

Applicant's Post Hearing Submissions (ISH4)

The West Midlands Rail Freight Interchange Order 201X

Deadline 4 - 14 June 2019

Four Ashes Limited



West Midlands
Interchange

Four Ashes Ltd

The West Midlands Strategic Rail Freight Interchange Order 201X

**Applicant's Post Hearing Submissions for Issue Specific Hearing 4:
the draft Development Consent Order and the draft Development Consent Obligation**

1. This table sets out the Applicant's submissions in response to the ExA's questions contained in the Agenda for ISH 4.
2. Each question is referred to as ISH4 + the ExA question reference. e.g. the response to 1.4 below is ISH4:1.4.
3. References to "dDCO" are to the draft Development Consent Order and references to "dDCOb" are to the draft Development Consent Obligation.

ISH 4 Agenda Annex 2 - Draft DCO – Structure, Definitions and Articles 1-49

COMMENTS AND QUESTIONS BY EXAMINING AUTHORITY

Q Ref	Part of DCO	Directed to	Question/ comment	Applicant's Response
1.1	A2	Applicant SSDC	The definition of “ <i>maintain</i> ” was discussed at ISH1 and in its post hearing submission [REP1-006] SSDC indicated its intention to suggest an alternative wording. What is the current position on this?	<p>No alternative wording has been received from SSDC, although the Applicant notes that SSDC confirmed it would provide its preferred wording in its post hearing submissions for Deadline 4. The Applicant will consider any suggested amendments once received and incorporate any agreed revision into the next dDCO to be submitted for Deadline 5.</p> <p>The article is similar to the definition of “maintain” in the East Midlands Gateway Order however the caveat to ensure that it does not authorise works outside of those which have been assessed is, in the WMI dDCO, contained in Article 6 rather than the definition,</p>
1.2	A2	SSDC SCC HE	Are the parties content with the revised definition of “ <i>occupation</i> ”?	The Applicant notes that all parties confirmed their approval to the definition at the ISH.
1.3	A2	SCC HE	Following the discussion at ISH1 the applicant has opted not to make any revision to the definition of “ <i>verge</i> ”. Do SCC and HE agree that no revision is required?	At the ISH, HE suggested that the word “road” in the definition of “ <i>verge</i> ” be replaced with the word “highway”. This was agreed by SCC. The Applicant is considering that amendment and will provide its response in the DCO Tracker to be submitted together with the next dDCO for Deadline 5.

1.4	A4	Applicant	<p>In its Deadline 1 submission (response to ISH1:1.10) the applicant indicated that they would give further thought to whether the wording in sub paragraphs (b) and (c) might usefully be amended to alleviate any concerns about the degree of flexibility provided by A4 but no changes appear to have been made.</p> <p>Is greater clarity needed in these clauses?</p>	<p>As set out in the Applicant's Explanation of Minor Amendments to Plans (Document 12.1, AS-044) submitted on 21 May, amendments have been made to the Bridge Plans and amendments are also proposed to be made to A4(b). The proposed amendment to A4(b) is:</p> <p><i>“(b) in respect of the bridges deviate vertically from the levels shown <u>highlighted yellow</u> on the bridge plans to a maximum of <u>0.5 metres</u> 1.5 metres upwards or <u>1.0 metres</u> downwards”</i></p> <p>This amendment will be incorporated in the next dDCO to be submitted for Deadline 5.</p>
1.5	A4	Applicant SSDC	<p>In its Deadline 1 submission (response to ISH1:1.11) the applicant refers to similar articles included in the A14 Order and the M20 J10a Order. However, the relevant articles in both of these DCOs, as made, reserve to the Secretary of State the decision as to whether any subsequent changes should be agreed and the ExA remains concerned about the degree of flexibility provided by the 'rider' to A4.</p> <p>(i) Is the applicant able to point to similar articles in other DCOs where this power is devolved to the local planning authority?</p>	<p>(i) There are two separate issues which should not be conflated. These are:</p> <ul style="list-style-type: none"> - the principle of accepting some flexibility in relation to the limits of deviation referred to; and - the person with whom the control sits

