



# Draft Outline Explanatory Memorandum Regulation 5(2)(c)

On behalf of  
Oxfordshire Railfreight Limited

# DRAFT

May 2022

**THE OXFORDSHIRE STRATEGIC RAIL FREIGHT INTERCHANGE  
AND HIGHWAYS ORDER 202X**

**OUTLINE DRAFT EXPLANATORY MEMORANDUM**

**MAY 2022**

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

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## 1. INTRODUCTION

- 1.1 This outline draft explanatory memorandum has been prepared on behalf of Oxfordshire Railfreight Limited (“the Applicant”) to explain the context of, and provisions in, the Draft Outline Development Consent Order produced for the first consultation.
- 1.2 It forms part of the suite of draft documentation upon which the Applicant is consulting as part of its Stage 1, non-statutory consultation ahead of its proposed application for the Oxfordshire Strategic Rail Freight Interchange and Highways Order 202X pursuant to section 37 of the Planning Act 2008. It is currently anticipated that the application will be submitted to the Secretary of State in Q1/2 2023. The application will seek approval of a draft Development Consent Order (“DCO”) for a new rail freight interchange, warehousing, highway improvements and associated infrastructure on land to the south of Ardley village and the Chiltern Main Line, to the east of Upper Heyford and to the west of the B430 in Cherwell District and the county of Oxfordshire.
- 1.3 The draft DCO is at an early stage in its drafting and must be considered as preliminary ‘work in progress’. Much of it is in outline only. It is being produced at this stage in order that people may familiarise themselves with the format and likely scope of the DCO. A much more advanced draft DCO will be produced for the second, statutory, consultation and it is that document which will provide the basis for constructive discussions with various stakeholders.
- 1.4 The draft DCO to be submitted with the application will take into account guidance produced by the Planning Inspectorate including Advice Note 13: Preparation of a Draft Development Consent Order and Explanatory Memorandum<sup>1</sup> and Advice Note 15: Drafting Development Consent Orders<sup>2</sup>. This draft memorandum is an early version of an explanatory memorandum which will accompany the draft DCO to explain the purpose and the effect of provisions in the draft DCO.<sup>3</sup>
- 1.5 The terminology used in this document is consistent with the glossary set out in the Briefing Document accompanying the Stage 1 Consultation which can be viewed on the project website - <https://oxsrfi.co.uk/>. In addition, all the plans and documents produced for consultation and referred to in this document can be viewed on the project website and at the locations specified in the Briefing Document.
- 1.6 The Applicant is Oxfordshire Railfreight Limited, a special purpose vehicle set up by Mountpark Logistics EU Sarl (Mountpark) to promote and develop the proposed development. If approved the development will be delivered by Mountpark – a leading developer with a proven track record in delivering high quality logistics developments across the UK/Ireland and Europe.

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<sup>1</sup> Version 3, republished in February 2019.

<sup>2</sup> Version 2, republished in July 2018.

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

## 2. DCO OVERVIEW

- 2.1 The DCO is the document that identifies and governs the development. It contains wide ranging powers to enable delivery of the development in recognition that the development applied for is nationally significant<sup>4</sup> which should be brought forward as soon as possible in the national interest.
- 2.2 Its scope can broadly be divided into six categories:
- a) It identifies the development that it is authorising and controls that development by apply requirements, which are similar to planning conditions attached to a planning permission.
  - b) It authorises and governs the highway works to be undertaken as part of, and in connection with, the development.
  - c) It contains other orders, such as highway orders and footpath diversion orders, required for implementation of the development – avoiding the need for them to be obtained separately.
  - d) It provides powers of compulsory acquisition over land and interests in land in order that difficulties in reaching agreement on such acquisition do not frustrate delivery of the development.
  - e) It includes protective provisions for parties, such as utility companies, whose assets may be affected by the development; and
  - f) It contains miscellaneous other provisions with the objective of ensuring there is no obstacle to delivery of the development.
- 2.3 The DCO is essentially in two parts – the provisions in the first part (called ‘Articles’) set out all of the operative provisions and the schedules in the second part provide the detail.
- 2.4 The Main Site is located between the B430 and the former Upper Heyford Airfield (Heyford Park) immediately to the south of the Chiltern Man Line. The location of, and context for, the Main Site can be seen on the draft Location Plan, the Parameters Plan and the Draft Illustrative Masterplan.
- 2.5 All the land affected by the Proposed Development is referred to in the draft DCO as the ‘Order limits’. The draft Order limits are shown by a red line on the Location Plan and they fall entirely within Cherwell District and the County of Oxfordshire.
- 2.6 The different elements of the Proposed Development are identified on the Components of the Proposed Development Plan and are described later in this document.

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<sup>4</sup> Being, as a matter of law, a nationally significant infrastructure project.

### 3. SCOPE OF THE DCO

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

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

3.1.2 the construction of a new length of motorway exceeding the thresholds set out in Section 22 of the 2008 Act; and

3.1.3 the alteration of All-Purpose Trunk Road exceeding the thresholds set out in Section 22 of the 2008 Act.

3.2 The three separate NSIPs are set out below.

#### *Rail Freight Interchange – NSIP 1*

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

3.3.1 be in England, and be more than 60 hectares in area<sup>5</sup>;

3.3.2 be capable of handling goods from more than one consignor to more than one consignee and be capable of handling at least 4 trains per day<sup>6</sup>;

3.3.3 be part of the railway network in England<sup>7</sup>;

3.3.4 include warehouses to which goods can be delivered from the railway network in England either directly or from another form of transport<sup>8</sup>; and

3.3.5 not be part of a military establishment<sup>9</sup>.

