



Meeting note

Project Name	Rail Central SRFI
File reference	TR050004
Status	Final
Author	The Planning Inspectorate
Date	25 May 2018
Meeting with	Ashfield Land
Venue	TQH
Attendees	The Planning Inspectorate The Applicant Ashfield Land Gazeley Womble Bond Dickinson Turley
Meeting objectives	Project Update Meeting
Circulation	All attendees

The Planning Inspectorate (the Inspectorate) advised on its openness policy, explaining that any advice given would be recorded and placed on the National Infrastructure website under section 51 (s51) of the Planning Act 2008 (as amended) (PA2008). Any advice given under s51 would not constitute legal advice upon which applicants (or others) could rely.

Summary of key points discussed and advice given:

Project Update

The Applicant is in the process of drafting their Development Consent Order (DCO) application and is considering how best to proceed in respect of cumulative effects and mitigation, given that the Northampton Gateway Strategic Rail Freight Interchange (NGSRFI) application has recently been submitted. The Applicant was of the opinion that both schemes can be developed together and is keen to engage effectively with Roxhill Developments. The Inspectorate supported the Applicant's aim to ensure a consistent approach to cumulative impact assessment and their willingness to engage in the examination of the Roxhill Development proposal (if the application is accepted for examination).

The Applicant is liaising with Network Rail (NR) to prepare its Statement of Common Ground (SoCG). It has completed the Governance for Railway Investment Projects (GRIP) stage 2 (detailing the necessary engineering solutions) and is working towards GRIP stage 3 (deliverability and options selection). The Applicant explained that both

NR and Highways England (HE) are keen to work with both Strategic Rail Freight Interchange (SRFI) developers but are liaising with each developer separately. The Applicant confirmed that the same NR sponsor team is dealing with both proposed schemes.

The Inspectorate advised that it would be helpful to see NR's response to the Applicant's statutory consultation (which ended on 23/04/18) and enquired whether NR had commented on the rail network's capacity to accommodate both SRFI proposals. Whilst the Applicant confirmed that it had not, it was satisfied that its own negotiations with NR were progressing well. The Applicant explained that extensive engagement has taken place with Network Rail through their GRIP process over the last 5 years, involving a designated sponsor supported by a NR project team comprising of in-house and outsourced technical specialists. This engagement with NR has informed the design and rail infrastructure and main line connections and the completed work undertaken at GRIP stage 2 has validated the technical and operational feasibility of the proposals. A Statement of Common Ground is at an advanced stage of drafting in order that this can be included within the DCO application.

The Inspectorate noted that two Examinations running simultaneously was likely to put some strain on NR's resources. The Inspectorate requested that the Applicant provide the contact details for NR in order for the Inspectorate to have an unbiased discussion with NR about the two schemes. The Inspectorate also noted that the examination of both schemes would involve the same Local Authorities (LAs) and other stakeholders and highlighted that the examination of just one proposal can put a strain on the resources of these persons/organisations.

The Applicant advised that it would submit a relevant representation for the NGSRFI scheme if it is accepted for Examination.

Draft application documents

The discussion noted the advice issued to the Applicant on the draft application documents provided to the Inspectorate for review. Advice given by PINS in respect thereof is attached to this meeting note ('the Feedback Summary').
Draft DCO (Qs 1-4)

The Applicant explained that its Explanatory Memorandum (EM) would clarify the draft DCO and include its rationale, along with a tabulated overview to assist with navigation.

The Inspectorate advised the Applicant that the EM should contain more detailed justification, as per the explanations included in the Applicant's covering letter to explain the dDCO drafting.

Q7 – The Applicant queried the best approach around the definition of 'commence', and was referred by the Inspectorate to consider the recently made Orders by Secretary of State for Transport (DfT), and also review Advice Note 15 (AN15) on the Planning Inspectorate website.

Q9 – The Applicant explained that whilst the schedule will list existing/important hedgerows, there was the possibility of identifying further hedgerows that may exist post consent. The Inspectorate advised the Applicant to discuss this with the LA and

that exercise of that power should be with the agreement with the LA and signed off prior to those works being undertaken.

Q19 –The Applicant acknowledged the need to clearly define and assess all necessary works, it will consider grouping them into staged 'work packages' and ensure that it justifies any necessary flexibility.

Q24 – The Applicant is currently considering how to best define the phases of construction and is hoping to streamline the standard measures contained within the Code of Construction Practice. It confirmed that it does intend to discuss this approach with the relevant LAs.

