Document 16.2

Applicant's Post Hearing Submissions (ISH5)

The West Midlands Rail Freight Interchange Order 201X

Four Ashes Limited

West Midlands Interchange

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APPLICANT'S POST HEARING SUBMISSIONS (ISH5)

1 Applicant's need case

1.1 The Applicant's need case is principally set out in the following documents:

- Planning Statement (APP-252), Section 5;
- Updated Market Assessment Report (REP2-004);
- Green Belt an Update (Appendix 3, REP2-010); and
- Compelling Need and VSC (Appendix 2, REP4 -004).

1.2 The need case is not significantly disputed by the planning authorities. In particular, Statements of Common Ground with Staffordshire County Council and South Staffordshire District Council agree with the historic identification of need through the RSS process, the fact that the need remains outstanding and the scale of market demand for rail served logistics set out in the Market Assessment report and the Updated Market Assessment report.

1.3 In the Deadline 2 response (ExQ1.2.5, REP2-009) the Applicant set out a summary of the methodology used by the West Midlands Regional Logistics Study (2009 Update) in calculating the total RLS requirement. The estimation of need was to 2026 and was undertaken by MDS utilising the GB Freight Model and converting volumes of goods to floor space. That resulted in a projected new build warehouse requirement of 180,000 sq m per annum over the 18-year period to 2026. Further methodology was applied, which estimated there to be a gross land requirement at RLS of between 307-438 ha (this methodology is summarised in the note provided in response to ExQ1.2.5 (REP2-009)). The Panel report recommended that 200-250 ha be required.

1.4 Using the data provided in Appendix 5 to ExQ1.2.5, the Applicant calculates that the average take-up across the ten-year period (2009 – 2018) for new build warehouses has been 231,722 sq. m per annum. This compares with the RLS projection of 180,000 sq. m per annum. It is clear that take-up has exceeded that which was forecast by nearly 30%, although this calculation is also likely to be an under-estimate of potential demand because the market has been chronically starved of land, which will have acted to depress take-up.

1.5 However, compared to the scale of need identified by the RSS (and RLS), there has been very little provision of rail served land. It is agreed that 54.2 ha (adjoining Birch Coppice and as an extension to Hams Hall) has been brought forward, and 15.8 ha remains.

1.6 Because the scale of need has significantly increased, the consequent shortfall against the previous identified need should be taken very much as a minimum. Trends in the requirement for rail served logistics floorspace are discussed in the Applicant's Appendix 9 submitted in response to ExQ1.2.18 (REP2-011), which identified both the increased scale of logistics buildings and the substantial impact which e-commerce is having on the market – estimating that every additional €1 bn of on-line sales results on average in an additional 72,000 sqm of demand for warehousing floorspace.

1.7 On the demand side there has been, and there is a continuing, structural change in the economy which has resulted in an increased and accelerating level of demand over and above that which arises from the underlying demand for new space from replacement of existing older buildings and economic growth.

1.8 The scale of buildings has increased over time with a consequent impact on site requirements. Whilst the scale of logistics schemes (including SRFIs) being proposed or under construction might appear large, in reality because of the size of buildings there is a high rate at which land is absorbed. On these large schemes the market expects an annual take-up rate of 37,000 – 46,500 sqm (floor area) which, at a normal development density of 40-45% (of developable land), equates to 20-25 developable acres per annum. This is an average; there is an overall growth in the average size of warehouses. Rail served warehousing, in particular, generates demand for larger buildings which can maximize the benefits of rail in terms of volume and consistency. For example, Tesco took a rail served building at DIRFT II of 76,500 sq. m and Sainsbury's occupy a building of 92,900 sq. m. Buildings of this scale require individual plots of up to 50 acres.

1.9 **Appendix 1** to this note provides case study information relating to the increased scale of SRFI and the relationship between scale and train services.

1.10 The history of planning and land supply in the West Midlands has been profoundly affected by the abolition of the regional planning process. The regional planning process established a substantial, examined, evidence base documenting the need for Regional Logistics Sites across the West Midlands, but the process was abolished before those conclusions could be translated into development plan allocations. That background explains the failure of the region to satisfy its identified requirement for rail served logistics as well as its failure to undertake Green Belt reviews to meet any development requirements and its consequent severe shortage of both housing and employment land. This position is documented in the Applicant's Planning Statement (APP-252) from paragraph 5.2.34 to 5.2.44. Those paragraphs identify, for instance:

- that there is not a single development site in the whole of the West Midlands Combined Authority area in excess of 25 ha that meets the needs of potential major employer (5.2.44);
- the West Midlands has the lowest vacancy rate of employment floorspace in the UK, with increasing evidence of large-scale occupiers being unable to find space (5.2.36);
- supply generally was lowest of all in the Black Country with the lack of supply being described as "*severe*" (5.2.36); and
- Green Belt and the lack of a Green Belt review is identified as the principal cause of constraint on supply in the West Midlands Strategic Employment Sites Study, 2015 (para 5.2.38).

1.11 The work being undertaken by the Black Country authorities to quantify employment land requirements is reported in the Applicant's 'Green Belt – an Update' (Appendix 3, REP2-010) submitted in response to ExQ1.1.4 and was helpfully brought up to date and confirmed by officers from the Black Country authorities at the ISH on the 10th July 2019 and in the submission on behalf of City of Wolverhampton Council and Walsall Council at Deadline 5 (REP5-044). The Black Country EDNA identifies a short fall to 2036 of 537 ha, taking account of available land supply within the Black Country (Black Country EDNA page 87). A suite of documents including the Black Country Urban Capacity Review, May 2018 set out a robust and comprehensive evidence base to confirm the inability of the Black Country to meet its development requirements. As the Urban Capacity review confirms:

"2.2.9… it is evident that there is a particular shortage of large and accessible high quality investment sites available in the short term. There remains a specific need for a large-scale, rail-based logistics provision to serve the Black Country, and in the absence of any suitably large sites within the administrative area, the proposed West Midlands Interchange located at Four Ashes in South Staffordshire has the potential to satisfy some or most of this need."

1.12 The locational suitability of Four Ashes to meet the outstanding requirement for an SRFI was discussed at the ISH, as summarised below.

2 Locational Suitability

2.1 The lack of land supply to the north-west of Birmingham (and capable of serving the Black Country) coincides with a gap in the supply of SRFIs, i.e. large-scale rail served logistics centres. The identification of this gap is not new. In policy terms it goes back at least to the Strategic Rail Freight Interchange Policy (SRA 2004), which confirmed that the north and west of the West Midlands Region lacked RFI capacity. That was confirmed in the Regional Logistics Study Stage 2 (2005), which was commissioned following the publication of the Regional Spatial Strategy for the West Midlands (RSS 11) to ensure an adequate supply of Regional Logistics Sites and to identify the number, size, and broad location of any additional facilities required. That study assessed sub-regions against recommended Regional Logistics Location criteria and identified eight which could be designated as Regional Logistics Locations (para 7.2 of the Regional Logistics Study 2005). It then considered whether there should be a hierarchy of locations and concluded that there were four Regional Logistics Locations which met the criteria to a higher degree and could be regarded as the 'Best Regional Logistics Locations' – the Best being effectively defined by two criteria: (1) the quality of railway access and (2) their location in relation to the origin and destination of cargo. The report went on to state that *(para 7.3) "Taking into account market demand and each sub-region's location in relation to the origin and destination of cargo, a Regional Logistics Site located in a 'Best Regional Logistics Location' will probably serve both national and regional markets."*

2.2 The four Best Regional Logistics Locations identified were:

- Burton, Lichfield and Sutton Coldfield;
- North Black Country and south Staffordshire;
- Tamworth and Atherstone; and
- Nuneaton, Coventry and Rugby.

2.3 Hence the general location of WMI has been identified since 2004. That need has not disappeared simply because of the abandonment of the RSS.

2.4 The gap in the SRFI network, which would be in part filled by WMI, stretches 120 km from Hams Hall and Birch Coppice (both to the north east of Birmingham and relatively close to each other but effectively operating in tandem) up to Widnes in the North West.

2.5 It is apparent that the economics of rail freight have changed, particularly with regard to the assumed minimum distances for rail freight to be economic (see further below). In addition, evidence identifies a concentration of the primary catchment area for SRFIs generally within around 10 miles / 15 km [1]. The result is that SRFIs can co-exist in greater proximity one to another, and this is seen in the clusters which have been developed in the network (existing and proposed) in the East Midlands.

2.6 Were a terminal to be brought forward around Stoke-on-Trent that would be welcomed and would co-exist with WMI, serving different market areas. Equally it was agreed that a terminal in Stoke-on-Trent would

[1] See Figure 2 (summary of destinations of lorries leaving DIRFT) of the ASA (APP-255)

not serve the Black Country and, indeed, in the RLS Study North Staffordshire was identified as Regional Logistics Location but only qualified in the "Good" category.

2.7 The Applicant's Alternative Sites Assessment submitted with the application (APP-255) evidences the significant gap in the national network of SRFI and suggests the need for at least two SRFIs or clusters of SRFIs in the M6 corridor (para 3.2.12). This is not a new or surprising conclusion. As recorded in the Applicant's Planning Statement (APP-252) at para 5.2.16, the revised WM RSS (2009) was published for examination, amending Policy PA9 to state that consideration and priority should be given to bringing forward additional land for two new rail-served facilities:

"Potential for new rail-served facilities to serve (a) the needs of the Black Country located in southern Staffordshire and (b) to serve the North Staffordshire conurbation."

Source: Policy PA9b West Midlands Regional Logistics Study, MDS Transmodal (May 2009)

2.8 In terms of the fundamentals of the location of WMI for logistics, the Applicant's consider that the WMI location it is extraordinarily well placed to serve both regional and national distribution, being at the geographical (population weighted) centre of gravity of the country. Distribution sites that have come forward along this stretch of the M6 north west of Birmingham have been taken up, but supply has been restricted largely because of the Green Belt constraint.

