OXFORDSHIRE
STRATEGIC RAIL FREIGHT INTERCHANGE

Applicant's Responses to Other Parties' Comments on the dDCO

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On behalf of
Oxfordshire Railfreight Limited

October 2026

Applicant's Responses to Other Parties' Comments on the Draft DCO

1. **Introduction**

1.1 This note sets out the Applicant's responses to comments made at Deadline 1 by Oxfordshire County Council & Cherwell District Council, the Environment Agency and National Highways on the drafting of the draft Development Consent Order ("DCO"). It addresses the principal issues that arise across the parties' comments, explains the Applicant's drafting approach and identifies the matters that remain under discussion. Detailed responses are attached at **Appendix 1**.

1.2 The Applicant has engaged with each of those bodies throughout the pre-application period and since the commencement of the Examination. That engagement has resulted in detailed tables recording the parties' respective positions and in a number of amendments to the draft DCO. This note is intended to supplement those tables by drawing together the Applicant's position on recurring or significant issues, particularly where the Applicant does not consider that a proposed amendment is necessary or appropriate.

1.3 The Applicant's initial drafting approach was to use recently made DCOs as a starting point because their wording has been considered during examination and accepted by the Secretary of State. It is not considered appropriate that well established precedent is adapted where it is unnecessary, simply because third parties have identified provisions that they would prefer to perfect, placing the Applicant in a less advantageous position or with more onerous restrictions when it is seeking to deliver, with private funds, a nationally significant infrastructure project. Where necessary, the Applicant has prepared bespoke drafting to reflect the specific requirements of this project, including article 26 (compulsory acquisition) and the Requirements in Schedule 2. The Applicant has also refined previous drafting where this reduces potential ambiguity. This approach has been applied consistently throughout the draft DCO.

2. **Adding third parties as a consultee to Requirements**

2.1 OCC, the EA and NH have each requested to be named as consultees in various Requirements. Naming a body would impose a mandatory consultation obligation on the approving authority (which will be Cherwell District Council in the majority of cases), removing its discretion to determine whether that body's input is necessary for the particular Requirement. The Applicant considers that this should be imposed only where consultation with the named body is clearly justified by the subject matter of the Requirement. For example, floodplain compensation and contamination fall squarely within the EA's regulatory remit, and the EA is therefore named as a consultee in Requirements 22, 28 and 29. Where a specific need for consultation has not been established, it is the Applicant's view that the approving authority should retain responsibility for identifying the bodies whose input is required. The absence of a named consultee does not prevent the approving authority from consulting any body whose input it considers necessary.

3. **Attaching conditions to approvals**

3.1 The Applicant does not agree that every approval under Part 3 (Streets) should be capable of being made subject to conditions.

3.2 Both NH and OCC have raised the point about certain Articles in Part 3 allowing the highway authority or street authority to attach conditions to its approval. By way of example, Article 12(4) (temporary closure, alteration, prohibition, diversion or restriction of use of streets), the undertaker must not temporarily close, prohibit the use of, alter or divert certain streets 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". The following provisions also include an ability to attach conditions to consents –

3.2.1 Article 17(7) (speed limits);

3.2.2 Article 18(2) (traffic regulation); and

3.2.3 Article 22(3) and 22(4) (discharge of water).

3.3 The principal purpose of these articles is to regulate temporary or operational activity that may affect the highway network. It is therefore reasonable for the relevant consent to be subject to conditions. For example, a condition under article 12 may restrict a street closure to particular times of day to avoid unacceptable disruption.

3.4 In contrast, there are other provisions in the draft DCO which require the consent of a consenting body, but which do not expressly state that such consent may be subject to conditions, namely –

3.4.1 Article 10(1) (power to alter layout, etc., of streets): the authority's consent is concerned with whether the alteration should go ahead (noting that this power is limited to the 'main site' only as defined in Article 2 and therefore is limited in scope). The details of design, construction standards and reinstatement are already controlled by the Requirements and by the protective provisions;

3.4.2 Article 14 (accesses): the consent is an approval of a means of access. Technical matters such as visibility splays and construction standards are dealt with through the detailed design approvals under the Requirements and protective provisions; and

3.4.3 Article 23 (authority to survey and investigate the land): the works are minor, temporary and investigative. The article already contains safeguards, including notice to owners and occupiers and compensation for loss or damage.

3.5 The Applicant's approach is to identify the matters requiring control under each consent or approval and whether those matters are already regulated by the Requirements or protective provisions. Where those provisions provide the necessary controls, the Applicant considers that an additional power to impose conditions would duplicate the approval regime. Nor is that, in the Applicant's view, an appropriate approach legal drafting – it could create uncertainty and/or duplication.

3.6 In particular, where Articles relate to the carrying out of permanent, physical works, the Requirements and the protective provisions in Parts 2 and 3 of Schedule 14 set out the regime for approval of the design and of operational issues such as road space booking and programme timings. Should the Articles be amended to allow for the imposition of conditions, the highway authorities would have two parallel routes by which to control the use of the

highway, with the risk of overlapping or inconsistent controls. The matters which the highway authorities may control under Schedule 14 are set out in detail and have been the subject of extensive negotiation between the Applicant and the authorities. That control is deliberately not unlimited: the principle of the works will have been considered during the Examination of the application, and the highway authorities' controls are therefore intended to address matters such as safety and the efficient operation of the highway network, rather than to reopen whether the works should proceed.

4. **Time periods**

4.1 The Applicant has revised two time periods in the dDCO in response to comments made by OCC, notwithstanding that its original drafting followed the PINS Advice Note. The Applicant increased the time for discharge of Requirements from 42 days to 40 business days (effectively an increase from six weeks to eight weeks) and increased the time within which the discharging authority may request further information from 10 business days to 15 business days (effectively an increase from two weeks to three weeks).

4.2 The Applicant has not extended the 42-day period within which a street, highway or traffic authority must determine an application for consent under the Articles before deemed consent applies (including Articles 10(2), 12(7), 14(3), 18(8), 22(9) and 23(6)). Those consents are narrower in scope than the discharge of Requirements. The period also runs only from receipt of an application accompanied by all relevant information, and deemed consent applies only where the application states that the deemed consent provisions apply to it. The authority therefore has a full 42 days to consider a complete application and is clearly on notice of the consequences of not responding. Although some made DCOs contain longer periods, others contain shorter ones, and the Applicant considers that 42 days strikes an appropriate balance between proper consideration and avoiding delay to a nationally significant infrastructure project.

5. **Applicant's Response to National Highways Written Representation**

5.1 **Ongoing engagement:** The Applicant and National Highways have continued discussions on the drafting of the DCO and protective provisions since ISH1. On 8 October 2026, ahead of Deadline 1, the Applicant provided National Highways with a revised table of comments on the DCO articles. National Highways' written representation does not appear to address all of the Applicant's comments, and the Applicant has therefore set out its position on the outstanding points below.

5.2 **Conditions attached to approvals:** National Highways seeks amendments so that every article requiring the approval of a traffic or highway authority permits that approval to be given subject to conditions. For the reasons set out under "Attaching conditions to approvals" above, the Applicant does not consider that a general conditioning power is necessary or proportionate and respectfully requests that the Examining Authority retains the present approach which has been accepted in made DCO including those cited in the Explanatory Memorandum.

5.3 **Deemed consent:** As to deemed consent, the Applicant is pleased to see that NH accepts the principle of deemed consent. However, NH is seeking an amendment to require the Applicant to give NH notice after 28 days that, in a further 28 days, deemed consent will apply if no response is provided. Rather than being included as an obligation in the DCO (a statutory instrument), this can be addressed by NH's own internal procedures, for example by simply diarising the deemed consent date when it receives a request for approval.

5.4 **Condition surveys:** National Highways requires a pre-condition survey of any structures and assets to be carried out prior to commencing works to the highway. Before the provisional certificate is issued (after which the maintenance period begins), the Applicant must arrange for a re-survey. The Applicant is liable for any damage caused to the structures and assets as a result of its works. The Applicant accepts the principle of this where such damage is directly attributable to the Applicant's works. However, it has re-considered this wording as its concern was that it could be interpreted widely and capture fair wear and tear or damage caused by third parties (other than the Applicant's contractors for which the Applicant notes it would be liable). The Applicant has therefore made some changes to this drafting.

5.5 **Compulsory Acquisition**

5.5.1 The Applicant's approach to the compulsory acquisition of NH's land, as set out in the Statement of Reasons (Document 4.1/APP-143) and confirmed in the Applicant's comments on Relevant Representations (Document 9.1/PDA-007), is as follows:

5.5.1.1 **No compulsory acquisition on adopted SRN** — Highway works and street works powers under the DCO provide the necessary power for these works and therefore no land interests are required;

5.5.1.2 **Protective provisions mechanism for NH operational (but not adopted) land** — The protective provisions include drafting under which NH agrees to adopt certain operational land on which highway works are to be carried out, meaning the Applicant can rely on the highway powers in the DCO without compulsory acquisition. The principle is agreed by NH but the precise mechanism remains under discussion;

5.5.1.3 **Voluntary agreement for non-operational NH land** — The Applicant has identified four plots of non-operational land which it proposes be subject to voluntary agreement, and it notes from NH's written representation that NH expects to be able to agree to the transfer of these plots by way of agreement;

5.5.1.4 **Land required only temporarily** — Temporary possession, subject to specified safeguards; and

5.5.1.5 **Land over which NH holds access rights only** — Access to be preserved through the protective provisions or alternative access provided.

5.5.2 **Land-status review.** To support discussions, the Applicant provided National Highways with a spreadsheet identifying every plot in which it has an interest and with shapefiles for the Land Plans. National Highways has indicated that several plots may have transferred to OCC under detrunking orders. The Applicant is verifying ownership, but that exercise does not prevent the parties from progressing the land discussions. Since Deadline 1, the Applicant has also provided an updated table identifying the proposed action for each plot, including those proposed for adoption as highway. National Highways' response on those proposed actions remains awaited.

5.5.3 **Adoption rather than temporary possession.** National Highways has suggested that temporary possession might be used as an alternative to the Applicant's proposed adoption mechanism. The Applicant considers adoption to be the more straightforward and appropriate mechanism because the relevant works form a permanent extension of, and improvement to, the strategic road network.

5.5.4 The Applicant understands NH's suggestion to be that the Applicant would use temporary possession powers to enter the land and carry out the relevant highway works (pursuant to the protective provisions), following which NH would adopt the works in accordance with the protective provisions. The Applicant considers adoption of the land to be more appropriate. It would allow the Applicant to rely on the highway powers alone, rather than also exercising temporary possession powers, in respect of which NH seeks a consent requirement and compensation would be payable. If NH adopts the land, as initially discussed and as the Applicant understood had been agreed in principle, there is no need to rely on temporary possession powers.

5.5.5 Further, Article 35 also requires temporarily occupied land to be restored to the condition agreed in writing with the owner and provides compensation for loss or damage – which should not apply to land that then becomes adopted highway. Those provisions would overlap with the more detailed indemnity, repair and reinstatement regime in the protective provisions. Adoption avoids uncertainty about the interaction and priority of the Article and the protective provisions.

5.5.6 **Plot 3/31.** Temporary possession powers are sought over plot 3/31, which provides access to the Cherwell Valley Motorway Service Area for the tie-in of Works 15A and 15B. As physical works will be carried out on the plot, those works will be subject to the protective provisions. The Applicant's preference is for the protective provisions to record National Highways' consent in principle to temporary possession of this plot, rather than to impose a further obligation prohibiting use of the temporary possession power without consent. The principle can be agreed during the Examination, while detailed design, road-space booking, programming and related matters remain subject to National Highways' approval under the protective provisions.

5.5.7 **Access rights over other plots.** Temporary possession is also sought over plots 3/70, 5/35, 5/36, 5/37a and 5/39a, over which National Highways holds access rights associated with the maintenance of boundary features. National Highways wishes to preserve its ability to exercise those rights while the Applicant is in possession. The Applicant considers that continuity of access, or suitable alternative access where required, can be secured through the protective provisions.

Appendix 1

1. **Applicant's Response to National Highways comments on the draft DCO submitted as part of its written representation**

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**	**Applicant's Response at Deadline 2**
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 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 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.	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. 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.	This article does not require amending as it already requires consent pursuant to para (2): *(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.*	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 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.	This Article applies only to the "main site" (as defined in Article 2), none of which forms part of the SRN. Its purpose is to enable the Applicant to alter the layout of streets within the main site, for which the Applicant will be the street authority. Its scope is, therefore, very limited. To the extent that the Applicant is not the street authority in relation to any streets within the 'main site': - If works under Article 10 require a street to be temporarily closed, altered or diverted, the Applicant would need to use the powers under Article 12, which requires the highway authority's consent and allows for conditions to be attached; - the Article must be read alongside the protective provisions. With regard to NH in particular, the protective provisions apply to any work on the SRN or land in which NH has an interest. They require various details to be submitted and approved prior to any works, the following of which are particularly relevant here: • a stage 1 and stage 2 road safety audit; • a programme of works; • detailed design; • details of the proposed road space bookings; • a scheme of traffic management; • the scope of all maintenance operations (routine inspections, incident management, reactive and third party damage); and • a condition survey and regime of monitoring. The protective provisions are comprehensive, and allowing conditions to be imposed through the Article would

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Article	**Drafting**	**NH's RR comments**	**NH's understanding of the Applicant's position**	**NH's further comments**	**Applicant's Response at Deadline 2**
					cut across the detailed framework which has been subject to extensive negotiation and discussion.
Article 14 (accesses)	This Article is included to allow for new access to be provided or existing 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. 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.	This article provides the Applicant with powers to form and lay out means of 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. Please also see our comments at the end of this table in relation to deemed consent.	Where the access is set out in Schedule 6, consent is not required. This access will already have been 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 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	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 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.	Firstly, the Applicant notes that this wording is the same as that in the EMG2 dDCO, in respect of which NH confirmed it was content with all matters relating to the DCO. The Applicant has considered NH's comments but maintains that no amendment is required to the Article. This is because where an access forms part of the 'specified works' in Part 2 of Schedule 14, its details will fall to be approved pursuant to that Part 2. For ease of reference, 'specified works' is defined as: *"specified works" means so much of any work, including highway works, street works, surveys and signalisation, authorised by this Order including any maintenance of that work, as is undertaken on the strategic road network or land in which National Highways has an interest and "specified work" shall be construed accordingly;* This is a very wide definition and would include the creation of accesses which require physical works on the SRN or land in which NH has an interest. The formation or alteration of any access affecting the SRN therefore remains subject to the protective provisions, under which the detailed design, timing, road space booking and other relevant controls will be addressed through the approval process. The Applicant therefore does not consider that any amendment to the Article is necessary. As a general point, each consent connected with temporary interference may be given subject to reasonable conditions: Article 12(4) (temporary closures), Article 17(7) (temporary speed limits) and Article 18(2) (traffic regulation). By contrast, the permanent physical powers are governed by a consent that must not be unreasonably withheld (Article 10(2) and Article 14(3)), and by

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					Schedule 14, which would apply to physical works. This is consistent with many made DCOs.
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 unreasonably withheld or delayed.	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 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.	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.* 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.	The definition of 'strategic road network' expressly includes drainage infrastructure, and 'specified works' include any authorised work (including maintenance) carried out on the SRN or on land in which NH has an interest. The definition of 'condition survey' also includes CCTV surveys of 'specified drains'. Accordingly, the Applicant considers that the protective provisions apply to any proposed use of, or works affecting, NH drainage infrastructure. Any discharge would also remain subject to the consent requirement in Article 22(4), and NH may impose appropriate terms and conditions. Again, the Applicant notes this provision is the same as that in the very recent EMG2 dDCO, to which NH confirmed agreement.
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 surveys or investigations, trial holes, bore holes, ecological or archaeological investigations and place	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	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	The Applicant notes that this wording is the same as that in the EMG2 dDCO, in respect of which NH confirmed it was content with all matters relating to the DCO. Notwithstanding the above, the Applicant has considered NH's further comments.

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	leave or remove apparatus on land in this regard.	investigations and 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 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.		Provisions (paragraph 7(2) of NH's template Protective Provisions.	It should be noted that the Applicant amended this Article at Deadline 1 to provide: *(6) No surveying, monitoring or investigation to which paragraph (1) refers may be carried out under this article in land located within the boundary of any highway without the consent of the relevant highway authority.* The Applicant's proposal to NH is that NH adopts as highway its land which is operational. This would mean that such land falls within the 'boundary of the highway'. In any event, the Applicant notes that the definition of 'specified works' in Part 2 of Schedule 14 includes surveys. It is therefore not necessary to amend the Article further.
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 or works under this article affect the SRN or any land NH has an interest in.	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.	The Applicant's proposal to NH is that NH adopts as highway its land which is operational. This would mean that such land falls within the 'boundary of the highway'. In addition, as noted above, the definition of 'specified works' applies to land in which NH has an interest. Should protective works be required, these will therefore be subject to the protective provisions. Again, the Applicant notes that this wording is the same as that in the EMG2 dDCO, in respect of which NH confirmed

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Article	**Drafting**	**NH's RR comments**	**NH's understanding of the Applicant's position**	**NH's further comments**	**Applicant's Response at Deadline 2**
		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.			it was content with all matters relating to the DCO.
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. 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.	-	These powers should not be exercised without NH's consent. See further NH's comments on compulsory acquisition below.	The Applicant has carried out a further review of the plots in which NH has an interest and has prepared an updated table with a proposed way forward in respect of each plot. NH will see that the Applicant proposes voluntary agreement in relation to the four plots of non-operational land which are proposed to be compulsorily acquired and of which NH is the freeholder. For NH's operational land, the Applicant proposes adoption under the protective provisions rather than compulsory acquisition, and no compulsory acquisition is proposed of the adopted SRN. The Applicant's overall approach is set out in section 6 of the main body of this note.
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 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		See further NH's comments on compulsory acquisition below.	As stated above, the Applicant has carried out a further review of the plots in which NH has an interest and has prepared an updated table with a proposed way forward in respect of each plot.