The Inspectorate advised the Applicant to provide a clear explanation in the EM about why certain works are considered to be NSIPs and to have regard to the advice issued under "General" within the Feedback Summary.

Town and Country Planning Act Regime

The use of the Town and Country Planning Act 1990 (TCPA) regime was discussed (for use prior to (and if) a DCO being granted, the Inspectorate advised the Applicant to consider how this fits with Schedule 6 of the PA2008 and if it is confident that such works will be permissible under the TCPA regime. The Applicant confirmed that they were confident that a number of works could be permitted under the TCPA regime and that they consider this was both acceptable in law and established through the implementation of DCOs in recent years.

Additional draft application documents

The Applicant advised that parts of its draft DCO application documents were complete and could be submitted for review by the Inspectorate. The Inspectorate offered to review any other draft documents that were ready, and advised that sight of the Consultation Report (outline of its outcomes) and the Land/Works Plans would be helpful. The Applicant was hopeful that matters could be finalised once the NGSRFI scheme submission had progressed further.

Consultation Update

The Applicant advised that stage 2 Consultation is on-going and that it is working through the responses received to date, which may result in some small changes to the proposed scheme.

Statement of Common Ground (SoCG)

The Applicant advised that these are at different stages with different stakeholders; the NR and Natural England SoCG are both at an advanced stage.

People over Wind, Sweetman vs Teoranta Case

The Inspectorate drew the Applicant's attention to the People over wind, Sweetman vs Teoranta Case. The Applicant was aware of this case and is awaiting further detail, but considered it unlikely to impact on its proposed scheme.

The Inspectorate's Spreadsheet

The Inspectorate advised the Applicant that it would require a full list of persons notified of the accepted application (if the application is accepted for examination). The Applicant agreed to compile this list on the Inspectorate's mail merge template spread sheet.

Rail Central Rail Freight Interchange and Highway Order

Section 51 Advice – ‘Early Submission’ of draft Application Document by Ashfield Land and Gazeley for PINS review

This advice relates solely to matters raised upon PINS review of the draft application documents submitted by Ashfield Land and Gazeley (“the Applicant”), and not the merits of the proposal. The advice is limited by the time available for consideration, and raised without prejudice to the acceptance or otherwise of the eventual application. It is provided to assist the preparation of the next iteration.

Abbreviations used

PA2008	<i>Planning Act 2008</i>	BoR	<i>Book of Reference</i>	dDCO	<i>draft Development Consent Order</i>
EM	<i>Explanatory Memorandum</i>	ExA	<i>Examining Authority</i>		
PINS	<i>Planning Inspectorate</i>	SoR	<i>Statement of Reasons</i>	SoS	<i>Secretary of State</i>

General Drafting points

1. The Applicant should ensure that when the development consent order (DCO) is finalised all internal references and legal footnotes are checked and that the drafting follows best practice in Advice Note (AN) 13 and 15 and any guidance on statutory instrument drafting.
2. A number of typos have been found in the draft DCO and Explanatory Memorandum. These will need to be corrected.
3. The Explanatory Memorandum (EM) should state whether the Article replicates a model provision or precedent Article. Where there has been a change from the precedent or model provision this should ideally be shown in a track change DCO. It would also be helpful if the EM clarified whether the change is minor and has been made where in the Applicant’s view the model provision is unclear, or does not follow standard statutory instrument drafting practice. Where a model provision or precedent Article is substantially changed, the EM should clearly explain how that alters the effect. Ideally (and particularly if an Article is novel), the power on which each Article is based should be identified.
4. Notwithstanding that drafting precedent has been set by previous DCOs, whether or not a particular provision in this DCO application is appropriate will be for the Examining Authority (ExA) to consider and examine taking account of the facts of this particular DCO application and having regard to any views expressed by the relevant authorities and interested parties.