				<p>As indicated in the response to ISH1:1.11, the Applicant is not suggesting that the power has been devolved to the local planning authority in other Orders. The purpose of referring to the other Orders is to emphasise that the flexibility provided by the proposed proviso has been deemed appropriate, as a matter of principle, by the Secretary of State when approving other Orders. The identity of the party controlling the proviso is not, in the view of the Applicant, relevant to whether or not it is acceptable in principle.</p> <p>It is not known whether, during the Examinations of the Orders referred to, the issue ever arose as to the appropriate party to control the operation of the proviso. It may be that it was simply accepted that, given the Orders concerned were promoted by Highways England, it was logical for the proviso to be operated by the Secretary of State for Transport.</p> <p>In this case all the subsequent approvals and acceptability of the details to which the limits relate are substantially in the hands of the local planning authority under the requirements. This proposal is akin to a form of development which would normally be covered by a planning permission whereas the Highways England Orders, if they were not DCOs, would be covered by Highway Orders.</p>
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			<p>(ii) In what way would the development be “disadvantaged” by being authorised by a DCO and does this provide adequate justification for the approach proposed?</p>	<p>(ii) The disadvantage arises from the need to amend the DCO to allow for a very minor flexibility to the limits of deviation referred to in A4(a) – (c). Such an amendment to the DCO, even if categorised as a non-material amendment, would take several months to be approved. Such a change to a proposal governed by a planning permission would be the subject of either a non-material amendment or a s.73 application, both of which could be expected to be dealt with more quickly. For prospective occupiers, delays of several months for minor details can be significant.</p>
1.6	A4	Applicant SSDC SCC HE	<p>The rider to A4 also includes the words “<i>would not give rise to any significant environmental effects on the environment not identified at the time this Order was made, or in any updated environmental information supplied under the 2017 EIA regulations</i>”.</p> <p>This same wording is adopted in A 6(3) and A 45 (1) & (2) and in the recital under the “Further Works” heading in Part 2 of Schedule 1.</p> <p>The ExA has concerns about the appropriateness of this ‘tailpiece’ with regard to the proper assessment of environmental effects and questions whether the comparison should not simply be to significant environmental effects.</p> <p>The additional words “<i>not identified at the time this Order was made, or in any updated environmental information supplied under the 2017 EIA regulations</i>”</p>	

			<p>do not appear in paragraph 13 of Schedule 2 to the Infrastructure Planning (EIA) Regulations 2017 which says that any change or extension to an approved project that may have significant adverse effects on the environment constitutes EIA development.</p> <p>(i) Can the applicant provide any justification for the specific wording proposed?</p>	<p>(i) Article 4</p> <p>The intention behind the additional words is to clarify that the judgment to be made is whether or not the deviation gives rise to any significant adverse effects on the environment. This is consistent with paragraph 13(1) of Schedule 2 to the Infrastructure Planning (EIA) Regulations 2017 which refers to development being EIA development where "<u>the change or extension may have significant adverse effects on the environment</u>" (our underlining).</p> <p>The wording in the dDCO was intended to clarify that the exercise was confined to considering the impact of the change rather than a complete re-assessment. It may be that those words are not required and could be replaced simply with the words "<i>as a result of that deviation</i>". This is perhaps, on reflection, simpler and more straightforward and the Applicant will amend the wording in the next dDCO to be submitted for Deadline 5.</p>
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				<p>Article 6(3), Article 45(1) and (2) and Sch 1 Further Works</p> <p>These articles raise a different issue. They are not concerned with assessing the effect of a change, but preventing a significant adverse effect being allowed which had not been identified at the time the DCO was approved. For example, the Further Works referred to in Schedule 1 are part of the authorised development and so they do not constitute a scheme change but the rider is attached to them to ensure that those works are only authorised provided they sit within the assessment envelope.</p> <p>Accordingly, the wording is designed to identify the effects that have been accepted at the time of the DCO approval so that comprises a benchmark against which additional effects can be compared. This is essentially the same approach as taken in A42(2) of The East Midlands Gateway Rail Freight Interchange and Highway Order 2016 (S.I. 2016 No. 17) ("the EMG Order") which prevents the approval of amendments to details agreed under the requirements "<i>where such amendments would permit development outside the scope of the authorised development or development which would give rise to any significant adverse environmental effects that have not been assessed in the environmental statement or</i></p>
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			(ii) Do other parties have any concerns about this proposed wording?	<p><i>any updated environmental information supplied under the 2009 EIA Regulations.”</i> Unlike the dDCO under consideration here, the Further Works in the approved EMG Order do not include any constraint preventing further works which give rise to significant environmental effects not already assessed.</p> <p>(ii) The Applicant notes SSDC's reference at the ISH to “materially different or materially worse” environmental effects which has been included in other DCO and other draft DCO. The Applicant considers that the wording currently included in the dDCO (amended as set out above in respect of A4) is more appropriate and more aligned with the wording in the EIA Regulations.</p>
1.7	A12	Applicant SCC	<p>(i) Can SCC provide an update as to the current position with regard to application to add an additional Right of Way (BOAT?) to the Definitive Map in the proximity of Gravelly Way that is referred to at paragraph 9.6 of the Local Impact Report [REP2-062]</p> <p>(ii) Are any amendments to the DCO required to reflect that change in circumstances?</p>	<p>(ii) As set out in the Applicant's Explanation of Minor Amendments to Plans (Document 12.1, AS-044), the Applicant has submitted a plan in relation to the BOAT (Document 2.3G, AS-051) and intends to include the stopping up of the BOAT as an option in the next version of the dDCO to be submitted.</p>

