



National Infrastructure Planning
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2 The Square
Bristol, BS1 6PN

Customer Services: 0303 444 5000
e-mail: NorthamptonGateway@pins.gsi.gov.uk

Your Ref:

Our Ref: TR050006

Date: 10 September 2018

Dear Sir/Madam

**Planning Act 2008 (as amended) – Section 88 and the Infrastructure
Planning (Examination Procedure) Rules 2010 (as amended) – Rule 6**

**Application by Roxhill (Junction 15) Limited for an Order Granting
Development Consent for the Northampton Gateway Rail Freight Interchange**

Appointment of the Examining Authority

I write to you following my appointment by the Secretary of State as the lead member of a Panel who will be the Examining Authority (ExA) to carry out an examination of the above application by Roxhill (Junction 15) Limited ('the Applicant'). The other member of the panel is David Brock. A copy of the appointment letter can be viewed at:

<https://infrastructure.planninginspectorate.gov.uk/document/TR050006-000656>

Invitation to the Preliminary Meeting

This letter is an invitation to the Preliminary Meeting to discuss the examination procedure and contains a number of supporting annexes.

Date of meeting: Tuesday 9 October 2018

Seating available from: 9.00am

Meeting begins: 9.30am

Venue: Hilton Northampton
100 Watering Lane
Northampton
NN4 0XW

Access and parking: The Hilton Northampton is just off the M1 Junction 15, 4.1 miles from Northampton Train Station. Parking is free.

Given the volume and frequency of letters the Planning Inspectorate needs to send to Interested Parties during an examination, the Planning Inspectorate aims to communicate with people by email wherever possible, as electronic communication is more environmentally friendly and cost effective for the Planning Inspectorate as a Government agency. If you are able to receive communications by email, please confirm this with us.

We would like to thank those of you who submitted Relevant Representations. These representations have assisted us when preparing our proposals regarding how to examine this application.

Purpose of the Preliminary Meeting

The purpose of the Preliminary Meeting is to enable views to be put to us about the way in which the application is to be examined. At this stage, the ExA is looking at the procedure, and not the merits of the application. The merits of the application will only be considered once the Examination starts, which is after the Preliminary Meeting has closed.

We wish to run a fair, efficient and effective meeting so that all relevant views can be heard. As such, we strongly encourage groups of individuals who have similar views on the procedure to choose one representative to speak for the group.

The agenda for the meeting is in **Annex A**. This has been set following our initial assessment of the Principal Issues arising on the application. That assessment is set out in **Annex B**. As a result of this assessment we wish to hear at the meeting from the Applicant, Interested Parties, Statutory Parties and Local Authorities where they consider changes may be needed to the draft timetable set out in **Annex C**.

Up-to-date information about the project and the Examination can be obtained from:

<https://infrastructure.planninginspectorate.gov.uk/projects/east-midlands/northampton-gateway-rail-freight-interchange/?ipcsection=overview>

This is the project website address from which we will make copies of all future communications and Examination documents available to the public. You can use this page to track progress of the Examination and access all relevant documents and correspondence from the links it contains. As the examination process makes substantial use of electronic documents, it will be useful to become familiar with this resource.

If you wish to receive an email notification when relevant documents and correspondence are published you can register on the project website to do so. Further information on the examination process is given in Advice Note 8.4 which is available on the Planning Inspectorate's website:

<https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/2013/04/Advice-note-8-4v3.pdf>

Attendance at the Preliminary Meeting

If you wish to attend the Preliminary Meeting please contact Kate Mignano, the Case Manager using the details set out at the top of this letter. Please confirm this by **midday (12 noon), Tuesday 2 October 2018**.

It will help the management of the meeting and benefit everyone if you also:



- Tell us whether you wish to speak at the meeting, and on which agenda items (**Annex A**), listing points you wish to make; and
- Notify us of any special requirements you may have (eg disabled access, hearing loop etc).

The Preliminary Meeting provides a useful introduction to the examination process. We will use it to make procedural decisions that will affect everyone participating in the Examination. The meeting provides you with an opportunity to have your say about procedural issues before these decisions are finalised. If you intend to play an active part in the Examination or you have questions about procedure it is useful to attend the meeting. However, please note that you are not required to attend the Preliminary Meeting in order to participate in the Examination.

If you are an Interested Party and do not wish to attend the Preliminary Meeting, you will still be able to make written representations and participate in any hearings that are arranged. Should you no longer wish to be an Interested Party and do not wish to be involved in the examination process, you can notify the Case Manager of this in writing.

After the Preliminary Meeting

After the Preliminary Meeting you will be sent a letter setting out the timetable for the Examination. An audio recording and a note of the meeting will also be published on the project page of the Planning Inspectorate website.

Interested Parties have the right to request an Open Floor Hearing and those persons affected by any request for compulsory acquisition or temporary possession of their land or rights may request a Compulsory Acquisition Hearing. Any other Issue Specific Hearings are at the discretion of the ExA and will be arranged if we feel that consideration of oral representations would ensure an issue is adequately considered.

Our initial suggestions for Issue Specific Hearings are set out in the draft timetable at **Annex C** with the particular topic indicated, although you will see further below that we have made a procedural decision to proceed with our first ISH (ISH1) into the draft Development Consent Order (dDCO) at 1.15pm on **Tuesday 9 October 2018**, shortly after the close of the Preliminary Meeting. The notification, agenda and table containing the 'Schedule of the ExA's Issues and Questions relating to the DCO' for this Hearing are set out at **Annex F, G and Table 1**, respectively.

We have also made a procedural decision to hold an Open Floor Hearing on **Wednesday 10 October 2018 at 6.30pm**. The notification and agenda for this Hearing are set out at **Annex F and H**, respectively. There is a provisional date within the draft timetable at **Annex C**, for a subsequent Open Floor Hearing, if required.

Our Examination will comprise consideration of written submissions about the proposal and any oral representations made at the hearings, in addition to consideration of the application documents, policy and legal positions, site inspections and any other matters we consider to be relevant and important.

All relevant and important matters will be taken into account when we make a recommendation to the Secretary of State for Transport, who will take the final decision in this case.

Procedural decisions made by the ExA under ss89(3), 91(1) and 93(1) of the Planning Act 2008

We have made some preliminary procedural decisions under s89(3) of the Planning Act 2008 (PA2008) as follows.

These include:

- to hold an Issue Specific Hearing into the draft Development Consent Order
- to hold an Open Floor Hearing
- the setting of deadlines for the submission of;
 - submission of Local Impact Reports (LIR)
 - comments on Relevant Representations (RRs);
 - submission of Written Representations (WRs);
 - summaries of any representations exceeding 1500 words;
 - submissions of Statements of Common Ground (SoCG);
 - comments on updated application documents and other documents submitted by the Applicant; and
- the notification by Statutory Parties, or certain Local Authorities of their wish to be considered as an Interested Party
- the notification by Interested Parties of their wish to attend an Accompanied Site Inspection (ASI) and their nomination of locations including justifications for the consideration of the ExA for their nominations.

These procedural decisions are all set out in full at **Annex E**.

Your status in the Examination

This letter has been sent to you because you (or the body you represent) fall within one of the categories in s88(3) of the Planning Act 2008 (PA2008).

If you have made a Relevant Representation, have a legal interest in the land affected by the application, or are a relevant Local Authority where the development is proposed within your boundary (reference numbers beginning with 'NGR-000', 'NGR-S57' or '2001'), you have a formal status as an Interested Party in the Examination.

Interested Parties will receive notifications from the Planning Inspectorate about the Examination throughout the process and may make written and oral submissions regarding the application.

If you are a statutory party (ie body specified in the relevant regulations supporting the PA2008) or a Local Authority bordering the Local Authorities in which the development is proposed; but have not made a Relevant Representation (reference number beginning with 'NGR-SP') you will not automatically be an Interested Party. However, following the Preliminary Meeting, you will have a further opportunity to notify the ExA that you wish to be treated as an Interested Party.

If you are not an Interested Party or a statutory party (ie body specified in the relevant regulations supporting the PA2008), you have received this letter because we wish to invite you to the Preliminary Meeting as an 'Other person' because it appeared to us that the Examination could be informed by your participation. 'Other persons' have a reference number beginning with 'NGR-OP'.

If you are not sure whether you are an Interested Party, please contact the Case Manager using the details at the top of this letter. Information regarding the formal status of Interested Parties and how you can get involved in the process is set out in the Planning Inspectorate Advice Note 8 Series on the National Infrastructure Planning website: <https://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/advice-notes/>

Award of Costs

We also draw your attention to the possibility of the Award of Costs against Interested Parties who behave unreasonably. You should be aware of the relevant cost guidance "Awards of costs; examinations of applications for development consent orders" which applies to National Infrastructure projects. This guidance is available at:

<https://www.gov.uk/government/publications/awards-of-costs-examinations-of-applications-for-development-consent-orders>

Management of Information

The Planning Inspectorate has a commitment to transparency. Therefore, all information submitted for this project (if accepted by the ExA) and any record of advice which has been provided, is published at:

<https://infrastructure.planninginspectorate.gov.uk/projects/east-midlands/northampton-gateway-rail-freight-interchange/>

All Examination documents can also be viewed electronically at the locations listed in **Annex D**.

Please note that in the interest of facilitating an effective and fair examination, we consider it necessary to publish some personal information. To find out how we handle your personal information, please view our Privacy Notice.

We look forward to working with all parties in the examination of this application.

Yours faithfully

Philip Asquith

Lead Member of the Examining Authority

Annexes

- A** Agenda for the Preliminary Meeting
- B** Initial Assessment of Principal Issues
- C** Draft timetable for examination of the application
- D** Availability of Examination documents
- E** Procedural decisions made by the Examining Authority
- F** Notification of Issue Specific Hearing into the draft Development Consent Order and notification of an Open Floor Hearing
- G** Agenda for Issue Specific Hearing into the draft Development Consent Order
- H** Agenda for Open Floor Hearing

Table 1

Schedule of Examining Authority Issues and Questions relating to the draft Development Consent Order

This communication does not constitute legal advice.

Please view our [Privacy Notice](#) before sending information to the Planning Inspectorate.