Draft Development Consent Order			
Q No.	Article (A)/ Requirement (R)	Extract from DCO (for ease of reference)	Comment/Question
1.	General draft DCO (dDCO)		<p>The cross referencing in the DCO appears to be incorrect e.g. A11 (6) [Stopping up of streets] reference to A32 (apparatus and rights of statutory undertakers in stopped up streets). We assume this should be in reference to A33?</p> <p>The Applicant should ensure that all cross references within the dDCO are checked and corrected where necessary/relevant, this includes references to any plans and we would assume this will be corrected in the application version.</p>
2.	General draft DCO (dDCO)		<p>The applicant will be asked to maintain a list of all plans and other documents that will require SoS certification (including plan/document references), updated throughout the examination process, and supplied to the ExA before the close of the examination</p>
3.	General draft DCO (dDCO)		<p>The DCO is proposed to be a SI and so should follow the statutory drafting conventions. The DCO (and any subsequent revisions) should be in the form required by the statutory instrument template (see Planning Inspectorate AN13) and validated as such using the current SI template, including detailed footnotes to all statutory references.</p>
4.	General draft DCO (dDCO)		<p>The application DCO and any subsequent versions of the submitted to the examination:</p> <ul style="list-style-type: none"> • should be supplied in both .pdf and Word formats, the latter showing any changes from the previous version by way of tracked changes, with Word comments briefly outlining the reason for the change? • The examination timetable will usually provide a deadline for receipt of the applicant's final or preferred version of the DCO. That version should be supported by a report of the outcome of validating it through the Publishing section of the www.legislation.gov.uk website.

Draft Development Consent Order			
Q No.	Article (A)/ Requirement (R)	Extract from DCO (for ease of reference)	Comment/Question
5.	General draft DCO (dDCO): references to Part 1 of the 1961 Act		A number of Articles make provision for " <i>compensation to be determined, in case of dispute, under Part 1 of the 1961 Act</i> ". It is acknowledged that a provision in this form is in the various MPs and is commonplace in DCOs and other Orders. However, Part 1 of the 1961 Act only relates to compensation for compulsory acquisition. In order for there to be certainty that it would apply in other situations (e.g. the temporary use of land under A32), should a modification be included as with the other compensation provisions in Schedule 14 ? If not, why not?
6.	Entire dDCO	Tree preservation order	There are no provisions relating to tree preservation orders. Is the applicant certain that these are not necessary?
7.	Definition of 'Commence'	<i>"commence" means beginning to carry out any material operation (as defined in section 155 of the 2008 Act) forming part of the authorised project other than operations consisting of site clearance, demolition work, archaeological investigations, environmental surveys, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, creation and laying of haul roads, erection of any temporary means of enclosure, temporary structures and/or hard standing, the temporary display of site notices or advertisements and the words "commencement" and "commenced" shall be construed accordingly;</i>	<p>Questions may need to be asked to help the ExA consider whether the flexibility afforded by the 'carve outs' in the definition are justified.</p> <p>This may including asking the Applicant to clarify any impacts of the commencement of the 'exempted works' (site clearance, demolition work, creation of haul roads, temporary structures and hardstanding etc.), so that the ExA can consider whether it is necessary for these to be controlled by a Requirement.</p> <p>It is noted that the exempted works will not be covered by the Construction Environmental Management Plan (CEMP). How will the Applicant ensure that any environmental impacts of these exempted works is sufficiently assessed and mitigated?</p> <p>We draw the Applicant's attention to the alternative approach taken in the made East Midlands Gateway Rail Freight Interchange DCO (see CEMP (Doc 6.22) drafting at 3.2 of that made order).</p>

Draft Development Consent Order			
Q No.	Article (A)/ Requirement (R)	Extract from DCO (for ease of reference)	Comment/Question
8.	A6	<p>Maintenance of authorised development <i>The undertaker may at any time maintain the authorised development, except to the extent that this Order, or an agreement made under this Order provides otherwise.</i></p>	<p>What/where are the restrictions? It may be helpful if the EM could summarise what the limitations on maintenance are (and where these are found in the dDCO), and how this has been taken into account in the ES.</p> <p>What would an 'agreement made under that order' be? Can this be explained in the EM?</p>
9.	A8 (4)	<p><i>(4) Regulation 6 of the Hedgerows Regulations 1997(d) is modified so as to read for the purposes of this Order only as if there were inserted after paragraph (1)(j) the following—</i></p> <p><i>“(k) or for carrying out development which has been authorised by an order granting development consent pursuant to the Planning Act 2008.”</i></p>	<p>This may be too wide. The hedgerows in question will need to be specified, or the broader power subject to a requirement.</p>
10.	A9	<p>Power to alter layout, etc., of streets <i>9.— Subject to paragraph (2), the undertaker may, for the purposes of constructing and maintaining the authorised development, alter the layout of any street within the main site and the layout of any street having a junction with such a street; and, without limitation on the scope of this paragraph, the undertaker may—</i></p> <p><i>(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;</i></p> <p><i>(b) alter the level or increase the width of such kerb, footway, cycle track or verge;</i></p> <p><i>(c) reduce the width of the carriageway of the street; and</i></p> <p><i>(d) make and maintain underpasses, crossovers, and passing places.</i></p> <p><i>(2) The powers conferred by paragraph (1) must not be exercised without the consent of the relevant</i></p>	<p>There is no numbered paragraph “1”</p> <p>Should highlighted text read 'but such consent must not be unreasonably withheld'?</p>

