary uses apply to the warehousing built pursuant to the DCO in the same way as if the warehousing were built pursuant to a planning permission. The Article follows the approach taken in Thames Tideway Tunnel, Article 4[32] and other more recent DCOs[33]. As with Article 3, the use is made subject to the provisions of the DCO.

Article 6 (Maintenance of authorised development)

5.24 This Article allows the maintenance of the authorised development. Its inclusion is permitted by section 120(3) of the 2008 Act because maintenance of the authorised development is clearly related to the development to be consented. Article 6(1) provides that maintenance may be carried out at any time, except to the extent that the DCO or any agreement made under the DCO provides otherwise. The latter reference to agreements is intended to capture agreements which may be required with third parties pursuant to the Protective

30 S.I. 2020 No. 474 (Article 5).

31 S.I. 2020 No. 1075 (Article 6).

32 The Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 S.I. 2014 No. 2384.

33 The Northampton Gateway Rail Freight Interchange Order 2019 (S.I. 2019 No 1358) and The West Midlands Rail Freight Interchange Order 2020 (S.I. 2020 No. 511).

Provisions in Schedule 14. It also provides a means for restricting the generality of the Article, if made by agreement.

5.25 The Article permits any activity within the definition of "maintain" set out in Article 2, but the inclusion of paragraph (3) means that maintenance activity which would be likely to give rise to any materially new or materially different significant effects on the environment that have not been assessed in the Environmental Statement or in any updated environmental information submitted pursuant to the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017[34] is not authorised. This would be subject to the interpretive provision in Article 2(11) explained above.

5.26 Maintenance of the highway works is not covered by this Article but is governed by Article 15 (maintenance of highway works) and the relevant provisions of Parts 2 and 3 of Schedule 14 since those provisions detail the appropriate arrangements and authorisations relevant to highway maintenance. This approach was accepted in The M54 to M6 Link Road Development Consent Order 2022[35], Great Yarmouth Third River Crossing Development Consent Order 2020[36] and The Thurrock Flexible Generation Plant Development Consent Order 2022[37].

Article 7 (Benefit of the Order)

5.27 The DCO will benefit the "undertaker", as defined in Article 2. In the case of the Main Site, this includes all parties who qualify under section 156 of the 2008 Act (principally being those with a legal interest in the Main Site). However, some powers will benefit only Oxfordshire Railfreight Limited, as follows:

(a) Part 5 (Powers of Acquisition) will be for the sole benefit of Oxfordshire Railfreight Limited to ensure that the Articles relating to the exercise of compulsory acquisition powers cannot be transferred unless the Secretary of State consents. This is because Oxfordshire Railfreight Limited will be providing the security for the funding of any potential compensation as a result of exercising these powers; and

(b) Only Oxfordshire Railfreight Limited will have the power to carry out the highway works and deliver them in accordance with the protective provisions in Parts 2 and 3 of Schedule 14 unless the Secretary of State consents to a transfer of those powers or the relevant highway authority takes over responsibility for carrying out the highway works in default of the undertaker, pursuant to the provisions of Parts 2 and 3 of Schedule 14.

5.28 In respect of the highway works, it is considered that the power to carry out the highway works should be restricted to the named undertaker as opposed to being available to all the owners of the land interests within the Order limits. This will ensure an orderly and comprehensive

[34] S.I. 2017 No. 572 (as amended).
[35] S.I. 2022 No. 475 (Article 4)
[36] S.I. 2020 No. 1075 (Article 5)
[37] S.I. 2022 No. 157 (Article 5)

approach to the carrying out of the works and is also appropriate given that the nature of those works, and the protective provisions relating to them, have been specifically discussed between Oxfordshire Railfreight Limited and the relevant highway authorities.

5.29 Article 7(4) is included to ensure that any works which may be carried out by other parties, including "owners" under the protective provisions are authorised. This wording has been included in other Orders such as the M4 Motorway (Junctions 3 to 12) (Smart Motorway) Development Consent Order 2016[38], The Northampton Gateway Rail Freight Interchange Order 2019 and The West Midlands Rail Freight Interchange Order 2020.

Article 8 (Transfer of the benefit of certain provisions of the Order)

5.30 This Article is included to set out the procedure to be followed in the event that a request to transfer the benefit of Part 5 (powers of compulsory acquisition) and/or Parts 2 and 3 of Schedule 14 (Protective Provisions) is made to the Secretary of State, as permitted by Article 7(2) and (3)(a).

5.31 Paragraph (3) provides that the exercise by a person of any benefits or rights conferred in accordance with any transfer under the Article is subject to the same restrictions, liabilities and obligations as would apply under the DCO if those benefits or rights were exercised by the undertaker. This ensures that any transferee does not take free from the provisions of the DCO and must still comply with its terms.

5.32 Paragraph (4) sets out the procedure for transferring the benefit of the DCO, namely, the undertaker must consult the Secretary of State before seeking its consent and, before any transfer takes effect, must give notice to the Secretary of State and, if the transfer relates to the exercise of powers in their area, the local planning authority and (in respect of the protective provisions for the highway works) the relevant highway authority. The Applicant considers it appropriate for the decision on whether or not transfer can occur to be with the Secretary of State.

5.33 Paragraph (5) then sets out the requirements for a notice, ensuring that the notice will provide all of the required information in order that the Secretary of State may make an informed decision on the transfer. The drafting of Article 8 (including the requirement to consult) is similar to the drafting of The Norfolk Vanguard Offshore Wind Farm Order 2022[39] and The Little Crow Solar Park Order 2022[40] but is limited to specified parts of the Order for the reasons set out above.

Part 3

Streets

Article 9 (Street works)

[38] S.I. 2016 No. 863 (Article 7(2))

[39] S.I. 2022 No. 436 (Article 5)

[40] S.I. 2022 No. 138 (Article 6)

5.34 This Article provides for the carrying out of the works described in paragraph (1) (a) – (j) for the purposes of the authorised development in respect of any of the streets set out in Schedule 3. As the works listed in Article 9(1) may only be exercised for the 'purposes of' the proposed development, this is not a general power to construct the elements listed in (1)(a) to (j). Article 9(1) is, as confirmed by Article 9(2), subject to the protective provisions for the benefit of National Highways and Oxfordshire County Council as local highway authority. Under those protective provisions, before carrying out street works the Applicant must put in place security for the benefit of the local highway authority (in the form of either a bond or a parent company guarantee, subject to ongoing negotiation) and must fund the local highway authority's administrative and supervision costs related to such works.

5.35 The inclusion of this Article in the Order provides a statutory right to undertake street works within the specified streets and means that the undertaker will not need to obtain a separate licence from the street authority under the New Roads and Street Works Act 1991 ("1991 Act").

5.36 As confirmed in paragraph (2), the authority given by Article 9(1) is a statutory right for the purposes of sections 48(3) and 51(1) of the 1991 Act and the application of this legislation is permitted by section 120(5)(a) of the 2008 Act.

5.37 Paragraph (4) provides that provisions relating to major highway works in Part 3 of the 1991 Act which refer to the highway authority concerned shall, in relation to works which are major highway works, be construed as references to the undertaker. "Major highway works" is defined in Section 86 of the 1991 Act as follows:

in this Part "major highway works" means works of any of the following descriptions executed by the highway authority in relation to a highway which consists of or includes a carriageway—
(a) reconstruction or widening of the highway,
(b) works carried out in exercise of the powers conferred by section 64 of the Highways Act 1980 (dual carriageways and roundabouts),
(c) substantial alteration of the level of the highway,
(d) provision, alteration of the position or width, or substantial alteration in the level of a carriageway, footway or cycle track in the highway,
(e) the construction or removal of a road hump within the meaning of section 90F of the Highways Act 1980,
(f) works carried out in exercise of the powers conferred by section 184 of the Highways Act 1980 (vehicle crossings over footways and verges),
(g) provision of a cattle-grid in the highway or works ancillary thereto, or
(h) tunnelling or boring under the highway.

5.38 The effect of the above is that any works which would be "major highway works" if carried out by a highway authority in relation to one of its streets, will be major highway works if carried out under the DCO. This is relevant in relation to:

(a) Section 84 of the 1991 Act which outlines the responsibilities and procedures when statutory undertakers' apparatus (including pipes, cables, ducts) is affected by major highway works;

(b) Section 85 of the 1991 Act which provides for cost sharing measures. When such works affect undertakers' apparatus, the costs of necessary measures (e.g. relocation or protection) must be shared between the highway authority (which will apply to the Applicant in its capacity as the undertaker in the DCO) and the statutory undertaker as prescribed by regulations.

ANPR

5.39 Since statutory consultation, Article 9(1)(c) has been amended to include reference to 'ANPR' as follows:

'(c) place apparatus in the street which includes without limitation the installation and maintenance of structures and equipment for ANPR on or near a highway;'

This has necessitated a definition of 'ANPR' to be added to Article 2 (interpretation): *means cameras for automatic number plate recognition.*

5.40 Adding express reference to ANPR was considered necessary as the definition of 'apparatus' does not include ANPR. As explained in the HGV Routeing Strategy (Document number 6.3A.03/AS-057), which is enforceable by Requirement 24, ANPR is proposed to be placed on the Main Site and on the highway adopted by Oxfordshire County Council in order to monitor the use of particular roads by HGVs travelling to and from the development during operation. The ANPR will be subject to detailed design approval under the protective provisions for the benefit of the local highway authority in the DCO and will be installed, maintained and managed by the Applicant pursuant to Article 9.

Tunnels

5.41 Article 9(1)(e) gives the power to construct bridges and tunnels. There are no vehicular tunnels proposed as part of the Authorised Development, however, there will be tunnels required for bats and newts. This is explained in Chapter 6 (Ecology and Arboriculture) (Document number 6.6/APP-174) of the Environmental Statement.

5.42 The Applicant has considered the use and definition of 'tunnel' in the 1991 Act. Under s.48(3), "street works" includes breaking up or opening the street, or any sewer, drain or tunnel under it, or tunnelling or boring under the street. Under s. 48(1) and 107(2), where a street or road passes over a bridge or through a tunnel, references to the road include that bridge or tunnel. However, 'tunnel' is not defined in isolation.

5.43 In light of the above, the Applicant considers it necessary to retain the power to construct tunnels as the proposed tunnels, albeit for wildlife, will form part of the bridges and in turn will form part of the roads and streets. The power to construct bridges and tunnels (and the power to carry out any works listed in Article 9(1)) is not unlimited. It is restricted to streets named in Schedule 3 and only where such works are for the purposes of 'the authorised development'.

Article 10 (Power to alter layout, etc., of streets)

5.44 This Article relates to the streets in the Main Site which will be maintained as private roads. However, any alteration to those roads will still require the consent of the relevant street authority, notwithstanding that they are private roads. This power is required to ensure that delivery of the authorised development is not hindered by interference with existing streets.

5.45 This Article is not limited to specified streets in a Schedule as detailed design is still to be carried out and therefore it may not transpire that it is necessary to alter certain streets until the design progresses. Any alterations require the consent of the street authority, thereby limiting the generality of this otherwise permissive power.

5.46 A deemed consent provision has been included to ensure there is a timeframe established for a route to a decision. This deemed consent approach is increasingly incorporated in many DCOs, sometimes with a shorter period of 28 days, for example, see Article 12(5) of the National Grid (Hinkley Point C Connection Project) Order 2016[41]. It was also included, with the 42 day period, as is proposed here, in The Northampton Gateway Rail Freight Interchange Order 2019 and The West Midlands Rail Freight Interchange Order 2020. Paragraph (8) requires the undertaker to inform the street authority of the deeming provisions when seeking consent, thus ensuring that the street authority is aware of the timescales. The Applicant has updated these provisions following discussions with Oxfordshire County Council to insert a new paragraph 10(9) which clarifies that if an application subject to the deeming provisions does not include the statement required under paragraph 10(8) then those provisions will not apply to that application.

5.47 The inclusion of the Article in the DCO is authorised pursuant to section 120(3) of the 2008 Act because any necessary works are related to the authorised development.

Article 11 (Permanent stopping up of streets)

5.48 This Article authorises the stopping up of streets in connection with the carrying out of the authorised development. The Article is drafted with reference to Schedule 4 which is split into two parts: streets to be permanently stopped up for which a substitute is to be provided and streets to be permanently stopped up for which no substitute is to be provided.

5.49 Where a street has been stopped up under the Article, all rights of way over or along the street are extinguished and the undertaker may use so much of the street as is bounded on both sides by the land owned by the undertaker, provided that it is used for the purposes of the authorised development.

5.50 In the case of streets to be stopped up where a substitute is to be provided, the street must not be stopped up unless the substitute has been completed to the reasonable satisfaction of the relevant street authority and is open for use or a temporary alternative route has been provided and maintained until completion of the new, substitute street.

5.51 The inclusion of the Article in the draft DCO is authorised pursuant to section 120(3) of the 2008 Act since any necessary works are related to the authorised development. The table

[41] S.I. 2016 No. 49

below addresses the street to be stopped up and provides a justification for the absence of a substitute:

Street to be stopped up	Extent of Stopping Up	Reason no substitute is provided
The lane known as Quarry Cottages or Somerton Road	The existing highway within the area marked i on the access and rights of way plans (Document 2.3B/ APP-031)	The lane was severed by the construction of the Upper Heyford Airfield and its remaining purpose was to access land between the former airfield and the Chiltern Main Line Railway. As this land is subsumed within the OxSRFI Main Site, the length of the lane crossing the railway onto this land will no longer need to be a public highway. The highway rights at the bridge crossing the railway are to be replaced by a public bridleway, which is part of the proposed public bridleway between the points marked 1-2-3-4 on the access and rights of way plans (Documents 2.3B and 2.3C/APP-031 and APP-032).

Article 12 (Temporary closure, alteration, prohibition, diversion and restriction of use of streets)

5.52 This Article authorises the undertaker to temporarily close, prohibit the use of, alter, divert or restrict the use of any street for the purposes of carrying out the authorised development. This can only be done with the consent of the relevant street authority (save where the undertaker is the street authority), which may attach reasonable conditions to any consent but such consent must not be unreasonably withheld or delayed. This power is included to minimise potential conflicts between the authorised development works and the use of affected streets during construction. As with Article 10, deemed approval applies after 42 days and when making an application for consent, the undertaker must inform the street authority of this.

5.53 The ability to attach conditions is appropriate because the street authority will remain responsible for the management of the street, for example, it may be reasonable to impose a condition restricting a closure to certain hours of the day.

5.54 Article 12(1)(a) and (b) also permit the diversion of traffic or a class of traffic from the street and permit the undertaker to prevent pedestrians from passing along the street. In some circumstances, it may not be necessary to close a street in its entirety and subparagraphs (a) and (b) provide the undertaker with the ability to take an approach which is more convenient to users of the street.

5.55 The DCO uses the term 'temporary closure' rather than 'temporary stopping up' as the term 'stopping up' is used in both the Town and Country Planning Act 1990 and Highways Act 1980 to refer to permanent closure of a route.[42]

5.56 Paragraph (2) requires the undertaker to provide reasonable access for pedestrians going to or from premises abutting a street affected by the Article.

5.57 Pursuant to paragraph (3), the undertaker may use as a temporary working site any street or public right of way which has been closed or worked on under the Article.

5.58 Paragraph (6) provides a mechanism for compensation for any person who suffers loss as a result of the suspension of any private rights of way.

Article 13 (Public rights of way – creation, substitution, stopping up and closure of level crossings)

5.59 This Article provides that the undertaker may, in connection with the carrying out of the authorised development:

(a) stop up the public rights of way in Part 1 of Schedule 5 and if the specified public right of way is stopped up, a substitute must be provided as described in Part 1 of that Schedule. The Article also allows the agreement with the local highway authority of an alternative temporary substitute right of way, or that no temporary substitute is necessary. Any temporary substitute right of way must be maintained by the undertaker until the opening of the permanent substitute, as per paragraph (3).

(b) stop up the public rights of way in Part 2 of Schedule 5 without providing a substitute;

(c) provide the new rights of way specified in Part 3 of Schedule 5; and

(d) alter the status of part of footpath 297/8 to a bridleway.

5.60 The Article also confirms that where a level crossing is crossed by a public right of way which is stopped up, the level crossing may also be stopped up and discontinued at the same time. This allows the closure of the Bucknells Farm Level Crossing.

5.61 The rights of way which it is proposed will be permanently stopped up for which no substitutes are proposed are set out below, together with an explanation for why no substitutes are provided.

[42] save for Section 261 of the Town and Country Planning Act 1990 which concerns the 'temporary stopping up' of a highway for mineral working

Public Right of Way to be stopped up	Extent of Stopping Up	Reason no substitute is provided
Bridleway 109/29 (part)	Between points 17 – 16 and 18 – 19 on the Access and Rights of Way Plans (Document 2.3D/APP-033)	The bridleway was severed by the construction of the Upper Heyford Airfield. Whilst there is no direct substitute for this bridleway (as its entire route will be subsumed by the OxSRFI Main Site), the Proposed Development actually increases the total length of bridleway in the area local to it by over 5km which means the loss of this route is mitigated by the benefit from the Proposed Development.
Footpath 398/7 (part)	Between points 64 – 65 on the Access and Rights of Way Plans (Document 2.3H/APP-037)	Footpath 398/7 was cut into two sections by the construction of the M40. No safe provision was made for pedestrians to cross through the junction. Following consultation with Oxfordshire County Council it was agreed that given the path is effectively a dead end, it should be trimmed back to provide an 'out and back' walking route rather than maintain the status quo which requires pedestrians to cross many lanes of traffic and climb over vehicle restraint barriers.

5.62 The inclusion of a power to stop up a public right of way is permitted by section 136 of the 2008 Act, if the Secretary of State is satisfied that an alternative right of way will be provided, or an alternative is not required.

5.63 The provisions relating to the creation of the public rights of way are included in the draft DCO in order to facilitate the development and therefore their creation is "related" to the authorised development pursuant to section 120(3) of the 2008 Act.

5.64 The Applicant considers that s120(3) permits the altering of the status of part of footpath 297/8. As stated above, section 120(3) provides that an order granting development consent may make provision relating to, or to matters ancillary to, the development for which consent is granted. Further, section 120(4) states that provision that may be made under subsection (3) includes in particular provision for or relating to any of the matters listed in Part 1 of Schedule 5.

5.65 Part 1 of Sch 5 para 2 states:

The creation, suspension or extinguishment of, or interference with, interests in or rights over land (including rights of navigation over water), compulsorily or by agreement.

5.66 The Applicant is of the view that 'modification' could constitute 'interference' with an interest over land. However, as an alternative, the Applicant proposes that modification is permitted under s120(3) of the 2008 Act as a 'provision relating to, or to matters ancillary to, the development for which consent is granted.' The Applicant has considered other DCOs which modify the status of public rights of way, listed below. The Explanatory Memoranda to these DCOs state that the relevant article is authorised by s120(3):

(a) The A122 (Lower Thames Crossing) Development Consent Order 2025 - Article 15 and Schedule 4 which provides for the redesignation of several footpaths to bridleways; and

(b) The M25 Junction 28 Development Consent Order 2022 – Article 16, which provides that the public rights of way described in Part 6 (other public rights of way) of Schedule 4 (classification of roads, etc.) will be of the types described in column (1) to the extent described in column (2).

5.67 Further, the following Transport and Works Act Orders also provide for the 'redesignation' of the status of public rights of way: see The Network Rail (Cambridgeshire Level Crossing Reduction) Order 2020 (Schedule 4)[43] and The Network Rail (Essex and Others Level Crossing Reduction) Order 2022 (Schedule 4)[44]. It is noted that Schedule 1 to the Transport and Works Act 1992 provides almost identical wording to that in Schedule 5 of the 2008 Act, specifically allowing for 'The creation and extinguishment of rights over land (including rights of navigation over water), whether compulsorily or by agreement' and also provides powers to authorise ancillary works. Whilst the Inspector's reports do not provide any commentary on the power for the modification to the PROW in these Orders, the report to the Cambridgeshire Level Crossing Order states:

> *A TWAO can authorise ancillary works (such as footbridges and bridleway bridges to carry new public rights of way (PROW) over drains or watercourses), the removal of crossings, the diversion or redesignation of the status of certain highways and the creation of new rights of way in substitution. It allows multiple level crossings to be considered in a holistic way and in a single application.*

5.68 The Applicant notes the reference to these as 'ancillary works'. In light of this, the Applicant concludes that modification of PROW is precedented and that its inclusion in the draft DCO is authorised by the 2008 Act.