Agenda for the Preliminary Meeting

Date: Tuesday 9 October 2018

Seating available from: 09.00am

Meeting Start Time: 09.30am

Venue: Hilton Northampton
100 Watering Lane
Northampton
NN4 0XW

09.00am	Doors opens
Item 1 (09.30am)	Welcome and introductions
Item 2	The Examining Authority's (ExA's) remarks about the examination process
Item 3	Initial Assessment of Principal Issues – see Annex B
Item 4	Draft Timetable for the Examination – See Annex C
Item 5	<p>Deadlines for submission of:</p> <ul style="list-style-type: none"> • Comments on Relevant Representations • Written Representations • Local Impact Reports • Responses to the ExA's Written Questions • Statements of Common Ground • Notifications relating to any Hearings • Nominations of suggested locations with justifications for site inspections • Procedural requests relating to these items that have been submitted to the Planning Inspectorate in advance of the Preliminary Meeting
Item 6	<p>Hearings and Accompanied Site Inspection (ASI):</p> <ul style="list-style-type: none"> • Procedure, matters and issues for an Issue Specific Hearing (ISH) into the draft Development Consent Order on 9 October 2018, see Annexes F, G and Table 1 • Procedure and matters for an Open Floor Hearing (OFH) on 10 October 2018, see Annexes F and H • Dates reserved for other ISHs • Dates reserved for Compulsory Acquisition Hearings (CAH) • Date reserved for a subsequent Open Floor Hearing • Date reserved for an ASI to the application site and surrounding area

	<ul style="list-style-type: none"> • Procedural requests relating to these items that have been submitted to the Planning Inspectorate in advance of the Preliminary Meeting
Item 7	Any remaining procedural questions or submissions not set out in the agenda that have been submitted to the Planning Inspectorate in advance of the Preliminary Meeting
Item 8	Any other matters
	Close of the Preliminary Meeting

Please note: Please be available from the start and throughout the meeting. The agenda is subject to change at the discretion of the ExA. The ExA will conclude the meeting as soon as all relevant contributions have been made. If there are any additional matters to be dealt with, or submissions take a considerable amount of time, the ExA may change the order of the agenda items and may introduce breaks in the proceedings.

Initial Assessment of Principal Issues

This is the early assessment of the Principal Issues arising from an initial consideration by the Examining Authority (ExA) of the application documents and relevant representations received. It is not a comprehensive or exclusive list of all relevant matters; regard will be had to all important and relevant matters in reaching a recommendation after the Examination is concluded. The identified Principal Issues are listed in alphabetical order and should not be taken to imply an order of importance.

The policy and consenting requirements and documentation associated with the Planning Act 2008 (PA2008) are an integral part of the Examination and are therefore not set out as separate Principal Issues. In addition, it should be noted that a number of these Principal Issues set out below have an interrelationship and overlap and these will be reflected in the Examination.

Compulsory Acquisition, including issues related to:

- Nature, extent and scope of land
- Rights and powers sought by Compulsory Acquisition
- Temporary possession powers
- Project funding and guarantees for compensation
- Human rights
- Consideration of alternatives

Development Consent Order, including issues related to:

- Relevant definitions
- Application and modification of legislative provisions
- Nature of requirements
- Discharging of requirements
- Protective Provisions
- Section 106 Agreements

Economic and Social Impacts, including issues related to:

- Market area served by the proposed Strategic Rail Freight Interchange (SRFI)
- The scale of potential employment growth from the development of the proposed SRFI
- Consequences for labour supply
- Consequences for housing needs
- Consequences of the proposed development for land use, including the loss of agricultural land
- Consequences for local businesses and residents

- The impact of the proposed development on the Public Rights of Way system in the locality

Environmental Impact including issues related to:

- Construction and operational noise
- Air quality
- Lighting impacts
- Wildlife and habitats

Historic Environment, including issues related to:

- Impact of the proposed development on the setting of heritage assets

Landscape and Visual Impact including issues related to:

- Design of the proposed development
- The appearance and character of the locality

Other Strategic Projects and Proposals

- The relationship to other known major nearby projects including the proposed Rail Central SRFI on adjacent land
- Cumulative and in-combination effects with other major projects

Traffic and Transport including issues related to:

- Justification for the transport proposals to meet the traffic generation that is forecast by development of the SRFI
- The capacity of the rail system to serve the SRFI
- Construction and operational effects on road and rail transport systems

Draft timetable for examination of the application

The Examining Authority (ExA) is under a duty to complete the examination of the application by the end of the period of six months beginning with the day after the close of the Preliminary Meeting.

The ExA's examination of the application primarily takes the form of the consideration of written submissions. The ExA will also consider any oral representations made at Hearings.

Item	Matters	Due Dates
1	Preliminary Meeting (PM)	Tuesday 9 October 2018 (9.30am)
2	Issue Specific Hearing 1 (ISH1) ISH1 on the draft Development Consent Order (dDCO)	Tuesday 9 October 2018 (1.15pm)
3	Open Floor Hearing	Wednesday 10 October 2018 (6.30pm)
4	Issue by the ExA of: <ul style="list-style-type: none"> • Examination Timetable • The ExA's Written Questions 	As soon as practicable following the PM
5	Deadline 1 Deadline for receipt of: <ul style="list-style-type: none"> • Local Impact Reports from any local authorities • Statements of Common Ground (SoCG) requested by the ExA – see Annex E • Draft s.106 Agreements and any similar Agreements and allied documents • Responses to the ExA's Written Questions • Written Representations (WRs) • Summaries of all WRs exceeding 1500 words • Comments on Relevant Representations (RRs) 	Tuesday 6 November 2018 (12 noon)

	<ul style="list-style-type: none"> • Summaries of all RRs exceeding 1500 words • Comments on updated application documents submitted by the Applicant before the PM – See Annex E • Post-hearing submissions including written submissions of oral cases • Responses to any further information requested by the ExA for this deadline • Nominations of suggested locations and justifications for site inspections for consideration by the ExA • Notification of wish to attend an Accompanied Site Inspection (ASI) • Notification of wish to speak at a Compulsory Acquisition Hearing • Notification of wish to speak at any subsequent Issue Specific Hearings (ISH) • Notification of wish to speak at a subsequent Open Floor Hearing (OFH) • Notification by Statutory Parties of their wish to be considered as an Interested Party (IP) by the ExA • Notification of wish to have future correspondence received electronically 	
6	<p>Deadline 2</p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> • Revised dDCO from Applicant • Comments on Local Impact Reports • Comments on any SoCG • Comments on WRs • Responses to comments on RRs • Comments on responses to the ExA's Written Questions 	<p>Tuesday 20 November 2018</p> <p>(12 noon)</p>

	<ul style="list-style-type: none"> • Comments on any additional information/submissions received by Deadline 1 • Responses to any further information requested by the ExA for this deadline 	
7	<p>Deadline 3</p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> • Comments on Applicant's revised dDCO • Comments on any additional information/submissions received by Deadline 2 • Responses to any further information requested by the ExA for this deadline 	<p>Friday 30 November 2018</p> <p>(12 noon)</p>
8	<p>Accompanied Site Inspection (ASI)</p> <p>Date reserved to hold an ASI (if required)</p>	<p>Tuesday 18 December 2018</p>
9	<p>Issue Specific Hearing (ISH2)</p> <p>ISH2 on Environmental matters, Landscape & Visual, Ecology, Air Quality and Other matters</p>	<p>Wednesday 19 December 2018</p>
10	<p>Issue Specific Hearing (ISH3)</p> <p>ISH3 on the dDCO</p>	<p>Thursday 20 December 2018</p> <p>(morning)</p>
11	<p>Compulsory Acquisition Hearing (CAH)</p> <p>Date reserved to hold a CAH (if required)</p>	<p>Thursday 20 December 2018</p> <p>(afternoon)</p>
12	<p>Deadline 4</p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> • Any revised dDCO from the Applicant • Post-hearing submissions including written submissions of oral cases • Comments on any additional information/ 	<p>Tuesday 8 January 2019</p> <p>(12 noon)</p>

	<p>submissions received by Deadline 3</p> <ul style="list-style-type: none"> • Responses to any further information requested by the ExA for this deadline 	
13	<p>Publication by ExA of:</p> <ul style="list-style-type: none"> • The ExA's Further Written Questions (if required) • The ExA's preferred dDCO or dDCO commentary (if required) • Report on the Implications for European Sites (RIES) (if required) 	<p>Tuesday 5 February 2019</p>
14	<p>Deadline 5</p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> • Responses to Further Written Questions (if issued) • Comments on the ExA's preferred dDCO or dDCO commentary (if issued) • Comments on the RIES (if issued) • Comments on any additional information/submissions received by Deadline 4 • Responses to any further information requested by the ExA for this deadline 	<p>Tuesday 26 February 2019</p> <p>(12 noon)</p>
15	<p>Issue Specific Hearing (ISH4)</p> <p>Date reserved to hold ISH4 on Cumulative Impact Issues</p>	<p>Tuesday 12 March 2019</p>
16	<p>Issue Specific Hearing (ISH5)</p> <p>Date reserved to hold ISH5 on the dDCO (if required)</p>	<p>Wednesday 13 March 2019</p> <p>(morning)</p>
17	<p>Compulsory Acquisition Hearing 2</p> <p>Date reserved to hold CAH2 (if required)</p>	<p>Wednesday 13 March 2019</p> <p>(afternoon)</p>
18	<p>Open floor Hearing 2 (OFH2)</p>	<p>Thursday</p>

	Date reserved to hold OFH2 (if required)	14 March 2019
19	<p>Deadline 6</p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> • Final draft DCO to be submitted by the Applicant in the SI template with the SI template validation report • Final s.106 Agreements and any similar Agreements and allied documents • Final SoCG • Post-hearing submissions including written submissions of oral cases • Comments on responses to the ExA's Further Written Questions (if required) • Comments on any additional information/submissions received by Deadline 5 • Responses to any further information requested by the ExA for this deadline 	<p>Tuesday 19 March 2019</p> <p>(12 noon)</p>
20	<p>Deadline 7</p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> • Comments on the Applicant's final dDCO • Comments on final s.106 Agreements and any similar Agreements and allied documents • Comments on final SoCG • Comments on any additional information/submissions received by Deadline 6 • Responses to any further information requested by the ExA for this deadline 	<p>Tuesday 26 March 2019</p> <p>(12 noon)</p>
21	<p>The ExA is under a duty to complete the examination of the application by the end of the period of six months beginning with the day after the close of the Preliminary Meeting.</p> <p>However, the ExA may close the Examination before the end of the six-month period if it is satisfied that all relevant matters have been addressed and discussed.</p>	<p>Tuesday 9 April 2019</p>

Publication Dates

All information received will be published on the project website as soon as practicable after the deadline for submissions. An Examination Library will be kept up to date throughout the Examination and can be accessed via the project page. Each document will be afforded a unique reference. These references will be used by the ExA during the Examination and can be obtained from:

<http://infrastructure.planninginspectorate.gov.uk/document/TR050006-000653>

Hearing Agendas

Please note that we will aim to publish a detailed draft agenda for each Hearing on the project website at least five working days in advance of the Hearing date; but the actual agenda on the day of each Hearing may be subject to change at the discretion of the ExA.

Report on the Implications for European Sites (RIES)

Where the Applicant has provided a No Significant Effects Report or a Habitats Regulations Assessment (HRA) Report with the DCO application, the ExA may decide to issue a RIES during the Examination. The RIES is a factual account of the information and evidence provided to the ExA on HRA matters during the Examination up to the date of the publication of the RIES, for the purposes of enabling the Secretary of State, as competent authority, to undertake its HRA. It is not the ExA's opinion on HRA matters. Comments on the RIES will be invited by the ExA and any received will be taken into account as part of the ExA's Recommendation to the relevant Secretary of State.

The Secretary of State may rely on the consultation on the RIES to meet its obligations under Regulation 63(3) of the Habitats Regulations and/ or Regulation 28 of the Offshore Marine Regulations.

Availability of Examination documents

All application documents including Relevant Representations and application documents are available on the National Infrastructure Planning website:

<https://infrastructure.planninginspectorate.gov.uk/projects/east-midlands/northampton-gateway-rail-freight-interchange/?ipcsection=docs>

Documents can be viewed electronically at the following locations. Please note that you may need to bring a form of ID to use the computer at these locations.