Draft Development Consent Order			
Q No.	Article (A)/ Requirement (R)	Extract from DCO (for ease of reference)	Comment/Question
		<i>highway authority but such consent must not be reasonably withheld.</i>	
11.	A10	Highway works <i>(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.</i>	There is no numbered paragraph "1" above this.
12.	A11(1) & (3)	<i>(3) The condition referred to in paragraph (1) is that—</i>	It is unclear where the reference to 'The condition referred to in paragraph (1)' is.
13.	A12 (b)	Public rights of way – creation, diversion and stopping up <i>12.—Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development—</i> <i>(a) stop up each of the public rights of way specified in columns (1) and (2) of Part 1 of Schedule 5 (public rights of way to be permanently stopped up for which a substitute is to be provided) to the extent specified, in column (3) of that Part of that Schedule;</i> <i>(b) provide the substitute public rights of way described in column (4) of Part 1 of Schedule 5 between the specified terminus points and on a detailed alignment to be agreed with the relevant highway authority;</i>	The inclusion of the highlighted text in this Article, removes the requirement for the alignment of the substitute public right of way to be specified, and prevents the suitability of any proposed alternative right of way may be examined.
14.	A27	Entirety of Article	The applicant may wish to review the drafting used in Article 27 of the made Order issued by the Secretary of State for M20 Junction 10A

Draft Development Consent Order			
Q No.	Article (A)/ Requirement (R)	Extract from DCO (for ease of reference)	Comment/Question
15.	A47	<p>Procedure in relation to Northampton Gateway</p> <p>(1). <i>In the event that Northampton Gateway:</i></p> <p>(a) <i>is not granted development consent Work Nos. 8B and 16A will be undertaken;</i></p> <p>(b) <i>is granted development consent, Work Nos. 8C and 16B will be undertaken.</i></p>	<p>We note your comment within the dDCO that a separate definition and plans would be required here. As the Planning Inspectorate is not in receipt of such plans, please can you confirm that plans for each option will be submitted with the application?</p> <p>If it is the Applicant's wish for a similar option to be included within the Northampton Gateway draft DCO, the Applicant should liaise directly with Roxhill Developments Limited.</p>
16.	Schedule 1: Works	<p>All Authorised Development</p> <p><i>Within the area of land described on the works plans as Work No. 1—</i></p> <p>(3) <i>The construction of a new railway lines from the rail freight terminal (Work No. 2) in order to connect with the existing Northampton Loop railway line and the express freight cross dock platform, the general arrangement of which is shown on the regulation 6(2) plan (Document ***), including—</i></p> <p>(a) <i>construction of a new railway track and associated rail infrastructure;</i></p>	<p>The Applicant may wish to review previously made Orders and draft DCOs submitted under the PA2008 for Examination.</p> <p>Schedule 1: Authorised Development, where Works are described are not normally not described by way of paragraph numbering "(2)", instead standard practice would be:</p> <p><i>Within the area of land described on the works plans as Work No. 1 - The construction of a new railway lines from the rail freight terminal (Work No. 2) in order to connect with the existing Northampton Loop railway line and the express freight cross dock platform, the general arrangement of which is shown on the regulation 6(2) plan (Document ***), including—</i></p> <p>(a) <i>construction of a new railway track and associated rail infrastructure;</i></p> <p>(b) ...</p> <p>Without sight of the draft Works Plans, there may also be cause for the Applicant to reference the relevant Sheet No. associated to the specific Works being described.</p>
17.	Schedule 1: Work No. 9	<p><i>Work No. 9 [J15a alterations]</i></p> <p><i>Within the area of land described on the works plans as Work No. 9—</i></p> <p>(1) <i>The provision of the *** interchange works, the general arrangement of which is shown on the</i></p>	<p>A definition of 'predevelopment works' may be helpful. Should this be linked with definition of 'commence'.</p>