The works which comprise the rail freight interchange NSIP will be carried out within the areas identified as Works Nos 1 to 11 on the Works Key Plan.

#### *Highway NSIPs*

3.4 It is currently envisaged that there will be two highway NSIPs as part of the proposed development, being:

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<sup>5</sup> Section 26(3)

<sup>6</sup> Section 26(4)

<sup>7</sup> Section 26(5)

<sup>8</sup> Section 26(6)

<sup>9</sup> Section 26(7)

*New Length of Motorway - NSIP 2*

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

3.5.1 they will be lengths of newly constructed highway located in England<sup>10</sup>;

3.5.2 National Highways will be the highway authority for the highway<sup>11</sup>; and

3.5.3 the area affected by those new lengths of highway will be greater than 15 ha<sup>12</sup>.

These works will be carried out within the area identified as Works No. 12 on the Works Key Plan.

*Alteration to All Purpose Trunk Road - NSIP 3*

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

3.6.1 the works to the A43 are to a highway in England<sup>13</sup>;

3.6.2 National Highways is the highway authority for the A43<sup>14</sup>; and

3.6.3 the area affected by the alterations is greater than 12.5ha<sup>15</sup>.

These works will be carried out within the area identified as Works No. 13 on the Works Key Plan.

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

*Associated Development*

3.8 Associated development<sup>16</sup> comprises development which is not an integral part of the NSIPs but is required to facilitate them. In this instance it includes some highway mitigation works which, even though substantial, are not part of NSIPs 2 and 3. It also includes the Central Hub facility, the relocation of the In Vessel Composting Facility within the Main Site and extensive Green Infrastructure including strategic landscaping and areas to be dedicated to

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<sup>10</sup> Section 22(2)(a)

<sup>11</sup> Section 22(2)(b). National Highways is the strategic highway company.

<sup>12</sup> Section 22(2)(c). The area of development for the construction of motorway is set out in Section 22(4)(a).

<sup>13</sup> Section 22(3)(a)

<sup>14</sup> Section 22(3)(b). National Highways is the strategic highway company.

<sup>15</sup> Section 22(3)(c). The area of development for the alteration of a highway with a speed limit greater than 50mph is set out in Section 22(4)(b).

<sup>16</sup> Section 115



biodiversity These elements can all be seen on the draft Parameters Plan and the draft Illustrative Masterplan.

- 3.9 The associated development will be carried out within the areas identified as Work Nos. 14 to 26 on the Works Key Plan.

*Contents of the proposed development*

- 3.10 The Proposed Development is outlined in Schedule 1 of the Draft Outline DCO by reference to the areas identified on the Works Plans. It will be described in detail in the draft DCO to be available for the Stage 2 consultation. The Proposed Development is also described in other consultation draft documentation, in particular Chapter 2 of the working draft Preliminary Environmental Information Report.

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

- An **intermodal rail terminal** served via new connections to the Chiltern Main Line, including container storage;
- Up to **603,850 sq.m.** (approx. 6.5 million square feet) of warehousing, including ancillary office accommodation, plus up to 225,000 sq.m. of additional floorspace in the form of mezzanines.
- **Improvements to Junction 10 of the M40** involving works on the A43 east of the M40 and new slip roads to and from the M40
- an **Ardley Bypass** to the east of Ardley;
- A **Heyford Park Link Road** which runs from Camp Road south-east of Heyford Park and south of the proposed development to a new junction on the B430;
- A **Middleton Stoney Relief Road** around the north-eastern side of the village connecting from a new junction on the B430 to the existing B4030 which links over the M40 to Bicester, supported by a bus gate west of the village;
- The **Principal Access** to the Main Site from a new roundabout on the B430 in the north-eastern corner of the Main Site, south of the railway line. This primary access will serve all HGV and car traffic accessing the Main Site;
- A **Secondary Access** into the Main Site from the Heyford Park Link Road for bus, pedestrian, cyclists and emergency vehicles only;
- Relocation of the **In Vessel Composting Facility** within the Main Site;
- Retention of the Grade II listed Threshing Barn at Ashgrove Farm as part of the **Central Hub** of estate management and communal facilities for the other development on the Main Site;

- Retained key **landscape features** and new green infrastructure, including ( strategic landscaping and areas dedicated to biodiversity.

#### *Ancillary Matters*

- 3.12 The draft DCO will also include powers for some ancillary matters as permitted by section 120 of the 2008 Act.
- 3.13 The draft outline DCO currently anticipates that the following ancillary matters will be included in the DCO. These provisions will authorise the carrying of actions to facilitate the development which are not, of themselves, development:
- 3.13.1 powers to compulsorily acquire land or rights in order to ensure that the authorised development can be delivered in a timely fashion. The extent of such powers and the land to which they will ultimately relate has not been finalised at the date of the Stage 1 non-statutory consultation and therefore the consultation does not include any other compulsory acquisition supporting information.;
- 3.13.2 highway orders such as traffic regulation orders and speed limit orders;
- 3.13.3 the creation of new public rights of way and new private means of access.