2.9 Figure 33 from the Planning Statement (APP-252) demonstrates the quality of the WMI location to serve the country as a whole, as well as the local market area.

Figure 1: The extent of the UK which could be reach in 4.5 hours by a HGV from WMI (Figure 33, APP-252)

2.10 The plan below shows the current situation with SRFI and RFI provision in the midlands and north of the country

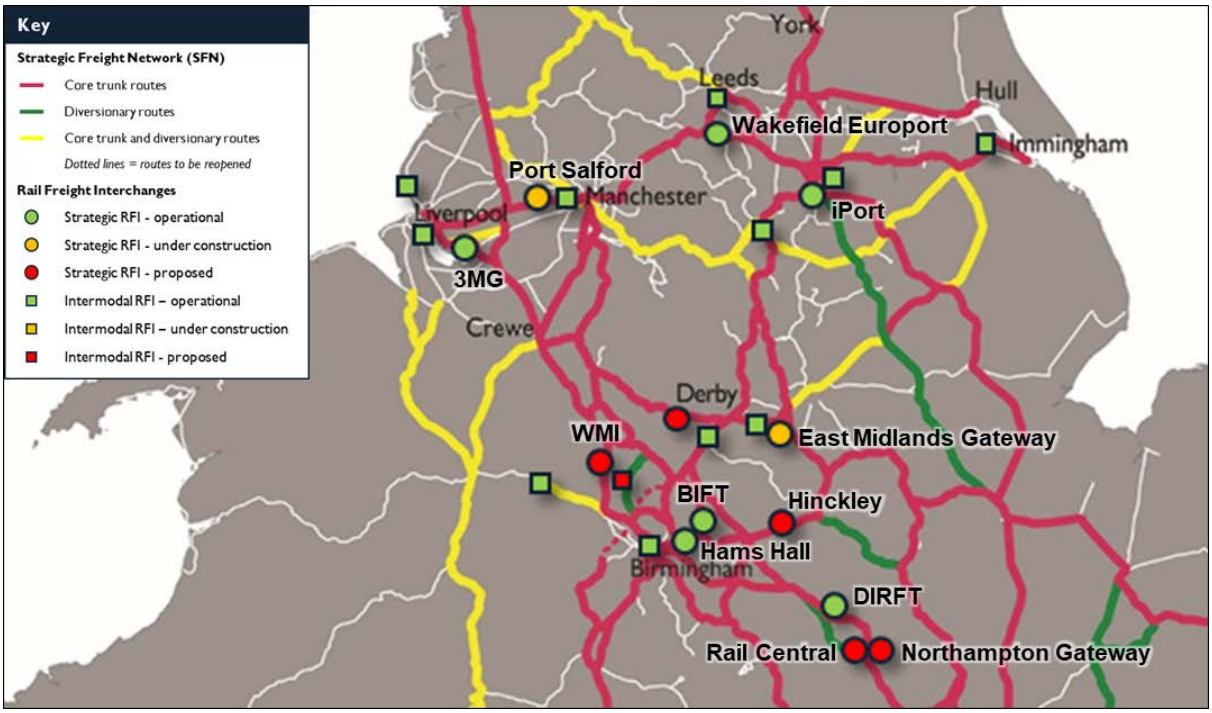

Figure 2: Map of SRFI and RFI in Midlands, North West, Yorkshire & Humberside

2.11 In this regard the clustering and co-existence of existing SRFI and RFI should be noted, in particular:

- Hams Hall SRFI, BIFT (Birch Coppice) SRFI and the Lawley Street RFI in Birmingham;
- 3MG SRFI and the Garston RFI in Liverpool;
- Wakefield Europort and the Stourton RFI in Leeds;
- iPort SRFI and the Railport in Doncaster.

2.12 The ability of SRFI to co-exist in close proximity to each other and other RFI reflects the role envisaged by the NPS, that use of rail for the majority of the trunk haul to and from SRFI then reduces the onward distance moved by road. Evidence provided by ProLogis on the operation of the open-access terminal at DIRFT I indicated that containers arriving by rail were then moved by road within a close geographic area of the terminal, with one-third staying within the DIRFT estate and the remaining two-thirds in adjacent areas. Analysis of the ProLogis data suggests containers moved no further than 15km to the next destination in the supply chain, i.e. National or Regional Distribution Centres in the surrounding area (eg Magna Park at Lutterworth).[2] From these points, goods will then continue their journeys along the supply chain either by road or rail, e.g. imported Alpro and Red Bull products are moved by rail from Purfleet/Tilbury to DIRFT II by rail, moved by road to the adjacent Tesco NDC warehouses, repicked for outbound distribution and moved by road back to the DIRFT II terminal, moved by rail to Scotland, Wales or London, and delivered the short distance by road to RDC and/or stores.

[2] Document - 7.4 Regulation - 5(2)(q) Need Report, Nathaniel Lichfield & Partners, October 2012, para 5.76 – 5.79

2.13 As there are only 7 SRFI in operation at present in Great Britain, the ability to undertake network distribution using rail is limited by the number of facilities available. The NPS sets out the Government's assessment of a compelling need for an expanded network of SRFI (para 2.56), rather than simply relying on expansion of existing facilities (para 2.55 Table 4).

2.14 Given the relatively small catchment area around SRFI for goods moved by rail to and from site, the gap in provision of any SRFI or RFI facilities between the West Midlands, North West and Yorkshire and Humberside is made apparent in Figure 1 above. The earliest evolution of SRFI policy in 2004 noted that:

"The major conurbation of the West Midlands primarily lacks capacity in the northern and western quadrants." [3]

2.15 Network Rail's Freight Market Study 2013 (the forecasts being referred to by the NPS in para 2.49) acknowledged the interest from developers in the Four Ashes / Featherstone area. Most recently, the West Midlands Freight Strategy (REP5-004 Annex 2) supports the development of SRFI and Intermodal RFI in and around the West Midlands, and notes the interest in south Staffordshire for SRFI development. Network Rail's Statement of Common Ground (AS-025 para 3.2) notes:

"The location to the North West of Birmingham, 30 km north of Hams Hall and 80 km south of 3MG Widnes, provides a geographically optimal location for a SRFI in accommodating future intermodal traffic growth."

3 The Role of the DCO

3.1 It is evident from the history, current documentary evidence, but also from the evidence given by councillors and officers of the District Council at the ISH that SSDC has no intention of addressing the long outstanding need for an SRFI through its local plan process.

3.2 15 years after the first identification of the specific need for an SRFI to serve the north-west quadrant of the West Midlands, there is no sign that any development plan intends to address the task of finding or allocating a suitable site, despite the requirement having been identified as a "*priority*" through the RSS process and reconfirmed in every subsequent analysis.

3.3 The outstanding requirement is recognised at para 9.11 of the SSDC Core Strategy with the relevant text confirming the Council's intention to co-operate with partners and use its "*best endeavours*" to ensure that a comprehensive study is completed by the end of 2012 (paragraph 9.12). Those positive words were urged by the Core Strategy Inspector (Inspector's report paragraph 65) who remarked that the Core Strategy as drafted did little to positively address the issue and was concerned that the positive preparation of the Core Strategy itself was at issue.

3.4 The URS Study was finally published in April 2013. The Study confirmed the scale of the need for an RLS/SRFI to serve southern Staffordshire and the Black Country but surprisingly suggested that the need could be met by a facility remote from the area – a conclusion which the District Council now accepts is directly contrary to the NPS.

3.5 South Staffordshire lies outside the West Midlands Combined Authority area and would not be covered by any development plan initiative for the combined area. Equally, the District Council's Local Plan Issues and

[3] Strategic Rail Freight Interchange Policy, Strategic Rail Authority, March 2004, para 6.11

Options, October 2018 simply acknowledges the history of the requirement for an SRFI at paragraphs 4.26 and 4.27 and reports that a DCO application has been submitted for West Midlands Interchange. However, the document then simply sets out a question for public consultation:

"Question 15: If granted approval, what implications will the SRFI proposal at Four Ashes have for the Local Plan Review?"

3.6 It is evident that the District Council intend the Local Plan Review to respond to the WMI proposal, rather than deal with the outstanding need for an SRFI.

3.7 Members and representatives of the District Council spoke at the ISH expressing concern that the District Council "*must protect its Green Belt*" and that the scale of the WMI proposal was inappropriate because it set out to serve more than the immediate local area. SRFI, however, are nationally significant infrastructure, the development of which is strongly encouraged within the NPS in view of their nationally important economic and environmental characteristics. The Government believes it is important to facilitate the development of the intermodal rail freight industry (NPS paragraph 2.53) and it is partly for this reason that SRFI are identified as nationally significant infrastructure subject to a separate planning regime.

3.8 In the absence of regional planning, it is not unusual to find that local plans and local authorities are reluctant to plan for national infrastructure. It is inherent in such infrastructure, however, that it serves a national as well as an immediately local purpose – that is not an objection, it is a virtue of well-designed and located SRFIs.

3.9 The need for a rail served logistics site to serve the area is long established, urgent and outstanding. The evidence identifies a lack of any alternative site and has confirmed the need on an up to date basis. There are no other proposals current, or in prospect, and no emerging policy document proposals setting out to meet that need. The determination of this DCO application provides the legitimate, and only, way in which the planning system will deliver a nationally important priority.

3.10 The Local Plan Issues and Options Report is helpful generally in confirming the strong economic relationship between South Staffordshire and the Black Country. Paragraphs 3.18 and 3.19 include the following:

…it is acknowledged that South Staffordshire may have a role in meeting cross boundary employment needs….

a significant proportion of South Staffordshire's working population travels to work outside the district. The Black Country economy, and those of other adjoining authorities, is an important source of jobs for the residents of South Staffordshire and is an important factor in the prosperity of the district.

the economic inter relationship between South Staffordshire and the Black Country is particularly strong with a key challenge to ensure that future cross boundary employment provision is mutually beneficial.

