Planning Act 2008

The Infrastructure Planning (Examination Procedure) Rules 2010

Application by Oxfordshire Railfreight Limited for the Oxfordshire Strategic Rail Freight Interchange Development Consent Order

Planning Inspectorate Reference Number: TR050008

DEADLINE 1: WRITTEN REPRESENTATION ON BEHALF OF NATIONAL HIGHWAYS

---

1 INTRODUCTION

1.1 This Written Representation is submitted by National Highways' ("**NH**") to the application by Oxfordshire Railfreight Limited (**"Applicant"**) for an order granting development consent for the Oxfordshire Strategic Rail Freight Interchange ("**DCO"**). The Applicant seeks development consent for proposed authorised development described in Schedule 1 of the draft DCO ("**Authorised Development"**).

1.2 A full Relevant Representation [**RR-100**] has been submitted by NH in its capacity as a statutory consultee in the planning process, as Strategic Highways Authority appointed under the provisions on the Infrastructure Act 2015. NH has responsibility for operating, maintaining and improving the Strategic Road Network (**SRN**) which, in the vicinity of this proposal includes the M40, the A34 and the A43. Section 2 of the Relevant Representation [RR-100] explains the role of National Highways and the specific strategy duties and Licence conditions NH needs to comply with.

1.3 Since the submission of the Relevant Representation [**RR-100**] discussions have continued with the Applicant and this Written Representation seeks to provide an update to the matters set out at length in the Relevant Representation.

2 THE IMPACT OF THE PROPOSED DEVELOPMENT ON THE SRN

Traffic Impacts and Proposed Mitigation

2.1 The proposed development incorporates major capacity enhancement works on the SRN; on the M40 at Junction 10 and Junction 9, and on the A43 between M40 Junction 10 and Baynard's Green Roundabout. These are required to mitigate the impact of development-related traffic on the safe and effective operation of the SRN.

2.2 As noted in the Relevant Representation the Applicant team has worked collaboratively with National Highways over several years to demonstrate the forecast impact of the proposed development on the SRN and to develop appropriate mitigation solutions. Extensive strategic, microsimulation and local modelling has been undertaken, which has been reviewed in depth by National Highways and its technical consultants. National Highways is content that the modelling has been carried out appropriately and forecast impacts on the SRN have been demonstrated satisfactorily. Further, National Highways agrees that the modelling shows that the proposed mitigation measures are effective in accommodating the increased traffic expected from the proposed development on the M40 at Junction 10 and Junction 9, and on the A43 between M40 Junction 10 and Baynard's Green Roundabout.

2.3 However, NH and the Applicant recognise that further work is required to confirm that the proposed mitigation designs are acceptable and compliant with the Design Manual for Roads and Bridges ("**DMRB**"). By way of update:

(a) A Road Safety Audit 1 ("**RSA1**") has now been conducted and is in the process of being reviewed by NH before the designer's response can be undertaken. Thereafter a number of departures need to be approved by NH. These activities, which are expected to be completed within the next few weeks, will complete the preliminary design process and, if agreed, will provide the necessary assurance that the proposed mitigation solution is deliverable.

(b) NH has completed its review of the Walking, Cycling and Horseriding Review ("**WCHAR**") and the WCHAR is considered by NH to be saisfactory.

2.4 NH welcomes the Applicant's inclusion in the application of a scheme to address the impact of cumulative development on Barleymow Roundabout on the A43 to the North of Baynard's Green, noting that the Applicant team identified the adverse impact of the proposed development in conjunction with other proposed developments on the safe and efficient operation of the junction. This was identified as a concern by the Applicant team during the latter stages of the modelling, with significant queuing and congestion and safety issues caused at this location as a consequence of additional capacity being provided at Baynard's Green and a combination of increased traffic arising from the proposed development in conjunction with other proposed developments and the rerouting of traffic from local roads. There is an existing collision cluster at the roundabout and conditions are expected to be particularly severe under a cumulative scenario, when OxSRFI, in combination with other developments, matures.

2.5 For these reasons, NH supports in principle the Applicant's proposal for an intervention at Barleymow Roundabout to be brought forward under a "monitor and manage" and direct funding arrangement. As the proposed solution and "monitor and manage" arrangement were identified at a relatively late stage, the proposals remain under review. The Applicant has now undertaken a topographical survey, updated the design and has completed local junction modelling. NH has reviewed the updated information and is satisfied that the proposed solution provides sufficient mitigation. A cost estimate for the works has been provided by the Applicant and NH will conduct a commercial review of this to ensure due diligence that the funding will be sufficient to cover the cost of the works. NH will continue to work collaboratively with the Applicant to conclude this work and considers that it is reasonable to expect this to be achieved during the Examination.

2.6 The above also applies to the specific detail of the "monitor and manage" proposal and the related DCO wording. NH has reviewed the proposal and, although satisfied with the general principles, it has a number of specific comments which need to be resolved. NH will continue to work collaboratively with the Applicant to agree a mutually acceptable solution, which can be expected shortly.

Phasing and Construction traffic

2.7 NH supports the Applicant's proposal to deliver the mitigation work in two phases in principle but, on reviewing the information provided in the Transport Assessment, requires further information to understand the impact of the proposal on the safe and efficient operation of the SRN. In particular, NH has sought further information regarding an hourly breakdown (particularly peak hour) of construction traffic, and evidence of:

(a) Why the need for the intervention at M40 Junction 9 is triggered by the opening of M40-A43 free-flow links at M40 J10 and is not required earlier.

(b) Whether the Phase 2 works overlap with Phase 1 and what impact this has in terms of construction flows and traffic management restrictions.

(c) How the construction of the Phase 2 works in combination with Phase 1 traffic following opening would affect the operation of the SRN and how the Phase 1 works are demonstrably sufficient to safely accommodate the Phase 1 development traffic.

2.8 NH and the Applicant are in ongoing constructive dialogue to advance the above outstanding points. Point (a) is now resolved and NH is satisfied on this matter. The remaining two points are to be explored in a joint workshop which was proposed by the Applicant and it to take place shortly.

Construction Management Documents

2.9 NH is able to confirm that it is now satisfied on these documents.

Travel Plan

2.10 NH is now supportive of the Travel Plan on the basis that the Applicant has agreed an amendment to the dDCO to include NH as a member of the Sustainable Transport Working Group.

3 PROTECTING THE SRN AND PROTECTIVE PROVISIONS

3.1 The SRN is a critical piece of economic infrastructure, vital to the nation's connectivity and the means for generating economic growth and NH is required, among other things, to ensure the effective operation of the network and to protect and improve the safety of the network. In all cases, and as a minimum standard, where there is the potential for impact to the SRN the Protective Provisions included within a development consent order need to ensure that:

- NH is held harmless from the impact of third party development;
- NH's procedures that have been put in place for the protection of property and persons are adhered to in accordance with NH's strict requirements on network occupancy;
- any works carried out to the highway, on NH land, underneath the highway, above the highway and to apparatus forming part of the highway estate should be certified by NH and approved by NH on completion of the works;
- financial provision should be put in place to ensure that in the event of the Applicant commencing works which may impact the SRN (including for example, underground works beneath the SRN or oversailing above it) and falling into financial difficulty or defaulting on completion of the works, NH has the resources needed to put the SRN and the highway estate into the position it was in before the Applicant commenced works;
- NH is indemnified for any loss or damage to the SRN or the highway estate as a result of the works;
- the Applicant is required to request approval from NH before exercising any powers under the DCO in relation to the SRN or the highway estate (such approval not to be unreasonably withheld) to enable proportionate rights and reservations to be secured for the protection of the SRN through private treaty;

- that emergency procedures be agreed for NH to access the SRN to carry out works or remove dangerous obstacles resulting from the Authorised Development which pose a risk to life.

3.2 These provisions are included in the NH protective provisions, which are were appended to the Relevant Representation [RR-100] at Appendix 1 ("**NH's Template Protective Provisions**").

3.3 NH considers that without protective provisions that align with NH's Template Protective Provisions, there is a considerable risk of serious detriment to the SRN, as any damage or injury to the SRN or wider highway estate would require funding to rectify that is not within NH's budget. There is no recourse to public funding for emergency works of this nature and a reserve of funding is not available. Without prejudice to whether the Authorised Development would cause a serious detriment to the SRN, it remains the case that the public purse should not be left to meet or subsidise costs of impacts caused by third party development to the SRN.

3.4 For the sake of clarity and transparency, NH has no desire to stymy development or to impose requirements on the Applicant which are disproportionate to the potential harm that could be caused to the SRN. NH is legally obliged to co-operate with third parties exercising planning or highway functions, which includes the Applicant in this statutory process[1]. NH is prepared to engage fully and assist in whatever way is reasonable to ensure that the Authorised Development proceeds as quickly and efficiently as possible.