#### **4. PLANS AND OTHER DOCUMENTS**

- 4.1 The consultation documentation for the Stage 1, non-statutory, consultation will be refined and supplemented throughout the pre-application stage. These documents comprise :
- (a) A **Briefing Document**
  - (b) An **Outline Draft Development Consent Order**
  - (c) This **Outline Draft Explanatory Memorandum**
  - (d) Working draft **Preliminary Environmental Information Report**
  - (e) Draft **Components of Proposed Development Plan**
  - (f) Draft **Works Plans** identifying the areas for the different works which are referred to in Schedule 1 in the Outline Draft DCO and, where appropriate, show limits of deviation.
  - (g) Draft **Footway Cycleway Rights of Way Strategy Overview Plan** which identifies new and altered means of access, stopping up of streets and roads, new and diverted public footpaths, bridleways and cycle tracks.
  - (h) Draft **Location Plan** identifying the context of the Application Site and the Order Limits;

- (i) A draft **Parameters Plan** which identifies the parameters with which the Works must comply.
- (j) A draft **Illustrative Masterplan** is provided to assist in demonstrating a form of development of the main site which would comply with the draft parameters which have been assessed at this stage (as shown on the Parameters Plan).
- (k) Draft **Highway Plans** These plans describe the various elements of the highway mitigation. This includes a draft plan showing the **Components of the Proposed Development** and a **Highway Work Overview** along with some **General Arrangement** plans
- (l) Draft **Rail Plans** - These plans illustrate the rail infrastructure for which authority is sought including the rail terminal.

The full list of documents and plans available for viewing is set out in the Briefing Document and they are all available to view on the project website - <https://oxsrfi.co.uk/>.

## 5. THE PARAMETERS OF DEVELOPMENT

- 5.1 The draft Parameters Plan identifies the parameters of the Proposed Development on the Main Site. This draft plan is the basis upon which the work on the preliminary environmental assessment has been carried out for the purposes of consultation.
- 5.2 The plan sets out the location of the various elements of the Proposed Development within the Main Site. It also identifies the maximum floorspace within each zone, the maximum overall floorspace, the finished floor levels and building height range and the height and location of the strategic bunding. The extent of the structural green infrastructure to be provided is also identified. These provide the “Rochdale Envelope” for the purposes of the environmental assessment of the development on the Main Site. This is in line with Planning Inspectorate Advice Note 9 “Using the Rochdale Envelope”<sup>17</sup>.
- 5.3 Article 4 of the draft DCO will ensure that the authorised development accords with the Parameters Plan.
- 5.4 The precise design of the authorised development, which is not detailed on the draft Parameters Plan, will be submitted to the local planning authority for approval following the approval of the DCO (if it is approved) – in similar fashion to reserved matters being approved following an outline planning approval.
- 5.5 The approval of the detail of the highway works will be governed by Parts 2 and 3 of Schedule 14 of the DCO which are the equivalent of section 278 Agreements under the Highways Act 1980 in respect of the strategic road network (National Highways) and the local highways (Oxfordshire County Council) respectively. The design of those works will

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<sup>17</sup> Version 3, republished July 2018.

need to be in accordance with the general arrangement drawings approved as part of the DCO approval.

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

- articles 4 (*Parameters of authorised development*) and 46 (*Governance of requirements and governance of protective provisions relating to highway works*);
- the description of the works in Schedule 1 and the limits of deviation shown on the works plans;
- the requirements in Schedule 2 [note that detailed requirements are not currently included in the consultation draft DCO but these will be discussed and progressed with the relevant authorities as part of the pre-application process]; and
- in respect of the highway works, the highway general arrangement] plans and the protective provisions relating to the highway works which are the equivalent of s.278 agreements (Parts 2 and 3 of Schedule 14).

5.7 The provisions of draft articles 4 and 46 function so that detail to be approved following the grant of the DCO must remain within the parameters upon which the environmental assessment was based. Permitting the approval of details subsequent to the making of the Order, and the ability to change details approved, as provided for in article 46(2), is in accordance with paragraph 17 of Advice Notice 15: Drafting Development Consent Orders.

## 6. THE DRAFT ORDER

6.1 This section of the memorandum explains each article of, and schedules to, the Outline Draft DCO. The description of the Articles is currently more detailed than the Schedules since the Articles are at the moment based on generic content that has previously been included in similar DCOs whereas the schedules are not generic and will be specific to this scheme. The drafting of the articles will be refined, and the Schedules populated, as the application proceeds through the pre-application process. For that reason, the Article numbers are provisional at this stage, and may well change as the drafting progresses. An advanced draft of the DCO to be submitted with the application will be available for the Stage 2, statutory, consultation.

6.2 Commentary on the articles notes where similar provisions have been included in other approved DCO. In particular, regard has been had to other SRFI DCO, being, The Daventry International Rail Freight Interchange Alteration Order 2014<sup>18</sup>, The East Midlands Gateway Rail Freight Interchange and Highway Order 2016<sup>19</sup>, The Northampton Gateway Rail Freight Interchange Order 2019<sup>20</sup> and The West Midlands Rail Freight Interchange Order 2020<sup>21</sup>.

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<sup>18</sup> S.I. 2014 No. 1796.

<sup>19</sup> S.I. 2016 No. 17.

<sup>20</sup> S.I. 2019 No 1358 (as corrected by The Northampton Gateway Rail Freight Interchange (Correction) Order 2020 (S.I. 2020 No. [ ]).

<sup>21</sup> S.I. 2020 No. 511 (as corrected by The West Midlands Rail Freight Interchange (Correction) Order 2020 (S.I. 2020 No. 1163).

