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To all interested parties

Your Ref:

Our Ref: TR050005

Date: 30 July 2019

Dear Sir/Madam

Planning Act 2008 (as amended) and The Infrastructure Planning (Examination Procedure) Rules 2010 (as amended) – Rule 17

Application by Four Ashes Limited for an Order Granting Development Consent for the West Midlands Interchange

Request for Further Information

Under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010, the I am issuing a formal request further information to be submitted to the examination.

Having given the matter careful consideration I have decided that this request is best made as a third set of Written Questions (ExQ3) which enables me to issue the request in a format which is now familiar to all participants in the Examination. As my request requires responses from number of parties in addition to the Applicant this format also provides for clarity as to which IPs the questions are directed to. This is set out in Column 2 in respect of each of the questions and Column 2 also includes a note of which Deadline the information requested should be submitted. Please note that the remaining deadlines in the Examination Timetable are as follows:

Deadline 7 – 7 August 2019

Deadline 8 – 21 August 2019

The Schedule of Third Written Questions is attached to this letter and includes a separate annex (Appendix A) which sets out a possible alternative wording of part of the Applicant's proposed Rail Requirements in Part 2 of Schedule 2 to the draft Development Consent Order.

Although each question is directed to a particular IP or number of parties this does not prevent an answer being provided to a question by a person to whom it is not directed, should the question be relevant to their interests.

Where responses have been requested by Deadline 7 (7 August) it is important that respondents adhere to this timetable so that other parties have the opportunity to comment on those responses (at Deadline 8) before the close of the examination.

Yours faithfully

Paul Singleton

**Paul Singleton
Examining Authority**

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Application by Four Ashes Limited for West Midlands Rail Freight Interchange

The Examining Authority's Third written questions and requests for information (ExQ3)

Issued on 30 July 2-019

The following table sets out the Examining Authority's (ExA's) third written questions and requests for information – ExQ3.

Questions are set out using an issues-based framework. Column 2 of the table indicates which Interested Parties (IPs) and other persons each question is directed to. The ExA would be grateful if all persons named could answer all questions directed to them, providing a substantive response, or indicating that the question is not relevant to them for a reason. This does not prevent an answer being provided to a question by a person to whom it is not directed, should the question be relevant to their interests.

Column 2 also sets out the Deadline by which a response is requested. Please note the dates of the 2 remaining deadlines in the Examination Timetable as follows:

Deadline 7 - 7 August 2019

Deadline 8 – 21 August 2019

Each question has a unique reference number which starts with 3 (indicating that it is from ExQ3) and then has an issue number and a question number. When you are answering a question, please start your answer by quoting the unique reference number.

The Examination Library

References in these questions set out in square brackets; e.g. [APP-010] are to documents catalogued in the Examination Library. The Examination Library can be accessed via the following link:

<https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR050005/TR050005-000516-new%20%20Examination%20Library%20Template.pdf>

	Question to:	Question:
3.1	Draft Development Consent Order	
3.1.1	<p>The applicant Local Authorities Highways England Stop WMI Group Other IPs</p> <p>Deadline 7</p>	<p><i>Schedule 2-Part 2: Rail Requirements</i> <i>The Flexibility provided for in the draft Requirements</i></p> <p>A central theme in the evidence submitted to the Examination has been the Applicant's commitment to the construction and completion of the rail connection and terminal proposed as part of the WMI development. Concerns have been expressed that the flexibility sought in the proposed Requirements creates uncertainty, not only about the timing of the provision of the rail infrastructure provision but also as to whether it would be provided at all.</p> <p>It is common ground that the Transport Assessment has not considered a development scenario with more than 186,000 sq. m of warehousing in occupation without the rail link being in place. The Applicant's Technical Note 41 at Appendix 10 to their Deadline 5 submissions [REP5-005] sought to provide such an assessment but this has not been agreed by Highways England (HE). HE and other IPs remain concerned that delay in the delivery of the Rail Terminal (RT) might result in a larger quantum of warehouse floorspace being occupied which is wholly road-dependent.</p> <p>In addition to the concerns about the potential effects on the highway network, a scenario in which the RT is not delivered at all could have significant implications in terms of whether the completed development would be a Nationally Significant Infrastructure Project (NSIP) under the</p>