Draft Development Consent Order			
Q No.	Article (A)/ Requirement (R)	Extract from DCO (for ease of reference)	Comment/Question
		regulation 6(2) plan (Document ***), including— (a) predevelopment works to facilitate widening and reconfiguration;	
18.	Schedule 1: Work No. 10	Lorry park	<p>The details of this are vague. Unless there is requirement that the rail element of the project is completed before the lorry park, this may cause concerns for the ExA, with the potential for an operational road haulage facility being in place for some unspecified time before the rail transport elements are operational. Has this been addressed in the ES?</p> <p>The explanation found within the draft EM at 7.3, would not appear to be sufficient and a more detailed explanation/justification would assist the ExA</p> <p>The Applicant may wish to consider the concerns/recommendations made on the East Midlands Gateway RFI by the ExA, and the eventual made Order issued by the SoS.</p>
19.	Schedule 1: Further works (q)	<i>(q) such other works as may be necessary or expedient for the purpose of or in connection with the construction or use of the authorised development which do not give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.</i>	<p>The ExA may wish to have further details of what these ‘other works’ are likely to be, and how environmental effects will be assessed if these have not already been considered in the ES.</p> <p>This is an unusually long list of ‘further works’ which are not tied down through the dDCO to a specific location, due to the likely scale of some of these works (for example weighbridges, bunds, embankments etc.) this may be of concern to the Examining authority. Without sight of the plans we are unable to comment on this further, however if this approach is adopted in the proposed application we strongly advise that a thorough justification for this approach is contained within the EM.</p>
20.	Schedule 2	Schedule 2: Requirements (Part 1)	Should Schedule 2 not include an “Interpretation” of this Part of the Schedule? Will the Applicant update this prior to submission for Acceptance?

Draft Development Consent Order			
Q No.	Article (A)/ Requirement (R)	Extract from DCO (for ease of reference)	Comment/Question
21.	R2	<i>Phases of development</i>	<p>We note the Applicant’s intention for a phasing strategy to be submitted to the local authority but not to be approved by the local authority. Please see Q27 below regarding the CEMP. We advise that the local authority is consulted on this Requirement prior to submission of the application, and evidence of the outcome of the consultation to be submitted with the application.</p> <p>Note that the current drafting of R2 states that <i>'No phase of the authorised development ... is to commence until a written scheme....has been submitted in writing by the relevant planning authority'</i>.</p> <p>How far in advance of the commencement of the works should the phasing strategy be submitted to the local authority? Whilst we recognise the need for a phasing strategy, what purpose would it serve (in submitting it to the local authority) if they were unable to provide comment?</p>
22.	R4 & R5	<p><i>4.The provisions of the Framework Travel Plan (Document ***) 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.</i></p> <p><i>5. The undertaker will establish a sustainable transport working group which will include so many representatives from the relevant local authorities and relevant highway authority as necessary and who will be responsible for the implementation of the Framework Travel Plan, who will ensure the Framework Travel plan is complied with at all times following the commencement of the authorised development.</i></p>	<p>R4 is confusing and the Applicant may wish to consider redrafting.</p> <p>Should the order of R4 and R5 not be reversed?</p>

Draft Development Consent Order			
Q No.	Article (A)/ Requirement (R)	Extract from DCO (for ease of reference)	Comment/Question
23.	R7	<p>6. The highway works must be carried out in accordance with details first submitted to and approved by the relevant body in accordance with the provisions of Schedules 19 and 20 (protection of interests).</p> <p>7. The undertaker must prior to commencement of the Work No.s [X], have submitted to and approved in writing by the relevant planning authority (following consultation with the undertaker for Northampton Gateway), a sequence for the delivery of the highway works that accounts for any other highway works carried out in relation to Northampton Gateway.</p>	<p>Consider alternative to 'sequence' e.g. 'scheme', 'plan' or 'timetable'.</p>
24.	R14 and R15	<p>Relationship between the Construction Environmental Management Plan (CEMP) and Code of Construction Practice (CoCP).</p>	<p>The Applicant should ensure that it consults with the relevant local authorities on this proposed requirement prior to submitting the application to ascertain if the local authority is content with this approach. The reason being that it can be resource intensive for the local authority to review a CEMP for each 'phase' of the development.</p> <p>Has the term 'phased' been defined? Is it clear how many 'phases' will take place?</p>
25.	R14	<p>(a) screening, fencing and site security; (b) biosecurity measures; (c) ecological and other environmental mitigation measures required during or prior to onstruction of the authorised development (2) The CEMP for each phase of development is to be reviewed and updated if necessary to address unacceptable impacts arising from construction works. Each CEMP must be submitted by the undertaker for approval in writing by the relevant planning authority or in the case of the highway works the relevant highway authority. All construction works</p>	<p>R14(c) "...prior to [c]onstruction..."</p> <p>Under what criteria would it determined whether impacts are 'unacceptable', and subsequently whether the CEMP needs to be updated.</p> <p>This is not explained in the draft EM.</p>