…South Staffordshire's EDNA (Stage 1) has undertaken an analysis of the South Staffordshire Functional Economic Market Area (FEMA) and has identified South Staffordshire as being in the same FEMA as Cannock Chase District, Dudley, Walsall and Wolverhampton.

the Black Country authorities acknowledge that they have a significant un-met need for employment land for their forthcoming plan period. They are undertaking further evidence gathering to see if they can reduce this gap, however, it is acknowledged that 3 of the Black Country authorities are in the same FEMA as South Staffordshire, and therefore we may have a role in meeting some of their un-met employment needs.

3.11 Similarly, collaborative cross boundary working with South Staffordshire is anticipated in the Issues and Options report for the Black Country Core Strategy (paragraph 3.47) and the Black Country EDNA identifies at paragraph 8.5:

"Four Ashes West Midlands Interchange – a proportion of the 270 ha (emerging infrastructure proposal) would potentially contribute to meeting the need/jobs for the Black Country."

3.12 The EDNA estimates that WMI could contribute approximately the equivalent of 100 ha of employment land to meeting the identified shortfall in the Black Country. At the ISH, officers from the Black Country identified this as an estimate. Since the close of the hearing, the Applicant's consultants have undertaken an analysis to attempt to provide more quantification of the contribution that could be made, and a note is provided at **Appendix 2** setting out that calculation. That note has been shared with Wolverhampton Council and with SSDC and the Applicant will update the Examination on any response.

4 Alternatives

4.1 Before discussing alternative sites, which were referenced at the Hearing, it may be relevant to discuss the 'no development' alternative. In other words, what happens if the need continues not to be met?

4.2 This "alternative" may have particular relevance to transport and environmental issues. Those who oppose the DCO often cite traffic issues as a reason for opposing the large-scale development represented by WMI. It should be recognised, however, that SRFI serve rather than generate the logistics market. The transport of goods to and from Staffordshire and the West Midlands is a product of the scale of population and businesses and the demand which they and their customers generate for goods and services. At present, that demand is served by the logistics sector in the West Midlands very substantially through HGV based transport. In regions with rail served facilities, the position is different. As Network Rail's Deadline 5 submissions identified (REP5-058), the only practical way to reduce carbon emissions for Great Britain bulk freight is to shift it to rail. Over long distance hauls, from either Felixstowe or Southampton to the North West, Network Rail report that rail has a competitive advantage over road and is attracting a majority share of container movements to the region. Government policy set out in the NPS will not be satisfied until at least the same is achieved for the West Midlands – particularly, as Network Rail notes, again in its Deadline 5 submissions (in response to ExQ2.2.13), that the West Midlands (thanks to its manufacturing economy) is one of the few regions with the potential for "back load", i.e. to fill containers and trains for the outward as well as the inward journey.

4.3 The Applicant's Alternative Sites Assessment (APP-255) is a comprehensive assessment of potential alternatives based on best practice from other SRFI applications but based also on an exhaustive study of the area applying all relevant criteria. The approach to the study has been accepted by SSDC and by SCC who agree that the ASA contains an accurate assessment of the availability and suitability of sites. Both authorities were involved and consulted during its preparation and neither can identify any alternative site to the WMI site. For example, see paragraphs 9.8-9.10 of the Statement of Common Ground with SSDC (REP—006)

4.4 At the ISH parties raised sites at Featherstone, Cannock, Dunston and the Phoenix 10 site between junctions 9 and 10 of the M6.

4.5 It was subsequently clarified that the terminal at Cannock was not being put forward as an alternative for SRFI development given the absence of any land there for development. For information, however, the closest land is assessed in Appendix 4 of the ASA.

4.6 Each of the other referenced sites is addressed in the ASA or its update, as follows:

- Featherstone (see Section 8.6) – the identified site is only 36 ha, the site has insufficient highway access, establishing a rail terminal of sufficient scale would be physically very difficult and the land is designated for alternative employment uses which exclude distribution;
- Phoenix 10 is addressed in the updated Alternative Sites Assessment (Appendix 6, REP2-011) submitted in response to ExQ1.2.10 – the site is under 20 ha separated from the rail line by the M6 and the river Tame and tightly fringed by residential and business properties such that a SRFI could not be established[4];
- Dunston is addressed at Section 8.8 of the ASA and further addressed in response to ExQ1.2.11 (REP2-009). In view of its landscape sensitivity, no party at the ISH was prepared to suggest that Dunston was a realistic alternative to WMI. This includes SSDC whose Core Strategy policies extend effectively the same policy protection to Open Countryside as they do to Green Belt within the district. Strategic Objective 1 of the Core Strategy seeks to sustain and protect both.

5 Rail Connectivity

5.1 The scale of SRFIs has generally increased over time. Hams Hall was 511,000 sq m when first consented, and has been extended marginally since with the allocation of Power Station B (c. 20 ha) which will increase the size overall to 585,284 sqm DIRFT I was 418,000 sq m but the extensions of DIRFT II and III will result in an overall scheme of c. 1,347,000 sq m The Hinckley proposals are for 850,000 sq m.

5.2 There is a clear trend, which is unsurprising, to increase and maximize the size of SRFI schemes, for a variety of reasons. These include the need to accommodate an increasing size of building (as outlined above). There are significant costs associated with the delivery of an SRFI, some of which are fixed (i.e. are not proportionate to scale) – and they include the cost of provision of rail infrastructure and other elements of infrastructure. There is a consequent need to spread the cost over a sufficient site area to make the project economically viable. This equation will vary depending on the value of serviced land and other factors. The economics are very different from a purely road-based site. SRFIs carry significant additional costs (with a significant upfront weighting) but, because they are in a competitive position to attract tenants and form a subset of a wider logistics market, they carry no premium rental value.

5.3 Attached at **Appendix 3** is a note setting out details of the way in which the industry has adapted to the consistently improving economics of the use of trains for freight distribution.

[4] The site is identified as the IMI Copperworks site in the Updated Market Assessment report, January 2019 on page 43 and cited as 13.2 ha.

5.4 At the hearing, the Applicant explained the market forces at work to drive the larger scale of SRFI including the need to optimise the use of expensive rail infrastructure and the shared benefit generated from a critical mass of logistics occupiers with immediate access to a high quality rail terminal.

5.5 At Deadline 5, the applicant also provided Appendix 6 (SRFI and Rail Terminal Commitments, REP5-004) in response to ExQ2.2.30 as well as Appendix 7 (SRFI Consents in the Green Belt, REP5-004) in response to ExQ2.3.1. The submitted information demonstrates:

- planning decisions have been unsuccessful in attempting to force sites to provide terminals and trains in advance of occupation – see the failure of Radlett, Howbury and Alconbury to proceed with development and the planning decisions necessary at Birch Coppice and Doncaster in response to evidence that such requirements were either un-reasonable or counterproductive;
- as the Applicant's response to ExQ1.2.24 (REP2-009) demonstrated, however, SRFI are successful in attracting an increasing number of trains when the critical mass of occupiers is established to support viable rail services.

5.6 This approach is consistent with the policy and objectives of the NPS. In particular, paragraphs 2.53 and 2.54 of the NPS seek to provide the facility for modal transfer. Paragraphs 2.45 and 2.58 of the NPS recognise the need for flexibility in order to allow the market to respond to the opportunity created by the development of warehousing in association with rail interchange facilities. Paragraph 4.83 of the NPS is clear that:

"Rail freight interchanges are not only locations for freight access to the railway but also locations for businesses, capable now or in the future, of supporting their commercial activities by rail. Therefore, from the outset, a rail freight interchange should be developed in a form that can accommodate both rail and non-rail activities."

5.7 The policy approach was tested at East Midlands Gateway. Questions arose at that examination and have arisen at this examination in relation to the meaning of the wording in paragraph 4.88 of the NPS which provides that SRFIs should provide for a number of rail connected or rail accessible buildings from the outset and that the initial stages of development must provide an operational rail network connection. The examination has considered what is meant by "*for initial take up*" and "*from the outset*".

5.8 The Secretary of State's decision at EMG is clear, definitive and entirely consistent with the objectives of the NPS. In particular, the decision established:

- that it is reasonable for developers to be able to generate income from the warehousing facilities before the railway becomes operational and that the interpretation of the NPS *"must allow for the realities of constructing and funding major projects such as this"* (paragraph 16);
- that "*initial take up*" does not necessarily mean immediately – it must be considered having regard to the time required for essential works and the construction of the rail infrastructure and taking account of the planned period over which the SRFI is intended to operate (paragraph 16);
- that conditions requiring a significant proportion of the consented floorspace not to be occupied until the rail facilities are in place (in that case 53%) are appropriate to ensure that there are reasonable prospects that the SRFI will fulfil its potential for contributing to modal transfer in the freight sector (paragraph 24); and

- that other interpretations are "*too restrictive*" – given the commercial nature of SRFIs, some degree of flexibility is needed when schemes are being developed to allow them to respond to market requirements and that it is important to consider whether the proposal as a whole is consistent with the objectives of the NPS by providing the potential to contribute significantly to modal transfer and to meet the national need for an expanded network of SRFIs (paragraph 26).

5.9 In circumstances where the evidence demonstrates that the rail infrastructure is being provided as quickly as circumstances allow, any alternative approach would be unreasonable and would run contrary to the objectives of the NPS. The very objectives which the NPS is trying to secure would be thwarted by seeking to impose unreasonable or undeliverable requirements on an SRFI.