Question to:	Question:
	<p>provisions of the 2008 Planning Act, and for the Secretary of State's decision as to whether or not the Very Special Circumstances needed to justify what all parties agree to be inappropriate development in the Green Belt have been demonstrated. These will, accordingly, be important matters for the ExA to address in his report and recommendation.</p> <p>Much of the recent oral and written evidence has concerned the detailed wording of the proposed requirements and the extent to which these can be drafted so to minimise areas of uncertainty and ambiguity. In response, the Applicant has made a number of changes to the Rail Requirements as set out in Part 2 to Schedule 2 of the final draft DCO submitted at Deadline 6 [REP-003].</p> <p>Rail Requirement 4(1) requires that the rail terminal works be completed before: (a) the occupation of more than 186,000 sq. m of warehousing or (b) the sixth anniversary of the first occupation of more than 47,000 sq. m, whichever is the earlier. As drafted, this requirement is qualified by the words "<i>subject to sub-paragraphs 2-6</i>" and "<i>unless otherwise agreed with the local planning authority.</i>"</p> <p>Subject to the limitations set out sub-paragraphs 5 and 6, these qualifications would, if requested by the undertaker (developer), enable South Staffordshire District Council, as Local Planning Authority (LPA), to approve a different timescale for the completion of the RT. By implication, as the draft Rail Requirement 4 refers to "<i>substitute figures</i>" being submitted and agreed, any variation to the requirement for completion of the RT could involve the construction and occupation of a larger volume of</p>

Question to:	Question:
	<p>warehousing before the RT has been completed. The Applicant seeks this flexibility in the event that the construction of the RT is delayed due to <i>"matters outside of the control of the undertaker"</i>.</p> <p>As drafted, Rail Requirement 6 requires that, following completion of the RT, the undertaker must retain, manage and keep the rail terminal works available for use. However, the words <i>"unless otherwise agreed by the local planning authority"</i> provide for the possibility that the LPA could, if requested by the undertaker, give approval for the RT and related infrastructure to be removed at some future date. It seems unlikely that the LPA would give approval to such a change without good reason but the tailpiece to the Requirement could give rise to that possibility.</p> <p>The ExA does not wish IPs and other parties to repeat evidence already given on the detailed wording of the proposed Rail Requirements although they are invited to comment on the further changes made in REP6-003. The ExA does, however, wish to know the final views of parties with an interest in these matters on the wider issues set out in the following questions.</p> <p>(i) The applicant's evidence is that there is a need for an element of warehousing to be constructed and occupied in advance of the completion of the RT, both to help fund the rail infrastructure and to ensure occupier demand for the rail services once they are available. Having regard to that evidence, do the parties consider that there are reasonable grounds for allowing up to 186,000 sq. m. of the proposed warehousing to be built and occupied prior to the opening of the RT?</p>

Question to:	Question:
	<p>(ii) Without the flexibility sought by the applicant, a simplified form of Rail Requirement 4 would possibly read as follows:</p> <p><i>“The undertaker must complete the rail terminal works prior to the earliest of—</i></p> <p><i>(a) the occupation of more than 186,000 sq.m of warehousing; or</i></p> <p><i>(b) the sixth anniversary of the first occupation of more than 47,000 sq. m. of warehousing”.</i></p> <p>If there are reasonable grounds for allowing some warehousing to be occupied prior to the completion of the RT, would this simplified Requirement 4 provide the necessary certainty as to the delivery of the rail infrastructure?</p> <p>(iii) Do the parties agree, as a matter of principle, that the Rail Requirements should provide for a subsequent change to the timescale for completion of the RT to be approved either by the LPA or by any other statutory body/authority?</p> <p>(iv) As currently drafted in REP6-003, do the Rail Requirements provide for an appropriate level of certainty as to the delivery of the RT given the Green Belt location of the proposed development?</p> <p>(v) The current wording of Rail Requirements 4 and 6 make the LPA the decision making authority for approving any subsequent changes to the approved RT delivery requirement. The Applicant expresses confidence that the RT will be delivered in the timescales specified. However, in a ‘worst case scenario’ the draft Requirements could potentially lead to the</p>