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**	**Applicant's Response at Deadline 2**
		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 acquisition of the land or rights, or the date of entry, whichever is earliest.	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.	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. 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.	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.	The rights of NH which the Applicant has identified are set out in the Book of Reference. The Applicant acknowledges that NH has several rights to maintain boundary features. The Applicant considers that these can be addressed via the protective provisions.
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— (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.	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 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.	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.	Please see the Applicant's response in respect of Article 30 above. NH's rights to maintain boundary features can be preserved through the protective provisions, and the Applicant's approach to plots over which NH holds access rights is set out in paragraph 6.4 of the main body of this note.

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**	**Applicant's Response at Deadline 2**
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 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.	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. 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.	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 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	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 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.	The Applicant suggests that temporary possession can be agreed now, and that agreement reflected in the protective provisions. The protective provisions would then govern the actual use of the land during that temporary possession. The Applicant sent a table of plots to NH which confirms where temporary possession is required. NH is asked to confirm whether it agrees to temporary possession of this land, subject to the protective provisions.
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 maintain the authorised development. At least 14 days' notice must be given (save in emergencies).	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. 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.	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).	Article 36(1) is expressly subject to Parts 2 and 3 of Schedule 14 (protective provisions), and the definition of 'specified works' in Part 2 of Schedule 14 expressly includes the maintenance of any work carried out on the SRN or on land in which NH has an interest. Any maintenance affecting the SRN or such land will therefore require NH's approval under the protective provisions. The Applicant does not, therefore, consider an amendment necessary. If NH considers there is a specific gap, the Applicant requests that NH provides proposed wording for its consideration.
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	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	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	The Applicant disagrees. This Article features in many made DCOs and is expressly made subject to the protective provisions in Schedule 14. Any works affecting the SRN or land in which NH has an interest would constitute 'specified

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Article	**Drafting**	**NH's RR comments**	**NH's understanding of the Applicant's position**	**NH's further comments**	**Applicant's Response at Deadline 2**
	over, any Order land belonging to statutory undertakers; (b) construct the authorised development in such a way as to cross underneath or over apparatus belonging to statutory undertakers and 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.	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.		7(2) of the NH's template Protective Provisions).	works' and would therefore require NH's approval under Part 2 of Schedule 14.
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 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.	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.	The Applicant amended Article 49 at Deadline 1 to add a new paragraph (9) which states: *Where a tree or shrub is within the strategic road network or within highway maintainable by the local highway authority, paragraph (1) is subject to Parts 2 and 3 of Schedule 14 (protective provisions).* In any event, as stated elsewhere in this response, the definition of 'specified works' includes works to land in which NH has an interest. Should the Applicant need to remove a tree on such land, this Article would give it the power to do so but it would not negate the protective provisions, which would still require compliance.
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 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	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.	The Applicant disagrees. The wording used features in many made DCOs and has therefore been confirmed as acceptable by the Secretary of State. Further, this wording is in a statutory instrument and therefore certainty is required. Determining whether or not a matter is outside NH's control could be open to dispute. The drafting in the DCO is deliberately simple for this reason: a fee is paid and, if the discharging authority does not respond within the set timescale, the fee must be returned. It provides an incentive for the discharging authority to ensure that a determination is made and, from the Applicant's perspective, gives force to the timescales.

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Article	**Drafting**	**NH's RR comments**	**NH's understanding of the Applicant's position**	**NH's further comments**	**Applicant's Response at Deadline 2**
	(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				
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 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	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.	The Applicant's view is that it is clear that such works would fall within the definition of 'specified works' as defined in Part 2 of Schedule 14 and therefore no amendments are required 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**	**Applicant's Response at Deadline 2**
			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.		

2. **NH has also made specific comments on the Requirements as follows:**

Requirements (Schedule 3)			Applicant Response
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 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.	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. 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.	The Applicant has considered this but does not propose to amend Requirement 3. This Requirement is drafted to mirror that in many made DCOs and is a general power to amend approved details so as to avoid the need to apply for further consents or variations to the DCO (consistent with the approach of a DCO as a 'one stop shop'). To add statutory bodies to Requirement 3 will complicate the drafting and is not necessary, as it is within the local planning authority's discretion to consult with third parties where it considers it necessary.
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.	The Applicant notes this but kindly requests comments as soon as possible. The drafting has been in the DCO since statutory consultation and although it has been subject to some amendments since, its effect is largely the same.
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.	The Applicant does not agree to this. Not only does this have the potential to delay approval of the details, but NH has a very specific statutory remit and it would not be appropriate to extend its approval to all construction works. Should the local planning authority consider that a P-CEMP (which does not relate to highway works) requires input from NH, it is able to approach NH directly.
Discharge of Requirements - Schedule 4			
Paragraph 1 and Paragraph 2	Paragraph 1 provides:	See NH's comments regarding deemed consent above. NH would want its deemed consent provisions to also be applicable here.	The Applicant does not agree to amend the deemed consent wording as this would result in different timings for different statutory bodies. Fundamentally, as a statutory instrument, the DCO is intended to create

Requirements (Schedule 3)			Applicant Response
	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).	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.	a precise regime in order to facilitate the construction of this nationally significant infrastructure project. NH is able to set its own internal reminders when it receives a request for approval under the DCO, and it is not necessary to legislate for the Applicant to remind NH of this mechanism. As to the period for requesting further information, the Applicant has, in response to comments from OCC, increased this from 10 business days to 15 business days, and the overall decision period has been increased from 42 days to 40 business days. The Applicant does not consider that the further-information period should be removed, as it gives the undertaker certainty that an application is complete.

3. **Applicant's Responses to OCC's and CDC's comments on the draft DCO in the Local Impact Report**

Article	Comment (wording is taken verbatim from the relevant representation unless stated otherwise)	Applicant's response	Response of OCC and CDC ("the Councils")	Applicant's response
Cover page	Since DCOs are not subject to parliamentary scrutiny and are not laid before Parliament, the words "*Laid before Parliament*" (between "*Made*" and "*Coming into force*") should be left out.	The Applicant is content to remove this and this will be reflected in the next draft of the DCO submitted to the Examining Authority.	The Councils welcome this response.	No Further Action (NFA)
Art.2 (interpretation)	The definition of "bridges" is "unless the context indicates otherwise, the bridges shown on the bridge plans;". For the avoidance of doubt, where does the context indicate otherwise?	The Applicant agrees that there are several instances where different context applies and suggests that this can be resolved through: • the deletion of the definition; • where the context requires reference to bridges on the bridge plans, to add that drafting; and • in all other instances, the plain meaning of bridge will apply	The Councils look forward to considering these amendments when the next version of the draft DCO is submitted.	For ease of reference the Applicant confirms that the definition of 'bridges' was removed in the DCO submitted at Deadline 1. The Applicant reviewed the DCO and did not consider that any further changes were needed as other references to bridges already referred to the bridge plans, where relevant.
Art.2 (interpretation)	The definition of "chief officer of police" refers to "Oxfordshire Police Force". Should the reference be to "Thames Valley Police"?	The Applicant agrees and has made this change. This will be reflected in the next draft of the DCO submitted to the Examining Authority.	The Councils welcome this response.	NFA
Art.2 (interpretation)	The definition of "commence" includes wide-reaching carve-outs which seem to go beyond the Explanatory Memorandum's **[APP-140]** description of them as "either non-intrusive or low impact" (page 14). While OCC note that certain requirements[1] apply to all works, including the carve-outs, it is not always clear how the carve-outs will be controlled. Similarly, it is not clear how the draft Order **[APP-139]** ensures the carve-outs are non-intrusive or low impact. OCC are aware of instances on other projects where inappropriately managed carve outs for purportedly minor operations have resulted in significant works being carried out without any control by the local planning authority. OCC want to avoid this happening here. OCC would comment as follows on the following carve-outs – **"(a) site preparation, site security, ecological mitigation works and clearance works;"** Absent any restriction on "site preparation" works, the scope here for large scale ground level changes is a concern. The prospect of	It should be noted that this definition is well precedented (see the A122 Lower Thames Crossing Order 2025 and Gatwick Airport (Northern Runway Project) Development Consent Order 2025). In some cases, the activities may need to be carried out in order to ensure that applications to discharge requirements (which require the provision of details) are properly informed. Further, it is reasonable for certain works to be excluded so that they may be carried out by the Applicant before a pre-commencement requirement is discharged, thereby minimising the construction timetable. However, the Applicant is considering the definition in light of the comments made by OCC and CDC and will contact the Councils to discuss this further directly. In the meantime, in response to two of the specific points raised: - Article 23 is not intended to ensure that works will be non-intrusive or low impact. Its purpose is to provide the undertaker with the power to survey and investigate land. However, what it does require is for notice to be given on the owners and occupiers of the	**Background** The Councils do not dispute the fact that certain activities may need to be carried out before the development is "commenced" for the purposes of the Requirements. The Councils are keen to ensure that, per the Explanatory Memorandum, the activities are "either non-intrusive or low impact". During a meeting between the Applicant and the Councils, the Councils explained their concerns with the drafting of the definition of "commence" as follows – **Paragraph (a)** (a) site preparation, site security, ~~ecological mitigation works~~ and clearance works; Ecological mitigation works Regarding "ecological mitigation works", by article 12(2) (habitat management and monitoring plan and biodiversity net gain) no part of the authorised development which will include such works is to commence until a phase-specific habitat management and monitoring plan for that part has been approved by the local planning authority. The Councils do not understand why ecological mitigation works carried out at the pre-commencement stage should be treated differently. The Councils consider these words should be removed from sub-paragraph (a) and understand the	Taking each of the points in turn: **Ecological mitigation works** Ecological mitigation works have been removed from the general exclusions in the definition of "commence". Specific exceptions have instead been included in Requirements 9, 23 and 31. Ecological mitigation works is carved out from Requirement 9 (detailed design approval), therefore such works may commence prior to the discharge of that requirement. This is because such works will not be subject to detailed design (which includes matters such as signage, embankments, bin stores, site levels). These works are also carved out from Requirement 23 (foul water drainage). This is on the basis that these works are not relevant to foul drainage. Finally, the works are carved out from Requirement 31 (employment), meaning that these works may be carried out before the preparation and approval of an employment scheme for construction. This is because ecological mitigation works will involve minimal construction activity, if any. **Site security**

[1] For instance, the energy strategy (Requirement 18); the carbon management plan (Requirement 19); Flood risk and surface water drainage (Requirement 20); HGV routeing (Requirement 24); and Construction hours (Requirement 25).

Article	Comment (wording is taken verbatim from the relevant representation unless stated otherwise)	Applicant's response	Response of OCC and CDC ("the Councils")	Applicant's response
	wide-ranging works also applies in respect of "clearance works". Regarding "ecological mitigation works", while OCC appreciate that ecological surveys might be required before commencement, "ecological mitigation works" should not. OCC consider these words should be removed from sub-paragraph (a). **"(c) removal of hedgerows, trees and shrubs listed in Schedule 13;"** While OCC appreciate the removal works would be subject to articles 49 to 51, as mentioned below, OCC are not comfortable with these provisions, as currently drafted. **"(b) environmental surveys and monitoring;** **…** **(d) investigations for the purpose of assessing ground conditions;** **(e) erection of construction plant and equipment;** **(f) geotechnical or ground contamination investigation;"** OCC understand sub-paragraphs (b), (d), (f) and (g) are subject to article 23 (authority to survey and investigate the land); however, it is not clear how article 23 will ensure these works will be "either non-intrusive or low impact". In addition, in the light of the proposed disapplication of regulation 4 (requirement for consent) of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, is there an indication in any of the application documents of the possible scale of the display of advertisements under carve-out (h)? Finally on this point, OCC consider it would be helpful if the Applicant could direct us to the relevant parts of the ES which assess the carve-out activities.	land and to provide for compensation to be payable for any loss or damage. This is a control on the exercise of the power. - As to (h), *display of site notices and advertisements,* the disapplication of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 only applies to the advertisements on the main site as shown on the parameters plan	Applicant intends to remove them in the next draft of the DCO. The Councils would welcome this change. Site security The Councils have asked for information regarding the proposals for "site security": for instance, whether flood lighting will be used. They have also asked for more information about the type of clearance works which are proposed. The Councils look forward to receiving that information in due course. **Paragraph (c)** (c) removal of hedgerows, trees and shrubs listed in Schedule 13 (removal of trees and hedgerows); While the Councils appreciate the removal works would be subject to articles 49 to 51, as mentioned below, the Councils are not comfortable with these provisions, as currently drafted. **Article 49 (felling or lopping of trees and removal of hedgerows)** For example, in respect of article 49, OCC would want, for reasons of safety, to be able to consent to the removal of trees on the highway and propose that a new paragraph is added after existing paragraph (6) – **"(6A) The undertaker may not pursuant to paragraphs (1) and (3) fell or lop a tree or remove hedgerows within the extent of the publicly maintainable highway without the prior consent of the highway authority"**. A similar provision is included in article 26(5) of the Daventry International Rail Freight Interchange Alteration Order 2014 (SI 2014/1796); article 37(5) of the East Midlands Gateway Rail Freight Interchange and Highway Order 2016 (SI 2016/17); article 42(4) of the Northampton Gateway Rail Freight Interchange Order 2019 (SI 2019/1358); article 41(5) of the West Midlands Rail Freight Interchange Order 2020 (SI 2020/511); and in article 38(5) of the draft East Midlands Gateway Phase 2 and Highway Order (**[REP5-008D]** of that project's Examination library). This provision is also precedented in several other DCOs including article 38(5) of the Byers Gill Solar Order 2025 (S.I. 2025/934), article 38(6) of the Mallard Pass Solar Farm Order 2024 (S.I. 2024/796), and article 36(5) of the Longfield Solar Farm Order 2023 (S.I. 2023/734). A similar new paragraph should also be included in articles 50 and 51. **Article 50 (trees subject to tree preservation orders)** The Councils understand that the TPO removal powers are intended to relate only to TPOs made between now and the commencement of the development. For clarity, the	The Applicant considers that this should have its plain meaning. It is reasonable that the Applicant should be able to secure the site at an early stage. However, the Councils are referred to the CEMP (Requirement 10) which requires various details to be submitted prior to commencement. This includes details of any temporary or task lighting. The Applicant could not, therefore, install such lighting without the approval of the local planning authority. **Paragraph (c)** Article 49 (felling or lopping of trees and removal of hedgerows) The Applicant included the following wording in Article 49 in the DCO submitted at Deadline 1: *(9) Where a tree or shrub is within the strategic road network or within highway maintainable by the local highway authority, paragraph (1) is subject to Parts 2 and 3 of Schedule 14 (protective provisions).* This means that the consent of the highway authority will be required. The Applicant considered it appropriate to make it express that the protective provisions will apply as the Applicant would require access to the highway and this could, in turn, require a scheme of traffic management to be prepared. The Applicant also points out that a new subparagraph (6) was added which states: *In carrying out works pursuant to paragraph (1), the undertaker must comply with British Standard 3998:2010, "Tree Works Recommendations".* This does not apply to trees identified in Schedule 13 as their removal has already been assessed as necessary. The Applicant has amended the definition at Deadline 2 so that the removal of trees and hedgerows listed in Schedule 13 is to be carried out in accordance with paragraphs 21.42 and 21.43 of the CEMP which ensure that the tree removal is governed by the necessary habitat protection method statement. Article 50 The Applicant amended this article at Deadline 1 to state the following, which it considers has the same effect as the Councils' proposed wording: *The undertaker may fell or lop or cut back the roots of any tree or shrub within the Order limits and specified in Part 1 of Schedule 13 (removal*

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			Councils consider article 50(1) should be amended to reflect this as follows – "The undertaker may fell or lop or cut back the roots of any tree or shrub within or overhanging land within the Order limits which is subject to a tree preservation order**, which was made after the date this Order is made,** if it reasonably believes it to be necessary to do so to prevent the tree or shrub from obstructing or interfering with the construction, operation, use or maintenance of the authorised development or any apparatus used in connection with the authorised development". The principle is precedented, though the drafting differs slightly, in several orders including; article 38(1) of the Thorpe Marsh Gas Pipeline Order 2016 (SI 2016/297); article 24(1) of the A122 (Lower Thames Crossing) Development Consent Order 2025 (SI 2025/462); and article 40(1) of the Springwell Solar Farm Order 2026 (SI 2026/419). **The definition of "commence" and the CEMP** When exercising its powers under the paragraph (c) carve-out of the definition of "commence" (and indeed, under articles 49 to 51) the Councils consider the Applicant should commit to – • avoiding impacts on nesting birds during the springtime; • lopping or cutting back any tree, shrub or hedgerow before deciding to fell it; and • exercising those powers in accordance with British Standard 5837:2012 (*Trees in relation to design, demolition and construction. Recommendations*) which governs how trees are surveyed, evaluated, and protected during development. (The Council appreciates that Requirement 11 (provision of landscaping) includes a similar provision; however, that will not apply to any hedgerow, tree or shrub which is to be removed as part of the pre-commencement works). The Councils consider these measures should be included in a control document and consider the construction environmental management plan ("**CEMP**") **[APP-189]** would be the most appropriate one. A corresponding amendment should be made to paragraph (c) as follows – ""commence" means, unless the context indicates otherwise, to carry out any material operation, as defined in section 155 of the 2008 Act (when development begins), forming part, or carried out for the purposes, of the authorised development other than operations consisting of— …	*of trees) which is subject to a tree preservation order if it reasonably believes it to be necessary to do so to prevent the tree or shrub from obstructing or interfering with the construction, operation, use or maintenance of the authorised development or any apparatus used in connection with the authorised development.* Definition of "commence" and the CEMP As explained above, the Applicant has amended the definition at Deadline 2 so that the removal of trees and hedgerows listed in Schedule 13 is to be carried out in accordance with paragraphs 21.42 and 21.43 of the CEMP which ensure that the tree removal is governed by the necessary habitat protection method statement. The avoidance of impacts on nesting birds is a legislative requirement and it is not necessary to specifically require that in the DCO. Construction plant and equipment The Applicant has agreed to change 'erection' to 'placement' so this part of the definition reads as follows: placement of construction plant and equipment; **Paragraph (e)** The Applicant notes the Councils' concerns and has amended this at Deadline 2 to state: diversion or laying of services required for the purposes of construction but not within the existing highway which is maintainable at the public expense by the local highway authority or National Highways; **Paragraph (f)** The Applicant made this change at Deadline 1. **Paragraph (h)** Site notices The Applicant has amended this to limit it to the display of *construction* site notices only, and the reference to advertisements has been removed. In the interests of health and safety, the Applicant needs to be able to display such notices immediately. As to OCC's concern about illuminated or reflective notices, any notices within the highway would be subject to the local highway authority protective provisions, and any temporary lighting is a matter to be approved as part of the relevant P-CEMP under Requirement 10. **Paragraph (j)**