3.5 The protective provisions included in the Applicant's draft DCO are not yet agreed, and concerns remain in relation to:

(a) wording of some of the articles, where powers are to be exercised over the SRN or on land over which NH controls, NH's consent needs to be secured but NH also needs to be able to grant that consent subject to conditions and the term of its protective provisions. The Street Works article (article 9) makes the powers subject to the protective provisions for the benefit of NH in Part 2 of Schedule 14 's PPs; equally the Article on temporary closures (see article 12(4)) makes reference to securing the consent of the street authority and notes that such consent may be granted subject to conditions. The drafting across the articles in Part 3 need to be consistent and NH would expect paragraph 7(2) of NH's Template Protective Provisions to be included to enable NH to give consent subject to certain conditions such as traffic management requirements or road space booking. This is addressed further in section 4 below.

(b) The other outstanding issue is the form of security. NH requires an on-demand bond or cash deposit of 200% of the cost of the works to ensure that it has "on-demand" funds available should it need to step-in and complete works on the SRN or in the event of the Applicant (or an entity benefiting from the transfer of benefit provisions in the dDCO) defaulting on obligations to make payments to NH, indemnify NH for any loss or expense or to cover the costs of NH as NH does not hold a budget to cover any costs arising from the proposals. NH would draw the ExA's attention to the Gatwick Airport Northern Runway Project DCO which was made last Autumn [TR020005]. The provisions of an uncapped indemnity in favour of NH were considered alongside the provision of the bond by both the ExA and the SoS. The required bond was included to avoid serious detriment to the carrying on of NH under s127 of the PA2008. It was agreed by the ExA and the SoS that it is not appropriate

[1] Section 5(1) Infrastructure Act 2015

for a public sector agency to potentially fund a private sector burden. The same is true of this Project and the protective provisions need to be updated accordingly.

(c) Timescales for NH to issue certificates – the Applicant is looking for specific timescales in lieu of the drafting "as soon as reasonably possible".

(d) On the indemnity included in the PPs the Applicant is seeking a duty on NH to mitigate its losses. NH must be held harmless for the construction, maintenance and operation of the Authorised Development and any resultant impacts, and it is common practice for statutory undertakers to be indemnified in such circumstances. It should not be for the public purse to cover instances of loss or damage occasioned by third party works. The addition of this duty risks creating a dispute and serious detriment to NH.

(e) The Applicant is looking for wording that commits NH to adopt certain operational land owned by NH in lieu of the compulsory acquisition of the same. This is addressed further below under the heading of compulsory acquisition.

4 COMMENTS ON THE DDCO [APP-139]

4.1 NH's Relevant Representation [**RR-100**] included a table of provisions included within the dDCO which are of specific concern to NH. NH note that Oxfordshire County Council ("**OCC**") in their role as local highway authority have also raised concerns on similar matters. The Applicant has responded to NH on those concerns, largely asserting that NH has adequate protection either through the Protective Provisions in the draft DCO or in the Article itself. With the various street powers in Part 3 of the dDCO, for example, the Applicant has noted that various articles make reference to the consent of the Street Authority. The reference to consent should, however, record that the relevant street authority may attach reasonable conditions to any consent. This is the wording that is adopted in Article 12(4). Not including this wording where there are others references to the street authority being permitted to attach reasonable conditions to such consent creates ambiguity. The Applicant's response that the drafting mirrors other DCOs is not acceptable. This is a case where there are significant interactions and works on and adjacent to the SRN and NH's operational land and NH needs to have appropriate protections

4.2 NH has asked for various articles in Part 3 to be included in paragraph 7(2) of its standard Protective Provisions, because paragraph 7(2) provides that the stated Article may not be exercised without NH's consent where it relates to works on the SRN or on land which NH has an interest (such land being operational land). The paragraph goes on to note that NH may require the undertaker to provide details of proposed road space bookings and submit a traffic management scheme. This is critical where powers are being exercised over the SRN. Any approval may also be given subject to any conditions as NH considers necessary (paragraph 7(4)).

4.3 If the Applicant is not willing to update the Articles, then paragraph 7(2) of NH's Protective Provisions needs to include the relevant Articles. This is the case for Article 10 and 14. Articles 22, 23, 24, 26, 29, 30, 31, 35, 36, 37, and 49.

4.4 Separately there is the issue of deemed consent. There are a number of articles which contain deemed consent provisions which would apply where NH does not provide its consent or approval to any provisions under the order within 42 days of it being requested where no response is received.

4.5 NH is concerned with the deemed consent given the safety implications of works being carried out to or under the SRN that may have bypassed its approval processes. This is a fundamental issue of public safety that should not be compromised to enable a private developer to achieve a quicker build programme. NH has statutory obligations to behave reasonably and support sustainable development and so it should not be forced to work under the pressure of deemed consent. The potential implications from a safety perspective of something going wrong far outweigh the Applicant's case for such a provision. NH's position is that after 28 days, further correspondence should be provided to NH noting the deeming provisions and then deemed consent would only apply after a further period of 28 days.

4.6 The effect of this is to prevent the Promoter from exercising powers over the SRN or land in which NH has an interest with deemed consent only applying where further notification has been provided to NH. This ensures that open dialogue between the parties occurs so that NH has control over the operations being carried out on its network. This is critical from a safety perspective and to maintain the integrity of the asset. As a public body, NH is under a duty to act reasonably, and this is expressly provided in paragraph 7(4) and 7(7) of NH's protective provisions.

4.7 NH's updated detailed comments on the articles in the dDCO are set out in the table below.

National Highways' Updated comments on the DCO drafting				
Article	Drafting	NH's RR comments	NH's understanding of the Applicant's position	NH's further comments – boxes highlighted in green have been resolved
9 (street works)	This Article provides for the carrying out of the works described in paragraph (1) (a) – (j) by the Applicant for the purposes of the authorised development in respect of any of the streets set out in Schedule 3. Paragraphs 1(a) to (j) provide as follows: (a) break up or open the street, or any sewer, drain or tunnel under it; (b) tunnel or bore under the street; (c) place apparatus in the street which includes without limitation the installation and maintenance on or near a highway structures and equipment for ANPR; (d) maintain apparatus in the street or change its position;	This article gives the Applicant the power to break open the streets, place and keep apparatus in or under the street etc to those streets referred to in Schedule 3 without the consent of the street authority. The Schedule includes the M40, the A34 and the A43 which form part of the strategic network that NH is responsible. As the highway authority for the M40, the A34 and the A43, NH must have control over the operations being carried out on and under its network in order to comply with its duty to co-ordinate the execution of works of all kinds (including works for road purposes) under section 59 of the New Roads and Street Act 1991. These works need to be subject to NH's protective provisions and NH needs to approve the details of the works and impose other conditions in respect of such works. Road space booking will also be required in connection with these works so NH can comply with its duty under section 59 of the New Roads and Street Act	This article does not require amending as it is already subject to the Protective Provisions, see para (2) *(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act and is subject to the provisions of Parts 2 and 3 of Schedule 14 (protective provisions).*	NH can agree that this article does not require any further updates and need not be referenced in paragraph 7(2) of the Protective Provisions

National Highways' Updated comments on the DCO drafting				
Article	Drafting	NH's RR comments	NH's understanding of the Applicant's position	NH's further comments – boxes highlighted in green have been resolved
	(e) construct bridges and tunnels; (f) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street; (g) alter the level or increase the width of such kerb, footway, cycle track or verge; (h) reduce the width of the carriageway of the street; (i) make and maintain crossovers and passing places; and (j) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (i).	1991. This is critical from a safety perspective and to protect the structure of the street and the integrity of apparatus in it. Therefore, the Applicant should be required to obtain NH's consent in the event the activities affect the SRN or any land NH has an interest in enabling NH to apply conditions to that consent. As a public body, NH is under a duty to act reasonably in providing such consent and this is expressly provided in paragraph 7(4) of NH's proposed protective provisions at Appendix 1. Inclusion of paragraph 7(2) of NH's proposed protective provisions would address NH's objection to this article, which requires the applicant to obtain NH consent before exercising their right under this article.		
Article 10 (power to alter layout of streets)	This Article provides that subject to paragraph (2), the Applicant may, for the purposes of constructing, operating, using and	The applicant has the power with the consent of the street authority to alter any street within the main site and the layout of any street at its junction.	This article does not require amending as it already requires consent pursuant to para (2):	The consent wording does not refer to the street authority being able to attach reasonable conditions to any consent. This article should be updated and like article 9 should

