

## DCO Changes Tracker

The West Midlands Rail Freight Interchange Order 201X

Regulation 5 (2) (q)

Eversheds Sutherland - 21 August 2019



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

**Schedule of changes made to the draft Development Consent Order submitted by the Applicant**

This schedule explains changes made to the previous draft Development Consent Order (dDCO) (Doc 3.1D (REP6—004 (tracked) and REP6-003 (clean)) in the dDCO submitted for Deadline 8 on 21 August 2019 (Document 3.1E).

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

DCO Provision	Change	Reason
<b>Article 2. Interpretation</b>	Definition of “ <i>the undertaker</i> ” – new wording added	As per the Applicant’s response to ExQ3.1.3 (page 14) (Document 17.2, REP7-004).
<b>Articles 11, 13, 17, 21 and 22</b>	Alternative to deemed consent provisions in relation to Highways England	<p>Highways England (HE) has objected to the application of a deemed consent provision. The Applicant believes there is no reason why HE should not be subject to the same provisions for deemed consent as other parties, for the reasons set out in Appendix 3 of the Applicant’s Responses to Other Parties Deadline 2 Submissions (Document 11.1, REP3-007). However, in the event that the Secretary of State disagrees with the Applicant’s position, alternative wording has been added in <i>italics</i>. The effect of this wording is to disapply the deemed consent to Highways England and instead require that consent not be unreasonably withheld or delayed.</p> <p>In the event that the Secretary of State agrees with the Applicant then the words in <i>italics</i> should be deleted.</p>

DCO Provision	Change	Reason
<b>Article 12. Public rights of way – creation and stopping up</b>	Amendment to article 12(3)	To replace the remaining rogue reference to “byway open to all traffic” with “public right of way” as per SCC’s Deadline 7 covering letter (REP7-033) and the Applicant’s Responses to Other Parties’ Deadline 7 Submissions (Document 18.1).
<b>Schedule 1 Authorised Development</b>	Works No 6 (u) and Works No 7(r) have been amended to add reference to a culvert adjacent to Zone A2	Works Nos 6(u) and 7(r) include words in italics which allow for construction of a culvert adjacent to Zone A2. For the reasons set out in Appendix 1 of the Applicant’s Post Hearing Submissions (ISH6) (Document 16.3 REP6-013) the Applicant is clear that there is no need to construct an additional culvert adjacent to Zone A2 since it is entitled, as a matter of law, to use the existing shared culvert in that location. However Highways England have objected to the continued use of that culvert, albeit without dealing with the legal arguments contained in Appendix 1 referred to above. Therefore, in the event that the Examining Authority is persuaded by Highways England that this might provide a barrier to delivery, notwithstanding the lack of evidence, then the italicised words could be added to provide for the construction of a new culvert.
	Works No. (7) – removal of (l) – laybys on the A449	As per the Applicant’s Response to ExQ3.1.3 (page 15) (Document 17.2, REP7-004).

DCO Provision	Change	Reason
	Removal of Works No. 11 (Straight Mile Farm) and re-numbering of Works No. 12 (Avenue Cottage Access)	<p>As explained in the Applicant's Responses to Other Parties' Deadline 7 Submissions (Document 18.1), following receipt of confirmation from Mr &amp; Mrs Wilkes that they no longer wish to proceed with the voluntary agreement on the terms agreed, the Applicant has removed Works No. 11 from the authorised development (and from the proposed compulsory acquisition – see updated Land Plans (Document 2.1D), Statement of Reasons (Document 4.1C) and Book of Reference (Document 4.3B) submitted at Deadline 8).</p> <p>Works No. 12 have therefore become Works No. 11 and the appropriate amendments made throughout the dDCO and to the Works Plans (Document series 2.2).</p>
<b>Schedule 2 (Part 2 – Rail Requirements)</b>	Amendment to Rail Requirement 4	<p>As per the Applicant's Response to ExQ3.1.1 and ExQ3.1.2 (Document 17.2, REP7-004), the Applicant has amended the requirement so that the tailpiece in 4(1) and sub-paragraphs (2) – (6) are removed.</p> <p>However, in the event that the ExA were minded to suggest and/or the Secretary of State were minded to determine that the tailpiece wording is appropriate, the Applicant has included in <i>italics</i> proposed suitable drafting as amended pursuant to its response to ExQ3.1.2. This also applies to the italicised wording in paragraph 11 of Part 2.</p>

DCO Provision	Change	Reason
	Amendment to Rail Requirement 6 to refer to Secretary of State rather than the local planning authority.	As per the Applicant's Response to ExQ3.1.1 (Document 17.2, REP7-004).
<b>Schedule 2 (Part 3 – Procedure for Approvals etc. under requirements</b>	Amendment to paragraph 3(14)	Following the changes to Part 2 so that approvals are to be sought from the Secretary of State rather than the local planning authority, to ensure that Part 3 applies only to Part 1 of Schedule 2.
<b>Schedule 9 (Part 1 – Amendments to Existing Orders)</b>	Amendments to plan numbers for the cross reference to the updated plans on which the TROs have been further amended.	To refer to the updated TRO Plans, as per the Applicant's response to HE's Deadline 6 and 7 Submissions (see response to 17.1.002 on page 4 of the Applicant's Responses to Other Parties' Deadline 6 Submissions (Document 17.1, REP7-003) and page 15 of the Applicant's Response to Other Parties' Deadline 7 Submissions (Document 18.1)).
<b>Schedule 13 (Protective Provisions) Part 2 Highways England</b>	Amendments to definition of "Bond Sum" and "Cash Surety"	As per the Applicant's Response to HE's Deadline 7 Submission (see Document 18.1).
	Additional wording at paragraph 3(5)	To add cross reference to the ability to agree matters under article 20 if necessary.

<b>DCO Provision</b>	<b>Change</b>	<b>Reason</b>
<b>Schedule 13 (Protective Provisions) Part 10 (Water and Sewerage Undertakers)</b>	Various amended provisions	To reflect discussions with South Staffordshire Water, being the appropriate authority. These provisions are agreed with South Staffordshire Water and the Applicant understands that the provisions address all items raised in the South Staffordshire Water representation (REP4-030).
<b>Schedule 15 (Certification Documents)</b>	Updates to documentation and plan references	To ensure the most up to date versions of the documentation and plans submitted are referred to in the certification schedule.