

# Applicant's Responses to ExQ3 and Requests for Information

The West Midlands Rail Freight Interchange Order 201X

Four Ashes Limited

**THE WEST MIDLANDS RAIL FREIGHT INTERCHANGE ORDER 201X  
APPLICANT'S RESPONSES TO EXAMINING AUTHORITY'S THIRD WRITTEN QUESTIONS AND REQUESTS FOR  
INFORMATION (EXQ3) – DOCUMENT 17.2**

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**Appendices**

Appendix 1 - Dashboard Note                      Following ISH5 on 10th July 2019 the ExA issued an action list requiring, in the event that agreement had not been completed with Inglewood that, the Applicant and Inglewood to provide at Deadline 7 a joint note confirming what is and is not agreed in respect of the Inglewood calculations and why. The Applicant is pleased to report that the agreement with Inglewood has been concluded and this is noted in the Applicant's response to ExQ3.8.2 below.

In the ISH5 action list the Applicant was also asked to provide at Deadline 7 an explanation of the Dashboard assumptions (Appendix 1 to the Applicant's Responses to Other Parties' Deadline 4 Submissions, Document 15.2, REP5-006). This note, which includes an explanation as to why IRR is a more appropriate metric than profit on cost is included as Appendix 1 to this Document.

Appendix 2 - The Applicant's letter to Mr & Mrs Wilkes (24 July 2019)

### **The Examination Library**

References to questions in the Third Written Questions are given by the relevant question number in that schedule of questions (e.g. 3.1.1).

References in these questions which are 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:	Applicant's Response
3.1	<b>Draft Development Consent Order</b>		
3.1.1	<p>The applicant Local Authorities Highways England Stop WMI Group Other IPs</p> <p><b>Deadline 7</b></p>	<p><b><i>Schedule 2-Part 2: Rail Requirements</i></b> <b><i>The Flexibility provided for in the draft Requirements</i></b></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</p>	

	<b>Question to:</b>	<b>Question:</b>	<b>Applicant's Response</b>
		<p>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 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>	

	Question to:	Question:	Applicant's Response
		<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 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</p>	

	Question to:	Question:	Applicant's Response
		<p>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><b>(i)</b> 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</p>	<p><b>(i)</b> The Applicant is fully committed to the provision of the rail terminal as soon as possible. The Applicant's position in relation to an element of warehousing being constructed and occupied in advance of the completion of the rail terminal has been submitted throughout the process and was most recently set out at ISH5 and at section 5 onwards of Document 16.2 of the DL6 ISH5 Post Hearing submissions</p>

	<b>Question to:</b>	<b>Question:</b>	<b>Applicant's Response</b>
		<p>the proposed warehousing to be built and occupied prior to the opening of the RT?</p>	<p>(REP6-012). As a reference the following submissions are relevant:</p> <ul style="list-style-type: none"> <li>• (Initial Submission) Planning Statement (APP-252) at Section 3.7, Section 10.2</li> <li>• (Deadline 3) Timing of the Provision of the Rail Freight Terminal (REP3-007, Appendix 2).</li> <li>• (Deadline 4) Post Hearing submissions ISH3 (REP4-004) Appendix 3 Rail Connectivity Note – dealing with the relationship between floorspace and the first rail services.</li> <li>• (Deadline 5) - Applicant's Responses to Examining Authority's Second Written Questions and Requests for Information (REP5-004) Appendix 5 (Current SRFI Proposals), Appendix 6 (SRFI and Rail Terminal Commitments) and Appendix 7 (SRFI consents in the Green Belt)</li> <li>• (Deadline 6) REP6-012 Post Hearing submissions ISH5 Doc 16.2 section 5 onwards.</li> </ul>



	Question to:	Question:	Applicant's Response
		<p><b>(ii)</b> 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><b>(iii)</b> 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><b>(iv)</b> As currently drafted in REP6-003, do the Rail Requirements provide for an appropriate level of certainty</p>	<p><b>(ii) and (iii)</b> The Applicant recognises that there is still concern from some parties regarding the certainty over its commitment to the delivery of the rail terminal. Whilst the Applicant considered it prudent to incorporate some flexibility into the rail requirements, it is now clear that the suggested flexibility has served to add to concerns and even assertions over the Applicant's commitment. The Applicant does not rely upon this flexibility and does not wish there to be any doubt over its commitment to providing the rail terminal or its commitment to deliver it as soon as possible and within the timetable indicated to the Examination at (Deadline3 Document 11.1 Appendix 2 REP3-007). On that basis the Applicant has no objection to the simplified form of Rail Requirement 4 as set out in ExQ3.1.1(ii), i.e. without the tailpiece in RR 4(1) and without 4(2) to (6).</p> <p><b>(iv)</b> See the Applicant's responses to (i) and (ii)-(iii) above.</p>

	Question to:	Question:	Applicant's Response
		<p>as to the delivery of the RT given the Green Belt location of the proposed development?</p> <p><b>(v)</b> 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 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><b>(vi)</b> 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</p>	<p><b>(v)</b> In respect of RR4 which deals with the delivery of the rail terminal, the Applicant has agreed to the simplified form of wording set out in ExQ3.1.1 (ii). In respect of RR6 the Applicant has no objection to the suggestion made by the ExA to substitute the Secretary of State for the LPA.</p> <p><b>(vi)</b> In the responses to (i)-(v) above the Applicant has confirmed the commitment to the delivery of the rail terminal as soon as possible and that the ExA's</p>

	Question to:	Question:	Applicant's Response
		<p>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"> <li>• Replace the references to “<i>the local planning authority</i>” LPA in paragraph (2) with the words “<i>the Secretary of State</i>,”</li> <li>• 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;</li> <li>• 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;</li> <li>• Remove the right to appeal as this would be a SoS decision in the first instance.</li> </ul> <p>Rail Requirement 6 might also be reworded to replace the reference to “<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</p>	<p>suggestion of a simplified form of Rail Requirement 4 (as set out in ExQ3.1.1(ii)) is accepted. However, in (vi) the parties are also asked to comment on an alternative approach whereby the Secretary of State is substituted for the local planning authority in the unlikely event that the Applicant needs to apply for changes to the terms of the rail requirements. Should the ExA consider this a more appropriate approach the Applicant has no objection to the substitution of the Secretary of State for the Local Planning Authority.</p> <p>Notwithstanding the Applicant's acceptance of the simplified wording suggested in ExQ3.1.1 (ii) or the alternative approach substituting the Secretary of State for the LPA in 3.1.1(vi), the Applicant notes in ExQ3.1.2 the specific request for clarity of the Rail Requirements <u>as drafted</u> and has sought to provide that clarity in responding to ExQ3.1.2.</p>