National Highways' Updated comments on the DCO drafting				
Article	Drafting	NH's RR comments	NH's understanding of the Applicant's position	NH's further comments – boxes highlighted in green have been resolved
	maintaining the authorised development, alter the layout of any street within the main site and the layout of any street at its junction with such a street; and, without limitation on the scope of this paragraph, the undertaker may— (a) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street; (b) alter the level or increase the width of such kerb, footway, cycle track or verge; (c) reduce the width of the carriageway of the street; and (d) make and maintain crossovers, and passing places. (2) Save as to streets in respect of which the	To the extent that the activities affect the SRN or any land NH has an interest in, the exercise of this power needs to be listed in paragraph 7(2) of NH's template protective provisions as this enables NH to impose conditions in giving its consent in line with the protective provisions. Conditions would include a requirement for NH to approve the detailed design and for the applicant to secure road space booking in advance of exercising the powers in Article 10. As a public body, NH is under a duty to act reasonably in providing such consent and this is expressly provided in paragraph 7(4) of NH's proposed protective provisions at Appendix 1. Please also see NH's comments on deemed consent at the end of this table.	*(2) Save as to streets in respect of which the undertaker is the street authority, the powers conferred by paragraph (1) must not be exercised without the consent of the relevant street authority but such consent must not be unreasonably withheld and if the relevant street authority has received an application for consent to exercise powers under paragraph (1) accompanied by all relevant information and fails to notify the undertaker of its decision before the end of the period of 42 days beginning with the date on which the application is submitted with all relevant information, it is deemed to have granted consent.*	make express reference to the authority given being subject to the provisions of Parts 2 of Schedule 14 as any alterations do need to be the subject of the Protective Provisions. Alternatively, this Article should be included in Prior Approval paragraph of the Protective Provisions (paragraph 7(2) of NH's template Protective Provisions.

National Highways' Updated comments on the DCO drafting				
Article	Drafting	NH's RR comments	NH's understanding of the Applicant's position	NH's further comments – boxes highlighted in green have been resolved
	undertaker is the street authority, the powers conferred by paragraph (1) must not be exercised without the consent of the relevant street authority but such consent must not be unreasonably withheld and if the relevant street authority has received an application for consent to exercise powers under paragraph (1) accompanied by all relevant information and fails to notify the undertaker of its decision before the end of the period of 42 days beginning with the date on which the application is submitted with all relevant information, it is deemed to have granted consent. (3) An application made under paragraph (1) must include a statement that the provisions of paragraph (2) apply to that application.			
Article 11 (permanent	This Article authorises the stopping up of streets in connection with the carrying	This article provides for the permanent stopping-up of parts of streets specified in Schedule 4. This includes	See the following paras which provide protection or NH:	In light of the protections in paragraphs (5) and (6), NH does not seek any amendment to this Article

National Highways' Updated comments on the DCO drafting				
Article	Drafting	NH's RR comments	NH's understanding of the Applicant's position	NH's further comments – boxes highlighted in green have been resolved
stopping up of streets)	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. 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. 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	parts of the M40 J10 northbound merge slip and the northbound diverge slip and highway at the A43 Ardley roundabout. The applicant should be required to obtain NH's consent for stopping-up, which affects the SRN or any land NH has an interest in. As a public body, NH is under a duty to act reasonably in providing such consent and this is expressly provided in paragraph 7(4) of NH's proposed protective provisions at Appendix 1. Inclusion of paragraph 7(2) of NH's proposed protective provisions would address NH's objection to this article, which requires the applicant to obtain NH's consent before exercising their right under this article.	*(5) This article is subject to article 38 (apparatus and rights of statutory undertakers in stopped up streets).* *(6) Any stopping up carried out under this article must be carried out in accordance with any relevant provisions of Part 2 and Part 3 of Schedule 14 (protective provisions).*	nor that it is referenced in Article 7(2) of the Protective Provisions.

National Highways' Updated comments on the DCO drafting				
Article	Drafting	NH's RR comments	NH's understanding of the Applicant's position	NH's further comments – boxes highlighted in green have been resolved
	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.			
Article 12 (temporary closure)	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).	This article provides that any street may be temporarily closed, altered or diverted with the consent of the street authority (such consent not to be unreasonably withheld or delayed). To the extent that the activities affect the SRN or any land NH has an interest in, the exercise of this power needs to be listed in paragraph 7(2) of NH's template protective provisions as this enables NH to impose conditions in giving its consent in line with the protective provisions. As a public body, NH is under a duty to act reasonably in providing such consent and this is expressly provided in paragraph 7(4) of NH's proposed protective provisions at Appendix 1.	See para (4) *(4) Save as to streets in respect of which the undertaker is the street authority, the undertaker must not temporarily close, prohibit the use of, alter or divert any street without the consent of the relevant street authority which may attach reasonable conditions to any consent but such consent must not be unreasonably withheld or delayed.*	NH can agree that this article does not require any further updates and need not be referenced in paragraph 7(2) of the Protective Provisions.
Article 14 (accesses)	This Article is included to allow for new access to be provided or existing	This article provides the Applicant with powers to form and lay out means of	Where the access is set out in Schedule 6, consent is not required. This access will already have been	The consent wording does not refer to the street authority being able to attach reasonable conditions to any

National Highways' Updated comments on the DCO drafting				
Article	Drafting	NH's RR comments	NH's understanding of the Applicant's position	NH's further comments – boxes highlighted in green have been resolved
	accesses to be altered. The Articles 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 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.	access, or improve existing means of access: (a) in the locations specified or (b) at any location within the order limits with the consent of the relevant street authority. NH's network, forms part of that order limits. Deemed consent provisions apply. Please see comments below in this regard. NH must have control over the operations being carried out on its network and accesses from its high speed network. This is critical from a safety perspective and to maintain the integrity of the asset. Inclusion of paragraph 7(2) of NH's proposed protective provisions would address NH objection to this article, which requires the applicant to obtain NH's consent before exercising their right under this article.	considered as part of the DCO process. However, where an access is not listed, the following applies: *with the approval of the relevant highway authority or relevant street authority, form and lay out such other means of access (permanent or temporary) 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 and the undertaker must with the request for approval from the relevant highway authority notify the relevant highway authority of the provisions of paragraph (3).* See also: *(2) The consent of the relevant highway authority or the relevant street authority as appropriate is not required for the formulation, layout, alteration or improvement of a new or existing means of access described in Schedule 1 (authorised*	consent. This article should be updated and like article 9 should make express reference to the authority given being subject to the provisions of Parts 2 of Schedule 14 as any access works do need to be the subject of the Protective Provisions. Alternatively, this Article should be included in Prior Approval paragraph of the Protective Provisions (paragraph 7(2) of NH's template Protective Provisions.

National Highways' Updated comments on the DCO drafting				
Article	Drafting	NH's RR comments	NH's understanding of the Applicant's position	NH's further comments – boxes highlighted in green have been resolved
		Please also see our comments at the end of this table in relation to deemed consent.	*development) and carried out in accordance with the relevant provisions of Parts 2 and 3 of Schedule 14 (protective provisions).* The effect of this is that the principle of the access is accepted, however pursuant to the PPs, the Applicant will still require approval to the design and timings in so much as it affects the SRN	
Article 15 (maintenance)	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. It provide that the highway works must be completed in accordance with the relevant provisions of Parts 2 and 3 of Schedule 14 (protective provisions). With effect from the date of the final certificate referred to in paragraph 42 of Part 2 of Schedule 14 the highway works to which that certificate relates will be	Article 15 is not acceptable and should exclude the SRN. NH does not agree to deemed adoption and the Applicant would need to comply with the adoption and maintenance provisions included in NH's standard proposed protective provisions. The applicant should be required to obtain NH's consent in the event the activities affect the SRN or any land NH has an interest in. As a public body, NH is under a duty to act reasonably in providing such consent and this is expressly provided in paragraph 7(4) of NH's proposed protective provisions at Appendix 1.	Para (1) provides that the highway works must be completed in accordance with the PPs.	NH can agree that this article does not require any further updates and need not be referenced in paragraph 7(2) of the Protective Provisions.

National Highways' Updated comments on the DCO drafting				
Article	Drafting	NH's RR comments	NH's understanding of the Applicant's position	NH's further comments – boxes highlighted in green have been resolved
	maintained by and at the expense of National Highways. Where new land not previously part of the public highway is the subject of a provisional certificate under paragraph 38 of Part 2 of Schedule 14 then it is deemed to be dedicated as part of the public highway on the issue of that certificate.	Inclusion of paragraph 7(2) of NH's proposed protective provisions would address NH's objection to this article, which requires the applicant to obtain NH's consent before exercising their right under this article.		
Article 18 (traffic regulation)	This article allows the Applicant to regulate traffic on the roads to the extent specified in Schedule 9 or to any other extent that is expedient or necessary, with the consent of the traffic authority, for the purposes of the authorised development or for purposes ancillary to the construction or maintenance of the authorised development	NH must have control over the operations being carried out on its network. This is critical from a safety perspective and to maintain the integrity of the asset. To the extent that the activities affect the SRN or any land NH has an interest in, the exercise of this power needs to be listed in paragraph 7(2) of NH's template protective provisions as this enables NH to impose conditions in giving its consent in line with the protective provisions. As a public body, NH is under a duty to act reasonably in providing such consent and this is expressly provided in	Para (2) requires the consent of the street authority	NH can agree that this article does not require any further updates and need not be referenced in paragraph 7(2) of the Protective Provisions.