Draft Development Consent Order			
Q No.	Article (A)/ Requirement (R)	Extract from DCO (for ease of reference)	Comment/Question
		<i>must be carried out in accordance with the CEMP as approved.</i>	
26.	R24	<i>“...CoCP (Document ***) unless otherwise agreed in writing by the relevant planning authority...”</i>	We draw your attention to AN15 and matters relating to inclusion of tail piece Requirements. We would recommend the removal of the highlighted tail piece.
27.	R28(2)(c) & (d)	<i>‘Movement Permits’ and ‘Test Certificates’</i>	These are capitalised but not defined. If defined terms, please provide ‘Interpretation’ see Q20, above.
28.	R31	<i>Amendments to approved details</i>	Does this relate only to changes to any information/detail which has been approved through requirements? If not, how does this relate to schedule 6 of the PA2008? Further justification within the EM is required. Has ‘minor’ been defined?
29.	Schedule 14: Provision 14(2)	<i>“...withdraws the notice to threat under this...”</i>	Should this be ‘notice to treat’?
30.	Schedule 16: Interpretation	<i>any significant alteration in the water level of the waterway, or significant interference with the supply of water thereto, or drainage of water therefrom;</i>	Does ‘significant’ need to be defined, or clarification provided in the EM as to what would constitute ‘significant interference’ etc.
		<i>“practical completion” means practical completion of all of the specified work notwithstanding that items which would ordinarily be considered snagging items remain outstanding, and the expression “practically complete” and “practically completed” shall be construed accordingly</i>	Does there need to be a definition or clarification as to what would ‘ordinarily’ be considered snagging items’.
31.	General Schedule 16 to 23 Protective Provisions		If these have not already happened, it would be sensible for there to be early discussions with the mentioned statutory undertakers to establish whether in their view these proposed protective provisions will be adequate.

Draft Development Consent Order			
Q No.	Article (A)/ Requirement (R)	Extract from DCO (for ease of reference)	Comment/Question
32.	Explanatory Note	<i>“This Order grants development consent for, and authorises *** (“the undertaker” to construct, operate and maintain, the new Rail Central Rail Freight Interchange ...”</i>	Missing second bracket from (“ the undertaker”, This Explanatory Note is usually presented at the end of the documents. We would recommend that this be inserted following Schedule 23.
33.	Schedule 23		The inclusion of this schedule is not listed in the index of the schedules at pages 2-3

Draft Explanatory Memorandum			
Q No.	Paragraph	Extract from EM	Question/comment
1.	General draft EM (dEM)		<p>Generally, the dEM tends to explain the <i>effect</i> of the relevant provision in the DCO, rather than explaining <i>why</i> it is necessary.</p> <p>The EM should also provide more detail and justification where a provision departs from the model provisions or a precedent. (See AN 13 and 15).</p> <p>This should include reference to the particular circumstances of this development and an explanation as to why this is necessary or desirable.</p>
2.	General draft EM (dEM)		<p>Further explanation and evidence (including the outcomes of any consultation) is required to explain why the content of each article, schedule etc to the dDCO is relevant and required for this proposal. Please refer to AN15.</p>
3.	General draft EM (dEM)		<p>The introduction to the EM would helpfully identify, perhaps by a table, each of the highways affected by the project, their classification (if any), and the responsible highway authority. If there are any streets affected by the project that are not highways, it would be helpful to identify them as well, together with the responsible street authority.</p>
4.	General draft EM (dEM)		<p>The draft EM is equivocal about the qualifying characteristics of the project that make it an NSIP. Does the project contain elements of improvement and alteration? See further notes under "General" header, bullet point 1 below.</p>
5.	7.15	Works No. 12 to 32	<p>Further explanation of these works is required.</p>
6.	A15	(Maintenance of highway works) is based on an article found in other Development Consents Orders and is included to provide for the maintenance of the new or altered public highways in accordance with the provisions in Schedules 19 and 20	<p>Please specify, or give examples, of the made DCOs upon which this article is based, and if appropriate, please explain the justification for any deviation from the precedent.</p>

