

NCC Responses to Inspector Questions and Examining Authority’s Written Questions.

(Questions requiring NCC Response only)

Inspector Questions				
Insp. Question No.	Part of DCO	Question	Applicant’s Response	NCC’s Response
9.	Art 2	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.	The definition of traffic authority in the Order is identical to that contained in the RTRA. The reference to “relevant” traffic authority is added solely to clarify that the articles which refer to the “relevant traffic authority” are to the authority which is responsible for the relevant roads to which a provision might relate. Currently this is either Highways England or Northamptonshire County Council (as local highway authority) depending whether or not the roads are part of the strategic road network.	The definition in Article 2 seems to be saying that it is the traffic authority (as defined in the RTRA) as relevant for the particular street being considered. I don’t think the intention is to dismiss the definition in the RTRA but to confirm who the relevant traffic authority is.
13.	Art 4 – vertical deviation	Please explain the reason and need for vertical deviations by up to 1.5 metres, up or down.	There is a need to allow an element of vertical deviation for roads and railways. This arises from the potential need to amend the alignment due to unforeseen circumstances during construction, such as encountering unexpected utilities or ground conditions. The principle of an allowance is established within DCOs, however there is no uniformity in the level of deviation approved. The Applicant is seeking less deviation than that granted in the EMG Order and is satisfied that this provides a sufficiently robust tolerance so as to ensure delivery is not frustrated.	This is acceptable.
15.	Art 7 (3) (b)	Are the highway authority and Highways England content with this provision? The ExA is not	See response to ISH1:14 above. The Applicant is seeking the SoCG requested.	See statement of common ground.

		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).		
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?	This article relates to streets within the main site only (which will remain private). It is a provision commonly used (see the Explanatory Memorandum (paragraphs 7.24 – 7.25, Document 3.2)). The provision authorises changes to onsite highways subject to the approval of the local highway authority.	See statement of common ground.
18.	Art 9 (2)	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.	This is considered to be reasonable, particularly given that the article relates to the private streets. As explained in the Explanatory Memorandum (paragraph 7.25, Document 3.2), the deemed consent (including 28 day period) was incorporated in the Hinkley Point C Connection Order (S.I. 2016 No 49). The crux of the matter is simply that the Applicant must be able to continue the development and not be stalled or unduly delayed from doing so due to the failure of engagement from the local highway authority. This provision is present in similar form in articles 9, 11, 13 and 17. In respect of all of those articles, it is considered reasonable to impose an obligation that consents are not unreasonably withheld so as to ensure that there is some recourse in the event of consent being unreasonably withheld. Whilst the deemed approval concept has been agreed with Highways England, Highways England, in respect of provisions relating to their interests, have requested a substantially longer period of 56 days. This defeats the purpose of this provision which is to ensure that there is reasonably prompt action in response to a request for a consent. If it is felt a positive decision cannot be made within the days before a deemed consent is triggered, then a response refusing consent will prevent the deemed consent applying. The driver behind the provision is to secure engagement within a timely period.	28 days is only acceptable if there has been sufficient pre-application discussion between the applicant and the County Council. Please see amendments proposed in statement of common ground.

			<p>The deemed approval provisions were also contained in the approved York Potash DCO (S.I. 2016 No. 772), both in respect of the street works articles (see articles 10(6), 11(5) and 12(2) of that DCO) and the Deemed Marine Licence (see paragraph 17 of Schedule 5 of the DCO). The MMO objected to the deemed approval provisions and the issue was discussed at a hearing. See paragraphs 9.7.8 and 9.7.9 of the ExA's Report to the Secretary of State in respect of the deemed approval arguments.</p> <p>The Applicant would be content to have an overarching approvals article similar to article 69 of the Silvertown Tunnel DCO (S.I. 2018 No. 574).</p>	
19.	Art 11	<p>'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. Greater precision is desirable.</p>	<p>This wording is derived from a model provision and is included in other approved DCOs, most recently, in article 12 of the A19/A184 Testo's Junction Alteration Development Consent Order 2018 (S.I. 2018 No. 994). The wording in that article is the same as the M20 Junction 10a DCO which is referred to in paragraph 7.29 of the Explanatory Memorandum (Document 3.2).</p> <p>The ability to exercise the power in article 11(1) is subject to obtaining the consent of the relevant street authority in advance and the appropriate timescales and "reasonableness" of the works would be discussed as part of that consent.</p> <p>At this early stage it is impossible to define "temporary" or a "reasonable time" because those time frames will depend on future circumstances and the flexibility to agree those time periods with the relevant street authority is required.</p> <p>However, to address the point raised by the ExA, and to require the appropriate temporary period to be considered, it is suggested that there be an amendment to article 11(3) with the insertion of the words "including specifying the time period within which the temporary activity may take place" after the first "consent" in the third line.</p>	See statement of common ground.
22.	Art 13 (3)	<p>This was not in the East Midlands DCO. Why is it needed here? And if it is, is the time period reasonable?</p>	<p>Please refer to the response to ISH1:18 above. It is partly based on the experience of implementation of the EMG DCO that this provision has been added, having noted its inclusion in other DCOs since the approval of EMG (e.g. Hinkley Point C Connection Project Order and the A19/A184 Testo's Order).</p>	28 days is only acceptable if there has been sufficient pre-application discussion between the applicant and the County Council. Please see

