

DCO Changes Tracker

The West Midlands Rail Freight Interchange Order 201X

Deadline 3: 24 April 2019

Eversheds Sutherland

**The West Midlands Rail Freight Interchange Order 201X
DCO Changes Tracker - Document 3.4A**

Schedule of changes made to the draft Development Consent Order submitted by the Applicant

This schedule explains changes made to the previous draft Development Consent Order (dDCO) submitted on 17 December 2018 (Document 3.1A (AS-015 (tracked) and AS-014 (clean))).

N.B. minor typographical changes are not covered in this Schedule.

Section/Article No. and title	Change	Reason
2. Interpretation	Deletion of “development consent obligation”	The term is not used in the dDCO and therefore the definition is not required.
	New definition of “occupation”	To ensure the timing for the various obligations linked to certain occupations is clear.
	Definition of “rail-served warehousing” removed and replaced with definition of “warehousing”	As per the Applicant’s response to ISH1:1.6 (see the Applicant’s Post Hearing Submissions (Document 9.1, REP1-002)).
4. Parameters of Authorised Development	Deletion of the word “works” from sub-paragraph (b)	As per the Applicant’s response to ISH1:1.10 (see the Applicant’s Post Hearing Submissions (Document 9.1, REP1-002)).

Section/Article No. and title	Change	Reason
	Removal of words at the end of sub-paragraph (b) relating to the bridge over the canal (previously inserted in Document 3.1A).	This is now covered in the protective provisions in Part 7 of Schedule 13 and therefore does not need to be included in this article.
17. Traffic regulation	Amended 17(3)	“Shall” is amended to “must” in accordance with AN15 and paragraph 3(a) is amended for clarity, with reference to the “relevant” traffic authority.
20. Agreements with highway authorities	Wording added to paragraph (1) A new sub-paragraph (g) is inserted to refer to signage.	To clarify that any agreements are to be related to the authorised development. In response to a suggestion from Highways England.
35. Temporary use of land for carrying out the authorised development	Amendment to article 35(4)	Amended wording as per response to ISH1:1.18 (see the Applicant’s Post Hearing Submissions (Document 9.1, REP1-002)).
36. Temporary use of land for maintaining authorised development	Amendments to article 36(5)	Amended wording as per response to ISH1:1.19 (see the Applicant’s Post Hearing Submissions (Document 9.1, REP1-002)).

Section/Article No. and title	Change	Reason
42. Defence to proceedings in respect of statutory nuisance	Article removed (but numbering retained as a placeholder until final version of dDCO)	<p>The Applicant has agreed with South Staffordshire District Council to remove the defence to statutory nuisance. The article is therefore removed and s158 (1) and (2) of the 2008 Act are disapplied in article 46, as permitted by s.158(3) of the 2008 Act.</p> <p>The article numbering has been retained in order to avoid repetitive article cross-referencing updates should any further articles be added or removed. This will be updated in the final dDCO to be submitted.</p>
46. Disapplication, application and modification of legislative provisions	<p>Removal of article 46(1)(a) and (2).</p> <p>New paragraph (6)</p>	<p>As per the response to ISH1:1.22 ii), these provisions have been removed, given that the DCO does not override the need for an Environmental Permit.</p> <p>To disapply s158(1) and (2) of the 2008 Act as explained above in relation to article 42.</p>
Schedule 1 Authorised Development	Descriptions to various Works No.s	The descriptions of the Works have been amended to reflect various items which should have been previously included and as per the responses to ISH1:1.24 – ISH1:1.27 (see the Applicant’s Post Hearing Submissions (Document 9.1, REP1-002)).