National Highways' Updated comments on the DCO drafting				
Article	Drafting	NH's RR comments	NH's understanding of the Applicant's position	NH's further comments – boxes highlighted in green have been resolved
		paragraph 7(4) of NH's proposed protective provisions at Appendix 1.		
Article 22 (discharge of water)	This article sets out the circumstances in which the undertaker is entitled to discharge water into a sewer, watercourse or drain. Essentially, this can be undertaken with the consent of the owner of the sewer, watercourse or drain (such consent not to be unreasonably withheld or delayed). In the case of highway drainage the article provides: (4) No water may be discharged into a watercourse that flows into the highway drainage system without the consent of the relevant highway authority and such consent may be given subject to such terms and conditions as the relevant highway authority consider appropriate but such consent not to be	This article allows the applicant to use any watercourse, public sewer or drain for the drainage of water in connection with the authorised development. It is unclear whether or not this article applies to NH's drainage system as drafted or whether this applies to public drains only. NH's drainage system is not a public drain and connection to it is not permitted. NH is concerned this provision potentially allows the applicant to make use of highway drainage infrastructure for the benefit of their authorised development. Paragraph 59 of the Draft Circular 01/2022 which contains government guidelines NH are required to comply with, sets out the following: 59. To ensure the integrity of the highway drainage systems, no new connections into those systems from third party development and proposed drainage schemes will be	This article applies to all 'watercourses' which is defined in Article 2 as: "watercourse" includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or public drain; See para (4) *(4) No water may be discharged into a watercourse that flows into the highway drainage system without the consent of the relevant highway authority and such consent may be given subject to such terms and conditions as the relevant highway authority consider appropriate but such consent not to be unreasonably withheld or delayed.*	NH acknowledges that the undertaker cannot discharge into a drain or sewer without consent of the owner. NH is concerned this provision potentially allows the applicant to make use of highway drainage infrastructure for the benefit of their authorised development. Paragraph 59 of the Draft Circular 01/2022 which contains government guidelines that NH are required to comply with sets out the following: *"59. To ensure the integrity of the highway drainage systems, no new connections into those systems from third party development and proposed drainage schemes will be accepted. Where there is already an existing informal or formal connection into the highway drainage system from a proposed development site, the right for a connection may be allowed to continue provided that the flow, rate and quality of the discharge into the highway drainage system remains unaltered or results in a betterment.*

National Highways' Updated comments on the DCO drafting				
Article	Drafting	NH's RR comments	NH's understanding of the Applicant's position	NH's further comments – boxes highlighted in green have been resolved
	unreasonably withheld or delayed.	accepted. Where there is already an existing informal or formal connection into the highway drainage system from a proposed development site, the right for a connection may be allowed to continue provided that the flow, rate and quality of the discharge into the highway drainage system remains unaltered or results in a betterment. The company may require a drainage management and maintenance agreement to be entered into to secure this requirement in perpetuity. Please also see our comments at the end of this table in relation to deemed consent.		The company may require a drainage management and maintenance agreement to be entered into to secure this requirement in perpetuity. Discharge into a highway drain is not permitted so the Article should be clear that non-SRN drainage should not be drained into NH drains.
Article 23 (authority to survey and investigate the land)	This article allows the applicant to enter any land within the order limits affected by the authorised development or enter on any land upon which entry is required in order to carry out monitor or survey in respect of the authorised development and, carry out	This article allows the applicant to enter any land within the order limits affected by the authorised development or enter on any land upon which entry is required in order to carry out monitor or survey in respect of the authorised development and, carry out surveys or investigations, trial holes, bore holes, ecological or archaeological investigations and	The Applicant is content to amend this Article to confirm that consent is required in relation to the SRN.	NH understands that the Applicant is content to amend this Article to confirm that consent is required in relation to the SRN. Consent also needs to be obtained to NH land – as this is operational land. This Article should be included in Prior Approval paragraph of the Protective Provisions (paragraph

National Highways' Updated comments on the DCO drafting				
Article	Drafting	NH's RR comments	NH's understanding of the Applicant's position	NH's further comments – boxes highlighted in green have been resolved
	surveys or investigations, trial holes, bore holes, ecological or archaeological investigations and place leave or remove apparatus on land in this regard.	place leave or remove apparatus on land in this regard. Whilst it is noted consent is required from the highway authority at sub paragraph 5 for any trial holes for land located within the highway boundary, consent is not required for the wider use of the powers granted within this article such as access to land for surveys etc. Consent is also not required for any land NH owns that is outside of the highway boundary and the applicant is only required to serve notice on the landowner prior to exercising this right. This is also a right that extends beyond the order limits. NH must have control over the operations being carried out on its network and land it has an interest in. This is critical from a safety perspective and to maintain the integrity of the asset. Therefore, the applicant should be required to obtain NH's consent in the event any access or works under this article affect the SRN or any land NH has an interest in. NH must ensure the safety of its road users and provide prior to approval to		7(2) of NH's template Protective Provisions.

National Highways' Updated comments on the DCO drafting				
Article	Drafting	NH's RR comments	NH's understanding of the Applicant's position	NH's further comments – boxes highlighted in green have been resolved
		those accessing its network. As a public body, NH is under a duty to act reasonably in providing such consent and this is expressly provided in paragraph 7(4) of NH's proposed protective provisions at Appendix 1. Inclusion of paragraph 7(2) of NH's proposed protective provisions would address NH objection to this article, which requires the applicant to obtain NH's consent before exercising their right under this article. Please see comments below regarding deemed consent.		
Article 24 (protective works)	This article sets out the circumstances in which protective works can be carried out to land, buildings, structures, or trees within the Order limits or which may be affected by the authorised development.	This article provides the Applicant with the power to carry out protective works to any land, building, structure, or tree within the order limits. NH must have control over the operations being carried out on its network and land, structures, apparatus and equipment it has an interest in. This is critical from a safety perspective and to maintain the integrity of the asset. Therefore, the Applicant should be required to obtain NH's consent in the event any access	The Applicant is content to amend this Article to confirm that consent is required in relation to the SRN.	NH understands that the Applicant is content to amend this Article to confirm that consent is required in relation to the SRN. Consent also needs to be obtained to NH land – as this is operational land. This Article should be included in Prior Approval paragraph of the Protective Provisions (paragraph 7(2) of NH's template Protective Provisions.

National Highways' Updated comments on the DCO drafting				
Article	Drafting	NH's RR comments	NH's understanding of the Applicant's position	NH's further comments – boxes highlighted in green have been resolved
		or works under this article affect the SRN or any land NH has an interest in. NH must ensure the safety of its road users and provide prior to approval to those accessing its network. As a public body, NH is under a duty to act reasonably in providing such consent and this is expressly provided in paragraph 7(4) of NH's proposed protective provisions at Appendix 1. Inclusion of paragraph 7(2) of NH's proposed protective provisions would address NH objection to this article, which requires the applicant to obtain NH's consent before exercising their right under this article.		
Article 26 (compulsory acquisition)	This article authorises the compulsory acquisition by the Applicant of so much of the order land as is required for the authorised development or to facilitate it, or is incidental to, it.	NH objects to the inclusion of the plots in the DCO and to Compulsory Powers for the acquisition of land (whether operational or otherwise) being granted in respect of them. Please refer to our comments above.	-	These powers should not be exercised without NH's consent. See further NH's comments on compulsory acquisition below.

National Highways' Updated comments on the DCO drafting				
Article	Drafting	NH's RR comments	NH's understanding of the Applicant's position	NH's further comments – boxes highlighted in green have been resolved
		NH must have control over the operations being carried out on its network. This is critical from a safety perspective and to maintain the integrity of the asset. Therefore, the applicant should be required to obtain NH's consent in the event the activities affect the strategic road network or any land NH has an interest in. As a public body, NH is under a duty to act reasonably in providing such consent and this is expressly provided in paragraph 7(4) of NH's proposed protective provisions at Appendix 1. Inclusion of paragraph 7(2) of NH's proposed protective provisions would address NH's objection to this article, which requires the applicant to obtain NH's consent before exercising their right under this article.		
Article 29 (Compulsory acquisition of rights and imposition of restrictive covenants)	This article allows the undertaker to acquire rights (and impose restrictions) over the Order land, including by creating new rights for the purpose of the authorised development.	NH objects to the inclusion of the plots in the DCO and to Compulsory Powers for the acquisition of rights (whether operational or otherwise) being granted. Please refer to our comments above. NH must have control over the operations being carried out on its		See further NH's comments on compulsory acquisition below.