Question to:	Question:
	<p>LPA being asked to give approval to WMI being completed and/or operated as a large warehousing development with no rail connection, as feared by many IPs in their evidence to the examination. Such an outcome would, arguably, mean that the completed development does not constitute a SRFI NSIP as defined in s26 of the Planning Act 2008.</p> <p>Does the delegation of this decision making authority to the LPA give rise to any legitimate concern that what would be approved under the DCO as drafted may not be developed in a form which would constitute an NSIP?</p> <p>(vi) If there are legitimate concerns of the type set out in Question 5, it seems to the ExA that one way of addressing such concerns would be to reserve to the Secretary of State the power to determine any subsequent application to change the timescale requirement for delivery of the RT rather than delegating this to the LPA. Under such a scenario the current drafting of Rail Requirement 4 might possibly be amended as follows:</p> <ul style="list-style-type: none"> • Replace the references to “<i>the local planning authority</i>” LPA in paragraph (2) with the words “<i>the Secretary of State</i>;” • Require that copies of the report referred to in (2)(a) be sent to the LPA, the local highway authority and HE and to require that those bodies be consulted by the SoS before a decision is made; • Remove the suggested need for HE to issue its written consent to any approval of a change as this would not be necessary if the decision is to be taken by the SoS for Transport; • Remove the right to appeal as this would be a SoS decision in the first instance. <p>Rail Requirement 6 might also be reworded to replace the reference to</p>

Question to:		Question:
		<p><i>"local planning authority"</i> to <i>"Secretary of State"</i>.</p> <p>Under this approach they might also need to be an amendment to Part 3 of Schedule 2 to make it clear that the rights of appeal do not apply to decisions taken under the relevant Rail Requirements.</p> <p>At Appendix A to these questions the ExA has produced a tracked changes version of how amended Rail Requirements 4-6 might read if this approach was to be taken.</p> <p>If parties consider that there are grounds for the potential concerns identified in Question (v) would they please set out their views as to whether those concerns would be allayed if Rail Requirements 4 and 6 were to amended along these lines and, if so, whether any other changes to the Rail Requirements would be needed?</p>
3.1.2	<p>The applicant Local Authorities Highways England Stop WMI Group Other IPs</p> <p>Deadline 7</p>	<p><i>Clarity of the Rail Requirements in Part 2 of Schedule 2 <u>as drafted</u></i></p> <p>The questions in this section have a different purpose to Q3.1.1 and are concerned only with the clarity of the wording of the Rail Requirements as currently drafted.</p> <p>(i) Rail Requirement 4(2) includes the wording <i>"the undertaker believes"</i>. As there could potentially be difficulty as defining what any person or body may "believe" would additional clarity be added by amending this to read <i>"reasonably believes"</i> so to introduces an objective test?</p> <p>(ii) As drafted, Rail Requirement 4(2)(a)(ii) requires a revised timetable with <i>"substitute figures"</i> to those in 4(1)(a) and (b). This presupposes that</p>

Question to:	Question:
	<p>any revised "timetable" would involve a change to the level of floorspace to be built and occupied prior to the completion of the RT rather than, for example a revised programme and agreed dates for achieving key milestones. Is it appropriate and reasonable that the Requirement be based on such an assumption?</p> <p>(iii) If the purpose of any change is to approve a revised timetable, is there a need to agree a change to the 186,000sq.m or 47,000 sq. m or could that purpose be achieved, for example, by changing the wording in 4(1)(a) from "<i>the occupation</i>" to "<i>the first anniversary of the occupation</i>" of 186,000 sq. m? or the wording in 4(1)(b) to "<i>the seventh anniversary</i>" rather than changing the area or floorspace to be occupied?</p> <p>(iv) There appears to be an inconsistency in that 4(2)(a) and 4(5) refer to "<i>substituted figures</i>" whereas the term "<i>substituted dates</i>" is used in 4(4)(a). Is a further amendment needed to remove that apparent inconsistency?</p> <p>(v) Would the use of "<i>substitute dates</i>" throughout Rail Requirement 4 add clarity whilst still providing a reasonable level of flexibility for the undertaker to seek some change in the programme if delivery of the RT is delayed due to matters outside of its control?</p> <p>(vi) New Rail Requirement 11 seeks to define "<i>matters outside the control of the undertaker.</i>" However, that term is not used consistently in all such references in Rail Requirement 4; for example, in 4(b). Should this not be consistent throughout the Requirements?</p> <p>(vii) In the revised wording in Schedule 2 Part 2 the term "<i>shall</i>" is used in</p>