				<p>The Applicant notes that the Modification Order was made on 25 April 2019. It will now be subject to the confirmation process, which may extend beyond the time period for this Examination. The drafting of the dDCO will therefore provide that, irrespective of whether or not the Modification Order is the effect of the DCO will be to stop up the BOAT.</p> <p>The Applicant will also ensure the justification for the stopping up of the BOAT is added to the next version of the Explanatory Memorandum to be submitted for Deadline 5.</p> <p>In response to further comments raised by SCC in respect of A12, the Applicant is meeting to discuss those comments with SCC and expects to be able to include any necessary amendments to A12 (and the related Schedules) in the next dDCO to be submitted for Deadline 5.</p>
1.8	A42	SSDC	Does the deletion of A42 satisfy SSDC with regard to its response to ISH1:1.8.5 [REP2-049] of the ExA First Written Questions with regard to the likely dust effects of the proposed development?	The Applicant notes SSDC's confirmation at the ISH.

1.9	A43	Applicant SCC SSDC	<p>In its Deadline 1 submission (response to ISH1:1.20) the applicant indicated that they were considering the need for additional wording to A43 but no amendments have been proposed.</p> <p>Are the parties satisfied that this article is consistent with the advices in paragraphs 22.1 & 22.2 of PINS Advice Note 15 (AN15)? (See also Q1.13 below).</p>	<p>The Applicant's consideration has resulted in additions to Schedule 14 of the dDCO (referred to in A46(7)) which disapplies the relevant consenting regimes. Please see entry relating to Schedule 14 in the DCO Tracker submitted at Deadline (Document 3.4A, REP3-005).</p> <p>The Applicant notes the suggestion in AN 15 to include a schedule in the DCO, but considers in this instance that the inclusion of a schedule is not practical or necessary, because the scheme is not fully designed and it is not known precisely the extent of hedgerows and trees which can be retained. More importantly, the protection of those trees/hedgerows is contained in the requirements and in A43 itself. A43 does not allow the felling or lopping of any tree/hedgerow which is:</p> <ul style="list-style-type: none"> (i) identified to be retained in the landscaping scheme approved under the requirements, without the consent of the local planning authority (A43(4)); (ii) within a highway, without the agreement of the highway authority; or (iii) planted as part of an agreed landscaping or ecological mitigation plan. <p>At ISH4, SSDC suggested that reference should be made in A43 to the relevant British Standard. The Applicant does not consider this necessary because</p>
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				the requirement to comply with the British Standard is already contained in Requirement 15.
1.10	A45	Applicant	As Schedule 2 is currently drafted A45(3) should now refer to Part 3 rather than to Part 2 of Schedule 2 (but seen queries regarding Schedule 2 in Annex 4 below).	This is noted and agreed, the correction will be made to the next dDCO to be submitted. See response to query in relation to Schedule 2 in Annex 4 below.
1.11	A9, 11, 13, 17, 21, 22,	Applicant HE	Are any changes needed to these clauses in response to HE's concerns re deemed consent as set out in its Deadline 1 response [REP1-008]	<p>The Applicant refers to its submissions contained in Appendix 3 of the Applicant's Responses to Other Parties' Deadline 2 Submissions (Document 11.1, REP3-007). The Applicant does not consider any changes are needed.</p> <p>The Applicant noted that HE confirmed that they do not have an issue with the deemed consent provisions in Article 9.</p>
	Art 18	-	HE referred to a desire that the dDCO incorporate some changes to existing traffic regulation orders relating to prohibition of vehicle waiting on verges along the A449 and A5.	<p>The Applicant indicated that HE had only raised the issue on the day of the hearing however there would be no difficulty in incorporating provisions in the dDCO to amend the orders if they were justified.</p> <p>The Applicant awaits the details and justification so that consideration can be given to the need/desirability of amending the dDCO.</p>