Electronic Deposit Locations:

Local Authority/ Library	Address	Opening Hours
Northampton Borough Council	St Giles' Square Northampton NN1 1DE	Monday – Friday: 09:00 – 17:00
Free computer terminal available for members of the public. Printing by request		
Northamptonshire County Council	One Angel Square Angel Street Northampton NN1 1ED Telephone: 0300 330 700 Email: via Council's online form	Monday – Friday: 09:00 – 17:00
Northamptonshire Central Library	The Librarian Abington Street Northampton NN1 2BA Telephone: 0300 126 1000 Email: centlib@firstforwellbeing.co.uk	Monday – Friday: 09:00 – 18:00 Saturday: 09:00 – 17:00 Sunday - Closed
Printing Costs	Black and White	Colour
A4	20p per sheet	50p per sheet
A3	30p per sheet	£1 per sheet
Computer use is free on Fridays, but charged at £1 for 20 minutes Saturday-Thursday. Wi-Fi use with own device is free.		
Towcester Library	Moat Lane Towcester NN12 6AD Telephone: 0300 126 1000 Email: towlib@firstforwellbeing.co.uk	Monday – Friday: 09:00 – 18:00 Saturday: 09:00 – 17:00 Sunday – Closed
Printing Costs	Black and White	Colour
A4	20p per sheet	50p per sheet
A3	30p per sheet	£1 per sheet
Computer use is free on Fridays but charged at £1 for 20 minutes Saturday-Thursday. Wi-Fi use with own device is free.		
Roade Parish Council		

You can also view the Planning Inspectorate's information poster for this project, with a QR code to our website in the 'Latest Tweets' section of the Parish Council's website at:

<https://www.roadeparishcouncil.gov.uk/news/2018/08/northampton-gateway-access-to-planning-documents>. The poster will also be displayed in the community noticeboard at Roade Post Office.

Procedural decisions made by the Examining Authority (ExA)

The ExA has made the following procedural decisions under Section 89(3) of the PA2008:

1. Issue Specific Hearing into the draft Development Consent Order

We have made a Procedural Decision to commence oral examination of the draft Development Consent Order (dDCO) by holding the first Issue Specific Hearing (ISH1) shortly after the close of the Preliminary Meeting (PM) on 9 October 2018. **Annex F** provides notice of this decision.

For the purposes of Rule 13(1) and (6) of the Infrastructure Planning (Examination Procedure) Rules 2010 (as amended), a period of not less than 21 days must be provided for notice of a hearing and for the Applicant to publicly notify and advertise the hearing arrangements. This date is no later than Tuesday 18 September 2018. This is a date before the start of the Examination, but it ensures that the required statutory 21 days' notice period has been provided for this hearing.

In light of this ISH commencing shortly after the PM, we have also decided that any person intending to participate in this ISH must notify the Case Manager of their intention to attend by midday (12 noon), Tuesday 2 October 2018, as advised in **Annex F**.

2. Open Floor Hearing

We have made a Procedural Decision to hold an Open Floor Hearing (OFH) on Wednesday 10 October 2018 at 6.30pm. **Annex F** provides notice of this decision.

For the purposes of Rule 13(1) and (6) of the EPR, a period of not less than 21 days must be provided for notice of a hearing and for the Applicant to publicly notify and advertise the hearing arrangements. This date is no later than Wednesday 19 September 2018. This is a date before the start of the Examination, but it ensures that the required statutory 21 days' notice period has been provided for this hearing.

In light of this ISH commencing shortly after the PM, we have also decided that any person intending to participate in this ISH must notify the Case Manager of their intention to attend by midday (12 noon), Tuesday 2 October 2018, as advised in **Annex F**.

3. Deadline for comments on Relevant Representations

We have made a Procedural Decision to seek comments on Relevant Representations (RR) by Tuesday 6 November 2018, being Deadline 1.

The RRs were published by Monday 13 August 2018 and so there is sufficient time for them to have been read and responded to by the deadline we propose to set.

4. Deadline for submission of Written Representations

We have made a Procedural Decision to seek Written Representations (WRs) by Tuesday 6 November, being Deadline 1. WRs provide Interested Parties (IP) with the opportunity to amplify and provide evidence for the matters set out in their RRs.

For the purposes of Rule 10(2) of the EPR, we are required to provide 21 days' notice of the deadline for receipt of WRs. We are therefore providing formal written notice in this letter of the deadline for submission of WRs by Tuesday 6 November 2018, being Deadline 1. As the deadline for submission of WRs set for Tuesday 6 November 2018 is more than the statutory requirement of 21 days' notice, we are satisfied that IPs have been permitted sufficient and reasonable time in which to draft and submit WRs.

5. Deadline for submission of Local Impact Reports (LIRs)

We have made a Procedural Decision to seek Local Impact Reports (LIRs) by Tuesday 6 November, being Deadline 1. LIRs give relevant local authorities the opportunity to provide details of the likely impact of the proposed development on the authority's area.

We are therefore providing formal written notice in this letter of the deadline for submission of LIRs by Tuesday 6 November 2018, being Deadline 1. We are satisfied that the relevant local authorities have been permitted sufficient and reasonable time in which to draft and submit LIRs.

6. Deadline for summaries of Representations

Our Procedural Decisions (3) and (4) above also seek the submission of summaries pertaining to RRs and WRs exceeding 1500 words. It is normal for ExAs to request that summaries are provided of RRs, comments to RRs and WRs, where these original representations exceed 1500 words in length. We have therefore also made a Procedural Decision to request the submission of summaries by Tuesday 6 November, being Deadline 1.

7. Notification by Statutory Parties, or certain Local Authorities¹ of their wish to be considered as an Interested Party

We have made a procedural decision that, in order to facilitate a timely start to the Examination, Statutory Parties and certain Local Authorities must have decided whether they wish to be considered as an IP and notify the Planning Inspectorate of their decision by Tuesday 6 November, being Deadline 1.

Note:

¹ a Local Authority without direct responsibility in the proposed development area.

If persons attending the Preliminary Meeting (PM) seek additional time to be provided for in any of our procedural decisions made above (3 to 5) for good reasons, we will consider the reasons for any such requests.

8. Accompanied Site Inspection – Nominations, Requests and intent to attend

The Applicant, IPs and other persons will be provided with an opportunity to provide comments to us on the approach that we should take to site inspections at the PM. Subject to this discussion, they are invited to nominate sites that we should inspect, the features that we should observe there and whether the inspection should be on an accompanied or an unaccompanied basis by Tuesday 6 November, being Deadline 1.

Site inspections can be carried out on an accompanied or an unaccompanied basis. In principle, inspections need to be carried out on an accompanied basis in the following circumstances:

- where the land is private and consent is required for the ExA to enter it;
- where there are health and safety or other regulatory considerations that require any visitor to a location to be accompanied; and / or
- where there are particular features that an IP wishes to ensure are pointed out to the ExA.

Where these considerations do not apply, it will normally be appropriate for a site inspection to be carried out by the ExA on an unaccompanied basis.

Before agreeing to hold site inspections at particular locations, we will consider the degree to which it is necessary to visit a site that has been nominated for an inspection to inform us about the application. We may decide not to visit nominated locations where we may have already visited the location or we consider that it is not necessary to see the features to be observed there. We may decide not to hold an Accompanied Site Inspection (ASI) if all relevant features can be observed and understood from locations in the public domain on an Unaccompanied Site Inspection.

Provisional arrangements for an ASI are included in the Examination Timetable, but this will only proceed should it appear that such an inspection is necessary.

9. Statements of Common Ground (SoCG)

In relation to some of the Principal Issues identified in **Annex B**, the ExA would be assisted by the preparation of SoCG between the Applicant and certain Interested Parties. The draft timetable for the Examination therefore provides a deadline for submission of SoCG, being Tuesday 6 November 2018 (Deadline 1), with any final updated SoCG to be submitted Tuesday 19 March 2019 (Deadline 6).

The aim of a SoCG is to agree factual information and to inform the ExA and all other parties by identifying where there is agreement and where

the differences lie at an early stage in the examination process. It should provide a focus and save time by identifying matters which are not in dispute or need not be the subject of further evidence. It can also usefully state where and why there may be disagreement about the interpretation and relevance of the information. The reasons for the differences and interpretation of the implications of a difference can then be expanded in the evidence. Unless otherwise stated or agreed, the SoCG should be agreed between the Applicant and the other relevant Interested Party or parties, and submitted by the Applicant.

The SoCG are requested to be prepared by the Applicant and:

A. **Northamptonshire County Council** to include:

- Highways
- Drainage and Water Framework Directive

B. **Network Rail** to include:

- Rail

C. **Warwickshire County Council** to include:

- Rail

D. **Relevant local authorities** to include:

- Archaeology, heritage and built environment
- Landscape and visual impact
- Ecology
- Air quality
- Noise
- Employment

E. **Anglian Water** to include:

- Drainage and Water Framework Directive

F. **Ashfield Land and Gazeley GLP** to include:

- Relationship with Rail Central

G. **Environment Agency** to include:

- Air quality
- Drainage and Water Framework Directive
- Noise

H. **Highways England** to include:

- Highways

I. **Historic England** to include:

- Archaeology, heritage and built environment
- Landscape and visual impact

J. **Local Enterprise Partnership** to include:

- Employment

K. **Natural England** to include:

- Ecology

L. **A joint SoCG between the Applicant and the following parties** in relation to Geology, soils and groundwater:

- Environment Agency
- South Northamptonshire District Council
- Northamptonshire County Council
- Natural England

M. **Cadent Gas** to include:

- Position on Protective Provisions

N. **relevant Electricity Undertakers** to include:

- Position on Protective Provisions

O. **relevant Electronic Communications Code Network Undertakers** to include:

- Position on Protective Provisions

The SoCG should cover the following topics where relevant:

- Methodology for Environmental Impact Assessment including assessment of cumulative effects
- Data collection methods
- Baseline data
- Data/ statistical analysis, approach to modelling and presentation of results (including forecast methodologies)
- Full expression of expert judgements and assumptions
- Identification and sensitivity of relevant features and quantification of potential impact
- Likely effects (direct and indirect) on special interest features of sites designated or notified for any nature conservation purpose
- Feasible and deliverable mitigation and method for securing such mitigation within the Development Consent Order

The ExA would like the Applicant to provide with the submitted SoCG a statement which shows the commonality on specific points between SoCG. The ExA would like this statement to be updated during the Examination to reflect additional agreement achieved.

10. Post-submission documents

Following the acceptance of the application, the Applicant submitted correspondence on 13 August 2018 [\[AS-017\]](#) to the Planning Inspectorate in response to s51 advice [\[PD-003\]](#) issued on 15 June 2018.