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			(c) removal of hedgerows, trees and shrubs listed in Schedule 13 (removal of trees and hedgerows) **and which must be carried out in accordance with paragraph [xxx] of the CEMP**;" This amendment would require the relocation of the definition of CEMP from paragraph 1 of Part 1 of Schedule 2 to article 2(1). **Paragraph (e)** Having discussed this point with the Applicant, OCC understands these pre-commencement activities are intended to be carried out in accordance with the local highway authority protective provisions ("LHAPPs"). OCC consider this should be mentioned in paragraph (e), in the same way that article 15(1) applies the LHAPPs to the highway works. Paragraph (e) should be amended as follows – ""commence" means, unless the context indicates otherwise, to carry out any material operation, as defined in section 155 of the 2008 Act (when development begins), forming part, or carried out for the purposes, of the authorised development other than operations consisting of— … (e) diversion or laying of services **(which must be completed in accordance with the relevant provision of Part 3 of Schedule 14 (protective provisions)**; **Paragraph (f)** (f) ~~**erection**~~ **placement** of construction plant and equipment; A drafting point. The Councils consider "placement" rather than "erection" would be a better word here (because "erection" suggests the putting up of a structure, something which is not the proposal here). The Councils understand this change will be made in the next draft of the DCO. The Councils would welcome this change. **Paragraph (h)** (h) the display of site notices ~~**and advertisements**~~; The Councils understand the Applicant wants to display health and safety notices (and similar notices) and that it attends to remove the reference to advertisements. The Council would welcome that change. Moreover, OCC would want to consent any illuminated works on the highway. If notices are illuminated or reflective, there is potentially a safety issue for OCC. **Paragraph (i)** (i) works for the protection and redevelopment of the threshing barn as shown on the listed building drawings,	Threshing barn The Applicant refers to its response to ExQ1.5.1 in which it justifies the exclusion of the threshing barn works from the definition of 'commence'. As to setting, setting considerations of the barn would ultimately only have a bearing on the design of the other elements (road, warehouses, landscaping) as they come forward, not the works proposed to the barn itself, which would be unchanged. Carrying out works to the threshing barn at an early stage avoids further delays with restoring the building and further loss and damage to historic fabric – the setting considerations and any impacts on the barn from the wider development would be considered as the different elements are progressed.

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			While the works on the barn itself do not cause concern, CDC in particular considers there is a risk that the setting of the building could be compromised if work is allowed to proceed without detailed consideration of adjoining land plots. Owing to this, CDC considers more detail around the setting of the building is still needed, notably entrance details off the new spine road, elevation changes around the site and in relation to neighbouring land plots and site boundary treatments.	
iArt.3(1) (development consent granted by the Order)	The Applicant states in paragraph 5.15 of the Explanatory Memorandum [APP-140] that it may be necessary for the Applicant to use powers outside the Order limits, "particularly in relation to the powers to survey land (Article 23) and to carry out protective works to buildings, structures and trees (Article 24)". OCC is considering the exercise of powers outside the Order limits and might comment further in due course.	Whilst the Applicant notes that OCC is considering the exercise of powers outside of the Order limits and may comment further in due course, the Applicant has reiterated below its previous comments to OCC on this provision made pre-application in relation to the specific Articles mentioned: The exercise of such powers outside of the Order limits would still be constrained by and subject to Articles 23 and 24, for example, both Articles provide that the powers only apply to land 'affected by' the proposed development. It is possible that land outwith the Order limits may be 'affected by' the proposed development. Permitting works in these instances is a less intrusive proposal than seeking temporary possession or compulsory acquisition. The Applicant has provided precedent for this in the Explanatory Memorandum and this approach was also authorised recently in The A122 (Lower Thames Crossing) Development Consent Order 2025. Whilst there are some examples of works/powers needed outside of the Order limits (see below), given the size and scale of this project (and the nature of a DCO being that some details are to be agreed post the grant of the DCO), it is necessary for the Applicant to be able to exercise this power outside of Order Limits in order to deliver the scheme. It is not intended that these powers extend to substantive activities such as 'earthworks' which are governed by requirements. In addition to surveying and monitoring, Article 23 also authorises the undertaker to • make trial holes to investigate the nature of the surface layer and subsoil and to remove samples; • to carry out ecological and archaeological investigations; and	The Councils are grateful for this explanation. Turning to article 23 (authority to survey and investigate the land), OCC notes that paragraph (1)(d) would allow the undertaker to carry out ecological or archaeological investigations "within the Order land or [on land] which may be affected by the authorised development". The scope for carrying out potentially invasive works (particularly the archaeological investigations, which could involve substantial below-ground works) is very broad. It would be helpful to know the circumstances in which the Applicant considers it would need to do this. Moreover, does the Applicant have an idea of the extent to which land "may be affected by the authorised development"?	The Applicant has agreed an archaeological mitigation strategy with OCC, and Requirement 14 secures compliance with it. The strategy controls the scope and nature of any excavation and sets out the aims and objectives of the archaeological investigation, and the Applicant would refer OCC to it. The Applicant does not anticipate that any ecological investigations will be intrusive. The Applicant cannot confirm the extent of land which 'may be affected by the authorised development' and this would not necessarily become known until investigative works were being carried out. The wording of Article 23(1)(d) is standard and follows a significant number of made development consent orders, including those referred to in the Explanatory Memorandum. The power is required to enable the Applicant to undertake the ecological and archaeological investigations necessary to deliver the authorised development without obtaining separate consents or landowner agreements for each investigation, which could delay the scheme. The surveys and investigations will also provide information about site conditions to inform the detailed design of the proposed development, including its landscaping and earthworks. Restricting investigations to the Order limits would not reflect the fact that archaeological, ecological and ground-condition effects, for example, do not necessarily follow clear physical boundaries. Any investigations carried out under this power would remain subject to the notice requirements and the obligation to pay compensation in Article 23.

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		• place apparatus and welfare facilities for use in connection with the surveying and monitoring of the land. In relation to Article 24, the Article includes reference to protective works to trees, as the Applicant is aware from its surveying work of at least one instance where there is a veteran tree outside of the Order Limits and therefore it may need to carry out protective works to prevent damage. It would not be proportionate to include this tree within the Order Limits as the land is not required for the purposes of the development. Both Articles require the Applicant to pay compensation if required as a result of any works carried out.		
Art.4 (parameters of authorised development)	Article 4(2)(d) provides that in respect of bridges, the Applicant may deviate vertically from the levels shown on the bridge plans to a maximum of 1.5 metres upwards or downwards. OCC's structures team are considering whether this is an acceptable level of deviation. It is expected that an update on the structures team's position will be included in the Local Impact Report.	The Applicant requires OCC's response on this point. This drafting has been in the draft DCO since statutory consultation. The Applicant requests that OCC kindly confirm its position without further delay.	OCC's solicitors confirmed to the Applicant's solicitors on 28 September that OCC's Structure and Highways Agreements Team are content with the limits of deviation on the basis there is a mechanism for agreeing greater limits if required. From an EIA perspective, however, OCC does not consider that, as the relevant highway authority, it is best placed to decide whether a greater limit of deviation would give "to any materially new or materially different significant effects on the environment that have not been assessed in the [ES] …" per article 4(4)(b). The determination of such a matter would ordinarily be a matter for the local planning authority, with OCC being consulted on the same. In the light of this, OCC considers (and CDC agrees) that article 4(4) ought to be amended so that the local planning authority is the decision-maker and the relevant highway authority is the consultee. OCC's proposed amendments to article 4(4) are set out below. On a drafting point, it will be noted that OCC has proposed the deletion of the words "on matters related to the local planning authority's functions". By article 2(1), "local planning authority" means CDC and, by article 2(10), a reference to CDC means CDC in its capacity as local planning authority. (Those provisions make similar provision in respect of OCC as local highway authority). Since the LPA is CDC in its capacity as LPA, it seems unnecessary to further state that CDC in its capacity as LPA will determine matters related to its LPA functions. That would seem obvious from article 2(1) and (10) as set out above. **Article 4(4)** (4) The maximum limits described in paragraphs (2) and (3) do not apply to constrain the authorised development when it is demonstrated by the undertaker, on application, to ~~—(a)~~ the local planning authority's satisfaction ~~on matters related to the local planning authority's functions,~~ and the local planning authority **(following consultation with**	The Applicant appreciated the confirmation of OCC's position ahead of the hearings in September. The Applicant has made this change and understands this article to now be agreed. For ease of reference, Article 4(4) now reads: *(4) The maximum limits described in paragraphs (2) and (3) do not apply to constrain the authorised development when it is demonstrated by the undertaker, on application, to the local planning authority's satisfaction and the local planning authority (in consultation with the relevant highway authority) certifies accordingly, that a deviation in excess of these limits would not be likely to give rise to any materially new or materially different significant effects on the environment that have not been assessed in the environmental statement or in any updated environmental information supplied under the 2017 EIA Regulations*

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			the relevant highway authority) certifies accordingly, that a deviation in excess of these limits would not be likely to give rise to any materially new or materially different significant effects on the environment that have not been assessed in the environmental statement or in any updated environmental information supplied under the 2017 EIA Regulations**,** ~~**; and**~~ ~~**(b) the relevant highway authority's satisfaction on matters related to the relevant highway authority's respective functions and the relevant highway authority certifies accordingly, that a deviation in excess of these limits would not be likely to give rise to any materially new or materially different significant effects on the environment that have not been assessed in the environmental statement or in any updated environmental information supplied under the 2017 EIA Regulations.**~~	
Part 3 (streets)	Generally, OCC have several concerns with the contents of Part 3 (and also with paragraphs 2 (Highways Act 1980) and 3 (New Roads and Street Works Act 1991) of Schedule 15 (miscellaneous controls)), including (for example) instances where the Applicant may carry out certain works without consent (see, for example article 9(1) (street works)) and how OCC will be resourced to carry out additional highways-related work proposed by the draft DCO. It is hoped that OCC's concerns can be addressed in suitable protective provisions ("PPs"). Draft PPs for the protection of the local highway authority are included at Part 3 of Schedule 14 to the draft DCO **[APP-139]**; however, in their current form, these are not satisfactory. Discussions are ongoing with the Applicant, and it is hoped a reasonable set of PPs can be agreed during the Examination.	These articles are commonplace in DCOs. Article 9(1) is, as confirmed by Article 9(2), subject to the protective provisions for the benefit of National Highways and OCC as local highway authority. The Applicant does not follow OCC's concern as to how it will resource additional highways work and this concern is therefore unfounded. The Applicant has been engaged in negotiating protective provisions with OCC for many months now. Before carrying out street works, the Applicant must put in place security for the benefit of OCC. Subject to ongoing negotiation between the parties, this will be either a bond or a parent company guarantee. In addition, the Applicant is also required to fund OCC's administrative and supervision costs related to such works. The Applicant would also add that the works listed in Article 9(1) may only be exercised for the 'purposes of' the proposed development.	OCC are aware that the "street" provisions in different DCOs have been drafted in different ways to reflect (amongst other things) concerns expressed by the local highway authority before and during the Examination. As stated in OCC's Relevant Representation, it is hoped OCC's concerns can be addressed in suitable protective provisions.	The Applicant notes that negotiations in relation to protective provisions are ongoing and is hopeful that OCC's concerns can be addressed there, as stated. A legal drafting meeting has been arranged with the Councils for 26 November.
Art.10 (power to alter layout, etc., of streets)	The dDCO includes several deeming provisions i.e. if a determination is not made within a certain period, it is deemed granted. For example, by article 10(1)(a) (power to alter layout, etc., of streets) an application to increase the width of the carriageway is, per article 10(2) subject to a deeming provision. Since the street authority must ensure proper consideration is given so that it does not affect the safety of the carriageway, it is	As OCC states, the street authority must ensure proper consideration is given so that altering the layout of a street does not affect safety. The ability to consider that is not in any way removed by deemed consent. Deemed consent only applies to the Articles (not DCO requirements) and if OCC does not reply within 42 days. This is subject to an application made under Article 10 including a statement that deemed consent will apply and subject to the application being accompanied by 'all relevant	OCC maintains its position in respect of the insufficiency of time provided under articles 10(2) (power to alter layout, etc. of streets); 12(7) (temporary closure, alteration, prohibition, diversion or restriction of use of streets); 14(3) (accesses); 18(8) (traffic regulation); 22(9) (discharge of water); 23(6) (authority to survey and investigate land). OCC notes that the corresponding periods in solar DCOs are usually much longer than those proposed here, despite the instant application being, in the Applicant's words, "materially more complex to deliver than a solar farm". If it is more complex for the Applicant, it is unlikely to be more	The Applicant has considered OCC's further comments but does not propose to change its position, and its original response remains. Whilst the precedent for longer periods is noted, as the Applicant has previously pointed out, there is also precedent for shorter periods. The Applicant has addressed this in section 4 (Time periods) of the main body of this note.

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	questionable whether deemed consent is appropriate in these circumstances. *[removed for brevity]*	information'. An application which did not provide sufficient information for a determination would not trigger the start of the 42 day period. There is, therefore, ample opportunity for OCC to consider safety. If OCC does not consider that it has been able to consider safety in such time, it must acknowledge the request for approval from the Applicant and confirm that it is being considered. Deemed approval is sought in order to drive efficiency and ensure that matters are not left to lie on file. Network Rail, the statutory undertaker for railways, has agreed deemed consent and indeed this features in its precedent protective provisions. The Applicant notes that the promoter of the Botley West Solar Farm has agreed a longer determination period; however, that approach is not relevant to this application. A strategic rail freight interchange is materially more complex to deliver than a solar farm and depends on multiple approvals from a range of statutory bodies. Delivery of the authorised development cannot be held in abeyance because of a failure to respond. By contrast, The Dogger Bank South East and West Offshore Wind Farms Order 2026 (SI 2026/577), which relates to a significantly more complex scheme, provides for deemed consent after 28 days. As this is a DCO application subject to Examination in which OCC is heavily participating, and has been involved in pre-application discussions for a number of years, the development is not an unknown for the Council. At the time details are submitted for approval, the project will already have been heavily discussed and the proposals reviewed. This will not, therefore, be an instance where OCC is receiving a request for approval 'out of the blue'. The Applicant therefore does not consider that revised time periods in the articles are appropriate. The Applicant is, however, willing to agree to an extended time period for the discharge of the DCO Requirements. This was discussed at a meeting between the parties on 8 September where it was discussed that an agreeable period would be 40 working days. The Applicant confirms that it will make this change in the next version of the dDCO to be submitted to the Examination.	straightforward (than a solar project) for a discharging authority. A longer period than 42 days is needed here to allows OCC to do its work properly and to reduce the risk of OCC having to refuse an application for consent when close to the deadline. A refusal would cause greater delay than providing a reasonable amount of time for the decision maker to deal with applications. OCC would invite the Applicant to reconsider its position here.	