	Question to:	Question:	Applicant's Response
		<p>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><b>Deadline 7</b></p>	<p><b><i>Clarity of the Rail Requirements in Part 2 of Schedule 2 as drafted</i></b></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><b>(i)</b> 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</p>	<p><b>Notwithstanding the Applicant's responses to ExQ3.1.1 above, the Applicant has responded to the questions relating to Part 2 of Schedule 2 as per the dDCO submitted at Deadline 6 (Document 3.1D, REP6-004 and REP6-004) below.</b></p> <p><b>(i)</b> The Applicant suggests that the addition of “reasonably” would be unnecessary since the reasonableness of the belief is inevitably something tested in dealing with the request. To add reasonable</p>

	Question to:	Question:	Applicant's Response
		<p>this to read “<i>reasonably believes</i>” so to introduces an objective test?</p> <p><b>(ii)</b> 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 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><b>(iii)</b> 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</p>	<p>at that point would introduce a pre-condition to the ability to even apply to the local planning authority/Secretary of State and it is not clear how that pre-condition would be examined as a separate item.</p> <p><b>(ii)</b> The intention of the phrase “<i>substitute figures</i>” was to refer to the floorspace references and/or the time period mentioned in RR4(1) so that either or both of those items could be amended if the rail terminal works could not be completed in those timeframes due to matters outside of the control of the undertaker. Perhaps it would have been clearer to remove the wording “<i>containing substitute figures for the figures contained in sub-paragraphs (1)(a) and (b)</i>” so that RR4(2)(a)(ii) simply reads “<i>a revised timetable for the completion of the rail terminal works</i>” and to define the term “<i>revised timetable</i>” in paragraph 11 of Part 2 so that it is clear that this is intended to cover both the level of floorspace and/or the timing, as appropriate.”.</p> <p><b>(iii)</b> See (ii) above. Whilst the suggestion of the seventh anniversary rather than the sixth would be appropriate, the Applicant considers that there would</p>

	Question to:	Question:	Applicant's Response
		<p>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><b>(iv)</b> 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><b>(v)</b> 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>be no purpose served in referring to the first anniversary of 186,000 sq. m because 4(1)(a) operates as a constraint on the amount of development, rather than being a timing constraint.</p> <p><b>(iv)</b> It is accepted that the phrases “<i>substituted figures</i>” and “<i>substitute dates</i>” may appear to be inconsistent. This could be resolved by replacing both phrases with “<i>revised timetable</i>” (with that term being defined in paragraph 11).</p> <p><b>(v)</b> See above. The flexibility was intended to be covered with the terms “<i>substituted figures</i>” by either the extension of the time frame from occupation of a certain amount of floorspace, or a change to the amount of floorspace, or both, in circumstances outside of the control of the undertaker. The phrase “<i>revised timetable</i>” (with that term being defined in paragraph 11) would perhaps have added further clarity.</p> <p><b>(vi)</b> The ExA is correct and the drafting should have been consistent, using the defined term in RR11.</p>

	Question to:	Question:	Applicant's Response
		<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 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?</p>	<p>(vii) The references should be amended.</p>
3.1.3	The Applicant  <b>Deadline 7</b>	<p><b>Article 2</b></p> <p>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?</p>	<p>The Applicant can confirm that no other parties have raised concerns, however, it is technically correct that other parties might be captured within the definition. To ensure it is clear that such parties will not be affected, the following wording could be added to the end of the definition:</p> <p><i>“and does not include any person who owned land within the main site at the date of this order until such</i></p>

	Question to:	Question:	Applicant's Response
			<i>time as the authorised development is commenced on land owned by that person”.</i>
3.1.3	The Applicant  <b>Deadline 7</b>	<b>Schedule 2: Works No.7</b>  Paragraph 7 (l) appears to duplicate what is provided for in (b)(iii). Is (l) needed or can it be deleted?	The ExA is correct and paragraph (l) can be deleted from Works No. 7 in Schedule 1.
3.1.4	The Applicant  <b>Deadline 7</b>	<b>Schedule 2 – Part 3</b>  Paragraph 3 (3) currently reads “of expiry of the 20 working day period referred to in paragraph (3)(1)(e)”. Is this correct or should this reference be to paragraph (3)(2)(e)?	Apologies for this typographical error, the ExA is correct – the reference should be to paragraph (3)(2)(e).
<b>3.2</b>	<b>Air Quality Assessment</b>		
3.2.1	The Applicant  <b>Deadline 7</b>	The ExA has considered information submitted by SSDC concerning the review of Chapter 7 of the Environmental Statement by Air Quality Consultants (AQC). It appears that the Applicant has accepted that modelling in the original air quality assessment resulted in significant over-estimations of NO <sub>2</sub> levels at some receptors (along motorway corridors) and in significant under-estimations of NO <sub>2</sub> levels at other receptors (along other road corridors).	As requested, a full revision of ES Chapter 7, with revised results for all receptor locations, is included within the Deadline 7 response. The response has included both track changes and clean versions of the chapter. For the track change version, the chapter contains a note where data in tables has changed, but data within the tables has not been track changed for clarity of reviewing the response.



	Question to:	Question:	Applicant's Response
		<p>The ExA understands that AQC's concerns about the accuracy of the modelling related also to the PM<sub>10</sub> and PM<sub>2.5</sub> 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</p>	<p>The updated chapter provides updated results for the operational phase traffic assessment for all receptor locations using the same methodology as used in the response to the queries raised by SSDC. Information is presented in the same level of detail as that set out in Tables A to L in Appendix 1 to Ramboll's Response to SSDC Review- REV3 dated 3 April 2019 (REP4-026 &amp; REP4-007).</p> <p>As noted in the response to SSDC (REP-007), whilst there are changes to the predicted concentrations at receptor locations throughout the study area, there are no changes to the conclusions of the original assessment presented in the ES Chapter 7 (APP-027).</p> <p>This will also require an update to Schedule 15 of the dDCO.</p>

	Question to:	Question:	Applicant's Response
		South Staffordshire District Council Review- REV3 dated 3 April 2019 [REP4-026 & REP4-007].	
3.2.2	City of Wolverhampton and Walsall Councils  <b>Deadline 8</b>	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.	--
<b>3.3.</b>	<b>Responses to Other Parties Submissions</b>		
3.3.1	The Applicant  <b>Deadline 7</b>	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	Please refer to Applicant's Responses to Deadline 6 Submissions (Document 17.1) submitted at Deadline 7.