Draft Explanatory Memorandum			
Q No.	Paragraph	Extract from EM	Question/comment
7.	A16	(Classification of roads) is based on articles found in other Development Consent Orders and is included to make provision for the classification of new, and re-classification of existing, highways within the Order limits.	Please specify, or give examples, of the made DCOs upon which this article is based, and if appropriate, please explain the justification for any deviation from the precedent.
8.	10 – Schedules - Requirements		<p>It would assist navigation of the document if the requirements referred to in part 10 of the EM are numbered.</p> <p>Further explanation and justification of the requirements, including the outcome of any consultation on the wording with the relevant bodies, should be evidenced here.</p> <p>'(phases of development)' refers to the CEMP in the EM, however this requirement relates to the phasing strategy, without reference to the CEMP</p>
9.	A46 Approval mechanism		Justification for the 8 weeks is required. Has the Applicant consulted with the relevant local authority on this drafting?

General

1. Consideration against dDCO, dEM and possible Statement of Reason (SoR):

- The description of the development in the dDCO should make explicit the subsection(s) of s22 of the PA2008 that apply to the proposed development ie whether the proposed development comprises the construction of a new road, or the alteration or improvement of an existing road (or any combination of these). The draft Explanatory Memorandum (dEM) should draw distinction between all works within a dDCO and explain in detail how those works relate to the tests set out in s22 of the PA2008^[1]. Clear and consistent evidence should be provided setting out how a proposed work(s) qualifies as an NSIP and whether or not the proposed works may comprise more than one NSIP. It is the Inspectorate's view that more than one NSIP may be included in a single application for development consent, where appropriate in the circumstances.
- Where s22(2)(c) or s22(3)(c) of the PA2008 is relied upon to demonstrate NSIP status, the dEM should make explicit the extent of works and how that extent relates to the associated threshold set out in s22(4) of the PA2008. Supporting plans will usefully be provided to demonstrate assertions relating to the extent of works and associated thresholds.

^[1] As amended by The Highway and Railway (Nationally Significant Infrastructure Project) Order 2013

- Section 22(9) of the PA2008 provides the definition for 'area of development'. The Inspectorate understands this to mean that if any part of the existing highway (i.e. any land within the existing highway boundary) is expected to be used in connection with any relevant construction or alteration under s22 of the PA2008, then it should be included in the calculation of the total 'area of development'.
 - Where any works comprising part of a proposed development could consist of 'improvement' of a highway under s22(5) and s235(1) of the PA2008, and where those works are not considered by an applicant to be an NSIP in their own right, applicants should signpost where within the ES it is evidenced that those works are not 'likely to have a significant effect on the environment'.
 - The definition of 'alteration' in s235(1) of the PA2008 includes 'improving'. If any works comprising part of a proposed development are 'improvement to highway', but are not in themselves 'likely to have a significant effect on the environment', applicants should consider carefully how the improvement works should be described in the dDCO (ie as integral to a construction/ alteration NSIP, or as 'associated development').
 - Advice in respect of defining the proposed development with sufficient precision is issued in consideration of the provisions of s160 of the PA2008 which deals with offences and convictions.
2. Where references are provided to other Application documents it would be beneficial to provide the full title thereof inclusive of document reference number. Should further draft documents be provided for review, the Applicant may wish to consider providing a full list of known application documents (for purpose of sign-posting) as well as their respective reference number.
3. [DCLG: Application form Guidance](#), paragraph 3 states: *The application must be of a standard which the Secretary of State considers satisfactory: Section 37(3) of the Planning Act requires the application to specify the development to which it relates, be made in the prescribed form, be accompanied by the consultation report, and be accompanied by documents and information of a prescribed description. The Applications Regulations set out the prescribed form at Schedule 2, and prescribed documents and information at regulations 5 and 6.*

It should be noted that the APFP Regulation 5(2)(n) states that an application must be accompanied "where applicable, a plan with any accompanying information identifying any Crown Land." It is acceptable to submit plans representing various features including Land to be Acquired, Temporary Possession and/or Crown Land, however this should be consistent with the suite of application documents submitted.