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Art.10 (power to alter layout, etc., of streets)	OCC agrees with the inclusion of sub-paragraph (3) i.e. – "(3) An application made under paragraph (1) must include a statement that the provisions of paragraph (2) apply to that application". [remove for brevity]	The Applicant agrees to the inclusion of the following wording where deemed consent is used: **"(4) If an application for consent under paragraph (1) does not include the statement required under paragraph (3), then the provisions of paragraph (2) will not apply to that application**"	The Councils welcome this response.	NFA
Art.12 (temporary closure, alteration, prohibition, diversion or restriction of use of streets)	Article 12(7) (temporary closure, alteration, prohibition, diversion or restriction of use of streets) demands that an application for consent under that article must be determined within 42 days, otherwise consent is deemed to be granted. In addition to this, article 12(4) demands consent must not be unreasonably withheld or delayed. With the deeming provisions included there is no need to also say that the approvals must not be "unreasonably withheld or delayed". In the Sea Link draft DCO **[REP6-005]**, the applicant (National Grid Electricity Transmission) has included "unreasonably withheld or delayed" in the equivalent provision and the host authorities have sought the deletion of these words. At Deadline 6 of the Sea Link DCO examination, the ExA submitted its Schedule of ExA's recommended amendments to the applicant's dDCO [PD-024]. The ExA has recommended the deletion of these words for following reasons – "The ExA considers that the inclusion of "which shall not be or must not be unreasonably withheld or delayed" (or a variation of such words) would add ambiguity rather than clarity". OCC agrees and considers article 12(4) should be amended as follows – "(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." It will be remembered that the Applicant has proposed the timeframe for determining an application and we can assume the	The Applicant disagrees with the contention that if deemed consent applies, that it is not necessary to require a decision not to be unreasonably withheld or delayed. Deemed consent is a fallback intended to address a situation where there has not been a decision. As a nationally significant infrastructure project, decisions on applications for approval should be made expeditiously. assuming all relevant information has been provided, in order that the project may progress. Whilst the Applicant notes the ExA's comments on the Sea Link draft DCO, respectfully, the Applicant does not agree and notes that this wording has featured in many made DCOs, including: • The Dogger Bank South East and West Offshore Wind Farms Order 2026 (SI 2026/577) • A63 (Castle Street Improvement, Hull) Development Consent Order 2020 (SI 2020/556) Article 12(4) • London Luton Airport Expansion Development Consent Order 2025 (SI 2025/463) Article 13(4) • M5 Junction 10 Development Consent Order 2025 (SI 2025/795) Article 15(4) The Applicant further notes that such wording is included in hybrid acts, see: • The High Speed Rail (London – West Midlands) Act 2017 • The High Speed Rail (West Midlands – Crewe) Act 2021 The Applicant considers OCC's concern that the 'unreasonably withheld or delayed' wording could expose local authorities to criminal liability under section 161 of the Planning Act 2008 is misconceived. Section 161(1)(b) creates an offence for a person to fail to comply	**<u>Background</u>** OCC does not disagree that deemed consent is a fallback and that decisions should be made expeditiously, provided all relevant information has been provided. Here, the Applicant has chosen 42 days because it considers (though OCC disagrees) that it is an appropriate time limit. In the light of this, it is difficult to understand how a consent could be "unreasonably withheld or delayed" if determined within a period chosen by the Applicant. **<u>The Applicant's precedents</u>** The point made in the first paragraph of OCC's "Comment" row is that where a provision includes a deeming provision, there is no need for it also to state that approval must not be "unreasonably withheld or delayed". Turning to the equivalent provision of article 12 of the instant Order in the Dogger Bank South East and West Offshore Wind Farms Order 2026 (SI 2026/577) (i.e. article 12 (temporary closure of streets)), OCC notes that while paragraph (6) includes a deeming provision, the words "unreasonably withheld or delayed" do not feature. OCC has considered the Decision Letters and Examining Authority Reports and Recommendations for the Dogger Bank, A63 Castle Street, London Luton Airport and M5 Junction 10 Orders, each of which is referred to in the Applicant's response. None of these documents includes any discussion of OCC's point i.e. that there is no need for a deeming provision to be accompanied by a statement that approval must not be "unreasonably withheld or delayed" and so it can be assumed that OCC's point was not considered during the Examination of these Orders, or during their subsequent determination by the Secretary of State. The position is different here where OCC has raised this drafting as a point of concern. Turning to the hybrid Acts, OCC notes there is one reference to "withheld or delayed" in the High Speed Rail (London – West Midlands) Act 2017 (paragraph 55(2) of Part 5 of Schedule 33, which sets out protective provisions for the drainage authority); however, it is not used in the context of a deeming provision. The position is the same in the High Speed Rail (West Midlands – Crewe) Act 2021 (see paragraph 45(2) of Schedule 32).	The Applicant maintains that the 42 days is a fallback. For deemed consent to apply, there must be a set time period and this is what the 42 day period applies to. Turning to precedents, please see Article 16 of the Dogger Bank DCO. Article 16(3) provides that consent must not be unreasonably withheld or delayed. Paragraph (9) provides the deeming provisions. Further, many DCOs include a general article which applies to the giving of approvals and consents under the DCO, for example, see Article 50 of The National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024: ***Procedure regarding certain approvals, etc.*** *50.—(1) Where an application or request is submitted to a relevant planning authority, the highway authority, a street authority or the owner of a watercourse, sewer or drain for any consent, agreement or approval required or contemplated by any of the provisions of the Order such consent, agreement or approval, if given, must be given in writing, such agreement not to be unreasonably withheld.* See also: Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 2024 (Article 39) Cory Decarbonisation Project Order 2025 (Article 48) At the risk of labouring the point, this is an application for an NSIP on which the Applicant has been in discussions with OCC for a number of years. It has undergone two rounds of public consultation. It is currently subject to a six-month Examination period. At the time of submitting applications for approval pursuant to the Articles, OCC will absolutely be familiar with this development.

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	Applicant considers the timeframe acceptable. The timeframe is also accompanied by a deeming provision. In the light of this, it is difficult to see how a consent could be delayed. In addition, by section 161(1)(b) of the Planning Act 2008 it is an offence, without reasonable excuse, for a person to fail to comply with the terms of a DCO. By section 161(4)(a) a person guilty of an offence under section 161 is liable, on summary conviction, to a fine not exceeding £50,000. Is it reasonable for these words to be included in the Order in the light of the sanctions that could arise because of a breach of a DCO? It is conceivable that somebody could say that if a discharging authority, subject to the provision as currently drafted, acts unreasonably in withholding or delaying their actions, they are committing a criminal offence. And that is a very good reason why this provision should not be included. OCC is not persuaded by the need for an additional criminal sanction to regulate local authority behaviour and is unaware of evidence of dilatory behaviour by local authorities in dealing with applications for consent arising from DCOs. Local authorities understand there is a public interest in expeditious decision making and their good sense and understanding can be relied on. The words are unnecessary: the deeming provision and appeal provision are entirely adequate. Nothing else is needed. In addition to article 12(4), the words "but such consent must not be unreasonably withheld or delayed" (or similar wording) should also be omitted from the following provisions: article 22(4) (discharge of water); article 23(4) (authority to survey and investigate the land); and article 55(3) (discharge of requirements and other approvals etc).	with the terms of a DCO 'without reasonable excuse'. It is reasonable to assume that a local authority that withholds or delays consent on legitimate planning, safety, or procedural grounds would have a 'reasonable excuse' and would not be committing an offence. The Applicant considers that section 161 is directed at substantive non-compliance with DCO obligations, not at the exercise of a consenting discretion where the authority has reasons for its decision or the time taken to reach it. The Applicant is not aware of any reported case in which a local authority has been prosecuted under section 161 for withholding or delaying consent. In any event, prosecution requires the public interest test under the Code for Crown Prosecutors to be satisfied, and it is not considered likely that the Crown Prosecution Service would pursue a local authority acting in good faith in the discharge of its statutory functions. OCC's concern is theoretical and should not prevent the inclusion of standard DCO wording that has featured in numerous made Orders without incident. Finally, the Applicant points out that several statutory undertakers are comfortable with this wording, including Network Rail, which will have a significant role to play in approving details under the DCO pursuant to the protective provisions.	OCC is therefore unconvinced that the precedents cited by the Applicant are particularly relevant to the point raised by OCC. **Enforcement** Turning to enforcement, under Part 8 of the Planning Act 2008, statutory responsibility for investigating and enforcing DCO breaches lies with the relevant local planning authority. This underscores the folly of including a provision which potentially creates a criminal offence in circumstances where the prospect of enforcement is (to put it at its highest), vanishingly small. For instance, if a district council has taken X-days to make a decision and it does not consider that X is an unreasonable period (and therefore does not constitute an unreasonable delay), that authority is not going to take enforcement action against itself. OCC agrees with the Applicant's point regarding the public interest test. It is not clear how that test could be met in these circumstances. In the light of the deeming provision, the references to "withheld or delayed" are neither reasonable nor proportionate and should be omitted.	As to the final point concerning criminal liability, section 161(1)(b) applies to *a failure to comply with the terms of an order* without reasonable excuse. The Applicant does not consider that it is intended to capture the time taken by an authority to respond to an application, and an authority acting in good faith on legitimate grounds would in any event have a reasonable excuse. The Applicant has therefore set out its position and does not propose to amend this wording, which is well established in made DCOs.
Art.12 (temporary closure, alteration, prohibition, diversion or restriction of use of streets)	By article 12(4) (temporary closure, alteration, prohibition, diversion or restriction of use of streets), the undertaker must not temporarily close, prohibit the use of, alter or divert certain streets 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".	In relation to Articles that provide for 'reasonable conditions' to be attached and those which do not, the Applicant notes that conditions may be attached to the Articles which concern operational or temporary matters and not permanent, physical changes. Taking Article 12 as an example, it is appropriate for the street authority to be able to impose conditions as it will remain the street	**Background** OCC does not agree with the Applicant's distinction between (i) operational / temporary matters and (ii) permanent, physical changes as justification for the application or otherwise of reasonable conditions to a consent under certain articles. OCC's responsibility for managing streets, which the Applicant accepts justifies conditions under article 12, does not stop when works are permanent. Permanent works to	The Applicant has considered the points raised but maintains that the distinction between (i) and (ii) is justified and appropriate. The DCO applies this distinction consistently. Each consent connected with temporary interference may be given subject to reasonable conditions: article 12(4) (temporary closures), article 17(7) (temporary speed limits) and article 18(2) (traffic regulation).

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	The following provisions also include an ability to attach conditions to consents – • Article 17(7) (speed limits); • Article 18(2) (traffic regulation); and • Article 22(3) and 22(4) (discharge of water). There are other provisions in the draft Order which require the consent of a consenting body, but which are silent as to the power to attach or impose reasonable conditions, namely – • Article 10(1) (power to alter layout, etc., of streets); • Article 14(3) (accesses); and • Article 23(4) (authority to survey and investigate the land) For clarity and consistency with the drafting of articles 12(4), 17(7), 18(2) and 22(3) and (4), OCC considers articles 10(1), 14(3) and 23(4) should be amended to state explicitly that conditions can be attached to any consent issued under those articles.	authority and therefore has a responsibility in relation to the management of the street. By way of example, it could therefore be reasonable to impose a condition restricting closure during certain hours of the day. Turning to the Articles which do not provide for conditions to be attached: - Article 10: This Article concerns physical alterations to streets within the main site and at junctions. These works are subject to detailed specifications in the Schedules and protective provisions (Schedule 14), therefore the local highway authority will have approval of the detailed design. - Article 14: the locations of accesses are largely predetermined in Schedule 6, and consent for other accesses under paragraph (1)(b) is limited to whether the access is reasonably required (and requires the approval of the highway authority or street authority, as appropriate). Such accesses will be subject to the protective provisions, therefore the local highway authority will have approval of the detailed design. - Article 23: this Article provides powers for temporary surveys, investigations, and trial holes and requires 14 days' notice to owners and occupiers rather than consent. The nature of survey works is temporary and investigative—they do not permanently affect the land or require the type of ongoing coordination that would necessitate conditions.	the highway create a lasting liability, so the need to control how, when and to what standard those works are carried out persists. OCC's ability to impose conditions should apply consistently across articles 10, 12 and 14. **Article 10 (power to alter layout, etc., of streets)** The Schedules and protective provisions in Part 3 of Schedule 14 do not necessarily cover matters such as timing of the works, phasing, working hours, coordination with other proposed works, reinstatement standards etc. Works which alter the layout of streets and junctions can involve significant (temporary) disruption and a condition can appropriately manage such operational matters. If the protective provisions already deal with a matter, there would be no need to impose a condition which does the same thing and so there is no prejudice to the Applicant by making the amendment proposed by the Councils. Precedent The ability to attach conditions in these circumstances is precedented in several DCOs including article 11(3)(b) of the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (SI 2014/2384) and article 10(4) of the Fenwick Solar Farm Order 2026 (SI 2026/151). It is also included in article 14(4) of the draft Tween Bridge Solar Farm Order **[REP9-003]**. Proposed drafting OCC would propose that article 10(2) is amended as follows – "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**, which may be given subject to reasonable conditions**, ~~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~~ **received** with all relevant information, it is deemed to have granted consent". The deletion of "but such … withheld" is justified by the comments in row **[xxx]** and the replacement of "submitted" with "received" by the comments in row **[xxx]**. **Article 14 (accesses)** The power under article 14(1)(b) to create accesses which are not specified in Schedule 6 is open-ended in terms of location within Order limits which amount to 411.78 hectares (paragraph 2.2.1 of the Historic Landscape Assessment	By contrast, the permanent physical powers are governed by a consent that must not be unreasonably withheld (article 10(2) and article 14(3)), and by Schedule 14, which would apply to physical works. This point has also been raised by National Highways and therefore the Applicant has addressed it in section 3 (Attaching conditions to approvals) of the main body of this note. **Article 10** OCC states that works which alter the layout of streets and junctions can involve significant (temporary) disruption. If works under Article 10 require a street to be temporarily closed, altered or diverted, the Applicant would need to use the powers under Article 12, which requires OCC's consent and allows for conditions to be attached. It should also be noted that article 10 applies to streets within the 'main site' defined in Article 2 'as that part of the land within the Order limits comprising the areas of land shown on the works plans as Work Nos. 1 to 9 (inclusive), 29 and 30'. It is therefore limited in scope. Article 10 must be read alongside the protective provisions, and the key provisions which are relevant to OCC's concerns are addressed below: **Protective provisions** The protective provisions for the benefit of the local highway authority apply to the 'county highway works'. These are the works within Work Nos. 10, 11, 12A, 12B, 13A, 13B, 17, 18, 19, 20, 21, 23, 24, 25A, 25B, 26, 27A, 27B, 28, 33, 36 and 39 identified on the works plans, the general arrangement of which is shown on the highway general arrangement plans, and any ancillary works. The Applicant agrees that permanent works to the highway create a lasting liability and this is why such works must be designed to OCC's standards and approved by OCC before being carried out. A commuted sum is also payable in respect of any highway structure and any adoptable features to fund the cost of maintenance. The Applicant refers to the following paragraphs in Part 3 of Schedule 14 which are relevant to this issue:

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			[APP-281]). It is not clear the extent to which these have been assessed in the Environmental Statement. As currently drafted, OCC would only be able to approve whether the "undertaker reasonably requires" the access. It is not clear how (say) legitimate highway concerns about an access could be controlled in these circumstances. For instance, safety-related concerns on matters such as signage, surfacing, vehicle routing, visibility splays and removal and reinstatement when a temporary means of access is no longer needed. If there is a safety concern and there is only a choice between granting approval unconditionally and refusing it, OCC considers a responsible street authority would be more likely to refuse. A power to grant consent subject to proportionate conditions is therefore likely to benefit the Applicant. Precedent The ability to attach conditions in these circumstances is precedented in article 14(2) of the Viking CCS Carbon Dioxide Pipeline Order 2025 (SI 2025/509). Proposed drafting OCC would propose that article 14(1) is amended as follows – "The undertaker may, for the purposes of the authorised development and subject to paragraph (2)— … (b) with the approval of the relevant highway authority or relevant street authority, **to which the relevant highway authority or relevant street authority may attach reasonable conditions**, 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). A drafting point: article 14(3) refers to the authority receiving an application for "consent under paragraph (1)(b)"; however, paragraph (1)(b) refers to an "approval". OCC would suggest that there should be a consistency in the terms used.	- paragraph 3(3) no work must commence on any phase of the county highway works until the detailed design information and a programme of works in respect of that phase has been submitted to and approved in writing by the local highway authority; - paragraph 4(2) The undertaker must comply with the local highway authority's usual road space booking procedures prior to and during the carrying out of each phase of the county highway works and no county highway works for which a road space booking is required must commence without a road space booking having first been secured; - paragraph 4(9) Insofar as it does not conflict with the terms of the Order, the undertaker must, while the county highway works are being carried out, maintain the flow of traffic and safeguard the passage of pedestrians along any street on which the county highway works are being carried out, and maintain, or provide temporary alternative for all accesses (including private accesses) affected thereby or in the vicinity thereof (our emphasis) To amend the Article to provide for the imposition of conditions would cut across the protective provisions, which provide a thorough means of control for OCC in relation to the delivery of the highway works. **Article 14** The Applicant disagrees with OCC's interpretation of Article 14(1)(b). The reference to 'reasonably requires' limits where accesses may be formed. If approved, the Applicant will have the power to create new accesses in locations it reasonably requires. The approval by OCC is not qualified, save that it must not be unreasonably withheld or delayed. It would, therefore, be reasonable to refuse approval on genuine safety grounds. Where an access forms part of the county highway works (as defined), its details will fall to be approved pursuant to Part 3 of Schedule 14.