				amendments proposed in statement of common ground.
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 Art 2)? The SoCG should cover that question and if the answer is affirmative explain why that is justified.	Article 14 has been the subject of discussion with Highways England and, it is understood, is agreed with Highways England. The Applicant is seeking to establish the position of Northamptonshire County Council. The ExA’s point is accepted and it should be made clear on the face of the DCO that the maintenance of the highway works does not fall within the umbrella definition of “maintain”. It is suggested that in the next draft of the dDCO, article 6 (maintenance of authorised development) include an additional sub-paragraph stating that the authorisation to maintain the authorised development contained in article 6 does not apply to the highway works, the maintenance of which is governed by article 14 and Parts 2 and 3 of Schedule 13.	See amendments proposed in statement of common ground.
25.	Art 17 – traffic regulation	Please supply a SoCG confirming that the highways authority and Highways England agree this.	The Applicant is seeking SoCGs to confirm this.	See statement of common ground.
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	The Applicant is seeking SoCGs to cover this.	See statement of common ground.

		21(4) is acceptable; and (c) the Environment Agency with regard to the acceptability of Art 21(5).		
31.	Art 22 (6)	Is the time period reasonable?	Please see response to ISH1:18 above.	28 days is only acceptable if there has been sufficient pre-application discussion between the applicant and the County Council. Please see amendments proposed in statement of common ground.
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.	The Applicant is seeking the requested SoCG.	See statement of common ground.
Requirements (R)				
53.	R6	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	This requirement is, in its inclusion of the term “reasonable endeavours” identical to requirement 5 of the EMG Order. Nonetheless, having regard to the ability to agree an adjustment to the timing of the provision contained in this requirement, the Applicant feels that the term “reasonable endeavours” can be deleted in light of the ExA’s comments.	Agreed. Should be ‘must’ as there is the provision for amending trigger dates.

		<p>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.</p>		
54.	R6(2)	<p>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</p>	<p>It was thought appropriate for the enforcing party to be the party with whom the restriction, or details, will have been agreed which in the case of requirement 6 is the relevant highway authority. This gives the highway authority the ability to enforce directly rather than having to rely on the local planning authority.</p> <p>Equally, the Applicant would have no difficulty in enforcement being restricted to the relevant planning authority.</p> <p>As regards the position of Northamptonshire County Council, it is suggested that in requirement 6 the references to Northamptonshire County Council be replaced with "Northamptonshire County Council or successor in function". It is also proposed that the definition of "Highways England" should be expanded by the addition of the words "or any successor body" at the end of the definition.</p>	<p>Application would usually be by body or its successor so re-arrangement does not affect this. Preference would be enforcement by either NCC or LPA as we have in S106's.</p>

		authority) rather than name (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.		
56.	R7(b)	Please consider adding “that having elected, notice of election must be given to Highways England the district planning authorities and the highway authority.”	This will be included in the revisions to requirement 7 referred to at ISH1:55 above.	Agreed
57.	R8 (1) – detailed design approval	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 authorities and the	This is accepted and the Applicant will make the amendment to the next dDCO to be submitted.	Agreed – Had understood that this is before the details have been agreed (see wording of 9).

		highway authority are invited.		
58.	R8 (2)	<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>	<p>The requirement sets out the details that are required to be agreed for the development when it will be completed. The exceptions are included to allow for certain temporary or preliminary works to take place so that development can proceed without unnecessary delay. Soil movement was included for this purpose and was not intended to conflict with works that would be associated with the creation of embankments and bunds and final site levels. However, it is appreciated that the exclusion of soil movement may lead to an inappropriate degree of uncertainty and therefore it is proposed to remove the reference to “<i>soil movement</i>” from requirement 8(2) and all other requirements where it is similarly referred to.</p>	<p>The applicants answer is noted and that reference to soil movement will be removed.</p>
Schedules				
80.	Sch 7, Pt 1 and Pt 2	<p>Please produce a SoCG with Highways England and Northamptonshire CC to confirm these are agreed.</p>	<p>The Applicant is seeking the requested SoCG.</p>	<p>See comments in the statement of common ground.</p>