National Highways' Updated comments on the DCO drafting				
Article	Drafting	NH's RR comments	NH's understanding of the Applicant's position	NH's further comments – boxes highlighted in green have been resolved
		network. This is critical from a safety perspective and to maintain the integrity of the asset. Therefore, the applicant should be required to obtain NH's consent in the event the activities affect the strategic road network or any land NH has an interest in. As a public body, NH is under a duty to act reasonably in providing such consent and this is expressly provided in paragraph 7(4) of NH's proposed protective provisions at Appendix 1. Inclusion of paragraph 7(2) of NH's proposed protective provisions would address NH's objection to this article, which requires the Applicant to obtain NH's consent before exercising their right under this article.		
Article 30 (Private rights)	This Article provides for the extinguishment of private rights over land subject to compulsory acquisition and the extinguishment of private rights over land subject to the compulsory acquisition of rights (in so far as the continuance of the existing right would be inconsistent) from the date of the	NH must have control over the operations being carried out on its network. This is critical from a safety perspective and to maintain the integrity of the asset. Therefore, the applicant should be required to obtain NH's consent in the event the activities affect the SRN or any land NH has an interest in. As a public body, NH is under a duty to act reasonably in providing such consent and this is	This is justified in the Explanatory Memorandum but in summary it enables the undertaker to clear existing third-party rights that would otherwise impede the construction or operation of nationally significant infrastructure. Without any agreements from NH, this Article must remain.	The Applicant needs to be clear what rights of NH are in fact to be overridden – most of the rights relate to the ability for NH to maintain fences and access for balancing ponds etc which absolutely must be retained. NH's rights should not be overridden without its consent as there could be material detriment to the SRN and its operational land.

National Highways' Updated comments on the DCO drafting				
Article	Drafting	NH's RR comments	NH's understanding of the Applicant's position	NH's further comments – boxes highlighted in green have been resolved
	acquisition of the land or rights, or the date of entry, whichever is earliest.	expressly provided in paragraph 7(4) of NH's proposed protective provisions at Appendix 1. Inclusion of paragraph 7(2) of NH's proposed protective provisions would address NH's objection to this article, which requires the applicant to obtain NH's consent before exercising their right under this article.	Note that it does not apply in relation to any right to which section 138(a) (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 37 (statutory undertakers) applies.	
Article 31 (power to override easements and other rights)	This article provides that any authorised activity undertaken by the undertaker which takes place on land within the Order limits (whether the activity is undertaken by the undertaker or by any person deriving title from the undertaker or by servants or agents of the undertaker) is authorised by this Order if it is done in accordance with the terms of this Order, regardless of whether it involves—	This article permits the Applicant to interfere with any statutory easement or other right NH may have in relation to the Order (within the order limits). This raises a concern NH must have control over the operations being carried out on its network. This is critical from a safety perspective and to maintain the integrity of the asset. Therefore, the applicant should be required to obtain NH's consent in the event the activities affect the strategic road network or any land NH has an interest in. As a public body, NH is under a duty to act reasonably in providing such consent and this is expressly provided in	This is justified in the Explanatory Memorandum but in summary	The Applicant needs to be clear what rights of NH are in fact to be overridden – most of the rights relate to the ability for NH to maintain fences and access for balancing ponds etc which absolutely must be retained. NH's rights should not be overridden without its consent as there could be material detriment to the SRN and its operational land.

National Highways' Updated comments on the DCO drafting				
Article	Drafting	NH's RR comments	NH's understanding of the Applicant's position	NH's further comments – boxes highlighted in green have been resolved
	(a) an interference with an interest or right to which this article applies; or (b) a breach of a restriction as to the use of the land arising by virtue of a contract.	paragraph 7(4) of NH's proposed protective provisions at Appendix 1. Inclusion of paragraph 7(2) of NH's proposed protective provisions would address NH's objection to this article, which requires the applicant to obtain NH's consent before exercising their right under this article.		
Article 32 (rights under or over streets)	This article provides that the Applicant may enter upon and appropriate so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or airspace for those purposes or any other purpose ancillary to the authorised development.	NH notes, however, that this provision does not apply to any street which is part of the strategic road network which is welcomed.	See para (6) *(6) Paragraph (1) does not apply to any street which is part of the strategic road network.*	NH can agree that this article does not require any further updates and need not be referenced in paragraph 7(2) of the Protective Provisions.
Article 35 (temporary use of land)	This article allows the land set out in Schedule 10 to be occupied temporarily by the Applicant in connection with the carrying out of the authorised development, as well as any other Order land	This article provides the applicant with the power to take temporary possessions of the land referred to in schedule 10 and any other order land without the consent of NH.	The Applicant notes that this Article is relevant to the following: Plot 3/70 – temporary possession is sought for the works associated with the stopping up of the bridleway 109/26 and footpath 109/22 as	There needs to be drafting within the dDCO or a side agreement to address the use of this land to ensure that the temporary possession powers are limited and

National Highways' Updated comments on the DCO drafting				
Article	Drafting	NH's RR comments	NH's understanding of the Applicant's position	NH's further comments – boxes highlighted in green have been resolved
	which may be subject to compulsory acquisition of land or rights but in respect of which the Applicant has not yet served a notice of entry or made a general vesting declaration.	NH must have control over the operations being carried out on its network. This is critical from a safety perspective and to maintain the integrity of the asset. Therefore, the applicant should be required to obtain NH's consent in the event the activities affect the strategic road network or any land NH has an interest in. As a public body, NH is under a duty to act reasonably in providing such consent and this is expressly provided in paragraph 7(4) of NH's proposed protective provisions at Appendix 1. Inclusion of paragraph 7(2) of NH's proposed protective provisions would address NH's objection to this article, which requires the applicant to obtain NH's consent before exercising their right under this article.	shown on the access and rights of way plans. NH has a right of entry to maintain boundary features but does not own this land. In relation to all plots, it is not the Applicant's intention to prevent NH being able to retain its boundary features. 3/31 – this is part of the MSA and leased to Asda and Moto. 5/35 and 5/36 – this is required Provision of temporary habitat fencing during construction of the authorised development. 5/37a and 5/39a – this is required for works associated with the stopping up of the bridleway 109/26 and footpath 109/22 as	that NH can still retain access to exercise its rights. NH's PPs only deal with this to the extent it is referenced in the approvals paragraph of the PPs. It isn't dealt with anywhere else in the PPs. Fine to be subject to the PPs but if the PPs are silent there are no provisions to apply. This article needs to be added to the approvals paragraph in the PPs.
Article 36 (Temporary use of land for maintaining the authorised development)	This article provides for entry upon, and the taking temporary possession of, land within the Order limits (except for houses, gardens and any other building for the time being occupied) reasonably required to	This article grants the Applicant with the right to take temporary possession of any land for the purposes of maintaining the authorised development within the order limits without the consent of NH.	See para (1) *Subject to paragraph (2) and Parts 2 and 3 of Schedule 14 (protective provisions), the undertaker may….*	The wording of the Article does not provide comfort to NH. NH's Protective Provisions only deal with this to the extent it is referenced in the prior approvals paragraph (paragraph 7(2) of the NH's template Protective Provisions).

National Highways' Updated comments on the DCO drafting				
Article	Drafting	NH's RR comments	NH's understanding of the Applicant's position	NH's further comments – boxes highlighted in green have been resolved
	maintain the authorised development. At least 14 days' notice must be given (save in emergencies).	NH must have control over the operations being carried out on its network. This is critical from a safety perspective and to maintain the integrity of the asset. Therefore, the applicant should be required to obtain NH's consent in the event the activities affect the SRN or any land NH has an interest in. As a public body, NH is under a duty to act reasonably in providing such consent and this is expressly provided in paragraph 7(4) of NH's proposed protective provisions at Appendix 1. Inclusion of paragraph 7(2) of NH's proposed protective provisions would address NH's objection to this article, which requires the applicant to obtain NH's consent before exercising their right under this article.		
Article 37 (statutory undertakers)	Subject to the protective provisions in Schedule 14 of the Order, it authorises the undertaker to: (a) acquire compulsorily, or acquire new rights or impose restrictive covenants over,	NH must have control over the operations being carried out on its network. This is critical from a safety perspective and to maintain the integrity of the asset. Therefore, the applicant should be required to obtain NH's consent in the event the activities affect the SRN or any land NH has an interest in. As a public body, NH is	As above, this is subject to the protective provisions. See para (1).	The wording of the Article does not provide comfort to NH. NH's Protective Provisions only deal with this to the extent it is referenced in the prior approvals paragraph (paragraph 7(2) of the NH's template Protective Provisions).