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				As to the drafting point, the Applicant agrees and has amended Article 14(1)(b) to state 'consent' rather than 'approval'. This will be seen in the draft DCO submitted at Deadline 2.
Art.13 (public rights of way - creation, substitution, stopping up and closure of level crossings)	OCC are considering the impact of this provision.	This Article has been in the draft DCO since consultation. Should OCC have any comments, the Applicant requires these as soon as possible so that it may address them before Deadline 1.	OCC's Relevant Representation **[RR-109]** sets out OCC's request for the inclusion of a PROW contribution in the section 106 agreement (see paragraphs 69 to 72). OCC maintains its position in respect of the need for this requested contribution.	The Applicant has agreed to this and it will be included in the draft Section 106 which will be submitted at Deadline 3.
Part 5 (powers of acquisition)	OCC are considering the impact of the proposed acquisition of certain of its interests and will comment on these in the LIR.	Noted. The status of the negotiations for land arrangements is detailed in the updated Land and Rights Negotiation Tracker (Document 4.4) submitted at Procedural Deadline A.	OCC's Relevant Representation **[RR-109]** sets out OCC's position in respect of the proposed acquisition of Ardley Woods Quarry (paragraphs 225 to 230). Discussions on the same with the Applicant are ongoing.	The Applicant notes this and hopes to reach agreement relating to this during Examination.
Art.28 (compulsory acquisition of land - incorporation of the mineral code)	OCC are considering the impact of this provision.	This Article has been in the draft DCO since consultation. The Applicant refers to paragraph 5.124 of the Explanatory Memorandum which explains and justifies this heavily precedented Article as follows: *This Article incorporates the 'mineral code' into the draft DCO. The effect of this is that existing minerals under land are exempt from being automatically acquired pursuant to the exercise of compulsory acquisition. It also enables the undertaker to prevent a minerals owner from working existing minerals and provides the undertaker with the ability to compensate the owner for any inability to do so as a result of the development.* Compulsory acquisition should be limited to what is necessary for the development and therefore this Article allows the Applicant to exempt minerals from being automatically acquired where they are not required for the development. The Article incorporates the mineral code which provides a statutory process for dealing with the purchase of and compensation for minerals.	OCC does not object to the drafting of article 28 and does not consider it will be affected directly by it because the OCC land which the Applicant proposes to acquire, Ardley Woods Quarry, is a backfilled quarry and therefore not something which can now be mined.	NFA
Art.35 (temporary use of land for carrying out the authorised development)	Paragraph (1)(b) allows the undertaker to – "(b) remove any buildings, apparatus, drainage, electric line, fences, debris and vegetation from that land that reasonably need to be removed in connection with the carrying out of the authorised development;" There is one listed building within the Order land, namely the threshing barn. The works	The Applicant confirms it has amended Article 35 to exclude the threshing barn. This will be included in the next version of the DCO submitted to the ExA. The term 'that land' (rather than 'the land') is used correctly in Article 35(1)(a)(i), (b), (c) and (g) as the sub-paragraphs already contain a reference to a specific piece of land and	**Threshing barn** The Councils welcome this response. **"The land" / "that land"** In the light of what follows in the third paragraph of the Applicant's response, OCC considers the reference in the second paragraph of that response to article 35(1)(b) is an	**Article 35** The purpose of this Article is to allow the Applicant to occupy the land specified in Schedule 10 (Land of which temporary possession may be taken) temporarily while the works are carried out, and also any of the land identified for the permanent acquisition that has not yet been acquired. It only applies to the Order land, as defined in Article 2. The

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	to the threshing barn form part of Work No. 9 (central hub), which are subject to requirement 15 (central hub). Paragraph (a) of that work states: "retention and development of the threshing barn as shown on the listed building drawings as a welcome building;". OCC understands the Applicant would be content to amend article 35 to make it clear that the threshing barn is excluded from "buildings" in paragraph (1)(b). OCC would welcome that amendment. A drafting point: paragraph (1)(b) refers to "that land", as do paragraphs (1)(c) and (1)(g); however, paragraphs (1)(d), (1)(e) and (1)(f) refer to "the land". It is not clear why different terms are used or what is the reason for the difference. Similarly, it is not clear what "land" is being referred to. If both "that land" and "the land" are intended to refer back to the land in paragraph (1)(a) OCC would suggest the same term (e.g. "that land") is used in each of paragraphs (1)(b) to (1)(g) and that, after (1)(h), a new paragraph is added to state – "(i) In sub-paragraphs (b) to (g) of paragraph (1), "that land" means the land referred to in subparagraph (a)". Paragraph (1)(c) allows the undertaker to – "(c) construct any permanent or temporary works (including the provision of means of access), haul roads, fencing, bridges, structures and buildings on that land;" Is the reference to bridges here to the bridges shown on the bridge plans, or is this a wider power to construct bridges?	therefore 'that land' is used to refer back to that identified parcel. However, in (b) this should be 'the land' and the Applicant has made this change. For the avoidance of doubt, the Article will read: *…remove any buildings (not including the Threshing Barn), apparatus, drainage, electric line, fences, debris and vegetation from the land that reasonably need to be removed in connection with the carrying out of the authorised development;* In relation to the reference to bridges, this is not a reference to a bridge on the bridges plans. If it were, it would be expressly stated. This should be clear once the amendment as explained in response to the query on the definition of "bridges" has been made in the next version.	error. In any event, OCC does not consider it is clear what land is being referred to in article 35(1)(b) to (h). As can be seen from OCC's "Comment" on this point, OCC considered the reference to "that land" in sub-paragraphs (b) to (g) of paragraph (1) was to all land referred to in sub-paragraph (a). This would include (i) the land specified in column (2) of Schedule 10 and (ii) any other Order land in respect of which, under the relevant legislation, no notice of entry has been served, and no declaration has been made. However, paragraph 5.148(c) of the Explanatory Memorandum **[APP-140]** states the undertaker "may enter on and take temporary possession of **the Order land** for the activities". [Emphasis added]. OCC does not consider that article 35(1)(b) – whether it refers to "that land" or "the land" – can be read as referring to "the Order land". In the light of the above, OCC would invite the Applicant to reconsider the drafting of article 35. **"Bridges"** The Councils look forward to considering these amendments when the next version of the draft DCO is submitted.	references to 'land' in sub-paragraphs (b) to (h) are referring back to the land as mentioned in (a).
Article 50(1) (trees subject to tree preservation orders)	Article 50 allows the undertaker to fell or lop or cut back the roots of any tree or shrub which is subject to a tree preservation order "within or overhanging land within the Order limits" to prevent it obstructing or interfering with the construction, maintenance, operation or decommissioning of the authorised development or any apparatus used in connection with the authorised development. Paragraphs 22.2 and 22.3 of PINS Advice Note Fifteen: drafting Development Consent Orders state –	There are no trees protected by a TPO or trees within a conservation area which are listed in Schedule 13. However, this power was included to allow works to the trees as it is possible that TPOs and conservation areas will be made between now and commencement of the development. This is set out in the Explanatory Memorandum. The Applicant considers that this is appropriate, however, the Applicant has reflected on OCC's concern and PINS' guidance on drafting development consent orders and therefore proposes to amend the Article to limit it to any trees made subject to a tree preservation order which are listed in Schedule 13.	**Article 50 (trees subject to tree preservation orders)** The Councils understand that the TPO removal powers are intended to relate only to TPOs made between now and the commencement of the development. For clarity, the Councils consider article 50(1) should be amended to reflect this as follows – "The undertaker may fell or lop or cut back the roots of any tree or shrub within or overhanging land within the Order limits which is subject to a tree preservation order**, which was made after the date this Order is made,** if it reasonably believes it to be necessary to do so to prevent the tree or shrub from obstructing or interfering with the construction, operation, use or maintenance of the	**Article 50 (trees subject to tree preservation orders)** The Applicant has amended Article 50 as explained above. **The definition of "commence" and the CEMP** Requirement 10(2) already requires each P-CEMP to include, where relevant, an arboricultural method statement and details of precautionary measures to protect habitats and species, including the timing of vegetation clearance. Article 49 also requires compliance with British Standard 3998:2010 when trees are felled or lopped. However, the Applicant recognises that (c) will allow for the removal of

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	"22.2 Applicants may also wish to include powers allowing them to fell, lop or cut back roots of trees subject to a Tree Preservation Order (TPO). This power can extend to trees which are otherwise protected by virtue of being situated in a conservation area. **To support the ExA inclusion of this power should be accompanied by a Schedule and plan to specifically identify the affected trees**. 22.3 Trees subject to TPO and/ or are otherwise protected (and likely to be affected) should be specifically identified. It is not appropriate for this power to be included on a precautionary basis. Proper identification of affected trees will enable the ExA to give full consideration to the particular characteristics that gave rise to their designation and the desirability of continuing such protection". [Emphasis added]. Part 1 of Schedule 13 to the draft DCO [APP-139] lists trees to be removed. Does this list include trees which are subject to TPOs? (Paragraph 5.250 of the EM [APP-140] cross-refers to "Schedule 13 (Felling or lopping or cutting back of trees or shrubs subject to a tree preservation order)", and this suggests TPO trees are listed; however, that is not the title of Schedule 13 in the draft Order [APP139] and it is not clear that TPO trees are included). If TPO trees which are subject to the power under article 50 are not identified, OCC considers they ought to be.	The Applicant would also like to point out, more generally, the protections for trees in the Requirements and provisions relating to their removal as follows: *Construction environmental management plan* *10.—(1) No part of the authorised development is to commence until a phase-specific construction environmental management plan ("P-CEMP") for that part of the authorised development, drafted in accordance with the principles set out in the CEMP, has been submitted to and approved in writing by the local planning authority or the relevant highway authority where the P-CEMP relates to the highway works.* *(2) Each P-CEMP must include where relevant to each phase—* *(a) the appointment of an ecological clerk of works, the role of which is described in the CEMP;* … *(e) an arboriculture method statement detailing measures to protect retained trees and hedgerows, and the method statement for any translocation of hedges, including details of built development and construction buffers and root protection areas;* … *(g) details of any precautionary measures required to protect habitats and species on site, including the timing of vegetation clearance and groundworks, buffers around watercourses, and any specific method statements required with regard to protected species; (h) details of existing and proposed landscaping which needs to be protected during construction, including any veteran trees outside the Order limits;* *Provision of landscaping* *11. No component of the authorised development on the main site which includes landscaping is to commence until a landscaping scheme for that component has been submitted to and approved in writing by the local planning authority. The landscaping scheme must be carried out in accordance with the parameters plan and the habitat management and monitoring plan and in accordance with the landscaping principles established in the main site design approach document and must*	authorised development or any apparatus used in connection with the authorised development". The principle is precedented, though the drafting differs slightly, in several orders including; article 38(1) of the Thorpe Marsh Gas Pipeline Order 2016 (SI 2016/297); article 24(1) of the A122 (Lower Thames Crossing) Development Consent Order 2025 (SI 2025/462); and article 40(1) of the Springwell Solar Farm Order 2026 (SI 2026/419). **The definition of "commence" and the CEMP** When exercising its powers under the paragraph (c) carve-out of the definition of "commence" (and indeed, under articles 49 to 51) the Councils consider the Applicant should commit to – • avoiding impacts on nesting birds during the springtime; • lopping or cutting back any tree, shrub or hedgerow before deciding to fell it; and • exercising those powers in accordance with British Standard 5837:2012 (*Trees in relation to design, demolition and construction. Recommendations*) which governs how trees are surveyed, evaluated, and protected during development. (The Council appreciates that Requirement 11 (provision of landscaping) includes a similar provision; however, that will not apply to any hedgerow, tree or shrub which is to be removed as part of the pre-commencement works). The Councils consider these measures should be included in a control document and consider the construction environmental management plan ("**CEMP**") **[APP-189]** would be the most appropriate one. A corresponding amendment should be made to paragraph (c) as follows – ""commence" means, unless the context indicates otherwise, to carry out any material operation, as defined in section 155 of the 2008 Act (when development begins), forming part, or carried out for the purposes, of the authorised development other than operations consisting of— … (c) removal of hedgerows, trees and shrubs listed in Schedule 13 (removal of trees and hedgerows) **and which must be carried out in accordance with paragraph [xxx] of the CEMP**;" This amendment would require the relocation of the definition of CEMP from paragraph 1 of Part 1 of Schedule 2 to article 2(1).	the hedgerows, trees and shrubs listed in Schedule 13 without needing to submit a P-CEMP. The removal of these trees has already been assessed in the environmental statement. Nesting birds are in any event protected under the Wildlife and Countryside Act 1981. The Applicant has, however, amended (c) to make it subject to paragraphs 21.42 and 21.43 of the CEMP but does not therefore consider that a further control document or an amendment to paragraph (c) of the definition of 'commence' is necessary over and above what has already been amended.

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		include details of all proposed soft landscaping works, including— *(a) location, number, species, size, layout, method of trees' support, plant protection measures and planting density of any proposed planting;* *(b) cultivation, importation of materials and other operations to ensure plant establishment;* *(c) details of existing trees to be retained, with measures for their protection during the construction period in accordance with British Standard 5837:2012, "Trees in relation to Design, Demolition and Construction Recommendations", and to include a schedule of remedial tree works to be carried out in accordance with British Standard 3998:2010, "Tree Works Recommendations", prior to construction commencing;* *(d) details of ecological mitigation; and* *(e) implementation timetable.*		
Article 59 (planning permissions etc.)	OCC understands this article is intended to address the possible effects of the Hillside decision (Hillside Parks Ltd v Snowdonia National Park Authority [2022] UKSC 30). OCC does not take issue with this intention. [Removed for brevity]	The Applicant has discussed this drafting with the Councils and is content to agree with this. The Applicant will include the suggested wording in the next DCO to be submitted at Deadline 1. The Applicant understands that the article is agreed subject to the addition of this wording.	OCC welcome this response.	NFA
Schedule 2 Paragraph 1 (interpretation)	The definition of "employment scheme" is precedented in the Northampton Gateway Rail Freight Interchange Order 2019 (SI 2019/1358 … [Removed for brevity]	The Applicant agrees that 'details of the reporting and monitoring of the above measures' should be sub-paragraph (f) and will make this change in the next DCO to be submitted.	The Councils welcome this response.	NFA
Requirement 2 (time limits)	OCC note that clause 4.6.1 of the draft S.106 agreement [APP1-142] requires "the Owners" to provide CDC and OCC "with written notice of the intention to Commence Development no later than 10 Working Days prior to Commencement of Development;" For OCC to ensure it has the appropriate resourcing in place to deal with the requirements, a longer notice period is required. OCC will discuss this point with the Applicant directly as part of its negotiations on the draft S.106 agreement. However, if a reasonable period cannot be agreed, OCC	The Applicant agrees to provide a longer notice period in the Section 106 agreement, such period to be agreed between the undertaker and the parties to the Section 106 agreement. The Applicant asks that OCC provides a timescale which would be suitable to it without delay so that it may be incorporated into the draft Section 106 agreement.	OCC considers **21** days would be reasonable.	The Applicant is content to agree to this period but has expressed it as 15 Working Days (which is broadly equivalent to 21 calendar days), as the draft agreement uses Working Days. This will be included in the next draft section 106 agreement to be submitted at Deadline 3.

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	might seek an amendment to the requirements to facilitate this.			
Requirement 5 (rail)	OCC and the Applicant have been in discussions in respect of this Requirement. In summary, OCC have raised the following concerns with the Applicant in respect of it • the meaning of "available for use"? • how the local planning authority will know when 232,258 square metres of warehouse have been provided; • the measures to ensure the development does not become a big logistics park, which is a particular concern for members; • how it will be demonstrated that section 26(4)(a) of the Planning Act 2008 has been satisfied (i.e. how the draft Order shows the RFI is capable of handling consignments of goods from more than one consignor and to more than one consignee); and • what provision in the Order shows that the works to ensure the rail terminal is capable of being served by W8 gauge will be complete in advance of the occupation of the 232,258 square metres of warehouse in line with paragraph 4.82 of the NNNPS. It is hoped that discussions on these points will continue with the Applicant and that OCC will be in a position to update its position in the LIR.	The Applicant has responded to these points previously but for the sake of reiterating its response for the Examining Authority, please see below: - The Applicant considers that 'available for use' has its plain meaning i.e. the rail infrastructure is ready to be used (note that the requirement states that the infrastructure must have been constructed so there is no ambiguity that 'available for use' arises post construction). However, following a meeting with OCC and the Applicant's legal representatives, the Applicant is expecting drafting on this from OCC which it will consider; - It is open to the LPA to request details in relation to this at any time and the LPA is in control of discharging requirements that will have been submitted for warehousing, therefore will have notice of when a warehouse is ready for occupation. However, the Applicant is content to provide for a specific notice obligation in the Section 106 agreement. The Applicant understands that this is agreed with the Council. - Requirement 5 provides the appropriate control that the rail terminal must be delivered before a certain amount of warehousing. - The SRFI will inherently satisfy this provision of the Act which is merely describing what an SRFI needs to be capable of doing. There is no requirement to include a provision in the DCO specifying that this must be satisfied. OCC is referred to the following application documents which address this point: **Document 5.4B/APP-163 – Planning Statement Appendix 2 (NPS Policy Compliance Tracker)** explains the development's compliance with NPS paragraph 4.89. **Document 7.2A/APP-312 – Rail Report** (paragraphs 2.3 and 6.7.1) explains that "The site is intended to provide capacity for up to 12 trains per 24 hours, initially operating with 4 trains per day within the first phase of operation, increasing over successive years	**Background** The Council's concerns with Requirement 5 can be set out in two points: first, how it will be notified when the threshold of 232,258 square metres has been reached and second, the meaning of "available for use". **(1) Notification of the threshold** Requirements are the DCO equivalent of planning conditions (section 120(2) of the Planning Act 2008). The Government's guidance *Planning Act 2008: Guidance on preparing an application: Part 3 - Contents of a draft Development Consent Order* (published 3 July 2026) states requirements, like conditions, "should … be precise, enforceable, necessary, relevant to the development, relevant to planning and reasonable in all other respects". [Emphasis added]. The Councils are concerned that Requirement 5, as currently drafted, would be difficult to enforce because it does not include a mechanism for informing the local planning authority when the threshold of 232,258 square metres has been reached. The Applicant's position is that the local planning authority should request this information; however, for the local planning authority to be able to exercise its power to request information under section 167 of the Planning Act 2008, it must appear to the authority there has been an offence under section 160 or 161 of that Act and the authority would be unable to meet that test without knowing whether the threshold had been met. Absent the ability to exercise this power, the authority would have to rely on writing at intervals to the Applicant, effectively chasing for the threshold information. This seems onerous, especially since it would be straightforward for the Applicant to supply the information in the first place. As a responsible undertaker, the Applicant will be aware when the threshold has been met because it will not want to exceed in circumstances contrary to Requirement 5. In the light of this, it should be straightforward for the Applicant to provide the local planning authority with the information. **Precedent** The Councils' request is not unusual in the context of other rail freight DCOs. For example, Part 2 of Schedule 2 to the West Midlands Rail Freight Interchange Order 2020 (SI 2020/511) ("**the West Midlands Order**") includes detailed rail requirements (Requirements 31 to 41), including a requirement to provide information at certain milestones – Requirement 33 – and a requirement – Requirement 34 – to notify the local planning authority of the date of first	**(1) Notification of the threshold** As discussed with OCC previously, the Applicant is content to include a notice provision in the Section 106 agreement. The Applicant had expected OCC's proposed wording to address this but has not received this and has therefore suggested its own drafting. This will be included in the next draft of the agreement submitted at Deadline 3. **(2) Drafting of Requirement 5 (rail)** **"… available for use"** The Applicant does not agree to this wording - the rail freight *terminal* itself will not form part of the railway network; it is the rail connections between the terminal and the Chiltern Main Line that will form part of the network. The Applicant does not accept that the milestones in West Midlands Interchange are necessary or appropriate. The Applicant's drafting is clear and straightforward. The Applicant had understood from discussions with the Councils that they were seeking to include a reference to the railway for clarity :(and the Councils had referenced the Northampton Gateway Amendment Order), but does not agree that the proposed wording is appropriate. The Applicant also refers to its response to ExQ1.5.10.