Question to:		Question:
		various places whereas this has largely been replaced by “ <i>must</i> ” in most of the articles and requirements in line with the Office of Parliamentary Drafting Guidelines. Should these references be amended accordingly?
3.1.3	The Applicant Deadline 7	Article 2 The ExA notes and understands the reason given for the change to the definition of “ <i>undertaker</i> ” in Article 2. Can the Applicant confirm that no other affected landowners have raised concerns similar to those raised by SI Group and that no other landowners are likely to be adversely affected by not being expressly excluded from the definition in the same way?
3.1.3	The Applicant Deadline 7	Schedule 2: Works No.7 Paragraph 7 (l) appears to duplicate what is provided for in (b)(iii). Is (l) needed or can it be deleted?
3.1.4	The Applicant Deadline 7	Schedule 2 – Part 3 Paragraph 3 (3) currently reads “ <i>of expiry of the 20 working day period referred to in paragraph (3)(1)(e)</i> ”. Is this correct or should this reference be to paragraph (3)(2)(e)?
3.2	Air Quality Assessment	
3.2.1	The applicant Deadline 7	The ExA has considered information submitted by SSDC concerning the review of Chapter 7 of the Environmental Statement by Air Quality

Question to:	Question:
	<p>Consultants (AQC). It appears that the Applicant has accepted that modelling in the original air quality assessment resulted in significant over-estimations of NO₂ levels at some receptors (along motorway corridors) and in significant under-estimations of NO₂ levels at other receptors (along other road corridors). The ExA understands that AQC's concerns about the accuracy of the modelling related also to the PM₁₀ and PM_{2.5} results.</p> <p>The Applicant provided AQC with revised results in April 2019 and AQC subsequently advised SSDC that they had sufficient information to conclude that, in South Staffordshire, the air quality objectives were unlikely to be exceeded either at the opening year of the development or beyond that date and that the overall impacts would not be significant. However, this conclusion has only been confirmed in respect of receptors within South Staffordshire.</p> <p>With the exception of Receptor 7a, there appears to have been no reassessment of the modelling results for receptor locations in Walsall and Wolverhampton, both of which include Air Quality Management Areas. Given the degree of variation between the original and revised modelled results for receptors in South Staffordshire, the ExA considers it necessary that a full revision of ES Chapter 7, with revised results for all receptor locations, is submitted to the examination. This information should be presented in the same level of detail as that set out in Tables A to L in Appendix 1 to Ramboll's Response to South Staffordshire District Council Review- REV3 dated 3 April 2019 [REP4-026 & REP4-007].</p>

Question to:		Question:
3.2.2	City of Wolverhampton and Walsall Councils Deadline 8	The ExA requests that Wolverhampton and Walsall Councils should review any revised information submitted by the applicant at Deadline 7 in response Question 3.2.1. Having done so, the Councils are requested to submit any comments that they wish to make on that revised information to the Examination at Deadline 8 and to confirm whether that revised information affects or alters their conclusions as to the significance of the effects of the development on air quality and on the AQMAs within their administrative boundaries.
3.3.	Responses to Other Parties Submissions	
3.3.1	The Applicant Deadline 7	At ISH2, the Applicant was asked to respond to Daniel Williams' concerns [REP2-178] about the effects of traffic on properties along the A449 to the south of Station Drive. The ExA notes that, although Mr Williams is not identified by name in all of the relevant responses in the Applicant's Deadline 3 Response to Other Parties [REP3-007], the main points of concern were dealt with in responses set out within pages 114 to 126 of that submission. The Applicant also responded to Section 1 of Mr William's Deadline 2 representation concerning rail infrastructure in its response to ExQ2.2.27.[REP5-003] Mr Williams has made a further written submission at Deadline 6 [REP6-036]. Can the Applicant please provide a response to Mr Williams' questioning of the Applicants previous responses and the specific questions which are set out in sections 2 and 3 of his new submission?
3.3.2	Highways England	Highways England is requested to review the submissions made by Daniel Williams at Deadlines 2 [REP2-178] and 6 [REP6-] and to consider