The letter provided by the Applicant outlines the revised documents submitted in response to the matters raised in advice issued by the Planning Inspectorate. We made a Procedural Decision on 28 August 2018 to accept this documentation and an additional submission from Historic England, which have now been published to the project page of the

Planning Inspectorate website. The list of documents and Examination Library reference can be found in the table below:

AS-003	Historic England – Additional Submission
AS-004	Doc 2.12 Location Plan
AS-005	Doc 3.1A Draft Development Consent Order (DCO) (Clean)
AS-006	Doc 7.5 Highways Statement of Common Ground with Northamptonshire County Council
AS-007	Doc 1.4B Document List
AS-008	Doc 2.1 Land Plans Key Plan
AS-009	Doc 2.1F Land Plans Sheet 6
AS-010	ES Figure 2.1 Parameters Plan
AS-011	ES Figure 10.1 Heritage Receptors
AS-012	Doc 6.3A Report on European Sites
AS-013	ES Figure 2.3 Main Site Phasing Plan
AS-014	Doc 1.4B Document List
AS-015	Doc 2.3C Access and Rights of Way Plans Sheet 3
AS-016	Doc 7.4 Water Statement of Common Ground with Anglian Water
AS-017	Letter to the Planning Inspectorate in response to s51 advice
AS-018	Doc 2.1B Land Plans Sheet 2
AS-019	Doc 2.1D Land Plans Sheet 4
AS-020	Doc 3.4 Development Consent Order (DCO) Tracker
AS-021	Doc 3.1A Draft Development Consent Order (DCO) (Tracked)
AS-022	Doc 1.4A Document List
AS-023	Applicant Response to s55 checklist - minor errors and omissions
AS-024	ES Figure 2.2 Phasing Plan

Notification of Hearings under Section 91 of the Planning Act 2008

The first Issue Specific Hearing (ISH1) will be held as follows:

Date	Hearing	Starting Time	Venue	Access and Parking
Tuesday 9 October 2018	Issue Specific Hearing on the draft Development Consent Order (dDCO) (ISH1)	1.15pm	Hilton Northampton 100 Watering Lane Northampton NN4 0XW	Free parking available at venue

The agenda for this Issue Specific Hearing is included at **Annex G**

Every effort will be made to ensure that the items in the agenda at **Annex G** and the issues in the 'Schedule of the ExA's Issues and Questions relating to the dDCO' at **Table 1** will be discussed on the day.

Notification of Hearings under Section 93 of the Planning Act 2008

The first Open Floor Hearing will be held as follows:

Date	Hearing	Starting Time	Venue	Access and Parking
Wednesday 10 October 2018	Open Floor Hearing	6.30pm	Hilton Northampton 100 Watering Lane Northampton NN4 0XW	Free parking available at venue

The agenda for this Open Floor Hearing is included at **Annex H**

Those Interested Parties (IPs) who wish to speak at the hearings listed above should notify the Case Manager (Kate Mignano) at the postal or email address in the covering letter by **midday (12 noon), Tuesday 2 October 2018**.

It would help with the management of the hearings if by the same date you can let the Case Manager know:

- whether you wish to speak at the hearings and on which agenda items, listing points you wish to make; and
- of any special needs you may have (e.g. disabled access, hearing loop).

Please ensure that you include your IP reference number in your correspondence.

The hearing venue will be open 30 minutes prior to the start of the hearings to enable a prompt start. Hearings will finish as soon as the

Examining Authority (ExA) deems that all those present have had their say and all necessary issues have been covered.

Depending on the number of parties wishing to speak, it may be necessary to limit the time allocated to each speaker.

The ExA reserves the right to rearrange the agenda for these hearings on the day. If discussion of an issue takes longer than anticipated, it may have to be completed at a later date or responded to by the relevant deadline date within the Examination Timetable.

Agenda for the Issue Specific Hearing on the draft Development Consent Order (DCO)

This document sets out the agenda for the initial Issue Specific Hearing (ISH1) into the draft Development Consent Order (dDCO) that was notified by the Examining Authority (ExA) in **Annex F**.

Date: Tuesday 9 October 2018
Time: 1.15pm
Venue: Hilton Northampton, Watering Lane,
Northampton, NN4 0XW

Access and Parking: Free parking available at venue

List of requested attendees:

- Roxhill (Junction 15) Limited (the applicant)
- Highways England
- Network Rail
- Ashfield Land and Gazeley GLP Northampton (Rail Central)
- South Northamptonshire District and Northampton Borough Councils
- Northamptonshire County Council
- Any other interested parties with an interest in the drafting of the DCO, seeking protective provisions or any related side agreements

Agenda

1. Introductions

2. Purpose of the hearing

An early hearing on the draft DCO is being held to address matters, issues and questions identified by the Examining Authority (ExA) during its initial assessment of preliminary issues, before its consideration of written representations. The ExA considers that it is necessary to examine these matters, issues and questions orally at the outset of the Examination, providing the maximum time for interested parties to respond to them in their own subsequent written representations and for the applicant, where necessary, to programme actions to address issues raised.

The ExA will examine the draft DCO within the framework of the matters set out below to consider:

- how the draft responds to the project definition;
- the applicant's response to guidance in PINS' Advice Notes, particularly AN13 and AN15;
- whether the draft secures delivery of the proposed project within the parameters assessed for environmental impact assessment (EIA), habitat regulations assessment (HRA) and other purposes – the 'Rochdale envelope';

- the need for changes to other legislative provisions, ensuring that these are clear and are not unduly reductive of other persons' rights;
- whether the policy tests for planning conditions set out at paragraph 55 of the National Planning Policy Framework (NPPF) and which are relevant to requirements are met;
- the need for protective provisions and the scope for changes to the current draft to respond to negotiations in progress;
- the need for any commercial agreements or planning obligations and progress towards these; and
- the need for statutory undertaker and any other consents.

In addition to the matters identified in this agenda, the ExA will review detailed issues and questions about individual DCO provisions that it has identified in the attached schedule. Additional issues and questions arising from interested parties that have not been identified in the schedule will not be discussed at this time. These should be set out in written representations and will be considered as the Examination progresses, in writing or orally as required.

This hearing will not examine the detailed content of provisions relating to the compulsory acquisition of land or rights, or temporary possession of land, although the attached schedule does contain a number of comments and questions on these issues. Responses to these should also be set out in written representations. The draft Examination Timetable proposes that separate compulsory acquisition hearing(s) will be held.

3. The function and structure of the draft DCO

The ExA will ask the applicant about:

- the proposed articles;
- the proposed project description (Sch 1 Parts 1 and 2);
- the proposed requirements (Sch 2);
- the need for and progress on protective provisions (Sch 13);
- the need for and progress on any planning obligations;
- the need for and progress on any related consents; and
- ongoing negotiations and statements of common ground.

4. Specific issues and questions bearing on the DCO, raised by the Examining authority

A schedule of issues and questions is attached to this agenda. Questions will be put to the applicant and views will be sought from interested parties present. Where they are relevant to the discussions under matter 3 above, the questions may be drawn out within those matters.

5. Discharge of requirements and conditions, appeals and disputes

The ExA will ask the bodies and local authorities whether they have any significant concerns in principle with the proposed approaches taken to the discharge of requirements, or for managing appeals or disputes arising from these.

6. Review of issues and actions arising

7. Next steps

8. Closure of the hearing

Agenda for the Open Floor Hearing

This document sets out the agenda for the Open Floor Hearing that was notified by the Examining Authority (ExA) in **Annex F**.

Date: Wednesday 10 October 2018
Time: 6.30pm
Venue: Hilton Northampton, Watering Lane,
Northampton, NN4 0XW

Access and Parking: Free parking available at venue

List of requested attendees:

- Interested Parties who wish to participate or observe

Agenda

- 1. Welcome, introductions and arrangements for the Open Floor Hearing**
- 2. Representations by Interested Parties**

Each Interested Party (IP) in attendance and wishing to speak will be invited to put oral submissions to the Examining Authority (ExA). A time guide of a maximum of five minutes per IP will be applied to these submissions. IPs who may have matters they wish to raise in common with others may wish to nominate a spokesperson to present them.

The ExA may ask questions of IPs about matters arising from written and oral submissions.

- 3. Closure of the hearing**

Participation, conduct and management of the hearing

Each interested party is entitled to make oral representations at the hearing subject to the Examining authority's power to control the hearing.

Individuals who have not registered in advance may participate at the discretion of the ExA.

You are advised not to repeat in your oral evidence material that has already been included in your Relevant Representation. This has been read by the ExA.

You are also advised to submit in your Post-hearing submissions including written submissions of oral cases, at Deadline 1, being Tuesday 6 November 2018, any new evidence that you present in your oral submission. That way you can be sure it has been recorded accurately.



The Planning Inspectorate

Application by Roxhill (Junction 15) Limited for a Strategic Rail Freight Interchange, NI reference TR050006, known as Northampton Gateway Rail Freight Interchange

Schedule of Examining Authority issues and questions relating to the draft Development Consent Order

The issues and questions set out below are based on the Applicant's draft Development Consent Order (dDCO) as submitted [[APP-070](#)]² as a matter for examination. In drawing up these questions, observations and comments, the ExA has also had regard to the revised dDCO [AS-005] submitted by the Applicant in response to the s.51 advice given to the Applicant at acceptance. The questions relate to the revised text. They will be referred to in the first issue-specific hearing (ISH1) into the dDCO on **Tuesday 9th October 2018**. They are principally addressed to the Applicant, but responses and observations from the relevant planning authorities, who have a leading role enforcing the DCO, if made, are invited. Other Interested Parties attending the hearing may also wish to respond. Questions may be expanded in the Examining Authority's (ExA's) First Written Questions.

The ExA particularly wish to address the following at ISH1 (the DCO ISH):

- 1 Things which are stated to be 'Temporary' - eg question 19
- 2 Article 38 – see question 36
- 3 Article 46 and especially Art 46(10) – see questions 41 - 44
- 4 Article 49 – see question 45
- 5 Requirement 3 and the meaning of "component" – see questions 51 and 64
- 6 Requirement 6(2) – see question 54
- 7 Soil movement and other exceptions – see eg Requirements 10 and 13 (questions 58, 60 and 63)
- 8 The relationship between the DCO and EIA – see questions 107A, 107B and 107C
- 9 Section 106 and similar agreements – see questions 108 to 110

² <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR050006/TR050006-000254-Doc%203.1%20-%20Draft%20Development%20Consent%20Order.pdf>

Abbreviations Used

Art	<i>Article</i>
dDCO	<i>Draft DCO</i>
East Midlands	<i>East Midlands Gateway Strategic Rail Freight Interchange</i>
ES	<i>Environmental Statement</i>
ExA	<i>Examining authority</i>
R	<i>Requirement</i>
Sch	<i>Schedule</i>
SoCG	<i>Statement of Common Ground</i>

The Examination Library

References above eg [APP-070) are to documents catalogued in the Examination Library. The Examination Library can be obtained from the following link: <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR050006/TR050006-000653-NGRFI%20Examination%20Library.pdf>

It will be updated as the Examination progresses.

Citation of Questions

Questions in this table should be cited as follows: Hearing reference: question number, eg **ISH1:1** – refers to question 1 in this table.