National Highways' Updated comments on the DCO drafting				
Article	Drafting	NH's RR comments	NH's understanding of the Applicant's position	NH's further comments – boxes highlighted in green have been resolved
	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 at 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.	under a duty to act reasonably in providing such consent and this is expressly provided in paragraph 7(4) of NH's proposed protective provisions at Appendix 1. Inclusion of paragraph 7(2) of NH's proposed protective provisions would address NH's objection to this article, which requires the applicant to obtain NH's consent before exercising their right under this article.		
Article 38 (Apparatus and rights of statutory undertakers in stopped up streets)	Article 38 protects the powers and rights of any statutory undertaker whose apparatus is located under, in, on, along or across any street which is stopped up under Article 11 (Permanent stopping up of streets and public rights of way). It also provides, however, that upon the Applicant's reasonable request, the statutory	NH objects to the principle of inclusion of this article and seek to protect its interest by the inclusion of this article in paragraph 7(2) of NH's proposed protective provisions. This would address NH objection to this article, which requires the applicant to obtain NH's consent before exercising their right under this article.		NH can agree that this article does not require any further updates and need not be referenced in paragraph 7(2) of the Protective Provisions.

National Highways' Updated comments on the DCO drafting				
Article	Drafting	NH's RR comments	NH's understanding of the Applicant's position	NH's further comments – boxes highlighted in green have been resolved
	undertaker must remove or alter the position of existing apparatus or provide other apparatus in substitution.			
Article 47 (Application of Landlord and Tenant)	This article governs the undertaker leasing any part of the authorised development for the purposes of its construction, operation or maintenance to any other person. It allows the terms of the lease to override any statutory provisions relating to landlord and tenant law.	NH does not have sufficient information to understand whether this article is likely to affect NH. In any event, NH would object to the principle of inclusion of this article and, if necessary, will be seeking to protect its interest by the inclusion of this article in paragraph 7(2) of NH's proposed protective provisions. This would address NH's objection to this article, which requires the applicant to obtain NH's consent before exercising their right under this article.	This article applies to any agreement for leasing any part of the authorised development and any agreement entered into by the undertaker for the construction, operation, use and maintenance of the authorised development so far as any such agreements relates to the terms on which any land any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use. Not anticipate to be relevant to NH.	NH can agree that this article does not require any further updates and need not be referenced in paragraph 7(2) of the Protective Provisions.
Article 49 (Felling or lopping)	This article provides the Applicant with the power to fell or lop any tree or shrub near any part of the authorised development.	NH is making checks internally to ascertain whether NH has any environment mitigation commitments that may be affected by the authorised development to ascertain whether this article may put NH in breach of its own statutory obligations. If works undertaken to trees affect any NH BNG commitments a replacement tree or trees would need to be provided	The Applicant agrees not to fell or lop any trees on the SRN without consent and will make this amendment in the next turn of the DCO.	This should apply to NH land as well adjacent to the SRN. This Article should be included in Prior Approval paragraph of the Protective Provisions (paragraph 7(2) of NH's template Protective Provisions.

National Highways' Updated comments on the DCO drafting				
Article	Drafting	NH's RR comments	NH's understanding of the Applicant's position	NH's further comments – boxes highlighted in green have been resolved
		to satisfy that existing commitment at a location to be agreed. NH objects to the principle of inclusion of this article and, if necessary, will be seeking to protect its interest by the inclusion of this article in paragraph 7(2) of NH's proposed protective provisions. This would address NH's objection to this article, which requires the applicant to obtain NH's consent before exercising their right under this article.		
Article 55 (Discharge of Requirements and other consents etc)	This article provides that paragraphs (1) and (2) of Part 2 (procedure for discharge of certain approvals) of Schedule 2 (requirements) is to have effect in relation to applications made pursuant to the requirements set out in Schedule 2. Part 2 of Schedule 2 is to have effect in relation to all consents, agreements, approvals or notices	Article 55(3) refers to paragraph (1) and (2) of Part 2 of Schedule 2 (discharge of Requirements). Paragraph 3(2) of Part 2 of Schedule 2 should be amended to provide that NH is not liable for a refund in the event that refund falls due to matters outside NH's control.	-	NH's comment remains.

National Highways' Updated comments on the DCO drafting				
Article	Drafting	NH's RR comments	NH's understanding of the Applicant's position	NH's further comments – boxes highlighted in green have been resolved
	granted, refused or withheld in relation to— (a) the requirements set out in Part 1 of Schedule 2; (b) any document referred to in any requirement set out in Part 1 of Schedule 2; and (c) the functions of the local authority set out in Sections 60 (control of noise on construction sites) and or 61 (prior consent for work on construction sites) of the Control of Pollution Where an application is made to, or a request is made of, the local planning authority, relevant highway authority, street authority or the owner of a watercourse, sewer or drain or any other relevant person for any agreement or approval required			

National Highways' Updated comments on the DCO drafting				
Article	Drafting	NH's RR comments	NH's understanding of the Applicant's position	NH's further comments – boxes highlighted in green have been resolved
Article 56: Application, disapplication and modification of legislative provision	This article makes provisions applying, modifying and excluding the statutory provisions set out in Schedule 15.	This article refers to Schedule 15 which seeks to exclude certain provisions of the Highways Act 1980 and the New Roads and Street Works Act 1991 in relation to the sections set out in Schedule 15. No explanation is provided in the Explanatory Memorandum seeking to justify the exclusion of the noted sections. In any event, NH objects to the disapplication of the Highways Act 1980 or the New Roads and Street Works Act in this regard. NH must have control over the operations being carried out on its network. This is critical from a safety perspective and to maintain the integrity of the asset.	The reasoning for the disapplication is set out in the Explanatory Memorandum but in short: S141 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. S167 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. S169 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. S172	NH is considering further but erection of fencing or hoardings would not be acceptable to NH on SRN and it needs to be clear that the erection of fencing, hoardings and similar structures would fall within the scope of the Protective Provisions.

National Highways' Updated comments on the DCO drafting				
Article	Drafting	NH's RR comments	NH's understanding of the Applicant's position	NH's further comments – boxes highlighted in green have been resolved
			This provision is disapplied in order that the Applicant does not need a separate consent from the relevant authority to in order not to erect 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. S173 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.	

4.8 NH has also made specific comments on the Requirements as follows:

Requirements (Schedule 3)		
3. Approved details and amendments to them	(1) With respect to any requirement which requires details to be submitted in accordance with a plan or document listed in requirement 1, the local planning authority may approve an	Where NH has approved any plan or document or been consulted on the same it should also approve or be consulted on any amendment or variation thereto and this needs to be added to Requirement 3.

	amendment or variation to such a document or plan in writing in accordance with sub-paragraph (3). (2) 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). (3) Any amendments to or variations from documents or approved details must be in accordance with the principles and assessments set out in the environmental statement. Such agreement may only be given in relation to immaterial changes where it has been demonstrated to the local planning authority 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. (4) The approved details must be taken to include any amendments that may subsequently be approved in writing by the local planning authority.	NH would expect to approve any variation to the CTMP. Requirement 10 also requires a phase-specific construction environment management plan to be approved by the relevant highway authority where it relates to the highway works, but then Requirement 3 as drafted permits an amendment to a phase-specific construction environment management plan to be agreed by the local planning authority only.
7. and 8. Design and phasing of highway works	Requirement 7 and 8 deal with Design and Phasing of highway works.	NH is still to review and agree the triggers proposed.
10. Construction and Environmental Plan	This Requirement provides for phase-specific construction environmental management plan ("P-CEMP") to be approved by relevant highway authority where relate to highway works and the local planning authority for other works	Given the measures that are being dealt with for other works (eg lorry routing) NH would want to approve all phase-specific construction environmental management plans ("P-CEMP") whether or not they relate to highway works.

	.	
Discharge of Requirements - Schedule 4		
Paragraph 1 and Paragraph 2	Paragraph 1 provides: 1) Where an application has been made to a discharging authority for any consent, agreement or approval required or contemplated by any of the provisions of this Order the discharging authority must give notice to the undertaker of its decision on the application before the end of the decision period. (2) For the purposes of sub-paragraph (1), the decision period is— (a) where no further information is requested under paragraph 2, 42 days from the day immediately following that on which the application is received by the discharging authority; (b) where further information is requested under paragraph 2, 42 days from the day immediately following that on which the further information has been supplied by the undertaker under paragraph 2; or (c) such longer period as may be agreed by the undertaker and the discharging authority in writing before the end of the period in paragraph (a) or (b).	See NH's comments regarding deemed consent above. NH would want its deemed consent provisions to also be applicable here. In paragraph 2, reference to 10 days to request further information should also be deleted. This is too short and disproportionate in the overall timescale for approvals.

5 COMPULSORY ACQUISITION

5.1 The Book of Reference [**APP–145**] lists a number of plots which form part of the SRN but which no compulsory acquisition is proposed (by way of example plot 1/21). The Applicant's Statement of Reasons [**APP-143**] confirms that this is land which is existing adopted public highway over which the Applicant proposes only to carry out highway works or “street works” under the DCO, and therefore land rights are not required. NH endorses that position.