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

### **Part 1 - Preliminary**

#### *Preamble*

- 6.4 The DCO begins with a preamble, as with all statutory instruments. Some of the wording in the consultation draft is in square brackets as it will not be known until after submission of the application whether the DCO will be examined by a single inspector or a panel of inspectors.

#### *Article 1 (Citation and commencement)*

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

#### *Article 2 (Interpretation)*

- 6.6 This article comprises, in the main, the definition of terms used throughout the DCO.
- 6.7 The definitions in italics refer to documents which will be prepared in due course and will be submitted with the application but have not yet been produced at this stage of scheme development. These documents will be available for the Stage 2 Consultation.
- 6.8 Definitions to note are:

(a) The definition of “undertaker” expressly refers to Oxfordshire Railfreight Limited and includes (in respect of the main site only), those persons who have the benefit of the Order in accordance with Section 156 of the 2008 Act. Article 7 restricts the benefit of the order in relation to the exercise of the compulsory acquisition powers and the carrying out of highway works to Oxfordshire Railfreight Limited only.

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

(c) [ETC]

- 6.9 The remainder of article 2 is consistent with many other DCOs and sets out further matters relating to interpretation.

### **Part 2 - Principal Powers**

#### *Article 3 (Development consent granted by the Order)*

- 6.10 This article provides development consent for the authorised development to be carried out and used within the Order limits subject to the provisions of the Order.

- 6.11 The article includes the reference to “use” because, although section 157 of the 2008 Act authorises the use of buildings in respect of which development consent is granted, there is no similar provision related to land. Further, whilst “use” is also expressly included in articles 5 (for the rail infrastructure and warehousing) and 40 (for the railway), in those articles, the “use” provision relates only to some specific works and not the “authorised development” in its entirety.

*Article 4 (Parameters of authorised development)*

- 6.12 This article identifies the parameters and limits of deviation within which the authorised development must be carried out by reference to various plans which identify those parameters and limits of deviation.
- 6.13 This approach is in accordance with the guidance set out in Planning Inspectorate’s Advice Notes 9 and 15.
- 6.14 The article permits exceptions to the application of the limits of deviation where the local planning authority is satisfied that it would not result in any materially new or materially different significant effects on the environment that have not been assessed in the Environmental Statement. The article applies the same test as that set out for “subsequent applications” in Schedule 2 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017<sup>22</sup> so that the consideration of any change will effectively amount to a “subsequent application” and be dealt with accordingly.
- 6.15 This approach was authorised in The Northampton Gateway Rail Freight Interchange Order 2019 and is therefore considered to be acceptable principle.

*Article 5 (Authorisation of Use)*

- 6.16 This article is included to expressly authorise the use of Work Nos.1 - 8, pursuant to section 157 of the 2008 Act. It authorises the operation and use of the rail freight interchange development and ensures that ancillary uses apply to the warehousing built pursuant to the DCO in the same way as if the warehousing were built pursuant to a planning permission. The article follows the approach taken in Thames Tideway Tunnel, Article 4<sup>23</sup> and other more recent Development Consent Orders<sup>24</sup>.

*Article 6 (Maintenance of authorised development)*

- 6.17 This article allows the maintenance of the authorised development. Its inclusion is permitted by section 120(3) of the 2008 Act because maintenance of the authorised development is clearly related to the development to be consented.
- 6.18 The article permits any activity within the definition of “maintain” set out in article 2, but the inclusion of paragraph (3) means that maintenance activity which would be likely to give rise

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<sup>22</sup> S.I. 2017 No. 572 (as amended)

<sup>23</sup> The Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 SI 2016 No. 2384

<sup>24</sup> The Northampton Gateway Rail Freight Interchange Order 2019 (S.I. 2019 No 1358) and The West Midlands Rail Freight Interchange Order 2020 (S.I. 2020 No. 511).

to any materially new or materially different significant effects on the environment that have not been assessed in the Environmental Statement or in any updated environmental information submitted pursuant to the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017<sup>25</sup> is not authorised.

- 6.19 Maintenance of the highway works is not covered by this article but is governed by the relevant provisions of Parts 2 and 3 of Schedule 14.

*Article 7 (Benefit of the Order)*

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

- (a) Part 5 (Powers of Acquisition) will be for the sole benefit of Oxfordshire Railfreight Limited to ensure that the articles relating to the exercise of compulsory acquisition powers cannot be transferred unless the Secretary of State consents. This is because Oxfordshire Railfreight Limited will be providing the security for the funding of any potential compensation as a result of exercising these powers; and
- (b) only Oxfordshire Railfreight Limited will have the power to carry out the highway works and deliver them in accordance with the protective provisions in Parts 2 and 3 of Schedule 13 unless the Secretary of State consents to a transfer of those powers or the relevant highway authority takes over responsibility for carrying out the highway works in default of the undertaker, pursuant to the provisions of Parts 2 and 3 of Schedule 14.

- 6.21 In respect of the highway works, it is considered that the power to carry out the highway works should be restricted to the named undertaker as opposed to being available to all the owners of the land interests within the Order limits. This will ensure an orderly and comprehensive approach to the carrying out of the works and is also appropriate given that the nature of those works will have been specifically discussed between Oxfordshire Railfreight Limited and the relevant highway authorities.