	Question to:	Question:	Applicant's Response
		<p>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]</p> <p>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?</p>	
3.3.2	Highways England <b>Deadline 7</b>	Highways England is requested to review the submissions made by Daniel Williams at Deadlines 2 [REP2-178] and 6 [REP6-] and to consider 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 <b>Deadline 7</b>	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	Please refer to Applicant's Responses to Deadline 6 Submissions (Document 17.1) submitted at Deadline 7. Technical Note 45 is provided at Appendix 1, which

	Question to:	Question:	Applicant's Response
		Applicant is requested to submit a written response to the submission made on behalf of New River.	provides a response to the Connect Consultants technical response (REP6-026).
3.3.4	The Applicant  <b>Deadline 7</b>	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"> <li>• the potential alternative site at ROF Featherstone;</li> <li>• the West Midlands Freight Strategy</li> <li>• the BC Urban Capacity Review</li> <li>• the Ten-T programme</li> </ul>	Please refer to Applicant's Responses to Deadline 6 Submissions (Document 17.1) submitted at Deadline 7.
3.3.5	Network Rail The Applicant  <b>Deadline 7</b>	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].	Please refer to Applicant's Responses to Deadline 6 Submissions (Document 17.1) submitted at Deadline 7.
3.3.6	The Applicant  <b>Deadline 7</b>	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.	Wolverhampton City Council has provided to the Applicant details of modal share data travel to work data obtained from occupiers at i54 during 2018. This is presented below:-

	Question to:	Question:	Applicant's Response																	
			<table border="1" data-bbox="1507 411 2020 951"> <thead> <tr> <th data-bbox="1507 411 1870 571">Mode</th> <th data-bbox="1870 411 2020 571">Modal Share (%)</th> </tr> </thead> <tbody> <tr> <td data-bbox="1507 571 1870 659">Single Occupancy Vehicle</td> <td data-bbox="1870 571 2020 659">62%</td> </tr> <tr> <td data-bbox="1507 659 1870 742">Car Sharer</td> <td data-bbox="1870 659 2020 742">16%</td> </tr> <tr> <td data-bbox="1507 742 1870 783">Bus</td> <td data-bbox="1870 742 2020 783">11%</td> </tr> <tr> <td data-bbox="1507 783 1870 825">Rail</td> <td data-bbox="1870 783 2020 825">2%</td> </tr> <tr> <td data-bbox="1507 825 1870 866">Cycle</td> <td data-bbox="1870 825 2020 866">4%</td> </tr> <tr> <td data-bbox="1507 866 1870 908">Walk</td> <td data-bbox="1870 866 2020 908">3%</td> </tr> <tr> <td data-bbox="1507 908 1870 951">Other</td> <td data-bbox="1870 908 2020 951">1%</td> </tr> </tbody> </table> <p data-bbox="1391 991 2141 1246">The data demonstrates that modes of travel other than single occupancy vehicles do form part of the journey to work modal share for employees of i54. This is contrary to the claim made by Linda Tomkins' Deadline 4 submission (REP4-048). Specifically, travel by bus, cycle and car sharing forms 31% of the modal share of i54.</p>		Mode	Modal Share (%)	Single Occupancy Vehicle	62%	Car Sharer	16%	Bus	11%	Rail	2%	Cycle	4%	Walk	3%	Other	1%
Mode	Modal Share (%)																			
Single Occupancy Vehicle	62%																			
Car Sharer	16%																			
Bus	11%																			
Rail	2%																			
Cycle	4%																			
Walk	3%																			
Other	1%																			

	Question to:	Question:	Applicant's Response
3.4	<b>Applicant's Consenting Strategy</b>		
3.4.1	The Applicant  <b>Deadline 7</b>	<p>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:</p> <p><b>(i)</b> 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</p> <p><b>(ii)</b> the current position in respect of any steps already taken (including securing agreement in principle) with regard to obtaining those permits, consents or agreements</p>	<p><b>(i)</b> The CRT have undertaken hydraulic analysis of the canal network and confirmed that there is capacity to discharge surface water from WMI into the Staffordshire and Worcestershire Canal at the rates specified in the Surface Water Strategy (Doc 6.2, Appendix 16.3).</p> <p>No other permits, consents or approvals have come to light since the application was submitted.</p> <p><b>(ii)</b> As set out at paragraph 5.1.8 of the 'Guide to the Application' (APP-002), the various permits, consents and agreements listed are largely dependent upon finalisation of the detailed designs</p>

	<b>Question to:</b>	<b>Question:</b>	<b>Applicant's Response</b>
		<p>the need for which was either identified in the Guide to the Application or which has since come to light?</p>	<p>and construction methodology, and these will be dealt with at the appropriate stages of development.</p> <p>Discussions have been ongoing with the relevant stakeholders – Network Rail, Natural England, Utility Providers, South Staffordshire Water, etc – to ensure that the various permits, consents and agreements can be achieved.</p> <p>Regarding utilities, discussions have been held with the various utility companies to establish the available supplies available to the site. The Applicant is satisfied that a detailed strategy to deliver the anticipated requirements can be achieved. The strategy will be updated as specific occupier requirements are understood and further detailed discussion and negotiation with the relevant parties.</p> <p>Prior to submitting the DCO application, the Applicant obtained a letter of no impediment (LONI) from Natural England with respect to bats. The LONI (as issued by Natural England and included in the application) covers bats as a European Protected Species. Natural England was content that licences</p>

	Question to:	Question:	Applicant's Response
			<p>for Badgers (a UK protected species, not an EPS) could be addressed at the appropriate time.</p> <p>Work has been done with the relevant stakeholders to ensure that the foul and surface water drainage strategies are principally agreed and that the receiving networks have capacity to receive the flows from the completed development with formal agreements to be progressed post determination.</p> <p>Finally, there will be a connection agreement with Network Rail which will secure a range of industry requirements related to the rail infrastructure. Regarding the connection agreement, please refer to the Applicant's response to ExQ1.2.17 at Deadline 2 which summarises the Proposed Development's current position within the GRIP process.</p>
<b>3.5</b>	<b>Statements of Common Ground</b>		
3.5.1	The Applicant  <b>At or before Deadline 8</b>	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?	The Applicant and CRT have agreed the SoCG. The Applicant understands that the delay in submitting a signed copy has been due to the absence of authorised signatories and the Applicant expects to



	Question to:	Question:	Applicant's Response
			submit a signed version of the SoCG (REP5-041) at or before Deadline 8.
3.5.2	The Applicant  <b>At or before Deadline 8</b>	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?	The Applicant is seeking the signed version of the SoCG from SCC. The absence of page 4/4 was a typographical error in the page numbering.
<b>3.6</b>	<b>Planning Obligations</b>		
3.6.1	The Applicant  <b>Deadline 7 Deadline 8</b>	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?	The Applicant confirms that it is intended to submit signed copies of the Development Consent Obligations (Main Site and Bird Mitigation) to the Examination as soon as possible. The engrossments are currently being circulated for signature and it is intended to submit the completed versions at or before Deadline 8.
<b>3.7</b>	<b>Effect on Sailing Conditions on Calf Heath Reservoir</b>		

	<b>Question to:</b>	<b>Question:</b>	<b>Applicant's Response</b>
3.7.1	Greensforge Sailing Club  <b>Deadline 7</b>	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  <b>Deadline 8</b>	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.	The Applicant has contacted Greensforge Sailing Club to discuss any responses they may have to the information submitted by the Applicant at Deadline 5 and 6 but has received no new information since. Greensforge has informed the Applicant that their comments will be made at Deadline 7. A draft SoCG is being prepared by the Applicant in anticipation of those comments with the aim of submitting the SoCG by Deadline 8. The Applicant's intention had been to base the SoCG on minutes from the meeting on 20 <sup>th</sup> May 2019, however, no feedback has been received from Greensforge on the minutes.
<b>3.8</b>	<b>Update on Compulsory Acquisition</b>		
3.8.1	Anthony Powell, James Powell or another	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	The Applicant is pleased to confirm that terms have been agreed and the documentation is being finalised. CA powers are still required, as per

	Question to:	Question:	Applicant's Response
	representative of the Powell Family  <b>Deadline 7</b>	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). (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? (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?	paragraph 3.19 of the updated Statement of Reasons (Document 4.1A).
3.8.2	The Inglewood Investment Company Limited  <b>Deadline 7</b>	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).  (i) Will the Inglewood Investment Company please review this information and confirm whether or not this accurately reflects its understanding of the current position?	The Applicant is pleased to confirm that a voluntary agreement has been signed by both parties. CA powers are still required, as per paragraph 3.19 of the updated Statement of Reasons (Document 4.1A).