5.2 As explained in the Applicant's Land and Rights Negotiation Tracker [**APP-146**] there are plots included in the Book of Reference that are owned by NH but which are not adopted highway. The plots are operational land and the Applicant proposes to carry out the highway works only on this land. NH understands that the purpose of including the land for permanent acquisition is so that this land can then be dedicated to NH as public highway. This is, however, unnecessary and disproportionate, as NH can consent to the Applicant entering this land to undertake the highway works, subject to compliance with NH's protective provisions in respect of the highway works. The dDCO and NH's protective provisions then deal with approvals and final certificates and the highway works will become maintainable at the public expense. The Applicant has otherwise proposed that such land is adopted by National Highways prior to works commencing. This would mean that the land would benefit from the highway works and street works powers in the DCO and will not need to be compulsorily acquired. The precise mechanisms in respect of this land are under discussion but there should be no need to permanently acquire the plots concerned. NH does require a clear list of the plots that fall within this category.

5.3 The Book of Reference also lists subsoil plots within the local highway, in which National Highways continues to have an interest due to the local highway being created by way of a Side Roads Order. These plots include 3/63, 3/64, 3/64a and Plot 4/7. Since this land is not required for NH's operations NH expects to be able to agree to the transfer of these plots by way of agreement.

5.4 Temporary possession powers are then sought over one plot in NH's ownership namely plot 3/31. This plot is the access to the Cherwell Valley Motorway Service Area and NH understand that access is required for the tying in of works 15A and 15B. NH would not want access being taken without NH having an understanding of the traffic management measures that would be put in place in relation to access over this plot and how the Motorway Service Access Area will remain open. In addition, the temporary possession powers listed at article 35 are very wide, including setting up construction compounds, which would clearly not be appropriate in this location. NH would not want temporary possession being taken without its consent and the necessary approvals required by its protective provisions applying.

5.5 Temporary possession is also sought over plot 3/70, 5/31, 5/35, 5/36 and 5/37a where NH has a right of access associated with the maintenance of boundary features. NH needs to be able to exercise those rights to the boundary fence should that be necessary, whilst the Applicant is in possession of the land.

5.6 NH also needs to ensure that its rights are not extinguished or overridden under the powers included in the dDCO for that purpose. The Applicant has noted to NH that NH has rights in the following plots:

(a) Temporary use: 3/70, 5/35, 5/36, 5/37a, 5/39a, 3/3;

(b) Acquisition of land: 5/12, 5/12a, 5/12b, 5/12c, 5/12d, 5/34, 5/34a and 7/3

(c) Acquisition of rights: 5/14c, 5/14d, 5/14e, 5/14f, 5/37

The Applicant has requested that NH justify the need to retain rights in relation to these plots. We will work with the Applicant but it should be for the Applicant to justify why the extinguishment of NH's rights is necessary.

Planning Act 2008

The Infrastructure Planning (Examination Procedure) Rules 2010

Application by Oxfordshire Railfreight Limited for the Oxfordshire Strategic Rail Freight Interchange Development Consent Order

Planning Inspectorate Reference Number: TR050008

DEADLINE 1: SUMMARY OF WRITTEN REPRESENTATION SUBMITTED ON BEHALF OF NATIONAL HIGHWAYS

---

1 INTRODUCTION

1.1 This is a summary of the Written Representation submitted by National Highways' ("**NH**") to the application by Oxfordshire Railfreight Limited (**"Applicant"**) for an order granting development consent for the Oxfordshire Strategic Rail Freight Interchange ("**Project**"). The Applicant seeks development consent for the proposed authorised development described in Schedule 1 of the draft DCO ("**Authorised Development"**).

1.2 A full Relevant Representation [**RR-100**] has been submitted by NH and the Written Representation updates the Relevant Representation. A separate summary of the Written Representation has not, therefore, been provided as NH's latest position is set out in the Written Representation. section 2 of the Relevant Representation [RR-100] explains the role of National Highways and the specific strategy duties and Licence conditions NH needs to comply with and reference to the Relevant Representation should be made in that regard.

1.3 Since the submission of the Relevant Representation [**RR-100**] discussions have continued with the Applicant and as noted above the Written Representation seeks to provide an update to the matters set out at length in the Relevant Representation.

2 THE IMPACT OF THE PROPOSED DEVELOPMENT ON THE SRN

Traffic Impacts and Proposed Mitigation

2.1 The Project incorporates major capacity enhancement works on the SRN; on the M40 at Junction 10 and Junction 9, and on the A43 between M40 Junction 10 and Baynard's Green Roundabout. These are required to mitigate the impact of development-related traffic on the safe and effective operation of the SRN.

2.2 The Applicant has worked collaboratively with NH over several years to demonstrate the forecast impact of the proposed development on the SRN and to develop appropriate mitigation solutions. NH is content that the modelling has been carried out appropriately and forecast impacts on the SRN have been demonstrated satisfactorily.

2.3 Further work is required to confirm that the proposed mitigation designs are acceptable and compliant with the Design Manual for Roads and Bridges ("**DMRB**"). The current position is:

(a) a Stage 1 Road Safety Audit (RSA1) has been carried out and NH is reviewing it before the designer's response to address the observations can be completed;

(b) several DMRB departures need NH approval and are currently being processed;

(c) the Walking, Cycling and Horse-riding Review (WCHAR) is now agreed by NH.

2.4 NH welcomes the Applicant's inclusion in the dDCO of a scheme for the Barleymow Roundabout on the A43. The Applicant team identified during the latter stages of the modelling, significant queuing and congestion and safety issues caused at this location as a consequence of additional capacity being provided at Baynard's Green and a combination of increased traffic arising from the proposed development in conjunction with other proposed developments and the rerouting of traffic from local roads. There is an existing collision cluster at the roundabout and conditions are expected to be particularly severe under a cumulative scenario, when the Project in combination with other developments.

2.5 NH supports in principle the Applicant's proposal for an intervention at Barleymow Roundabout to be brought forward under a "monitor and manage" and direct funding arrangement. NH is now satisfied that the proposed solution is appropriate to mitigating the forecast impacts. Further work is needed to agree the cost estimates for the work. In addition, NH has some comments on the specific details of the "monitor and manage" proposal which need to be

resolved alongside the legal mechanisms in the DCO. NH expects this work to be concluded collaboratively in the coming weeks.

Phasing and Construction traffic

2.6 NH supports the Applicant's proposal to deliver the mitigation work in two phases in principle but, on reviewing the information provided in the Transport Assessment, requires further information to understand the impact of the proposal on the safe and efficient operation of the SRN. NH and the Applicant are in ongoing constructive dialogue to advance the above outstanding points.

Construction Management Documents

2.7 NH is now satisfied on these documents.

Travel Plan

2.8 NH is now supportive of the Travel Plan on the basis that the dDCO is to include NH as a member of the Sustainable Transport Working Group.

3 PROTECTING THE SRN AND PROTECTIVE PROVISIONS

3.1 The SRN is a critical piece of economic infrastructure, vital to the nation's connectivity. NH is required to ensure the effective operation of the SRN and to protect and improve the safety of the network. As a minimum, wherever the SRN is impacted the Protective Provisions included within a development consent order need to ensure that:

- NH is held harmless from the impact of third party development;
- NH's procedures that have been put in place for the protection of property and persons are adhered to in accordance with NH's strict requirements on network occupancy;
- any works carried out to the highway, on NH land, underneath the highway, above the highway and to apparatus forming part of the highway estate should be approved by NH and certified as complete by NH on completion of the works;
- financial security is in place to ensure that so that, if the Applicant defaults or gets into financial difficulty, NH can restore the SRN to its pre-works condition and NH is fully indemnified (backed by financial security) for any loss or damage to the SRN or the highway estate as a result of the works;
- NH's approval is secured before exercising any powers under the DCO in relation to the SRN or the highway estate (such approval not to be unreasonably withheld) to enable proportionate rights and reservations to be secured for the protection of the SRN through private treaty;
- that emergency procedures be agreed for NH to access the SRN to carry out works or remove dangerous obstacles resulting from the Authorised Development which pose a risk to life.

3.2 These provisions are included in the NH protective provisions, which are were appended to the Relevant Representation [RR-100] at Appendix 1 ("**NH's Template Protective Provisions**").

3.3 NH considers that without protective provisions that align with NH's Template Protective Provisions, there is a considerable risk of serious detriment to the SRN, as any damage or injury to the SRN or wider highway estate would require funding to rectify that is not within NH's budget. There is no recourse to public funding for emergency works of this nature and a reserve of funding is not available. Without prejudice to whether the Authorised Development would

cause a serious detriment to the SRN, it remains the case that the public purse should not be left to meet or subsidise costs of impacts caused by third party development to the SRN.