Article 14 (Accesses)

5.69 This Article is included to allow for new access to be provided or existing accesses to be altered. The Article provides that the undertaker may, for the purposes of the authorised development:

(a) form and lay out means of access, or improve or maintain an existing means of access, in the locations specified in column (2) of Part 3 of Schedule 6 (new

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43 S.I. 2020 (No 1485).

44 S.I. 2022 (No. 651).

private means of access created) at the stage of the authorised development identified in column (3) of that Part of that Schedule.

(b) with the approval of the relevant highway authority or relevant street authority, form and lay out such other means of access or improve or maintain any existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development. A request for a new access or to improve an existing access will be deemed approved in the absence of a notification from the relevant highway authority or relevant street authority within 42 days. As with the other Articles in Part 3, deemed approval only applies where that authority has not notified the undertaker of its decision. In its request for approval, the undertaker must notify the relevant highway authority of the deeming provisions, and new paragraph (5) confirms that if an application does not include that statement, the deeming provisions will not apply to it. Express provision for conditions is not included because the locations of accesses are largely predetermined in Schedule 6, consent under this sub-paragraph is limited to whether the access is reasonably required, and such accesses will be subject to the protective provisions, through which the local highway authority will approve the detailed design.

5.70 This Article requires consent from either the highway authority or street authority as appropriate. Reference to the two different authorities is required because of their separate roles:

(a) the highway authority (defined in the DCO as per the definition in the 1980 Act, which in turn defines highway authority in Section 1 of that Act) is responsible for highways which are maintainable at the public expense;

(b) a street authority (defined in the DCO as per the definition in the 1991 Act, which in turn defines a street authority in Section 49 of that Act). If the street is a highway maintainable at the public expense, the street authority is the highway authority. If the street is not a maintainable highway, the street authority is the "street managers". The “street managers” are the authority, body, or person liable to the public to maintain or repair the street, or if none exists, any authority, body, or person having the management or control of the street.

In summary, therefore, reference to both authorities is required to cover the possibility of roads being maintainable and not maintainable at the public expense.

5.71 Pursuant to paragraph (2), any access works which are included and defined as part of the authorised development will not require any further consent other than through the provisions of Parts 2 and 3 of Schedule 14 (Protective Provisions).

5.72 Paragraph (6) provides for the specified accesses in Part 1 of Schedule 6 (private means of access to be replaced) to be removed and replaced at the stage of the authorised development identified in column (4). Paragraph (7) provides for the specified accesses in Part 2 of Schedule 6 (private means of access to be closed for which no substitute is to be provided) to be closed at the stage of the authorised development identified in column (3), without the provision of a substitute.

5.73 The creation of the private accesses is permitted by Section 120(3) of the 2008 Act because the purpose for which the provisions relating to the creation of the private accesses are included in the DCO is to facilitate the development consented by the DCO, and therefore their creation is related to the authorised development.

5.74 The table below details the private means of access to be stopped up and the justification for not providing a substitute:

Private Means of Access to be stopped up	Reason no substitute is provided
The existing private means of access marked A, B and C on the access and rights of way plans (Document 2.3B/APP-031)	These accesses are into land subsumed by the Main Site from the lane known as Quarry Cottages / Somerton Road which is to be stopped up.
The existing private means of access marked R, S, T, U and V on the access and rights of way plans (Document 2.3D/APP-033)	These accesses are into land subsumed by the Main Site from Upper Heyford Road which is to be stopped up.
The existing private means of access marked AC on the access and rights of way plans (Document 2.3G/APP-036) shown shaded purple.	This access is into land subsumed by the Main Site from Upper Heyford Road which is to be stopped up.

Article 15 (Maintenance of highway works)

5.75 This Article provides for the maintenance of the highway works. It refers to the certification processes to be included in Parts 2 and 3 of Schedule 14. The Article has precedent in The Northampton Gateway Rail Freight Interchange Order 2019 and The West Midlands Rail Freight Interchange Order 2020.

5.76 The inclusion of this Article is permitted by section 120(3) of the 2008 Act because maintenance of the highway works is clearly "related" to the consent. The specification of the highway authority for the highway works is also authorised by section 120(4) and paragraph 23 of Part 1 to Schedule 5 of the 2008 Act.

Article 16 (Classification of highways)

5.77 The drafting of this Article is based on Articles in other Development Consent Orders[45] and is required for this DCO in order to make provision for the classification of new highways within the Order limits as set out in Schedule 7.

5.78 The provision to classify the highways is specifically permitted by section 120(4) and paragraph 19 of Part 1 to Schedule 5 of the 2008 Act.

[45] e.g. the Heysham to M6 Link Road Order 2013 S.I. 2013 No. 675, The East Midlands Gateway Rail Freight Interchange and Highway Order 2016 S.I. 2016 No.17, The Northampton Gateway Rail Freight Interchange Order 2019 S.I. 2019 No 1358 and The West Midlands Rail Freight Interchange Order 2020 S.I. 2020 No 511.

Article 17 (Speed limits)

5.79 This Article is based upon Articles in other Development Consent Orders, for example, the M1 Junction 10(a) Order,[46] and Houghton Regis Order[47], The East Midlands Gateway Rail Freight Interchange and Highway Order, The Northampton Gateway Rail Freight Interchange Order 2019 and The West Midlands Rail Freight Interchange Order 2020.

5.80 Paragraph (1) of this Article and Part 1 of Schedule 8 provide for the revocation of the existing order specified in that Part upon the event listed in column (4).

5.81 The Article will allow the length of the highways to be identified in Schedule 8 to be subject to new speed limits as set out in that schedule following completion of the relevant part of the authorised development.

5.82 The Article also provides for the temporary speed limits specified in Part 6 of Schedule 8 and enables the undertaker to impose further temporary speed limits with the consent of the relevant traffic authority, on giving not less than 4 weeks' notice to the chief officer of police and the relevant traffic authority.

5.83 The inclusion of the Article is permitted by section 120(3) of the 2008 Act, since the regulation of speed limits on the various highways is related to the provision of the highway works as part of the authorised development. The requirement of the various speed limits is also related to the classification of the various highways and is therefore permitted by section 120(4) and paragraph 19 of Part 1 of Schedule 5 of the 2008 Act.

5.84 Paragraph (9) provides that the new speed limits set by the Order may be varied in the future by the relevant traffic authority, as they could have been had they been imposed by an order under the Road Traffic Regulation Act 1984.

Article 18 (Traffic Regulation)

5.85 This Article enables amendments to existing traffic regulation orders if necessary as a result of the highway works. Whether this is required is still to be determined.

5.86 The Article also provides for new permanent and temporary Traffic Regulation Orders to allow, with the consent from the relevant traffic authority, the imposition of orders which may be necessary for the carrying out of the works. These powers are similar to those contained in The A46 Coventry Junctions (Walsgrave) Development Consent Order 2026 [48].

5.87 Article 18(5) provides that any prohibition, restriction or other provision made under this Article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers conferred by this Article at any time.

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46 The M1 Junction 10a (Grade Separation) Order 2013 S.I. 2013 No. 2808.

47 The Central Bedfordshire Council (Woodside Link Houghton Regis) Development Consent Order 2014 S.I. 2014 No. 2637.

48 S.I. 2026 No. 125.

5.88 The inclusion in the DCO of this power falls within section 120(3) of the 2008 Act because the need for a Traffic Regulation Order in this manner would only be required as a result of the authorised development.

Article 19 (Clearways and no waiting)

5.89 Article 19 provides for clearways along lengths of the new highway works. The lengths of road affected are identified in Part 2 of Schedule 9 (clearways).

5.90 The Article also proposes the imposition of a "no waiting at any time" traffic regulation order along the length along Somerton Road and the B430 Station Road. These lengths of road are set out in Part 3 of Schedule 9 (No waiting at any time).

5.91 Similar to the inclusion of the Article authorising traffic regulation, this Article is related to the authorised development and is therefore permitted by section 120(3) of the 2008 Act.

Article 20 (Motor vehicle restrictions)

5.92 This Article deals with the imposition of weight restrictions as part of the overall highway mitigation measures. The Article provides that vehicles over 7.5 tonnes gross weight are prohibited from entering or proceeding within certain zones (as listed in Part 4 of Schedule 9) after the event specified in column (4) of Part 4 of Schedule 9, unless directed or permitted by a police or traffic officer in uniform.

5.93 The restriction does not apply to:

(a) anything done in accordance with any restriction or requirement indicated by traffic signs placed by or on behalf of the police;

(b) vehicles being used—

i) in the service of a local authority or water authority in pursuance of statutory powers or duties;

ii) for police, ambulance, fire and rescue authority or traffic officer purposes;

iii) for the purpose of agriculture on any land adjacent to the restricted roads;

iv) for the purpose of gaining access to or leaving any land and/or premises situated in or adjacent to the restricted roads or any roads accessible only therefrom;

v) in connection with activities carried out on land or premises located on or near the restricted roads, including building works, industrial operations, demolition, or the removal of traffic obstructions. This also covers works related to the maintenance, improvement, reconstruction, cleaning, or lighting of the road or any roads only accessible from it. Additionally, it includes the installation, modification, or repair of sewers, gas, water,

electricity, or electronic communications infrastructure beneath or on the road, as well as the placement, upkeep, or removal of traffic signs; and

vi) for public transport.

5.94 Paragraph (3) provides that no person, except upon the direction or with the permission of a police officer or traffic officer in uniform is to cause or permit any vehicle to proceed in the manner specified in column (2) of Part 5 of Schedule 9 following the event specified in column (3) of Part 5 of Schedule 9. This allows for the specific prohibited movements described in that Part of Schedule 9, which are required to facilitate the development and its approach to the highway mitigation.

5.95 Paragraph (4) ensures that no vehicles (save for access) can travel the length of road that is being stopped up and converted to a bridleway.

5.96 Paragraph (5) ensures that no person, except upon the direction or with the permission of a police officer or traffic officer in uniform is to cause or permit any vehicle to enter the road specified in Part 7 of Schedule 9, in the manner and on the event specified in that Part.

5.97 Pursuant to paragraph (6), the restrictions are treated as if made under a Traffic Regulation Order under the Road Traffic Regulation Act 1984, and can be varied or revoked by such an order or other relevant legislation.

Article 21 (Agreements with Highway Authorities)

5.98 This Article is included to allow the undertaker to enter into agreements with the relevant highway authority relating to the construction/maintenance of a new highway, carrying out of works in the highway, stopping up, alteration or diversion of highways, the maintenance of the structure of any bridge carrying a highway over or under a railway and landscaping within or adjacent to a highway.

5.99 This Article is included in the draft DCO to cover any agreements that might be required with the relevant highway authority which are not covered by the protective provisions and therefore avoids the need to find an alternative statutory authority which may not be fit for purpose. For example, s.278 of the Highways Act 1980 can authorise works to the public highway however they have to be undertaken on behalf of the Highway Authority and be of public benefit, which would not necessarily be the case.

5.100 The Article is in similar form to that included in several DCOs including The National Grid (Hinkley Point C Connection Project) Order 2016[49], The Northampton Gateway Rail Freight Interchange Order 2019 and The West Midlands Rail Freight Interchange Order 2020.

5.101 The inclusion of this Article is permitted by section 120(3) of the 2008 Act because it would permit agreements related to the authorised development or matters ancillary to the authorised development.

Part 4 – Supplemental Powers

[49] S.I. 2016 No 49.

Article 22 (Discharge of water)

5.102 The first part of this Article uses the drafting of Article 14 in the general model provisions[50] and is required in relation to the drainage of the land within the Order limits in connection with the carrying out and maintenance of the development. This Article provides that consent is required from the person who owns the relevant watercourse, public sewer or drain but such consent may not be unreasonably withheld. Its inclusion is permitted by section 120(3) as well as section 120(4) and specifically paragraph 26 of Part 1 to Schedule 5 of the 2008 Act.

5.103 Section 146 of the 2008 Act applies if a DCO includes provision authorising the discharge of water into inland waters or underground strata and has the effect that the person to whom the order is granted does not also acquire the power to take water or require discharges to be made from such watercourses or underground strata.

5.104 The effect of section 146 is to make it explicit that although the DCO may confer power on the undertaker to put water into a watercourse or underground strata, the undertaker cannot then take water back out or require discharges to be made from such watercourse or underground strata under this Article.

5.105 The Article requires the undertaker to obtain consent as follows:

(a) in relation to the discharge of water into any public sewer or drain in which case the consent of the person to whom owns the public sewer or drains must be provided; and

(b) no water may be discharged into a watercourse that flows into the highway drainage system without the consent of the relevant highway authority

Article 23 (Authority to survey and investigate the land)

5.106 This Article enables the undertaker to enter land within the Order limits, or land which may be affected by the authorised development, to survey or investigate it. It is considered necessary to extend this power to land outside the Order limits to ensure that the undertaker has sufficient powers to survey all land which may be affected by the authorised development. This approach was accepted in the A122 (Lower Thames Crossing) Order 2025.

5.107 The provision is permitted by sections 120(3) and 120(4) of the 2008 Act, and specifically paragraph 12 of Part 1 to Schedule 5 and has become standard in many made DCOs. The wording is necessary in order to ensure that the undertaker can safely carry out the authorised development and ensure that effects are as assessed by the environmental statement. This general power also negates the need for the land to be compulsorily acquired.

50 The Infrastructure Planning (Model Provisions) (England and Wales) Order 2009.

5.108 In addition to surveying and monitoring, the Article also authorises the undertaker to:

(a) make trial holes to investigate the nature of the surface layer and subsoil and to remove samples;

(b) to carry out ecological and archaeological investigations; and

(c) place apparatus and welfare facilities for use in connection with the surveying and monitoring of the land.

5.109 Paragraph (2) requires the undertaker to give at least 14 days' notice to the owner and occupier of the land before entering the land or leaving equipment on the land. Paragraph (3) sets out detail in relation to the actions of the person entering the land on behalf of the undertaker, namely:

(a) they must provide written evidence of their authority to enter (if required); and

(b) may take such vehicles and equipment as are necessary for the survey or investigation or to make trial holes.

5.110 Paragraph (4) provides that no trial holes may be made under the Article in land located within the highway boundary without the consent of the relevant highway authority; or in a private street without the consent of the relevant street authority, but such consent must not be unreasonably withheld. Paragraph (6) also requires the consent of the highway authority for any surveying, monitoring or investigation within the boundary of a highway. Where an application for consent under paragraph (4) or (6) includes all relevant information and the authority fails to notify the undertaker of its decision within 42 days, consent is deemed to have been granted, and any application must include a statement that the deeming provision applies. Express provision for conditions is not considered necessary because the consents relate to survey works which are temporary and investigative in nature and therefore do not permanently affect the land or require the type of ongoing coordination that would necessitate conditions.

5.111 Paragraph (5) requires the undertaker to compensate the owners and occupiers for any loss and damage arising by exercise of the authority conferred by the Article.

5.112 Paragraph (8) provides that section 13 (refusal to give possession to acquiring authority) of the Compulsory Purchase Act 1965 applies to the entry onto, or possession of land under the Article to the same extent as it applies to the compulsory acquisition of land under the DCO by virtue of section 125 *(application of compulsory acquisition provisions)* of the 2008 Act. The effect of this is to provide an enforcement mechanism when entry onto land under this Article is refused.

Article 24 (Protective works)

5.113 This Article allows the undertaker, at its own expense, to carry out protective works to any building, structure or tree affected by the authorised development where such works are considered necessary or expedient. The works may be carried out:

(a) before or during the carrying out in the vicinity of the building, structure or tree of part of the authorised development; and

(b) such works may also be carried out after the completion of the part of the authorised development in the vicinity of the building, structure or tree for a period of five years beginning with the day on which that part of the authorised development comes into use or becomes operational.

5.114 The Article includes compensation provisions in relation to the consequences of the protective works being undertaken. The Applicant has also added paragraph (6), which provides that no protective works may be carried out within the boundary of a highway without the consent of the relevant highway authority, such consent not to be unreasonably withheld or delayed. This was added to address concerns raised by National Highways in its Relevant Representation [RR-100] with regards to maintain the safety of the highway. The Applicant considers it reasonable and appropriate that consent is sought to access the highway for protective works.

5.115 The Article also includes reference to protective works to trees, as the Applicant is aware from its surveying work of at least three veteran trees to be retained (one of which is outside of the Order Limits) and it is therefore appropriate to ensure that it is able to carry out protective works to prevent damage. It would not be proportionate to extend the Order Limits to include the veteran tree outside of the Order Limits, as the land is not required for the purposes of the authorised development.

5.116 This Article is permitted by section 120(3) of the 2008 Act as protective works to buildings affected by the authorised development is a matter ancillary to the grant of consent for the authorised development, and 120(4) and paragraph 10 ("*The protection of the property or interests of any person*") of Part 1 to Schedule 5 of the 2008 Act.

Article 25 (Removal of human remains)

5.117 This Article authorises the removal of human remains from the Order limits and provides a process for notification and identification of the human remains as well as their re-interment or cremation. The Article requires the payment of the reasonable expenses associated with this process.

5.118 It is not anticipated that any human remains will be encountered during construction works but it is possible that human remains could be found within the Order limits. Without this Article, the express consent of the Secretary of State for Justice would be required for removal which would risk delay to the construction programme. This is contrary to the accepted principle that DCOs are in so far as possible a 'one stop shop' containing as many consents as are possibly needed to enable the efficient delivery of nationally significant infrastructure projects.

5.119 The Applicant notes Advice Note Fifteen: Drafting Development Consent Orders which states:

The extent of justification should be proportionate to the degree of novelty and/ or controversy in relation to the inclusion of that particular power.

The Applicant considers that this Article is neither novel nor controversial. The process for the removal of human remains in the Article requires the Applicant to advertise the discovery and to notify the local planning authority. It is a comprehensive and fair process, giving the public the opportunity to claim the remains. The Applicant is aware that some recent Secretary of State decisions have removed this article but there is precedent for this Article in The Cambridge Waste Water Treatment Plant Relocation Order 2025 and The A122 (Lower Thames Crossing) Development Consent Order 2025, the latter of which was made by the Secretary of State for Transport. The Applicant considers that removal of the provision could present a hurdle requiring further consents and delay the delivery of an NSIP, which is not consistent with the intention of a DCO to be a 'one stop shop'.

Part 5 - Powers Of Acquisition

Article 26 (Compulsory acquisition of land)

5.120 This Article authorises the compulsory acquisition of the Order land insofar as such land is required for the authorised development, or to facilitate it, or is incidental to it. The Article is subject to:

(a) article 29(2) (compulsory acquisition of rights and imposition of restrictive covenants)

(b) article 27 (time limit for exercise of authority to acquire land compulsorily),

(c) article 30 (private rights), and

(d) article 35(9) (temporary use of land for carrying out the authorised development).

5.121 "Order land" is defined in Article 2 as "land shown on the land plans which is within the limits of land to be acquired or used permanently or temporarily and described in the book of reference."

5.122 After statutory consultation, new sub-paragraphs (3) and (4) were added to this Article which provide as follows:

(a) the power to compulsorily acquire land under paragraph (1) does not apply to the land shown on the land plans as 1/4, 1/10 and 1/11 (being the land required for Work Nos. 16 and 17) when the provisions of paragraph 8(4) of Part 1 of Schedule 2 apply. This means that if the Applicant is not obliged to undertake Works No. 16 and 17 because a third party has obtained planning permission for works at the A43 Baynard's Green junction (including works to the B4100) it cannot compulsorily acquire the land for those Works.

(b) the power to compulsorily acquire land under paragraph (1) only applies to the land shown on the land plans as 9/12 and 9/21 if the Applicant agrees with the local highway authority that Work No. 39 is to be carried out by the undertaker. As explained at paragraph 5.232, the Applicant may agree a contribution in lieu of the provision of these works. If so, acquisition of the land will not be required.