5.10 At WMI, the evidence has established that the immediate delivery of the rail terminal is dependent upon the remediation of land, the actions of the Environment Agency, performance by highway authorities and the speed at which Network Rail can process and deliver relevant approvals under its GRIP process. Against this background, the draft DCO at Schedule 2 Part 2 contains a series of requirements which seek to ensure that the rail infrastructure is delivered as soon as it practically can be. No consented SRFI has been subject to such a detailed and structured series of requirements aimed at ensuring the delivery of the rail terminal.

5.11 It may be interesting to speculate why the current DCO proposals at Northampton have offered to open the rail terminal before the occupation of warehousing. Those proposals are promoted in competition in an area of the country subject to significantly higher land values where viability considerations will be different. Neither of those proposals are subject to the remediation requirements that inevitably apply at WMI to defer opening. Neither proposal has been consented or delivered.

5.12 What is important, therefore, is to consider the specific circumstances of WMI and to ensure that all necessary commitments are made to enable the rail terminal to be delivered as soon as practical but to recognise the importance of facilitating the development of a high quality SRFI rather than handicapping its delivery.

5.13 The specific terms of the proposed requirements are addressed in a note addressing the points made regarding the need to provide some form of security for delivery of the rail terminal (**Appendix 4**) and the Applicant's Post Hearing Submissions for ISH 6 (Document 16.3).

6 Viability

6.1 The Applicant's position is set out in its Note on Viability (Appendix 1, REP5-004) submitted at Deadline 5. At the hearing, the Applicant was asked to confirm the principal inputs into its viability appraisal and to justify its approach to using an Internal Rate of Return rather than a profit on cost as the principal measure of viability.

6.2 The Applicant was asked to confirm the phasing of the £40.6m rail infrastructure costs summarised in the dashboard submitted at Deadline 5 (Appendix 1, REP5-004). Rail infrastructure costs are incurred from the outset of the development and are distributed in line with the following milestones:

- Opening of the initial rail terminal – Year 2-4 post occupation of first warehouse - £32.5m
- Completion of the full rail terminal – Year 7-9 post occupation of first warehouse - £8.1m

6.3 The Applicant's appraisal assumes that the rail infrastructure is delivered earlier than the longstop dates in the Requirements, in order to use prudent financial assumptions. The longstop dates in the Requirements are dictated by the longest theoretical periods that all the delivery processes could take.

6.4 The residual appraisal method is commonly used to assess the viability of development projects. This approach sees profit expressed as a cash sum received on completion of the development and expressed as a proportion of either the total development costs or the Gross Development Value. This method of assessing viability is best suited to smaller development projects which are completed (built out, let and sold) within a relatively short timescale and usually within a single phase. Whilst the residual method is common practice in many circumstances, it has a number of drawbacks, particularly for larger multi-phase schemes such as WMI which have a lengthy development timescale.

6.5 It is widely recognised that viability for this type of long term, phased development is therefore more accurately tested by undertaking a cashflow analysis of all receipts and revenues in order to derive the Net Present Value and the Internal Rate of Return (the discount rate which results in a Net Present Value of 0%). The IRR is expressed as an annual percentage, thereby giving a time weighted representation of the project return and allowing for the time value of money in the timing difference between costs and receipts. An IRR-based approach therefore allows the comparison of projects of similar risk profiles, irrespective of their duration.

6.6 The profit on cost measure used in the residual method does not take into account when the cost occurs within the development period and assumes that profit is paid as a cash sum on completion. As the development programme becomes longer and more complicated, profit on cost as a measure therefore becomes more misleading. Such profit-based metrics do not allow for comparison based on the time taken to deliver profit. In the case of WMI, there is considerable time between the point at which costs are incurred and the ultimate revenue generated.

6.7 For these reasons, profit on cost is not an appropriate measure by which to assess viability (it has not been appropriate to use it in this case nor other significant (SRFI) schemes such as DIRFT/Rugby Radio Station), in particular where early infrastructure cost expenditure is at a level such that it is several years before there are positive returns, i.e. the cashflow goes positive. The IRR is more appropriate and informative as it takes into account the time value of money and more accurately enables a risk weighted comparison and assessment of development projects by investors.

6.8 Typically, a discounted cashflow appraisal includes growth assumptions (as FAL's model does), and this recognises the impact of inflation over such long-term projects.

6.9 In evidence at the examination, the applicant also confirmed the following:

- the Note on Viability submitted at Deadline 5 (Appendix 1, REP5-004) included a dashboard summary of the development's appraisal showing an IRR of 14.7% for the whole scheme based on the assumptions in the dDCO;
- at these levels of return the project is viable but could not sustain a reduction in the scale of the development without impacting these key criteria for funding and viability. The Applicant confirmed it would not be able to secure funding or board approval for a smaller scheme based on a similar level of infrastructure; and
- the Applicant confirmed that it has also undertaken sensitivity analysis on its appraisal, looking at the results based on delaying the delivery of the warehousing until after the rail terminal delivery, using the same assumptions for the delivery of the rail infrastructure. The result would be an IRR of 5.7%, which would not be sustainable or fundable.

6.10 In addition, the Applicant confirmed its intention to seek to reach an agreed position with Inglewood in relation to the principal inputs relevant to Inglewood's appraisal of viability submitted with its Written Representations and their relationship to the inputs into the Applicant's own appraisal. The Applicant will seek to provide that information for Deadline 7.

7 Green Belt

7.1 The Applicant's position in relation to Green Belt issues is set out in the Planning Statement (Section 6, APP-252) and also particularly in the Applicant's Post Hearing Submission submitted at Deadline 4 (Compelling Need and VSC, Appendix 2, REP4 -004). That document, for instance, sets out the Applicant's position in relation to a future Green Belt boundary.

7.2 Also relevant to the discussion at the ISH are the following:

- the Applicant's response to ExQ1.3.4 (REP2-009) which addresses issues relating to the role of the WMI site in preventing neighbouring towns from merging; and
- responses to ExQ1.3.3 (REP2-009) and ExQ2.3.3 (REP5-003) in relation to Green Belt purposes, including the Applicant's response to SSDC's answer to these questions, submitted at Deadline 6.

7.3 The Applicant's response to ExQ2.3.4 (REP5-003) also considers the potential timing of any future change in Green Belt boundaries which may arise as a result of the WMI decision. This question, however, is very much a question for SSDC. Were this DCO application to be consented, the Applicant could proceed with the development notwithstanding the continuing Green Belt designation.

7.4 The ISH explored the relative weight and approach to be taken to potential tensions within the NPS, which sets out both the need for SRFI and the need to protect the Green Belt. In the Applicant's view, the NPS provides a clear framework for decision making.

7.5 Paragraph 2.56 of the NPS sets out that there is a compelling need for an expanded network of SRFIs and paragraph 4.2 states that there is a presumption in favour of granting development consent for national network NSIPs that fall within the need for infrastructure established in this NPS. In the applicant's view, both of those statements apply in principle to the application proposals. This application proposes a SRFI development which is clearly necessary to contribute towards a significant gap in the national network of SRFI and the infrastructure proposed is clearly consistent with the need identified in the NPS.

7.6 Very substantial weight attaches to these expressions of need and support within the NPS both because of their clarity as up to date government policy but also because of the important objectives which they seek to achieve.

7.7 Paragraphs 5.162 – 5.178 relate to land use issues including Green Belt. The wording of the NPS is directly consistent with the wording of the NPPF and it establishes a presumption against inappropriate development (paragraph 5.170) and that the Secretary of State will attach substantial weight to the harm to the Green Belt when considering any application for such development.

7.8 However, the grant of development consent for an SRFI in the Green Belt will be consistent with the NPS where very special circumstances can be shown. Paragraph 5.178 is clear that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. Where such other considerations are of sufficient scale and weight, therefore, an SRFI can be consented in the Green Belt consistent with the policies of the NPS.

7.9 Other passages of the NPS are helpful in this respect. In particular:

it is important that SRFIs are located near the business markets they serve – major urban centres or groups of centres (paragraph 2.56);

…for SRFIs, brownfield land may not be economically or commercially feasible (paragraph 5.163);

this requires the logistics industry to develop new facilities that need to be located alongside the major rail routes, close to major trunk roads as well as near to the conurbations that consume the goods (paragraph 2.45);

given the locational requirements and the need for effective connections for both rail and road, the number of locations suitable for SRFI will be limited, which will restrict the scope for developers to identify viable alternative sites (paragraph 2.56);

due to these requirements, it may be that countryside locations are required for SRFIs (paragraph 4.84).

7.10 As paragraph 5.164 identifies, Green Belts are situated around certain cities and large built up areas and we know this to include the West Midlands. Paragraph 2.54 identifies that the network of SRFIs is needed across the regions, to serve regional, sub-regional and cross-regional markets. That network will not be complete without suitable SRFIs to serve the West Midlands and the NPS policies effectively anticipate that it will be difficult if not impossible to find brownfield sites that meet the locational requirements set out in the NPS. It is not, therefore, surprising that a Green Belt site is proposed in this case. As paragraph 5.172 states:

"Promoters of strategic rail freight interchanges may find that the only viable sites for meeting the need for regional strategic rail freight interchanges are on Green Belt land."

7.11 No other national policy statement sets out a recognition that nationally important infrastructure may only be achievable through the development of Green Belt land. This recognition does not diminish the importance of the Green Belt, rather it reflects the reality of the characteristics of nationally important SRFI development.

7.12 Paragraph 5.172 then makes clear:

"Promoters need to recognise the special protection given to Green Belt land. The Secretary of State would have to be convinced, and the promoters would need to demonstrate, very special circumstances to justify planning consent for inappropriate development in the Green Belt."

7.13 There is an onus on the Applicant, therefore, to demonstrate its case but a recognition that such a case may be capable of being demonstrated.

