

DCO Changes Tracker

The West Midlands Rail Freight Interchange Order 201X

Regulation 5 (2) (q)

Eversheds Sutherland - 19 July 2019

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

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) (Doc 3.1C (REP5—008 (tracked) and REP5-007 (clean)) in the dDCO submitted for Deadline 6 on 19 July 2019 (Document 3.1D).

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

DCO Provision	Change	Reason
Article 2. Interpretation	Definition of “ <i>the undertaker</i> ” – new wording added in respect of SI Group	The reasons for this change are explained in the representation made on behalf of SI Group submitted to the ExA on 10 July 2019. The purpose of the amendment is to ensure that SI Group is not liable as undertaker simply because it retains ownership whilst the remediation works are undertaken.
Article 4. Parameters of Authorised Development	Amendment made to beginning of article to add “subject to those parameters”	As discussed in ISH6 – to ensure that the limits of deviation allowed for in sub paragraphs (a) to (c) are still constrained by the parameters.
	Proviso deleted	The Applicant has given further thought to the practical need for the proviso to Article 4 and has concluded that it is not necessary.

DCO Provision	Change	Reason
Article 12. Public rights of way – creation and stopping up	Amendment to article 12(3)	At the request of SCC the reference to byway open to all traffic has been changed to the umbrella term of public right of way. This is because a representation has been received by SCC (in response to the consultation on the alteration to the definitive map) suggesting that the byway open to all traffic may in fact be a bridleway. The amendment allows for the operation of article 12(3) whatever the outcome of the deliberations on the status of the route.
Article 29. Compulsory acquisition of land – incorporation of the mineral code	Amendment to article 29(1) Amendment to article 29(2)	Correction of the reference to Part I and II of the Acquisition of Land Act 1981. The ExA will recall that article 29(2) was inserted in Document 3.1C ((REP5—008 (tracked) and REP5-007 (clean)) to provide that the Mineral Code would not apply to the land owned by the Inglewood Investment Company. At ISH6, the ExA requested confirmation of which plots would be affected by the Mineral Code. It is intended that the Mineral Code will not apply to any land which is to proposed to be compulsorily acquired, or to land where the minerals are specifically noted as being subject to compulsory acquisition (i.e. land shown tinted pink, hatched pink or tinted orange on the land plans). This is because the mines/minerals will be acquired pursuant to those compulsory acquisition powers or through voluntary agreement, where agreements are concluded and honoured.

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		<p>The article has been amended to reflect this.</p> <p>The Mineral Code would therefore apply to all other land within the Order Limits.</p>
Article 42. [Placeholder]	Article 42 was a placeholder as a result of the earlier deletion of an article.	The placeholder has been deleted and the subsequent articles re-numbered. All references to, what were, articles 43 to 49 have been amended accordingly throughout the dDCO.
Article 42. (was 43) Felling or lopping of trees and removal of hedgerows	Addition of words to article 42 (2)	Reference to the relevant British Standard has been added at the request of SSDC.
Article 44 (was 45) Governance of requirements and governance of protective provisions relating to highway works	Additional wording included in 44(1) and (2)	Following the ExA's suggestion that wording similar to that contained in the East Midlands Gateway Order be added to this article, to make it abundantly clear that all approvals under the DCO must be within the parameters shown and described on the parameter plans, the Applicant undertook to consider the point and has amended articles 44(1) and (2) accordingly.
Article 48 (was 49) Arbitration	Amendment to 48(1) and new 48(2)	The Applicant agreed to amend article 49 so that it would not apply to any decisions made by the Secretary of State under the DCO.

DCO Provision	Change	Reason
Schedule 1 Authorised Development	Further Works – amendment to paragraph (4)	For the reasons explained in relation to Article 12(3) above.
Schedule 2 (Part 1) (Requirements)	Requirements 20(3) (Noise – construction stage) and 21(4) (Noise – operational stage) – insertion of cross references.	The relevant paragraphs in the environmental statement have been added to provide a reference point for the noise levels that were anticipated.
	Requirement 26(2) (Water and flood risk – surface water drainage scheme)	Wording re-ordered as suggested by the ExA
Schedule 2 (Part 2 – Rail Requirements)	Additional wording to paragraphs 4,7,9 and 11 to provide more detail of process, and justification, for any deferral of the rail terminal delivery	<p>As discussed at ISH6.</p> <p>The amendments address comments made by the SCC in response to ExA 2.15.1 at Deadline 5 [REP5-053] and expand the provisions relating to the timing of the provision of the rail terminal to provide greater clarity in the process and provide for the substitution of a revised timetable if necessary. The Applicant noted that those amendments were largely considered, by the local authorities, Stop WMI and HE, to be helpful.</p> <p>Following further discussions with HE, the Applicant has concluded that there is no prospect of undertaking an assessment of the impact of a deferred terminal of the extent desired by HE during the course of the</p>

DCO Provision	Change	Reason
		<p>Examination. Accordingly, the Applicant has added some wording to paragraph 4 of Part 2 of Schedule 2 of the dDCO submitted for Deadline 6 to provide that HE's consent is required before any relaxation can be given by the local planning authority. This is following receipt from HE of a precedent in another DCO, currently undergoing Examination, whereby it had been accepted that an approval pursuant to particular requirement should be subject to HE's consent¹. The amended wording in the WMI DCO is different but follows the same principle.</p> <p>In response to a comment made by Stop WMI the Applicant undertook to consider a potential definition of the term "outside of the control of the undertaker" in order provide greater certainty. The main concern of the parties was that the Applicant might use unavailability of funds to justify a deferral. The Applicants has amended paragraph 11 of Part 2 of Schedule 2 to make it clear that such an argument could not be utilised.</p> <p>SSC expressed concerns that the rail freight co-ordinator might be appointed at too late a stage. Accordingly paragraph 7 of Part 2 of Schedule 2 has been amended in order to bring forward the timing of appointment.</p>

¹ Reinforcement to North Shropshire Electricity Distribution Network DCO, Requirement 11

DCO Provision	Change	Reason
		<p>At ISH6 SSDC commented, in relation to paragraph 9 of Part 2 of Schedule 2, that there was reference to a GRIP process which may change. The Applicant agreed to consider whether some wording could be added to address this. The Applicant has amended the wording in paragraphs 9 and 11 to ensure that the substance of the GRIP process remains applicable irrespective of any future changes (which, in any event, the Applicant understands are not imminent).</p>
<p>Schedule 2 (Part 3 – Procedure for Approvals etc. under requirements</p>	<p>Addition of paragraph 3(14)</p>	<p>To ensure that there is no doubt that Part 3 applies to Part 2 as well as Part 1.</p>
<p>Schedule 13 (Protective Provisions) Part 3 Staffordshire County Council</p>	<p>Addition of missing figure to paragraph 9.(3)(b) and amendment to Expert Determination provision (paragraph 14)</p>	<p>Amendments to ensure that, if there is disagreement between the undertaker and SCC with regard to the level of reduction of the Bond Sum in respect of a phase of the highway works, the Expert has regard to the financial exposure of the County Council when considering any decision on a referral. The revised wording has been agreed with SCC.</p>