Q. No	Part of DCO	Drafting example (where relevant)	Question
1.	General: Order, format and tracking of changes		<p>General drafting considerations</p> <p>The Applicant is asked to confirm that subsequent versions of the dDCO submitted after the latest application version (Doc 3.1A) will be:</p> <ul style="list-style-type: none"> • supplied in both .pdf and Word formats and in two versions, the first forming the latest consolidated draft and the second showing changes from the previous version in tracked changes, with comments outlining the reason for the change; and • the consolidated draft version in Word is to be supported by a report validating that version of the dDCO as being in the SI template, obtained from the publishing section of the legislation.gov.uk website; and • endorsed with updated revision numbers consecutively from the application version.
2.	General: List of Plans or Documents to be Certified		<p>The Applicant is asked to confirm that Schedule 15 (Certification of Plans and Documents) will be updated in each subsequent version of the dDCO provided during the Examination. This should accompany a table recording the latest version of each plan and documents required to support the Examination and the dDCO (the 'plan of plans').</p>
3.	General: Plan or Document Changes and		<p>The Applicant is asked to ensure that all application or subsequent plans and documents referred to in the dDCO in whatever provision are identified by Drawing</p>

Agenda for ISH1: Table 1 to Annex G

	Revision Numbers		<p>or Document and Revision Numbers in subsequent versions of the dDCO. Where revisions are prepared to plans and documents, these should be reflected in the latest version of the dDCO. The Applicant should undertake a final audit of plans and documents referred to in the dDCO prior to submitting its final preferred dDCO to the Examination. It should ensure that the results of this audit are reflected in all references, in Schedule 15 and in the final 'plan of plans' (see Q2). It should take all reasonable steps thereafter to ensure that changes to plans and documents are not required.</p>
4.	General: drafting usage		<p>The Applicant is requested to review the dDCO to ensure that common terms are drafted consistently throughout and that current drafting conventions are observed. Examples of such issues are provided below (although this is not exhaustive):</p> <ul style="list-style-type: none"> • The term 'sub-paragraph' is used with both a hyphen connecting the words and in an unhyphenated form, as two separate words. • In appropriate context, the use of 'must' rather than 'will' or 'shall'. • All references should be gender-neutral, as in references to "engineer" in Part 1 of Schedule 13.
5.	Interpretation. Art 2 revised dDCO [AS-005]	<i>Definition of "commence" and "commencement"</i>	<p>Whilst this is commendably simple and straightforward, is it appropriate throughout the DCO? For example, in Requirement 7 there is a reference to "commencement" of the Smart Motorway Project. As</p>

Agenda for ISH1: Table 1 to Annex G

			<p>“commencement” is defined to refer to the authorised development, this does not work. Please will the Applicant and the district planning authorities review the DCO carefully for this? It may be that the phrase “save where the context indicates otherwise” would assist, but the ExA’s current preference is for the individual instances to be checked and rectified.</p>
6.	Art 2	<i>Definition of “maintain”</i>	<p>This includes “reconstruct, decommission, demolish, replace or improve”. That would allow the SRFI or any part to be rebuilt at some stage in the future, which would normally require a new consent/permission. It also raises the issue of compliance at that stage with the law on environmental impact assessment. The inter-relationship of the DCO and EIA is an issue raised separately in questions 108A -108C below. But, for the purposes of this question, the ExA would like the Applicant to address whether such a wide definition of “maintain” is intended and, if so, how it is justified.</p>
7.	Art 2	<i>Definition of “maintain”</i>	<p>The ExA notes that “maintain” includes “decommission”. However, the Waste chapter of the ES specifically excludes consideration of waste arising from decommissioning on the ground that it would require a separate consent (para 14.2.24). See also the ExA’s questions on this aspect of the Waste chapter (not yet published but, in brief, the concern is that decommissioning waste is relevant to the ES). Observations from the Applicant are invited.</p>
8.	Art 2	<i>Definition of “relevant planning authority”</i>	<p>Why is the meaning different depending on whether the phrase is used in relation to the requirements? Please will the Applicant give practical examples of the working of the two meanings when answering?</p>

Agenda for ISH1: Table 1 to Annex G

			Observations from the district planning authorities (relevant planning authorities to be) are also invited.
9.	Art 2	<i>Definition of "Relevant traffic authority"</i>	Is this different from the meaning as in ss.121A and 142 of the Road Traffic Regulation Act 1984 (RTRA). Why choose this formulation? What are the disadvantages of the definition in the RTRA? Comments and observations from the highways authority and Applicant are invited.
10.	Art 2	<i>Definition of "trunk road"</i>	Why is it necessary to include "an order granting development consent"? Is it the intention that this should refer to all and any such orders, or is it intended to be a reference just to this one?
11.	Art 2(3), (5) and (6)		How "approximate" are the sizes and distances? Should Art 2(6) also apply to Art 2(3)?
12.	Principal Powers. Art 3(2)		1. What controls will there be on such temporary development? 2. Bearing in mind that a DCO is a permissive document, what restrictions is it thought this exception covers? 3. What is meant by temporary? What would be the maximum time period?
13.	Art 4 – vertical deviation		Please explain the reason and need for vertical deviations by up to 1.5 metres, up or down.
14.	Art 7(1)	<i>"(1) Subject to paragraphs (2), (3) and (4) the undertaker shall have the benefit of the Order"</i>	Given the terms of s156(1) of the Planning Act 2008 why is this necessary? What is the Applicant seeking to achieve by these words?
15.	Art 7(3)(b)	<i>"(3) Roxhill (Junction 15) Limited has the sole benefit of the powers conferred by this Order to carry out the highway works in accordance with the provisions of Parts 2 and 3 of Schedule 13"</i>	Are the highway authority and Highways England content with this provision? The ExA is not encouraging them to ask for more, but wishes to know there is no need for more. Please address this in a statement of common ground (SoCG).

Agenda for ISH1: Table 1 to Annex G

		<p><i>(protective provisions) unless the Secretary of State consents to the transfer of the benefit of those provisions.—</i></p> <p><i>(a) ... ; or</i></p> <p><i>(b) the provisions of paragraph 4(6) of Part 2 or paragraph 4(6) of Part 3 of Schedule 13 apply in which case the relevant highway authority shall have the benefit of the powers to carry out the relevant highway works."</i></p>	
16.	Art 8(1)	<i>" streets subject to street works"</i>	There appears to be some confusion or an error in the drafting. Sch. 3 column 2 is entitled 'Street within the Order limits subject to <i>highway</i> works'. Will the Applicant please clarify and/or redraft?
17.	Art 9(1)		These are broad powers. Is the highway authority content (please submit an SoCG on this point)? Why will the powers in the Town and Country Planning (General Permitted Development)(England) Order 2015 not suffice?
18.	Art 9(2)	<i>"(2) The powers conferred by paragraph (1) must not be exercised without the consent of the local highway authority but such consent must not be unreasonably withheld"</i>	Is it appropriate to constrain the highway authority exercising its statutory powers in this way? Is 28 days a reasonable period? These issues recur in several articles. The Applicant is asked to list them and answer these two questions for each of them.
19.	Art 11	<i>"The undertaker may during and for the purposes of carrying out the authorised development, temporarily stop up, alter or divert any street and may for any</i>	'Temporary' is not defined (the "reasonable" time limit applies to aspects of the temporary stopping up, but that is somewhat open-ended). Please give consideration to some test or limit for both the temporary stopping up and the "reasonable" time.

Agenda for ISH1: Table 1 to Annex G

		<i>reasonable time— ... "</i>	Greater precision is desirable.
20.	Art 11(1)	<i>"any street"</i>	Some territorial limit is necessary; or a list of streets.
21.	Art 12(2) – Replacement Rights of Way	<i>"(2) No public right of way specified in columns (1) and (2) of Part 1 of Schedule 5 may be wholly or partly stopped up under this article unless the permanent substitute public rights of way referred to in column (4) of Part 1 of Schedule 5 or an alternative temporary substitute public right of way agreed by the local highway authority has first been provided by the undertaker, to the reasonable satisfaction of the local highway authority."</i>	While this provides flexibility, is it acceptable for the final alignment to be agreed by the local highway authority, rather than be subject to examination? What restraint is there on a long or indefinite temporary period?
22.	Art 13(3)	<i>"(3) If a highway authority or street authority which has received an application for consent under paragraph (1) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted consent."</i>	This was not in the East Midlands DCO. Why is it needed here? And if it is, is the time period reasonable?
23.	Art 14 – Maintenance of highway works		Please supply a SoCG between the Applicant, the highways authority, and Highways England to confirm that these provisions are agreed. Is it intended that the extended definition of the words "maintain" and "maintained" should apply (taking into account the ExA's comments on the definition of those terms in

Agenda for ISH1: Table 1 to Annex G

			Art 2)? The SoCG should cover that question and if the answer is affirmative explain why that is justified.
24.	Art 16(6) – speed limits	<i>“chief officer of police”</i>	Please define “chief officer of police”.
25.	Art 17 – traffic regulation		Please supply a SoCG confirming that the highways authority and Highways England agree this.
26.	Art 18 – clearways		Please define “traffic officer”.
27.	Art 20 – agreements with highway authorities	<i>“(1) A relevant highway authority and the undertaker may enter into agreements with respect to—...”</i>	Please explain why this power is needed? Are not the existing powers adequate?
28.	Art 21 – Discharge of water		Please supply SoCG with (a) the Environment Agency and the relevant sewerage and drainage authority (who should confirm their status on such matters) to confirm that Art 21(3) is acceptable; (b) with the relevant sewerage and drainage authority (who should likewise confirm their status on such matter) to confirm that Art 21(4) is acceptable; and (c) the Environment Agency with regard to the acceptability of Art 21(5).
29.	Art 21(8) – deemed approval		Some approvals may have to be sought from private individuals (eg, owners of drains). Should the request for approval explain that a deemed approval occurs after (x) days, the derivation of the power (ie the Article), and a recommendation to seek professional legal and engineering advice? Also, 28 days is quite a short time for individuals. Would 42 days be more appropriate?
30.	Art 22(2) – rights to enter to survey and investigate land	<i>“(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14</i>	The notice period of 14 days is short for private individuals – people often go on holiday for a fortnight. Comments and suggestions on this are sought please.

