



West Midlands
Interchange

Four Ashes Ltd

The West Midlands Rail Freight Interchange Order 201X
Applicant's Draft Response to ExA DCO and DCOB Comments (Agenda to ISH1)

1. This document is submitted to the Examining Authority (ExA) ahead of Issue Specific Hearing (ISH) 1 in respect of the draft Development Consent Order (dDCO) and the draft Development Consent Obligation (DCOb) (also referred to as the S106 Agreement). This document has been submitted as a draft and will be finalised following ISH1 and submitted to the ExA as part of the Applicant's post hearing submissions.
2. The Applicant has provided a draft response to the questions raised by the ExA in Annexes 2 – 5 of the ISH Agenda. Each question is referred to as ISH1 + the ExA question reference. e.g. the response to 1.4 below is ISH1:1.4.
3. The Applicant has responded to the DCOb questions in ISH1 Agenda Annex 5, but also submits, alongside this document, an updated draft DCOb which, although still in draft format, has moved on since the submission of the Application. At the time of writing the Applicant is awaiting a response from the Councils to the draft agreement which will then be considered and discussed further. Such discussions are likely to include consideration of whether or not some of the subject matter in the s.106 Agreement should be dealt with in the dDCO instead.

ISH1 Agenda Annex 2 - Draft DCO – Structure, Definitions and Articles 1-49 (Agenda item 4)

COMMENTS AND QUESTIONS BY EXAMINING AUTHORITY

Q Ref	Part of DCO	Directed to	Question/ comment	Applicant's Response
1.1	General	Applicant	It is noted that the use of the word " <i>shall</i> " has been replaced with other wording in a number of places within the revised draft in accordance with the guidance in Advice Note 15 (AN15). However, " <i>shall</i> " is still used extensively in the drafting where alternative wording would seem more appropriate.	This is noted. The Applicant will review and amend the dDCO accordingly.

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			<p>The applicant is requested to undertake a further review of the draft text with a view to minimising reliance on this wording whilst maintaining consistency across the draft DCO as a whole. (Compare for example A16 (6) with A17 (3) where there appears to be no obvious need for a different wording).</p>	
1.2	A2	Applicant	<p>Why within the definition of “<i>Authorised Development</i>” is it necessary or appropriate to include the additional wording “<i>and any other works carried out under the requirements</i>”? This appears to be superfluous since works carried out under the requirements would, presumably, already be covered by the phrase “<i>and any other development authorised by this Order</i>” within the first part of the definition.</p>	<p>This wording is included to ensure that any works (which may not necessarily be “development”) carried out pursuant to a requirement (e.g. following approval of a scheme) are included in the meaning of “authorised development” and are therefore authorised by the Order.</p>
1.3	A2	Applicant SSDC	<p>The definition of “<i>commence</i>” in the revised draft DCO includes the words “<i>unless the context indicates otherwise</i>”. (i) What circumstances are envisaged by this reference and how might this affect the clarity of the Order? (ii) Is this additional wording necessary and appropriate?</p>	<p>This wording was added following a comment by the ExA of a different Examination (The Northampton Gateway Rail Freight Interchange Order), where that ExA was concerned to ensure that the meaning of “commence” or “commencement” was appropriately applied to its context throughout the dDCO.</p> <p>It is necessary for the West Midlands dDCO because there are several references to “commencement” which do not only apply in the context of commencing the “authorised development” e.g. see article 10(3)(b) which refers</p>

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				to commencement points for the stopping up of streets. That clearly is not the carrying out of a material operation as part of the authorised development, and therefore it is felt that the inclusion of the additional wording to allow interpretation in its appropriate context is helpful.
1.4	A2	Applicant SSDC SCC	<p>i) Is the definition of “<i>maintain</i>” in the revised draft DCO consistent with the guidance at paragraph 18.2 of AN15 that a power to maintain should not authorise development which may result in significant environmental effect not already assessed?</p> <p>ii) Has the applicant engaged with the relevant bodies to seek to agree this definition and the related article in the draft Order?</p>	<p>i) Maintenance of the authorised development is governed by article 6, except for the highway works, the maintenance of which is governed by article 14 and the relevant protective provisions (see Parts 2 and 3 of Schedule 13).</p> <p>Article 6(3) ensures that any maintenance (as defined in article 2) must not give rise to any significant adverse effects on the environment which have not been identified at the time the Order was made or in any updated environmental information supplied. This is consistent with para 18.2 of AN 15.</p> <p>ii) The Applicant has sought to engage with the District and County Councils to obtain their comments on the dDCO and has not received any comments on this definition or the related article. The Applicant considers that the definition and article are appropriate and clearly come within the guidance at paragraph 18.2 of AN15.</p>
1.5	A2	Applicant SCC	(i) Is there any specific need or purpose for using separate terms for “ <i>street authority</i> ” and “ <i>relevant</i>	(i) The dDCO does include the definition of “ <i>relevant highway authority</i> ”. The terms “ <i>relevant</i>

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		HE	<p><i>street authority</i> and for <i>traffic authority</i> as well as <i>relevant traffic authority</i> when there seems to no similar duplication of the term <i>highway authority</i>?</p> <p>(ii) Is any useful distinction identified by means of the separate terms or could they be reduced to a single term for each type of authority to be used in all appropriate parts of the DCO?</p>	<p>street authority”, “relevant traffic authority” and “relevant highway authority” are required because in each instance there are different bodies to which a provision might be referring.</p> <p>For example, article 10(3)(a) refers to a “relevant street authority” because the street authority could be either the highway authority (either the County or Highway England) or the undertaker (in the case of the private streets on the main site). Similarly, article 17 refers to the “relevant traffic authority” because the traffic regulation provisions apply to roads on the Highways England network and/or the County highway network. Finally, the term “relevant highway authority” is necessary for the provisions relating to public highways which require consent of either Highways England or the County highway authority (e.g. see articles 12, 13 and 20).</p> <p>ii) It is considered necessary to include each of the separate terms because they have a particular meaning dependent upon their context (e.g. a highway authority relates to a public road, whereby a street authority includes private streets and could therefore include the undertaker in respect of those streets in the Order limits which will remain private).</p>
1.6	A2	Applicant	As drafted the second part of the definition of <i>“rail served warehousing”</i> is not particularly clear. Any	It is intended that the definition includes all warehousing provided as part of the authorised