5.123 Detail of the reasons for the power to acquire each parcel of land is set out in the Statement of Reasons submitted with the DCO Application.

Article 27 (Time limit for exercise of authority to acquire land compulsorily)

5.124 This Article imposes a time limit of five years beginning with the day on which the DCO is made for the exercise of compulsory acquisition powers by way of a notice to treat or general vesting declaration. The time limit for exercising the compulsory acquisition powers under Part 1 of the Compulsory Purchase Act 1965 is disapplied by section 125(3)(a) of the 2008 Act. This Article therefore imposes a time limit which is linked to the time period in which the authorised development is required to commence (see Requirement 2), in accordance with section 154(3) of the 2008 Act.

5.125 Article 27(2) provides that the authority conferred by Article 35 (temporary use of land for carrying out the authorised development) also ceases at the end of the period of five years, save that the undertaker is not prevented from remaining in possession of the land after that period expires, if possession was taken before the end of that period.

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

5.126 This Article incorporates the 'mineral code' into the draft DCO. The effect of this is that existing minerals under land are exempt from being automatically acquired pursuant to the exercise of compulsory acquisition. It also enables the undertaker to prevent a minerals owner from working existing minerals and provides the undertaker with the ability to compensate the owner for any inability to do so as a result of the development.

5.127 The drafting is in a similar form to many made DCOs such as The A428 Black Cat to Caxton Gibbet Development Consent Order 2022[51] and the Lake Lothing (Lowestoft) Third Crossing Order 2020[52].

Article 29 (Compulsory acquisition of rights and imposition of restrictive covenants)

5.128 This Article allows for the compulsory acquisition of existing rights and the power to create and acquire new rights as well as the imposition of restrictive covenants. The ability to acquire new rights ensures that the undertaker is able to seek a lesser interference with land where this is appropriate (whether in the context of new or existing rights) as the authorised development is implemented.

5.129 In respect of the Order land specified in Schedule 11, the undertaker's powers of acquisition are limited to the acquisition of such new rights and the imposition of such restrictive covenants as may be required for the purpose specified in that Schedule.

[51] S.I. 2022 No. 934 (Article 33)

[52] S.I. 2020 No. 474 (Article 24)

5.130 Paragraph (5) provides that where the acquisition of new rights or the imposition of a restriction under the Order is required for a statutory undertaker, the undertaker may, with the consent of the Secretary of State transfer the powers to the statutory undertaker.

5.131 The Article is permitted by section 120(4) and paragraphs 1[53] and 2 of Part 1 to Schedule 5 of the 2008 Act.

5.132 The approach requires a modification to compulsory purchase and compensation provisions and this is dealt with in Schedule 12 (Modifications of compensation and compulsory purchase enactments for creation of new rights and restrictive covenants), which is permitted by section 120(5)(a) of the 2008 Act.

Article 30 (Private rights)

5.133 This Article extinguishes private rights over land from the date of acquisition by the undertaker (whether compulsorily or by agreement) or on the date of entry on the land by the undertaker pursuant to the powers of entry in Section 11 of the 1965 Act (whichever is the earlier). It is necessary to extinguish private rights in order to implement and carry out the Proposed Development.

5.134 Paragraph (2) permits the extinguishment of private rights in land over which new rights are acquired or restrictive covenants imposed, insofar as their continuance would be inconsistent with the exercise of the new right or compliance with the restrictive covenant.

5.135 Paragraph (3) provides that private rights over land owned by the undertaker within the Order limits are extinguished on commencement of any activity authorised by the DCO which interferes with or breaches such rights.

5.136 Paragraph (4) confirms that all private rights over land of which the undertaker takes temporary possession under the DCO are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

5.137 Compensation is addressed in paragraph (5) which states that any person who suffers loss by the extinguishment or suspension is entitled to compensation.

Article 31 (Power to override easement and other rights)

5.138 This Article provides that any "authorised activity" by the undertaker within the Order Limits is authorised if done in accordance with the DCO, regardless of whether it involves either an interference with an interest or right or a breach of restriction as to the use of the land arising by virtue of a contract. The effect of this is that any such rights will not present an impediment to delivery. The Article is necessary in order to provide certainty that the authorised development will not be prevented due to third party rights.

5.139 "Authorised activity" is defined in paragraph (8) as:

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53 Paragraph 1 refers to "land" but section 159 of the 2008 Act confirms that in this context, "land" includes a right in, on, over or under land.

(a) the erection, construction, carrying out or maintenance of any building or works on land;

(b) the erection, construction or maintenance of anything in, on, over or under land; or

(c) the use of any land (including the temporary use of land).

5.140 The Article provides for compensation to be payable to the beneficiary of any right that is extinguished, breached, abrogated or discharged. This is permitted by sections 120(3), 120(4) and paragraphs 2 and 3 of Part 1 to Schedule 5 of the 2008 Act. The power is also supplementary to Articles 26 and 30 of the draft DCO and its inclusion is therefore necessary to give full effect to the draft DCO and so is permitted by section 120(5)(c) of the 2008 Act.

Article 32 (Rights under or over streets)

5.141 This Article permits the undertaker to enter on and appropriate interests within streets where required for the purposes of the authorised development. Compensation is payable for any loss or damage to structures along the relevant street. The power does not apply to any street which is part of the strategic road network.

5.142 Whilst the Article provides that the undertaker is not required to acquire any part of the street or any easement or right, paragraph (3) sets out the exclusions in relation to this, namely, it does not apply in relation to (a) any subway or underground building; or (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

5.143 As part of PINS' review of the documents, it questioned the relevance in paragraph (3) to any cellar, vault, arch or other construction in, on or under a street. The Applicant cannot confirm whether or not a street required for the authorised development may specifically have cellars, vaults, arches or other construction. In any event, these structures are excluded from the power in Article 32 and the Applicant considers it necessary to retain this reference as a limitation to the power in respect of such structures.

5.144 This Article, with the wording the Applicant has proposed, has appeared in numerous DCOs, not least The A46 Coventry Junctions (Walsgrave) Development Consent Order 2026, made as recently as 4 February 2026. [54]

Article 33 (Application and modification of the 1981 Act)

5.145 This Article applies the vesting procedures in the Compulsory Purchase (Vesting Declarations) Act 1981 to the exercise of powers of compulsory acquisition pursuant to the Order. It gives the undertaker the option to acquire land via the process set out under the 1981 Act, by way of a vesting declaration, rather than the notice to treat procedure. This Article incorporates and reflects the changes brought about by the Housing and Planning Act 2016.

[54] S.I. 2026 No. 125

5.146 This Article is in a similar form to the equivalent provisions found in other Orders such as The West Midlands Rail Freight Interchange Order 2020[55] and the Boston Alternative Energy Facility Order 2023[56].

Article 34 (Modification of Part 1 of the 1965 Act)

5.147 This Article modifies the provisions of Part 1 of the Compulsory Purchase Act 1965 as applied to the Order by section 125 of the 2008 Act and as with the preceding Article, this provision reflects the changes introduced by the Housing and Planning Act 2016. The Article is needed to ensure that the DCO is consistent with the 1965 Act.

5.148 The application of the Compulsory Purchase (Vesting Declarations) Act 1981 is permitted by section 120(5)(a) of the 2008 Act.

5.149 Paragraph (4) confirms 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 (temporary use of land for carrying out the authorised development) and 36 (temporary use of land for maintaining the authorised development) of the DCO.

Article 35 (Temporary use of land for carrying out the authorised development)

5.150 Pursuant to this Article, the undertaker may, in connection with carrying out the authorised development:

(a) enter on and take temporary possession of land specified in Schedule 10 for the purposes specified in that Schedule (in which case the undertaker may not remain in possession of the land after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in the Schedule).

(b) enter onto any other Order land in respect of which no notice of entry has been served under Section 11 of the 1965 Act and no declaration has been made under Section 4 of the 1981 Act (in which case the undertaker may not remain in possession of the land after the end of the period of one year beginning with the date of completion of the work for which temporary possession of this land was taken unless the undertaker has already served a notice to treat or general vesting declaration).

(c) enter on and take temporary possession of the Order land for the activities set out in paragraph (1)(b) to (h). In response to a request made by Oxfordshire County Council, the Applicant has amended sub-paragraph (1)(b) to exclude the threshing barn so as to make it clear that the threshing barn is excluded from “buildings” in sub-paragraph (1)(b). It is considered that this approach is beneficial for affected landowners since it could limit or reduce the permanent land take where highway works limits of deviation are lesser than the

[55] S.I. 2020 No. 511 (Article 30)
[56] S.I 2023 No. 778 (Article 31)

full extent of the works area identified, which would not be known until the works had been finalised.

5.151 Pursuant to paragraph (9), the undertaker may not compulsorily acquire any of the land specified in Schedule 10 (Land of which temporary possession may be taken), save that the undertaker may carry out a survey of that land under Article 23 (authority to survey and investigate the land) and protective works under Article 24 (protective works).

5.152 The final paragraph in this Article mirrors the drafting in Article 33(3) of The Boston Alternative Energy Facility Order 2023 and has been included to provide the ability to, in the event of a potential risk or safety alert, enter land to put right a danger subject to giving such period of notice as is reasonably practicable in the circumstances. In all other cases not less than 14 days' notice must be given.

Article 36 (Temporary use of land for maintaining the authorised development)

5.153 Pursuant to this Article, the undertaker may, in connection with maintaining the authorised development:

(a) enter on and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised development

(b) enter on any land within the Order limits for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised development; and

(c) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

5.154 The Article does not authorise the undertaker to take temporary possession of any house or garden belonging to a house or any building if it is occupied (as per paragraph (2)).

5.155 As with Article 35, paragraph (11) is based on the drafting in Article 34(4) of The Boston Alternative Energy Facility Order 2023 and has been included to provide the ability to, in the event of a potential risk or safety alert, enter land to put right a danger subject to giving such period of notice as is reasonably practicable in the circumstances. In all other cases not less than 14 days' notice must be given.

Article 37 (Statutory undertakers)

5.156 Pursuant to this Article, the undertaker may (subject to Schedule 14 (protective provisions)):

(a) acquire compulsorily, or acquire new rights or impose restrictive covenants over, any Order land belonging to statutory undertakers;

(b) construct the authorised development in such a way as to cross underneath or over apparatus belonging to statutory undertakers and other like bodies within the Order land; and

(c) extinguish the rights of, or restrictions for the benefit of, remove, relocate the rights of or reposition the apparatus belonging to statutory undertakers over or within the Order land.

5.157 The inclusion of the Article is authorised by section 127(2) and (3) and section 138 of the 2008 Act.

5.158 The Applicant considers that any statutory undertakers' land affected can be replaced (or relocated/diverted) without serious detriment to the carrying on of the undertaking, and there are Protective Provisions proposed in this regard. The Applicant is continuing to negotiate with the various parties which will have the benefit of the protective provisions and expects that Schedule 14 will change as these negotiations progress.

Article 38 (Apparatus and rights of statutory undertakers in stopped up streets)

5.159 This Article protects statutory undertakers' rights (including public communications providers as defined in section 151(1) of the Communications Act 2003[57]) where their apparatus is under, in, along or across a street which has been stopped up under the draft DCO.

5.160 The Article also provides that a statutory undertaker must remove or relocate its apparatus at the reasonable request of the undertaker, in which circumstances the undertaker must bear the cost of the relocation. The provision is linked to Article 11.

5.161 The inclusion of this Article is authorised by sections 120(3) as well as 120(4) and paragraph 14 of Part 1 to Schedule 5 of the 2008 Act, which allows provision for the removal, disposal or re-siting of apparatus.

Article 39 (Recovery of costs of new connections)

5.162 Pursuant to this Article, where any apparatus of a public utility undertaker or of a public communications provider is removed under article 37, the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred in effecting an alternative supply.

Article 40 (No double recovery)

5.163 The purpose of this Article is to secure the established principle that a claimant in compulsory purchase is to be compensated for no more and no less than his or her loss. It ensures that compensation is not payable in respect of the same loss or damage under both the Order and other compensation regimes.

5.164 It is considered necessary because it is important that the DCO is clear that compensation payable under it is not to be paid more than once. The 'no double recovery' article also protects the promoter in the event that there is a risk of double recovery under other powers of the Order outside of compulsory acquisition that can

[57] Defined as being (a) a provider of a public electronic communications network; (b) a provider of a public electronic communications service; or (c) a person who makes available facilities that are associated facilities by reference to a public electronic communications network or a public electronic communications service.

give rise to loss – including for example temporary possession, protective provisions and the survey power.

5.165 The provision is included in many made Orders such as The Triton Knoll Electrical System Order 2016 (Article 28), The Northampton Gateway Rail Freight Interchange Order 2019 (Article 37), The West Midlands Rail Freight Interchange Order 2020 (Article 37), The Cottam Solar Project Order 2024 [58] The National Grid (Bramford to Twinstead Reinforcement) Order 2024[59] and The Associated British Ports (Immingham Eastern Ro-Ro Terminal) Development Consent Order 2024[60].

5.166 It is a supplementary provision and its inclusion is authorised by section 120(5)(d) of the 2008 Act as well as sections 120(3) and 120(4) and paragraph 36 of Part 1 to Schedule 5 of the 2008 Act.

Article 41 (Guarantees in respect of payment of compensation)

5.167 This Article is included as security in respect of payment of compensation for any interests which are affected by the exercise of the relevant compulsory powers listed. It will ensure that no compulsory acquisition powers can be exercised until appropriate security for the liabilities of the undertaker to pay compensation in respect of that acquisition has been provided to the local planning authority.

5.168 The Article is related to the powers for the acquisition of land and is therefore related to paragraph 1 of Part 1 of Schedule 5 to the 2008 Act. Its inclusion is therefore authorised by section 120(4) of the 2008 Act.

5.169 The requirement to provide a form of security for potential compensation as a result of exercising compulsory acquisition powers is a generally accepted principle which has been included in various recent approved Orders[61]. It is not considered necessary or appropriate for a guarantee or other form of security to be provided for any other provision or implementation of the DCO.

5.170 The Article provides that nothing requires a guarantee or alternative form of security to be in place for more than 15 years after the date on which the relevant power is exercised. The Applicant considers 15 years from the exercise of the relevant power to be a reasonable time period for such a guarantee/security, and indeed this time period has been accepted in many recent DCOs, such as the Boston Alternative Energy Facility Order 2023[62] and The Riverside Energy Park Order 2020.[63]

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58 (S.I. 2024 No. 943).

59 (S.I. 2024 No. 958).

60 (S.I. 2024 No. 1014).

61 e.g. The Triton Knoll Electrical System Order 2016 (S.I. 2016 880) (Article 37) The Northampton Gateway Rail Freight Interchange Order 2019 (S.I. 2019 No 1358) (Article 23) and The West Midlands Rail Freight Interchange Order 2020 (S.I. 2020 No 511) (Article 23).

62 S.I. 2023 778.

63 S.I. 2020 419.

Article 42 (Disregard of certain interests and improvements)

5.171 This Article replicates section 4 of the Acquisition of Land Act 1981 which would otherwise only apply to compulsory purchase orders, and not DCOs. It is a compensation principle which provides that, when assessing compensation, the tribunal must not consider any interest in land, or any increase in land value due to buildings, works, improvements, or alterations if these were not reasonably necessary, and done with the intention of increasing compensation.

5.172 This provision originates from section 4 (Assessment of compensation) of the 1981 Act. The 1981 Act only applies to a compulsory purchase order made (and confirmed) pursuant to it, or to compulsory purchase in another enactment which has applied its provisions. Neither the Planning Act 2008, nor standard Development Consent Order provisions, apply the 1981 Act. Therefore, in order for the above-mentioned compensation principle to apply to the draft DCO, it is necessary to include a specific article, the purpose and effect of which mirrors that of section 4 of the 1981 Act.

Article 43 (Set-off for enhancement in value of retained land)

5.173 This Article concerns betterment to retained land where there has been severance as a result of compulsory acquisition and provides that when land (including subsoil) is acquired, the tribunal must deduct from the compensation any increase in value of adjacent or contiguous land owned by the same person, resulting from the development.

5.174 It is a compensation principle which ensures that a claimant with retained land does not receive enhanced value due to the impact of the 'scheme' (as defined in section 6D of the Land Compensation Act 1961) in respect of which compulsory purchase powers are sought, as well as losses from having land acquired – often referred to as 'betterment'. In order for this same compensation principle to apply to the draft DCO, and for the provisions of section 6D to apply to the 'authorised development', it is necessary to include a specific article in the draft DCO.

5.175 This Article is included in the following recently made orders:

(a) The Rampion 2 Offshore Wind Farm Order 2025- Article 54;

(b) The Cambridge Waste Water Treatment Plant Relocation Order 2025, - Article 38; and

(c) The National Grid (Yorkshire Green Energy Enablement Project) Order 2024, made March 2024 - Article 30.

5.176 As a result of this Article, when new rights or restrictive covenants are acquired, the tribunal must deduct:

(a) Any increase in value of the land subject to the rights/covenants.

(b) Any increase in value of adjacent or contiguous land owned by the same person, due to the development

Part 6 – Miscellaneous and General

Article 44 (Operation and Use of Railways)

5.177 This Article is based on the Article contained within Schedule 2 (model provisions for railways) of the model provisions. It has been included as the authorised development includes a railway but has been amended from the Article in those model provisions to allow only for the carriage of goods as the authorised development will not be used for passenger trains. The provision is included pursuant to sections 115 and 120(3) of the 2008 Act.

Article 45 (Operational land for the purposes of the 1990 Act)

5.178 This Article will ensure that land within the Order limits will be treated as operational land of a statutory undertaker for the purposes of the Town and Country Planning Act 1990. The provision is included pursuant to sections 115 and 120(3) of the 2008 Act.

5.179 "Operational land" is land which is used by statutory undertakers for the purpose of carrying on their undertaking or any land in which an interest is held for that purpose. Sections 264(3) and (4) of the 1990 Act provide that land is operational land if:

(a) there is, or at some time has been, in force with respect to it a specific planning permission for its development; and

(b) that development, if carried out, would involve or have involved its use for the purpose of the carrying on of the statutory undertakers' undertaking.

5.180 With this Article, the development will benefit from the appropriate permitted development rights afforded to statutory undertakers.

5.181 This Article is permitted by section 115 and section 120(3) of the 2008 Act.

Article 46 (Charges)

5.182 This Article is based on an Article at Schedule 2 of the model provisions (model provisions for Railways) and allows the undertaker to impose charges for the carrying of goods on the railway, or for other services or facilities connected to its operation. As with Article 44, amendments have been included, as the proposed railway is to be used for the carriage of goods only. The provision is authorised by section 120(4) and paragraph 18 of Part 1 to Schedule 5 of the 2008 Act.

Article 47 (Application of landlord and tenant law)

5.183 This Article provides for the overriding of landlord and tenant law so far as it would prejudice the operation of any agreement for leasing the whole or part of the authorised development or the right to operate the same or any agreement entered into by the undertaker for the construction, maintenance, use or operation of the authorised development. This is considered necessary as it is intended that ultimately parts of the authorised development will be leased, particularly the warehousing.

Article 48 (Defence to proceedings in statutory nuisance)

5.184 This Article is based upon an Article in the model provisions and appears in other approved DCOs. It provides a defence to proceedings under section 82(1) of the Environmental Protection Act 1990 brought in relation to a nuisance caused by noise or vibration (specified in Section 79(1) of that Act) in certain circumstances:

(a) in the course of carrying out construction or maintenance of the authorised development, and for which notice has been given under section 60 or consent obtained under section 61 of the Control of Pollution Act 1974 or which cannot be reasonably avoided as a consequence of the authorised development; or

(b) is a consequence of complying with a requirement of the DCO and it cannot be reasonably avoided; or

(c) is a consequence of the construction or maintenance of the authorised development and it cannot be reasonably avoided; or

(d) relates to premises used by the undertaker for the purpose of or in connection with the maintenance, operation or use of the authorised development and that nuisance is attributable to the operation and use of the authorised development which is being operated or used in compliance with a requirement of the Order.

5.185 This Article is permitted by s158 of the 2008 Act. The Explanatory Memorandum to the 2008 Act confirms that this section provides a defence of statutory authority in proceedings for nuisance if a person carries out development for which consent is granted by an order granting development consent. Such a defence is available in respect of anything else authorised by an order granting development consent. 'Anything else' would incorporate use.