Question to:		Question:
	Deadline 7	whether it wishes to comments on those submissions over and above what is said in HE's post hearing submission at Deadline 6 [REP4-016]. Please provide any further written comments on Mr William's concerns about the effects on the A449 south of Station Drive and his suggestions for possible mitigation of any adverse effects by Deadline 7.
3.3.3	The Applicant Deadline 7	On behalf of New River, Connect Consultants have submitted a technical response [REP6-026] to the Applicant's Technical Note 42 [REP4-007] concerning the possible closure of Station Drive at the railway bridge. The Applicant is requested to submit a written response to the submission made on behalf of New River.
3.3.4	The Applicant Deadline 7	The Applicant is requested to provide written comments on Stop WMI Group's Deadline 6 post hearing submission [REP6-028] and response to D5 submissions [REP6-029], in particular in respect of the Group's further comments on: <ul style="list-style-type: none"> • the potential alternative site at ROF Featherstone; • the West Midlands Freight Strategy • the BC Urban Capacity Review • the Ten-T programme
3.3.5	Network Rail The Applicant Deadline 7	Network Rail and the Applicant are requested to provide a written response to Stop WMI Group's comments concerning the Midland Rail Hub at point 2.2.22 of the Group's Deadline 6 response to Deadline 5 submissions [REP6-029].

Question to:		Question:
3.3.6	The Applicant Deadline 7	The Applicant is requested to provide a written response to the Deadline 4 submission by Linda Tomkins [REP4-048] in which she comments on the use of buses and cycle routes serving the i54 business park.
3.4	Applicant's Consenting Strategy	
3.4.1	The Applicant Deadline 7	Paragraphs 5.1.7 and 5.1.8 of the 'Guide to the Application' [APP-002] set out the Applicant's understanding, at the time the application was made, of what additional permits, consents or agreements may be required to enable the construction and/or operation of the proposed development. Can the Applicant please provide an update of that information as necessary in respect of: <ul style="list-style-type: none"> I. the need for any other permits, consents or approvals that has come to light since the application was submitted (for example the need for consent to discharge surface water to the canal; and II. the current position in respect of any steps already taken (including securing agreement in principle) with regard to obtaining those permits, consents or agreements the need for which was either identified in the Guide to the Application or which has since come to light?
3.5	Statements of Common Ground	
3.5.1	The Applicant At or before Deadline 8	The SoCG with the Canal and River Trust submitted at Deadline 5 [REP4-041] is unsigned. Can the applicant please submit a signed version of this SoCG?

Question to:		Question:
3.5.2	The Applicant At or before Deadline 8	The addendum to the SoCG with Staffordshire County Council [REP5-039] submitted by the applicant at Deadline 5 appears to have page 4/4 missing and is unsigned. Can the Applicant please submit a complete and signed copy of the addendum?
3.6	Planning Obligations	
3.6.1	The Applicant Deadline 7 Deadline 8	Please will the Applicant confirm by Deadline 7 whether it is the intention to submit signed and/or certified copies of the Development Consent Obligation and Farmland Bird Obligation to the examination. If this is the case please ensure that these are submitted at or before Deadline 8?
3.7	Effect on Sailing Conditions on Calf Heath Reservoir	
3.7.1	Greensforge Sailing Club Deadline 7	The Applicant has provided a written response (Appendix 2 to REP6-011) to the Sailing Club's Deadline 5 submission. The ExA requests that any comments that the Club wishes to make on that response should be submitted in writing by Deadline 7.
3.7.2	The Applicant Greensforge Sailing Club Deadline 8	Reference is made in the Applicant's Deadline 6 submission to a Statement of Common Ground (SoCG) between the parties having been prepared in draft. Whilst recognising that significant areas of disagreement may remain, the ExA encourages the parties to complete and submit a SoCG such that the area of agreement and disagreement can be clearly defined. That SoCG will need to be submitted by Deadline 8.