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		towards its maximum capacity." It also describes the phasing, with the initial phase deploying reach stackers across two handling sidings, equating to "a maximum capacity on site of 4 trains per siding or 8 in total." **Document 7.2C/APP-314 – GB Rail Freight Capacity Report** identifies the available rail paths, confirming that "Four return paths have been identified for services heading northwards to Crewe Basford Hall; two have been identified heading southwards to Wembley Yard and one return path has been identified heading southwards to Eastleigh (for Southampton Docks)." **Document 7.2A – Appendix E (Network Rail agreed position statement/APP-312)** states "the studies have identified that there are at least four compliant return paths per day for the SRFI (i.e., 4 paths into the site and 4 paths out of the site per day)," which have been peer-reviewed by GB Railfreight and Network Rail. - Re W8 gauge, the OxSRFI scheme provides rail access onto the Chiltern Main Line which is part of the strategic freight network. The line operates as a freight diversion route and will be cleared to Network Rail's W8 structure gauge as required by the NPS. The fact that gauging works need to be done in order to satisfy Network Rail's approval of the rail works is inherent in the consent and therefore covered by the protective provisions and arrangements with Network Rail. The OxSRFI will therefore fully comply with the NPS in terms of providing the required access to rail freight traffic. Further, a **Statement of Common Ground (Document 8.1/AS-092)** between the Applicant and Network Rail has been provided which confirms the suitability of the OxSRFI scheme on the Chiltern Main Line in respect of pathing and gauging for an SRFI. The following documents also deal with W8: **Document 3.1/APP-139 – Draft Development Consent Order** The Draft DCO contains Schedule 1, which identifies Work No.38 as "Works to Ardley Tunnel to provide W8 loading gauge clearance through the tunnel."	occupation of certain meterage of warehousing. Requirements 33 and 34 state – "33. The undertaker must keep the local planning authority advised of progress in respect of all the rail provision milestones on a quarterly basis including providing copies to the local planning authority of any material formally submitted to all bodies in pursuance of compliance with the rail provision milestones, if requested. 34. The undertaker must notify the local planning authority of the date of the first occupation of more than 47,000 square metres of warehousing and 186,000 square metres of warehousing within 28 days of such occupations occurring". **The Applicant's response** In its response, the Applicant states it is "content to provide for a specific notice obligation in the Section 106 agreement. The Applicant understands that this is agreed with the Council". The principle of including a notice obligation in the section 106 agreement is acceptable; however, no drafting has yet come forward. The Councils look forward to discussing the drafting in due course and considers something along the lines of Part 2 of Schedule 2 to West Midlands Order would be acceptable. **(2) Drafting of Requirement 5 (rail)** **"… available for use"** The Councils consider Requirement 5 should be amended as follows – "No more than 232,258 square metres of warehouse (including ancillary office floor space but not including mezzanine floor space) to be provided as part of the authorised development may be occupied until the rail freight terminal which is capable of handling a minimum of four 775 metre trains per day and the associated rail infrastructure required for those purposes has been constructed and is available for use **as part of the railway network**". **Background** Section 26 of the Planning Act 2008 sets out the circumstances in which a rail freight interchange is a nationally significant infrastructure project. By section 26(5), the rail freight interchange must be part of the railway network in England. By section 26(10), "network" has the meaning given by section 83(1) of the Railways Act 1983, which states – "network" means — (a) any railway line, or combination of two or more railway lines, and	

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		Document 5.4/ APP-161 – Planning Statement The Planning Statement addresses compliance with paragraph 4.82 of the NNNPS, which requires that SRFIs be located on routes with at least W8 clearance.	(b) any installations associated with any of the track comprised in that line or those lines, together constituting a system of track and other installations which is used for and in connection with the support, guidance and operation of trains; OCC have asked what "available for use" means and the Applicant has responded, stating the words have their plain meaning. OCC does not consider the explanation provides the clarity sought; however, OCC considers this can be achieved by adding "as part of the railway network" at the end of the Requirement i.e. the terminal and associated infrastructure have been constructed and are available for use as part of one or more railway lines etc. Since the words "as part of the railway network" are part of what the Planning Act states constitutes a rail freight interchange, OCC hopes their inclusion is uncontroversial.	
Requirement 6 (sustainable transport and travel plan)	Requirement 6(1) (sustainable transport and travel plan) states – "The provisions of the framework travel plan or any variation of such plan agreed by the sustainable transport working group must be complied with at all times following the commencement of the authorised development unless otherwise agreed in writing by the local planning authority". [Emphasis added]. The subject matter of the requirement falls within the expertise (and statutory responsibilities) of CDC and OCC, and both consider "the local highway authority" and "the local planning authority" should discharge this requirement. In the light of the above, the references to "local planning authority" in sub-paragraphs (1), (2), and (9) should be followed by "and the local highway authority".	The Applicant is considering this. Its preference is for one authority to be responsible for discharging the requirement in consultation with the other, rather than it being a joint requirement, and therefore the Applicant would suggest this should be OCC.	The Councils disagree. This is an example where both authorities are expert in the subject matter of the Requirement and so it would be sensible if both discharged. The Councils' approach here is not dissimilar to that original proposed by the Applicant in respect of article 4 (parameters of authorised development).	The Applicant is unable to find any examples of DCOs which require two authorities to approve the details of Requirements and suspects that this is because of the complications which could arise without one 'lead' authority to make the decision. It is appropriate for one authority to consult with another but a joint decision risks delay in the event of disagreement and, further, is not expressly accounted for in the appeal provisions; for example, if one authority was willing to approve details but the other was not, the approving authority would still be compelled to participate in an appeal process. Whilst the Applicant is content to amend the Requirement to provide that OCC is the discharging authority in consultation with CDC, it will not amend to give the authorities an equal role.
Requirement to provide tat OCC is the approving	Drafting point (1): in the light of the reference (in sub-paragraph (6)) to "sub-paragraph (1) or (2)" should sub-paragraph (6)(b) state – "(b) the local planning authority and the relevant highway authority agree that such alternative work should be carried out in lieu of the individual work specified in sub-paragraph (1) or (2), … and either— …" Drafting point (2): sub-paragraph (b) ends with "and either" and is followed by three options: (i), (ii) and (iii). At the end of sub-	Drafting point 1: The Applicant agrees and will make this change. This will be done in the next DCO submitted. Drafting point 2: The Applicant agrees and will make this change. This will be done in the next DCO submitted to the Examining Authority. General point: There are several reasons why sub-paragraph (6) being engaged would not result in a materially different scheme: • Some highway works proposed are to mitigate the highway impacts of the development. Alternative works can only be	Drafting point 1: the Councils welcome this response. Drafting point 2: the Councils welcome this response. General point: this is noted.	NFA

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	paragraph (6)(b)(i), should the word "or" be added? General point: what would prevent the power under sub-paragraph (6) from resulting in a materially different scheme from that proposed in sub-paragraph (1) or (2)?	proposed if they too would mitigate the impacts and this is agreed by the local planning authority and OCC. The authorities therefore have control over what can be delivered in lieu. • Further, this is not an open-ended substitution power. The mitigation must still be achieved, so the transport effects assessed remain mitigated. • Article 54 is a backstop on environmental effects. [remove for brevity]		
Requirement 9 (detailed design approval)	Since OCC have local standards for cycle, motorcycle and vehicle parking, OCC considers Requirement 9(2)(f) should be amended as follows – "(2) No component of the authorised development on the main site is to commence until the details of that component have been submitted to and approved in writing by the local planning authority. The details of each component must include details of the following where they are located within that component— … (f) cycle, motorcycle and vehicle parking; **in accordance with the local parking standards**".	The Applicant does not agree with the amendment and is in discussion with OCC in relation to the parking standards.	Until discussions in relation to the parking standards are resolved satisfactorily, OCC considers Requirement 9(2)(f) should be amended as set out in the "Comment" row.	The Applicant discussed parking standards at ISH2 (see Document 10.2/REP1-016). It considers the current drafting to be appropriate in light of the Framework Travel Plan and does not propose to amend it. For ease of reference, the relevant discussion at ISH2 is pasted below: *The Framework Travel Plan is secured by Requirement 6 of the DCO (Document number 3.1) (Examination library reference APP-139). Each occupier will need to prepare its own subsidiary Travel Plan that aligns with the objectives, targets and measures set out in the Framework Travel Plan. The subsidiary Travel Plans will be subject to review and approval by OCC as the local highway authority.* *The Framework Travel Plan sets a target of a 26% reduction in car trips compared to the baseline position. This equates to a daily traffic reduction of some 4,100 cars. This reduces the traffic impact of the Proposed Development and reduces the need for car parking at the development.* *The Applicant is proposing to commit to a maximum car parking ratio that will restrict car parking as compared to other SRFI sites. The Applicant proposes a maximum ratio of one car parking space per 200 sqm. That compares with a minimum car parking ratio of one space per 120 sqm at Northampton Gateway SRFI. The ratio of one space per 200 sqm represents an appropriate and proportionate balance and is sufficient to prevent overspill parking, while remaining constrained enough to support the Travel Plan objectives of reducing car use and increasing travel by sustainable modes.* The Applicant has added a new paragraph (4) to Requirement 9 to secure these standards which states: *Car parking must not exceed more than one space per 200 square metres of warehousing*

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				floor space and one space per 400 square metres of mezzanine floor space. This can be seen in the draft DCO submitted at Deadline 2. The reasoning is set out in the Explanatory Memorandum (Document 3.2).
Requirement 10(1) (construction environmental management plan)	Requirement 10(1) states – "No part of the authorised development is to commence until a phase-specific construction environmental management plan ("P-CEMP") for that part of the authorised development, drafted in accordance with the principles set out in the CEMP, has been submitted to and approved in writing by the local planning authority or the relevant highway authority where the P-CEMP *relates to the highway works*". [Emphasis added]. The reference to "highway works" should be removed as each P-CEMP will also include details of the CTMP for HGV traffic and details of construction access, which the highway authority needs to determine, regardless of whether the P-CEMP relates to highway works. In the light of this, OCC and CDC consider the emphasised text should state – "… **approved in writing by the local planning authority and the relevant highway authority**".	The Applicant will consider this but does not agree that every P-CEMP will be relevant to the highway authority.	The Councils welcome the Applicant's consideration of this point and will consider any revised drafting in due course.	Please see the draft DCO submitted at Deadline 1, the relevant wording of which is extracted below. If the P-CEMP relates to highway works, OCC will be the approving authority and the Applicant considers this appropriate. CDC may consult with OCC on any P-CEMP if it considers this necessary. 10.—(1) No part of the authorised development is to commence until a phase-specific construction environmental management plan ("P-CEMP") for that part of the authorised development, drafted in accordance with the principles set out in the CEMP, has been submitted to and approved in writing by the local planning authority **or where the P-CEMP relates to the highway works, the relevant highway authority.** (2) Each P-CEMP must include the following matters, where relevant to each phase concerned— (a) the appointment of an ecological clerk of works, the role of which is described in the CEMP; (b) details of the methods to control noise and vibration arising from construction activities, including— … (3) Each P-CEMP is to be reviewed and updated if necessary to address unacceptable impacts arising from construction works. Each P-CEMP (and any revision to it) must be submitted by the undertaker for approval in writing by the local planning authority **or where the P-CEMP (or revision) relates to the highway works, the relevant highway authority.** (4) All construction works must be carried out in accordance with the relevant P-CEMP as approved in writing by the local planning authority **or, where the P-CEMP relates to the highway works, the relevant highway authority.**

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Requirement 10(2) (construction environmental management plan)	By article 10(2) (power to alter layout, etc., of streets), the 42-day determination period for a consent under that article begins "with the date on which the application is submitted …". Similar drafting is included in article 12(7) (temporary closure, alteration, prohibition, diversion or restriction of use of streets). [removed for brevity]	The Applicant agrees and will make this change. This will be done in the next draft DCO submitted.	The Councils welcome this response.	NFA – please see the DCO submitted at Deadline 1
Requirement 13(3) (earthworks)	The main body of OCC's Relevant Representation states the scope of the "watching brief" referred to in this requirement (or a Written Scheme of Investigation) should be submitted as a control document into the examination and should be agreed with a credible palaeontological institution. A consequence of this is that Requirement 13(3) would need to be recast along the following lines – "Earthworks details in phases relevant to Zones A4, A5, B and C as shown on the parameters plan must be in accordance with the [relevant control document]". An additional requirement would be needed, similar to requirement 14, which provides that the authorised development will be carried out in accordance with the approved control document. It goes without saying that OCC would need to be satisfied with the contents of the control document.	This Requirement provides control as to the content of the 'watching brief'. Details of the earthworks in relation to each component of the main site must be submitted and approved prior to commencement of that component. Sub-paragraph (3) is confirming that earthworks in specific zones must include details of the 'watching brief' by a palaeontologist. This must be in accordance with the principles of the Ardley trackways technical note, which is a certified document in the DCO. These will form part of the details to be approved pursuant to sub-paragraph (1). Sub-paragraph (2) provides that the earthworks are to be carried out in accordance with the approved details. In light of the above already providing control, the Applicant does not consider it necessary to prepare a control document now.	OCC maintains its position, as set out in its "Comment" row and would welcome the opportunity to discuss this further with the Applicant.	The Applicant is willing to discuss with OCC. However, it has considered its initial response and its position remains: an additional control document is not necessary for the reasons previously stated. In addition, all earthworks must be carried out in accordance with the approved details. As the watching brief forms part of the approved earthworks details, it is already covered by this wording.
Requirement 14 (archaeology and built heritage)	Requirement 14 is titled "Archaeology and built heritage"; however, neither the Requirement nor the Archaeological Mitigation Strategy [APP-283], which is referred to in the Requirement, refer to "built heritage". The title is therefore misleading, and OCC consider it should be amended to state, simply, "Archaeology".	The Applicant agrees and is content to make this change. This will be done in the next draft DCO submitted.	The Councils welcome this response.	NFA – please see the DCO submitted at Deadline 1
Requirement 15 (central hub)	Paragraph 15(1) seems to be missing words. OCC assumes the following words (or similar) should be included after sub-paragraph (i) – "has been approved in writing by the local planning authority".	The Applicant agrees and will make this change. This will be done in the next draft DCO submitted.	The Councils welcome this response.	NFA – please see the DCO submitted at Deadline 1

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Requirements 20 to 22 (flood risk and surface water drainage)	In each of these requirements, where reference is made to a decision being taken by the lead local flood authority, OCC (the lead local flood authority) and CDC (the local planning authority) consider it would be preferable if it were taken by the local planning authority, in consultation with the lead local flood authority. [Removed for brevity]	The Applicant agrees and will make this change. This will be done in the next draft DCO submitted.	The Councils welcome this response.	NFA – please see the DCO submitted at Deadline 1
Requirement 33 (community liaison group)	To ensure the effective administration of the community liaison group, OCC consider it would be helpful if a protocol for its operation was agreed by the Applicant and OCC and CDC. In the light of this, OCC consider paragraph (3) should have the following words appended to the end: "…in accordance with a protocol agreed with the local planning authority and relevant highway authorities prior to the commencement of the authorised development." It is noted that certain documents refer to the community liaison group, including: paragraph 4.10 of the Main Site DAD (doc 5.5A) [APP-166]; paragraph 3.11 of the CEMP (doc 6.2C – ES Appendix 2.3) [APP-189]; Commitments DE1 and SE3 of the PINS Commitments Tracker (doc 7.3) [APP-315]; and section 5 of the EqIA (doc 7.4) [APP-316]. However, none of these includes a protocol for the community liaison group. It would be helpful if such a provision could be included in requirement 33, including a reference to a minimum frequency of meetings (which could be caveated with "unless otherwise agreed by all members of the group").	The Applicant considers that the current drafting is appropriate. Such further details can be determined as part of the establishment of the group. However, following a meeting with OCC and the Applicant's legal representatives, the Applicant is expecting suggested drafting on this from OCC which the Applicant will consider.	The Councils would propose the Requirement is amended as follows – "(4) The community liaison group is to continue to meet **at least once every quarter** until the expiry of five years from full occupation of the authorised development unless otherwise agreed with the local planning authority. **(5) The undertaker must publish and maintain a website to allow the proceedings of the community liaison group to be followed by participants and non-participants**.	The Applicant agrees to amend paragraph (4) as proposed, and this change can be seen in the draft DCO submitted at Deadline 2. The Applicant does not propose to include the suggested paragraph (5). Under section 120(1) of the Planning Act 2008, a DCO may impose requirements "in connection with" the development for which consent is granted. Requirements are the DCO equivalent of planning conditions, and the Planning Inspectorate's Advice Note Fifteen (Drafting Development Consent Orders) and the Planning Practice Guidance on the use of planning conditions confirm that requirements should meet the policy tests in paragraph 57 of the National Planning Policy Framework. These tests are that a requirement must be necessary, relevant to planning, relevant to the development to be consented, enforceable, precise and reasonable in all other respects.. Proposed paragraph (5) does not meet these tests. No planning harm has been identified that a website obligation would mitigate. Further, the wording does not say what content must be published, when it must be published, for how long the website must be maintained, or what standard is required to "allow the proceedings … to be followed". An obligation framed in this way would be difficult for the local planning authority to monitor or enforce, and difficult for the undertaker to show it has complied with. The means of communicating the group's proceedings is an administrative matter. It is better dealt with in the group's terms of reference than in a legally binding requirement, where breach could amount to an offence under section 161 of the Planning Act 2008.
Schedule 2 Part 2, paragraph 1	Part 2, paragraph 1 provides 42 days for the discharge of requirements. While older DCOs included a 42-day turnaround, a	The Applicant considers the time period to be reasonable (and in accordance with PINS model drafting). It should also be pointed out that the wording provides for a longer period to	The Councils welcome this amendment.	NFA