	Question to:	Question:	Applicant's Response
		(ii) Can the Company 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?	
3.8.3	Mr Jamie Wilkes on behalf of Mr & Mrs Wilkes in relation to Straight Mile Farm  <b>Deadline 7</b>	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?	The first time that the Applicant was made aware that the arrangement it had previously understood to have been agreed was in fact not agreed was when Mr Jamie Wilkes' letter to the ExA dated 11th June 2019 was published by PINS. The Applicant responded at DL 5 (REP5-006 in Appendix 2 to Document 15.2) and has since sought to engage with the Wilkes to further understand their position. The Applicant wrote to Mr & Mrs Wilkes on 24 July (copy attached at <b>Appendix 2</b> ) and provided a copy of its Response on CA issues (Document 15.2) submitted at Deadline 5 and has also sought to ensure by telephone and email correspondence that Mr Jamie Wilkes was aware of the deadline for responses to ExA Q3.8.3.  The Applicant received a letter in response from Mrs Wilkes on 7th August 2019 confirming that she and

	Question to:	Question:	Applicant's Response
			<p>her husband no longer wish to pursue the negotiated settlement previously agreed.</p> <p>The Applicant received the letter signed by Mrs Wilkes on the day of Deadline 7 and has therefore not had time to consider or respond fully. The Applicant is disappointed that Mr and Mrs Wilkes appear to have decided not to proceed with the agreement that had been reached on terms that were intended to comply with their detailed wishes. The Applicant will therefore need to retain Compulsory Acquisition powers in respect of this plot.</p>
3.8.4	<p>The Applicant</p> <p><b>Deadline 7</b></p> <p><b>Deadline 8</b></p>	<p>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.</p>	<p>The Applicant's Updated Statement of Reasons (Document 4.1A) was accidentally omitted from its Deadline 6 Submissions, for which, apologies. The Updated Statement of Reasons was submitted to the Examination on 29 July 2019. Since then, a minor alteration is required to refer to a missing plot number as requested by the Inglewood Investment Company. This alteration has been made and a further updated Statement of Reasons is submitted at Deadline 7 (Document 4.1B).</p>

	Question to:	Question:	Applicant's Response
3.8.5	The Applicant  <b>Deadline 7</b> <b>Deadline 8</b>	<p>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 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>	<p>The Applicant's Updated Statement of Reasons (Document 4.1A) and Updated Book of Reference (Document 4.3A) were accidentally omitted from its Deadline 6 Submissions, for which, apologies. Both updated documents were submitted to the Examination on 29 July 2019.</p> <p>Please note the updated paragraph 3.19 in the Statement of Reasons which reflects the Applicant's position on the updating of any extent of CA and also provides a further update on the status of negotiations.</p>
3.8.6	The Applicant  <b>Deadline 7</b> <b>Deadline 8</b>	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.	Please see response to ExQ3.8.4 above.

## Appendix 1 - Dashboard Note

The West Midlands Rail Freight Interchange Order 201X

Four Ashes Limited

## APPENDIX 1

### DASHBOARD NOTE

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- 1.1** The Applicant's case in relation to viability was set out in its Note on Viability (REP5-006, Appendix 1) submitted at Deadline 5. Part of this submission comprised a 'WMI Dashboard' (REP5-006, Appendix 1, Annex 1) that summarised the key outputs and overall viability of the project. At the Issue Specific Hearing (ISH) on 10 July 2019 (Achieving SRFI Objectives), the Applicant was asked to provide an explanation of these dashboard assumptions.
- 1.2** The inputs to the Applicant's appraisal are commercially sensitive and confidential. The appraisal behind the dashboard is also complex and prepared specifically for the WMI development to reflect its timescale and phased infrastructure requirements. The inputs to this appraisal are derived from assumptions and advice from suitably qualified and experienced experts, led by the Applicant's market and valuation expert, Savills. The following summary provides an overview of the methodology and key inputs.
- 1.3** The appraisal methodology presented by the Applicant takes the approach that the developer will be acquiring the necessary land and providing the significant infrastructure required, including the rail infrastructure, in order to generate necessary value from serviced land (effectively, the value of land which is ready for vertical development) over the period from the date of the first land sale. The subsequent vertical build process has additional costs, funding requirements, a different risk profile and structure, and so it is necessary to distinguish between the two parts of the development and to ensure both are viable.
- 1.4** The appraisal uses the limits of development contained within the dDCO to derive an illustrative development programme and timescale. This development programme is consistent with the milestones, obligations and limits identified within the dDCO and DCOB, however where longstops are used it is anticipated – and financially prudent – that delivery is assumed to take place within these limits. For example, the delivery of the rail infrastructure is assumed to take place within the longstop date identified.
- 1.5** The headline delivery assumptions are:
- Net developable area: 390.16 acres
  - Land drawdown rate: 25.6 net developable acres per annum, equating to:
    - Take up rate: 515,900 sq ft per annum
  - Total project duration: 17.5 years, comprising:
    - 1.75 year pre-construction period
    - 15.75 year construction period
- 1.6** The appraisal also includes cost assumptions which are a combination of fixed known amounts and estimates produced by the Applicant and its advisors. These costs include the cost of Section 106 items and contributions to Network Rail and the CRT. These are broken down into headline items, as follows:
- Planning costs: £15.0 million
  - Land acquisition costs: £43.6 million
  - Overall site wide costs: £137.9 million, including:
    - Rail infrastructure costs: £40.6 million (day-one value)



- Other primary infrastructure: £76.4 million (day-one value)
- Finance costs: £10.3 million, based on:
  - Finance rate of 5.50% per annum
  - Loan to cost ratio of 60%

**1.7** Project revenue is derived from:

- Serviced land revenue: £253.4 million
- Rail terminal value of £23.7 million

**1.8** The serviced land revenue is derived from applying a (day-one) serviced land value of £525,000 per developable acre to the total developable acreage of the scheme. This value per acre is based on comparable sites in the region. However, the applicant would note that the rate is consistent with the overall land value which could be derived from a residual approach, using the inputs identified in its response to the representation from the Inglewood Investment company (REP3-007, Appendix 4) principally a rental rate of £5.50 per sq ft, with lease terms and average yields applied dependent on the unit size but generally between 15-20 years and 5.00% – 5.50%. This would combine with appropriate cost assumptions, including per sq ft construction rates applied to the individual logistics warehouse units, and a profit for the vertical build phase. This profit will vary according to whether the units are pre-let or speculative and a residual approach would typically use a blend of between the two.