- 6.22 Sub-paragraph 4 is included to ensure that any works which may be carried out by other parties under the protective provisions are authorised. This wording has been included in other Orders such as the M4 Motorway (Junctions 3 to 12) (Smart Motorway) Development Consent Order 2016<sup>26</sup>, The Northampton Gateway Rail Freight Interchange Order 2019 and The West Midlands Rail Freight Interchange Order 2020.

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<sup>25</sup> S.I. 2017 No. 572 (as amended)

<sup>26</sup> S.I. 2016 No. 863 (article 7(2))

### **Part 3**

#### **Streets**

##### *Article 8 (Street works)*

- 6.23 This article provides for the carrying out of the works described in paragraph (1) (a) – (j) for the purposes of the authorised development in respect of any of the streets set out in Schedule 3 (yet to be populated).
- 6.24 The inclusion of this article in the Order provides a statutory right to undertake street works within the specified streets and means that the undertaker will not need to obtain a separate licence from the street authority under the New Roads and Street Works Act 1991.
- 6.25 The authority given by article 8(1) is a statutory right for the purposes of sections 48(3) and 51(1) of the New Roads and Street Works Act 1991 and the application of this legislation is permitted by section 120(5)(a) of the 2008 Act.

##### *Article 9 (Power to alter layout, etc., of streets)*

- 6.26 This article relates to the streets in the Main Site which will be maintained as private roads. However, any alteration to those roads will still require the consent of the local highway authority, notwithstanding that they are private roads.
- 6.27 A deemed consent provision has been included to ensure there is timeframe established for a route to a decision. This deemed consent approach is increasingly incorporated in many DCOs, sometimes with a shorter period of 28 days, for example, see article 12(5) of the National Grid (Hinkley Point C Connection Project) Order<sup>27</sup>. It was also included, with the 42-day period, as is proposed here, in The Northampton Gateway Rail Freight Interchange Order 2019 and The West Midlands Rail Freight Interchange Order 2020.
- 6.28 This article is included in similar form in in many other Development Consent Orders including the Southampton to London Pipeline Development Consent Order 2020<sup>28</sup>.
- 6.29 The inclusion of the article in the DCO is authorised pursuant to section 120(3) of the 2008 Act because any necessary works are related to the authorised development.

##### *Articles 10 - 13*

- 6.30 These articles deal with the various highway orders required to be put in place to enable closure/diversion of PROW, such as:
- Permanent and temporary closure of streets
  - Creation, substitution and closure of PROW and level crossing
  - Closure and substitution of private accesses

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<sup>27</sup> S.I. 2016 No. 49

<sup>28</sup> S.I. 2020 No. 1099 (article 10)



6.31 The schedules relating to the article are not yet populated. At this stage the nature and extent of the highway works are best understood by reference to the following plans which can be viewed on the project website - <https://oxsrfi.co.uk/> :

- The Highway Works Overview; and
- The Footway Cycleway Rights of Way Strategy Overview

*Article 14 (Maintenance of highway works)*

6.32 This article provides for the maintenance of the highway works. It refers to the certification processes to be included in Parts 2 and 3 of Schedule 14 (not yet populated). The article has precedent in The Northampton Gateway Rail Freight Interchange Order 2019 and The West Midlands Rail Freight Interchange Order 2020.

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

*Article 15 (Classification of highways)*

6.34 This drafting of this article is based on articles in other Development Consent Orders<sup>29</sup> and is required for this DCO in order to make provision for the classification of new highways within the Order limits.

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

*Article 16 (Speed limits)*

6.36 This article is based upon articles in other Development Consent Orders, for example, the M1 Junction 10(a) Order,<sup>30</sup> and Houghton Regis Order<sup>31</sup>, The East Midlands Gateway Rail Freight Interchange and Highway Order, The Northampton Gateway Rail Freight Interchange Order 2019 and The West Midlands Rail Freight Interchange Order 2020.

6.37 Paragraph 1 of this article and Part 1 of Schedule 8 provide for amendments to existing orders, if required. Whether this is required is still to be determined.

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<sup>29</sup> e.g. the Heysham to M6 Link Road Order 2013 S.I. 2013 No. 675, The East Midlands Gateway Rail Freight Interchange and Highway Order 2016 S.I. 2016 No.17, The Northampton Gateway Rail Freight Interchange Order 2019 S.I. 2019 No 1358 and The West Midlands Rail Freight Interchange Order 2020 S.I. 2020 No 511

<sup>30</sup> The M1 Junction 10a (Grade Separation) Order 2013 S.I. 2013 No. 2808

<sup>31</sup> The Central Bedfordshire Council (Woodside Link Houghton Regis) Development Consent Order 2014 S.I. 2014 No. 2637

- 6.38 The article will allow the length of the highways to be identified in Schedule 8 to be subject to new speed limits as set out in that schedule following completion of the relevant part of the authorised development.
- 6.39 The article also enables temporary speed limits during construction by agreement with the relevant highway authority.
- 6.40 The inclusion of the article is permitted by section 120(3) of the 2008 Act, since the regulation of speed limits on the various highways is related to the provision of the highway works as part of the authorised development. The requirement of the various speed limits is also related to the classification of the various highways and is therefore permitted by section 120(4) and paragraph 19 of Part 1 of Schedule 5 of the 2008 Act.
- 6.41 Paragraph 7 provides that the new speed limits set by the Order may be varied in the future by the relevant traffic authority, as they could have been had they been imposed by an order under the Road Traffic Regulation Act 1984.