Annex 3: Draft DCO – Schedules 1 and 3-13

COMMENTS AND QUESTIONS BY EXAMINING AUTHORITY

Q Ref.	Part of DCO	Directed to	Question/ comment	Applicant's Response
1.12	S1 Part 1	Applicant	It is noted that no amendments have been made to Works No. 3 sub paragraph (e). The ExA would like to review the need for any changes having regard to the drawing submitted at Deadline 2 (Appendix 11).	<p>The drawing at Appendix 11 demonstrates potential ways in which there might be a direct rail link to warehousing in Zones A1 and A2, however, at this stage it is not known what arrangement might be required by any specific occupier. Accordingly, the Applicant felt that the description in Works No. 3(1)(e) remained appropriate.</p> <p>The Applicant advised that the drafting of the Works was similar to that included in the DIRFT III Order which has a similar relationship between the terminal and rail linked warehousing.</p>
1.13	S1 Part 1	SSDC SCC HE CRT NR Other IPs	<p>A number of amendments/ additions have been made to the description of Works Nos. 1, 4, 6, 7 and 10a.</p> <p>(i) Do any of the IPs have any concerns with regard to these detailed amendments.</p> <p>(ii) Are any further revisions to the Works descriptions required?</p>	<p>(i) The Applicant notes that no IP's expressed concerns in relation to the amendments.</p> <p>(ii) The Applicant confirmed at the ISH that two further amendments are required to the description of the Works arising out of discussions with Network Rail. They are as follows:</p>

				<ul style="list-style-type: none">• Works No. 4(n) should also refer to an access point to the west of the West Coast Main Line Loop railway (through the rail terminal); and• Works No. 6(v) should refer to culvert (singular). <p>These amendments will be made to the next dDCO to be submitted for Deadline 5.</p> <p>Highways England referred to Works No.7(s) and suggested that an additional culvert under the A449 should be added with the intention that the Applicant construct an additional culvert under the A449 to accommodate surface water run off rather than use the existing culvert under the A449 used currently to drain the site.</p> <p>The Applicant indicated that an additional culvert was not part of the scheme. Highways England had indicated, at a meeting in February 2019, that it would provide information demonstrating why the scheme should not use the existing culvert and it is still awaited.</p> <p>The position is that the run off rate into the existing culvert from the proposals, being restricted, will actually be less than the existing flows from the site through the culvert.</p> <p>It appears to the Applicant that Highways England is suggesting that the Applicant constructs an entirely new and unnecessary element of new</p>
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				infrastructure, however, it awaits the justification from Highways England, due at Deadline 4.
1.14	S13 Part 3	Applicant SCC	Are the seemingly substantive changes to paragraphs 7 and 9 of Part 3 agreed between the applicant and SCC?	The amendments to paragraphs 7 and 9 relate to a single issue – namely the point at which the phases of the link road receive a provisional certificate and (thus the related bond reduced). The Applicant is meeting with SCC to discuss the issue. It is hoped to submit an agreed version of paragraphs 7 and 9 in the dDCO to be submitted at Deadline 5.
1.15	S14	Applicant SSDC SCC	<p>In the DCO Changes Tracker the applicant states that the proposed new paragraphs 5 and 6 have been included to “<i>ensure the powers in the Order to remove trees and important hedgerows are not subject to any further consents</i>” as per the applicant’s response to ISH1:1.20. However, the proposed provisions are widely drawn and seem to go much further than this.</p> <p>(i) Is the proposed wording appropriate and what is the justification for the broad scope of these proposed provisions?</p> <p>(ii) Is this suggested amendment appropriate without a cross reference to the relevant section of the ES to identify the important hedgerows as suggested in the applicant’s Deadline 1 submission (response to ISH1:1.20)?</p>	Please see response to ISH4:1.9 above.