Agenda for ISH1: Table 1 to Annex G

		<i>days' notice has been served on every owner, who is not the undertaker, and occupier of the land."</i>	
31.	Art 22(6)	<i>"(6) If either a highway authority or a street authority which has received an application for consent under paragraph (4) fails to notify the undertaker of its decision within 28 days of receiving the application the authority is deemed to have granted the consent."</i>	Is the time period reasonable?
32.	Art 23(5)	<i>"Nothing in this article requires a guarantee or alternative form of security to be in place for more than 15 years from the date on which the relevant power is exercised".</i>	A similar provision in respect of guarantees in respect of payment of compensation exists in the East Midlands made DCO. However, in that case the guarantee period was a maximum of 20 years. On what basis does the Applicant justify a period of no more than 15 years in the present case?
33.	Art 24(3)(c)		Please amend reference to article 29 to article 30 (time limit for exercise of authority to acquire land and rights compulsorily).
34.	Art 27(3) Private Rights	<i>"Subject to the provisions of this article, all private rights and restrictions over land owned by the undertaker which, being within the limits of land which may be subject to compulsory acquisition powers shown on the land plans, is required for the purposes of this Order are extinguished on the appropriation of the land or right</i>	<ul style="list-style-type: none"> • Is what is intended more succinctly stated as "... all private rights and restrictions over land owned by the undertaker which, being within the Order limits, is required for the purposes of this Order..."? • What is the relevance of the phrase "... is required for the purposes of this Order...". Presumably the purpose of the provision is to clear private rights from the title of land owned by the undertaker, in which case is the phrase

Agenda for ISH1: Table 1 to Annex G

		<i>by the undertaker for any of those purposes”.</i>	somehow confusing?
35.	Art 28(3)	<i>“ Nothing in this article authorises interference with any right of way or right of laying down, erecting, continuing or maintaining apparatus on, under or over land which is a right vested in or belonging to statutory undertakers for the purpose of carrying on their undertaking”</i>	The definition of ‘statutory undertaker’ is taken to mean that for the purposes of s127(8) of Planning Act 2008, which in turn refers to s8 of the Acquisition of Land Act 1981. This does not appear to cover electronic communications code operators. Is the Applicant content that the power to override easements and other rights of such operators is adequately covered by Art 33?
36.	Art 38 – no double recovery	<i>“Compensation is not payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law.”</i>	The principle is understood. However does not the wording go too far? For example, a nuisance claim is turned into money compensation under this Order. But if the nuisance injured a person or, say, caused a birth deformity, actionable in negligence, is it right to deny the injured person compensation? This may simply be a matter of clarification, for example adding at the end: “to the extent it the compensation relates to the same detriment”.
37.	Art 39(2)	<i>(2) Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part 1 (the provision of railway services) of the Railways Act 1993</i>	What is the purpose of this article?
38.	At 43(1) – felling/lopping of trees/hedgerows	<i>“(1) Subject to paragraphs (4), (5) and (6) the undertaker may fell or lop any tree, shrub or hedgerow near any part of the authorised development ...”</i>	How near is near? Please supply more information as to which trees etc, the Applicant anticipates having to fell, lop or cut back.
39.	Art 43(2)	<i>“ (2) In carrying out any activity</i>	What will the quantum of compensation be? The cost

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		<i>authorised by paragraph (1), the undertaker must not cause unnecessary damage to any tree, shrub or hedgerow and must pay compensation to any person who suffers loss for any loss or damage arising from such activity."</i>	of reinstating a tree or hedge will usually greatly exceed the financial loss.
40.	Art 43(6) & (7)		See para 22.2 of Advice Note 15, which states that to support the ExA including this power it should be accompanied by a Schedule and plan specifically identifying the affected trees. Please will the Applicant provide such documents?
41.	Art 46(5)	<i>"(5) The provisions of the Neighbourhood Planning Act 2017 do not apply in so far as they relate to the temporary possession of land under articles 35 and 36 of this Order"</i>	To what provisions of the 2017 Act does this refer? Please explain what is intended and why it is justified.
42.	Art 46(7) – Disapplication of advertisement control to various advertisements at S1 and S2		What is the view of the district planning authority on this? Please supply an SoCG on this.
43.	Art 46(8) – CIL not to apply, whether or not there is a charging schedule in force now		What is the view of the district planning authorities and county planning authority? Please supply an SoCG on this.
44.	Art 46(10) – effect of other		The ExA notes the comment in the Applicant's Explanatory Memorandum. The ExA would like to hear

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	enactments (known and unknown)		submissions on the effect of this on known statutes, for example the Environment Act controls on discharges to the water environment, or the on-site disposal of waste when the development is operational.
45.	Art 49 – Arbitration		The ExA notes the comments in the Explanatory Memorandum. How does this provision work when there are issues over compensation, or enforcement? Or is it thought that these are differences “otherwise provided for”?
46.	Sch 1 Pt 2 – Further Works (1)(g), (2)(m) & (3)(p)		These allow for “such other works as may be necessary or expedient for the purpose of or in connection with the construction of the authorised development”. This seems very wide even if constrained by environmental impact assessment legislation. Please supply a better indication as to the scale and detail of the potential further works. Also (1)(g), 2(m) and (3)(p) are circular – see the definition of “authorised development” in Art 3.
47.	Sch 1 Pt 2 – Further Works (1), (2) & (3)		As to all, please explain why the location, extent and design of the further works cannot be specified at this stage; alternatively supply those details.
48.	Sch 1 Pt 2 Further Works (2) (h) & (i)		Some sort of time limit would seem necessary – temporary can go on for quite a long time. Could the Applicant please suggest the appropriate limit?
49.	Sch 1 Pt 2 Further Works (3) (c)		Please specify a height limit for the fencing.
Requirements (R)			
50.	General		A number of requirements require compliance unless the local planning authority agrees otherwise (eg R9, 13, 15 and 17). Is this necessary and justified?
51.	R3 Components of	<i>“ (3) A rail terminal capable of</i>	How is a “Component” determined?

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	development and phasing	<i>handling at least four goods trains per day must be constructed and available for use prior to ..."</i>	Please specify the length for the trains – this could otherwise be meaningless.
52.	R3(3)		Should not the occupation of the non-rail-served warehousing also be restricted pending completion of the rail terminal?
53.	R6	<i>"The undertaker must use reasonable endeavours to complete the highway works identified in column (1) of the table below by ..."</i>	An obligation to use reasonable endeavours to deliver the highways works seems unlikely to meet the test of precision and enforceability. It is certainly difficult for a planning authority to decide whether or not to commence enforcement proceedings. This condition relates to works to offset highways congestion and prohibits occupation of certain buildings unless the improvement works are completed. An absolute restriction would be normal and prevent the congestion arising from the development concerned from occurring. As it stands this Requirement appears unacceptable. Observations and comments from the district planning authorities, highways authority and Highways England as well as the Applicant would be welcome.
54.	R6(2)	<i>"(2) This requirement is enforceable by the relevant body or bodies identified in column (4) of the table contained in requirement 6(1)."</i>	Why is enforcement not by the district planning authorities? Highways England will not have experience or expertise in planning enforcement and the County planning authority's expertise will lie in minerals and waste planning. In addition, the functions of the County Council are in the course of being re-arranged and redistributed in a local government re-arrangement in Northamptonshire so it would be preferable to allocate enforcement by statutory designation (eg local planning authority, or relevant planning authority) rather than name

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			(Northamptonshire County Council). It is a criminal offence to breach a requirement, which allows for private prosecutions, so to limit the enforcing authority may be inappropriate for that reason also. The ExA invites observations from the district planning authorities, highways authority and Highways England as well as the Applicant.
55.	R7(a) Highway alternatives	<i>"not programmed to be commenced".</i>	This drafting is ambiguous. The difficulty is with the words "not programmed to be commenced". Programmed by whom? Is it the programme which must be in existence within six months of commencement of Works No. 8 or commencement of the Smart Motorway Project (SMP) within 6 months? Is it within six months before or after commencement of Works No 8? Is this to avoid a clash between the construction of Works No 8 and the SMP? Will the Applicant please explain how this works, with a worked example(s), eg at the point of commencement of Works No 8 and at the letting of the contract for Works No 8. The ExA notes what is said in the Explanatory Memorandum.
56.	R7(b)	<i>"(b) the undertaker so elects."</i>	Please consider adding "that having elected, notice of election must be given to Highways England the district planning authorities and the highway authority."
57.	R8(1) –detailed design approval	<i>"The details of each component of the authorised development on the main site referred to in requirement 3 must be in general accordance with the parameters plan and the design and access statement."</i>	Details "must be in general accordance with the parameters plan and design and access statement"; surely they must not exceed the limits in the parameters plan, be in general accordance with the design and access statement and be based on the principles set out in that statement? Comments and observations from the Applicant, the district planning

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58.	R8(2)	<p><i>“(2) No component of the authorised development on the main site (excluding archaeological investigation, soil movement, geotechnical or ground contamination investigation and ecological mitigation works) is to commence until the details of that component have been submitted to and approved in writing by the relevant planning authority. The details of each component must include details of the following where they are located within that component—</i></p> <p><i>(a) ... ;</i></p> <p><i>(b) embankments and bunds;”</i></p>	<p>authorities and the highway authority are invited.</p> <p>“Soil movement” is one of the exceptions to the prohibitions on commencing a component without obtaining detailed approvals for that component. However, the details to be sought include “embankments and bunds”, “site levels”. Those works are obviously soil movements. Other works whose details are sought may also include soil movement, or affect it. Can it be right to allow soil movement therefore while such details are being approved? The Applicant is asked to give consideration to this and to make submissions at the DCO ISH. This exception occurs against several requirements. Will the Applicant please consider and make submissions on them all? Submissions from the district planning authorities and the county council will also be welcome.</p>
59.	R9 – landscaping	<i>Details subject to alteration by agreement</i>	Why “agreement”? The conventional wording is “approval”.
60.	R10	<i>Provision of landscaping</i>	<p>This is another example of a requirement with the “soil movement” exception.</p> <ul style="list-style-type: none"> • Are the other exceptions justified before approval of the written landscaping scheme given that they involve ground disturbance? • Why are large trees alone singled out, and what is the test for a “large tree”? • There is no requirement to ensure the landscaping works are carried out, nor a finish date. Please comment and suggest suitable wording. • The formatting of (c) and (d) appears to be

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			incorrect “Tree Works Recommendations” prior to construction commencing’ should surely follow on at the end of (c) as it is the title of BS 3998?
61.	R12(1)	<i>Construction Environmental Management Plan</i>	The East Midlands made DCO has reference to having regard also to any relevant protective provisions. <ul style="list-style-type: none"> • Please comment on whether that is necessary here?
62.	R12(2)		Should there be an addition – ‘or in the case of highway works to the relevant highway authority’, as in Requirement 11 of the East Midlands made DCO?
63.	R13	<i>Earthworks</i>	This requirement calls for an earthworks strategy and other details relating to soil movement prior to commencement of each component. Yet the following are to be permitted whether or not such earthworks strategy and other details have been submitted: archaeological investigation, soil movement, geotechnical or ground contamination investigation and ecological mitigation works. <ul style="list-style-type: none"> • Given that with the possible exception of some aspects of ecological mitigation these are all earthworks, is this appropriate? • This is another case where the “agreement” of the relevant planning authority can be sought to alterations. Is “agreement” appropriate when “approval” is the norm?
64.	R14(1)	<i>Archaeology – “No component of the authorised development is to commence ...”</i>	Do all the components add up to the entirety of the development authorised by the DCO? This question is applicable to all other prohibitions in commencing “components”. Please will the Applicant respond and demonstrate – if it is the case – how one can know the components add up to the whole?