	Question to:	Question:
3.8	Update on Compulsory Acquisition	
3.8.1	<p>Anthony Powell, James Powell or another representative of the Powell Family</p> <p>Deadline 7</p>	<p>An updated version of the Applicant's Compulsory Acquisition (CA) Position Statement [REP6-008] was submitted at Deadline 6. This sets out the Applicant's understanding of the current position with regard to their negotiations to secure the acquisition by agreement of the land owned by members of the Powell Family and occupied by MMS Gas Power (Plots References: 52,53, 54 and 55).</p> <p>(i) Will Mr Powell/the Powell family please review this information and confirm whether or not this accurately reflects their understanding of the current position?</p> <p>(ii) Can Mr Powell/the Powell family please indicate whether they are hopeful that satisfactory terms will be agreed with FAL and whether they wish to maintain an objection to the proposed CA of their land and property interests at this stage of the Examination?</p>
3.8.2	<p>The Inglewood Investment Company Limited</p> <p>Deadline 7</p>	<p>An updated version of the Applicant's Compulsory Acquisition (CA) Position Statement [REP6-008] was submitted at Deadline 6. This sets out the Applicant's understanding of the current position with regard to their negotiations to secure the acquisition by agreement of the land owned by The Inglewood Investment Company Limited (Plot References: 101,102,103,111,112 & 113).</p> <p>(i) Will the Inglewood Investment Company please review this information and confirm whether or not this accurately reflects its understanding of the current position?</p> <p>(ii) Can the Company please indicate whether they are hopeful that</p>

Question to:		Question:
		satisfactory terms will be agreed with FAL and whether they wish to maintain an objection to the proposed CA of their land and property interests at this stage of the Examination?
3.8.3	Mr Jamie Wilkes on behalf of Mr & Mrs Wilkes in relation to Straight Mile Farm Deadline 7	An updated version of the Applicant's Compulsory Acquisition (CA) Position Statement [REP6-008] was submitted at Deadline 6. This sets out the Applicant's understanding of the current position with regard to their negotiations to secure the acquisition by agreement of the land owned and occupied by Mr & Mrs Wilkes at Straight Mile Farm (Plot Reference: 117). (i) Will Mr Wilkes please review this information and confirm whether or not this accurately reflects Mr & Mrs Wilkes' understanding of the current position? (ii) Can Mr Wilkes please indicate whether Mr & Mrs Wilkes are hopeful that satisfactory terms will be agreed with FAL and whether they wish to maintain an objection to the proposed CA of their land and property interests at this stage of the Examination?
3.8.4	The Applicant Deadline 7 Deadline 8	The Applicant is requested to confirm, at Deadline 7, whether or not it is proposed to submit a revised/updated Statement of Reasons in relation to the proposed CA. If so, this should be submitted at or before Deadline 8.
3.8.5	The Applicant Deadline 7 Deadline 8	In its Statement of Reasons [APP-005] the Applicant, in various places, expresses the hope that the scope of the proposed CA might be revisited as a result on FAL's (then) ongoing negotiations with affected parties. The Applicant is requested to confirm, at Deadline 7, whether it proposed that any of the interests or rights which are included in Book of Reference

Question to:		Question:
		<p>should be excluded from the CA provisions before the close of the Examination.</p> <p>The Applicant should please provide that confirmation by Deadline 7, and submit the relevant details including a revised Book of Reference by Deadline 8 if such changes are to be made?</p>
3.8.6	<p>The Applicant</p> <p>Deadline 7 Deadline 8</p>	<p>The Applicant is requested to confirm, at Deadline 7, whether they see a need to revised or update the Statement of Reasons submitted with the application [APP-005]. If so, an updated version will need to be submitted at or before Deadline 8.</p>