81.	Sch 8 – all parts	Please produce a SoCG with Highways England and Northamptonshire CC to confirm these are agreed.	The Applicant is seeking the requested SoCG.	See comments in the statement of common ground.
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.	Noted.	See comments in the statement of common ground.
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.	The Applicant is seeking the requested SoCG.	See comments in the statement of common ground.
103.	Sch 14, Miscellaneous controls, para 3(8)	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 from the street authority will be welcome.	This is consistent with the approach taken in Thames Tideway Tunnel. It is noted that this provision is not yet in force, however, it is suggested that the power should be disapplied if and when the power under s73A does come into force. The Applicant can update the wording to clarify this. The intention is that re-surfacing of the streets within the Order limits should not be applicable. Once the works have been completed the streets will either remain private (on the main site) or be adopted public highway.	The applicants answer is noted and the County Council has no further submissions on this.
104.	Sch 14, Miscellaneous controls, para 3(10), (11), (13) and (14)	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.	The Applicant understands that Schedule 3A to the New Roads and Street Works Act 1991 (defined as the 1991 Act in article 2 of the dDCO) was inserted by s.52(2) and Schedule 4 of the Traffic Management Act 2004. This came into force on 29 June 2007 and is subject only to transitional provisions in Article 7 of SI 2007/1890 – this provides that the Schedule shall only apply where a street authority receive notice under section 54 or 55 of	The applicants answer is noted and the County Council has no further submissions on this.

			<p>the 1991 Act on or after 1st April 2008. The Applicant therefore believes that Schedule 3A does exist and is in force.</p> <p>The provisions in that Schedule should be disapplied in respect of the authorised development because the works to be carried out to the streets will be approved pursuant to the provisions of the DCO and should not be subject to any further mechanism for approval.</p>	
109	Section 106 and similar agreements	<p>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.</p>	Noted.	Accepted and noted
110	Section 106 and similar agreements	<p>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</p>		Accepted and noted

		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.		
--	--	---	--	--

Examining Authority's Written Questions General and Cross – topic Questions

EXQ1	Question to	Question	NCC Response
1.0.30	The Applicant, NBC, SNDC, NCC Highways England, Network Rail	Paragraph 8.3; will the Applicant, the District Councils, the County Council, Highways England and Network Rail please indicate what weight they consider the ExA and Secretary of State should put on the potential to serve destinations between 90 minutes and 4.5 hours' drive time away, and whether this should be counted a benefit or an adverse effect?	<p>We assume that, in the context of a Market Analysis Report, the applicant is seeking to demonstrate that the site is accessible to a large population.</p> <p>Northamptonshire is widely recognised as being part of the 'Golden Triangle' for logistics operations, broadly bounded by the M1, M6 and M42, reflecting the ability of sites in the area to serve a national market.</p> <p>We would consider the consider the statistics shown to be beneficial in terms of demonstrating the marketability of the site for HGV access and for warehousing in general, although in themselves and without further explanation they give no obvious</p>

			<p>demonstration of demand for rail served warehousing.</p> <p>(Obviously there are would be other beneficial and adverse effects in other respects, as particularly set out in the Environmental Statement).</p>
1.8.	Noise and Vibration		
1.8.11.	<p>The Applicant, NCC</p>	<p>The Applicant has not assessed the impacts of road traffic-induced ground vibration arguing that this is mainly caused by vehicles passing over irregularities in the road surface (ES paras 8.3.54 – 55). How will the Applicant ensure that the road traffic associated with the Proposed Development will not lead to significant levels of ground vibration as the road quality deteriorates over the lifetime of the development? Is Northamptonshire County Council, in its capacity as relevant Highways Authority, satisfied with the approach taken by the Applicant in this regard, taking into consideration the likely quality of road surfaces during the lifetime of the project?</p>	<p>This relates to the Noise and Vibration section of the Chapter of the Environmental Assessment. We are not qualified to comment on the likely vibration impacts of vehicles passing over irregularities in the road surface, which have not been assessed by the applicant in any event.</p> <p>The applicant has stated that the highways works associated with the development will be constructed in accordance with the County Council's standards, with appropriate surfacing, and therefore will not result in significant ground vibration (on these elements).</p>