**1.9** As explained in the Applicant's Post Hearing Submission to ISH5 (REP6-012, Section 6), the appraisal uses a discounted cashflow approach and includes inflationary growth, applied to both costs and values at an assumed rate of 2.25% per annum.

**1.10** The Applicant's dashboard illustrates:

- The project delivers a profit, but this profit is very heavily weighted towards the latter stages of a 17.5 year period. This profit is delivered on a total cost basis of £206.8 million, which is heavily front loaded. It is therefore appropriate to use a discounted cashflow analysis and consider the return on an IRR basis, which indicates a return of 14.7% for the whole scheme. It should be noted that, due to the duration of the project and the differing risk profiles of the different stages, with the risk highest at the outset, it may be further divided into phases related to planning, infrastructure and vertical build.
- At this level 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.
- A proportion of revenue (although by no means the majority) is generated prior to the opening of the rail terminal, which is necessary to generate a sufficiently attractive return for viability.

# WMI Dashboard

The West Midlands Rail Freight Interchange Order 201X

Four Ashes Limited

## APPENDIX 1: NOTE ON VIABILITY

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### 1 Introduction

1.1 The Applicant has explained their approach to viability in previous submissions to the Examination, namely:

- Deadline 2, Document 10.1, Appendix 9 response to ExQ 1.2.18 Scale of the Development Proposed (REP2-011);
- Deadline 3 Document 11.1, Appendix 4 response to WR on behalf of Inglewood Investment Company Limited (REP3-007); and
- Deadline 4 Document 14.1, Appendix 2: Applicant's post hearing submissions relating to Compelling Need and VSC (REP4-004).

1.2 An Action List was agreed following the Compulsory Acquisition (CA) Hearing on 5 June 2019 and for Deadline 5 the Applicant was asked to:

1. *work with Inglewood to provide a joint note confirming what is and is not agreed in respect of the inputs into and assumptions under pinning the Inglewood viability calculations and why. Similar to a Scott Schedule;*
2. *Applicant to consider its position on demonstrating the viability of the proposal and any evidence it wishes to submit in relation to this. Applicant to consider the relevance of viability to Green Belt issues (extent of harm to openness resulting from the scale of land take) and CA proportionate approach. Is the Applicant seeking to acquire more land than is necessary to achieve the SRFI objectives in accordance with the NPS? and*
3. *advise the ExA whether, if a smaller scheme is viable, there is still a case having regard to the GB and NPS for the larger scheme.*

### 2 Inglewood

2.1 The Applicant has engaged with Inglewood extensively since the CA Hearing in an attempt to agree common ground and to agree terms on which to acquire the Inglewood land by private treaty rather than compulsory acquisition.

2.2 The Applicant and Inglewood have reached agreement on the Heads of Terms for a voluntary agreement. The agreement is being documented as quickly as possible and is expected to be concluded in July 2019.

2.3 In the circumstances the two parties have agreed to prioritise that agreement. The parties will keep the ExA apprised of the situation.

### 3 The Applicant's case in relation to viability

- 3.1 The Applicant's case in this respect is explained in its Deadline 4 submission Compelling Need and VSC.<sup>1</sup>
- 3.2 As explained there, the Applicant's case is that there is a compelling need for the scale of development proposed and that very special circumstances exist to justify its development in the Green Belt. That case was advanced in the application without reference to viability and does not depend upon any finding in relation to viability. Issues of viability have principally entered the Examination, as a result of written representations, to which the Applicant has been obliged to respond.
- 3.3 Viability and deliverability, however, are reinforcing arguments supporting the scale of the development proposed. Whilst viability matters can be complex and detailed appraisals can consume significant inquiry or examination time, the principle of the Applicant's position on viability can be readily stated. Savills' report<sup>2</sup> explains:
- development land values in the West Midlands are very substantially lower than those achieved in the M1 corridor where other SRFI developments have come forward and are currently under development;
  - nevertheless the scale of infrastructure required for a fully functioning SRFI is the same and it follows, therefore, that a larger scale of development is necessary to recoup these fixed, early costs.
- 3.4 The Applicant has advised that the primary infrastructure at WMI is estimated to cost £117 million, of which the rail connection and terminal is costed at £40.6 million<sup>3</sup>. The infrastructure costs are front-loaded and in particular the rail costs are incurred in the early stages of the development.
- 3.5 As might be expected, the Applicant has undertaken careful appraisals of viability as the application proposals have developed. Those appraisals are commercially sensitive and confidential for the good reason that, in the event that development consent is granted, the applicant needs to negotiate and settle significant items within that appraisal, both cost and revenue items. Additionally, the financial terms of the bespoke land acquisition agreements reached to date are also covered by confidentiality arrangements.
- 3.6 In an attempt to assist the examination, however, the Applicant has prepared **Annex 1** which is a read out from the Applicant's own viability appraisal "dashboard" which summarises the outcome of its most up to date appraisal.
- 3.7 Whilst the dashboard is relatively simple, the appraisal which sits behind it is complex and has been prepared specifically for the WMI development. The Applicant believes that its financial model is more sophisticated and more appropriate for the specific circumstances than an Argus appraisal.
- 3.8 The Applicant's dashboard shows that the development would generate an internal rate of return (IRR) in the order of 15%. This is consistent with, but at the low end of, the range identified in the Savills report provided at Deadline 3 (referenced above), which advised:

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<sup>1</sup> Document 14.1, appendix 2 (REP4-004)

<sup>2</sup> Submitted as Annex 1 to document 11.1, appendix 4 Response to WR on behalf of Inglewood (REP3-007)

<sup>3</sup> Document 10.1, appendix 9: scale of the development proposed, paragraph 6.3 (REP2-011)

*“1.2.2. An overall profit of in the order of at least 20% on cost would be required, albeit for this nature of project the market would look at an Internal Rate of Return (IRR) basis and would be seeking 15-20% as an IRR.”*

- 3.9** The IRR is the appropriate primary metric due to the length of time over which costs are incurred and revenue is generated, especially in light of the significant weighting of infrastructure costs in the initial phases of development.
- 3.10** The dashboard confirms the Applicant’s position that the development is viable but also demonstrates that the development is not in a position to suffer any significant increase in cost or loss in value. There are important consequences of this including:
- a) accelerating further the time at which infrastructure costs are incurred would damage the appraisal (because an internal rate of return model is particularly vulnerable to early costs or deferred value); and
  - b) viability would also be damaged by the loss of development value such as would arise, for instance, if the Inglewood land was excluded from the development.
- 3.11** Excluding Inglewood would remove c.111,020 sqm of net lettable floorspace (15.28% of the proposed scheme total) from the scheme. The primary infrastructure costs, however, would not vary. As the Applicant has explained, the Inglewood land could potentially be brought forward in the early phases of development because (at least in part) it is not dependent upon the construction of the link road. Losing that opportunity would significantly affect the viability of the project.
- 3.12** It was suggested by other parties at the hearings that the original WMI scheme was significantly smaller and did not extend south of Vicarage Road. The Applicant has explained its position in its Post Hearing Submissions at paragraph 7.2 of Appendix 3 (REP4-004). The consequence of detailed design development, coupled with the recognised need to provide a full-scale rail freight interchange to meet occupier and policy requirements caused the infrastructure costs to increase substantially, which required a larger scale of development to maintain viability whilst also providing maximum benefit from the infrastructure.