Annex 4: Draft DCO Schedule 2 – Requirements

COMMENTS AND QUESTIONS BY EXAMINING AUTHORITY

Q Ref.	Part of DCO	Directed to	Question/ comment	Applicant's Response
1.16	Part 1	Applicant SCC	What are the reasons for deleting the requirements in relation to the provision of HGV parking bays from the DCO and replacing these with provisions within the draft DCOb?	The rationale for deleting the requirements in relation to the provision of HGV parking bays from the dDCO is that the provisions of the Site Wide Travel Plan and the HGV Management Plan are dealt with in the DCOb and it seems appropriate to have all of the governance of those matters dealt with in one place rather than being separated. This approach is agreed with the County Council.
1.17	R2 & R3	Applicant	In both cases the tracked changes have accidentally deleted the first bracket before the word "excluding" in sub paragraph (1).	This will be corrected in the next version of the dDCO to be submitted.
1.18	R2	Applicant SSDC SCC HE	Are the parties content that the additions made to R2 are adequate to provide sufficient clarity to this requirement?	The Applicant is content that this requirement has sufficient clarity.
1.19	R3	Applicant SSDC SCC HE	Are the parties content that the additions/amendments made to R3 are adequate to provide sufficient clarity to this requirement?	The Applicant is content that this requirement has sufficient clarity.
1.20	R5		See Q1.25 below.	

Q Ref.	Part of DCO	Directed to	Question/ comment	Applicant's Response
1.21	R9	SSDC SCC	Are the parties content with the revised wording of this requirement?	
1.22	R16	Applicant HE	Have HE's concerns re the potential for on-site landscaping works to interfere with the safe operation of the SRN (point 5 of REP1-008) been resolved?	The Applicant understands that HE's concerns have been satisfactorily addressed. Verbal confirmation from HE has been obtained, however written confirmation is awaited. The Applicant notes that HE confirmed in the ISH that it would provide its formal view on this point in its post hearing submissions.
1.23	R20	Applicant SSDC	(i) Is the revised wording of R20 agreed? (ii) Note error in R20(2): should " <i>jurisdiction</i> " should read " <i>justification</i> "?	(i) The Applicant is content with R20 and notes it is also acceptable to SSDC. (ii) The error will be corrected in the next version of the dDCO to be submitted.
1.24	R22	Applicant SSDC	Are the parties content with the wording of amended R22?	The Applicant is content with R22 and notes it is also acceptable to SSDC and SCC.
1.25	Part 2	Applicant SSDC SCC HE NR Other IPs	I have concerns about the proposed approach of setting out the detailed "requirements" in respect of the provision of the rail infrastructure in a separate section (Part 2) of Schedule 2 both in the interests of clarity and in terms of ensuring these are fully enforceable. As drafted new R5 is a requirement for the purposes of the DCO but the details set out in Part 2 are not. These are cross referenced in R5 as " <i>provisions</i> " and do not fall within the definition of " <i>requirements</i> " in A2(1) which refers only to the requirements " <i>set out in Part 1 of Schedule 2</i> ".	

Q Ref.	Part of DCO	Directed to	Question/ comment	Applicant's Response
			<p>(i) What are the views of LAs with regard to the appropriateness and efficacy of this approach?</p> <p>(ii) Is the flexibility provided by paragraphs (4) & (6) appropriate and acceptable given HE's submissions that there has been no transport assessment of the traffic effects of the occupation of more than 147,000 sq. m of building floorspace on the Site?</p>	<p>(i) The concern of the ExA in relation to ensuring that Part 2 of Schedule 2 is a fully enforceable requirement is understood. The Applicant would propose to amend the definition of "requirements" to include reference to Part 2 of Schedule 2 as well as Part 1 and also amend requirement 5 to replace "<i>the provisions of</i>" with "<i>the requirements in</i>".</p> <p>The Applicant sees no difficulty in dealing with the rail requirements in either Part 1 or Part 2 of Schedule 2. There is no requirement to format requirements in any particular way and the Applicant felt that it would aid clarity and accessibility for the detail of the rail requirement to be dealt with separately.</p> <p>(ii) Please see the Applicant's Response to the HE Written Representation (page 65 of Applicant's Responses to Other Parties' Deadline 2 Submissions Document 11.1 REP3-007). It is not correct to say that there has been no transport assessment of the traffic effects of the occupation of more than 147,000 sq m. of building floorspace on the site. The Applicant will continue to discuss these matters with the highway authorities but it is the Applicant's position that its</p>