*Article 17 (Traffic Regulation)*

- 6.42 This article enables amendments to existing traffic regulation orders if necessary as a result of the highway works. Whether this is required is still to be determined.
- 6.43 The article also provides for new permanent and temporary Traffic Regulation Orders to allow, with the consent from the relevant traffic authority, the imposition of orders which may be necessary for the carrying out of the works. These powers are similar to those contained in the Thames Tideway Order<sup>32</sup> and has more recently been authorised in The Southampton to London Pipeline Development Consent Order 2020<sup>33</sup>.
- 6.44 The inclusion in the DCO of this power falls within section 120(3) of the 2008 Act because the need for a Traffic Regulation Order in this manner would only be required as result of the authorised development.

*Article 18 (Clearways and no waiting)*

- 6.45 Article 18 provides for Clearways along lengths of the new highway works. The lengths of road affected will be identified in Part 2 of Schedule 9.
- 6.46 Similar to the inclusion of the article authorising traffic regulation, this article is related to the authorised development and is therefore permitted by section 120(3) of the 2008 Act.

*Article 19 (Motor Vehicle Restrictions)*

- 6.47 This article will deal with the imposition of weight restrictions as part of the overall highway mitigation measures.

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<sup>32</sup> The Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (S.I. 2014 No. 2384) (article 18).

<sup>33</sup> S.I. 2020 No 1099

*Article 20 (Agreements with Highway Authorities)*

- 6.48 This article is included to allow the undertaker to enter into agreements with the relevant highway authority relating to the construction/maintenance of a new highway, carrying out of works in the highway, stopping up, alteration or diversion of highways, the maintenance of the structure of any bridge carrying a highway over or under a railway and landscaping within or adjacent to a highway.
- 6.49 This article is included in the draft DCO to cover any agreements that might be required with the relevant highway authority which are not covered by the protective provisions and therefore avoids the need to find an alternative statutory authority which may not be fit for purpose. For example, s.278 of the Highways Act 1980 can authorise works to the public highway however they have to be undertaken on behalf of the Highway Authority and be of public benefit, which would not necessarily be the case.
- 6.50 The article is in similar form to that included in several DCOs including The National Grid (Hinkley Point C Connection Project) Order 2016<sup>34</sup>, The Northampton Gateway Rail Freight Interchange Order 2019 and The West Midlands Rail Freight Interchange Order 2020.
- 6.51 The inclusion of this article is permitted by section 120(3) of the 2008 Act because it would permit agreements related to the authorised development or matters ancillary to the authorised development.

**Part 4**  
**Supplemental Powers**

*Article 21 (Discharge of water)*

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

*Article 22 (Authority to survey and investigate the land)*

- 6.53 This article enables the undertaker to enter land within the Order limits or land which may be affected by the authorised development to survey or investigate. The provision is permitted by sections 120(3) and 120(4) of the 2008 Act, and specifically paragraph 12 of Part 1 to Schedule 5 and is has become standard in many made DCO.

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<sup>34</sup> S.I. 2016 No 49

**Part 5**  
**Powers Of Acquisition**

*Articles 23 - 39*

- 6.54 It is currently envisaged that the DCO will seek compulsory powers to acquire freehold land and other interests in land necessary to ensure the delivery of the Proposed Development. These draft articles deal with various aspects of such powers. They are currently generic in nature and will be finalised when the extent of powers required is more certain. The land to be the subject of such powers will, in due course, be shown on the Land Plans and described in the Book of Reference to be submitted with the DCO application.
- 6.55 Further detail will also be included in the Statement of Reasons submitted with the DCO application.

**Part 6**  
**Miscellaneous And General**

*Article 40 (Operation and Use of Railways)*

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

*Article 41 (Operational land for the purposes of the 1990 Act)*

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

*Article 42 (Charges)*

- 6.58 This article is based on an article at Schedule 2 of the model provisions (model provisions for Railways) and allows the undertaker to impose charges for the carrying of goods on the railway, or for other services or facilities connected to its operation. As with article 39, amendments have been included, as the proposed railway is to be used for the carriage of goods only. The provision is authorised by section 120(4) and paragraph 18 of Part 1 to Schedule 5 of the 2008 Act.

*Article 43 (Defence to proceedings in statutory nuisance)*

- 6.59 This article is based upon an article in the model provisions and appears in other approved Development Consent Orders. It provides a defence to proceedings brought in relation to a nuisance caused by noise or vibration in certain circumstances. The article is included as authorised by section 158 of the 2008 Act.

*Article 44 (Felling or lopping of trees and removal of hedgerows)*

- 6.60 This article is based upon an article in the model provisions. It enables the undertaker to fell or lop any tree hedgerow or shrub near the authorised development or cut back its roots, where it believes that it is necessary to prevent the tree hedgerow or shrub from interfering with the authorised development, but subject to some exceptions. It is included pursuant to sections 120(3) and 120(4) and paragraph 13 of Part 1 to Schedule 5 of the 2008 Act.
- 6.61 The article makes provision for compensation to be payable for any loss or damage arising, as authorised by section 120(4) and paragraph 26 of Part 1 to Schedule 5 of the 2008 Act.
- 6.62 The article also allows for the felling, lopping or cutting back of trees subject to a tree preservation order, with the consent of the relevant planning authority. The article follows the guidance in paragraph 22 of Advice Note Fifteen: Drafting Development Consent Orders.