Section/Article No. and title	Change	Reason
Schedule 2 (Part 1) (Requirements)	Removal of definitions of “early arrival bays”, “extended stay bays”, “HGV”, “HGV management plan” “operational bays”, and “site-wide travel plan”	The provisions relating to these requirements are now to be contained in the DCOB, as agreed with the County Council. This will be reflected in the next draft of the DCOB to be submitted.
	New definition of “map of heritage receptors”	To ensure clarity in the reference to this in R9.
	New definition of “outline written scheme of investigation”	To ensure clarity in the reference to this in R8.
	New definition of “permissive paths” and replacement requirement 22	<p>As per response to ISH1:1.12 and ISH1:1.61 (see the Applicant’s Post Hearing Submissions (Document 9.1, REP1-002)).</p> <p>The new provision is in the replacement R22. Obligations relating to the provision of permissive paths are moved to the DCO rather than being in the DCOB as discussed at ISH1.</p>
	<p>Details to be included in phasing scheme added to requirement 2 (Phases of development)</p> <p>Removal of highway works from the excluded items.</p>	<p>As per response to ISH1:1.34 (see the Applicant’s Post Hearing Submissions (Document 9.1, REP1-002)) and to ExQ1.10.23 (see Applicant’s Responses to ExQ1, Document 10.1, REP2-009) the requirement has been expanded.</p> <p>As agreed with Staffordshire County Council, so that those works are captured by the requirement to submit a phasing scheme.</p>

Section/Article No. and title	Change	Reason
	<p>Amendments to requirement 3 (Detailed design approval)</p> <p>Removal of highway works from the excluded items.</p> <p>Replacement R3(4)</p> <p>New R3(5)</p>	<p>As per discussions at ISH1 and response to ISH1:1.35 (see the Applicant's Post Hearing Submissions (Document 9.1, REP1-002)).</p> <p>As agreed with Staffordshire County Council. The addition to R3(2)(i) covers the scenario where the details of the highway works may have already been approved pursuant to the relevant protective provisions.</p> <p>Also to update cross reference to article 46(5).</p> <p>R3(4) has been replaced – the previous requirement relating to the provision of HGV early arrival bays is now to be contained in the DCOb as agreed with the County Council. The replacement R3(4) is inserted following discussions with the County Council, to address SCC's concerns. Please also see the Applicant's response to paragraphs 3.3 – 3.5 of SCC's Written Representation (page 24 of Document 11.1) submitted for Deadline 3.</p> <p>A new R3(5) deals with ExQ1.9.10 (see Applicant's Responses to ExQ1, Document 10.1, REP2-009) and stipulates that the warehousing in Zone A7 must be single aspect, as per the ES.</p>

Section/Article No. and title	Change	Reason
	Replacement requirement 5 (Rail)	<p>The previous requirement 5 was erroneously included in the dDCO, given that the road bridge over the canal is not to be demolished.</p> <p>The new requirement deals with the provision of the rail terminal (having been moved from the DCOB has discussed at ISH1 and as per the Applicant's responses to ISH1:1.35 and ISH1:1.54 (see the Applicant's Post Hearing Submissions (Document 9.1, REP1-002)) and also to ExQ1.17.2 (see Applicant's Responses to ExQ1, Document 10.1, REP2-009). please see also Appendix 2 to the Applicant's Responses to Other Parties' Deadline 2 Submissions (Document 11.1) submitted at Deadline 3.</p>
	<p>Requirement 6 (Construction hours):</p> <p>Removal of landscaping works from the list of excluded items.</p> <p>Amended construction hours.</p>	<p>As per the response to ISH1:1.37 (see the Applicant's Post Hearing Submissions (Document 9.1, REP1-002)).</p> <p>As agreed with South Staffordshire District Council.</p>
	<p>Requirement 8 (Archaeology):</p> <p>Wording to clarify that the exclusion of highway works only relates to existing highways and not any new highways. The change also applies to R12 & R13</p>	<p>To ensure that those approvals are not required for works to those existing highways.</p>

Section/Article No. and title	Change	Reason
	(Ground conditions – contamination risk) and R14 (Earthworks).	
	<p>Requirement 9 (Cultural heritage – demolition of heritage assets):</p> <p>The requirement has been amended to remove Heath Farm buildings from the list of heritage assets to be demolished.</p> <p>Amended to refer to heritage assets rather than receptors.</p> <p>Paragraph (2) amended and paragraphs (4) and (5).</p>	<p>The Applicant understands that the current landowner has already demolished the Heath Farm buildings in accordance with their own separate approval. The table is therefore removed and the wording of the requirement amended accordingly.</p> <p>As per the response to ISH1:1.38 (see the Applicant's Post Hearing Submissions (Document 9.1, REP1-002)).</p> <p>For clarity and as per the response to ISH1:1.38 (see the Applicant's Post Hearing Submissions (Document 9.1, REP1-002)).</p>
	<p>Requirement 10 (Cultural heritage – demolition of canal crossings):</p> <p>Wording amended.</p>	<p>For clarity and as per the response to ISH1:1.39 (see the Applicant's Post Hearing Submissions (Document 9.1, REP1-002)).</p>