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	longer period has become commonplace. For instance – • London Luton Airport Expansion Development Consent Order 2025 (SI 2025/463): [remove for brevity]	be agreed and therefore has flexibility, should the 42 days not be sufficient. Notwithstanding this, as explained above, the Applicant has considered OCC's request and is content to agree to a determination period of 40 working days, effectively being eight weeks. The Applicant understands this is agreed with both OCC and CDC.		
Part 2, paragraph 2	OCC considers the provisions for requesting further information to be insufficient. As drafted, the discharging authority is permitted only 10 business days to request further information otherwise it is considered to have sufficient information. This is an unreasonable burden to place on the discharging authority. Deciding whether further information is needed requires an extensive review of the submitted documents by officers of various technical disciplines which will be challenging in 10 business days, particularly in the context of officers having other work to do. The draft Order makes provision of 42 days to decide applications, the bulk of which time will be spent reviewing the submitted documents to reach a conclusion on whether they fulfil the obligations set out in the requirement. It is only once the documents have been thoroughly reviewed that it can be decided whether an application includes sufficient information for the requirement to be discharged. There is no limit to how many applications can be submitted to a discharging authority at once meaning it is possible for the discharging authority to be expected to review multiple applications amounting to many hundreds of pages of technical detail in just 10 business days. OCC considers a more reasonable time limit of 20 business days would give the discharging authority adequate time to decide whether an application contains sufficient information. If the Applicant maintains that 10 business days is reasonable, then this position should be justified in the EM **[APP140]** which currently lacks such a rationale. (It will be remembered that, for EIA development, the consultation period for statutory bodies is 30 days – 20 business days – and there is a risk	The Applicant disagrees that the model wording imposes an unreasonable burden on the discharging authority. The application is for a DCO subject to an Examination process of six months, preceded by two formal rounds of consultation and years of pre-application engagement during which the discharging authority will have had significant opportunity to familiarise itself with the scheme and the submitted documents. This is not a case where the discharging authority will first encounter the relevant technical materials when an application for discharge is submitted. On the contrary, by the time such applications are made, the discharging authority will have had substantial prior engagement with the project. Further, many of the requirements require details to be submitted in accordance with outline documents which the discharging authority will already have reviewed during examination. In such circumstances, the discharging authority's role will be to ensure that the details accord with the approved outline, rather than to conduct a first review of the scheme. As has already been stated, this is a nationally significant infrastructure project that requires approvals and consents from numerous statutory and other bodies. It is therefore imperative that it is able to proceed without delay from third parties. Nevertheless, having considered OCC's request and recognising the importance of establishing an effective long-term working relationship with OCC, the Applicant is willing to include an initial assessment period of 15 business days.	There is clearly a difference between information provided (i) in a pre-application consultation or during an Examination and (ii) in an application to discharge a requirement. It will be remembered that the discharging authority will not be discharging the requirements of the instant application in isolation. Oxfordshire is currently earmarked for four DCOs and it is reasonable to assume that officers will be dealing with discharges for each project on or around the same time. It is likely that each DCO will have strict time limits and no restriction on the number of discharge applications that can be made at the same time. This, combined with the insufficient fee proposal included in the instant application, is likely to put tremendous pressure on local authority resources, particularly if other projects follow the Applicant's approach to fees. Flexibility is therefore key and the Councils maintain their position for a 20-day is reasonable and propionate in the circumstances.	The Applicant has considered OCC's further response but maintains that 15 Working Days is reasonable in the context of an NSIP. The Applicant does not intend to increase this timescale further.

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	that a shorter period will compromise the consultee's ability to respond timeously).			
Part 2, paragraph 3	Part 2, paragraph 3 (fees) provides an unsatisfactory regime for the payment of fees to the discharging body for discharging requirements. Rather than the regime proposed in the dDCO, the Applicant and authorities should enter into a planning performance agreement ("PPA") for the full recovery of the costs in discharging any application under the Order. It is unsatisfactory for several reasons – • First, while the discharging authority will be required to deal with applications for consent under articles and requirements, by paragraph 3(1) of Part 2 of Schedule 2, a fee is only payable in respect of requirements. OCC consider that fees should also be paid for dealing with applications under articles and requirements, and for responding to any consultation under it. There can be no reasonable justification for restricting fees to work done under requirements. • Second, the proposed fee is unreasonably low. Paragraph 3(1) says a fee must be the same as that which would have been paid for a reserved matters application under the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012. By paragraph 4(2) of Schedule 1 to those Regulations, the fee is £578. This is too low. If we assume an hourly rate of £139 for an officer to deal with this work, the fee will mean the officer would have to deal with any discharge application within around 4 hours before dealing with the application started to cost the local authority money. It is unlikely that any application will be capable of determination within that period. While a council cannot, by law, make a profit for this work, it is reasonable for it to seek the full recovery of the actual costs incurred. Any other approach is unfair. It will be appreciated this is an application for	The Applicant does not agree that a Planning Performance Agreement is necessary or appropriate in this context. The fee regime in the draft Order follows the approach commonly adopted in made DCOs and reflects an established and workable model for the discharge of requirements. However, the Applicant is awaiting some proposed drafting from OCC so that it may consider this.	The Councils maintain their position in respect of fees. The fee regime in the draft Order follows an approach which might have been commonly adopted some time ago, but that approach has been overtaken by the practical realities of discharging requirements and other consents. The Councils are aware that discharging authorities routinely enter into post-consent PPAs with DCO applicants to ensure that the discharge of consents is a cost-neutral exercise for the authority. It will be remembered that, on and from 8 June 2026, the Councils became entitled pursuant to the Infrastructure Planning (Fees) Regulations 2010 (as amended) ("the Fees Regulations") to charge fees for providing "relevant services" in relation to applications for development consent. Determining applications for consent under an article, requirement, or control document would clearly be a relevant service and the Councils therefore propose to recover all fees in accordance with the Fees Regulations. Part 2, paragraph 3 (fees) should therefore be omitted from the draft Order.	The Applicant is aware that local authorities may charge for relevant services, pursuant to the Fees Regulations (as amended). This requires a statement to be published on the authority's website which describes the services in respect of which fees are charged and sets out the fees. The Applicant requests a copy of this. In any event, the Fees Regulations do not permit full cost recovery in all circumstances; recovery is limited to costs 'reasonably' incidental to the provision of the 'relevant services'. The Applicant considers that the fee regime in Part 2, paragraph 3 of Schedule 2 should be retained to give certainty.

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	a nationally significant infrastructure project under the Planning Act 2008, and the fee should reflect the work involved. • Third, this is not only about fairness but also about the way in which the Order is drafted. For example, by paragraph 1 of Schedule 2, the discharging authority will have 42 days to make its decision on any application and if no decision is made within that period, consent will be deemed to have been granted. The same applies in respect of consents sought under articles. Dealing with any application for consent under this Order will therefore be a matter of high priority for the discharging authority, diverting officer resource from other matters. The inclusion of the deeming provision and its effects on local authority resourcing is another reason why the full cost of doing this work should be covered by the Applicant. • Fourth, the refund provision under paragraph 3(2) of Schedule 2 is unreasonable. For example, if an application is rejected as invalid, the discharging authority will have done the work to reach that conclusion. Reaching this decision, based on the Applicant's inability to submit documents in a valid fashion, should not cost the discharging authority money. • Rather than the regime currently proposed in the Order, OCC and CDC consider it would be preferable if the Applicant, OCC and CDC entered into a PPA for the full recovery of both councils' costs in discharging (or being consulted on) any application under the Order.			
Schedule 14, Part 3 (Protective Provisions for the Protection of the Local Highway Authority)	As mentioned in row 7, the draft DCO [APP-139] includes unsatisfactory PPs for the protection of the local highway authority. OCC has several concerns with the Applicant's proposed drafting, and the	<u>Form of security</u> The Applicant's position is that there should be flexibility in the protective provisions as to the form of security, being either a parent company guarantee ("PCG") or a bond.	<u>Discussions on the PPs are ongoing and OCC would welcome a further meeting with the Applicant to discuss these points.</u> <u>In brief,</u> OCC maintains its position that a bond should be provided. OCC <u>Form of security</u>	The Applicant welcomes the opportunity to discuss the protective provisions with OCC and has proposed a meeting to discuss. In relation to the form of security, the Applicant has previously provided examples of statutory

<table>
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<td></td>
<td>concerns relate to several important points including, but by no means limited to –
• The appropriate form of security to be included in the PPs,
• The Applicant's proposed departure from OCC's tried and tested way of calculating fees for county highway works,
• The proposed inclusion of a deeming provision, and
• The appropriate indemnity to be included in the PP.
Discussions on the PPs are ongoing with the Applicant, and it is hoped these can be agreed during the Examination.</td>
<td>OCC has, to date, resisted the inclusion of a PCG. A PCG is an acknowledged, acceptable form of security. It is accepted by many statutory undertakers in made DCOs, including SSE and National Grid. Further, a PCG is often accepted as a form of guarantee for payment of CPO compensation.
In terms of the benefits of a PCG:
• it can be seen from the Funding Statement that the ultimate parent company is exceptionally well funded;
• it offers the same level of security to OCC, if not better, than a bond;
• the parent company will be subject to reporting obligations, therefore its financial standing can be independently assessed;
• it will be much more straightforward to put in place for ORL. It is not affected by the state of the bond market at the time of the works, nor does it have the (substantial) administrative costs of a bond, which, when considering the extent of funds being expended by ORL to deliver the significant infrastructure up front, is a considerable consideration;
• it would allow direct recourse to the parent company, avoiding the need to go through the bank and navigating the terms of the bond which may delay recovery.
• the bond has the potential to be needed for a long period and a bond on these terms could be difficult to obtain. That does not apply to a PCG which can have no fixed end date;
If the Applicant cannot secure a bond on the terms required, it would not be able to carry out the 'county highway works' as it is a requirement of the protective provisions that the security is in place prior to commencement. This would sterilise the project due to something which is not within the control of the Applicant.
The Applicant is simply seeking comfort to be included in the DCO that a PCG is a suitable and acceptable alternative form of security. The Applicant proposes to prepare a draft PCG for review by OCC in the hope that drafting can</td>
<td>Protective provisions for the local highway authority ("LHAPPs") are not commonplace in DCOs. Where a DCO includes LHAPPs and these include a security provision, none states explicitly that a PCG is an acceptable form of security. The position is as follows –
<table>
<tr><th>Order</th><th>Location of LHAPP</th><th>Form of security</th></tr>
<tr><td>London Luton Airport Expansion Development Consent Order 2025 (SI 2025/463)</td><td>Part 6 of Schedule 8</td><td>Para 56 (security): bond from an approved bondsman and cash surety</td></tr>
<tr><td>Cambridge Waste Water Treatment Plant Relocation Order 2025 (SI 2025/452)</td><td>Part 6 of Schedule 15</td><td>Para 100 (cash deposit): cash deposit</td></tr>
<tr><td>West Midlands Rail Freight Interchange Order 2020 (SI 2020/511)</td><td>Part 3 of Schedule 13</td><td>Para 9 (security): bond or other security that may be agreed between the undertaker and LHA</td></tr>
<tr><td>Northampton Gateway Rail Freight Interchange Order 2019 (SI 2019/1358)</td><td>Part 3 of Schedule 13</td><td>Para 8 (security): bond from an approved bondsman (drafted substantially per the annexed draft)</td></tr>
<tr><td>East Midlands Gateway Rail Freight Interchange and Highway Order 2016 (SI 2016/17)</td><td>Schedule 20</td><td>Para 9 (security): bond (drafted substantially per the annexed draft) or some alternative form of security acceptable to the LHA</td></tr>
</table>
There is scope in the drafting of the West Midlands and East Midlands provisions for a PCG to be used, provided the relevant applicant and authority agree to that form of security.
Similarly, there is sufficient flexibility in the instant draft LHAPPs for the LHA and Applicant to agree another form of security: paragraph 1 provides that the LHAPPs have effect,</td>
<td>undertakers who have accepted a PCG as security in made DCOs. The Applicant maintains its position that a PCG is acceptable security for the reasons already stated.
As to the suggestion that there is sufficient flexibility in the instant draft LHAPPs for the LHA and Applicant to agree another form of security (because paragraph 1 provides that the LHAPPs have effect, unless otherwise agreed in writing), the Applicant considers this to be purely theoretical when OCC has made clear that it requires a bond. The Applicant cannot defer to paragraph 1 in the face of several submissions from OCC that it requires a bond.
The Applicant has stated previously that it intends to provide a form of PCG for OCC's review and it will do so before Deadline 3.</td>
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		demonstrate OCC's apparent concerns can be addressed. OCC has raised a concern about highway works being left unfinished and it needing to utilise the security to complete these. The vast majority of the highway works are not on the local road network/adopted highway (namely the Ardley Bypass and Middleton Stoney Relief Road). OCC would therefore have no powers to step in and complete these works, nor would there be any need to do so given they do not affect the existing local road network. In any event, the Applicant has strong incentives to deliver these works. First, Requirements 7 and 8 prevent occupation of warehouse floorspace beyond specified thresholds until the highway works are delivered, creating a clear commercial imperative. Prospective tenants will require evidence of DCO compliance, making delivery essential to the Applicant's business interests. Second, and more importantly, breach of a DCO is a criminal offence under section 161 of the Planning Act 2008. This provides the strongest possible incentive to secure compliance. <u>Fees for the County highway works</u> The Applicant's objection to the County Council's definition was the costs being calculated as a percentage of the cost of the works, which has no direct relationship to the costs to be incurred by the County Council. If the County Council's wording was accepted, the Applicant would be paying hundreds of thousands of pounds for the works fees. No justification has been provided as to how this figure relates in any way to the actual costs which may be incurred. Pursuant to s93 of the Local Government Act 2003 and section 3 of the Localism Act 2011, the County Council should not be profiting from the carrying out of its statutory functions yet this definition risks that. There is precedent for costs being related to the actual costs incurred, see The A303 Sparkford to Ilchester Dualling Development Consent Order 2021 (as well as East Midlands Gateway as referred to already). <u>Deeming</u> The Applicant reiterates its comments in relation to deemed approval made elsewhere in this response.	unless otherwise agreed in writing between the LHA and Applicant. So, if the Applicant were unable to secure a bond, there would be scope for the parties to agree to amend the LHAPPs. OCC note the Applicant proposes to share some drafting in respect of a proposed PCG and will consider that in due course. <u>Fees for the County highway works</u> <u>OCC'</u>	

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		Indemnity The scope of the indemnity is under discussion but the Applicant is confident that agreement can be reached on this point.		
Schedule 15 (miscellaneous controls)	Paragraph 5 (Environment Act 1995) provides that no order, notice or regulation under the 1995 Act, in relation to the preservation of hedgerows, has effect in relation to the authorised development. The relevant provision(s) of the 1995 Act should be set out.	The DCO was amended to address this prior to submission. Paragraph 5 refers to section 97 of the 1995 Act.	This is noted.	NFA
Requirement 21 (taken from page 122 of the Local Impact Report)	The applicant contends that the impact of the proposed development on flood risk is negligible. OCC's Relevant Representation [RR-109] provides detailed commentary and, in accordance with that response, there are potential impacts that the Council would expect to be addressed: • Any relevant existing downstream flood risk not considered as part of any Section 19 flood investigations, as indicated in paragraph 173 of OCC's RR [RR-109]. This is to ensure that this existing flood risk is fully considered as part of any assessment. • A conclusion in relation to the maintenance of the inverted siphon and the eventual owners of this asset, as indicated in paragraph 176 of OCC's RR [RR-109]. Where an asset of this nature is not maintained, it has the potential to increase flood risk by becoming blocked or damaged during higher flows. • An assessment of the downstream flood risk from the surface water drainage proposals, which include the potential for an increase in runoff from the site, as detailed in paragraphs 180 and 181 of OCC's RR [RR-109]. This could increase flood risk where the ability to attenuate the runoff is not provided for within the site proposals. This requirement is in accordance with the National Networks National Policy Statement (paragraphs 5.140 and 5.145) and Cherwell District Council Local Plan Policy ESD 6: Sustainable Flood Risk Management. • More detailed information on who will own the surface water drainage assets and the maintenance schedule for these assets. This provides for appropriate consideration of the maintenance requirements before works to assets are undertaken. Clarity is sought as to who the applicant intends will adopt and maintain this asset once constructed. It should be noted that the LLFA has no duty to inspect or enforce on ordinary watercourses. Under current legislation, it falls to the riparian owners of watercourses to understand their responsibilities and maintain watercourse channels and assets which fall within their land ownership (Land Drainage Act 1991). OCC, as the LLFA, only has permissive powers to undertake enforcement on ordinary watercourses. 8.7.13 In relation to the CEMP [APP-189] (6.2C ES Appendix 2.3 Construction Environmental Management Plan), the applicant indicates in paragraph 19.2 that a surface water management plan will be produced that aims to 'prevent an increase in runoff to the receiving watercourse, sewer or drainage system'. The Council would suggest that this should also 'not' increase flood risk to any downstream areas. The applicant has stated that runoff will be attenuated during the construction stage; however, there is no further detail on how measures will achieve this at this point in the application. 8.7.14 Of particular concern to the Councils is the sequencing of development across the site and how development parcels will be integrated into supporting drainage infrastructure as the site is built out over seven years. 8.7.15 It is noted, for example, from the CEMP [APP-189] that in year one the land to the north, where the rail terminal is to be located, and the first phase of buildings, along with the attenuation ponds to the south, will be constructed. However, in the following years, the land between these two parcels is to be excavated and levels significantly changed. This creates uncertainty about the sustainability of the connection between the north and south development parcels and about what interim arrangements will be used during construction, whether gravity or pump driven. 8.7.16 To address this, the Councils would wish to see detailed construction drainage plans agreed in advance of construction by way of an updated CEMP or a pre-construction P-CEMP. 8.7.17 Under paragraph 19.3, any management plan should also include monitoring of water quantity, as well as quality, downstream of any temporary lagoons. Information on how this will be undertaken should form part of any management of the site and its environs. 8.7.18 In relation to the Draft DCO [APP-139], there are a number of matters to clarify. Under paragraph 21(1) of Part 1 of Schedule 2, any proposals that come forward should be submitted to the Local Planning Authority in consultation with the LLFA. The LLFA does not currently approve drainage proposals as part of planning permissions. The LPA currently holds the planning enforcement role in terms of the construction and implementation of measures, and the LLFA has no remit or mechanism in this part of the process. This should be reworded to refer to the LPA in consultation with the LLFA where required. 8.7.19 In relation to Requirement 22 of the Draft DCO [APP-139], the Local Planning Authority needs to be the approver, alongside the Environment Agency, for floodplain compensation schemes.		OCC has raised several issues in this response. The Applicant is considering this and will respond fully at or before Deadline 3.