Appendix A to ExA's Third Written Questions

Rail Infrastructure

4.—(1) Subject to sub-paragraphs (2) to (46) the undertaker must complete the rail terminal works prior to the earliest of—

- (a) the occupation of more than 186,000 sq.m. of warehousing; or
- (b) the sixth anniversary of the first occupation of more than 47,000 sq.m. of warehousing, ~~unless otherwise agreed with the local planning authority.~~

(2) If the completion of the rail terminal works is delayed and the undertaker believes it cannot be achieved by the earliest of the events referred to in sub-paragraphs (1)(a) and (b) due to matters outside of the control of the undertaker then the undertaker may apply to the ~~local planning authority~~ Secretary of State as provided for below—

(a) the undertaker shall submit a report to the ~~local planning authority~~ Secretary of State (providing a copy at the same time to the ~~local planning authority, local~~ highway authority and Highways England) setting out—

- (i) the reasons for the delay and the attempts by the undertaker to take steps to avoid the delay including supporting evidence; and
- (ii) a revised timetable for the completion of the rail terminal works containing substitute figures for the figures contained in sub-paragraphs (1)(a) and (b).

(b) the ~~local planning authority~~ Secretary of State shall then consult with the ~~local planning authority, the local~~ highway authority and Highways England and with other persons ~~it~~ he feels appropriate and shall within 42 days of receipt of the report notify the undertaker of ~~its~~ his decision as being either—

- (i) that the undertaker has demonstrated to its reasonable satisfaction that the delay is outside the control of the undertaker and that the substitute figures suggested by the undertaker are accepted; or
- (ii) that the undertaker has demonstrated to its reasonable satisfaction that the delay is outside the control of the undertaker but the substitute figures suggested by the undertaker are not accepted and setting out the substitute figures which would be acceptable to the ~~local planning authority~~ Secretary of State; or
- (iii) advising that the ~~local planning authority~~ Secretary of State does not believe the undertaker has demonstrated to its reasonable satisfaction that the delay is outside the control of the undertaker.

~~(c) subject to (d) below the local planning authority must not issue a decision in accordance with (b)(i) or (ii) above without first obtaining the written consent of Highways England.~~

~~(d) for the avoidance of doubt the inability of the local planning authority to make a decision in accordance with (b)(i) or (ii) due to the lack of written consent from Highways England shall not prevent the provisions relating to appeals against failure to take a decision contained in Part 3 of this Schedule applying to that lack of decision.~~

(3) In the event that sub-paragraph (2)(b)(i) applies then the substitute figures suggested by the undertaker will be substituted for the figures contained in sub-paragraph (1)(a) and (b) and the provisions of this Part of this Schedule shall apply with sub-paragraph (1) so amended.

~~(4) In the event that sub-paragraph (2)(b)(ii) applies then the undertaker must notify the local planning authority within 14 days of receipt of the notification pursuant to sub-paragraph (2)(b)(ii) that either—~~

~~(a) it accepts the substituted dates suggested by the local planning authority; or~~

~~(b) it intends to invoke its right to appeal against the decision of the local planning authority under the provisions of paragraph 3 of Part 3 of this Schedule.~~

~~(5) In the event that sub-paragraph (4)(a) applies then the substitute figures suggested by the local planning authority Secretary of State will be substituted for the figures contained in sub-paragraph (1)(a) and (b) and the provisions of this Part of this Schedule shall apply with sub-paragraph (1) so amended.~~

~~(6) In the event that sub-paragraph (2)(b)(iii) applies then the undertaker must notify the local planning authority within 14 days of receipt of the notification pursuant to sub-paragraph (2)(b)(iii) whether it intends to appeal against the decision of the local planning authority under the provisions of paragraph 3 of Part 3 of this Schedule.~~

5. The undertaker must pursue the completion of the rail terminal works as expeditiously as possible following the commencement of their construction.

6. Following completion of the rail terminal works the undertaker must retain, manage and keep the rail terminal works available for use unless otherwise agreed by ~~the local planning authority~~ Secretary of State.