*Article 45 (Protective Provisions)*

- 6.63 The article gives effect to the protective provisions which are contained in Schedule 14.

*Article 46 (Governance of requirements and governance of protective provisions relating to highway works)*

- 6.64 The article provides flexibility for details to be approved pursuant to requirements (and in the case of the highway works, protective provisions) and ensures that any details approved do not take the development outside the scope of the authorised development or beyond the scope of what has been assessed in the environmental statement.
- 6.65 Paragraph (1) is clear that all initial approvals under the requirements and Part 2 and 3 of Schedule 14 are governed by article 4 and prevents details being approved which lead to a form of development outside the scope of that which has been assessed. Paragraph (2), in accordance with Advice Note Fifteen: Drafting Development Consent Orders provides that approvals may be amended but any changes to approved details also must not go beyond the parameters that have been assessed.
- 6.66 The flexibility that is allowed for is of paramount importance for the authorised development. If no provision is made for the subsequent approval of details (and variations within the constraints referred to) then the development would be significantly disadvantaged against other large scale distribution sites and its ability to compete with those sites for occupiers would be adversely affected.
- 6.67 Paragraph (3) gives effect to the appeal procedure to be contained in Part 2 of Schedule 2 in relation to the approval of details pursuant to the requirements.

*Article 47 (Disapplication, application and modification of legislative provisions)*

- 6.68 This article incorporates and modifies legislative provisions which are necessary for carrying out the authorised development and is included in the DCO as permitted by section 120(5) of the 2008 Act.

- 6.69 Article 47(1) removes the need for some additional consents, making use of the “one stop shop”. This avoids the need for and delay in having to obtain a separate consent governing the same development.
- 6.70 Article 47(2) ensures that the provisions in the Neighbourhood Planning Act 2017 relating to temporary possession do not apply to the temporary possession of land under articles 33 and 34 of the DCO. The provisions relating to temporary possession in the Neighbourhood Planning Act 2017 have not yet come into force and therefore it is considered appropriate to apply the temporary possession regime which has been included in previous DCOs and Orders made under the Transport and Works Act 1992 to date instead. This approach has also been taken most recently in the Hornsea Three Offshore Wind Farm Order.
- 6.71 Article 47(3) provides that development carried out pursuant to a planning permission following implementation of the DCO would not be in breach of the DCO, removing the risk of criminal liability pursuant to section 161 of the 2008 Act. This also includes any development authorised by a general development order as well as an express planning permission. This follows the approach approved in The East Midlands Gateway Rail Freight Interchange and Highway Order 2016, the Northampton Gateway Rail Freight Interchange Order 2019 and the West Midlands Rail Freight Interchange Order 2020.
- 6.72 Article 47(4) dis-applies Regulation 4 of the Town and Country Planning (Control of Advertisements) (England) Regulation 2007 in respect of advertisements located in the locations shown on the Parameters Plan. Again, making use of the “one stop shop” approach, this removes the need to obtain a further consent for the totem entrance advertisements required for the development.
- 6.73 Article 47(5) dis-applies the Community Infrastructure Levy (CIL) provisions to ensure there are no unforeseen liabilities on the undertaker arising from any CIL yet to be introduced. It is common for CIL to be dis-applied in DCO.<sup>35</sup>
- 6.74 Article 47(6) gives effect to Schedule 15 which applies/modifies and/or amends various legislative provisions as appropriate to ensure they facilitate, and do not constrain, the development. This is based on the approach taken in the Thames Tideway Tunnel Order <sup>36</sup>. Schedule 15 is yet to be populated.
- 6.75 Article 47(7) ensures that anything permitted as a result of the provisions of article 47 does not prevent the operation of the 2017 EIA Regulations, in accordance with Advice Note 15: Drafting Development Consent Orders.

*Article 48 (Certification of plans and documents)*

- 6.76 This article provides for the certification of the plans and documents referred to in the DCO. These will be listed in Schedule 16.

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<sup>35</sup> See for example Thames Tideway Tunnel, Article 14 DCO and National Grid Hinckley Point C Connection

<sup>36</sup> SI 2014 No. 2384

*Article 49 (Service of Notices)*

- 6.77 This article provides for the service of notices under the DCO and allows certainty regarding the procedure for service, for example, under article 22 (Authority to survey and investigate the land). The article is included pursuant to section 120(3) of the 2008 Act.

*Article 50 (Arbitration)*

- 6.78 This article is included in case of any dispute regarding the provisions of this Order, except where it is expressly dis-applied, as it will be in the case of some of the protective provisions which will provide their own dispute resolution mechanisms. The provision is included pursuant to sections 120(3) and 120(4) and paragraph 37 of Part 1 to Schedule 5 of the 2008 Act.

**Schedules**

*Schedule 1 (Authorised Development)*

- 6.79 This schedule describes the authorised development for which Development Consent is sought, including associated development.
- 6.80 The Works are set out in brief below and the area of the Application Site to which they relate can be seen on the Works Key Plan which is available to view on the project website - <https://oxsrfi.co.uk/>. The Works will be described in detail in the draft DCO to be produced for the Stage 2 Consultation.