## **4 Conclusions**

- 4.1** Against this background, the Applicant’s position in relation to the matters raised in the Action List is as follows:
- a) the Applicant has chosen to submit viability evidence to the examination both in response to representations received and in support of its case;
  - b) the viability evidence demonstrates that the full scale of development proposed is necessary to deliver the WMI development and the benefits which are necessary to show both a compelling need for the development and very special circumstances;
  - c) a smaller scheme would require similar infrastructure costs and would not be viable; and
  - d) the Applicant is not seeking to acquire more land than is necessary to achieve the benefits of the development proposed.
- 4.2** One important issue that arises from the terms of the Action List is contained within the question:

*“Is the applicant seeking to acquire more land than is necessary to achieve the SRFI objectives in accordance with the NPS?”*

- 4.3** As set out above, the Applicant’s position is that a smaller development would not be viable. In any event, however, the NPS does not set a limit on the scale of SRFI development. The reason that it seeks a network of SRFI across the country is because SRFIs achieve a number of important benefits including:
- playing an important role in a low carbon economy and helping to address climate change (para 2.53);
  - providing considerable benefits for the local economy (paragraph 2.52);
  - responding to the changing needs of the logistics sector (paragraph 2.47); and
  - becoming an important driver of economic growth (paragraph 2.42).
- 4.4** It would be entirely inconsistent with the objectives of the NPS to seek to limit these benefits or to suggest that the policy requirement would be satisfied by “ticking the box” by providing a smaller scale development which qualifies as an SRFI. The NPS is clear that SRFI capacity needs to match the demands of the market (NPS paragraph 2.58) and substantial evidence has been submitted in this case to demonstrate the long standing identification of the scale required, the growing need for SRFI in this location in response to market trends, the strength of market demand and the complete absence of alternative locations on which the policy requirements and benefits can be secured. It is a very important part of the Applicants case, therefore, not only that WMI is an SRFI but also that it is of a scale which responds to the identified need and, as a result, generates substantial benefits.

## Annex 1 – WMI Dashboard

### West Midlands Interchange

#### Summary and Results

Appraisal Summary		Comments
<b>Value</b>	<b>Total (£)</b>	
Serviced Land	253,432,920	Gross value of fully serviced and developable land
Rail Terminal	23,672,882	Capital value of completed rail terminal
Seller's Costs	-4,156,587	
<b>Net Receipts</b>	<b>272,949,215</b>	
<b>Costs</b>	<b>Total (£)</b>	
Acquisition Costs	43,587,617	Gross site assembly costs including stamp duty
Planning Costs	15,026,304	Total project planning costs (pre and post DCO)
Site-wide Costs	137,927,190	Cost of abnormalities and infrastructure, rail infrastructure, and statutory contributions
<b>Total Costs (before finance / profit)</b>	<b>196,541,110</b>	
Financing Costs	10,257,898	
<b>Profit</b>	<b>66,150,207</b>	
Profit on Development Value	23.9%	
Leveraged IRR	14.7%	
<b>Inputs</b>		
Inflation Indexation	2.25%	
Serviced Land Value (£ per acre)	525,000	
Take Up Rate (sq. ft per annum)	515,990	
Take Up Rate (acres per annum)	25.6	
Total Net Developable Acres	390.16	
Interest Rate (per annum)	5.50%	
<b>Project Programme</b>	<b>Quarter</b>	
Today's Date	0	
Grant of DCO	3	
DCO Implementation	7	
Infrastructure Construction Start	7	
Rail Terminal Completion	24	
Project End	70	

## Appendix 2 - The Applicant's letter to Mr & Mrs Wilkes (24 July 2019)

The West Midlands Rail Freight Interchange Order 201X

Four Ashes Limited



Bury House,  
1-3 Bury Street,  
Guildford,  
Surry,  
GU2 4AW

01483 569263



Mr and Mrs J Wilkes  
Straight Mile Farm

24th July 2019

Dear Mr and Mrs Wilkes

**WEST MIDLANDS INTERCHANGE  
STRAIGHT MILE FARM**

The purpose of writing to you today is not put pressure on either of you to reach agreement with us, but rather to make sure that we understand your position correctly and to offer you a last opportunity to take advantage of the terms we are offering in case there has been any misunderstanding. It is, however, entirely a matter for you to decide which course of action you wish to take.

I have received no reply to my letter of 14<sup>th</sup> May 2019 and since then the Examining Authority has received the attached representation from your son stating that you do not wish go ahead with an agreement with us, although terms had been agreed. We have no way of knowing if this is your wish expressed in the representation as we have not heard from you, but could you confirm if that is your position? This has been complicated by the fact that although we have paid for you to have independent advice from both Bruton Knowles and Mills and Reeve, neither of those organisations have returned our calls or messages to say what your position is either, so we can only assume they are in the dark, as well.

The Compulsory acquisition process requires us to demonstrate we have tried to reach agreement with landowners, but if agreement cannot be reached the compulsory acquisition process will need to be followed in order to ensure we can demonstrate deliverability of the WMI scheme.

If we receive no reply, the compulsory acquisition process will need to continue in which case this would mean that bespoke terms to reflect your circumstances, which we had agreed with you, would no longer apply as we do not have any response from you on this matter.

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Registered address: Registered address: Four Ashes Limited, 4<sup>th</sup> Floor, 7-10 Chandos Street, London, W1G 9DQ

Registered Number: 09747871

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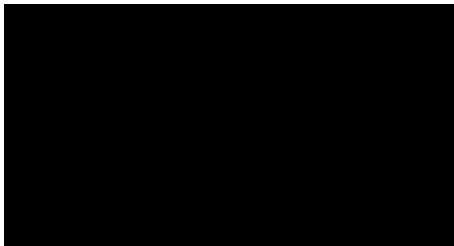
01483 569263



In addition to this there is one more formal opportunity to update the Examining Authority on the position before the Examination period comes to an end, and this is why we are double checking with you.

If you would like to discuss the matter further I am always available, but it would help us and the Examination process to understand if the representation made by your son is the accurate position today.