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			<p>warehouse could, arguably, be capable of receiving goods “<i>by means of another form of transport</i>”. (i) Is this intended to refer to the transfer of goods from the Rail Freight Terminal to a warehouse comprised within the authorised development? (ii) does the definition cover all of the proposed warehousing?</p>	<p>development. The term “rail served” was intended to indicate compliance with section 26 of the Planning Act 2008, hence the reference to “by means of another form of transport” which is taken from section 26. However, the Applicant accepts that it has served to confuse and implies a differentiation between some of the warehouses being proposed as part of the development, which is not the case. The Applicant suggests an alternative definition where only the term “<i>warehousing</i>” is used, which will be defined as “<i>means the warehousing constructed as part of the authorised development</i>” This amended definition, together with the associated changes throughout the dDCO, will be included in the next version of the dDCO to be submitted for Deadline 3.</p>
1.7	A2	Applicant SCC HE	<p>The definition of “<i>verge</i>” as drafted would appear capable of including any footway or cycleway running alongside the ‘<i>carriageway</i>’. Is this an accurate meaning of the term having regard to the definitions set out in s329 of the Highways Act 1980?</p>	<p>The ExA is correct that the definition of “<i>verge</i>”, as drafted, includes a footway or cycleway due to the meaning of “<i>carriageway</i>” in s329 of the Highways Act 1980. The Applicant notes the potential for conflict with regard to A18 and will consider a suitable amendment to this definition. It may be along the lines of: “<i>verge</i>” <i>means any part of a road which is not a carriageway but excluding a footway or cycleway.</i></p>
1.8	A3	Applicant	<p>(i) Are the words “<i>and used</i>” towards the end of A3 needed?</p>	<p>(i) The wording was included to explicitly authorise the use of the development in addition to its construction.</p>

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			(ii) Do they meet a separate and specific purpose not already covered in the wording of A5 and A39?	<p>The reason for the inclusion of “and used” is that, although section 157 of the Planning Act 2008 authorises the use of buildings in respect of which development consent is granted, there is no similar provision related to land.</p> <p>(ii) It is acknowledged that this is also expressly included in articles 5 (dealing with rail infrastructure and warehousing) and 39 (dealing with the railway system), however, in those articles, the “use” provision relates only to some specific works and not the “authorised development” in its entirety.</p>
1.9	A4	Applicant	How would Clause (a) operate alongside Note 3 on the Works Plans, for example in respect of the flexibility in relation to the detailed siting, plan and footprint of any of the proposed warehouses or other buildings?	<p>Note 3 on the Works Plans explains the limits of deviation for each of the works. That is, for those Works No.s which are not specifically mentioned, the full extent of deviation is the works area shown on the plan, within the Order limits. For those which are mentioned, the limit of deviation is as shown on those plans with the relevant delineation (e.g. for Works No. 5 the maximum deviation is either 5m where there is a blue dashed line or 7m where there is an orange dashed line).</p> <p>In respect of the example given, all warehousing must be sited within the area shown as Works No. 3, shaded grey. Any flexibility in their exact siting and footprint is governed by the parameters plans and the approval of the detailed design under the requirements.</p>

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1.10	A4	Applicant	<p>i) How would Clause (b) operate alongside the annotations on the Bridge Plans which indicate detailed levels for the underside, deck and other key elements of the proposed bridges and set minimum clearance levels for the underside of bridges?</p> <p>ii) Would there be a risk that the flexibility provided by Clause (b) might operate in tandem with that provided by Clause (c) (i.e. in relation to a bridge over part of the railway works) to result in an upwards deviation in the level of such a bridge by 3 metres?</p> <p>iii) Has the full degree of flexibility provided for in A4 been assessed in the ES on a worst case basis?</p>	<p>i) It is intended that the exact detail of the bridge design is to be approved before construction (requirement 3 will be amended to provide for that explicitly). The ExA will note that some of these annotations on the Bridge Plans refer to approximate distances. The maximum limits of deviation are required to ensure that the DCO allows for tolerance to accommodate normal variations required when construction details are known.</p> <p>ii) The Applicant does not consider that there is a risk of this, but will consider whether the wording of sub-paragraphs (b) and (c) might be suitably amended to alleviate any concerns. The railway works mentioned in sub-paragraph (c) specifically relate to Works 1 and 2, whereas the construction of the bridges is contained in Works 4. However, the Applicant understands the potential for confusion and suggests that article 4(b) is amended to refer to "bridges" rather than "bridge works", since the term "bridges" is defined with reference to the Bridge Plans.</p> <p>iii) The parameter plans make reference to the works plans and these, along with the stated variations in Article 4, have been considered in the ES where effects have been considered on a worst case basis.</p>