5.186 This Article is necessary to avoid uncertainty and ensure that the Applicant is not hindered from delivering this nationally significant infrastructure. It is heavily precedented, as acknowledged by the Secretary of State in its decision letter for The Helios Renewable Energy Project Order 2025[64] at paragraph 4.67. It also stated:

> *given one of the Order's purposes is to bring several permissions within one consent, the Secretary of State considers it is appropriate to provide the requested defence to proceedings under section 82(1) of the Environmental Protection Act 1990 in order to prevent delays to the Proposed Development.*

5.187 In respect of Article 48(1)(c) in particular, this ensures that use of the authorised development benefits from the protections of Article 48 so that the Applicant is not prevented from using the authorised development by virtue of an order of a magistrates' court pursuant to section 82 of the Environmental Protection Act 1990. It only applies where the authorised development is being used in accordance with a requirement or other provision of the DCO and where the nuisance cannot reasonably be avoided.

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64 S.I. 2025 No. 1372.

5.188 In relation to noise the Environmental Protection Act 1990 expressly excludes noise made from traffic from consideration of nuisance. In respect of the Proposed Development, traffic noise impacts are the only impacts found in the Environmental Statement to result in significant adverse effects. However, such claims would not be permitted under the Environmental Protection Act 1990.

5.189 In relation to the noise impacts that are relevant to statutory nuisance (these being construction noise and vibration, operational noise and vibration), no significant adverse effects are predicted and therefore no statutory nuisance is expected as a result of the implementation of the embedded mitigation. This is discussed in the Statutory Nuisance Statement (Document number 5.2/APP-159) and Chapter 5 (Noise) (Document number 6.5/ AS-066).

5.190 Finally, section 152 of the 2008 Act provides compensation for persons whose land is injuriously affected by the carrying out of works, where there is a defence of statutory authority in civil or criminal proceedings for nuisance in respect of any authorised works.

Article 49 (Felling or lopping of trees and removal of hedgerows)

5.191 This Article is based upon an Article in the model provisions. It enables the undertaker to fell or lop any tree hedgerow or shrub within 15 metres of any part of the authorised development or cut back its roots, where it believes that it is necessary to prevent the tree, hedgerow or shrub from interfering with the authorised development. It is included pursuant to sections 120(3) and 120(4) and paragraph 13 of Part 1 to Schedule 5 of the 2008 Act.

5.192 Subject to paragraph 5.193 below, the Applicant has not provided for consent to be obtained to removal. This would negate the purpose of the DCO as a 'one stop shop' and would have the potential to prevent expeditious delivery of the proposed development. Further, the Applicant notes that the powers in this Article must only be exercised where the Applicant 'reasonably believes' it is 'necessary' to do so to prevent obstruction or interference with the proposed development.

5.193 The Applicant has inserted a new paragraph 9 into Article 49 following discussions with National Highways. The new provision makes any tree or shrub located either within the strategic road network or within highway maintainable by the local highway authority subject to Parts 2 and 3 of Schedule 14 (protective provisions). The effect of this change is that consent will need to be obtained from the relevant approving authority where a tree or hedgerow is within the highway. Following a review of the Article in light of comments from Cherwell District Council, the Applicant has also amended Article 49 so that any works to trees must be carried out in accordance with British Standard 3998:2010 "Tree Works Recommendations".

5.194 The Article also provides express consent for the removal of the trees, hedgerows and important hedgerows specified in Schedule 13 and identified on the Tree and Hedgerow Retention and Removal Plans (Document numbers 2.15 to 2.15J/APP-124 to APP-134) to be removed.

5.195 The Article does not provide the power to remove trees and hedgerows which are marked for retention on the Tree and Hedgerow Retention and Removal Plans (Document numbers 2.15 to 2.15J/APP-124 to APP-134) without the agreement of the local planning authority.

5.196 The Article makes provision for compensation to be payable for any loss or damage arising, as authorised by section 120(4) and paragraph 26 of Part 1 to Schedule 5 of the 2008 Act.

5.197 The Article provides for the removal of trees (where necessary) within 15m of the authorised development. Removal of trees outside of the Order limits is well precedented and there are several recently made DCOs which provide this power, albeit they use 'near' rather than a fixed distance (see, for example, The Cambridge Waste Water Treatment Plant Relocation Order 2025). The Applicant considered that providing a set distance would provide more certainty as to the extent of this power. The 15m is based on the Applicant's surveys of the land surrounding the Order limits and the possibility of such trees interfering with the authorised development. In addition, BS:5837 2012 - Trees in Relation to Design, Demolition, and Construction Recommendation, provides that the root protection area for any individual tree, group or woodland (not Veteran or Ancient) should be capped at a radial distance of 15m, thus, recording all tree cover within 15m of the Order limits will capture the root protection area of all non-veteran trees which may impact the authorised development.

5.198 The Applicant has not assessed the removal of all trees, shrubs and hedgerows within 15m of the Order limits within the Environmental Statement. This is because this Article does not provide a blanket power to remove these items. Removal is confined to whether it is 'necessary' in the two specified circumstances in Article 49(1)(a) and (b), namely:

(a) *obstructing or interfering with the construction, maintenance, use or operation of the authorised development or any apparatus used in connection with the authorised development; or*

(b) *constituting a danger to persons using the authorised development.*

It is therefore considered disproportionate to assess the removal when the Environmental Impact Assessment process requires an evaluation of the *likely significant* effects.

Article 50 (Trees subject to tree preservation orders)

5.199 The Article provides that the undertaker may fell or lop or cut back the roots of any tree or shrub which is subject to a tree preservation order to prevent it from obstructing or interfering with the construction, maintenance, operation or use of the authorised development. This applies to a tree subject to a tree preservation order made before or after the date of the Order. Following engagement with Oxfordshire County Council, the Applicant has made amendments to state that the power to fell or lop or cut back the roots of any tree which is subject to a tree preservation order applies to those trees specified in Part 1 of Schedule 13 (removal of trees) only. This addresses the risk of a tree, which has been assessed and identified for removal, being protected by a TPO between now and the making of the DCO.

5.200 Without this Article, the undertaker could be delayed from carrying out the authorised development by having to obtain consent. It also removes the risk of consent being refused which could frustrate the delivery of the authorised development.

5.201 Responding to comments from Oxfordshire County Council, the Applicant confirms that there are no trees protected by a tree preservation order or trees within a conservation area which are listed in Schedule 13, however, this power is included to allow works to the trees as it is possible that tree preservation orders and conservation areas will be made between now and commencement of the development.

5.202 The Applicant has inserted a new paragraph 5 into Article 50 following discussions with Cherwell District Council. The new provision makes any tree or shrub located either within the strategic road network or within highway maintainable by the local highway authority subject to Parts 2 and 3 of Schedule 14 (protective provisions). The effect of this change is that consent will need to be obtained from the relevant approving authority where a tree or hedgerow is within the highway.

Article 51 (Trees in conservation areas)

5.203 The Article permits the undertaker to fell or lop any tree or shrub in a conservation area or cut back its roots if it reasonably believes it to be necessary to do so to prevent obstruction or interference with the authorised development. Compensation is payable for loss or damage.

Article 52 (Interface with waste operation permits)

5.204 This article is the subject of discussion with the Environment Agency and makes provision for the interface between the authorised development and existing waste operation activities at the Ardley Landfill Site. This is required due to the overlap of the authorised development with the Ardley Landfill Site which is subject to an environmental permit for waste operations.

5.205 Part of the existing landfill site is needed to undertake the following works authorised by Work Nos. 1, 2, 11 and 34 of the draft Development Consent Order:

a) rail connections to the existing Chiltern Main Line railway (Work No. 1);
b) private rail connections (Work No. 2);
c) part of the Principal Access roundabout (Work No.11); and
d) the landfill works, being those works that are required to facilitate Work Nos. 1, 2 and 11 above, to remove the waste material from the relevant areas of Work Nos. 1, 2 and 11 and deposit that material on the Ardley Landfill Site.

5.206 This land is part of an existing operation and is subject to an environmental permit with the reference EPR/BV7346IM which splits the landfill into ‘cells’. Environmental permits do not run with the land on which the regulated facility is operated. Therefore, in the event that land within the Order limits is compulsorily acquired by the Applicant under the powers to be conferred by the Order for the purposes of the construction and operation of the authorised development, any environmental permit relating to that land needs to be varied to allow for activities on the relevant land acquired by the undertaker, and for the permit to remain in place as appropriate for the rest of the landfill site which will remain with the current owner.

5.207 Article 52 as originally drafted allowed the Applicant to submit environmental schemes to the Environment Agency, enabling it to make regulator-initiated variations to the existing permit. There is precedent for that approach in The A122 (Lower Thames Crossing)

Development Consent Order 2025, where it was agreed with the Environment Agency. However, the Applicant has since received revised drafting from the Environment Agency, which it has amended and incorporated into the draft DCO submitted for Deadline 1.

5.208 Under the revised Article 52, the undertaker may, following consultation with the permit holder and the Environment Agency, apply to vary, transfer or surrender (in whole or in part) an existing permit in respect of land which has been, or is proposed to be, compulsorily acquired, or where an authorised activity would give rise to inconsistency or conflict with an existing permit, and may combine these in a single application. The Environment Agency must determine the application within 56 days (or such other period as may be agreed), failing which the undertaker may appeal to the Secretary of State for Transport as if the application had been refused. Where a variation reduces the extent of the site of a regulated facility, a separate surrender application is not required provided the Environment Agency is satisfied that the relevant surrender requirements are met, and the usual application charges apply to the undertaker as they would to the permit holder. The Applicant is also engaging with the landowner and will therefore only make an application under Article 52 should alternative arrangements with the landowner not be agreed.

5.209 As explained in the Statement of Reasons (Document 4.1/APP-143) the Applicant is in discussions with the owner and operator of the Ardley Landfill Site in respect of the land arrangements needed and those discussions, and the ultimate requirement for compulsory acquisition powers, include and will inform the Applicant's approach or requirement to the need to vary and/or obtain an environmental permit. The Applicant seeks this provision to ensure it is able to adequately address and secure the necessary consents for the delivery of key infrastructure needed for the Proposed Development.

Article 53 (Protective provisions)

5.210 The Article gives effect to the protective provisions which are contained in Schedule 14.

Article 54 (Governance of requirements and governance of protective provisions relating to highway works)

5.211 The Article provides flexibility for details to be approved pursuant to requirements (and in the case of the highway works, protective provisions) and ensures that any details approved do not take the development outside the scope of the authorised development or beyond the scope of what has been assessed in the environmental statement.

5.212 Paragraph (1) is clear that all initial approvals under the requirements and Parts 2 and 3 of Schedule 14 are governed by Article 4 and prevents details being approved which lead to a form of development outside the scope of that which has been assessed. Paragraph (2), in accordance with Advice Note Fifteen: Drafting Development Consent Orders provides that approvals may be amended but any changes to approved details also must not go beyond the parameters that have been assessed.

5.213 The flexibility that is allowed for is of paramount importance for the authorised development. If no provision is made for the subsequent approval of details (and variations within the constraints referred to) then the development would be significantly disadvantaged against

other large scale distribution sites and its ability to compete with those sites for occupiers would be adversely affected.

Article 55 (Discharge of requirements and other approvals)

5.214 This Article deals with the procedure to be applied for the discharge of the various consents and approvals required under the Order. Paragraphs (1) and (2) give effect to the procedure (including the appeal procedure) contained in Part 2 of Schedule 2 in relation to applications made pursuant to the requirements and other specified consents and approvals.

Article 56 (Disapplication, application and modification of legislative provisions)

5.215 This Article gives effect to Schedule 15 which incorporates and modifies legislative provisions which are necessary for carrying out the authorised development and is included in the DCO as permitted by section 120(5) of the 2008 Act. The Appendix to this Explanatory Memorandum details the justification for each disapplication, application and modification of legislation.

5.216 The Applicant proposes to retain the Grade II listed Threshing Barn within the Order limits. This will be developed for ancillary uses relating to the rail freight interchange. The draft DCO does not disapply or modify any legislation in relation to listed buildings as Section 33(1)(i) 2008 Act provides that consent for works to listed buildings is not required for development requiring development consent.

Article 57 (Certification of plans and documents)

5.217 This Article provides for the certification of the plans and documents referred to in the DCO. These are listed in Schedule 16.

Article 58 (Service of Notices)

5.218 This Article provides for the service of notices under the DCO and allows certainty regarding the procedure for service, for example, under Article 23 (Authority to survey and investigate the land). The Article is included pursuant to section 120(3) of the 2008 Act.

5.219 *Article 59 (Planning permissions etc.)*

5.220 This Article is included to address the potential effects of the Hillside judgment (Hillside Parks Ltd v Snowdonia National Park Authority [2022] UKSC 30), in relation to overlapping planning consents. It is considered to be an appropriate provision to ensure clarity as to the impact of such overlapping consents and their continued validity. The effect of the article is to allow planning permissions and the DCO to co-exist so long as they are not physically incompatible whilst allowing delivery of the DCO development.

5.221 The Applicant needs to retain the ability to apply for future consents and ensure that it can still develop pursuant to the DCO, particularly in light of the fact that the warehouses will be let in future to individual occupiers who may have their own requirements for the warehouses, thereby necessitating applications for permission, and still ensure that the DCO can authorise development.

5.222 At the request of Oxfordshire County Council, the Applicant has included a new paragraph to clarify that nothing in Article 59 prevents any enforcement action being taken under the Town and Country Planning Act 1990 or the Planning Act 2008 in relation to any breach of that permission or consent where that breach is not an inconsistency for the purposes of paragraph (2). Article 59 does not confer any power to carry out works, nor does it disapply the EIA Regulations. If consent were sought for EIA development under the 1990 Act, the likely significant environmental effects, including cumulative effects with the authorised development once the Order is made, would need to be assessed and an environmental statement submitted. The Article therefore does not allow additional development to come forward without consideration of its impacts.

Article 60 (Arbitration)

5.223 This Article is included in case of any dispute regarding the provisions of this Order, except where it is expressly dis-applied, as it will be in the case of some of the protective provisions which will provide their own dispute resolution mechanisms. Article 60 allows parties to agree an alternative to arbitration. Arbitration is a formal process which can be costly and it may not be proportionate to the nature of the dispute and therefore the Applicant does not consider it appropriate to compel parties to use arbitration.

5.224 The provision is included pursuant to sections 120(3) and 120(4) and paragraph 37 of Part 1 to Schedule 5 of the 2008 Act.

5.225 It should be noted that the Applicant has excluded the application of this Article to decisions of the Secretary of State by way of Article 60(2) which is copied below for ease of reference:

> *Paragraph (1) does not apply to any decisions of the Secretary of State made pursuant to the provisions of this Order.*

Schedules

Schedule 1 (Authorised Development)

5.226 This Schedule describes the authorised development for which Development Consent is sought, including associated development.

5.227 The Works are listed below and the area of the Application Site to which they relate can be seen on the Works Plans (Document series 2.2/AS-004).

Work Number	Description
1	*Railway works to the existing Chiltern Main Line*
2	*Private railway*
3	*Rail Freight Terminal*
4	*Rail terminal or rail served warehousing*
5	*Rail sidings (warehousing)*
6	*Rail served warehousing*
7A	*Estate road (Excluding southern link)*
7b	*Estate road (southern link)*

Work Number	Description
8	*Landscaping*
9	*Central Hub*
10	*Chilgrove Drive*
11	*Principal Access to the Main Site*
12A	*Heyford Park Link Road (western section)*
12B	*Heyford Park Link Road (eastern section)*
13A	*Aves Ditch Bridleway Connection*
13B	*Camp Road/Chilgrove Drive Junction*
14A	*M40 Junction 10 Phase 1*
14B	*M40 Junction 10 Phase 2*
15A	*A43 Trunk Road Phase 1*
15B	*A43 Trunk Road Phase 2*
16	*A43 Baynard's Green Junction*
16A	*A43 Baynard's Green Junction alternative*
17	*B4100*
18	*B430 South of Ardley Roundabout*
19	*Ardley Road*
20	*Ardley Bypass*
21	*Ardley Bypass Public Rights of Way*
22	*M40 Junction 9*
23	*Middleton Stoney Relief Road*
24	*Middleton Road*
25A	*B430 Active Travel Route*
25B	*Upper Heyford Road Junction*
26	*Quarry Cottages Turning Head and Bridleway*
27A	*Ardley Road (Middleton Stoney)*
27B	*Middleton Stoney Cross Roads*
28	*Aves Ditch (North)*
29	*Ecological Mitigation Area (Main site)*
30	*Biodiversity and Landscaping Enhancement Area (Main site)*
31	*Biodiversity and Landscaping Enhancement Area (Woodland Planting)*
32	*Ecological Mitigation Area (Middleton Stoney Relief Road)*
33	*Cycle link to Middleton Road*
34	*Landfill works*
35	*Foul Sewer Outfall to Bicester*
36	*B430 Station Road*
37	*Ecological Mitigation Area (North of Ardley Road)*
38	*Ardley Tunnel*
39	*A4095/B4030 roundabout*

5.228 Whilst each Work No details the works which may be carried out within that Work No, the Applicant would like to draw attention to the following in particular:

Demolition

5.229 Since statutory consultation, the Applicant has added a definition of 'main site demolition plan' and 'central hub demolition plan' to Article 2. This is referenced in several Work Nos. The addition makes clear that demolition may be carried out as shown on the demolition plans (Document number 2.17A and 2.17B/APP-137 and APP-138), certified documents listed in Schedule 16.

Biodiversity enhancement works

5.230 Work No 8 includes biodiversity enhancement works. This is also referenced in Requirement 4. 'Biodiversity enhancement works' is a defined term in Schedule 2 as 'new planting and other forms of habitat creation or enhancement of existing ecological features to contribute towards delivery of net gains in biodiversity through either or both increased areas of habitat, or improved quality of habitat within the Order Limits.'

Ecological mitigation area

5.231 Work Nos. 29, 32 and 37 consist of ecological mitigation areas. This differs to the biodiversity enhancement areas. Within these areas, works will be carried out for the provision of ecological mitigation works (a defined term in Schedule 2).

Work Nos. 15B, 16 and 16A

5.232 Work Nos. 15B and 16 overlap on the Works Plans (Document series 2.2/AS-004). This is because Work No. 15B consists of the alteration of part of the A43 all-purpose trunk road. This requires a temporary alignment for two lanes to become three lanes. At Work No. 16, the three lanes will become two. The overlap on the Works Plans therefore shows the overlap of the physical works.

Work No. 39 – A4095/B4030 Roundabout

5.233 The Applicant has proposed a contribution towards improvements in this area, to be secured by Section 106 agreement, in order that the local highway authority can carry out the works. However, at the time of submission of the DCO application, the financial sum to be included in the Section 106 agreement has not been agreed, therefore the Applicant may need to acquire the land in order to deliver the improvements itself, rather than via the local highway authority. For this reason, this land is included as land to be acquired, as explained in the Statement of Reasons (Document number 4.1/APP-143).

Further works

5.234 Schedule 1 includes **"Further Works"** the precise location of which it is not appropriate to identify. This enables the provision of such works across the areas of works noted within those sub-paragraphs. The approach is included in several made DCOs including The Northampton Gateway Rail Freight Interchange Order 2019, The West Midlands Rail Freight Interchange Order 2020 and the Cambridge Waste Water Treatment Plant Relocation Order 2025.

5.235 All of the "Further Works" are subject to the provisos contained in the Schedule including the test of "significant adverse environmental effects" pursuant to paragraph 13 of Schedule 2 of the 2017 EIA Regulations. The paragraphs are drafted so that any appropriate 'further works' are carried out in specific works areas.

Schedule 2 (Requirements)

Part 1 (Requirements)

5.236 Part 1 of Schedule 2 contains draft Requirements pursuant to section 120(1) of the 2008 Act.

5.237 Section 120(2) states that requirements "*may in particular include*":

(a) requirements which are akin to conditions which could have been imposed on the grant of a permission or consent which would have been required for the development, were it not required to be authorised by the DCO; or

(b) requirements to obtain the approval of the Secretary of State or any other person, if they do not fall within (a) above.