7.14 There is, therefore, no inconsistency within the NPS – rather, there is a clear framework for decision making.

7.15 The Applicant has set out its case in a number of application documents and sought to summarise the case in the Post Hearing Submissions submitted at Deadline 4, Compelling Need and VSC (Appendix 2, REP4 - 004). Those submissions are referenced and relied on here, rather than repeated. They include, of course, the presumption in favour of NSIP development that meets the need identified in the NPS. As the Deadline

4 document advises, however, "I*t is difficult to imagine a stronger, evidence need case for a development which is so strongly supported by government policy because of the nationally important economic and environmental benefits which it brings."*

7.16 One other issue in relation to Green Policy arose at the hearing, namely that referenced at paragraph 141 of the NPPF which encourages local planning authorities to plan positively for the benefit or use of Green Belts such as looking for opportunities for outdoor sport and recreation, to retain and enhance landscapes, visual amenity and biodiversity etc.

7.17 The Applicant does not suggest that the WMI proposals represent appropriate development within the Green Belt. If development consent is granted and implemented, it would be sensible for SSDC at some stage to review the Green Belt boundary to reflect the WMI development and to exclude the site from the Green Belt. The application, of course, does propose some important characteristics which are consistent with objectives set out in paragraph 141, including in particular the commitments to green infrastructure and public access as well as the commitment to achieve a net gain in biodiversity. These are benefits of the proposals, particularly having regard to the almost total lack of public access to the application site (apart from access along the canal and Penk 29) and having regard to its agricultural or minerals working characteristics which limit its biodiversity. Nevertheless, the Applicant accepts that the majority of the WMI development is inappropriate within the Green Belt and inconsistent with paragraph 141 of the NPPF. The Applicant's case, of course relies upon the multiple other considerations which act together to outweigh the harm to the Green Belt and any other harm so that very special circumstances exist to justify the grant of development consent.

Document 16.2, Appendix 1

Case Studies in Scale and Train Services

The West Midlands Rail Freight Interchange Order 201X

Four Ashes Limited

West Midlands Interchange

Four Ashes Ltd

APPENDIX 1 TO ISH5 POST HEARING SUBMISSIONS
CASE STUDIES IN SCALE AND TRAIN SERVICES

1.1 ProLogis notes on its website[1] about how DIRFT has evolved since construction:

*"The Daventry International Rail Terminal (DIRFT), one of the earliest of these new developments, was originally designed to handle freight in transit to and from the Port of Felixstowe and the Channel Tunnel. A 364-acre [**147 Ha**] logistics park with planning permission for around 4 million square feet [**371,000 square metres**], the first phase of DIRFT included a rail terminal to operate on the electrified West Coast Main Line. By the time DIRFT was officially opened in November 1997 by HRH The Princess Royal, the rail terminal was fully operational and the first building, a 475,000 square foot [44,129 square metre] facility for Eddie Stobart, was complete.*

Less than 10 years later, when Prologis secured a holding in DIRFT, the original 364 acre site had been built out and at the rail terminal, container traffic was increasing year on year. In short, growing number of companies were realising that it is faster, more cost-effective and more environmentally-friendly to transport goods by rail than by road.

We became owners of the rail terminal and a 130 acre [52 Ha] expansion site at DIRFT when we acquired Severn Trent Property Ltd in 2006. We started developing the phase two land in 2010, with an 840,000 square foot [78,000 square metre] national distribution centre for Tesco. This was followed by a 1 million square foot [92,900 square metre] general merchandise distribution hub for Sainsbury's and a 420,000 square foot [39,000 square metre] intermodal hub for Eddie Stobart. By 2015, the second phase of the development, which was now known as Prologis RFI DIRFT, was complete.

All three phase two buildings are rail-connected and the process of linking the new rail infrastructure to the existing freight line was complex. We linked the Tesco facility to the rail terminal on the original site through a 20 metre rail tunnel that we built under the A5 trunk road. While for Sainsbury's, which has its own intermodal facility, we adopted a different approach. We built a bridge across the A428, so that we could extend the existing freight line to a railhead beside the new distribution centre. This extended line will also serve the third phase of Prologis RFI DIRFT, carrying on to a new bridge over the A5 and onwards to a new rail terminal that will be part of the latest stage of the development.

In 2014, the Planning Inspectorate granted Prologis a Development Consent Order for a further 7.8 million square feet [725,000 square metres] of rail-served logistics space at DIRFT…

Work on the third phase is moving forward. The initial stage of infrastructure - providing building plateaux, access roads and full servicing - is complete and the first two logistics buildings, which total 520,000 square foot, are under construction. At the rail estate freight trains now run to and from Barking, Coatbridge, Felixstowe, Grangemouth, Mossend, Southampton and Wentloog. However, the next phase will include a

[1] https://www.prologis.co.uk/our-stories/on-the-right-track-20-years-at-dirft

new terminal that will offer customers even more capacity for intermodal rail freight as an alternative to road haulage."

1.2 The annotated chart in Figure 1 below shows the evolution of rail traffic through DIRFT against growth in floorspace and other major milestones. The chart suggests that 4 trains per day would equate to around 225,000 square metres (2.4 million square feet) of floorspace. By comparison, iPort Doncaster has recently achieved the 4 trains per day threshold with some 156,000 square metres (1.7 million square metres) of floorspace now occupied.

1.3 It is equally apparent from the DIRFT example shown above that rail freight traffic has continued to grow in line with floorspace, as occupiers have established initial road-based operations on site and in time increased usage of rail through the on-site rail freight interchange facilities. By way of example, whilst Eddie Stobart and Tesco were amongst the first occupiers on site, the first dedicated trains operated by these companies did not start until ten years after opening, but have since grown to include services from DIRFT linking to Scotland, Wales, London and Germany. Domestic intermodal services operated by Malcolm Group and Russell Group now carry containers on behalf of multiple customers sharing the same train, including Argos, ASDA, Co-Op, Waitrose and Morrisons. The Tesco rail services travel outbound with store deliveries from DIRFT, and return with "backloads" from a number of suppliers (see Figure 1 of Appendix 3 of this document). Furthermore, the delivery of the rail terminal before the warehousing does not result in rail services being delivered earlier, as can be seen from the iPort example, which is the most recent SRFI to open. Some 156,000 sq m of warehousing and associated freight transport activity has been established ahead of the start of rail services, the strong growth reflecting the considerable scale and diversity of customers needed to achieve full train loads to a variety of destinations. This critical mass of traffic is essential to establishing viable rail services. Train loads are being combined by 3 out of the four occupiers at iPort to destinations across the country.

1.4 The difference in initial traffic growth between DIRFT and iPort, against the relative levels of "front loading" of floorspace, occupation and associated rail freight traffic generation, can be summarised as follows:

- DIRFT: **44,129 square metres of floorspace** built and occupied **immediately after** the rail freight interchange opened (the occupier making no use of rail until 2006), 4 trains per day reached **6 years** after the interchange opened;
- iPort: **156,000 square metres of floorspace** built and occupied **prior** to the rail freight interchange opening, 4 trains per day reached **18 months** after the interchange opened, 3 of the 4 occupiers now making use of rail;

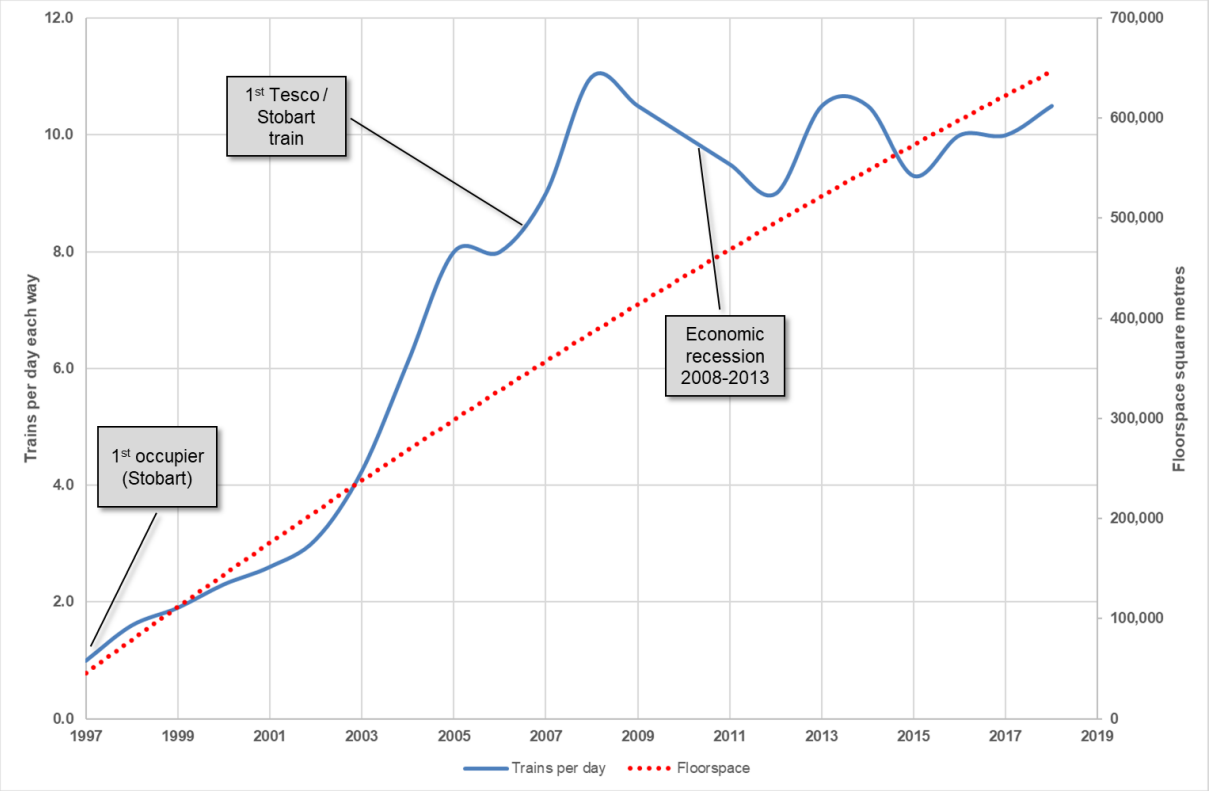

Figure 1: Evolution of rail traffic and floorspace at DIRFT I and II

1.5 The basis for Network Rail's long-term forecasting of rail freight traffic related to domestic intermodal services – the largest component of growth for rail freight to 2043 – is predicated on the scale of floorspace. The scale of SRFI development on each site is not simply to create a large quantum of floorspace to provide a catalyst for rail freight traffic generation, but also to permit multiple large-scale buildings which can further concentrate the level of freight traffic generation. The chart below in Figure 2 shows the evolution of rail freight traffic from SRFI, noting the speed with which the latest SRFI at iPort has achieved 4 trains per day compared to first-generation SRFI.