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1.11	A4	Applicant	<p>In respect of the second part (rider) to A4, generally it is acceptable to provide for the LPA (or other body) to agree subsequent amendments to details that it has been responsible for approving under a requirement included within a DCO. However, giving an LPA the power to agree subsequent amendments to details approved by the SoS as part of the original Order creates uncertainty for the SoS as to what is being approved by the DCO. The additional flexibility proposed in this part of A4 appears to be of this nature and is a cause of concern. What further variation from the limits prescribed in Clauses (a) to (c) is anticipated and why cannot this be accommodated within the parameter plans which would be approved as part of the DCO?</p> <p>It is noted that the EM refers to similar wording having been proposed in the DCO for the A14 road project. However, I am advised that the SoS rejected that wording and made any power to approve any further variation from the approved parameters subject to SoS approval (See A7 of that DCO- Ref. TR010018).</p>	<p>The inclusion of this proviso (albeit in some different forms), is generally accepted in DCOs and is becoming more common in order to allow flexibility without the need for a formal amendment to a DCO, but only in circumstances where the local authority is satisfied that there is no significant adverse effect on the environment as a result.</p> <p>The provision included is as drafted by the Secretary of State for the A14 Order except with the local authority being the adjudicator rather than the Secretary of State, which it is felt is more appropriate. Accordingly it is considered the flexibility it provides is acceptable in principle. It is felt that the local planning authority is the appropriate authority to consider this in this case, given the involvement of the local planning authority in dealing with approval of details for the remainder of the development.</p> <p>Flexibility is very important in DCO for SRFI in particular, since it is needed to ensure that the development is not disadvantaged by being authorised by a DCO rather than a planning permission. However, the parameters plans are not capable of being amended through the operation of Article 4, only the limits of deviation set out in (a) to (c). The purpose of (a) to (c) is to allow for the need for flexibility arising from construction issues.</p>

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1.12	A12	Applicant SCC	I understand this article to be concerned with the new rights of way that are proposed to be created. Should there also be provision made within the DCO for the construction and delivery of the routes proposed as permissive paths if these are considered necessary for accessibility purposes? (Paragraph 6.37 of the Explanatory Memorandum (EM) only refers to the means of keeping them permanent once they have been provided).	<p>The provision of permissive paths is currently proposed to be governed through the Section 106 Agreement (Development Consent Obligation/DCOb) (see paragraph 8 of Schedule 2 of the attached draft which travels with this document (Document 7.7C)). This approach was taken at East Midlands Gateway where the Applicant understands it was the preference of the local authority that the obligation was secured as a planning obligation rather than as part of the DCO and the Applicant applied the same approach.</p> <p>The Applicant is content to amend the dDCO and the DCOB so that the provision and maintenance of the permissive paths is included in the dDCO instead. This would take the form of a requirement in Schedule 2.</p>
1.13	A13	Applicant	There appears to be an error in the description in Column 2 to Part 3 of Schedule 6 re the notation of the private footpath between points J and AAA on Document 2.3C. The route appears to be shown by a dashed orange line rather than a blue one.	This is noted. The Applicant will amend the dDCO in the next version to be submitted for Deadline 3 .
1.14	A17	Applicant SCC	Further clarification is sought on the purpose and scope of the provisions in A17 (2) and why these are needed. There appears to be nothing in the wording that limits the provisions to roads within the Order Limits and the provision seem very broad in	This wording is identical to powers included in other recently approved DCOs (for example the Thames Tideway Tunnel DCO (S.I. 2014 No. 2384) article 18 (3)). The power is included to ensure that the undertaker is able to regulate

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			their scope. What is the specific justification for including these provisions in this draft DCO?	<p>traffic (not only within the Order limits) with the consent of the relevant traffic authority and avoid the need for further orders to be obtained. This is consistent with the objective of a one-stop shop.</p> <p>The article contains the overriding safeguard that the consent of the traffic authority is required. Under A17(3) the traffic authority may require that consultation is carried out.</p>
1.15	A20	Applicant	The provisions in A20 (1)(e) could potentially circumvent the need for the normal statutory process to be followed in relation to the stopping up or diversion of a highway and deprive those who might be affected by such a proposal of the opportunity to comment on or object. What is the specific justification for including these provisions in this draft DCO?	<p>The ability to enter into agreements with respect to the stopping up or diversion of a highway does not negate the need to obtain the statutory authority for such stopping up, it simply allows the authority to enter into an agreement in that respect (e.g. the undertaker might agree to make a contribution for the authority to pursue such stopping up).</p> <p>The article is also included in similar format in other DCOs, such as the Thames Tideway Tunnel DCO (S.I. 2014 No. 2384) and The East Midlands Gateway Rail Freight Interchange and Highway Order (S.I. 2016 No. 17).</p>
1.16	A22	Applicant	(i) What is the basis/ rationale for specifying 28 days' notice in A22 (2)? (i) Is there any precedent for adopting this time period?	<p>The extended time period of 28 days rather than 14 which has been previously commonly used is included following comments from the ExA of another Examination (Northampton Gateway) that 14 days is not sufficient, given that it is conceivable that a person might be on holiday for that length of time. The suggestion is that 28 days gives a</p>

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				reasonable notice period, allowing for normal lengths of absence.
1.17	A35	Applicant	I note that s A46 (3) disapplies the provisions of the Neighbourhood Planning Act (NPA) 2017 and that paragraph 6.97 of the EM states that this is because the relevant parts of the NPA have not yet come into force. However, the NPA provisions might be taken to give an indication of what Parliament considers to constitute reasonable notice periods in temporary possession situations and the right of the owner to serve a counter notice. What justification is there for adopting shorter periods proposed and for not including any right to serve a counter notice in the circumstances of this draft DCO?	<p>The disapplication of the NPA is required to provide certainty for both the Applicant and the landowners/occupiers potentially affected by the use of the temporary possession powers as to which regime is to apply. The temporary possession provisions in the NPA 2017 are not yet in force and there is no indication as to when these provisions will come into force or whether they will be brought into force in their entirety. Further, there is no indication of the nature of any proposed transitional provisions, and/or the extent to which the powers, as brought into force, could conflict with this DCO. Accordingly it is not considered appropriate to apply the NPA 2017 provisions to this DCO.</p> <p>The ExA will appreciate that there is a need for infrastructure schemes to make use of these temporary possession powers in order to ensure that delivery is not impeded. The period is considered to be fair in the context of this DCO, for which there are limited parcels of land affected, and it will be known by all parties from the outset, rather than risk having a longer period applied if and when the NPA amendments do come into force should any transitional or saving provision be applied. The parcels of land proposed to be subject to temporary possession are small areas</p>