5.238 The National Policy Statement for National Networks provides guidance as to the imposition of requirements and states that they should only be imposed if they are necessary, relevant to planning, relevant to the development to be consented, enforceable, precise and reasonable in all other respects (Paragraph 4.11).

5.239 The proposed Requirements are set out below. The Requirements have been discussed with the various stakeholders, including the local authority and highway authorities and refined as required.

Requirement No.	Detail of requirement
1	**Interpretation** This part of the Requirements details the defined terms and their meaning. The Requirements have their own defined terms, outside of Article 2, as these defined terms are only used in Schedule 2.
2	**Time Limit** Paragraph 2 provides that the authorised development must commence no later than the expiration of five years beginning with the date on which the DCO comes into force. Section 154 of the 2008 Act requires development for which development consent is granted to be begun before the end of the (a) prescribed period or (b) such other period as specified in the order granting consent.

Requirement No.	Detail of requirement
	The prescribed period is five years, as per Regulation 6(1) of The Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015[65] which provides that: *Development for which development consent is granted must be begun before the end of a period of five years beginning on the date on which the order granting development consent is made*. The Applicant considers that given the scale of the development and the investigations, survey and monitoring work required prior to commencement, five years is an appropriate period of time in which to commence development. In addition, the Applicant has agreed to provide in the Development Consent Order Obligation (Section 106) (Document number 3.4, APP-142) a longer period of notice of the intention to commence development than the 10 working days in the draft agreement, the period to be agreed with the parties to that agreement, so that the authorities can put appropriate resourcing in place.
3	**Approved details and amendments to them** Where a requirement requires details to be submitted in accordance with a document or plan, Requirement 3 enables the local planning authority to approve an amendment or variation to that document or plan. With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved by the local planning authority, the authorised development must be carried out in accordance with those details as approved unless an amendment or variation has previously been approved in writing by the local planning authority in accordance with sub-paragraph (3). As per paragraph (3), any amendment or variation to documents or approved details must be in accordance with the principles and assessments in the environmental statement. Agreement can only be given in relation to immaterial changes where it has been demonstrated that the subject matter of the agreement sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

65 S.I. 2015 No 462.

Requirement No.	Detail of requirement
	The interpretation of 'materially new or materially different environmental effects' is addressed in Article 2 of the DCO. Without this Requirement, the undertaker would be constrained by documents, plans and details which may have been prepared several years or months in advance of the work to which they relate coming forward. In light of the scale and complexity of the development, a certain degree of flexibility is required in order to ensure that the development is deliverable. The wording in paragraph (3) ensures that any changes do not have the effect of giving rise to materially new or different environmental effects. This drafting has precedent in the Cambridge Waste Water Treatment Plant Relocation Order 2025.
4	**Components of development and phasing** This Requirement prohibits any component of the authorised development from commencing on the main site until details of the phasing of that component have been submitted to and approved by the local planning authority. *'component of the authorised development on the main site*' is a defined term in Requirement 1 of Schedule 2 as follows: *means the components listed in requirement 4 (components of development and phasing);*
5	**Rail** Pursuant to this Requirement, no more than 232,258 square metres of warehouse (including ancillary office but not including mezzanine floor space) floor space to be provided as part of the authorised development may be occupied until the rail freight terminal which is capable of handling a minimum of four x 775 metre trains per day and the associated rail infrastructure required for those purposes has been constructed and is available for use. This ensures that the rail freight terminal is delivered prior to a significant amount of the warehousing and therefore means that the undertaker cannot deliver the warehousing without ensuring that the rail freight terminal is available and capable of handling at least four trains per day. 'Available for use' bears its plain meaning, namely that the rail infrastructure, having been constructed, is ready to be used. This

Requirement No.	Detail of requirement
	approach reflects national policy, which explicitly recognises that warehousing on SRFIs may be delivered before final delivery or commissioning of rail connections (NPS paragraph 4.88), and follows the approach accepted by the Secretary of State in The East Midlands Gateway Rail Freight Interchange and Highway Order 2016, The Northampton Gateway Rail Freight Interchange Order 2019 and The West Midlands Rail Freight Interchange Order 2020. The works to provide W8 loading gauge clearance through the Ardley Tunnel are authorised as Work No. 38 and are subject to Network Rail's approval under its protective provisions.
6	**Sustainable transport and travel plan** Paragraph (1) of Requirement 6 secures compliance with the framework travel plan (Document number 6.3B/APP-203) and any variations to that plan which may be agreed with the sustainable transport working group. Compliance begins following the commencement of the authorised development unless otherwise agreed in writing with the local planning authority. Paragraph (2) provides that prior to the occupation of each individual warehouse unit, a travel plan specific to the occupier of that unit, must be submitted to and approved by the local planning authority. A unit specific travel plan must be prepared in accordance with the framework travel plan, thereby ensuring consistency with the overall objectives for travel to and from the development. Paragraphs (3) and (4) secure compliance with the sustainable transport strategy and public transport strategy respectively. Both strategies must be complied with following the first occupation of any warehouse floorspace. Paragraph (5) clarifies that reference to employees in the framework travel plan or public transport strategy, in the context of sustainable transport measures, includes all persons attending the authorised development as their place of work. Paragraph (6) requires the undertaker to use reasonable endeavours to maximise the use of Euro VI compliant HGV fleets operated by the occupiers of the warehouse units which visit those warehouses.

Requirement No.	Detail of requirement
	The remaining paragraphs of this Requirement deal with the establishment and operation of the sustainable transport working group. The group will manage the provisions of the framework travel plan and public transport strategy. Full details of the membership, role and protocol of the group are set out in Part 3 of Schedule 2.
7 and 8	**Design and phasing of highway works** Requirement 7(1) requires the highway works to be carried out in accordance with the details approved pursuant to the relevant provisions of Schedule 14 (protective provisions). Paragraph 8(1) sets out the requirements for phasing and timing of the highway works. There are several conditions to which this paragraph is subject, namely: - Paragraph (2) references Work No. 7B. This Work No. is not in the table in this requirement because it is not a highway work. It is controlled by Schedule 5. - Paragraph (3), which provides that the undertaker is not obliged to undertake Work No. 13B if a third party has commenced construction of works at the Chilgrove Drive / Camp Road junction as required by planning permission reference 18/00825/HYBRID (or any approved variation thereto or any other planning permission which requires the same or similar to those works at that junction, whether or not granted on appeal) prior to the stage of development specified in column (3) of the table at sub-paragraph (1) above. This is because the Applicant is aware that the referenced planning permission requires the carrying out of works at the junction and if those works are completed pursuant to that permission, the Applicant's works will not be required. It is therefore appropriate to ensure the undertaker is not required to duplicate such works. - Paragraph (4), which provides, in a similar manner to paragraph (3) above, that the undertaker is not required to undertake Work Nos. 16 or 17 if a third party has commenced construction of highway works at Baynard's Green required by planning permission references 21/03268/OUT, 21/03267/OUT, 21/03266/F or 22/01340/OUT (or any approved variation thereto or any

Requirement No.	Detail of requirement
	other planning permission which requires the same or similar to those works at that junction, whether or not granted on appeal) prior to the stage of development specified in column (3) of the table at sub-paragraph (1) above. For the same reasons as above with Work No. 13B, the Applicant's works will not be required in those circumstances, but an alternative work would be required – this is referred to as Work 16A and paragraph (4) deals with its provision. - At present, the planning applications referenced in paragraph (4) were refused and therefore if granted, it will be on appeal. It is also possible that a new application may be made and submitted to the local planning authority. It is therefore necessary to refer to alternative permissions and those granted on appeal in this paragraph. - Paragraph (5) confirms that the alternative works mentioned in the table and in paragraph (4) will only be required if the third party works are delivered. - Paragraph (6) allows the undertaker to agree alternative provision for any individual work specified in sub-paragraph (1) and (2) where— - the undertaker has agreed with the local planning authority and the relevant highway authority that an alternative to that work has been proposed which will mitigate the effect of the authorised development at the location of that work; and - the local planning authority and the relevant highway authority agree that such alternative work should be carried out in lieu of the individual work specified in sub-paragraph (1), and either— - an agreement for carrying out that alternative work has been entered into between the relevant highway authority and a third party; or - the undertaker has entered into an agreement with the relevant highway authority in relation to the carrying out of that alternative work.

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	Paragraph (6) is considered necessary to ensure that appropriate alternatives can be delivered for highway works given the potential for uncertainty in respect of overlaps with third party works. It is not an open-ended substitution power and could not result in a materially different scheme to the Proposed Development. Any alternative work must mitigate the effect of the authorised development at that location and must be agreed by both the local planning authority and the relevant highway authority. Further, Article 54 prevents any approval which would give rise to materially new or materially different significant environmental effects and, unless otherwise agreed, Parts 2 and 3 of Schedule 14 apply to alternative works, so that National Highways and the local highway authority retain approval of the detailed design. Following engagement with Oxfordshire County Council, the Applicant has proposed that the trigger for certain Phase 2 works in paragraph 8(1) be clarified so that those works must be completed prior to the occupation of more than 185,806 square metres of warehousing (and, if such warehousing includes mezzanine floorspace, no more than 61,967 square metres of mezzanine floorspace). This ensures the trigger cannot be avoided if mezzanine floorspace is not built or occupied as this is not the Applicant's intention. Paragraph 8(1) also now requires the highway works to be completed so that they are available for use by the public, and a new definition of "complete" has been added by reference to the issue of a provisional certificate under Part 2 or Part 3 of Schedule 14, giving certainty as to when each trigger is met.
9	**Detailed design approval** Pursuant to paragraph (1), the details of each component of the authorised development on the main site referred to in requirement 4 (components of development and phasing) must be in accordance with the parameters plan (Document number 2.5/AS-008) and the principles set out in the design code included at section 7 of the main site design approach document (Document number 5.5A/APP-166).

Requirement No.	Detail of requirement
	Paragraph (2) then states that no component of the authorised development on the main site is to commence until the details of that component have been submitted to and approved in writing by the local planning authority. Specific details which must be included when they are located with the component in question are listed at (a) to (w) and include matters such as drainage, parking, site levels, estate roads, substations and telecommunication masts. The Applicant has amended paragraph (2) so as to exclude ecological mitigation works from the restriction on commencement included in this requirement. This is required as a result of the removal of this general carve-out in the definition of "commence" as described above and in the DCO Schedule of Changes (Document number 3.5, Examination library reference to be confirmed). The Applicant considered this appropriate as it recognises that there are details required by the P-CEMP and P-HMMP which are relevant to ecological mitigation works and therefore these details should be submitted and approved before ecological mitigation works may be carried out. Paragraph (3) secures the provision of electric vehicle charging. Paragraph (4) secures compliance with the details approved under this Requirement. This requirement restricts the commencement of development in relation to components of the development on the main site only, as the detailed design approval is specific to those particular components of the main site. The Applicant considers that it would be unduly prohibitive to restrict development on the entire site until design approval is provided for only specific elements of the main site.
10	**Construction environmental management plan ("CEMP")** Paragraph (1) provides that no part of the authorised development is to commence until a phase-specific construction environmental management plan ("P-CEMP") for that part of the authorised development, drafted in accordance with the principles set out in the CEMP (Document number 6.2/APP-189), has been submitted to and approved in writing by the local planning authority. If the P-CEMP relates to highway works, it must be approved by the relevant highway authority.

Requirement No.	Detail of requirement
	Paragraph (2) lists the details which each P-CEMP must include where relevant to a phase. Paragraph (3) requires each P-CEMP to be reviewed and updated if necessary to address unacceptable impacts arising from construction works. Each P-CEMP (and any revision to it) must be submitted by the undertaker for approval by the local planning authority (or the relevant highway authority where the P-CEMP (or revision) relates to the highway works). Paragraph (4) secures the carrying out of all construction works in accordance with the relevant P-CEMP as approved by the local planning authority or, where the P-CEMP relates to the highway works, the relevant highway authority.
11	**Provision of Landscaping** Requirement 11 prohibits commencement of any component on the main site which includes landscaping until a landscaping scheme has been submitted to and approved by the local planning authority. The restriction on commencing has been limited to the specified components on the main site as the provision of landscaping is relevant to these components only. The landscaping scheme must be carried out in accordance with the parameters plan (Document number 2.5/AS-008) and the habitat management and monitoring plan (Document number 6.6K/AS-075) and in accordance with the landscaping principles established in the main site design approach document and must include details of all proposed soft landscaping works.
12	**Habitat management and monitoring plan and biodiversity net gain** Paragraph (1) requires that the authorised development must provide no less than 10% biodiversity net gain. Pursuant to paragraph (2), no part of the authorised development which includes ecological mitigation works is to commence until a phase-specific habitat management and monitoring plan ("P-HMMP") for that part of the authorised development, drafted in accordance with the principles set out in the habitat management and monitoring plan (Document number 6.6K/AS-075), has been submitted to and approved in writing by the local planning authority.

Requirement No.	Detail of requirement
	Paragraph (4) provides that following completion of the green infrastructure, the ongoing management and maintenance must be agreed with the local planning authority prior to the occupation of any warehouse.
13	**Earthworks** Requirement 13(1) prohibits the commencement of any component of the authorised development on the main site which includes earthworks until details relating to earthworks for that component have been approved by the local planning authority. The Applicant has narrowed this restriction to components which include earthworks, as it would be unduly restrictive to prevent other components from commencing (which do not include earthworks) before earthworks details are approved. Paragraph (2) provides that Earthworks details in phases relevant to Zones A4, A5, B and C as shown on the parameters plan (Document number 2.5/AS-008) must include details confirming the scope of a watching brief by a palaeontologist in accordance with the principles set out in the Ardley trackways technical note (Document number 6.11I/AS-080).
14	**Archaeology** Requirement 14 provides that the programme of archaeological excavation, recording, analysis, reporting and publication must be in accordance with the archaeological mitigation strategy (Document number 6.10H/PDA-005). The archaeological mitigation strategy has been agreed with Oxfordshire County Council and is a certified document in Schedule 16. Following a request by Oxfordshire County Council, an amendment has been made to the heading to remove reference to 'built heritage' on the basis that it is not relevant to the requirement.
15	**Central hub** This requirement ensures that a scheme is to be submitted to and approved in writing by the local planning authority for each part of the central hub, confirming the details of the various units and uses

Requirement No.	Detail of requirement
	at the central hub. Paragraph (2) requires the scheme to be in accordance with the principles set out in the central hub design approach document. As the DCO seeks detailed consent for the listed building works, paragraph (3) requires the threshing barn works to be carried out in accordance with the threshing barn drawings (Listed Building Plans, Document numbers 2.14A to 2.14X/AS-022 to AS-045). The works concern the restoration and redevelopment of the threshing barn which is located within the central hub on the main site.
16	**Lighting details** Requirement 16 provides that details of the proposed permanent external lighting must be approved by the local planning authority prior to the commencement of each component of the authorised development on the main site which includes permanent lighting. The lighting details must accord with the principles in the outline lighting strategy (Document number 6.8A/APP-256). Paragraph (2) secures compliance with the approved lighting details. Paragraph (3) requires the details submitted to include details of any lighting or gantry cranes in the component. Paragraph (4) provides that for the purposes of this Requirement, remedial work in respect of any contamination or adverse ground conditions and pre-construction archaeological works may be carried out prior to the approval of the lighting scheme. The Applicant considers it reasonable that these works may be carried out prior to the scheme being approved as the scheme concerns permanent external lighting and is therefore not related to these activities. For the avoidance of doubt, this wording means that the Applicant could carry out the above works, as well as those works specified in the definition of 'commencement' before approval of the lighting scheme.
17	**Building sustainability and climate change** Requirement 17 provides that no construction of a warehouse must start until a BREEAM Pre-Assessment Report based upon

Requirement No.	Detail of requirement
	the BREEAM version 7 method (or equivalent) has been submitted to and approved in writing by the local planning authority demonstrating that the warehouse concerned is expected to achieve at least a BREEAM "Excellent" rating (BREEAM version 7 "Excellent").
18	**Energy Strategy** Requirement 18 secures compliance with the energy strategy (Document number 6.15D/APP-304).
19	**Carbon Management Plan** Requirement 19 secures compliance with the carbon management plan (Document number 6.15E/AS-083).
20	**Flood risk and surface water drainage** Paragraph (1) requires the authorised development to be carried out in accordance with: - the mitigation measures detailed within the flood risk assessment (Document number 6.9B/AS-076) and the water framework directive assessment (Document number 6.9E/AS-079); or - any variation to these measures agreed in writing with the Environment Agency and the local planning authority in consultation with the lead local flood authority. The Applicant has amended paragraph (1) in response to comments from Oxfordshire County Council. Oxfordshire County Council has confirmed that the appropriate body to approve variations to the approved measures is the local planning authority, in consultation with the lead local flood authority. As explained in its relevant representation [RR-109], this is because an agency agreement between Oxfordshire County Council and the district councils in its area allows the district councils to determine applications under the Land Drainage Act 1991. The Oxfordshire district councils are therefore experienced in determining matters that elsewhere would be dealt with by the county council. For this reason, Oxfordshire County Council and Cherwell District Council both consider that the local planning authority is best placed to make decisions under Requirements 20 to 22, after first consulting the lead local flood authority. The

Requirement No.	Detail of requirement
	Applicant agrees with this approach and has made this change in Requirements 20, 21 and 22.
21	Requirement 21 provides that no component of the authorised development on the main site must commence until a surface water drainage scheme for that component based on sustainable drainage principles has been submitted to and approved in writing by the local planning authority in consultation with the lead local flood authority. The Applicant has amended paragraph (1) to narrow the restriction on development to those components of the authorised development on the main site which include surface water drainage. The Applicant considers that this is proportionate as it would be unduly restrictive to restrict all development on the main site before the surface water drainage scheme is approved. The scheme must be in accordance with the sustainable drainage statement (main site) (Document number 6.9C/AS-077) and must be informed by additional infiltration testing in accordance with BRE standard 365 “Soakaway design”. The extent of the testing is to be approved in advance by the lead local flood authority. The aim of the testing is to identify the maximum extent of reliance upon infiltration in accordance with the drainage hierarchy set out in the sustainable drainage strategy. Paragraph (2) secures compliance with the approved surface water drainage scheme in respect of the implementation and maintenance of the authorised development for its operational life. Reference to maintenance was added in order to address comments made by the Environment Agency in its relevant representation. The Applicant confirmed it would add this in its response (Document 9.1B/PDA-009).
22	Requirement 22 provides that: - any element of the authorised development which directly affects any floodplain must not commence until a floodplain compensation scheme has been submitted to and approved in writing by the local planning authority in consultation with the lead local flood authority;

Requirement No.	Detail of requirement
	- the scheme must accord with the principles in the flood compensation measures set out in the flood risk assessment (Document number 6.9B/AS-076) or drainage strategy; - except for the floodplain compensation scheme itself, no above-ground part of the authorised development in any floodplain may commence until the relevant compensation scheme has been implemented in full; and - the scheme must be fully implemented and maintained in accordance with the timing and phasing arrangements within the scheme (or within any other period as may subsequently be agreed in writing by the local planning authority in consultation with the lead local flood authority). In response to a request from Oxfordshire County Council, the Applicant has amended Requirement 22 to provide that the local planning authority in consultation with the lead local flood authority can agree to subsequent variations to the agreed timing and phasing arrangements.
23	**Foul water drainage** Requirement 23 requires that prior to the commencement of the authorised development on the main site (excluding earthworks, landscape works, biodiversity enhancement works, ecological mitigation works and permanent signage), a foul water drainage strategy must be submitted to and approved in writing by the local planning authority. The Applicant has amended this paragraph to narrow the restriction on commencement under Requirement 23 by expanding the exclusions listed to include landscape works, biodiversity enhancement works, ecological mitigation works and permanent signage. The Applicant considers that these exclusions are required to ensure that the restriction on commencement under this Requirement is proportionate and not unduly restrictive, particularly as the exclusions identified do not interact with the foul water drainage. Except where it is constructed in accordance with the approved foul water drainage strategy, no component of the authorised development is to commence on the main site, excluding

Requirement No.	Detail of requirement
	earthworks, landscape works, biodiversity enhancement works, ecological mitigation works and permanent signage, until details of the foul water drainage system for that component have been submitted to and approved in writing by the local planning authority. Similarly to paragraph 23(1) above, the Applicant has amended the drafting to narrow the restriction on commencement.
24	**HGV Routeing Strategy** This requirement secures compliance with the HGV Routeing strategy (Document number 6.3A.03/AS-057).
25	**Construction hours** Requirement 25 restricts the hours of work for construction and demolition works on the main site to between 07:00 and 19:00 hours on weekdays and between 07:00 and 16:00 hours on Saturdays and not at all on Sundays nor on public holidays. These hours may be varied with the agreement of the local planning authority in which case they would be subject to requirement 3. Paragraph (2) sets out the activities and instances to which the restrictions on hours do not apply, for example, overnight traffic management measures, emergency works or works which are carried out with the approval of the local planning authority. Works within existing buildings or buildings constructed as part of the authorised development are excluded because internal works would not require planning permission. Works to complete an operation that would otherwise cause greater interference if left unfinished are excluded because some activities, such as concrete pours, cannot safely be abandoned midway. This exception appears in The Northampton Gateway Rail Freight Interchange Order 2019 and The West Midlands Rail Freight Interchange Order 2020. Works which do not give rise to noise or vibration causing an adverse impact at the boundary of the main site are excluded because the purpose of controlling construction hours is to mitigate adverse impacts and, where these are not occurring, the works should be allowed to continue in the interests of efficiency.