Q Ref.	Part of DCO	Directed to	Question/ comment	Applicant's Response
			<p>(iii) Is the word "<i>expeditiously</i>" in paragraphs 5 & 9 sufficiently clear as to allow for the enforcement of these provisions?</p> <p>(iv) If they are to be treated as requirements do all of the provisions set out in Part 2 meet the relevant tests?</p>	<p>Transport Assessment is robust and that any effects arising from an unanticipated delay to the opening of the RFI fall within the effects already assessed.</p> <p>The Applicant explained that it would include some additional wording to paragraph 4 to require the Applicant to demonstrate to SSDC's satisfaction its endeavours to meet the rail provision milestones in respect of matters outside of the Applicant's control. Updated wording will be included in the next dDCO to be submitted for Deadline 5.</p> <p>(iii) The Applicant is open to consideration of alternative wording, however, the intention is to require the Applicant to carry out the action concerned as soon as possible.</p> <p>(iv) The Applicant considers that the requirements do meet the relevant tests.</p>

Annex 5: Draft Development Consent Obligations (DCOb)

COMMENTS AND QUESTIONS BY EXAMINING AUTHORITY

1. Since the submission of the draft DCOb on 7 May (Document 7.7D, AS0-38 (tracked) and AS-037 (clean)) a further meeting has been held with the local authorities, following which some further minor amendments are to be made to the draft. These amendments, along with some points still under consideration, are summarised below:
 - a. The following documents are to be appended rather than cross referred to:
 - i. Green Infrastructure Parameter Plan;
 - ii. Site Wide Travel Plan;
 - iii. Site Wide HGV Management Plan;
 - iv. Employment Skills & Training Plan Framework (ESTPF);
 - v. Routeing Plan;
 - vi. Barred Route Plan; and
 - vii. Approved Route Plan.
 - b. The reference to five years in paragraph 3.2 of Schedule 1 is to be changed to ten years.
 - c. Paragraph 3.8 of Schedule 2 is to be deleted and the reference in paragraph 3.9 to paragraph 2.12.2 to be replaced with 2.12.
 - d. Some minor amendments to the Bespoke Noise Insulation Scheme arising out of recent discussions with the District Council's EHO are to be made.
 - e. The Site Wide Travel Plan, Site Wide HGV Management Plan and the ESTPF have all been agreed by the relevant authorities.

Subject to the above, the DCOb is understood to be agreed.

Q Ref.	Part of DCOB	Directed to	Question/ comment	Applicant's Response
1.26	General	Applicant	<p>(i) Although most references in the draft document to "owner" have been amended to "owners" there are a number which are still written in the singular. There may be good reason for some of these but a final check for consistency may be advisable.</p> <p>(ii) The final pages of the draft document have not been updated to provide space for signature by the additional owners who are to be party to the deed.</p>	Noted.
1.27	Background-C	Applicant	It is not fully clear to the ExA which owners are referred in section (c).	The owners referred to in Recital (C) are the owners referred to at the head of the Agreement in paragraphs (3), (4) and (5) who are together called "the Owners" – please see wording after (5).
1.28	Definitions	Applicant	Would the "Obligation Land" be better defined as the "land shaded pink on Plan A"?	Yes. This will be amended.
1.29	6.1.2 & 6.1.3	Applicant SSDC SCC	(i) Do the provisions in these paragraphs adequately prevent the development of all remaining, privately owned land within the Order Limits without the necessary obligations having been secured?	<p>(i) The land which is needed to be bound by the s106 obligations is that which is required to secure those obligations at the appropriate time. The Obligation Land is an extensive area and is capable of satisfactorily binding all the monetary contributions and the site specific obligations relating to that land.</p> <p>The site specific obligations relating to land not included in the Obligation Land are Green Infrastructure obligations, Occupier</p>