			This appears to be a reasonable position to take from a Highways Perspective, but the Local Planning Authority maybe better placed to consider the vibration impacts from a ES perspective.
1.9.	Cumulative impacts and interactions		
1.9.6.	The Applicant, NCC, NBC, NSDC	Cumulative effects with committed development; have the developments, whether committed or not, with which the application should be assessed cumulatively, been agreed with the two LPAs and the County Council? Please indicate within relevant SoCG.	<p>The County Council has agreed with the Applicant the appropriate development sites to be included for the areas of assessment with which it is responsible.</p> <p>Due to the wide-ranging impacts of traffic assessment, this has included all allocated and permitted sites within Northamptonshire (which are already included in the Traffic Model future year base) together with TEMPRO growth as determined by the Department for Transport for area outside Northamptonshire.</p> <p>For other areas of impact we have been happy to agree to the cumulative assessment being limited to the two nearby</p>

			<p>Sustainable Urban Extensions.</p> <p>However, as set out in our Written Representations we remain concerned about the mechanisms for dealing with cumulative impacts of Rail Central.</p>
1.11.	Transportation, Traffic and Rail		
1.11.1.	<p>The Applicant/NCC</p>	<p>Paragraph references below are to ES Chapter 12 (Transport) [APP-116]. Chapter 12 refers to the A45/M1 Northampton Growth Management Scheme (NGMS) and a Memorandum of Understanding. Please explain the status of this document and how the Proposed Development relates to the schemes within the NGMS.</p>	<p>The attached Memorandum of Understanding is an agreement between Highways England, the County Council, Daventry District Council, Northampton Borough Council and South Northamptonshire Council to work together to secure a series of improvements at M1 Junction 15 and along the A45 corridor to accommodate growth in the area.</p> <p>The Memorandum of Understanding and its supporting appendices are also a public document, to specify how the approach of securing contributions will be applied to developments.</p> <p>Within the Memorandum of</p>

			Understanding it is for Highways England to determine when and how contributions to the schemes should be sought.
1.11.2.	Highways England (HE), NCC	Highways England has identified an improvement scheme for the M1 Junction 15 (J15) that could potentially provide increased capacity, but that this would still leave the junction over capacity in certain conditions, with there being no certainty whether an improvement would be delivered (paragraph 12.4.7). Improvements to J15 within the Smart Motorway Project (SMP) have also been excluded (paragraph 12.4.12). Is it therefore the view of HE and the local highway authority that appropriate capacity improvements to J15 are only likely if led and funded by the Proposed Development?	As confirmed by Highways England, who is the Highway Authority responsible for M1 J15, appropriate capacity improvements to J15 are only likely if led and funded by the proposed development.
1.11.6.	The Applicant, NCC	The proposed access to the Main Site would be configured to require all departing HGV traffic to travel north, supported by Automatic Number Plate Recognition, and an enforcement regime to deter U-turning movements at the M1 J15. (i) Please provide details of the envisaged latter enforcement regime and how this would be secured and maintained. (ii) What sanctions would there be against transgressors?	The details of the enforcement regime have not been discussed in detail with the local highway authority at this stage, and will be covered by the Obligations.
1.11.1 8.	The Applicant, HE, NCC	Regulation 123(3) of the Community Infrastructure Levy Regulations 2010, which restricts the number of planning obligations allowed to pool funds, appears to apply. Please comment on how it interacts with the A45/M1 NGMS Memorandum of Understanding and any s.106 or similar agreements proposed in relation to this application.	The Highway Capacity Improvement Contribution and other s106 contributions will be applied by the County Council in such a way as to ensure compliance with Regulation 123(3). It is considered highly unlikely that there will be sufficient developments contributing to any project to trigger the restriction of Regulation 123 (3).

1.11.2 4.	The Applicant, NCC, SNDC and NBC	Paragraph 12.6.8: Please confirm that the financial contribution to NCC will not infringe the Community Infrastructure Regulations 2010, Regulation 123. Please address this issue also in relation to paragraph 12.7.86 and any other contributions to be made by planning obligations or provisions to which Regulation 123 applies.	<p>The A45/M1 NGMS Memorandum of Understanding sets out, particularly at Section 3 v of Annex 3, how Highways England and other partners will ensure compliance with the Community Infrastructure Levy Regulations.</p> <p>The Highway Capacity Improvement Contribution and other s106 contributions will be applied by the County Council in such a way as to ensure compliance with Regulation 123(3). It is considered highly unlikely that there will be sufficient developments contributing to any project to trigger the restriction of Regulation 123 (3).</p>
--------------	--	--	---