Requirement No.	Detail of requirement
	Paragraph (3) provides no piling operations are to take place before 08:00 and after 18:00 hours on weekdays or before 08:00 and after 13:00 on Saturdays, and not at all on Sundays nor on public holidays (unless otherwise agreed in writing by the local planning authority). Paragraph (4) restricts the re-profiling works as part of the landfill works (Work No. 34) so that they do not take place before 08:00 or after 18:00 hours on weekdays or before 08:00 or after 16:00 on Saturdays, and not at all on Sundays nor on public holidays, unless otherwise agreed in writing by the local planning authority as set out in the Odour Management Plan (Document number 6.4F/APP-218). Pursuant to paragraph (5), if emergency works are carried out, the undertaker must notify these to the local planning authority within 72 hours of commencement.
26	**Control of operational noise** Paragraph (1) provides that where mechanical and ventilation plant and any other noise-making machinery, or mobile plant (including HGV chiller units) is intended to be used in any of the warehouses or other buildings within the main site, details must be submitted to and approved by the local planning authority prior to installation. The details will include an assessment of the expected noise impact at relevant receptors in accordance with BS4142:2014+A1:2019 Methods for rating and assessing industrial and commercial sound (or such other amendment or replacement of such documents as shall apply at the time of submission of the relevant application). The assessment will consider noise from the proposed plant and machinery to demonstrate compliance with government and local policy on noise. Paragraph (2) was added to secure the commitment to use eco reach stackers, as discussed in Chapter 5 (Noise and Vibration) of the Environmental Statement (Document number 6.5/AS-066). Eco reach stackers are quieter than standard models. This part of the Requirement provides that if the reach stackers to be employed have the same (or lower) noise level as the eco reach

Requirement No.	Detail of requirement
	stackers, that must be confirmed to the local planning authority in writing with submission of supporting evidence. However, if a noisier model is used, but it can be demonstrated that when considered alongside all the other sources that would be present at the Main Site, the cumulative effect at the receptor was materially no worse than predicted in the Environmental Statement, the noisier model could be used.
27	**Construction Odour** This requirement provides that the landfill works must not commence until a detailed odour management plan has been submitted to and agreed in writing with the local planning authority. Pursuant to paragraph (2), the detailed odour management plan must be in accordance with the principles of the outline odour management plan (Document number 6.4F/APP-218).
28	**Contamination risk** Pursuant to paragraph (1), if previously unidentified contamination is discovered during the course of construction, construction must cease within the identifiable perimeters of the area in which the suspected contamination is located and the contamination must be reported in writing to the local planning authority within 10 working days. This wording was included at the request of the Environment Agency following statutory consultation. There is no known contamination outside of the landfill, which is governed by the landfill works requirement (Requirement 30) and the separate environmental permitting regime. A suitable investigation and risk based land contamination assessment for the discovered contamination (to include any required amendments to the remedial scheme and verification plan) must be submitted to and approved in writing by the local planning authority prior to recommencing works on that area.
29	If a remediation scheme and verification plan have been agreed under Requirement 28 for a part of the completed authorised development, a verification investigation must be undertaken in line with the agreed verification plan for any works outlined in the remedial scheme.

Requirement No.	Detail of requirement
	A report showing the findings of the verification investigation relevant to that part of the authorised development must be submitted to and approved in writing by the local planning authority. Paragraph (2) sets out what the verification investigation report must contain and address.
30	**Landfill works** Paragraph (1) ensures that the landfill works cannot commence without, where necessary, the relevant environmental permit from the Environment Agency. Paragraph (2) ensures that the landfill works are carried out in accordance with the principles of the landfill reprofiling technical note (Document number 6.13A/APP-299), a certified document in Schedule 16.
31	**Employment** Paragraph (1) requires an employment scheme to be submitted prior to the commencement of any part of the authorised development. The scheme only concerns the employees involved in construction. An amendment has been made to exclude ecological mitigation works from the prohibition on commencement until the employment scheme in relation to that part has been submitted. The approval of the local planning authority is required before construction of the relevant part of the authorised development can commence. Pursuant to paragraph (2), prior to the occupation of each warehouse to be occupied, and any subsequent change in occupation of any warehouse, an employment scheme must be submitted to and approved in writing by the local planning authority. The employment scheme concerns the employees in that warehouse only. Paragraph (3) secures compliance with the approved schemes. Paragraph (4) provides that for the purposes of this Requirement, remedial work in respect of any contamination or adverse ground conditions and pre-construction archaeological works may be

Requirement No.	Detail of requirement
	carried out prior to the approval of the employment scheme in paragraph (1). The Applicant considers it reasonable that these works may be carried out prior to the scheme being approved as the scheme concerns employees involved in construction and these are pre-construction works. For the avoidance of doubt, this wording means that the Applicant could carry out the above works, as well as those works specified in the definition of 'commencement' before approval of the employment scheme. Following discussions at ISH2, the Applicant has included reference to 'volunteering' opportunities in the definition of employment scheme. This means that the Applicant will need to provide details of this as part of the employment scheme to be submitted to the local planning authority.
32	**Community liaison group** Paragraph (1) requires that prior to the commencement of the authorised development the undertaker must establish a community liaison group to facilitate liaison between various bodies in relation to the construction and operation of the authorised development. Wording has been added to clarify that the group is to facilitate liaison between bodies *and the community*. Paragraph (2) lists the parties which must be provided with the opportunity to participate in the community liaison group. Paragraph (3) requires the community liaison group to be administered by the undertaker. Pursuant to paragraph (4), the community liaison group is to continue to meet until the expiry of five years from full occupation of the authorised development unless otherwise agreed with the local planning authority.

Part 2 – Procedure for Approvals etc

5.240 This part deals with the procedure for approvals and appeals. It is based on Appendix 1 to Planning Inspectorate Advice Note Fifteen: Drafting Development Consent Orders.

5.241 Following discussions with Oxfordshire County Council and Cherwell District Council, the Applicant has agreed to extend the period for determining applications under paragraph 1 from 42 days to 40 business days (effectively eight weeks) and to extend the initial assessment period within which the discharging authority may request further information to 15 business days. The Applicant considers these periods sufficient. The discharging authorities will have had substantial engagement on the Proposed Development through years of pre-application discussions, two formal rounds of consultation and the Examination, and many of the requirements require details to be submitted in accordance with outline documents which the discharging authority will already have reviewed, so that its role will be to confirm that the details accord with the approved outline rather than to undertake a first review of the scheme. The procedure also allows a longer period to be agreed where necessary.

5.242 The fee regime in paragraph 3 follows the approach commonly adopted in made DCOs and reflects an established and workable model for the discharge of requirements.

Part 3 – Membership, role and protocol of the Sustainable Transport Working Group

5.243 This Part of Schedule 2 sets out the provisions for the Sustainable Transport Working Group. The provisions are based upon those from the Northampton Gateway Rail Freight Interchange Order 2019.

5.244 These provisions are being discussed with the Sustainable Transport Working Group. The Applicant has received comments from Oxfordshire County Council and has amended the provisions as a result. Following submission of the application, it was agreed that National Highways would be added as a voting member to the Group.

Schedule 3 (Streets subject to street works)

5.245 This Schedule sets out the streets that would be subject to street works (including reference to the location and the specific street).

Schedule 4 (Streets to be permanently stopped up)

5.246 This Schedule sets out the streets to be permanently stopped up, with and without a substitute being provided.

5.247 *Schedule 5 (Public Rights of Way)*

5.248 This Schedule sets out the public rights of way:

(a) to be permanently stopped up for which a substitute is to be provided;

(b) to be permanently stopped up for which no substitute is to be provided;

(c) new public rights of way to be created; and

(d) the status of public rights of way to be modified.

5.249 *Schedule 6 (Private means of access)*

5.250 This Schedule sets out the private means of access to be replaced, to be closed (for which no substitute is to be provided) and new private means of access to be created.

Schedule 7 (Classification of Highways)

5.251 This Schedule deals with the classification of highways as required to accommodate the proposed highway works and amendments.

Schedule 8 (Speed Limits)

5.252 This Schedule deals with the speed limits for the proposed highway works and amendments.

Schedule 9 (Traffic Regulation)

5.253 Schedule 9 includes various traffic regulation orders including amendments to existing orders, clearways and no waiting, environmental weight limit, prohibited movements and vehicle prohibitions.

Schedule 10 (Land of which temporary possession may be taken)

5.254 This Schedule sets out the land of which only temporary possession may be taken for the purposes of the construction of the authorised development pursuant to Article 35 with reference to the appropriate purposes for which temporary possession may be taken.

5.255 *Schedule 11 (Land in which only new rights etc. may be acquired)*

5.256 This Schedule sets out the land in which only new rights may be acquired and restrictive covenants imposed pursuant to Article 29, together with the purposes for which those rights may be acquired.

Schedule 12 (Modifications of compensation and compulsory purchase enactments for creation of new rights and restrictive covenants)

5.257 This Schedule modifies existing compensation legislation including the Land Compensation Act 1973 and the Compulsory Purchase Act 1965. It has been updated to reflect any necessary changes arising as a result of the Housing and Planning Act 2016.

Schedule 13 (Removal of trees and hedgerows)

5.258 This Schedule lists trees and hedgerows which are to be removed, consent for which is given by Article 49. Article 50 also refers to the trees listed in Part 1 of this Schedule; none of the trees listed is currently subject to a tree preservation order or located in a conservation area.

Schedule 14 (Protective provisions)

5.259 Schedule 14 includes draft provisions to protect the interests of various bodies whose assets it is currently understood may be affected by the proposed development. These are subject to discussion with the parties concerned:

Part of Schedule	For the Protection of	Status of negotiations
1	**Railway interests (Network Rail)**	The draft DCO includes the Applicant's currently proposed protective provisions for the benefit of Network Rail. Negotiations are ongoing with Network Rail in respect of these.
2	**National Highways**	The Applicant has had several positive meetings with National Highways. The parties have made some progress in agreeing drafting differences but further engagement is required. The Applicant has proposed some novel drafting in the protective provisions which it considers is required as a result of its land investigations, namely: - It has identified plots of land which appear to be National Highways operational land (and which are owned by National Highways) but which are not adopted highway. The Applicant proposes to carry out highway works to this land only and has therefore proposed that such land is adopted by National Highways. This will mean that it will benefit from the highway works and street works powers in the DCO and will not need to be compulsorily acquired. The principle of this is agreed by National Highways but the drafting and precise mechanism to effect this is under discussion; and - The Applicant has also identified land which is National Highways owned but is local adopted highway. This highway will be stopped up as part of the authorised development and will form part of Work Nos. 6 and 8 and the Applicant therefore needs to acquire such land. The Applicant proposes that such land is transferred to it from National Highways, subject to terms to be agreed, in which case it will not be

Part of Schedule	For the Protection of	Status of negotiations
		necessary to exercise powers of compulsory acquisition. The following points are under discussion: - the provision of security by the Applicant; - the drafting in relation to the indemnity from the Applicant to National Highways; - general drafting in relation to timescales and cooperation between the Applicant and National Highways.
3	**Local Highway Authority**	The Applicant has been negotiating the draft protective provisions with Oxfordshire County Council, as local highway authority, for several months and the parties are continuing to liaise with a view to reaching agreement during the Examination. The following points are under discussion: - the form of security to be provided by the Applicant: the Applicant's position is that the protective provisions should allow security to be provided by either a bond or a parent company guarantee, which is an acknowledged and acceptable form of security accepted by many statutory undertakers in made DCOs, offers at least equivalent security without the substantial administrative cost of a bond, and avoids the risk that the county highway works (and therefore the project) could be sterilised if a bond could not be obtained on the required terms; - general drafting in relation to timescales and cooperation between the Applicant and the local highway authority; - the calculation of fees for county highway works, where the Applicant considers fees should relate to the

Part of Schedule	For the Protection of	Status of negotiations
		actual costs incurred by the local highway authority rather than a percentage of the cost of the works (consistent with The A303 Sparkford to Ilchester Dualling Development Consent Order 2021 and The East Midlands Gateway Rail Freight Interchange and Highway Order 2016)
4	**Operators of Electronic Communications Code Networks**	The Applicant has proposed generic protective provisions for the benefit of the operators of electronic communications code networks which have been widely included in many made DCOs. Openreach has apparatus within the Order limits and therefore will benefit from these protective provisions.
5	**Thames Water Utilities Limited**	The Applicant provided draft protective provisions for the benefit of Thames Water which have been amended and returned by Thames Water. Negotiations are ongoing. The drafting is broadly agreed save for the following outstanding issues which remain under discussion: - time periods; - minor drafting amendments including the use of 'reasonableness'.
6	**Electricity, gas, water and sewerage undertakers**	The Applicant has proposed generic protective provisions for the benefit of electricity, gas, water and sewerage undertakers which have been included in many made DCOs. Southern Gas Networks has apparatus within the Order limits and therefore will benefit from these protective provisions. The Applicant considers these protective provisions to be suitable and proportionate for Southern Gas Networks given that the authorised development does not require any works near to high risk apparatus (specifically a high pressure gas main).

Part of Schedule	For the Protection of	Status of negotiations
		Amendments have been added to confirm that Anglian Water's interests in land are retained.
7	**Southern Electric Power Distribution**	Southern Electric Power Distribution has provided draft protective provisions which the Applicant has reviewed and amended. These are largely agreed. Negotiations are ongoing, including in relation to the required insurance levels.

Schedule 15 (Miscellaneous Controls)

5.260 This Schedule sets out various legislative provisions which are to be modified or excluded from being applied to the Proposed Development. The relevant provision and the reason for its modification or exclusion is detailed in the table at **Appendix 1**.

Schedule 16 (Certification of Plans and Documents)

5.261 This Schedule lists the various plans and documents that are to be certified by the Secretary of State for the purposes of the DCO. The plans and documents listed are those referred to in the draft DCO.

6. CHANGES TO THE CONSULTATION DRAFT DCO (CROWN LAND)

6.1 Since statutory consultation on the Proposed Development, the Applicant has continued its investigations into the land and interests within the Order Limits. At the time of statutory consultation, there were registered interests in favour of the Secretary of State for Transport. These interests are now registered to National Highways.

6.2 In light of this, the previous consultation draft Article 59 (Crown land) which prevented the Applicant from acquiring any Crown land (as defined in the 2008 Act), or from otherwise interfering with such land without the written consent of the relevant Crown authority is not necessary and this Article has been removed from the Application submission draft DCO.

Eversheds Sutherland (International) LLP

October 2026

Appendix 1: Article 56 and Schedule 15 – Disapplication, application and modification of legislative provisions

Schedule 15: Miscellaneous Controls			
Draft DCO provision		***Relevant Legislation***	***Applicant's Justification***
Schedule 15 Paragraph 2	Section 141 of the Highways Act 1980	**141 Restriction on planting of trees etc in or near carriageway** (1) Subject to sections 64 and 96 above and section 142 below, no tree or shrub shall be planted in a made-up carriageway, or within 15 feet from the centre of a made-up carriageway. (2) If a tree or shrub is planted in contravention of this section the highway authority for the highway or, in the case of a highway maintainable by reason of tenure, enclosure or prescription, the person liable to maintain the highway, may by notice given either to the owner or to the occupier of the land in which the tree or shrub is planted require him to remove it within 21 days from the date of service of the notice. (3) If a person fails to comply with a notice under subsection (2) above he is guilty of an offence and liable to a fine not exceeding [level 1 on the standard scale] and if the offence is continued after conviction he is guilty of a further offence and liable to a fine not exceeding 50p for each day on which the offence is so continued.	The Applicant has sought to disapply these provisions because the details and provisions are dealt with in the DCO (including the protective provisions) and its associated plans.
	Section 167 of the Highways Act 1980	**167 Powers relating to retaining walls near streets** (1) This section applies to any length of a retaining wall, being a length— (a) any cross-section of which is wholly or partly within 4 yards of a street; and	This provision is disapplied because, as above, the details and provisions are dealt with in the DCO (including the protective provisions) and its associated plans. The DCO will deal with the necessary approvals in this regard and the statutory

Schedule 15: Miscellaneous Controls			
Draft DCO provision		***Relevant Legislation***	***Applicant's Justification***
		(b) which is at any point of a greater height than 4 feet 6 inches above the level of the ground at the boundary of the street nearest that point; but does not apply to any length of a retaining wall erected on land belonging to any transport undertakers so long as that land is used by them primarily for the purpose of their undertaking or to any length of a retaining wall for the maintenance of which a highway authority are responsible. (2) No length of retaining wall, being a length which when erected will be a length of retaining wall to which this section applies, shall be erected otherwise than in accordance with plans, sections and specifications approved by the local authority in whose area the street is situated; and before giving such approval that authority, if they are not the highway authority for the street, shall consult the highway authority. (3) Any person aggrieved by the refusal of a local authority to approve any plans, sections and specifications submitted to them under this section may appeal to a magistrates' court. (4) If a person erects a length of retaining wall in contravention of this section, he is guilty of an offence and liable to a fine not exceeding [level 3 on the standard scale].	provision is therefore to be disapplied to ensure that only one approval mechanism is required.

Schedule 15: Miscellaneous Controls			
Draft DCO provision		***Relevant Legislation***	***Applicant's Justification***
		(5) If a length of retaining wall to which this section applies is in such condition (whether for want of repair or some other reason) as to be liable to endanger persons using the street, the local authority in whose area the street is situated may, by notice served on the owner or occupier of the land on which that length of wall is, require him to execute such works as will obviate the danger. (6) Where the power conferred by subsection (5) above is exercisable in relation to a length of wall and has not been exercised by the local authority empowered to exercise it, then, if that authority are not the highway authority for the street in question, the highway authority may request the local authority to exercise the power; and if the local authority refuse to comply with the request or fail within a reasonable time after the request is made to them to do so, the highway authority may exercise the power. (7) Subsections (2) to (7) of section 290 of the Public Health Act 1936 (appeals against and the enforcement of, certain notices under that Act) apply to any notice served under subsection (5) above as they apply to such notices as are mentioned in subsection (1) of that section, but subject to the following modifications:— (a) references to the local authority are to be construed as including references to the highway authority;	

Schedule 15: Miscellaneous Controls			
Draft DCO provision		***Relevant Legislation***	***Applicant's Justification***
		(b) for paragraph (f) of subsection (3) there is substituted the following paragraph— "(f) that some other person ought to contribute towards the expense of executing any works required by the notice". (8) Sections 300 to 302 of the Public Health Act 1936 (supplementary provisions relating to appeals under the said section 290) apply, with the necessary modifications, to appeals brought by virtue of subsection (7) above. (9) In this section "retaining wall" means a wall, not forming part of a permanent building, which serves, or is intended to serve, as a support for earth or other material on one side only.	
	Section 169(1) of the Highways Act 1980	**169 Control of scaffolding on highways.** (1)Subject to subsection (6) below no person shall, in connection with any building or demolition work or the alteration, repair, maintenance or cleaning of any building, erect or retain on or over a highway any scaffolding or other structure which obstructs the highway (hereafter in this section referred to as a "relevant structure") unless he is authorised to do so by a licence in writing issued for the purposes of this section by the highway authority (hereafter in this section referred to as "a licence") and complies	This provision is disapplied in order that the Applicant may erect scaffolding without the need for a licence. The Applicant considers that an express licence is not required as the Applicant will seek consent for these works as part of the Requirements pursuant to Schedule 2 of the DCO.