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65.	R14(2)	<i>(2) "No component of the authorised development is to commence until a programme of archaeological mitigation measures informed by the exploratory investigations referred to in sub-paragraph (1) and by earlier phases of investigation has been implemented in accordance with a written scheme of mitigation measures which has been approved in writing by the local planning authority"</i>	<ul style="list-style-type: none"> • The ExA invites submissions from the Applicant and the district planning authorities as to the compatibility of this with the requirements for environmental assessment and, in particular, the judgment in R. v. Cornwall CC ex p Hardy [2001] Env L R 25; [2001] JPL 786. • Is the reference to "local planning authority" appropriate? Should it not be consistent with the use of "relevant planning authority"? See however also the ExA's question above about the use of that phrase in Art 2.
66.	R15	<i>Lighting details</i>	Another example of "agreement" rather than "approval".
67.	R16	<i>"No development of a warehouse may take place until ... "</i>	"Commence" for "take place"?
68.	R16(2)	<i>" ... a certificate must be provided within three months ... "</i>	Provided to whom?
69.	R17	<i>" ... or be carried out in accordance with any variation to these measures agreed in writing with ... "</i>	There were no provisions for variation in the East Midlands DCO. Please comment on why it is suitable in this case.
70.	R18 – Flood risk and surface water drainage	<i>"No component of the authorised development on the main site (excluding archaeological investigation, soil movement, geotechnical or ground contamination investigation and ecological mitigation works) may commence until a surface water drainage scheme for that</i>	Again, is the exclusion appropriate given that those operations may affect the existing surface water drainage and land profile?

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		<i>component ..."</i>	
71.	R18 - Flood risk and surface water drainage	<i>" ... based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development in accordance with chapter 7 of the environmental statement ..."</i>	Why has the assessment not already been carried out? Please comment also in relation to ex parte Hardy (referred to above in relation to Art 14(2)).
72.	R19	<i>Flood risk</i>	<ul style="list-style-type: none"> • "The floodplain compensation scheme" or "floodplain compensation scheme"? • "local planning authority" or "relevant planning authority"?
73.	R19	<i>Flood risk " ... or within any other period as may subsequently be agreed in writing by the local planning authority ..."</i>	"Agreed" or "Approved"?
74.	R21	<i>Construction hours</i>	<ul style="list-style-type: none"> • Please explain why landscaping works, which can be noisy and dusty, are excluded from this prohibition. • The construction hours are currently in square brackets. Will the Applicant please clearly state its proposed hours to enable informed comments to be made by participants?
75.	R21	<i>Construction hours – exclusion of "works which do not cause noise that is audible at the boundary of the main site"</i>	What about vibrations, both air- and ground-borne?
76.	R24	<i>Monitoring of complaints</i>	Is it local planning authority or "Relevant planning authority"? Please explain why, and taking into account the ExA's earlier questions on the definition of "relevant planning authority".
77.	R25	<i>Contamination risk " No</i>	There needs to be a definition of "site"

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		<i>development is to commence on any specifically identified localised areas of the site potentially affected by contamination".</i>	
Schedules			
78.	Sch 3	<i>Heading to Column 2</i>	See the comment above on Art 8 (question 16).
79.	Sch 5 Pt 1	<i>Heading to Column 5 " Stage of the authorised development"</i>	Is this the point at which the stopping up must be completed, or before which it cannot occur? Or is the action just part of that stage?
80.	Sch 7, Pt 1 and Pt 2	<i>Classification of Highways</i>	Please produce a SoCG with Highways England and Northamptonshire CC to confirm these are agreed.
81.	Sch 8 – all parts	<i>Speed limits</i>	Please produce a SoCG with Highways England and Northamptonshire CC to confirm these are agreed.
82.	Sch 8 Pt 4	<i>Column 4</i>	There is ambiguity here. Commencement of what – is this Works No 8 or the authorised works? This question applies to every instance of this wording/approach. The Applicant is requested to list with the next iteration of the dDCO all the places where they change the wording in response to this question.
83.	Sch 13 – protective provisions	<i>General</i>	As noted in question 4, there is inconsistency between the use of "sub paragraph" and "sub-paragraph" and also "subparagraph". The ExA suspects "sub-paragraph should be the preferred approach.
84.	Sch 13, Protective Provisions, Part 1	<i>For the protection of railway interests</i>	<ul style="list-style-type: none"> • The Applicant and Network Rail should submit a SoCG confirming that the protective provisions in Sch 13 Pt 1 are agreed and that no further protective provisions are contemplated. • The Applicant should check the Provisions for gender-neutral wording. • "with all reasonable dispatch" – the wording in the East Midlands DCO was "without

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			<p>unnecessary delay” – the parties should consider which is preferable.</p> <ul style="list-style-type: none"> • Para 11(11); there is no reference in Art 49 (Arbitration) to the institution of Civil Engineers. Is what is meant that any reference in article 49 (Arbitration) to the Lands Chamber of the Upper Tribunal shall be read as a reference to the Institution of Electrical Engineers?
85.	Sch 13, Protective Provisions, Part 2	<i>For the protection of Highways England</i>	<ul style="list-style-type: none"> • The Applicant and Highways England should submit a Statement of Common Ground confirming that the protective provisions in Sch 13 Pt 2 are agreed and that no further protective provisions are contemplated. • “Cash surety” – the ExA notes the amount has yet to be inserted.
86.	Sch 13, Protective Provisions, Part 2, Interpretation – para 2	<i>“Detailed Design Information’ means drawings, specifications and other information calculations as appropriate for the following which shall all be in accordance with the general arrangements of the HE Works shown ...”</i>	<ul style="list-style-type: none"> • Will the Applicant please explain why this formulation has been chosen over the wording in the East Midlands DCO “detailed design information” means the following drawings, specifications and other information which must be in accordance with the general arrangements shown ...”?
87.	Sch 13, Protective Provisions, Part 2, para 3(1)	<i>“approved by Highways England”</i>	Should this be “approved in writing by Highways England”?
88.	Sch 13, Protective Provisions, Part 2, para 3(6)	<i>Walking, Cycling and Horse Riding Assessment and Review</i>	Should this be defined?
89.	Sch 13, Protective Provisions, Part 2,	<i>(3) Each Phase of the HE Works shall be carried out to the</i>	The drafting convention is to replace “shall” with “must” (see question 4 above).

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	para 4(1)	<i>satisfaction of ..."</i>	
90.	Sch 13, Protective Provisions, Part 2, Para 12	<i>"PROVIDED THAT"</i>	Should this not be in lower case?
91.	Sch 13, Protective Provisions, Part 2, Para 16(1)	<i>"Schedule"</i>	Should this not be "Part"?
92.	Sch 13, Protective Provisions, Part 3		The Applicant and Northamptonshire County Council (or Highway Authority at the time) should submit a SoCG confirming that the protective provisions in Sch 13 Pt 3 are agreed and that no further protective provisions are contemplated.
93.	Sch 13, Protective Provisions, Part 3, para 9(2)		The reference needs to be inserted in the square brackets.
94.	Sch 13, Protective Provisions, Part 3, para 13(2)(b)	<i>"4 days"</i>	Should this be 14?
95.	Sch 13, Protective Provisions, Part 4	<i>Protection of Cadent Gas</i>	The Applicant and Cadent Gas Limited should submit a SoCG confirming that the protective provisions in Sch 13 Pt 4 are agreed and that no further protective provisions are contemplated.
96.	Sch 13, Protective Provisions, Part 4, para 15	<i>"The plans submitted to Cadent by the undertaker pursuant to paragraph 8(1) must be sent to Cadent Gas Limited Plant Protection at [] or such other address as Cadent may from time to time appoint instead for that purpose and notify to the undertaker"</i>	Should this be "Plan and scheme" rather than just "plans" – to refer properly to para 8(1).
97.	Sch 13, Protective		The Applicant and Anglian Water should submit a

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	Provisions, Part 5		SoCG confirming that the protective provisions in Sch 13 Pt 4 are agreed and that no further protective provisions are contemplated.
98.	Sch 13, Protective Provisions, Part 5, Para 4(b)	<i>"company"</i>	Should this be "undertaker"?
99.	Sch 13, Protective Provisions, Part 6	<i>Protection of Electricity Undertakers</i>	With whom is this Schedule being negotiated? Please supply the names of the parties. As for the other Protective Provisions, the ExA requires a SoCG with the protected parties to confirm the provisions are agreed and no more are contemplated.
100.	Sch 13, Protective Provisions, Part 7	<i>Protection of Electronic Communications Code Networks Undertakers</i>	With whom is this Part of the Schedule being negotiated? Please supply the names of the parties. As for the other Protective Provisions, the ExA requires a SoCG with the protected parties to confirm the provisions are agreed and no more are contemplated.
101.	Sch 14, Miscellaneous controls		Can the Applicant please explain the effects of each of these, and justify them. As a general comment, would it not be better to redraft these and place them in the relevant sections? To leave them here is likely to be a trap for the unwary. Submissions on this from the Applicant and affected interested parties are invited at the DCO ISH.
102.	Sch 14, Miscellaneous controls, paragraph 3		What does the street authority say about these provisions? Please submit a SoCG confirming they are acceptable and any areas of difference by Examination Deadline 2.
103.	Sch 14, Miscellaneous controls, para 3(8)	<i>"(8) The powers conferred by section 73A(1) and 78A(1) of the 1991 Act(a) (requirements for</i>	There is no s.73A of that Act. S.55 of The Traffic Management Act 2004 which creates it is not yet in force. Please explain the need for this. Submissions

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		<i>undertaker to re-surface street) may not be exercised in relation to the authorised development."</i>	from the street authority will be welcome.
104.	Sch 14, Miscellaneous controls, para 3(10), (11), (13) and (14)	<i>"(10) Schedule 3A to the 1991 Act"</i>	There is no such schedule. This point applies to all four sub-paragraphs. Please explain the need for this. Submissions from the street authority will be welcome.
105.	General matter: "not to be unreasonably withheld"		This phrase appears on a number of occasions. What is the position if consent is reasonably withheld? Is Art 49 the dispute resolution provision? Is it appropriate in all cases?
106.	General matter: Descriptions of the Works in schedule 1		The ExA is considering whether it would be helpful to have a reference to the relevant plans in the description of the Works. This was done for East Midlands and provides a degree of additional clarity and certainty. The ExA invites submissions on this.
107.	Environmental assessment and the DCO	<p>Background</p> <p>The DCO provides in a number of places for the authorised development to be altered. For example, in article 4 where the limits in the parameters plan can be exceeded in some circumstances, article 2 in the definition of maintenance, article 45 (works required by the protective provisions), and Further works in Schedule 1.</p> <p>Requirement 4 allows the travel plan to be varied with the agreement of the relevant planning authority. Requirement 8 provides for the submission of details which must be in general accordance with the parameters plan, but this does not appear to preclude details which exceed those limits. By Requirement 9 they can be altered with the agreement of the relevant planning authority. Requirements 11 (Landscape and Ecological Management Plan), 13 (Earthworks), 15 (Lighting), and 17 (Flood risk and surface water drainage) 18 (Surface water drainage) and 19 (Flood risk) are examples of requirements which allow for approved details to be changed, or for schemes and protections to be varied, with the</p>	