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				<p>of agricultural land and the proposed notice period is sufficient to enable affected owners/occupiers to prepare for possession being taken.</p> <p>With regard to the counter notice provisions, the Applicant does not consider it appropriate to include provision for this in the draft DCO. There is no process for this currently set out in statute and its inclusion would require drafting a bespoke process and the need to ensure that the Tribunal would have jurisdiction to determine the counter-notice where no such process for determination currently exists in law. To seek to draft and create a bespoke a determination process for counter-notices for this DCO would be disproportionate to the powers sought, and the Applicant is not aware of any other recent DCOs (granted post NPA 2017) which have included such provision. In any event it is not considered that the exercise of temporary possession powers as proposed to be authorised by the DCO is likely to result in any material detriment.</p> <p>The Applicant also notes that other recent DCOs made since the NPA 2017 have the same notice periods proposed by articles 35 and 36 of this DCO (e.g. The A19/A184 Testos Junction Alteration DCO (S.I. 2018 No. 994, The Eggborough Gas Fired Generating Station DCO (S.I. 2018 No. 1020) and The Silvertown Tunnel DCO (S.I. 2018 No. 574)). Similarly, the hybrid bill</p>

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				for Phase 2 of HS2 which is currently before Parliament, does not seek to incorporate the longer period proposed in the NPA 2017, nor to include a bespoke counter-notice procedure.
1.18	A35	Applicant SCC	The amendments made to A35 (4) have resulted in some awkward wording. Further clarity might possibly be added to avoid the possible reading that the provision requires the undertaker to both remove and restore any temporary highway access.	The Applicant will give the wording further consideration and any revised wording will be included in the dDCO to be submitted for Deadline 3 .
1.19	A36	Applicant SCC	The amendments made to A36 (5) have resulted in some awkward wording. Further clarity might possibly be added to avoid the possible reading that the provision requires the undertaker to both remove and restore any temporary highway access.	As per ISH1:1.18 above.
1.20	A43	Applicant SSDC	Given that the proposed development requires the felling of a small number of veteran trees and some lengths of important hedgerows is there a need for a specific provision to be included in the DCO which gives consent for this felling and removal? (See paragraphs 22.1 & 22.2 of AN15).	<p>The Applicant is considering the need for the addition of some extra wording to this article and A46 (to remove the need for any necessary consents under the Hedgerow Regulations 1997), and the addition of reference to an appropriate schedule or reference in the environmental statement.</p> <p>The veteran trees to be retained are specifically identified on the Green Infrastructure Parameter Plans and are therefore protected by the need to comply with the Parameters Plans by virtue of A4.</p>

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1.22	A46	Applicant	<p>i) The first paragraph of A46 is not numbered in the revised draft DCO.</p> <p>ii) What is the justification for the provisions set out in the first paragraph and what precedent, if any, is there for including such provisions in the DCO?</p> <p>iii) Has the EA been consulted about the proposal to include these provisions given that it would likely be the relevant regulatory authority in relation to the legislation and statutory instruments listed in sub paragraphs (a) to (f)? (See Good Practice Point 10 in AN15).</p>	<p>i) Noted – all formatting will be double checked and corrected in the next version of the dDCO to be submitted for Deadline 3.</p> <p>ii) The Applicant has reviewed these provisions recently and, having regard to article 21(7), which explicitly acknowledges that the DCO does not override the need for an environmental permit, articles 46(1)(a) and 46(2) will be removed from the version of the dDCO to be submitted for Deadline 3.</p> <p>iii) Discussions have been ongoing with the EA in relation to the scheme generally and a Statement of Common Ground has been agreed in respect of the scheme which is being submitted at the same time as this document. Attention has now turned to obtaining a specific response from the EA to the drafting of the dDCO.</p>

ISH1 Agenda Annex 3: Draft DCO – Schedules 1 and 3-13 (Agenda Item 5)

COMMENTS AND QUESTIONS BY EXAMINING AUTHORITY

Q Ref.	Part of DCO	Directed to	Question/ comment	Applicant's Response
1.23	S1 Part 1	Applicant	The numbering of sub paragraphs under the heading of " <i>Works No. 1</i> " appears to have gone awry in both the tracked changes and clean versions of the revised draft DCO.	Noted, the Applicant will amend the dDCO accordingly.
1.23	S1 Part 1	Applicant	In Works No. 2 sub paragraph (g) what facilities and operations are envisaged under the reference to " <i>rail freight terminal refuelling</i> " and where are any structures or facilities required for this purpose indicated on the plans submitted with the application?	The refuelling activities would take place in the area of the cripple siding to the southern end of the rail freight terminal should such facilities be required. Fuelling for reach stackers and/or any shunt locos on site could be provided for during the start-up phase using mobile bowlers visiting the site as required. In the longer term if reach stackers are still required on site a tank could be supplied as a standalone piece of plant without requiring a building to house it, such that this could then be removed from site once electric gantry cranes are deployed.
1.24	S1 Part 1	Applicant	In Works No.3 sub paragraph (e)what works are anticipated over and above the " <i>rail linked warehousing sidings</i> " which are shown on the plan at Document 2.14 and appear to be within the site area of Works No.2?	The warehouses constructed within Works No 3 in Zones A1 and A2 are to have the ability to be directly connected to rail, accordingly, there may be on plot rail infrastructure required to facilitate such connection. This may take the form of access across the boundary between the rail terminal or rail linked warehousing sidings to be opened up to allow lifting equipment to operate freely between the rail areas and the warehousing