Schedule 15: Miscellaneous Controls			
Draft DCO provision		***Relevant Legislation***	***Applicant's Justification***
		with the terms of the licence; and a licence may contain such terms as the authority issuing it thinks fit.	
	Section 172 of the Highways Act 1980	**172 Hoardings to be set up during building etc.** (1) Subject to subsection (2) below, a person proposing to erect or take down a building in a street or court, or to alter or repair the outside of a building in a street or court, shall, before beginning the work, erect a close boarded hoarding or fence to the satisfaction of the appropriate authority so as to separate the building from the street or court. For the purposes of this section the appropriate authority, in relation to any street or court, is the council of the county [, metropolitan district] or London borough in which it is situated or, if it is situated in the City, the Common Council. (2)The obligation to erect a hoarding or fence imposed by subsection (1) above may be dispensed with if the appropriate authority so consent. (3)Where a person has erected a hoarding or fence in compliance with subsection (1) above, he shall—	This provision is disapplied in order that the Applicant does not need a separate consent from the relevant authority in relation to the erection of, or dispensation from erecting, a hoarding or fence in relation to works to a building in a street. The Applicant considers that an express consent is not required as the Applicant will address this as part of the Requirements pursuant to Schedule 2 of the DCO.

Schedule 15: Miscellaneous Controls			
Draft DCO provision		***Relevant Legislation***	***Applicant's Justification***
		(a)if the appropriate authority so require, make a convenient covered platform and handrail to serve as a footway for pedestrians outside the hoarding or fence; (c) maintain the hoarding or fence and any such platform and handrail in good condition to the satisfaction of the authority during such time as the authority may require; (d) (c)if the authority so require, sufficiently light the hoarding or fence and any such platform and handrail during the hours of darkness; and (d)remove the hoarding or fence and any such platform and handrail when required by the authority. (4)A person aggrieved by the refusal of a consent under subsection (2) above or by a requirement under subsection (3) above may appeal to a magistrates' court. (5)Subject to any order made on appeal, if a person contravenes this section he is guilty of an offence and liable to a fine not exceeding [level 3 on the standard scale]; and if the offence is continued after conviction he is guilty of a further offence and liable	

Schedule 15: Miscellaneous Controls			
Draft DCO provision		***Relevant Legislation***	***Applicant's Justification***
		to a fine not exceeding £2 for each day on which the offence is so continued.	
	Section 173 of the Highways Act 1980	**173 Hoardings to be securely erected.** (1)No person shall use for any purpose a hoarding or similar structure that is in, or adjoins, any street unless it is securely fixed to the satisfaction of the council who, in relation to that street, are the appropriate authority for the purposes of section 172 above. (2)If a person contravenes this section he is guilty of an offence and liable to a fine not exceeding [level 1 on the standard scale]; and if the offence is continued after conviction he is guilty of a further offence and liable to a fine not exceeding £1 for each day on which the offence is so continued.	As above, the details of hoardings will be dealt with as part of the Requirements and therefore to avoid duplication of controls, the Applicant considers it appropriate to disapply this section.
Schedule 15 Paragraph 3	Section 56(1) and (1A) of the New Roads and Street Works Act 1991	**56 Power to give directions as to timing of street works** (1) If it appears to the street authority— (a) that proposed street works are likely to cause serious disruption to traffic, and (b) that the disruption would be avoided or reduced if the works were carried out only at certain times [or on certain days (or at certain times on certain days)],	Article 9 and parts 2 and 3 of Schedule 14 (protective provisions) deal with the detail and approvals relating to notices and road space booking. These provisions are therefore disapplied to ensure only one approval mechanism is needed.

Schedule 15: Miscellaneous Controls			
Draft DCO provision		***Relevant Legislation***	***Applicant's Justification***
		the authority may give the undertaker such directions as may be appropriate as to the times [or days (or both)] when the works may or may not be carried out. [(1A) Where it appears to a street authority— (a) that subsisting street works are causing or are likely to cause serious disruption to traffic, and (b) that the disruption would be avoided or reduced if the works were to continue to be carried out only at certain times or on certain days (or at certain times on certain days), the authority may give the undertaker such directions as may be appropriate as to the times or days (or both) when the works may or may not continue to be carried out.]	
	Section 56A of the New Roads and Street Works Act 1991	**[56A Power to give directions as to placing of apparatus]** [(1) Where— (a) an undertaker is proposing to execute street works consisting of the placing of apparatus in a street ("street A"), (b) placing the apparatus in street A is likely to cause disruption to traffic, and (c) it appears to the street authority that—	Article 9 and parts 2 and 3 of Schedule 14 (protective provisions) deal with the detailed highway design which will include arrangements relating to placing of apparatus. These provisions are therefore disapplied to ensure only one approval mechanism is needed.

Schedule 15: Miscellaneous Controls			
Draft DCO provision		***Relevant Legislation***	***Applicant's Justification***
		(i) there is another street ("street B") in which the apparatus could be placed, and (ii) the conditions in subsection (2) are satisfied, the authority may by direction require the undertaker not to place the apparatus in street A (but may not require him to place the apparatus in street B). (2) The conditions referred to in subsection (1)(c) are that— (a) disruption to traffic would be avoided or reduced if the apparatus were to be placed in street B; (b) placing the apparatus in street B would be a reasonable way of achieving the purpose for which the apparatus is to be placed; and (c) it is reasonable to require the undertaker not to place the apparatus in street A. (3) A direction under this section may be varied or revoked by a further such direction. (4) The procedure for giving a direction under this section shall be prescribed by the Secretary of State. (5) The Secretary of State may by regulations make provision for appeals against directions under this section, including provision as to the persons who may determine appeals and the procedure to be followed on an appeal. (6) An undertaker who executes works in contravention of a direction under this section commits an offence and is liable on	

Schedule 15: Miscellaneous Controls			
Draft DCO provision		***Relevant Legislation***	***Applicant's Justification***
		summary conviction to a fine not exceeding level 5 on the standard scale. (7) An undertaker shall be taken not to have failed to fulfil any statutory duty to afford a supply or service if, or to the extent that, his failure is attributable to a direction under this section. (8) The Secretary of State may issue or approve for the purposes of this section a code of practice giving practical guidance as to the exercise by street authorities of the power conferred by this section; and in exercising that power a street authority shall have regard to the code of practice.]	
	Section 58(1) of the New Roads and Street Works Act 1991	**58 Restriction on works following substantial road works** (1) Where it is proposed to carry out substantial road works in a highway, the street authority may by notice in accordance with this section restrict the execution of street works during the [prescribed period] following the completion of those works. For this purpose substantial road works means works for road purposes, or such works together with other works, of such description as may be prescribed.	The Applicant considers the disapplication of this provision necessary to ensure the delivery of the development is not frustrated, for example, the Applicant may need to carry out works where other works may have been recently completed.
	Section 61(1) of the New Roads and Street Works Act 1991	**61 Protected streets** (1) The consent of the street authority is required for the placing of apparatus by an undertaker in a protected street, except as mentioned below.	This provision is disapplied to ensure that the Applicant is able to divert apparatus placed in a special road. The DCO will deal with any such necessary approvals.

Schedule 15: Miscellaneous Controls			
Draft DCO provision		***Relevant Legislation***	***Applicant's Justification***
		The following are "protected streets" for this purpose— (a) any highway or proposed highway which is a special road in accordance with section 16 of the Highways Act 1980, and (b) any street designated by the street authority as protected.	
	Section 62(2) of the New Roads and Street Works Act 1991	**62 Supplementary provisions as to designation of protected streets** (2) Where a street has been designated as protected the street authority may direct an undertaker to remove or change the position of apparatus placed in the street at a time when it was not so designated. The authority shall indemnify the undertaker in respect of his reasonable expenses in complying with such a direction.	The Applicant considers this provision should be disapplied to ensure that any apparatus will not then be directed to be moved, since the placing of them will have been agreed under the DCO.
	Section 62(4) of the New Roads and Street Works Act 1991	**62 Supplementary provisions as to designation of protected streets** (4) Where a designation is made or withdrawn the street authority may give such directions as they consider appropriate with respect to works in progress in the street when the designation comes into force or ceases to have effect.	The Applicant considers that the protective provisions and DCO should properly deal with the designation of any streets and therefore the statutory provision should not apply.

Schedule 15: Miscellaneous Controls			
Draft DCO provision		***Relevant Legislation***	***Applicant's Justification***
	Section 63(1) of the New Roads and Street Works Act 1991	**63 Streets with special engineering difficulties** (1) The provisions of Schedule 4 have effect for requiring the settlement of a plan and section of street works to be executed in a street designated by the street authority as having special engineering difficulties.	Detailed design is covered through the DCO including the protective provisions and therefore the statutory provision is disapplied to ensure only one governing mechanism.
	Section 74 of the New Roads and Street Works Act 1991	**74 Charge for occupation of the highway where works unreasonably prolonged** (1) The Secretary of State may make provision by regulations requiring an undertaker executing street works in a maintainable highway to pay a charge to the highway authority where— (a) the duration of the works exceeds such period as may be prescribed, and (b) the works are not completed within a reasonable period. (2) For this purpose "a reasonable period" means such period as is agreed by the authority and the undertaker to be reasonable or, in default of such agreement, is determined by arbitration to be reasonable, for completion of the works in question.	The timeframe/schedule for the carrying out and completion of the works is to be governed by the DCO and protective provisions and therefore this provision needs to be disapplied to ensure that only the DCO is the appropriate governing mechanism.

Schedule 15: Miscellaneous Controls			
Draft DCO provision		***Relevant Legislation***	***Applicant's Justification***
		In default of agreement, the authority's view as to what is a reasonable period shall be acted upon pending the decision of the arbitrator. [(2A) The regulations may prescribe exemptions from the requirement to pay charges.] (3) The regulations may provide that if an undertaker has reason to believe that the duration of works will exceed the prescribed period he [shall give to the authority, in such manner as may be prescribed, notice containing] an estimate of their likely duration— (a) in the case of works in connection with the initial placing of apparatus in the street in pursuance of a street works licence, together with his application for the licence, (b) in the case of other works (not being emergency works), together with his notice under section 55 (notice of starting date) [or notification under paragraph 2(1)(d) of Schedule 3A (notification of proposed works)], or (c) in the case of emergency works, as soon as reasonably practicable after the works are begun,	

Schedule 15: Miscellaneous Controls			
Draft DCO provision		***Relevant Legislation***	***Applicant's Justification***
		and that the period stated in an estimate [contained in a notice given to an authority in such manner] shall be taken to be agreed by the authority to be reasonable unless they give notice, in such manner and within such period as may be prescribed, objecting to the estimate. (4) The regulations may also provide that if it appears to the undertaker that by reason of matters not previously foreseen or reasonably foreseeable the duration of the works— (a) is likely to exceed the prescribed period, (b) is likely to exceed the period stated in his previous estimate, or (c) is likely to exceed the period previously agreed or determined to be a reasonable period, he [shall give to the authority, in such manner as may be prescribed, notice containing] an estimate or revised estimate accordingly, and that if he does so any previous estimate, agreement or determination shall cease to have effect and the period stated in the new estimate shall be taken to be agreed by the authority to be reasonable unless they give notice, in such manner and within such period as may be prescribed, objecting to the estimate.	

Schedule 15: Miscellaneous Controls			
Draft DCO provision		***Relevant Legislation***	***Applicant's Justification***
		(5) The amount of the charge shall be determined in such manner as may be prescribed by reference to the time taken to complete the works and the extent to which the surface of the highway is affected by the works. Different rates of charge may be prescribed according to the place and time at which the works are executed and such other factors as appear to the Secretary of State to be relevant. [(5A) The regulations may— (a) prescribe more than one rate of charge in respect of the same description of works, and (b) provide that charges are to be paid in respect of any works of that description at the rate which appears to the highway authority to be appropriate in relation to those works. (5B) The regulations may make provision for the determination of the duration of works for the purposes of the regulations. (5C) And they may, in particular, make provision for works to be treated as beginning or ending on the giving of, or as stated in, a notice given by the undertaker to the highway authority, in the	

Schedule 15: Miscellaneous Controls			
Draft DCO provision		***Relevant Legislation***	***Applicant's Justification***
		prescribed manner, in accordance with a requirement imposed by the regulations.] (6) The regulations may make provision as to the time and manner of making payment of any charge. (7) The regulations shall provide that a highway authority may reduce the amount, or waive payment, of a [charge— (a) in any particular case, (b) in such classes of case as they may decide or as may be prescribed, or (c) in all cases or in all cases other than a particular case or such class of case as they may decide or as may be prescribed]. [(7A) The regulations may make provision as to— (a) the application by [strategic highways companies or] local highway authorities of sums paid by way of charges, and (b) the keeping of accounts, and the preparation and publication of statements of account, relating to sums paid by way of charges.	

Schedule 15: Miscellaneous Controls			
Draft DCO provision		***Relevant Legislation***	***Applicant's Justification***
		(7B) The regulations may create in respect of any failure to give a notice required by the regulations a criminal offence triable summarily and punishable with a fine not exceeding [level 4] on the standard scale.] (8) The first regulations for the purposes of this section shall not be made unless a draft of them has been laid before and approved by a resolution of each House of Parliament; subsequent regulations shall be subject to annulment in pursuance of a resolution of either House of Parliament.	

Section 74A of the New Roads and Street Works Act 1991	**74A Charge determined by reference to duration of work** (1) The Secretary of State may make provision by regulations requiring an undertaker executing street works in a maintainable highway to pay to the highway authority a charge determined, in the prescribed manner, by reference to the duration of the works. (2) The regulations shall not require charges to be paid to [a strategic highways company or] a local highway authority unless the Secretary of State has approved it for the purposes of the regulations by order made by statutory instrument. (3) The regulations may prescribe exemptions from the requirement to pay charges. (4) The regulations may prescribe different rates of charge according to— (a) the extent to which the surface of the highway is affected by the works, (b) the place and time at which the works are executed, and (c) such other factors as appear to the Secretary of State to be relevant. (5) The regulations may— (a) prescribe more than one rate of charge in respect of the same description of works, and (b) provide that charges are to be paid in respect of any works of that description at the rate which appears to the highway authority to be appropriate in relation to those works. (6) The regulations may make provision for the determination of the duration of works for the purposes of the regulations. (7) And they may, in particular, make provision for works to be treated as beginning or ending on the giving of, or as stated in, a notice given by the undertaker to the highway authority, in the prescribed manner, in accordance with a requirement imposed by the regulations.	As above, the timeframe/schedule for the carrying out and completion of the works is to be governed by the DCO and protective provisions and therefore this provision needs to be disapplied to ensure that only the DCO is the appropriate governing mechanism.

		(8) The regulations may make provision as to the time and manner of making payment of charges. (9) The regulations shall provide that a highway authority may reduce the amount, or waive payment, of a charge— (a) in any particular case, (b) in such classes of case as they may decide or as may be prescribed, or (c) in all cases or in all cases other than a particular case or such class of case as they may decide or as may be prescribed. (10) The regulations may make provision as to— (a) the application by [strategic highways companies or] local highway authorities of sums paid by way of charges, and (b) the keeping of accounts, and the preparation and publication of statements of account, relating to sums paid by way of charges. (11) The regulations may create in respect of any failure to give a notice required by the regulations a criminal offence triable summarily and punishable with a fine not exceeding [level 4] on the standard scale. (12) The regulations may require disputes of any prescribed description to be referred to an arbitrator appointed in accordance with the regulations. (13) The first regulations under this section shall not be made unless a draft of them has been laid before and approved by a resolution of each House of Parliament; subsequent regulations shall be subject to annulment in pursuance of a resolution of either House of Parliament.	
	Schedule 3A to the New Roads and Street Works Act 1991 where a notice under section 54 (advance notice of certain works) or 55 (notice of starting date of works) of that Act(b) is given in respect of the authorised development		

	No notice under paragraph 2(1)(d) of Schedule 3A to the New Roads and Street Works Act 1991 shall have effect to require the notification of works proposed to be carried out in the course of the authorised development.	**[SCHEDULE 3A Restriction on Works Following Substantial Street Works]** **Notice by authority of proposed restriction** (1) The street authority may publish a notice— (d) requiring any other undertakers who propose to execute street works in that part of the highway, and who have not already done so, to notify the authority of their proposed works within the period specified in the notice ("the notice period").	The Applicant disapplies these provisions because the DCO, including protective provisions, cover carrying out of the works and it is prudent to ensure that there is no additional, separate statutory provision.
	No directions under paragraph 3 of Schedule 3A to the New Roads and Street Works Act 1991 may be issued to the undertaker.	**[SCHEDULE 3A Restriction on Works Following Substantial Street Works]** **Completion of notified works** 3 (1) After the expiry of the notice period the street authority may issue directions to— (a) the undertaker proposing to execute the substantial street works, (b) any undertakers who have given notice under paragraph 2 in respect of works they propose to execute, and (c) any undertakers who have previously given notice of works they propose to execute in the part of the highway specified under paragraph 2(1)(c). (2) A direction to an undertaker under this paragraph is a direction as to the date on which he may begin to execute the works proposed by him. (3) Where—	The Applicant disapplies these provisions because the DCO, including protective provisions, cover carrying out of the works and it is prudent to ensure that there is no additional, separate statutory provision.

		(a) a direction is given to an undertaker under this paragraph as respects the date on which he may begin to execute the works proposed by him, and (b) he begins to execute those works before that date, he is guilty of an offence. (4) After the expiry of the notice period, any undertaker who, before completion of the works referred to in sub-paragraph (1)(a) to (c), executes any other street works in the part of the highway specified under paragraph 2(1)(c), commits an offence. (5) Sub-paragraph (4) does not apply— (a) where an undertaker executes emergency works; or (b) in such other cases as may be prescribed. (6) A person guilty of an offence under this paragraph is liable on summary conviction to a fine not exceeding level 5 on the standard scale.	
	(13) Paragraph 3(4) of Schedule 3A to the New Roads and Street Works Act 1991 shall not apply in relation to the execution of works in the course of the authorised development.	**[SCHEDULE 3A Restriction on Works Following Substantial Street Works]** **Completion of notified works** (4) After the expiry of the notice period, any undertaker who, before completion of the works referred to in sub-paragraph (1)(a) to (c), executes any other street works in the part of the highway specified under paragraph 2(1)(c), commits an offence.	The Applicant disapplies these provisions because the DCO, including protective provisions, cover carrying out of the works and it is prudent to ensure that there is no additional, separate statutory provision.
	Paragraph 5(1) of Schedule 3A to the New Roads and Street Works Act	**[SCHEDULE 3A Restriction on Works Following Substantial Street Works]** **Effect of direction imposing restriction** **5**	The Applicant disapplies these provisions because the DCO, including protective provisions, cover carrying out of the works

	1991 shall not apply in relation to the execution of works in the course of the authorised development	(1) Where a direction under paragraph 4 is in force, an undertaker may not during the period specified in the direction execute street works in the part of the highway to which the restriction relates.	and it is prudent to ensure that there is no additional, separate statutory provision.
Schedule 15 Paragraph 4	Section 42 of the Local Government (Miscellaneous Provisions) Act 1976	**42 Certain future local Acts etc to be subject to the planning enactments etc except as otherwise provided** (1) An Act or order to which this section applies shall have effect subject to— (a) the provisions of the enactments relating to town and country planning; (b) the provisions of the enactments relating to historic buildings and ancient monuments; (c) . . . [(d) Part II of the Food and Environment Protection Act 1985 (which relates to deposits in the sea)], except so far as the Act or order expressly provides otherwise. (2) This section applies to an Act or order which is— (a) a local Act passed after or in the same Session as this Act; (b) a provisional order confirmed by an Act so passed; or	This provision is disapplied to ensure certainty so that no unknown future enactment restricts the authorised development.