	<p>agreement of usually the local planning authorities. Requirement 21, which controls the hours of construction working, allows those hours to be changed. This is not a complete list.</p> <p>The proposed development has been subject to environmental assessment as a Schedule 2 project under the Infrastructure Planning (Environmental Assessment) Regulations 2017.</p> <p>Issue A</p> <p>Article 4 provides that the authorised development must be carried out within the parameters on the parameters plan and the limits of deviation. In the case of highways works and railway works in Works Nos 1 and 2 some leeway is given to the extent of an upwards or downwards deviation of up to 1.5 metres in either direction. However, in the case at least of the limits of deviation, in respect of the highway works and the railway works in Works Nos 1 and 2, those limits do not apply where the relevant planning authority is satisfied that a deviation in excess of those limits “would not give rise to any materially new or materially worse environmental effects in comparison with those assessed in the environmental statement”.</p> <p>Measurements are approximate – see article 2(3). By article 2(6) where the term “approximate” appears before a measurement that word “does not authorise any works which would result in significant environmental effects which have not been assessed in the environmental statement”.</p> <p>There is a power to maintain the authorised development in article 6 and that is constrained by Art 6(2) which states that the power “does not extend to any maintenance works which would give rise to any materially new or materially worse environmental effects in comparison with those assessed in the environmental statement”.</p> <p>The Further works in Schedule 1, which form part of the authorised development, are extensive, and are subject to the proviso that “such works do not give rise to any materially new or materially worse environmental effects than those assessed in the environmental statement”.</p>
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		<p>The ExA notes that the tests used in the dDCO vary. The principal tests are whether the change would “give rise to any materially new or materially worse environmental effects in comparison with those assessed in the environmental statement” and “would result in significant environmental effects which have not been assessed in the environmental statement”.</p> <p>Where comparison with effects already assessed is to take place, the draft DCO usually compares with the assessment in the environmental statement. However environmental assessment is a process as the 2014 directive emphasises.</p> <p>The test in the environmental assessment directive (2011/92/EU, as amended by 2014/52/EU) is whether the project is “likely to have significant effects” (see Art 1 of the 2014 directive, amending Art 3 of the 2011 directive).</p> <p>Question 107A</p> <p>The Applicant, district planning authorities and county council are requested to consider the different formulations and to be ready to answer questions at the DCO ISH on (a) the need for consistency, (b) what they consider should be the correct approach, (c) the intent, meaning and drafting of article 4, (d) whether comparisons should be against the ES or effects identified and assessed in the EIA as a whole and (e) any other relevant issues concerning the test and its application in the dDCO.</p> <p>Other interested persons may also wish to participate on these issues at the ISH and should identify themselves in advance. They should avoid duplication and ensure their submissions are focussed on these points. Please see Annex F (Notification of Hearings) and provide the Case Manager with the information there requested. All persons making submissions at the ISH on this issue should be ready to submit them in writing following the ISH.</p> <p>Issue B</p>
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		<p>Submissions pursuant to Requirements.</p> <p>A number of Requirements in the draft DCO allow for variations of limits with the agreement of the local planning authority. There does not appear to be any testing for environmental effects. The use of tailpieces is discouraged by advice note 15.</p> <p>Question 107B</p> <p>The Applicant is asked to consider whether the provisions for variations are consistent with the requirement for environmental assessment of the development or are satisfactorily constrained, and be ready to answer questions from the ExA at the DCO ISH. There has been considerable litigation around the multi-stage consent process and environmental assessment. One outcome of this has been the ability to require EIA where “subsequent applications” are made. Would the application of the subsequent application regime in the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 to applications for such variations be a way to address this issue? It is recognised that the subsequent applications provisions of the 2017 regulations currently only apply to approvals needed before development is begun so some amendment for the purposes of this DCO would be required.</p> <p>As with question 107A, district planning authorities and the county council are asked to be ready to participate and answer questions. Other interested persons may also wish to participate on these issues and are asked to identify themselves in advance and be ready to answer questions. The same comments about duplication, focus and making submissions in writing apply.</p> <p>Issue C</p> <p>Requirement 14 requires a further archaeological investigation to be carried out, following which mitigation is to be devised. See also question 65 above.</p> <p>Question 107C</p>
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		<p>The Applicant is requested to be ready to answer questions at the DCO ISH on the compatibility (or otherwise) of this and the judgment in R. v. Cornwall CC ex p Hardy [2001] Env L R 25; [2001] JPL 786. The Applicant should consider whether there are any other requirements affected by ex p Hardy.</p> <p>As with questions 107A and B, district planning authorities and the county council are asked to be ready to participate and answer questions. Other interested persons may also wish to participate on these issues and are asked to identify themselves in advance and be ready to answer questions. The same comments about duplication, focus and making submissions in writing apply.</p>
108.	Section 106 and similar agreements	Please will the Applicant supply any draft s106 or similar agreements for Examination Deadline 1?
109.	Section 106 and similar agreements	The Applicant should note that the ExA will require confirmation that any s106 agreements and any similar documents have been properly executed in accordance with the constitutions of the parties entering into them, all other legal requirements, and are enforceable against them. This confirmation will need to be issued by the solicitors for the relevant parties. The form of the confirmation should be submitted to the ExA in due course for approval, and should be for the benefit of the local planning authorities and Secretary of State.
110.	Section 106 and similar agreements	The local planning authorities (ie the districts and the county) should note that the ExA will expect them to carry out proper title investigation of the parties entering into the s.106 agreement(s) and any similar documents, and to confirm that they are satisfied that the appropriate persons have been joined in; with the title of the persons entering into the s.106 agreement(s); and that the obligations will be enforceable against persons deriving title from the original covenants.
Typographical matters		
111.	Page 4	<p><i>"Infrastructure Planning (Applications: Prescribed Form and Procedure) Regulations"</i></p> <p>Please amend to read "Prescribed Forms...".</p>

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112.	Art 16(2)	<i>"...in lengths of highway..."</i>	Should this be ... "on lengths of highway..."?
113.	Art 25(2)		Please amend to read "with <u>h</u> the exercise of that new right" in the final line.
114.	Art 46(3)(f)	<i>"...duties in relation to sites of scientific interest..."</i>	Please amend to read "...duties in relation to sites of <u>special</u> scientific interest...".
115.	Sch 2, 3(3)	<i>"...rail served..."</i>	Should this read "...rail-served..."?
116.	Sch 2, 4(2)	<i>"...occupier specific..."</i>	Would this be more appropriately amended to "occupier_ <u>specific</u> "?
117.	Sch 2,12(1)	<i>"...excluding archaeological investigation soil movement geotechnical..."</i>	Should this be amended to "...excluding archaeological investigation_ <u>soil</u> movement_ <u>geotechnical</u> ..." ?
118.	Sch 2, 13(b)		A semi-colon is required.
119.	Sch 2, 19		In the first sentence would it be more appropriate to refer to "a floodplain compensation scheme..."? Should "above ground" be hyphenated?
120.	Sch 2, 22		Should "phase specific" be hyphenated?
121.	Sch 2, 24	<i>"local planning authority"</i>	Should references be to the " <u>relevant</u> planning authority" given that works will be in more than one planning authority area?
122.	Sch 13, Part 1, 11(1)	<i>"signaling"</i>	Amend to "signall <u>ing</u> ".

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123.	Sch 13, Part 1, 11(6)	<i>"... authorised railway comprised in the authorised..."</i>	Should this read "... authorised railway comprising the authorised..."?
124.	Sch 13, Part 2, 1 and 2		References should be to "Part of this Schedule" and in 2(2) to "Part" and not "Schedule"?
125.	Sch 13, Part 2, 2(1)		<ul style="list-style-type: none"> • In the definition of "Nominated Persons" "undertaker s" requires an apostrophe. • In the definition of "Utilities" commas are required between "pipes wires cables".
126.	Sch 13, Part 2, 3(1)	<i>"...the Detailed Design Information and a Programme of Works in respect of that phase has been submitted..."</i>	Should this be "... <u>have</u> been submitted..."?
127.	Sch 13, Part 2, 4(5) and in general within the Protective Provisions		Possessive apostrophes required for "Contractors" and "undertakers within the appropriate context"?
128.	Sch 13, Part 2, 5(1)	<i>"...using in house staff..."</i>	"in house" requires hyphenating.
129.	Sch 13, Part 2, 7(1)(a)	<i>"... such works to be first area with Highways England"</i>	Amend to "...first <u>agreed</u> ..."
130.	Sch 13, Part 2, 11		Comma required between "damage loss"?
131.	Sch 13, Part 2,		<ul style="list-style-type: none"> • Are commas required throughout?

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	12(1)(a)		<ul style="list-style-type: none"> • Should it be "...for whom <u>it</u> is responsible;"?
132.	Sch 13, Part 2, 16		Should the reference to "Schedule" instead be to "Part"?
133.	Sch 13, Part 3, 2(2)		<ul style="list-style-type: none"> • A semi-colon is needed at the end of (d). • At the end of (i) "and" needs removing. • Should "Schedule" at the end of the definition of Estimated Costs be changed to "Part"? • Within the definition of Nominated Persons is an apostrophe required in "Contractors"? • Within the definition of Road Safety Audit "mans" needs changing to "means". • Are commas required within the definition of Utilities?
134.	Sch 13, Part 3, 4(1)		Apostrophe required after "days".
135.	Sch 13, Part 3, 5(1)	<i>"in house"</i>	"in house" requires hyphenating.
136.	Sch 13, Part 3, 6(1)(c)	<i>"be come"</i>	Amend to "become".
137.	Sch 13, Part 3,		Are commas required between "...costs expenses

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	11(1)		damages losses...”?
138.	Sch 13, Part 3, 12		Are commas required between “skill care”?
139.	Sch 13, Part 3, 13(1)	<i>“... neither given or refused...”</i>	Should this be “neither given <u>nor</u> refused...”?
140.	Sch 13, Part 3, 14(1)	<i>“Article [49] (arbitration)...”</i>	This should read “Article 49 (Arbitration)...”.
141.	Sch 13, Part 3, 14(7)		No square brackets needed around “49”.
142.	Sch 13, Part 4, 4(1)	<i>“...if Cadent has any apparatus is in the street...”</i>	Delete “is”.
143.	Sch 13, Part 4, 7(2)	<i>“...facilities and rights are subject in the matter...”</i>	<ul style="list-style-type: none"> • Delete “in”. • Reference is made to arbitration in accordance with article 49. Should the reference here be to paragraph 14, where the reference to article 49 is found?
144.	Sch 13, Part 4, 9(2)	<i>“...article 37 (apparatus and rights of statutory undertakers in stopped up streets)...”</i>	Should “apparatus be capitalised?
145.	Sch 13, Part 4, 9(3)	<i>“...article 49 (arbitration)...”</i>	Should “arbitration” be capitalised?
146.	Sch 13, Part 4,	<i>“...workman like...”</i>	This should be one word.

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	10(2)		
147.	Sch 13, Part 4, 10(3)(b)		<ul style="list-style-type: none"> • Space required between “2008subject”. • Reference to paragraph 11 should be to paragraph 10.
148.	Sch 13, Part 5, 2		<ul style="list-style-type: none"> • In the definition of “apparatus” in the final line “ay” should be replaced by “any” and a semi-colon added at the end. • “statutory functions in not less efficient manner...” requires replacing with “statutory functions in no less efficient manner...”. • In the definition of “standard protection strips” “pie” needs replacing with “pipe” and “pipes” in the third line needs replacing by “pipe is...”.
149.	Sch 13, Part 5, 6		No brackets are required around “49”.
150.	Sch 13, Part 6, 9(3)		Reference to “article 48 (arbitration)” should be to “article 49 (Arbitration)”.
151.	Sch 13, Part 7, 2		The line spacing between ““electronic communications apparatus” has the same meaning as in the electronic communications code” needs removing.