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	<p>Requirements 12 (Ground conditions – contamination risk):</p> <p>Wording to clarify that the exclusion of highway works only relates to existing highways and not any new highways.</p> <p>Paragraphs (3) and (4) re-ordered and wording added to the newly re-numbered requirement 12(4).</p>	<p>As explained above for R8.</p> <p>As agreed with the SI Group. See SI submission for Deadline 2 (REP2-151).</p>
	<p>Requirements 13 (Ground conditions – contamination risk):</p> <p>Wording to clarify that the exclusion of highway works only relates to existing highways and not any new highways.</p>	<p>As explained above for R8.</p>
	<p>Requirement 14 (Earthworks):</p> <p>Wording to clarify that the exclusion of highway works only relates to existing highways and not any new highways.</p> <p>The wording “soil movement” has been removed from the list of excluded works.</p> <p>A new R14(e) is inserted.</p>	<p>As explained above for R8.</p> <p>Given that soil movement is clearly an “earthwork” this has been removed so that no soil movement may be undertaken until the details are approved by the local planning authority.</p> <p>This requirement is added to address points made by several parties and in response to discussions with</p>

Section/Article No. and title	Change	Reason
		<p>various parties, in particular, following discussions with the County Council – please see the Applicant’s response to paragraph 6 of the SCC Written Representation (page 31 of the Applicant’s Responses to Other Parties’ Deadline 2 Submissions (Document 11.1) submitted for Deadline 3). Please also see the Applicant’s response to the Inglewood Written Representation (Appendix 4 of the Applicant’s Responses to Other Parties’ Deadline 2 Submissions (Document 11.1) submitted for Deadline 3).</p>
	<p>Requirement 15 (Landscape – written landscaping scheme)</p> <p>Inserted wording to (e) and (f) and new paragraph (2).</p> <p>Amended R15(3).</p>	<p>For clarity and as per the response to ISH1:1.41 (see the Applicant’s Post Hearing Submissions (Document 9.1, REP1-002)).</p> <p>As agreed with the County Council. Please also see the Applicant’s response to paragraph 3.1 of the SCC Written Representation (page 22 of the Applicant’s Responses to Other Parties’ Deadline 2 Submissions (Document 11.1) submitted for Deadline 3).</p>
	<p>Requirement 16 (Landscape - implementation and maintenance of landscaping works):</p> <p>R16(1) wording altered.</p>	<p>For clarity and as per the response to ISH1:1.44 (see the Applicant’s Post Hearing Submissions (Document 9.1, REP1-002)).</p>

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	<p>Requirement 19 (Lighting details):</p> <p>Additional wording to R19(1) relating to the height of lighting columns.</p> <p>R19(2) wording removed.</p> <p>R19(3) wording added to refer to identification of the bat hop-overs.</p>	<p>The wording is proposed to address concerns raised by SCC. Please also see the Applicants responses to paragraphs 2.15 of the SCC Written Representation and 8.20 of the SCC Local Impact Report (pages 22 and 33 respectively of the Applicant’s Responses to Other Parties’ Deadline 2 Submissions (Document 11.1) submitted for Deadline 3).</p> <p>To avoid repetition since the approval is dealt with in R16(1).</p> <p>For clarity.</p>
	<p>Requirement 20 (Noise – construction stage):</p> <p>Amended wording and alteration to construction hours.</p>	<p>As agreed with SSDC.</p>
	<p>Requirement 21 (Noise – operational stage):</p> <p>Amended wording and new R21(3).</p>	<p>As agreed with SSDC and to ensure broadband reversing alarms are employed during the operational stage subject to health and safety requirements.</p>