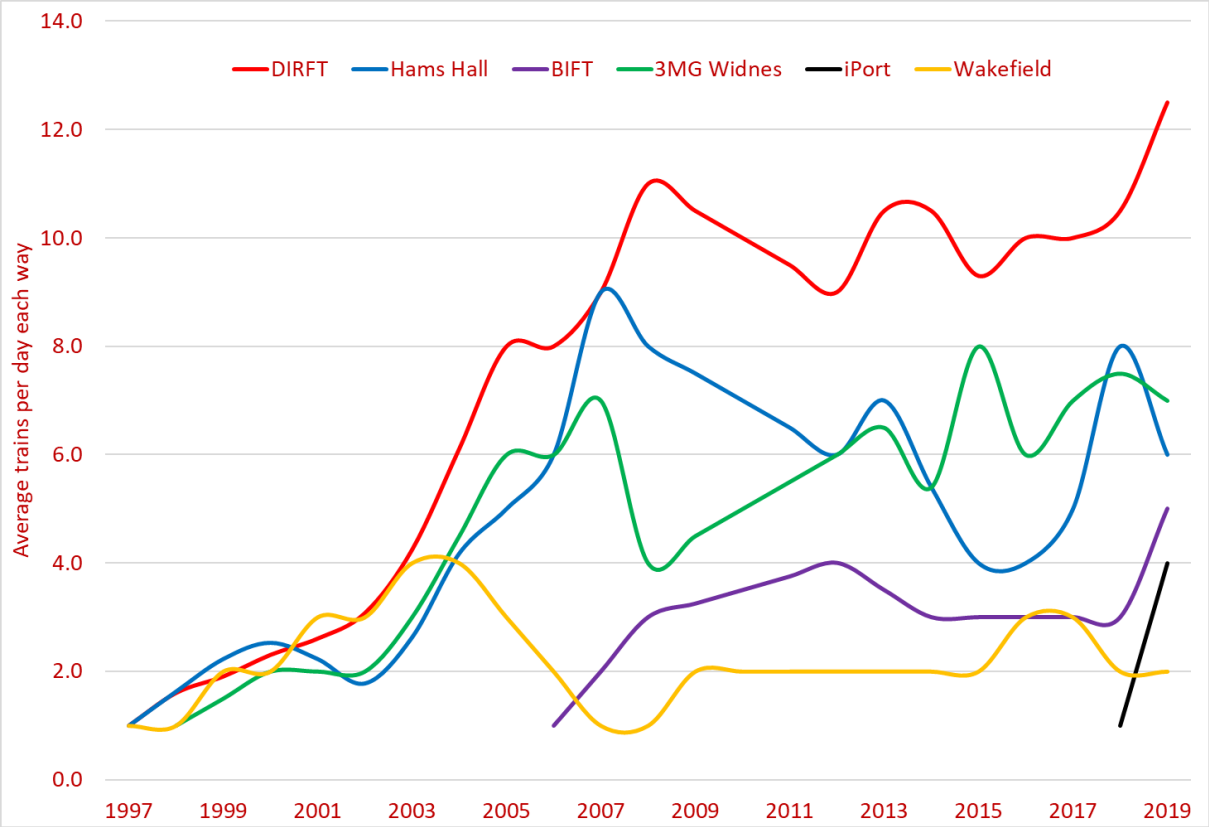

Figure 2: Evolution of rail freight traffic through operational SRFI in England

Document 16.2, Appendix 2

WMI Benefit to Black Country

The West Midlands Rail Freight Interchange Order 201X

Four Ashes Limited

West Midlands Interchange

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APPENDIX 2 TO ISH5 POST HEARING SUBMISSIONS
WMI BENEFIT TO BLACK COUNTRY

1.1 West Midlands Interchange (WMI) is expected to create an estimated 8,550 jobs. The Gravity Model and Travel to Work Area (TTWA) for WMI, which projects where employees are likely to travel from, estimates that, 2,900 of these employees could come from homes within the Black Country – that is one third of the total jobs created.

1.2 The 2017 Black Country Economic Development Needs Assessment (EDNA) suggests that 80-100ha of the Black Country's employment land needs could be met by WMI (Four Ashes) (Figure 8.4). That is the equivalent of around a third of the total land take of WMI (297ha). Therefore, assumptions in the EDNA about the extent to which WMI will serve to meet the employment land needs of the Black Country is supported by the outcomes of the Gravity Model. A third of the jobs are projected to go to Black Country residents – which, looked at another way, means a third of WMI land is meeting Black Country needs,

1.3 It is important to note that the TTWA, and the transport assessment that is based on it, assume a "worst case scenario", where there are no training initiatives and no public transport intervention. This means that the Environmental Statement fully reflects the potential for any adverse effects from the development. It also means that local training initiatives are an additional benefit – which could be leveraged to increase the proportion of employees travelling from the Black Country.

1.4 The WMI Employment, Skills and Training Framework Plan (ESTP) sets out how future occupiers of WMI will sign up to the Occupier Charter. One of the requirements of this Charter is to, "Implement targeted recruitment practices that encourage and support people living within 10 miles of WMI to gain employment on-site". There is a range of supporting policies (and monitoring processes) set out in the ESTP that will further encourage this aim.

1.5 The 10 mile catchment area refers to the straight line distance between WMI and the postcode of the main place of residence of an employee. This catchment covers parts of the Black Country, including Wolverhampton.

1.6 In addition to the Occupier's Charter, the WMI Employment Fund will be pot of money, designed to be a flexible tool that can be used by the Local Authorities to direct funds to employment initiatives that will improve access to jobs at WMI.

1.7 The Employment Fund Steering Group (EFSG) will be a decision-making body who will be responsible for directing the spending of the Employment Fund and the Contingency Employment Fund. This model allows the fund to be used flexibly, responding to needs at the time of delivery rather being defined at this early stage. This model also allows input from occupiers to help to ensure that spending is relevant to their operations and does not duplicate their existing, costed programmes.

1.8 EFSG representatives will be able to share their combined expertise, or knowledge of local opportunities and industry best practice to ensure that spending of funds is focussed on their respective objectives whilst maintaining flexibility to respond on new issues or opportunities that emerge. It will be within the powers of this group to direct funds to those communities most in need of support if they decide that is the best target for intervention – parts of the Black Country are in the 10-20% most deprived areas of the country (based on the Indices of Multiple Deprivation).

1.9 At the discretion of this group, the funds may be specifically directed to addressing employment needs in the Black Country.

1.10 Wolverhampton City Council was influential in drawing up the ESTP and will be a non-voting member of the ESFG. As such it will be in a position to advocate for the needs and aspirations of the Black Country in this forum.

1.11 As such, WMI has the potential to play an important role in meeting the Black Country Strategic Employment Land needs.

Document 16.2, Appendix 3

Viability of Rail Services

The West Midlands Rail Freight Interchange Order 201X

Four Ashes Limited

West Midlands Interchange

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APPENDIX 3 TO ISH5 POST HEARING SUBMISSIONS
VIABILITY OF RAIL SERVICES

1.1 The 7 SRFI to be built to date have each generated rail freight services, delivering on the expectations of the NPS. This in no small part reflects the scale of freight activity created on each site, as well as the facilitation of rail access to on-site occupiers and other businesses located within a relatively close catchment area by road. Despite the relatively small number of SRFI, a degree of networking between SRFI and/or RFI has been achieved, replicating the networks of interlinked NDC and RDC warehouses otherwise served by road. Examples of SRFI/RFI networking include:

- Felixstowe to Birmingham Lawley Street, which calls at DIRFT en route;
- Neuss (Germany) to 3MG Widnes, which calls at DIRFT en route;
- Tilbury to Grangemouth, a new service which calls at DIRFT en route;
- Felixstowe to Birch Coppice, 2 services per day call at Hams Hall en route.

1.2 The creation of new clusters of occupiers with access to the rail network (see case studies below) has in turn created a whole new market for rail freight – intermodal services between SRFI and RFI – which with port-related intermodal services to SRFI and RFI now forms the single largest component of the rail freight market. The combination of critical mass of freight traffic and a cross-fertilisation of services between train and logistics companies and their customers has transformed the performance and economics of rail freight. As evidence of this, in 2008 the West Midlands Regional Logistics Study Stage 2 stated that (p25):

"For flows from a rail connected origin e.g. container port, to a non rail connected distribution centre (eliminating one road haul), without any grants that may be available, rail freight becomes cost competitive with road transport at distances over 300km (around 200km with grant funding)"

1.3 Today the rail services operated by Eddie Stobart for Tesco operate from DIRFT to Barking, a distance of 144km. Services also operate from DIRFT to Cardiff, the 220 km miles by rail (and a 32-km road leg to the RDC at Magor) being longer than the equivalent door-to-door road journey of 211 km. iPort has also led to new services being operated to and from Teesport, a distance by rail of 151 km, using half-length trains operating 2 round trips per day.