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				potentially under a warehouse canopy. Alternatively it may take the form of an additional siding directly into the warehouse.
1.25	S1 Part 1	Applicant SCC	Works No. 5 includes reference to signage and street lighting but these items are not referenced in Works No.4. Should they be included?	Street lighting is included at item (m) of Works No. 4. Signage will be added to Works No.4 in the next version of the dDCO to be submitted for Deadline 3 .
1.26	S1 Part 2	Applicant	Are the community parks likely to involve lighting, signage, hard landscaping and built structures/furniture that might need to be listed under Works No.6?	The contents of Works No. 6 will be considered further and any necessary amendments will be made in the next version of the dDCO to be submitted for Deadline 3 .
1.27	S1 Part 2	Applicant	Item (c) of Works No.9a refers to " <i>underground cabling in Works No.4</i> " but these works are not listed in Works No.4. There is a similar cross reference in Works No. 9b to underground cabling in Works No.6 but those works are not listed in Works No.6. (i) Are these omissions?	(i) This has been dealt with by way of the site wide "further works" in Schedule 1 (see paragraphs (1)(b), (2)(e) and (3)(g): " <i>the diversion and provision of utilities services including the underground cabling to connect into Works Nos. 9a and 9b</i> ". However, given the specific references to Works No 4 and 6 in Works No 9a and 9b, it is suggested specific reference to

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			<p>(ii) What is the extent of the underground cabling in the central part of the site?</p> <p>(iii) Do they also extend into the site area of other Works (for example Nos. 3 & 7)?</p>	<p>cabling be added to those works in the next version of the dDCO to be submitted for Deadline 3.</p> <p>(ii) This specific reference to the underground cabling (i.e. the link to Works Nos. 9a and 9b) relates to the diversion of the existing overhead lines underground.</p> <p>(iii) See above.</p>
1.28	S1 Part 2	Applicant	<p>Would Development Zone A3 have any other vehicular access than via part of the private estate road included within Works No.10a? If not, this might suggest that the main purpose of the first section of that road is to provide access to the authorised development and give rise to the question of whether it is properly included in Part 2 of S1 as 'Associated Development' when all other key access roads are listed in Part 1.</p>	<p>Works No 10a serves several purposes including accessing Zone A3, accessing the Gravelly Way Farm buildings (Works No. 8) and providing access to the SI Facility. It would not be correct to attribute a main purpose to any of those and accordingly it was felt that the Works were properly categorised as Associated Development, however, if desired, the works could be categorised as part of the NSIP instead. This would only affect the categorisation in Schedule 1 and has no other consequences.</p>
1.29	S13 Part 3	Applicant SCC	<p>Paragraph 2 (2) includes a definition for the term "<i>country link road</i>" but that term does not appear to be used in S13 Part 3. Neither is the road identified by this notation on the plans at Document 2.10. Is the definition needed?</p>	<p>Apologies for this. This is a typographical error and some old drafting. It refers to what was previously defined as the "County link road" but which is now replaced with the "A5/A449 link road". The Applicant will amend the next dDCO to be submitted for Deadline 3 accordingly.</p>

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1.30	S13 Part 6	Applicant	How do the provisions within Part 6 relate to the SI remediation works and programme or are these dealt with separately?	<p>The provisions in Part 6 are for the benefit and protection of SI and give them the right to be involved in aspects of the development which may affect their operation.</p> <p>Requirements 2, 12 and 13 deal with phasing of the works and dealing with contamination.</p>

ISH1 Agenda Annex 4: Draft DCO Schedule 2 – Requirements (Agenda Item 6)

COMMENTS AND QUESTIONS BY EXAMINING AUTHORITY

Q Ref.	Part of DCO	Directed to	Question/ comment	Applicant's Response
1.31	Part 1	Applicant SCC HE	Have the definitions and locations of “ <i>early arrival</i> ”, “ <i>extended stay</i> ” and “ <i>operational</i> ” bays been agreed?	The definitions of the “ <i>early arrival</i> ”, “ <i>extended stay</i> ” and “ <i>operational</i> ” bays as set out within the amended dDCO (Document 3.1A) are understood to be acceptable to SCC. The location of that parking falls to be considered when details are submitted pursuant to R3.
1.32	Part 1	Applicant	The word “ <i>shall</i> ” still appears in a small number of the requirements (3, 7 & 18) where other wording, such as “ <i>must</i> ” may be more appropriate. As in respect of the articles a consistent approach is to be preferred.	The Applicant will review the requirements for consistency and will amend the next dDCO to be submitted for Deadline 3 accordingly.
1.33	Part 1	Applicant	Where requirements cross reference an application document it would be helpful for the document reference to be included in the text; e.g. the reference to the Design and Access Statement in R3.	This is noted and the Applicant will consider this approach to the drafting. However, for consistency, it might then be appropriate for all documents and plans referred to throughout the dDCO to include the document reference, which does not appear to be the conventional drafting approach. The terms are defined and the Applicant has included specific details on the document number, reference and revision in the updated Schedule 15 to the dDCO which appears to be aligned with more recently approved DCOs e.g. Schedule 10 of the A19/A184 Testo's Junction Improvement Order (S.I. 2018 No.994) and The M20 Junction 10a Development Consent Order