3.4 The protective provisions included in the Applicant's draft DCO are not yet agreed, and concerns remain in relation to:

(a) wording of some of the articles, where powers are to be exercised over the SRN or on land over which NH controls, NH's consent needs to be secured but NH also needs to be able to grant that consent subject to conditions and the terms of its protective provisions.

(b) The other outstanding issue is the form of security. NH require an on-demand bond or cash deposit of 200% of the cost of the works to ensure that it has "on-demand" funds are available should it need to step-in and complete works on the SRN or in the event of the Applicant (or an entity benefiting from the transfer of benefit provisions in the dDCO) defaulting on obligations to make payments to NH, indemnify NH for any loss or expense or to cover the costs of NH as NH do not hold a budget to cover any costs arising from the proposals. NH would draw the ExA's attention to the Gatwick Airport Northern Runway Project DCO which was made last Autumn [TR020005]. The provisions of an uncapped indemnity in favour of NH were considered alongside the provision of the bond by both the ExA and the SoS. The required bond was included to avoid serious detriment to the carrying on of NH under s127 of the PA2008. It was agreed by the ExA and the SoS that it is not appropriate for a public sector agency to potentially fund a private sector burden. The same is true of this Project and the protective provisions need to be updated accordingly.

(c) Timescales for NH to issue certificates – the Applicant is looking for specific timescales in lieu of the drafting "as soon as reasonably possible".

(d) On the indemnity included in the PPs the Applicant is seeking a duty on NH to mitigate its losses. NH must be held harmless for the construction, maintenance and operation of the Authorised Development and any resultant impacts and it is common practice for statutory undertakers to be indemnified in such circumstances. It should not be for the public purse to cover instances of loss or damage occasioned by third party works. The addition of this duty risks creating a dispute and serious detriment to NH.

(e) The Applicant is looking for wording that commits NH to adopt certain operational land owned by NH in lieu of the compulsory acquisition of the same. This is addressed further below under the heading of compulsory acquisition.

4 COMMENTS ON THE DDCO [APP-139]

4.1 NH's Relevant Representation [**RR-100**] included a table of provisions included within the dDCO which are of specific concern to NH. NH note that Oxfordshire County Council ("**OCC**") in their role as local highway authority have also raised concerns on similar matters. The Applicant has responded to NH on those concerns, largely asserting that NH has adequate protection either through the Protective Provisions in the draft DCO or in the Article itself. With the various street powers in Part 3 of the dDCO, for example, the Applicant has noted that various articles make reference to the consent of the Street Authority. The reference to consent should, however, record that the relevant street authority may attach reasonable conditions to any consent. This is the wording that is adopted in Article 12(4). Not including this wording where there are others references to the street authority being permitted to attach reasonable conditions to such consent creates ambiguity. The Applicant's response that the drafting mirrors other DCOs is not acceptable. This is a case where there are significant interactions and works on and adjacent to the SRN and NH's operational land and NH need to have appropriate protections

4.2 NH has asked for various articles in Part 3 to be included in paragraph 7(2) of its standard Protective Provisions, because paragraph 7(2) provides that the stated Article may not be exercised without NH's consent where it relates to works on the SRN or on land which NH has an interest (such land being operational land). The paragraph goes on to note that NH may require the undertaker to provide details of proposed road space bookings and submit a traffic management scheme. This is critical where powers are being exercised over the SRN. Any approval may also be given subject to any conditions as NH considers necessary (paragraph 7(4)).

4.3 If the Applicant is not willing to update the Articles, then paragraph 7(2) of NH's Protective Provisions need to include the relevant Articles. This is the case for Article 10 and 14. Articles 22, 23, 24, 26, 29, 30, 31, 35, 36, 37, and 49.

4.4 Separately there is the issue of deemed consent. There are a number of articles which contain deemed consent provisions which would apply where NH does not provide its consent or approval to any provisions under the order within 42 days of it being requested where no response is received.

4.5 NH is concerned with the deemed consent given the safety implications of works being carried out to or under the SRN that may have bypassed its approval processes. This is a fundamental issue of public safety that should not be compromised to enable a private developer to achieve a quicker build programme. NH has statutory obligations to behave reasonably and support sustainable development and so it should not be forced to work under the pressure of deemed consent. The potential implications from a safety perspective of something going wrong far outweigh the Applicant's case for such a provision. NH's position is that after 28 days, further correspondence should be provided to NH noting the deeming provisions and then deemed consent would only apply after a further period of 28 days.

4.6 The effect of this is to prevent the Promoter from exercising powers over the SRN or land in which NH has an interest with deemed consent only applying where further notification has been provided to NH. This ensures that open dialogue between the parties occurs so that NH has control over the operations being carried out on its network. This is critical from a safety perspective and to maintain the integrity of the asset. As a public body, NH is under a duty to act reasonably, and this is expressly provided in paragraph 7(4) and 7(7) of NH's protective provisions.

4.7 NH has also made specific comments on the Requirements as follows:

(a) Requirement 3 (amendments): where NH has approved or been consulted on a document, it should also approve or be consulted on any amendment. NH would expect to approve any change to the CTMP. The drafting of Requirement 3 also creates an inconsistency. The discharge of Requirement 10 needs highway authority approval of P-CEMPs for highway works, but Requirement 3 as drafted provides that the local planning authority alone approve amendments.

(b) Requirements 7 and 8 (design and phasing of highway works): NH has not yet agreed the proposed triggers.

(c) Requirement 10 (P-CEMPs): NH would wish to approve all phase-specific CEMPs, not only those for highway works, because they cover matters such as lorry routing.

(d) Discharge procedure, paras 1–2: NH would wish for its position re deemed consent here too. The 10-day limit for requesting further information is also too short.

5 COMPULSORY ACQUISITION

5.1 The Book of Reference [**APP–145**] lists a number of plots which form part of the SRN but which no compulsory acquisition is proposed (by way of example plot 1/21). The Applicant's

Statement of Reasons [**APP-143**] confirms that this is land which is existing adopted public highway over which the Applicant proposes only to carry out highway works or "street works" under the DCO, and therefore land rights are not required. NH endorses that position.

5.2 There are plots included in the Book of Reference that are owned by NH but which are not adopted highway. The plots are operational land and the Applicant proposes to carry out the highway works only on this land. NH understands that the purpose of including the land for permanent acquisition is so that this land can then be dedicated to NH as public highway. This is, however, unnecessary and disproportionate, as NH can consent to the Applicant entering this land to undertake the highway works, subject to compliance with NH's protective provisions in respect of the highway works. The dDCO and NH's protective provisions then deal with approvals and final certificates and the highway works will become maintainable at the public expense. The Applicant has otherwise proposed that such land is adopted by National Highways prior to works commencing. This would mean that the land would benefit from the highway works and street works powers in the DCO and will not need to be compulsorily acquired. The precise mechanisms in respect of these plots is under discussion but there should certainly be no need to permanent acquire the plots concerned. NH does require a clear list of the plots that fall within this category.

5.3 The Book of Reference also lists subsoil plots within the local highway for which National Highways continues to have an interest due to the local highway being created by way of a Side Roads Order. These plots include 3/63, 3/64, 3/64a and Plot 4/7. Since this land is not required for the operation of the SRN NH expects to be able to agree to the transfer of these plots by way of agreement.

5.4 Temporary possession powers are then sought over one plot in NH's ownership namely plot 3/31. This plot is the access to the Cherwell Valley Motorway Service Area and NH understands that access is required for the tying in of works 15A and 15B. NH would not want access being taken without NH understanding of the traffic management measures that would be put in place in relation to access over this plot and how the Motorway Service Access Area will remain open. The temporary possession powers listed at article 35 are very wide and include setting up construction compounds. This would clearly not be appropriate in this location. NH would not want temporary possession being taken without its consent and the necessary approvals required by its Template Protective Provisions applying.

5.5 Temporary possession is also sought over plot 3/70, 5/31, 5/35, 5/36 and 5/37a where NH has a right of access associated with the maintenance of boundary features. NH needs to be able to exercise those rights to the boundary fence should that be necessary, whilst the Applicant is in possession of the land.

5.6 NH also needs to ensure that its rights are not extinguished or overridden under the powers included in the dDCO for that purpose. The Applicant has noted to NH that NH has rights in the following plots:

(a) Temporary use: 3/70, 5/35, 5/36, 5/37a, 5/39a, 3/3;

(b) Acquisition of land:_5/12, 5/12a, 5/12b, 5/12c, 5/12d, 5/34, 5/34a and 7/3

(c) Acquisition of rights: 5/14c, 5/14d, 5/14e, 5/14f, 5/37

The Applicant has requested that NH justifies the need to retain rights in relation to these plots. NH will work with the Applicant in relation to this issue but it should be for the Applicant to justify why the extinguishment of NH's rights are necessary.