Yours sincerely,

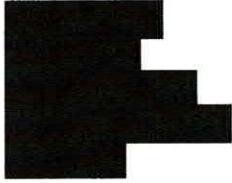


**Peter Frost**  
**Director**  
**Four Ashes Limited**

(Contact telephone number 01483 569263)

Enc.

Mr Jamie Wilkes  
C/o Straight Mile Farm,



11<sup>th</sup> June 2019

Dear Mr Singleton,

I am writing to you with the full consent of my parents Mr & Mrs J Wilkes who are resident at the above address.

They have lived at Straight Mile Farm since 1957 and besides myself have a daughter who is still a permanent resident and has been since her birth in 1962.

My parents land at the moment is being used as grazing land for cattle and also for horses. The income from this supplements their pensions. This income would be lost if their home was to be fragmented by the WMI.

This 10 acres of land has always had livestock on it and provides a valuable space which would otherwise be lost as part of the greenbelt.

Mr & Mrs Wilkes feel that they have had pressure placed upon them to accept an offer of cash for their property, being pestered by telephone and letter. They are both in their 80's and are not very mobile, my mother also [REDACTED], they also are [REDACTED] so were unable to attend the meetings to raise their objections. This has resulted in them being confused and feeling that they have no choice but to accept WMI offer when they do not wish to relocate at this late change in their life. This is definitely affecting their health with sleepless nights and confusion.

Four Ashes Ltd have said they will pay agricultural price for the land but then it will not be used for agricultural purposes only for industrial use. In the meeting of 05/06/19 the sum of £24,000 per hectare was mentioned whereas industrial land is priced at £600,000 per hectare.

FAL have put forward an offer to purchase Straight Mile Farm at 110% of market value with agreed option terms provided at the time were that while the surrounding land could be acquired at any time after the WMI commenced, Straight Mile Farm could not be acquired during my parents lifetimes. In return for accepting this offer a payment of £15,000 would be paid as an option fee. My parents have not accepted this offer as their land would be lost and a bunding placed within eye view of the main rear windows of the house effectively stopping any income from grazing.

There are also vast quantities of sand and gravel which has not been quarried beneath the 10 acres of their land, the value of this would be substantial. The sand and gravel all around my parents land (side, front & rear) has already been removed

The barns surrounding the house also have planning permission on them for development and this also has not been taken into consideration.

Mr & Mrs Wilkes [REDACTED] and we as a family feel that the stress of this possible development is definitely making things a lot worse.  
I hope that you take the time to give their plight careful consideration as they do not wish to move from their family home of 62 years.

Kind regards,

Jamie Wilkes (Mr)



# Response on CA Issues

The West Midlands Rail Freight Interchange Order 201X

Four Ashes Limited

APPENDIX 1

RESPONSE ON CA ISSUES

D4 Individual Responses to CA		APPLICANT RESPONSE	
<b>1. Jamie Wilkes (11 June 2019)</b>			
1.1	<p><b><i>I am writing to you with the full consent of my parents Mr &amp; Mrs J Wilkes who are resident at the above address. They have lived at Straight Mile Farm since 1957 and besides myself have a daughter who is still a permanent resident and has been since her birth in 1962.</i></b></p> <p><b><i>My parents land at the moment is being used as grazing land for cattle and also for horses. The income from this supplements their pensions. This income would be lost if their home was to be fragmented by the WMI.</i></b></p> <p><b><i>This 10 acres of land has always had livestock on it and provides a valuable space which would otherwise be lost as part of the greenbelt.</i></b></p> <p><b><i>Mr &amp; Mrs Wilkes feel that they have had pressure placed upon them to accept an offer of cash for their property, being pestered by telephone and letter. They are both in their 80's and are not very mobile, my mother also [redacted], they also are [redacted] so were unable to attend the meetings to raise their objections. This has resulted in them being confused and feeling that they have no choice but to accept WMI offer when they do not wish to</i></b></p>	1.1	<p>The Applicant has not been advised by Mr &amp; Mrs Wilkes, or their advisors, that their son now represents them. The Applicant has no reason to doubt that is the case, but the Applicant's contact has been almost exclusively through Mr and Mrs Wilkes' surveyor and their solicitor to date. These advisers were appointed in late 2017, at the Applicant's expense, following the Applicant's initial contact with Mr and Mrs Wilkes in June 2016 (by letter) and then in March to September 2017 in several meetings.</p> <p>Through discussions with the surveyor (from Bruton Knowles) and the solicitors (from Mills and Reeve), an arrangement was structured to reflect the circumstances of Mr and Mrs Wilkes. The arrangement was split into two principal parts:</p> <ol style="list-style-type: none"> <li>a. Mr and Mrs Wilkes could require the Applicant to purchase either or both their home and the grazing land; and</li> <li>b. The Applicant would have an option to purchase the grazing land (which is required relatively early in the scheme phasing to implement the undergrounding of the pylons) and the house Straight Mile Farm; but</li> </ol>



D4 Individual Responses to CA	APPLICANT RESPONSE
<p><b><i>relocate at this late change in their life. This is definitely affecting their health with sleepless nights and confusion.</i></b></p> <p><b><i>Four Ashes Ltd have said they will pay agricultural price for the land but then it will not be used for agricultural purposes only for industrial use. In the meeting of 05/06/19 the sum of £24,000 per hectare was mentioned whereas industrial land is prices at £600,000 per hectare.</i></b></p> <p><b><i>FAL have put forward an offer to purchase Straight Mile Farm at 110% of market value with agreed option terms provided at the time were that while the surrounding land could be acquired at any time after the WMI commenced, Straight Mile Farm could not be acquired during my parents lifetimes. In return for accepting this offer a payment of £15,000 would be paid as an option fee. My parents have not accepted this offer as their land would be lost and a bunding placed within eye view of the main rear windows of the house effectively stopping any income from grazing.</i></b></p> <p><b><i>There are also vast quantities of sand and gravel which has not been quarried beneath the 10 acres of their land, the value of this would be substantial. The sand and gravel all around my parents land (side, front &amp; rear) has already been removed The barns surrounding the house also have planning permission on them for development and this also has not been taken into consideration.</i></b></p>	<p>c. The option for Straight Mile Farm could not be implemented until the later of 15 years after the DCO is implemented or the death of Mr or Mrs Wilkes, whoever is the second to die.</p> <p>It is not proposed to demolish the house, even in the long term.</p> <p>The Applicant understood the arrangements and price to be accepted by Mr and Mrs Wilkes and on 12 February 2019 Bruton Knowles emailed the Applicant's agent and asked that the Heads of terms which had been negotiated should now be finalised.</p> <p>The arrangement which was understood to be agreed involved an option fee and a price mechanism for the grazing land which would replace the lost income.</p> <p>The Applicant needs the rights to carry out the infrastructure works on the Wilkes land and the proposal made to purchase the entire interest was seen as the best way to protect the interests of the owners, as discussed with the Wilkes at the outset.</p> <p>Negotiations with the Wilkes, although ongoing since June 2016, have been, almost entirely, conducted through their appointed surveyor, whose fees the applicant have paid. The applicant strongly refutes any suggestion that it has 'pestered' the Wilkes. The Applicant, however, is under an obligation to make all reasonable attempts to purchase land by agreement and it only wrote to Mr and Mrs Wilkes directly when progress with documenting the in principle agreement the Wilkes had ceased and</p>