Q Ref.	Part of DCO	Directed to	Question/ comment	Applicant's Response
				(S.I. 2017 1202) and The A14 Cambridge to Huntingdon Order 2015 (S.I. 2014 No. 547).
1.34	R2	Applicant SSDC SCC HE	<p>i) In the interests of clarity should R2 specify what details are to be submitted as part of the written phasing scheme?</p> <p>ii) Is there a need for R2 to refer to the Indicative Phasing Plan (Figure 4.5 of Document 6.2) since this indicative phasing is referred to at various places in the ES?</p> <p>iii) In the interests of certainty should R2 specify a stage in the development of the proposed warehousing by which the Initial Rail Terminal must be completed and available for use? (see R2 of the East Midlands Gateway RFI DCO)</p> <p>iv) Would it be helpful, for the purposes of cross referencing in subsequent requirements, for R2 to include the words "<i>approved phasing scheme</i>" or similar wording?</p>	<p>i) The Applicant will consider an amendment to the requirement.</p> <p>ii) The Applicant does not consider that the Indicative Phasing Plan (Figure 4.5 of Document 6.2) should be referred to in R2. The phasing of the Proposed Development is currently indicative and is dependent upon occupier requirements. The ES assessment of the Proposed Development is based on the indicative phasing comprising 5 separate phases and it is currently anticipated that the construction of the scheme will take place over 15 years.</p> <p>iii) The timing and delivery of the Rail Terminal is currently intended to be controlled by the obligations in Schedule 1 of the Draft Development Consent Obligation (Document 7.7C). Consideration will be given to this issue being dealt with within the DCO itself instead. Approved SRFI DCO vary in this respect.</p> <p>iv) The Applicant agrees this would facilitate cross referencing and will include this in the next version of the dDCO to be submitted for Deadline 3.</p>

Q Ref.	Part of DCO	Directed to	Question/ comment	Applicant's Response
1.35	R3	Applicant SSDC	Would it provide greater clarity if the first sentence of R3 (5) was moved to the end of R3 (1)?	The Applicant agrees and will amend the next dDCO to be submitted for Deadline 3 accordingly.
1.36	R4	Applicant SCC SSDC	As it is likely that SCC would be consulted on these details before SSDC issued any approval under R3 is R4 needed?	The Applicant would have no objection to the deletion of R4 however SCC may wish to have the comfort of a requirement to consult.
1.37	R6	Applicant SSDC	I have concerns about the proposed exclusion of " <i>landscaping works</i> " from the construction hours restriction. These works could have significant potential to generate noise and some of these works would be likely to close to sensitive receptors. What is the justification for this proposed exclusion?	The Applicant agrees with the point made by the ExA and will remove ' <i>landscaping work</i> ' from the exclusion of the construction hours restriction in the next revision of the dDCO.
1.[38]	R9	Applicant SSDC	<p>i) Would "<i>heritage assets</i>" be a more appropriate description that "<i>heritage receptors</i>" or is there a specific reason for this wording?</p> <p>ii) There is potential for confusion between the requirements of paragraphs (2) and (5) as to when demolition can take place. Greater clarity might possibly be provided if R9 (2) is incorporated within R9 (3) and R9 (5) is reworded to require that the demolition of any asset must not take place until written confirmation that all of the works required under paragraph 3 (a)-(c) have been completed has been submitted to the LPA.</p>	<p>i) The Applicant has no objection to referring to heritage assets rather than receptors and will amend the next dDCO to be submitted for Deadline 3 accordingly.</p> <p>ii) The Applicant agrees and will incorporate the amendment in the next revision of the dDCO.</p>

Q Ref.	Part of DCO	Directed to	Question/ comment	Applicant's Response
1.39	R10	Applicant SSDC	Would it be better simply to state that " <i>demolition of the canal crossings ... must be completed within 5 years...</i> "?	The Applicant agrees and will incorporate the amendment in the next revision of the dDCO.
1.40	R11	Applicant SSDC SCC	Is it sufficient that the Ecological management and Mitigation Plan should be in accordance with the Framework plan or is there a case for more specific requirements as done in R10 of the East Midlands Gateway DCO?	The Framework Ecological Management and Mitigation Plan (FEMMP) prescribes specific overarching measures, broken down by habitat and species. The FEMMP was drafted noting comments from SCC that the FEMMP should include clear measures, rather than general aspirations. It is considered that compliance with FEMMP for plot specific plans is sufficient.
1.41	R15	Applicant SSDC	<p>i) Is R15 (e) intended to refer to hedgerows to be retained and, if so, would a rewording of this requirement add clarity to its purpose?</p> <p>ii) Would additional clarity be added by amending (g) to require the submission of a programme for the implementation of the works?</p>	<p>i) The Applicant agrees and will incorporate the amendment in the next revision of the dDCO.</p> <p>ii) The Applicant agrees and will incorporate the amendment in the next revision of the dDCO.</p>
1.42	R16	Applicant SSDC	<p>The wording of R16 (1) is a little awkward.</p> <p>(i) Why is this needed and could the wording be simplified?</p> <p>(ii) If it is necessary to exclude landscaping works undertaken as part of highway works would this be better stated in the requirement as per R9 of the East Midlands Gateway DCO?</p>	<p>i) This is noted and the Applicant will consider an amendment to R16 in the next revision of the dDCO.</p> <p>ii) The Applicant agrees and will incorporate the amendment in the next revision of the dDCO to be submitted for Deadline 3 accordingly.</p>