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	<p>Requirement 22 (Permissive paths)</p> <p>The previous requirement relating to the travel plan has been removed and a new requirement governing permissive paths has been inserted.</p>	<p>As per response to ISH1:1.12 and ISH1:1.61 (see the Applicant's Post Hearing Submissions (Document 9.1, REP1-002)). Obligations relating to the provision of permissive paths are moved to the DCO rather than being in the DCOB as discussed at ISH1.</p> <p>The obligations relating to the travel plan are now to be contained in the DCOB in view of their complexity as agreed with the County Council.</p>
	<p>The previous requirement 23 relating to Transport – HGV management has been removed and the remaining requirements re-numbered.</p>	<p>The obligations relating to HGV management are now to be contained in the DCOB in view of their complexity as agreed with the County Council.</p>
	<p>Newly re-numbered requirement 23 (Transport – demolition and construction)</p> <p>New paragraph (2) added.</p>	<p>Added in response to a request from Highways England, as noted in their response to ExQ1.2.8 (REP2-036).</p>
	<p>Newly re-numbered requirement 24 (Transport – phasing of highway works)</p> <p>New paragraph (2) added.</p>	<p>To ensure the relevant authorities are notified in advance of the various triggers being reached.</p>

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	<p>Newly re-numbered requirement 26 (Water and flood risk – surface water drainage scheme)</p> <p>Wording added to paragraph (1) regarding maintenance activities.</p>	<p>As agreed with the County Council to address their concerns. See also the Applicant's response to paragraphs 4.2 and 4.3 of the SCC Written Representation (page 30 of the Applicant's Responses to Other Parties' Deadline 2 Submissions (Document 11.1) submitted for Deadline 3).</p>
	<p>Newly re-numbered requirement 27 (water and floor risk – foul water drainage)</p> <p>Requirements 28(2) and (3) combined. Timing for the provision of the scheme added.</p>	<p>For clarity and as per response to ISH1:1.46 (see the Applicant's Post Hearing Submissions (Document 9.1, REP1-002)).</p>
<p>Schedule 2 (Part 2 – Rail Requirements)</p>	<p>This new Part 2 is added and the previous Part 2 becomes Part 3.</p>	<p>To set out the requirements relating to the provision of the rail terminal, as explained above for R5.</p>
<p>Schedule 12 (Modifications of compensation and compulsory purchase enactments for creation of new rights)</p>	<p>Insertion of referencing to “acquiring” authority in various paragraphs.</p>	<p>For clarity.</p>

Section/Article No. and title	Change	Reason
Schedule 13 (Protective Provisions)	Part 1 (Network Rail)	To correct typographical errors.
	Part 2 (Highways England)	To correct typographical errors.
	Part 3 (Staffordshire County Council)	To correct typographical errors including the removal of definition of “County Link Road” as per response to ISH1:1.29. This definition is not used and is replaced by the definition of “A5/A449 link road which is contained in article 2.
	Part 4 (Western Power Distribution)	To correct typographical errors.
	(Part 5 (Users of the Four Ashes Access Roundabout)	<p>To correct typographical errors and to remove Kay Properties from the Annex. The interests previously held by Kay Properties are now held by Bericote Four Ashes Limited.</p> <p>The Applicant received a response to the protective provisions from Bericote on 23 April. The response appears to be their Deadline 3 submission. The Applicant has therefore not had an opportunity to consider the response or discuss it with Bericote. The points made on behalf of Bericote will be considered and hopefully an agreed position reached, which will be reflected in a further version of the dDCO in due course.</p>

Section/Article No. and title	Change	Reason
	Part 6 (SI Group)	To correct typographical errors.
	Part 7 (Canal and River Trust)	To reflect discussions with the Canal and River Trust and to correct typographical errors. CRT has confirmed this version of the protective provisions is agreed on the basis of the current DCO, save that CRT has requested the inclusion of an indemnity to cover the termination of any of the Trust's tenants/licensees. The Applicant cannot accept this indemnity on the basis that there can be no clear determination that the reason for the termination of such interests is as a result of the authorised development.
	Part 8 (Cadent Gas)	To correct typographical errors.
	Part 10 (Water and Sewerage Undertakers)	To correct typographical errors.
Schedule 14 (Miscellaneous Controls)	New paragraphs 5 and 6	To ensure the powers in the Order to remove trees and important hedgerows are not subject to any further consents, as per ISH1:1.20 (see Document 9.1, REP1-002).

Section/Article No. and title	Change	Reason
Schedule 15 (Certification of Plans and Documents)	Amended so as to include Document/Plan revisions numbers	Updated documentation added to reflect documents submitted since acceptance of the Application. This schedule will be reviewed and updated throughout the Examination and completed in the final dDCO to be submitted by the Applicant.