D4 Individual Responses to CA	APPLICANT RESPONSE
<p><b><i>Mr &amp; Mrs Wilkes [redacted] and we as a family feel that the stress of this possible development is definitely making things a lot worse.</i></b></p> <p><b><i>I hope that you take the time to give their plight careful consideration as they do not wish to move from their family home of 62 years.</i></b></p>	<p>the Applicant was unable to obtain an explanation for this either from their solicitor or their surveyor (who had by that point moved firms).</p> <p>One of the reasons the applicant is paying the Wilkes' surveyors and legal fees is so that they can obtain independent advice they can trust. The applicant understood that the advice the Wilkes has received was to accept The Applicant's offer and this is why Heads of Terms for an in principle agreement were also understood to be agreed. The Heads of Terms respond directly to the wishes of Mr and Mrs Wilkes to ensure that they do not have to relocate. The applicant understands the Wilkes position and has always sought to ensure that they can continue to live in Straight Mile Farm for the rest of their lives, whilst the pylon is undergrounded and a country park is provided around their home.</p> <p>The heads of terms which were understood to be agreed) do not specify a price (except for the option fee). Rather, they confirm that the price to be paid would be based on an uplift from market value, ignoring the impact of the scheme.</p> <p>The land proposed to be purchased is not proposed for industrial development but for the undergrounding of a pylon and for landscaping with community access.</p> <p>The landscaped bund is proposed as part of a wider scheme of green infrastructure to help screen the noise, light and visual effect of the WMI development.</p>



D4 Individual Responses to CA		APPLICANT RESPONSE	
			<p>The land is not allocated or safeguarded for minerals extraction but any value in this respect would be included in the settlement of 'market value' under the terms of the (draft) agreement.</p> <p>The in principle agreement reached with the Wilkes provides for a payment to be made equivalent to 110% of market value. If buildings on the land have planning permission which adds to market value, this will be taken account of in the assessment of the payment to be made.</p> <p>The Applicant has no wish to cause any distress – which is why negotiations were conducted from an early stage through funded agents – and why the Heads of Terms are structured to protect the family home and to respond to what was understood to be the instructions of Mr and Mrs Wilkes.</p>
<b>2. Donna Gilmartin</b>			
2.1	<p><b><i>We have been having meetings with the applicant for 2 years now without any significant progress until you published the agenda for the CA hearing with our names as interested parties to attend the hearing. Amazingly the very next day an offer was put forward, as you stated there is nothing like a deadline to focus the mind. Perhaps I am very cynical in thinking they only jumped because you had focused on our situation.</i></b></p> <p><b><i>We do not have any paperwork yet for an agreement, I appreciate my father is out of the country [redacted] but the applicant appears to delay at every opportunity. Also, the</i></b></p>	2.1	<p>The Applicant has actively engaged with the Powell family, including Donna Gilmartin, over the last 3 years (since May 2016) in an effort to secure agreement in relation to the property interests in which they have an interest. A draft agreement was provided to Mr Powell in December 2017 and again in January 2018. Agents Knight Frank have been instructed by the land owners since November 2017, funded by the applicant. Various terms have been offered for the property interests since early 2018, including at the end of February 2019. An offer in relation to Croft House was accepted, in principle, in April 2019. In</p>

D4 Individual Responses to CA	APPLICANT RESPONSE
<p><b><i>applicant is not taking the opportunity to use any of the sites found by my brother, instead they want to find their own which may not be in such a suitable position. There are limited places available locally and these could be taken up by other businesses. It is important for the gas business to remain as close as possible to where it is currently situated to retain the customer base and employees.</i></b></p> <p><b><i>During meetings with the applicant they gave assurances to find another site for the gas business but kept saying no alternative site could be found, yet when my brother decided to look he found 3 alternative sites within 2 miles of the existing site. Also the applicant indicated several times that an alternative site would be easier to find if and when the DCO had been granted. This is a worry to me as the applicant is thinking that once this area is developed then further development or 'infill' will be easier. Our small villages will be wiped out and all become one industrialised area.</i></b></p> <p><b><i>At the CA hearing another family came to speak to me, they were too worried to speak out at the hearing. They are elderly and feeling completely helpless and upset at the thought of losing their home. I care greatly for my community, I personally know a lot of residents as I have lived here all my life and I find it so very upsetting for people to feel bullied and coerced and made to feel they have no choice but to comply as they are lead to believe this development will go ahead. They are unable to sleep worrying about what will happen. I have advised them to write in to you for deadline 4.</i></b></p>	<p>relation to the other property interests, following ongoing discussions with their surveyor, an amended offer was made on 31 May 2019.</p> <p>Detailed Heads of Terms for an agreement have been the subject of negotiations between surveyors since the end of February 2019. However, discussions over the principles of an acquisition and relocation have been ongoing since 2017. The Applicant's interest is in concluding an agreement. There is no benefit to it in delay. The Applicant's 'contact log' records 72 entries (meetings, emails, letters, calls with the landowners and/or their advisers).</p> <p>The proposal put to MMS Gas (which is the business to which the respondent refers) sets out a detailed approach to the identification of a relocation site close to its existing customer base. The search area and the property specification reflect that which has been requested by the landowners.</p> <p>The Applicant has no interest in declining relocation sites and the Heads of Terms make clear that the applicant would be obliged to purchase a relocation site if it meets the specified terms and is agreed by the landowner.</p> <p>As was confirmed at the CP Hearing on 5 June 2019, negotiations with MMS Gas are at an advanced stage and a further meeting was held with the business on 19 June 2019. As a result of this meeting revised Heads of Terms were issued that the Applicant understand deals with all</p>



D4 Individual Responses to CA	APPLICANT RESPONSE
	<p>remaining concerns of the Powell family. The Applicant is awaiting formal confirmation that terms are now agreed.</p> <p>The Applicant does not know to whom the comment concerning another family refers but it may be the Wilkes. Wherever practical, the Applicant has followed first contact with an offer that the landowner should appoint advisers at the Applicant's expense.</p> <p>The Applicant has made a detailed reply in this document regarding the Wilkes property and strongly refutes the use of the words "bullied and coerced". The approach taken by the Applicant in the negotiation on that property has proceeded as for that with the Powell family and their property interests, with careful consideration given to requests made by the parties in order to reach an agreement should the project proceed. Agreement has been reached with Donna Gilmartin regarding on her own property interests and the Applicant has tried to offer the same protection to the Wilkes.</p> <p>The Applicant appreciates the WMI project may not be welcomed by all residents, but it has throughout all negotiations tried to be sensitive to each resident's particular circumstances and requests.</p>