Q Ref.	Part of DCOB	Directed to	Question/ comment	Applicant's Response
			(ii) Are there any matters still to be resolved in this regard?	<p>Travel Plans, HGV Management Plans and the warehouse specific ESTP provisions.</p> <p>The delivery and maintenance of the Green Infrastructure is not dealt with in the DCOB but is dealt with in Requirements 15, 16 and 17 of the DCO. The provisions in the DCOB relate only to the mechanics of the future maintenance of the Green Infrastructure and are therefore adequately dealt with by binding the Green Infrastructure Land before it becomes Green Infrastructure, as secured by clause 6.1.2.1.</p> <p>The obligations on occupiers of the warehouses relating to the Travel Plan, HGV Management Plan and ESTP are also adequately secured by the relevant land being bound before any warehousing is constructed on that land, as secured by clause 6.1.2.2.</p> <p>Clause 6.1.3 ensures that no warehouse can be occupied until the training and requirement facility is secured.</p> <p>(ii) The Applicant notes SSDC and SCC's confirmation at the ISH that the approach in respect of the land to be bound, as outlined above, is now agreed.</p>

Q Ref.	Part of DCOB	Directed to	Question/ comment	Applicant's Response
			(iii) Note typographical error in 6.1.3.	(iii) Noted.
1.30	17.1 & 17.2	Applicant SCC SSDC	Is there a reason why the rider added to these clauses applies to SCC but not to SSDC?	The riders concerned have been requested by SCC only. They are not acceptable to the Applicant and SCC confirmed at the ISH that it agreed to the removal of the riders. They will be removed from the next dDCOb to be submitted.
1.31	19.1	Applicant SCC SSDC	(i) Whilst the 'commitment to rail' provisions have been moved to Schedule 2 of the draft DCO will it not still be necessary for formal notification of occupation of the first 47,000 sq. m of warehousing to be given to the Councils? (ii) If this is not done how will clarity be achieved in relation to the start date of the 6-year period referred in draft Rail Requirement 3(1)(b) in Part 2 of Schedule 2 to the revised draft DCO [REP3-003].	(i) and (ii) If it is necessary for notice to be given of occupation for the purposes of applying the rail requirement, then the Applicant suggests the approach to be taken is to add that obligation to the rail requirement (in Part 2 of Schedule 2 to the DCO) so that all the provisions relating to rail are set out in one place. The appropriate addition will be made to requirement 5 in the next dDCO to be submitted at Deadline 5
1.32	S1:2.1 & 2.2	Applicant SSDC	Is SSDC content that obligations re the MoU and EMP are linked to above ground construction of any warehousing rather than earlier stages of the development?	These provisions have been agreed between the parties.
1.33	S1:2.3 and 2.4	Applicant SSDC	Are these provisions and timescales/triggers agreed?	These provisions have been agreed between the parties.

Q Ref.	Part of DCOB	Directed to	Question/ comment	Applicant's Response
1.34	S1:3.3	SSDC	Is the Council content with the wording of this obligation and that entering this obligation would not conflict with any of its statutory obligations and responsibilities?	These provisions have been agreed between the parties subject to the minor amendments referred to at the beginning of this Annex 5.
1.35	S2 Part 1	Applicant SCC SSDC	<p>(i) Are there any elements of S2 that have not yet been agreed between the applicant and SCC?</p> <p>(ii) Are there any significant differences between the Travel Plan obligations as set out in S2 and those that have been agreed in relation to other major warehousing/industrial developments in Staffordshire?</p> <p>(iii) In paragraph 2.5 should "<i>nomination</i>" read "<i>appointment</i>"- i.e will the person(s) be appointed by the owners?</p> <p>(iv) Re paragraph 3.5 what enforcement measures might be open to SSDC in the event of non-compliance?</p>	<p>(i) All elements of Sch 2 have been agreed with SCC subject to the minor amendments referred to at the beginning of this Annex 5.</p> <p>(iii) The Applicant is content with "<i>appointment</i>" or "<i>nomination</i>".</p> <p>(iv) The District Council is in the same position as the County Council and able to enforce the entirety of the obligations through use of enforcement powers under section 106, either through enforcement through the Courts or direct action and recovery of costs.</p>
1.36	S2 Part 2 2.8-2.9	Applicant SCC	Who would fines be paid to in the first instance before transfer to SCC and how would this be recorded?	The mechanism for payment of the fines is that payments are made to the Site Wide Travel Plan Coordinator who will pay the fines to the County Council at the same time as submitting the Barred Route Breach Report under paragraph 2.9. It is the