Q Ref.	Part of DCO	Directed to	Question/ comment	Applicant's Response
1.43	R20	Applicant SSDC	<p>i) In instances where it would not be practicable to meet the limit set in R20 (1) would it be desirable to include a requirement to obtain prior approval to that exceedance? (See R21 of East Midlands Gateway DCO).</p> <p>ii) Is there a need for R20 to require the carrying out of regular noise monitoring during the construction period to ensure compliance with the imposed limit?</p> <p>iii) Would R 20 (1) be made clearer if the wording specified that the limit applies to noise generated by construction and demolition works?</p>	<p>i) The principle is agreed. Section 61 of the CoPA is relied on at EMG but it is an onerous process which may exceed what is necessary to reach agreement with the local authority. The Applicant is engaged in discussions with the local authority on these issues with a view to agreeing a Statement of Common Ground. Specific wording may be agreed though that process. Subject to that, the Applicant suggests adding to R20(1):</p> <p><i>“Where this is not practicable, prior approval from the local planning authority shall be sought, with full justification given for the deviation.”</i></p> <p>ii) This is noted and the Applicant will consider an addition to R20 in the next revision of the dDCO. Monitoring will be necessary in relation to the implementation of the bespoke noise insulation scheme and further consideration will be given to how this is dealt with in the next revision of the dDCO.</p> <p>iii) The Applicant agrees and will incorporate the amendment in the next revision of the dDCO.</p>
1.44	R21	Applicant SSDC	<p>i) As drafted R21 does not impose any limits for operational noise for any part of the development or any monitoring requirements. How does this secure the protection of sensitive receptors?</p>	<p>i) The protection of receptors is achieved through a combination of an extensive green infrastructure network including the use of landscape bunds and fencing to screen residential receptors from noise generating activities, a commitment to use high</p>

Q Ref.	Part of DCO	Directed to	Question/ comment	Applicant's Response
			<p>ii) Should the wording from R20 (2) also be repeated in R21 to control reversing alarms on all vehicles servicing the RFT and the warehousing units?</p>	<p>quality building materials, the use of the buildings themselves as noise screens, location of the rail terminal adjacent to the existing WCML away from immediate residential receptors, and the implementation of a bespoke noise insulation scheme.</p> <p>The provisions in the Requirements need to be read together with the obligations in the draft Section 106 Agreement.</p> <p>ii) The majority of operators do not have control over all of the vehicles that visit their sites; they will often be visited by supplier vehicles and the nature of their reversing alarms is not within the operator's control. Whilst this outcome can be encouraged, this would be unenforceable as a requirement.</p> <p>A requirement could be limited to all site-based vehicles, i.e. those that are owned or leased by the operators, and remain within the site boundary. Suitable wording will be included in the next version of the dDCO.</p>
1.45	R27	Applicant SSDC	<p>i) What is the justification for the exclusion of earthworks and ecological mitigation works from this requirement?</p>	<p>i) It is anticipated that earthworks arising from a particular phase of development may be stockpiled away from the area in that phase for re-use in a later phase. Similarly, mounding may be created within a later phase area prior to establishing detailed development plans for that phase. Earthworks in this context would not</p>

Q Ref.	Part of DCO	Directed to	Question/ comment	Applicant's Response
			<p>ii) R27 (1) should identify the Document references where the flood risk assessment and site wide drainage strategy are contained.</p>	<p>require specific drainage and without plans for the proposed development, it would not be feasible to design the drainage systems.</p> <p>Ecological mitigation measures may be implemented in areas of the site which fall outside of a particular phase boundary. With the exception of the basins and wetlands created in the community parks, the ecological mitigation measures will not require positive drainage.</p> <p>ii) The expressions "<i>flood risk assessment</i>" and "<i>site wide surface water drainage strategy</i>" are defined at the beginning of Part 1 of Schedule 2 by reference to their location in the environmental statement.</p>
1.46	R28	Applicant SSDC	<p>As drafted R28 does not include any timing clause and would not, therefore, meet the relevant tests. What wording is required to rectify this omission?</p>	<p>The requirement provides that the drainage strategy must be submitted and agreed prior to the commencement of the development of any warehouse or rail terminal. If the concern is that there is no specific reference to timing of implementation then the Applicant would propose to amend the requirement to specify that the drainage strategy must include details of phased implementation.</p>
1.47	Part 2	Applicant	<p>Paragraph 3 (3) of this Part defines time limits for the appointed person to issue a decision on any appeal. What rationale/ justification can the</p>	<p>The inclusion of the time periods for determination of the appeal is to ensure that there is a clear route and timeline to a decision so as to avoid delay in delivery of the scheme. At the moment the</p>

Q Ref.	Part of DCO	Directed to	Question/ comment	Applicant's Response
			applicant provided for the periods proposed and are there precedents for these?	decision maker is the only party to the timeline to whom no time period is applied and there seems to be no reason why this should be the case.

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ISH1 Agenda Annex 5: Draft Development Consent Obligations (DCOb) (Agenda Item 7)

This Annex relates to an earlier draft of the Development Consent Obligation – see Note 3 at the outset of this document.

COMMENTS AND QUESTIONS BY EXAMINING AUTHORITY

Q Ref.	Part of DCOB	Directed to	Question/ comment	Applicant's Response
1.48	General	Applicant SSDC	In the interests of clarity should all references to obtaining the approval of the District Council or other bodies be worded so as to require " <i>written approval</i> "?	This is correct, all approvals should be written. This will be included in the next draft DCOB to be submitted for Deadline 3 .
1.49	1.1	Applicant	Some definitions and figures have still to be completed.	Noted. The draft is still a working draft and the Applicant is in discussion with the District and County Councils.
1.50	1.1	Applicant	" <i>Implementation</i> " is defined only be reference to the 1990 Act; should there be a reference to S155 of the 2008 Planning Act?	It could be either – consideration will be given to this with the local authorities.
1.51	1.1	Applicant	There appears to be a typographical error in the definition of "Index".	Noted. The Applicant will review this.
1.52	1.1	Applicant	" <i>Obligation Land</i> " is defined as the " <i>land edged red on Plan A</i> " but there is no plan marked " <i>Plan A</i> " attached to the draft deed. The plan included in the draft DCOB (TerraQuest Drawing No. 1710-7760_512 v0.1) shows the extent of Mr Monckton's ownership and the rest of the area to be referenced in preparation for the submission of the Land Plans and Book of Reference. Given that Mr Monckton's ownership appears not to include the majority of the	The approach to the Obligation Land is under discussion with the local authority however it is obviously the case that not all the Order limits will be bound since the entirety of the Order limits is not under the Applicant's control nor will it be at the time the agreement is entered into. What is required is to ensure that sufficient land is bound with the appropriate obligations to ensure that the obligations are sufficiently secured.