1.4 Some of the initial rail services from first-generation SRFI were related to Channel Tunnel pilot services originally contracted by British Railways Board, as part of the Government's concession agreement with Eurotunnel and French Railways. This helps explain why rail services from SRFI such as DIRFT and Wakefield Europort were able to start before warehousing was occupied.

1.5 The following section has case studies showing how the development of SRFI has helped improve the use and viability of rail freight services:

Tesco and Eddie Stobart

1.6 This is an example of a major retailer and logistics company developing a network of rail services across multiple SRFI and RFI facilities in recent years. In the 2014 Network Rail document *Our Railway's Future*, William Stobart outlined the evolution of the rail services with Tesco:

Our involvement in rail extends back by more than a decade. We first started thinking about how rail could complement our road haulage operations in 1997, as much for circumventing road congestion black spots

as to address growing concerns about fuel prices and sustainability. At the time, the railways were still emerging from privatisation, with encouraging signs of investment in the network, new traction and rolling stock, and in new rail freight interchanges. Indeed, we were one of the first occupiers of the Daventry International Rail Freight Terminal (DIRFT), which has since become the national hub for our rail service network.

Plans were drawn up during 1997 for a network of in-house trainload services, moving freight between DIRFT and terminals in Scotland, the South East and South Wales. There was also the prospect of making a push into mainland Europe via the new Channel Tunnel. The speed with which the plans were developed was in no small part due to support from Railtrack, starting a partnership which has continued to this day with Network Rail. We took our plans for rail to an advanced stage over the following 12 months, but despite strong support from the rail industry and Government, we remained concerned that rail service quality was still some way off the level necessary to satisfy our requirements and those of our major customers. With some reluctance we put our plans on hold.

The catalyst for our first dedicated train service came from one of our major customers, Tesco, which decided that its new distribution centre at DIRFT would be served by rail, as well as road, for moving goods out to stores. The tender for the distribution contract required that all bidders include rail services in their submissions. Drawing on our previous experience and backed by our in-house rail engineering capability, we developed our proposals and secured the initial 3-year contract. Working closely with Tesco, train operator DRS and Network Rail, we set about creating a new rail service specification, using the same robust performance regime and contingency plans as Tesco would expect from its road hauliers.

Our first service for Tesco started in September 2006 between DIRFT and Grangemouth, linking distribution centres in DIRFT and Livingston in Scotland. The service was fully loaded in both directions, with Tesco providing 100% of the volume travelling north and 90% of the southbound volume, while other Stobart customers provided the remaining southbound volume. The DIRFT – Grangemouth services continue to operate.

The hard work of planning the service paid dividends, as the robust performance regime assisted in achieving a reliable operation. Contingency plans were tested in February 2007 when a Virgin Trains Pendolino unit derailed on the West Coast Main Line at Grayrigg; whilst most of the freight trains to and from Scotland were cancelled over the following days, the DIRFT – Grangemouth service remained in operation, our careful choice of containers allowing them to operate via a diversionary route on the Settle to Carlisle line. As the Midlands – Scotland services became established, the environmental benefits were highlighted in Tesco's annual Corporate Social Responsibility report, stating that the rail service had produced a net saving in CO2 of nearly 3,000 tonnes in its first year of operation against movement of the equivalent traffic by road.

Today, we operate a network of rail services across the UK, linking DIRFT with Scotland, the South East and South Wales, together with a service from Glasgow to Inverness. We also operate a major rail container terminal at Widnes, served by 4 giant overhead gantry cranes, which handles up to 7 trains per day of third-party container traffic from Felixstowe and Teesport.

We continue to advance the scope of our rail freight services, often in extremely challenging conditions, from moving time-sensitive fresh produce over 1,000 miles from Valencia to London, through to plans to move local store deliveries by rail over distances below 100 miles. The ability of rail to move the equivalent of more than 30 lorry loads using 1 train, 1 locomotive and 1 driver, saving around three-quarters of the fuel and emissions of road haulage, produces a range of benefits across operational, commercial and environmental perspectives. Whilst trains can never replace trucks as the prime mover of our distribution

operations, we do see our rail service network expanding wherever the combination of distance, volume and accessibility makes rail the logical choice of mode.

1.7 Today Eddie Stobart is involved in the operation of rail freight services between SRFI at DIRFT, 3MG and Mossend, linking with RFI in Germany, France, London, Wales and Scotland, over distances as short as 97 miles (to/from Purfleet) to as far as 730 miles (Germany/France). The intermodal services carry outbound store deliveries for Tesco, returning with inbound loads of products from suppliers including Alpro, Red Bull, Highland Spring, Coca Cola and Proctor & Gamble See Figure 1 below). A conventional wagon service delivers bottled water from a rail-served bottling plant in Evian, France to DIRFT, whilst a mixed-formation intermodal / conventional wagon service links Neuss in Germany with DIRFT and 3MG, the intermodal wagons being detached/attached en route at DIRFT with the conventional wagons moved to/from 3MG, moving aluminium products in both directions for customer Novelis and in turn its end customer Jaguar Land Rover at production plants in the West Midlands and North West. Stobart has recently announced a further intermodal service which will link the ports of Tilbury and Grangemouth via DIRFT. In addition, as noted above, the company handles third-party deep-sea containers through the terminal at 3MG.

Figure 1: Tesco suppliers using rail into DIRFT (source Tesco publicity video)

Waitrose

1.8 The Freight Transport Association 2015 publication *On track! Retailers using rail freight to make cost and carbon savings* sets out a number of case studies including Waitrose, stating:

Waitrose was looking for a way to cut its costs and CO2 emissions on long-haul trips from its most northern distribution centre in Leicestershire to Scottish stores when approached by multimodal logistics firm WH Malcolm. It has minimised both costs and its carbon footprint by taking space in a WH Malcolm train, which also carries John Lewis product (at certain times of the year), running 300 miles up the west coast from Daventry and into Edinburgh. WH Malcolm provides an end-to-end service, with initial and final-mile journeys by road.

"Train journeys require volume so we can achieve sufficient ambient volume by a multi-drop delivery to two Edinburgh stores at Morningside and Comely Bank," says Julie Thornhill, manager, distribution operational strategy. "Our HGVs are compartmentalised for frozen and chilled as well as ambient, which allows us to consolidate loads. If a cost-effective, compartmentalised, temperature-controlled rail wagon was designed, we would certainly use it."

Product is picked in the morning for 3pm collection from its Bardon depot and then trunked overnight by train for delivery into Edinburgh in the early morning. "That fits with the standard schedule we use on road," says Thornhill.

Waitrose says the Scottish run is cost-neutral because it recovers its de-kit – cages, bread dollies etc – by road. However, use of rail still saves 0.4 tonnes of CO2 per trip.

Marks & Spencer

1.9 The FTA publication also references M&S in the list of case studies:

Marks & Spencer's commitment to rail freight stems from Plan A, its ambitious environmental strategy. It has committed to make its logistics carbon neutral by 2012. M&S asked logistics suppliers DHL Supply Chain to produce innovative solutions to improve the efficiency of its product movements. All M&S stores receive daily food deliveries, and its garments also need to be delivered on hangers and in store-ready condition.

DHL switched 25 HGV loads to rail from the Midlands to Scotland each week. Sales information comes directly into the DCs from store, rail capacity is booked and products are shipped to the nearest RDC within 24 hours. John Forester, DHL operations director for the M&S account, says rail clients need to negotiate hard on cost. "It takes perseverance to find a company with the right availability for the price to be favourable," he says. "WH Malcolm had product coming out of Scotland already so it was a win-win."

Hanging garments, which require specialist equipment for transport by road, had never been transported by rail before. DHL had to turn a standard rail container into a racked wardrobe within minutes, with kit which could be easily disassembled and removed at the other end. "We spent time and money developing a fast, cost-effective solution – and we've now patented it," says Forester. "We've since won many awards for this innovation." The rail freight venture has paid off within one year. DHL and M&S are investigating other rail routes to and from the south-east of England.

iPort Doncaster

1.10 The time taken to establish a rail connection into site led to a series of discussions with the local authority regarding a planning condition on provision of the rail access. The local authority noted the discussions and agreements which were achieved as a consequence (letter from Doncaster Metropolitan Borough Council to CGMS Consulting Ltd, dated 11th March 2016, reference 16/00227/MAT, amendment to previous permission 09/00190/OUTA, granted on19/08/2011, wording of Condition 22):

This condition was subsequently varied under 13/00404/MAT to allow for the occupation of the proposed Unit 1 on the site. The reasoning behind this related to interest from a potential occupier whose timescales would have preceded the opening of the rail link. On the basis of securing investment and jobs, and to kickstart the development of the wider site, it was agreed that condition 22 be varied as such…

Following that variation and in light of changing market demand. The condition was altered again to allow for the occupation of the equivalent floor space on the site as was allowed by the occupation of the approved Unit 1. Given that evidence was provided to demonstrate that the rail connection process was well underway, it was considered acceptable that Condition 22 could be altered as such…

In the intervening period, progress has been made in discussions with potential occupiers on the site, however the current wording of Condition 22 as currently written is causing the site owner difficulties in marketing the site, since the potential first occupiers of the site see the condition as a significant hurdle to occupation, as the timescales for bringing the rail link into place are not definite. Real progress has been made, with the earthworks formed for the rail terminal area and a contractor appointed to bring forward the facility, as well as ongoing discussions with Network Rail. The intention of the condition was to allow the first units to be occupied before the rail connection was fully in place, which would still be the result from this proposed new variation. This new variation seeks to replace the floorspace figure with the named units IP1, IP2A, IP2B and IP2D, which will result in only a minor increase in floorspace from the previous non-material amendment. As such it is agreed to vary the wording of condition 22 as such…

Based on the facts supplied with your application received on 3rd February 2016, it is considered that the application constitutes a non material amendment and, as such, no further formal planning permission is required.