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	8.7.20 The information presented by the applicant in its ES and supporting documents provides adequate evidence that the proposed development drainage is generally in accordance with national and local standards and guidance. The surface water drainage proposals require further information and calculations at the detailed design stage to confirm their acceptability; the Councils would require the following information: • Evidence that the hydraulic models prepared as part of the application have been approved by the Environment Agency. • Post-development modelling outputs which include representation of the diverted ordinary watercourse. • Calculations to demonstrate that surface water discharge rates will not increase risk off-site, including downstream along the Ashgrove Brook. • Information on the ground conditions, such as groundwater monitoring and infiltration testing, to understand the infiltration potential. Consideration of groundwater levels should be included in any assessment of runoff rate, drainage design and any surface water modelling or drainage strategy. • Details for the management and maintenance of the proposed inverted siphon within the Padbury Brook Tributary. 8.7.21 It is noted that there has been positive engagement with the applicant on the points highlighted above since the submission of [RR-109]. 8.7.22 To ensure that these details are adequately secured at detailed design stage, the detailed drainage design should be secured by updating Requirement 21 with a sub-paragraph (3) to include the following requirements, which are drawn from the wording of conditions outlined within OCC's Local Standards & Guidance for Major Development with Surface Water Drainage: 'Surface Water Drainage – Detailed Design The strategy should include but not be limited to: a. An updated detailed surface water drainage strategy, or a technical summary of any changes made to the original drainage strategy. b. A phasing plan demonstrating that the strategic drainage system serving any part of the development will be constructed and operational prior to the construction of the remainder of that development phase. c. The results of infiltration testing undertaken in accordance with BRE 365 or similar best practice guidance at the location and depth of proposed infiltration features. d. The results of groundwater level monitoring at depths of at least one metre below the bases of proposed infiltration features to determine the likely maximum groundwater level, usually during the winter/spring period. e. Detailed surface water drainage plans clearly demonstrating the type, layout, dimensions and catchments of drainage features, to include direct references to the hydraulic calculations report. f. Detailed surface water drainage hydraulic calculations demonstrating that: • runoff rates for the developed site will not exceed the equivalent greenfield runoff rates (or no greater than five times the greenfield runoff rate should a relaxation factor need to be applied) for all storm events up to the 1% AEP event, • infiltration features drain down half their volume within 24 hours for storm events up to the 3.3% AEP event, with mitigation provided for slower half-drain times during larger events, • no surcharging occurs for the 50% AEP event, • no flooding occurs for storm events up to the 3.3% AEP event plus an appropriate climate change allowance for peak rainfall, • any flooding occurring for the 1% AEP event plus an appropriate climate change allowance for peak rainfall is managed appropriately within the site. g. A plan showing that exceedance flood flow routes do not adversely affect the proposed development if the surface water drainage system fails. h. An assessment of how the proposed SuDS features will mitigate the pollution hazard posed by the development, in accordance with the simple index approach outlined in CIRIA C753 The SuDS Manual. i. Details of the long-term maintenance arrangements for the surface water drainage system, to include details of protection measures during construction, and maintenance schedules and plans showing liability for each part of the completed drainage system. j. Details of accessible easements of at least three metres in width adjacent to watercourses and proposed drainage features on or abutting the site to allow access for maintenance.' 8.7.23 Oxfordshire County Council wishes for further engagement with the applicant on this topic and is happy to discuss alternative drafting for Requirement 21.			

4. **Applicant's Response to Environment Agency comments on the draft DCO submitted as part of its written representation**

RR	Respondee	DCO Article/Schedule	Comment (wording is taken verbatim from the relevant representation unless stated otherwise)	Applicant's Response	Environment Agency Response Deadline 1 (13/10/2026)	Applicant's response at Deadline 2
RR-042	Environment Agency	Requirements 10, 22, 28 and 29	The Environment Agency should be named as a consultee for key DCO Requirements (10, 22, 28 and 29) affecting its regulatory remit, particularly the CEMP, floodplain compensation, contamination management and remediation provisions. Contamination Requirements do not adequately secure Environment Agency involvement, management of previously unidentified contamination, or remediation of known contamination affecting the Principal Aquifer.	The Applicant proposes that this is a matter for the discharging authority to determine as it will be responsible for carrying out consultation. The Applicant has asked CDC whether it would agree to including reference to the EA in the requirements and awaits confirmation.	**Status: Remains unresolved.** **This matter relates to EA Relevant Representation [RR-042] issues EA01, EA03, EA04 and EA05.** Given the nature of the matters controlled by Requirements 10, 22, 28 and 29, the Environment Agency is a specialist regulator with statutory responsibilities relating to flood risk, groundwater protection, contamination and environmental permitting. Naming the Environment Agency as a consultee would ensure those interests are consistently considered and would provide greater certainty, transparency and procedural robustness than reliance on discretionary consultation by the discharging authority.	The EA will see in the draft DCO submitted at Deadline 1 that it has been named as a consultee in Requirements 22, 28 and 29, which concern floodplain compensation and contamination and fall directly within its regulatory remit. The Applicant does not propose to name the EA in Requirement 10. The CEMP covers a wide range of construction matters, most of which fall outside the EA's remit, and the local planning authority remains able to consult the EA on any P-CEMP, or element of it, where it considers this necessary.
		Schedule 2	The Discharge of Requirements Procedure should include a minimum consultation period for named consultees to allow adequate technical review. 15 working days is proposed.	The length of time for a consultee to respond will be addressed by the discharging authority when it requests a consultation response.	**Status: Remains unresolved.** **This matter relates to EA Relevant Representation [RR-042] issue EA06.** We maintain that the discharge procedure should specify a minimum consultation period for named consultees. Reliance on individual requests issued by the discharging authority provides no certainty as to the time available for technical review. A prescribed minimum period would promote consistency, procedural fairness and effective consideration of matters within statutory consultees' remits. The Environment Agency considers that a minimum 15 working day period would be reasonable and proportionate.	The Applicant maintains its position that the length of consultation is a matter for the discharging authority to determine. The Applicant has increased the overall time for discharge of requirements from 42 days to 40 business days (i.e. from six weeks to eight weeks) and this gives further time for the discharging authority to carry out consultation.
		Requirement 10	Requirement 10 should be revised to remove ambiguous wording and improve the certainty and enforceability of the Construction Environmental Management Plan. The use of phrases such as "in accordance with the principles of" and "substantially in accordance with" in DCO Requirements undermines enforceability and creates unnecessary uncertainty.	The Applicant does not agree with the EA's assessment of Requirement 10. The wording is widely used in DCOs when an outline or framework document is certified by the Secretary of State and the DCO then obliges the undertaker to produce a detailed plan, see, for example, Schedule 2 requirements in the A122 Lower Thames Crossing Order 2025.	**Status: Remains unresolved.** **This matter relates to EA Relevant Representation [RR-042] issue EA02.** The Environment Agency proposes that "substantially in accordance with" should be defined and therefore the following should be included: 'substantially in accordance with' means that the plan or detail to be submitted should in the main accord with the outline document and where it varies from the outline document should not give rise to any new or any materially new or materially different environmental effects in comparison with those reported in the Environment Statement.	The Applicant has considered this but does not consider the EA's wording necessary because: - it does not consider there to be any ambiguity in the use of 'substantially in accordance with'. This wording must be read in context and that context is a Requirement where reference to the outline CEMP is stated; - Article 54 (Governance of requirements…) already prevents approval being given which would give rise to materially new or different effects;

RR	Respondee	DCO Article/Schedule	Comment (wording is taken verbatim from the relevant representation unless stated otherwise)	Applicant's Response	Environment Agency Response Deadline 1 (13/10/2026)	Applicant's response at Deadline 2
						- all construction works must be carried out in accordance with the approved P-CEMP. That obligation is absolute and has no 'principles' qualification; and - paragraph 3(2) of Part 1 of Schedule 2 limits any amendment to approved documents to immaterial changes that are consistent with the principles and assessments in the environmental statement. Any amendment must also be shown to be unlikely to give rise to materially new or materially different environmental effects. Wording such as 'in accordance with the principles of' and 'substantially in accordance with' is used widely in development consent orders, planning permissions and conditions. It is routinely accepted by the Examining Authority and the Secretary of State and reflects the approach of detailed design coming at a later point, which is entirely appropriate for a scheme of this size and nature.
		Requirement 28	The EA proposes amended wording as follows: 28. If, during the course of construction, previously unidentified contamination is discovered, construction must cease on that localised area of land within the identifiable perimeters of the area in which the suspected contamination is located within the Order limits and the contamination must be reported in writing to the local planning authority within 10 working days. Prior to the recommencement of construction on that localised area of land within the Order limits, suitable investigation and risk-based land contamination assessment for the discovered contamination (to include any required amendments to the remedial scheme and verification plan) must be submitted to and approved in writing by the local planning authority in consultation with the Environment Agency. The authorised development must then be implemented in accordance with the details approved by the relevant planning authority and, unless otherwise agreed in writing by the local planning authority, retained as such in perpetuity.	The wording 'within the identifiable perimeters of the area in which the suspected contamination is located' is already included in the DCO submitted with the application. This change was made at the request of the Environment Agency following statutory consultation. As for the EA being named as a consultee, the Applicant reiterates that this is a matter for the discharging authority. The Applicant has asked CDC whether it would agree to including reference to the EA in the requirements and awaits confirmation.	**Status: Partially resolved.** We have reviewed the dDCO [APP-139] and we are satisfied that the wording concerning the identifiable perimeters of suspected contamination has been included in Requirement 28. As such, this matter associated with EA04 is now resolved, however our named consultee request remains outstanding. Please refer to our comments above (row 1) in relation Requirements 10, 22, 28 and 29.	The Applicant amended the DCO submitted at Deadline 1 to require consultation with the EA in the discharge of this Requirement.

RR	Respondee	DCO Article/Schedule	Comment (wording is taken verbatim from the relevant representation unless stated otherwise)	Applicant's Response	Environment Agency Response Deadline 1 (13/10/2026)	Applicant's response at Deadline 2
		Requirements 28 and 29	Clarify how the remediation of known contamination will be secured and implemented. If this is intended to be secured through the DCO, identify the relevant Requirement or amend the dDCO as necessary to ensure that the investigation, remediation and verification of known contamination are appropriately secured.	There is no known contamination outside of the landfill, which is to be governed by the landfill works requirement (30) and separate EA permit regime.	**Status: Remains unresolved.** Please refer to our comments on EA28 and EA31 in relation to contamination outside of the landfill.	Each P-CEMP must include, where relevant, an earthworks specification, remediation strategy and verification report informed by ground investigation work, and must be approved before the relevant phase commences. Any contamination identified through that work across the wider site would therefore be investigated, remediated and verified under Requirement 10, and Requirement 28 (as amended at Deadline 1 to require consultation with the EA) applies to any previously unidentified contamination found during construction. In relation to the recommendation in ES Appendix 11.5 Road Corridor Geo-Environmental Assessment [APP-290], the Applicant confirms that the further works to confirm the absence of contamination will be carried out as part of the ground investigation work informing the relevant P-CEMP.
		Article 52	We are in discussions with the Applicant as to whether the drafting of Article 52 is appropriate and, whether it would allow us to effectively discharge our regulatory responsibilities. As such, we are not currently in a position to agree Article 52 and will provide a further update on our position at an appropriate time during examination. Our permitting position comments focus on whether the proposed landfill activities are technically feasible and capable of being authorised under the Environmental Permitting regime. We understand that the purpose of Article 52 is to establish a legal mechanism for managing the interface between the authorised development and the existing Ardley Landfill environmental permit, including any permit variations or partial permit surrender that may be required to facilitate the Proposed Development whilst maintaining regulation of the remaining landfill site.	The Applicant has received an amended version of Article 52 directly from the EA and is grateful for the EA's proactivity in relation to this. The Applicant is reviewing the wording and will respond to the EA in due course.	**Status: Remains unresolved.** **This matter relates to EA Relevant Representation [RR-042] issue EA07.** We have received correspondence from the Applicant on 12/10/2026 regarding this issue. We are in the process of reviewing the Applicant's details and we will respond to them directly as soon as we can. We will provide an update to the ExA at Deadline 2 where possible.	The Applicant has received comments from the EA on its revised drafting and is pleased to confirm that there remain only two points of discussion which relate to appeals and the process for permit variation. The Applicant will continue its engagement with the EA on this drafting.
		General	Impact: Lack of clarity regarding the interface between the DCO and Environmental Permitting regimes, resulting in uncertainty over how activities will be regulated and how environmental risks will be assessed, managed, monitored and controlled throughout the Proposed Development. Solution:	The Applicant has addressed these points below; however, it first considers it important to state that the Applicant has engaged extensively with the EA in relation to the proposed approach to the landfill works and the landfill site, which is subject to an existing permit. The EA has been provided with preliminary risk assessments, enabling the EA's "in principle" agreement to the proposals as noted in Document 6.13A/[APP-299] - ES Appendix 13.1 Landfill reprofiling technical note. The DCO provides development consent for the works and enables land acquisition and temporary	**Status: Resolved.** **This matter relates to EA Relevant Representation [RR-042] issue EA35.** A minor point: we note there is a typing error in the Applicant's response at paragraph 6, line 5, which should read, "and submit the final scheme to the EA".	NFA

RR	Respondee	DCO Article/Schedule	Comment (wording is taken verbatim from the relevant representation unless stated otherwise)	Applicant's Response	Environment Agency Response Deadline 1 (13/10/2026)	Applicant's response at Deadline 2
			Provide a clear explanation of the interface between the DCO and environmental permitting regimes in relation to activities undertaken during the pre-construction, construction and operational phases, including the associated investigations, risk assessments, remediation measures and monitoring requirements.	possession of land, along with other consents and powers. However, the DCO does not replace the requirement for an environmental permit under the Environmental Permitting (England and Wales) Regulations 2016 ("the 2016 Regulations"). [removed for brevity]		

EA Issue No.	Issue	Applicant response [PDA-009]	EA Deadline 1 Response	Applicant's Deadline 2 response
EA08	Potential requirement for a Flood Risk Activity Permit has not been identified within the Other Consents and Licences Statement	Communication with Thames Water is ongoing regarding the proposed foul sewer outfall. Due to the route to the proposed outfall crossing a culverted main river it is currently anticipated that a Flood Risk Activity Permit (FRAP) will be required. A FRAP application will be made ahead of construction, The Applicant will provide an updated Other Consents and Licences Statement at Deadline 1 to reflect this.	Status: Remains unresolved. We acknowledge that the Applicant is discussing the foul sewer connection with Thames Water. We will await the submission of an updated Other Consents and Licences Statement at Deadline 1 to reflect the requirement for a Flood Risk Activity Permit (FRAP).	Please see the Other Consents and Licences Statement submitted at Deadline 1 (Document 5.3/REP1-012) which addresses the need for a FRAP and confirms that the DCO does not disapply the need for this.
EA37	The draft DCO excludes "investigations for the purpose of assessing ground conditions" and "geotechnical or ground contamination investigation" from the definition of commencement, but it is unclear what mitigation and management measures would apply to these activities before commencement. Impact: In the absence of appropriate mitigation and management measures, these activities could result in adverse impacts to controlled waters. Solution: Clarify the mitigation and management measures that would apply to pre commencement investigations for the purpose of assessing ground conditions and geotechnical or ground contamination investigation, and identify where these measures are secured. Additional narrative/explanation: This could include, for example, a pre-commencement environmental management plan.		Status: Remains unresolved. No comments have been provided to address this issue. We note that EA37 does not appear to have been addressed directly within Appendix A [PDA-008] or Appendix B [PDA-009]. However, it may be that the response to Oxfordshire County Council [RR 109], row 4 of Appendix A [PDA-008], is also intended to address EA37. If so, please could you confirm this. However, it would be better for clarity if our issue EA37 was addressed directly.	The EA will see from the DCO submitted at Deadline 1 that the pre-commencement works have been scaled back. In particular, the definition was amended: - to remove ecological mitigation works (albeit this has been carved out from specific requirements); and - to remove 'geotechnical or ground contamination investigation'. The definition still excludes 'investigations for the purposes of assessing ground conditions' from the definition of 'commence'. Investigations for assessing ground conditions are excluded from the definition of 'commence' so that they can inform the P-CEMP. Each P-CEMP must include, where relevant, "an earthworks specification, remediation strategy and verification report informed by ground investigation work". These investigation works therefore form the evidence base for the mitigation which must later be approved before the relevant phase commences. Any investigation would also remain subject to the notice and compensation provisions of Article 23.
EA45	It is unclear how operational SuDS maintenance will be secured.	The Sustainable Drainage Statement (SDS) – Main Site (Document 6.9C/AS-077) discusses the proposed drainage interventions for the proposed scheme. In Section 4 of the report, the expected maintenance regime is outlined. Further information will be provided at a later date prior to handover of the drainage to a management company. The Applicant proposes to amend Requirement 21 of the DCO to include reference to maintenance; this will be included in the dDCO submitted at Deadline 1.	Status: Remains unresolved. We agree that Section 4 of the Sustainable Drainage Statement (SDS) – Main Site [AS-077] includes maintenance, but at the time of our review, we were unclear whether this document was sufficient to secure this commitment in the absence of an OEMP. This links to issue EA45. However, if Requirement 21 of the DCO is amended to include a reference to maintenance, we await the updated dDCO to be submitted at the next relevant examination deadline.	The Applicant amended Requirement 21 in the DCO submitted at Deadline 1 to address maintenance as set out below: **Requirement 21** (1) … (2) The surface water drainage scheme must be implemented ***and maintained*** for the operational life of the development in accordance with the details approved by the local planning authority in consultation with the lead local flood authority or in accordance with any variations to those details agreed in writing

				by the local planning authority in consultation with the lead local flood authority.