		(c) an order which is made in the exercise of powers conferred by an Act and comes into force after the passing of this Act or in the same Session as this Act, and which authorises the carrying out on land specified in the Act or order of works of a kind so specified.	
Schedule 15 Paragraph 5	No order, notice or regulation under the Environment Act 1995 in relation to the preservation of hedgerows, has effect in relation to the authorised development.	**Section 97 Environment Act 1995**	Section 97 of the Environment Act 1995 grants the "appropriate Ministers" the authority to make regulations for the protection of important hedgerows. Specifically, section 97(1) allows for the creation of regulations concerning the protection of important hedgerows, while section 97(3) permits the inclusion of provisions related to other hedgerows to facilitate the protection of important hedgerows. The disapplication of s97 is required to ensure that the Hedgerow Regulations don't apply to those hedgerows which are authorised to be removed under the DCO.
Schedule 15 Paragraph 6	Disapplication of section 23 of the Land Drainage Act 1991 in relation to watercourses for which Oxfordshire County Council is the	**23 Prohibition on obstructions etc in watercourses** (1) No person shall— (a) erect any mill dam, weir or other like obstruction to the flow of any ordinary watercourse or raise or otherwise alter any such obstruction; or	The Applicant proposes to disapply this provision to avoid the need to secure future consents, as is permitted by s120(5) of the 2008 Act. The DCO includes at article 22 provisions relating to the discharge of water and the

	drainage board concerned	[(b) erect a culvert in an ordinary watercourse, or (c) alter a culvert in a manner that would be likely to affect the flow of an ordinary watercourse,] without the consent in writing of the drainage board concerned. [(1A) Consent under this section may be given subject to reasonable conditions. (1B) An internal drainage board or lead local flood authority must consult the [appropriate agency] before carrying out work within subsection (1)(a), (b) or (c) if the board or authority is "the drainage board concerned" for the purposes of this section. (1C) The drainage board concerned must have regard to any guidance issued by the [appropriate supervisory body] about the exercise of the board's functions under this section.] (2) The drainage board concerned may require the payment of an application fee by a person who applies to them for their consent under this section; and the amount of that fee shall be £50 or such other sum as may be [prescribed] [and the amount of the fee shall be determined in accordance with a prescribed charging scheme]. (3) Where an application is made to the drainage board concerned for their consent under this section— (a) the consent is not to be unreasonably withheld; and	article includes a requirement to obtain consent.

		(b) if the board fail within two months after the relevant day to notify the applicant in writing of their determination with respect to the application, they shall be deemed to have consented. (4) In subsection (3) above "the relevant day", in relation to an application for a consent under this section, means whichever is the later of— (a) the day on which the application is made; and (b) if at the time when the application is made an application fee is required to be paid, the day on which the liability to pay that fee is discharged. (5) If any question arises under this section whether the consent of the drainage board concerned is unreasonably withheld, that question shall be referred to a single arbitrator to be agreed between the parties or, failing such agreement, to be appointed by the President of the Institution of Civil Engineers on the application of either party. (6) Nothing in this section shall apply— (a) to any works under the control of a navigation authority, harbour authority or conservancy authority; or (b) to any works carried out or maintained under or in pursuance of any Act or any order having the force of an Act.	

		(7) The power of the Ministers to make an order under subsection (2) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament. [(7A) In subsection (2) above "prescribed" means specified in, or determined in accordance with, an order made by the Ministers; and any such order may make different provision for different cases, including different provision in relation to different persons, circumstances or localities.] (8) Subject to section 8 above, references in this section and [sections 24 and 25] below to the drainage board concerned— (a) in relation to a watercourse in an internal drainage district, are references to the drainage board for that district; and [(b) in relation to a watercourse in an area outside an internal drainage district, are references to the lead local flood authority for the area]. [(9) Lead local flood authority" has the meaning given by section 6 of the Flood and Water Management Act 2010.]	
	Disapplication of Section 32 of the Land Drainage Act 1991	**32 Variation of awards** (1) Where any award made under any public or local Act contains any provision which in any manner affects or relates to the drainage of land, including any provision affecting the powers or duties of any drainage body or other person with respect to the drainage of land, the [appropriate agency]—	This section is disapplied due to the disapplication of section 23 and the applicable provision relating to land drainage being the DCO and not the LDA.

		(a) may submit to the appropriate Minister for confirmation a scheme for revoking, varying or amending that provision; and (b) shall submit such a scheme if it is directed to do so by the appropriate Minister on an application under subsection (2) below. (2) An application may be made to the appropriate Minister for such a direction as is mentioned in subsection (1)(b) above by any person who is under any obligation imposed by the award or by any internal drainage board. (3) An application under subsection (2) above shall not be entertained unless— (a) the applicant has requested the [appropriate agency] to submit a scheme under this section; and (b) the [appropriate agency] has either refused to do so or failed to do so within six months or has submitted a scheme different from that which was requested. (4) A scheme under this section with respect to any award may— (a) provide for commuting, on the basis on which the obligations to which section 33 below relates are to be commuted, the obligation of any person under the award to repair or maintain any drainage works;	

		(b) contain such incidental, consequential or supplemental provisions as are necessary or proper for the purposes of the scheme; (c) be revoked or varied by a subsequent scheme under this section. (5) The appropriate Minister may by order made by statutory instrument confirm any scheme submitted to him under this section, either with or without modifications. (6) Schedule 3 to this Act shall apply with respect to an order confirming a scheme under this section. (7) An order confirming a scheme under this section may contain provisions with respect to the persons by whom all or any of the expenses incurred by the appropriate Minister or other persons in connection with the making or confirmation of the order, or the making of the scheme, are to be borne. (8) In this section "the appropriate Minister"— (a) in relation to England, means the Minister; and (b) in relation to Wales, means the Secretary of State.	
	Disapplication of Byelaws made under Section 66 of the	**N/A - Generic provision relating to any byelaws made under the Land Drainage Act 1991**	The disapplication of byelaws including future byelaws is sought on the basis that they address matters whose merits and acceptability can, and will, already have

	Land Drainage Act 1991		been sufficiently considered and resolved if the Order is made. Such matters should therefore not be the subject of further regulatory consideration or control, which would cause unnecessary uncertainty and duplication, and may unjustifiably delay the implementation of the Scheme. The development has been assessed within the Environmental Statement accompanying the DCO application and the powers to carry out the development conferred under the DCO will have only be conferred on the applicant following a close examination of those powers (and of the accompanying ES). However, the terms of a byelaw made under the relevant provisions of the 1991 Act could still operate to fetter those powers if granted. The Applicant considers that any byelaws are therefore required to be disapplied under the DCO in their application to the development authorised under it. This is consistent with many other made DCOs for example the recently made Longfield Solar Farm Order 2023 (S.I. 2023 No. 734).
	Disapplication of section 28E of the	**[28E Duties in relation to sites of special scientific interest]** [(1) The owner or occupier of any land included in a site of special scientific interest shall not while the notification under section	The Applicant requires the disapplication of this provision to ensure certainty that the DCO authorises the works and that

	Wildlife and Countryside Act 1981	28(1)(b) remains in force carry out, or cause or permit to be carried out, on that land any operation specified in the notification unless— (a) one of them has, after service of the notification, given [Natural England] notice of a proposal to carry out the operation specifying its nature and the land on which it is proposed to carry it out; and (b) one of the conditions specified in subsection (3) is fulfilled. (2) Subsection (1) does not apply to an owner or occupier being an authority to which section 28G applies acting in the exercise of its functions. (3) The conditions are— (a) that the operation is carried out with [Natural England's] written consent; (b) that the operation is carried out in accordance with the terms of an agreement under section 16 of the 1949 Act[, section 15 of the 1968 Act or section 7 of the Natural Environment and Rural Communities Act 2006] [, section 7 of the Natural Environment and Rural Communities Act 2006 or section 16 of the Environment (Wales) Act 2016]; (c) that the operation is carried out in accordance with a management scheme under section 28J or a management notice under section 28K. (4) A consent under subsection (3)(a) may be given—	any notification under this provision wouldn't apply, since Natural England's approval for relevant works would be secured pursuant to the DCO, therefore it would not be necessary to seek a further consent outside of the DCO. Obtaining consent under and at the point of the making of the DCO would avoid any potential delay in seeking express consent from Natural England under Section 28E, which could otherwise negatively impact upon the programme for carrying out the works.

		(a) subject to conditions, and (b) for a limited period, as specified in the consent. (5) If [Natural England] do not consent, they shall give notice saying so to the person who gave the notice under subsection (1). (6) [Natural England] may, by notice given to every owner and occupier of any of the land included in the site of special scientific interest, or the part of it to which the consent relates— (a) withdraw the consent; or (b) modify it (or further modify it) in any way. (7) The following— (a) a consent under subsection (3)(a) granting consent subject to conditions or for a limited period, and (b) a notice under subsection (5) or (6), must include a notice of [Natural England's] reasons for imposing the conditions, for the limitation of the period, for refusing consent, or for withdrawing or modifying the consent, and also a notice of the matters set out in subsection (8). (8) The matters referred to in subsection (7) are—	

		(a) the rights of appeal under section 28F; (b) the effect of subsection (9); and (c) in the case of a notice under subsection (6), the effect of section 28M. (9) A withdrawal or modification of a consent is not to take effect until— (a) the expiry of the period for appealing against it; or (b) if an appeal is brought, its withdrawal or final determination. (10) [Natural England] shall have power to enforce the provisions of this section.]	
Schedule 15 Paragraph 8	Section 60(4) of the Control of Pollution Act 1974	(4)In acting under this section the local authority shall have regard— (a)to the relevant provisions of any code of practice issued under this Part of this Act; (b) to the need for ensuring that the best practicable means are employed to minimise noise; (c) (d) before specifying any particular methods or plant or machinery,	This section is amended so that where a local authority is acting further to Section 60(4) in relation to the construction of the authorised development and works before completion of construction then that local authority must also have regard to the noise levels referred to in the environmental statement.

		to the desirability in the interests of any recipients of the notice in question of specifying other methods or plant or machinery which would be substantially as effective in minimising noise and more acceptable to them; (d)to the need to protect any persons in the locality in which the premises in question are situated from the effects of noise**.**	
	Section 60(7) of the Control of Pollution Act 1974	(7)A person served with a notice under this section may appeal against the notice to a magistrates' court within twenty one days from the service of the notice.	These sections are disapplied in relation to the DCO.
	Section 61(7) of the Control of Pollution Act 1974	(7)If— (a)the local authority does not give a consent within the said period of twenty-eight days; or (b)the local authority gives its consent within the said period of twenty-eight days but attaches any condition to the consent or limits or qualifies the consent in any way, the applicant may appeal to a magistrates' court within twenty-one days from the end of that period	
	Section 61(9) of the Control of Pollution Act 1974	A consent given under this section shall contain a statement to the effect that the consent does not of itself constitute any ground of defence against any proceedings instituted under ... **[**section 82 of the Environmental Protection Act 1990**]**.	The DCO amends this section so that it does not apply where a consent relates to the use of premises by the undertaker for the purposes of or in connection with the

			construction or maintenance of the authorised development.
Schedule 15 Paragraph 9	This Order shall not constitute a planning permission for the purpose of Part 11 of the 2008 Act (community infrastructure levy) notwithstanding the definition of planning permission contained within article 5 of the 2010 Regulations (meaning of planning permission).	**5 Meaning of "planning permission"** For the purposes of Part 11 of PA 2008, "planning permission" means— (a) planning permission granted by a local planning authority under section 70, 73 or 73A of TCPA 1990; (b) planning permission granted by the Secretary of State under the provisions mentioned in sub-paragraph (a) as applied by sections 76A(10), 77(4) and 79(4) of TCPA 1990 (including permission so granted by a person appointed by the Secretary of State in accordance with regulations made under Schedule 6 to TCPA 1990); (c) planning permission granted or modified under section 177(1) of TCPA 1990 (grant or modification of planning permission on appeals against enforcement notices); (d) modification of a planning permission under section 97 or 100 of TCPA 1990; (e) planning permission granted by an order made under section 102 or 104 of TCPA 1990 (orders requiring discontinuance of use or alteration or removal of buildings or works); (f) development consent granted by an order made under section 114(1)(a) of PA 2008; or	The Applicant requires the disapplication of CIL to the development to ensure there are no unforeseen liabilities on the undertaker arising from any CIL yet to be introduced (there is no applicable CIL currently in place in respect of the development). It is common for CIL to be dis-applied in DCOs and it is reasonable and justifiable for the Applicant to ensure that it is aware of its financial commitments under the DCO.

		(g) a general consent. (2) But planning permission does not include planning permission granted for a limited period. (3) In paragraph (1)(g) "general consent" means— (a) planning permission granted— (i) by a development order made under section 59 of TCPA 1990, (ii) by a local development order adopted under section 61A of TCPA 1990, [(iia) by a neighbourhood development order made under section 61E [or 61Q (community right to build orders)] of TCPA 1990,] (iii) by a simplified planning zone scheme within the meaning of sections 82 and 83 of TCPA 1990, (iv) in accordance with section 90 of TCPA 1990 (development with government authorisation), or (v) by an enterprise zone scheme adopted under Schedule 32 to the Local Government, Planning and Land Act 1980; or (b) development authorised by an Act of Parliament or an order approved by both Houses of Parliament which designates	

		specifically the nature of the development authorised and the land on which it may be carried out.	
Schedule 15, paragraph 10	Street Works (Charges for Occupation of the Highway) (England) Regulations 2012	The Regulations permit Oxfordshire County Council to charge promoters who carry out road and street works for the time their works occupy the highway.	The Applicant has received notice that the Secretary of State has approved the Oxfordshire County Council Lane Rental Scheme application for the purpose of requiring charges to be paid under the Street Works (Charges for Occupation of the Highway) (England) Regulations 2012 in accordance with the Oxfordshire Lane Rental Scheme which was submitted to the Secretary of State on 27 March 2024. The Oxfordshire County Council Lane Rental Scheme is expected to go-live on 5 May 2026. It will result in a daily charge for works to some of the highways within the Order limits. As per Oxfordshire County Council's notice of the scheme sent to stakeholders dated 18 February 2026, "The Scheme, which has been submitted to and approved by the Secretary of State, is designed to control the carrying out of works in specified traffic sensitive locations at sensitive times. This will be achieved by requiring the payment of a

			charge, in accordance with the 2012 Regulations, for each day that the street is occupied by the works. " The carrying out of works pursuant to the DCO will be controlled by the DCO, namely the Articles, the Requirements and the Protective Provisions. Unlike other schemes which are affected by the Regulations, the authorised development will be an NSIP with a detailed and lengthy construction programme, contingent on a multitude of factors.
Schedule 15 Paragraph 11	Disapplication of Regulation 4 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007	**4 Requirement for consent** (1) Subject to paragraph (2), no advertisement may be displayed unless consent for its display has been granted— (a) by the local planning authority or the Secretary of State on an application in that behalf (referred to in these Regulations as "express consent"); or (b) by regulation 6 (referred to in these Regulations as "deemed consent"). (2) An advertisement to which, by virtue of regulation 1(3), Parts 2 and 3 of these Regulations do not apply may be displayed without express consent or deemed consent.	The Applicant seeks to disapply the need for advertisement consent for any advertisement which is located in the areas identified on the parameters plans (Document number 2.5/AS-008). This makes use of the "one stop shop" approach, and the Applicant considers it is reasonable to remove the need to obtain a further consent outside of the DCO for the advertisement boards required for the development. The disapplication applies only where an advertisement is erected in the locations, and in accordance with the parameters, shown as 'areas for development signage' on the parameters plan. Permanent external lighting is

		(3) In determining an application for consent for the display of advertisements, the local planning authority may have regard to any material change in circumstances likely to occur within the period for which the consent is requested.	controlled by Requirement 16, which requires details to be approved by the local planning authority in accordance with the principles of the outline lighting strategy (Document number 6.8A.APP-256).
Schedule 15 Paragraph 12	Section 25 of the Burial Act 1857	**25 Offence of removal of body from burial ground** (1) It is an offence for a body or any human remains which have been interred in a place of burial to be removed unless one of the conditions listed in subsection (2) is complied with. (2)The conditions referred to in subsection (1) are— (a)the body or remains is or are removed in accordance with a faculty granted by the court; (b)the body or remains is or are removed in accordance with the approval of a proposal under the Care of Cathedrals Measure 2011 (No. 1) by the Cathedrals Fabric Commission for England or a fabric advisory committee; (c)unless the body or remains is or are interred in land which is subject to the jurisdiction of the court or its or their removal requires or require the approval of a proposal under the Care of Cathedrals Measure 2011, the body or remains is or are removed under a	The Applicant considers it necessary to disapply this section, which creates an offence to remove a body or human remains, as there is a detailed procedure for the removal of a body or human remains in Article 25.

		licence from the Secretary of State and in accordance with any conditions attached to the licence. (3)A person who removes a body or remains in contravention of subsections (1) and (2) is liable, on summary conviction, to a fine not exceeding level 1 on the standard scale. (4)In subsection (2)(a) and (c) "court" means [(a)]the consistory court of the diocese or, in the diocese of Canterbury, the commissary court of that diocese [, or (b)any other court or body referred to in section 9, 16, 19 or 21 of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018 (Arches and Chancery Courts, Court of Ecclesiastical Causes Reserved, Commission of Review, Privy Council) and having jurisdiction to determine the matter.]]	
Schedule 15 Paragraph 13	Neighbourhood Planning Act 2017	**Chapter 1**	The Applicant considers it necessary to disapply provisions relating to temporary possession in the Neighbourhood Planning Act 2017 as although such provisions are not yet in force, they may come into force during the construction of the authorised development. The Applicant considers it appropriate that it has certainty that the temporary possession regime under the DCO will apply. This approach has been accepted in many DCOs, including in The A122 (Lower Thames Crossing) Order 2025.

			Section 112 of the Planning and Infrastructure Act 2025 would resolve this, by making it clear that the DCO overrides the 2017 Act, however at the time of preparing the draft DCO this provision is not in force. Section 112 will provide: In section 18 of the Neighbourhood Planning Act 2017 (power to take temporary possession of land), for subsection (3) substitute— "(3)Subject to— (a) any express provision in another Act; (b)any provision in an order granting development consent made under section 114 of the Planning Act 2008; (c)any provision in an order made under section 1 or 3 of the Transport and Works Act 1992; (d)any provision in an order granting infrastructure consent made under section 60 of the Infrastructure (Wales) Act 2024 (asc 3);

			the power in subsection (2) is the only power under which a person may take temporary possession of land compulsorily."
Schedule 15 Paragraph 14	Finance Act 1996	Disapplication in respect of liability for or the payment of landfill tax, including any orders or regulations made pursuant to it	Work No. 34 constitutes the works to the existing landfill within the Order limits. The Finance Act 1996 provides the power to charge landfill tax, the framework of which is then established through regulations made pursuant to the Act. The Applicant seeks to ensure on the face of the Order that the Act does not apply to the authorised development, as it has been established through consultation with the Environment Agency that the proposed works in connection with the authorised development do not amount to activities which would trigger liability for landfill tax. The DCO contains provisions relating to works to landfill and permitting arrangements with the Environment Agency which address the relevant duties placed on the Applicant in connection with the authorised works. However, notwithstanding that works proposed to the landfill do not bring about

			a liability to pay landfill tax, the Applicant considers this disapplication necessary for reasons of certainty and to confirm beyond doubt that a tax is not payable. The Applicant intends to seek a ruling from HMRC to confirm the tax position for completeness, however, the Applicant understands that such a ruling applies for specified financial periods (i.e. a Financial Year) and the Applicant considers it appropriate and reasonable that it is clear on the face of the Order that no such tax is applicable. This is appropriate because the Applicant needs certainty as to its funding requirements for the development. The Applicant's proposed drafting provides for a blanket disapplication of the Act and any regulations made pursuant to it but only insofar as they concern landfill tax and only to the extent that it is related to the authorised development. There is precedent for this drafting approach in The Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (Schedule 19, paragraph 3) [66]

66 S.I. 2014 No. 2384