**NSIP 1 - Rail Freight Interchange**

<b>Work Number</b>	<b>Description</b>
<b>1</b>	<i>Chiltern Main Line works including connection to private rail infrastructure</i>
<b>2</b>	<i>Private rail infrastructure</i>
<b>3</b>	<i>Construction of Rail Terminal</i>
<b>4</b>	<i>Construction of area for use as extended rail terminal or warehousing</i>
<b>5</b>	<i>Construction of rail sidings to serve warehousing direct</i>
<b>6</b>	<i>The construction of rail served warehousing</i>
<b>7</b>	<i>The construction of private estate roads on the main site</i>
<b>8</b>	<i>The provision of hard and soft landscape works within the main site and works to the rights of way network</i>
<b>9</b>	<i>Construction of principal access for the main site</i>
<b>10</b>	<i>Construction of the Heyford Park Link Road</i>
<b>11</b>	<i>Reconfiguration and upgrading of the Camp Road and Chilgrove Drive junction</i>

**NSIP 2 – Construction of New Lengths of Motorway**

Work Number	Description
12	Construction of new lengths of motorway as part of M40 J10 Highway Improvement Works

**NSIP 3 – Alteration of All Purpose Trunk Road**

Work Number	Description
13	Alterations to A43 as part of M40 J10 Highway Improvement Works

**Associated Development**

Work Number	Description
14	Relocation of In Vessel Composting Facility
15	Provision of estate facilities and management offices in Central Hub
16,17,18,19	Other highway works as part of the M40 J10 Highway Improvement Works and works to the rights of way network
20	Construction of Ardley Bypass and works to the rights of way network
21	Other highway works in the vicinity of Ardley Bypass and works to the rights of way network arising from the construction of the Ardley Bypass and closure of level crossing
22	Construction of a bus gate on the B4030
23	Construction of the Middleton Stoney Relief Road and works to the rights of way network
24	Construction of a footway/cycleway alongside the B4030
25	Other highway works along the B430
26	Construction of a turning head on Quarry Cottages and works to the rights of way network

- 6.81 Schedule 1 also includes “**Further Works**” the precise location of which it will not be possible to identify. The approach is included in several made DCOs including The Northampton Gateway Rail Freight Interchange Order 2019 and The West Midlands Rail Freight Interchange Order 2020.
- 6.82 All of the “Further Works” are subject to the provisos contained in the Schedule including the test of “significant adverse environmental effects” pursuant to paragraph 13 of Schedule 2 of the 2017 EIA Regulations.



*Schedule 2 (Requirements)*

*Part 1 (Requirements)*

- 6.83 Part 1 of Schedule 2 will, in subsequent versions of the draft DCO, contain the requirements pursuant to section 120(1) of the 2008 Act.
- 6.84 Section 120(2) states that requirements “*may in particular include*”:
- (a) requirements which are akin to conditions which could have been imposed on the grant of a permission or consent which would have been required for the development, were it not required to be authorised by the DCO; or
  - (b) requirements to obtain the approval of the Secretary of State or any other person, if they do not fall within (a) above.
- 6.85 The National Policy Statement for National Networks (“NPSNN”) provides guidance as to the imposition of requirements and states that they should only be imposed if they are necessary, relevant to planning, relevant to the development to be consented, enforceable, precise and reasonable in all other respects (Paragraph 4.9).
- 6.86 The matters intended to be covered by the requirements are set out below. The requirements will be discussed with the various stakeholders, including the local authority and highway authorities, and a draft of the suggested requirements will be included in the draft DCO to be produced for the Stage 2 Consultation.

Requirement (Topic)
<b>Time limit for commencement of development</b>
<b>Phasing</b>
<b>Approval of detailed design</b>
<b>Approval of detailed construction and environmental management plan</b>
<b>Approval of detailed landscape and ecological management plan</b>
<b>Rail Provision</b>
<b>Construction hours</b>
<b>Archaeology and cultural heritage</b>
<b>Air quality</b>
<b>Ground conditions and earthworks</b>

Requirement (Topic)
<b>Biodiversity</b>
<b>Lighting</b>
<b>Noise</b>
<b>Building sustainability</b>
<b>Transport and highways</b>
<b>Water and flood risk</b>
<b>Waste management</b>

*Part 2 – Procedure for Approvals etc Under Requirements*

This part will deal with the procedure for approvals and appeals under the requirements. It will be based on Appendix 1 to Planning Inspectorate Advice Note 15: Drafting Development Consent Orders (version 2, republished in July 2018).

*Schedules 3 - 9*

- 6.87 These Schedules will deal with the various Highway Orders required to deliver the Proposed Development, referred to in Articles 8 – 20.

*Schedules 10 - 12*

- 6.88 These Schedules will set out details in relation to the exercise of compulsory purchase powers referred to in articles 23 – 39.

- 6.89 *Schedule 13 (Felling or lopping or cutting back of trees or shrubs subject to a tree preservation order)*

- 6.90 This Schedule will list any trees and shrubs which are subject to a tree preservation order for which consent is given by article 44 to fell, lop or cut back.

*Schedule 14 (Protective provisions)*

- 6.91 Schedule 14 will include draft provisions to protect the interests of various bodies whose assets it is currently understood may be affected by the proposed development. They will be subject to discussion with the parties concerned. They include:

- Part 1: Network Rail
- Part 2: Highways England
- Part 3: Oxfordshire County Council as local highway authority

Part 4: [ETC]

*Schedule 15 (Miscellaneous Controls)*

6.92 This Schedule will set out various legislative provisions which are to be modified or excluded from being applied to the Proposed Development.

*Schedule 16 (Certification of Plans and Documents)*

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

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