1.11 Some 156,000 square metres of floorspace (around 28% of the total consented) was developed and occupied in advance of the rail terminal becoming operational in February 2018. Rail services commenced in September 2018, and have since grown further to 4 trains per day, the latest services to Felixstowe and Teesport announced in May and June 2019 respectively. The terminal operator at iPort has confirmed that 3 of the occupiers on site (the 4 occupiers at present being Amazon, CEVA, Fellowes and Lidl) are using the rail services, along with IKEA, and shipping lines CMA CGM, Maersk and ONE.

1.12 The combination of shipping lines traffic and customers based at iPort has succeeded in providing the critical mass necessary to establish a variety of rail services to different parts of the country. The customers at iPort have all combined container numbers to form common rail services to the benefit of all.

Document 16.2, Appendix 4

Security for Delivery of the Rail Terminal

The West Midlands Rail Freight Interchange Order 201X

Four Ashes Limited

West Midlands Interchange

Four Ashes Ltd

APPENDIX 4 TO ISH5 POST HEARING SUBMISSIONS
SECURITY FOR DELIVERY OF THE RAIL TERMINAL

1.1 Stop WMI have suggested that there be some security provided for the provision of the rail terminal, the theory being that, in the event that the Applicant did not deliver the terminal when required, the terminal would nonetheless be delivered.

1.2 The suggestion is that this security be provided by way of either a bond or a trust deed. A form of trust deed was submitted by Stop WMI in their Post Hearing Submissions submitted at Deadline 4 (REP4-032).

1.3 SSDC have also drawn a parallel with "*enabling development*" and suggested that there be a similar mechanism employed here but have not provided any details.

1.4 The first point to make, in respect of the general proposition that security should be provided, is that it is unnecessary. It is not necessary because the provisions of Part 8 of the Planning Act 2008 provide the appropriate enforcement regime. They include, but are not confined to, the sanction of a criminal offence, which is something that Companies, especially directors of companies, take very seriously (ss160 & 161). Other enforcement measures available are Injunctions (s171), Notices of Unauthorised Development (s169) and Step in Rights for local authorities (s170).

1.5 Secondly, security for the delivery of the rail terminal is not something that has been required for any other SRFI and yet no one can point to an SRFI consent that has resulted in the warehousing element being delivered without the terminal also being delivered. That is not surprising, given that progressing a planning application or application for a Development Consent Order for an SRFI is a major task and involves a very significant commitment in respect of the rail elements of the application. Having invested so heavily in establishing the feasibility, design and market attractiveness of the rail provision, promoters fully understand the benefits of the terminal to their development and it is not surprising that developers, once consent is obtained, are, as Mr Frost put it in ISH5, desperate to get on and build it.

1.6 The requirement as drafted in the draft DCO provides ample obligations in relation to the delivery of the rail terminal which may be enforced. These are not simply the overriding triggers by which the rail terminal is to be delivered but also the milestones along the way. The Applicant has attempted to respond to every constructive suggestion made in respect of the drafting of those requirements and believes that they are fit for purpose. They are the most sophisticated requirements that have been included in any of the SRFI approvals or proposals.

1.7 Dealing with the issues of a bond, trust deed or enabling development in turn.

Bond

1.8 Bonds are used in a planning context to secure the provision of public infrastructure which is being provided by developers as part of their development, normally this is such as roads or schools.

1.9 The Applicant has provided for bonds in the dDCO (in Parts 2 and 3 of Schedule 13) to make sure that, if the Applicant commences the construction of the roads, they are finished to the standard required by the highway authorities and they then take them over.

1.10 The rail terminal, whilst part of nationally significant infrastructure (being both the rail terminal and the warehousing) is private infrastructure to be constructed, operated and maintained privately. It is a commercial enterprise.

1.11 The suggestion is that, if the Applicant has been unable to deliver the rail terminal through matters outside of its control, then a bond should be available - but for what purpose? If the Applicant cannot succeed, how will others? This could only have relevance if it was not due to matters outside of the control of the Applicant that the rail terminal had not been built – in which case the array of enforcement measures under Part 8 would apply.

1.12 If the inability to deliver the rail terminal is due to matters outside of the Applicant's control, then it is not clear how invoking a bond will lift the barriers that have prevented the Applicant delivering the rail terminal.

1.13 And who is to invoke and utilise the bond? Whilst the local authority, as highway and education authorities, and can take over the construction, operation and maintenance of roads and schools – is it really intended that they take over the construction, operation, and forever maintain, a rail terminal which an experienced developer has not been able to progress?

Trust Deed

1.14 The trust deed in concept is effectively a bond but with the monies drawn down as a local tax on the development to provide the security. The deed therefore has all the difficulties associated with a bond as discussed above but, as proposed by Stop WMI, it poses more difficulties and it would do nothing at all to secure the rail terminal.

1.15 It is important to understand how the trust deed put forward is constructed. It provides that:

1.16 20% of the "*gross receipts*" from the development of the land which is covered by the Section 106 Agreement is to be paid to the local authority (Clause 2.1).

1.17 It only applies to development subject to the s.106 agreement – the land subject to the s.106 agreement does not include the rail terminal land because the rail provisions are included in the dDCO (Clause 1.6). The step in rights set out in clause 4 do not therefore apply to the land upon which the terminal is to be built.

1.18 The local authority are then to hold the receipts money for the lifetime of the development because it is to be held until all the requirements have been complied with, and some of those requirements are ongoing requirements, such as the obligation to maintain the green infrastructure (Clause 3).

1.19 The money is also security for compliance with carrying out all of the works in Part 1 of Schedule 1, which include much more than simply the rail terminal works (Clause 4.1).

1.20 If the objective of the trust deed is to address a situation whereby 47,000 square metres, or 186,000 square metres of floor space is built, but then no rail terminal is built within the 6 year period referred to, then the trust deed fails, since it does not apply to the rail terminal land and 20% of the income from 186,000 square metres would be the maximum money available to construct the terminal.

1.21 It may be thought that the 20% ring fences profit to be directed to the construction of the terminal. Irrespective of the precise % this is not a correct understanding of the position. A levy of 20% of gross receipts, effectively a local tax, held by the local authority for the lifetime of the development is penal and unworkable. It has no regard to the costs incurred to create that receipt.

1.22 Due to the large, front loaded, infrastructure burden, at the time the Rail Terminal is delivered the scheme is unlikely to be cash flow positive[1] (i.e. the amount of revenue at 25% of the warehousing is not sufficient to offset the costs incurred at that point). The 186,000 sq m of warehousing constitutes 25% of the total floorspace[2] – the ability to deliver the remaining 75% is the commercial incentive to deliver the terminal so that the remaining (i.e. the vast majority of) revenue can be captured.

1.23 The requirement to construct the terminal within 6 years is of course accompanied by imperatives to pursue the necessary approvals (the Rail Provision Milestones[3]) which ensure that the Applicant cannot commence the construction of the warehousing without also progressing the delivery of the terminal.

1.24 Stop WMI argue that if the Trust Deed cannot deliver the Rail Terminal (as is the case for the reasons set out above in paragraph 16.) then, as a default, the money should be used as part of the Community Fund. This simply emphasises the collection of the 20% gross receipts as a local tax. It clearly fails to meet any of the tests to be applied to the collection of such monies.[4] It would fail to be reasonably related in scale or kind to the proposed development. It is also not necessary in order to make the development acceptable in planning terms.

Enabling Development

1.25 No particular mechanism has been suggested by SSDC – they have simply drawn an analogy with enabling development, such as that mostly associated with historic buildings.

1.26 The concept of enabling development does not apply here. Enabling development is development which is contrary to policy and would not be acceptable but for the benefits it brings which outweigh the harm. That is not the situation applying here. The Applicant has demonstrated that the provision of an SRFI in this location is in accordance with the NPSNN.

Summary and Conclusion

1.27 The requirements set out in Part 2 of Schedule 2, with the enforcement capability provided by Part 8 of the Planning Act 2008 are the appropriate means by which to secure the provision of the rail terminal.

1.28 The provision of a bond/trust deed would not make the delivery of the rail terminal any more certain.

1.29 In response to the concerns expressed by some parties the requirements included in the dDCO go significantly further to provide imperatives for the delivery of the terminal than those contained in the approved East Midlands Gateway DCO.

1.30 The EMG DCO contained only the following requirement in respect of rail:

"The rail terminal constructed as part of Works No.2 must be constructed and available for use prior to the occupation of more than 260,000 square metres of the rail served warehousing" (Requirement 2(3)).

1.31 In contrast to WMI, at EMG there is no long stop date included by which time the rail terminal must be delivered.

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[1] Even without the significant, and potentially handicapping, costs of a bond

[2] See Para 3.1 and 3.2 Appendix 2 to Applicants Responses to other Parties Deadline 2 Submission (Doc 11.1 REP3-007

[3] Paragraphs 1 and [9} of Part 2 of Schedule2 of the dDCO

[4] Paras 4.9 and 4.10 of the NPSNN applies the guidance in respect of conditions and obligations to NSIPS

1.32 There is 176,700 sq m of floorspace under construction or occupied at EMG. The developers could have decided to simply stop at 260,000 sq. metres and never build the terminal. They have not. The rail infrastructure has been progressed as an integral part of the development infrastructure. A rail operator was appointed following a process involving information exchanges with 14 potential operators followed by detailed expressions of interest received from 6 operators, leading to negotiations with a shortlist of 3 operators. Maritime were then nominated as preferred rail operator and subsequently appointed[5]. The appointed Rail Operator is currently obtaining approval of the details of the terminal building and the terminal itself will be operational by the end of 2019, approximately four years from the approval of the EMG DCO.

[5] Information taken from Northampton Gateway response to ExQ1.11.13 (iii) contained in Applicant's Response to ExA First Written Questions (REP-020) Northampton Gateway Examination.