Q Ref.	Part of DCOB	Directed to	Question/ comment	Applicant's Response
			land within the Order Limits that lies to the west of the WCML or a large part of that to the south of Vicarage Road clarification is required as to what land parcels would be bound by the proposed Development Consent Obligations. A revised plan that clearly shows this is also required.	The latest draft of the s.106 agreement deals with this in clause 6.1.2
1.53	S1:1.1	Applicant SSDC	<p>i) The wording "<i>at the same time as ... the Development</i>" is unclear as to what timescale is intended by the obligation in 1.1.</p> <p>ii) There appears to be no definition in the draft document of "<i>the first phase of development</i>". Is one required in order to clarify the intention of this obligation?</p>	The Applicant will consider these concerns and refine the drafting to provide more certainty in the version to be submitted at Deadline 3 .
1.54	S1:1.2	Applicant SSDC SCC	<p>i) Why could this not be dealt with by a requirement? (See Q1.34)</p> <p>ii) Have the proposed trigger points been agreed with other parties?</p> <p>iii) The inclusion of the words "<i>unless otherwise agreed...</i>" raises possible concerns with regard to the undertaker's commitment to delivering this key component of the proposed development.</p> <p>iv) Should the obligation not refer both to completion of the works and to the Initial Rail</p>	<p>i) See Note 3 at the outset of this document and the response to ISH1:1.34.</p> <p>ii) These are under discussion with SSDC</p> <p>iii) These words should not give rise to that concern since the control rests with the SSDC not the Applicant. These words are simply a prudent measure to ensure that unforeseen circumstances affecting delivery and outside the control of the Applicant are capable of being taken into account.</p> <p>iv) The Applicant agrees with the point made and will amend accordingly in the next version of the DCOB to be submitted for Deadline 3.</p>

Q Ref.	Part of DCOB	Directed to	Question/ comment	Applicant's Response
			Terminal being available for use by the specified time limit?	
1.55	S1:1.3	Applicant SSDC SCC	This clause seems to provide a great deal of flexibility as to when the works might be completed. What circumstances are anticipated that would justify such flexibility?	This wording is required to ensure that the development is not stalled by reasons outside of the Applicant's control. An example of the circumstances envisaged is delay in obtaining possession of the railway to carry out the works which is granted by Network Rail and, can be affected by other works being carried out to the network.
1.56	S1:1.4	Applicant SSDC SCC	This clause seems to provide a great deal of flexibility as to the future use and operation of the Rail Terminal. What circumstances are anticipated that would justify such flexibility	The only flexibility afforded to the Applicant is the ability to obtain a review of the appropriateness of obligation by the local authority. This is considered a prudent measure allowing for unforeseen eventualities to be addressed without the need to apply to the Secretary of State for an amendment to the s.106 agreement.
1.57	S1:2	Applicant SSDC SCC	Although the term " <i>Rail Freight Co-ordinator</i> " is defined in the draft document this part of S1 does not include any obligation on that person to do anything other than report progress or on the undertaker to actively promote and market the use of the rail facilities to prospective or existing occupiers. Is this a satisfactory level of commitment?	The Applicant is not clear as to what else might be expected of a Rail Co-ordinator but will consider any suggested expansion of the role.

Q Ref.	Part of DCOB	Directed to	Question/ comment	Applicant's Response
1.58	S1:4	Applicant SSDC	<p>i) Is there a requirement for membership of the Liaison Group to be approved by SSDC prior to its first meeting?</p> <p>ii) Is it necessary/ desirable to specify a stage in the development process by which the Group should be established and should hold its first meeting?</p>	<p>i) Membership of the Community Liaison Group is set out in the definition of the term in the DCOB..</p> <p>ii) The wording in paragraph 4.2 provides that the first meeting will need to be held within the first quarter following Implementation of the development.</p>
1.59	S2:3 & 4	Applicant SCC	i) Is there a requirement for membership of the TSG and the Transport Co-ordinator appointment to be approved by SCC?	The Site Wide Travel Plan deals with the membership of the TSG. Discussions with SCC have indicated that they do not feel it necessary to approve the appointment of the Transport Co-ordinator.
1.60	S2:5.1 & 6.1	Applicant SCC	Have the draw down stages been agreed with SCC?	There has been no response to these proposed triggers from SCC
1.61	S2:8	Applicant SCC	Could the provision of permissive paths not be dealt with by a requirement? (See Q 1.12)	See response to ISH1:1.12. The Applicant is content to deal with permissive paths by way of a requirement.
1.62	S4:1 & S5:1.1	Applicant SSDC SCC	Have the arrangements been agreed?	Discussions are continuing.
1.63	S7	Applicant SSDC	Are the parties content with the use of the term " <i>Applicant</i> " throughout S7 in terms of identifying who is responsible for the required actions?	This will be reviewed.
1.64	S7	Applicant	In S7 the paragraph numbering appears to jump from paragraph 1 to paragraph 4 which renders the	The Applicant will address any remaining formatting and drafting issues.

Q Ref.	Part of DCOB	Directed to	Question/ comment	Applicant's Response
			paragraph references within the text (e.g. at 5.4) unintelligible. Some revision appears to be required.	

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