Q Ref.	Part of DCOB	Directed to	Question/ comment	Applicant's Response
				Barred Route Breach Report which records the fines.
1.37	S2 Part 3	Applicant SCC	Is the total sum for the Bus Service Contribution and the phasing of payments agreed?	These provisions have been agreed between the parties.
1.38	S2 Part 4	Applicant SCC	What is the basis of calculation of the total sum for the Shuttle Bus Fund and has this sum been agreed?	Please see table attached at Appendix 1 for the basis of the calculation for the Shuttle Bus Fund. This sum has been agreed. Please also see the Applicant's Post Hearing Submissions in relation to ISH2 (Accessibility and Transport).
1.39	S3	Applicant SCC	(i) Are there any elements of S3 that have not yet been agreed between the applicant and SSC? (ii) Are there any significant differences between the ES&T obligations as set out in S3 and those that have been agreed in relation to other major warehousing/industrial developments in Staffordshire?	(i) These provisions have been agreed between the parties.
1.40	S3 2.6	Applicant SCC	Please clarify the purpose of this provision and the 5-year timescale proposed.	The Applicant understands the purpose of 2.6 to be to provide SCC with up to date information on legal interests in the land so that they are aware which parties are required to provide employment skills training plans. The Applicant understands that the five year timescale is to allow for

Q Ref.	Part of DCOB	Directed to	Question/ comment	Applicant's Response
				monitoring of the performance of the relevant ESTPs.
1.41	S3 2.7	Applicant SCC	The wording appears rather awkward in respect of the occupier's obligation to engage with the County Council; the use of " <i>must</i> " may not be adequate to convey a binding obligation. Is this sufficiently clear?	The Applicant will give consideration to more appropriate wording which will be included in the dDCO to be submitted for Deadline 5.
1.42	S6	SSDC	Are there any elements of Bespoke NIS and its proposed operation which have yet to be agreed by SSDC?	As explained above, some minor amendments to the Bespoke Noise Insulation Scheme arising out of recent discussions with the District Council's EHO will be incorporated in the next draft, together with amendments discussed at the ISH in relation to drafting clarity and improvements in relation to the time periods. With those amendments, it is understood that the scheme will be agreed.

APPENDIX 1
SHUTTLE BUS CALCULATIONS

Build Out Year	Expected Number of Employees	Number of Shuttle Buses	Annual Cost	Service Charge	Annual Subsidy Required	Cumulative Subsidy
2021	570	1	£150,000	£10,000	-£140,000	-£140,000
2022	1140	1	£150,000	£20,000	-£130,000	-£270,000
2023	1710	1	£150,000	£30,000	-£120,000	-£390,000
2024	2280	1	£150,000	£40,000	-£110,000	-£500,000
2025	2850	1	£150,000	£50,000	-£100,000	-£600,000
2026	3420	2	£300,000	£120,000	-£180,000	-£780,000
2027	3990	2	£300,000	£140,000	-£160,000	-£940,000
2028	4560	2	£300,000	£160,000	-£140,000	-£1,080,000
2029	5130	2	£300,000	£180,000	-£120,000	-£1,200,000
2030	5700	2	£300,000	£200,000	-£100,000	-£1,300,000
2031	6270	3	£450,000	£330,000	-£120,000	-£1,420,000
2032	6840	3	£450,000	£360,000	-£90,000	-£1,510,000
2033	7410	3	£450,000	£390,000	-£60,000	-£1,570,000
2034	7980	3	£450,000	£420,000	-£30,000	-£1,600,000
2035	8550	3	£450,000	£450,000	£0	-£1,600,000
	8550					