

From: Hutton, Laura-Beth [<mailto:Laura-bethHutton@eversheds-sutherland.com>]
Sent: 17 December 2018 15:05
To: Ewa Sherman; Northampton Gateway
Cc: Thomson, Morag; Kate Mignano
Subject: Northampton Gateway - ISH3 - Applicant's Responses to ExA Queries
Importance: High

Ewa

Please find attached ahead of ISH3 our responses to the ExA's questions raised in respect of the DCO. We thought this would be useful for the ExA to review ahead of the hearing.

Kind regards
Laura-Beth

Laura-Beth Hutton | Senior Associate | Planning and Infrastructure Consenting | Eversheds Sutherland

T: +44 115 931 7642
M: [REDACTED]

www.eversheds-sutherland.com

Eversheds Sutherland

Client Commitment. Innovative Solutions. Global Service.

This email is sent for and on behalf of Eversheds Sutherland (International) LLP

Eversheds Sutherland (International) LLP is a limited liability partnership, registered in England and Wales, (number OC304065), registered office One Wood Street, London, EC2V 7WS. Registered VAT number GB820704559. A list of names of the members (who are referred to as "partners") together with a list of those non-members who are designated as partners and their professional qualifications is available for inspection at the above office. Eversheds Sutherland (International) LLP is authorised and regulated by the Solicitors Regulation Authority and governed by the SRA Code of Conduct (see www.sra.org.uk/handbook/). Eversheds Sutherland (International) LLP is part of a global legal practice, operating through various separate and distinct legal entities, under Eversheds Sutherland. Each Eversheds Sutherland entity is a separate legal entity and is not responsible for the acts or omissions of, nor can bind or obligate, another Eversheds Sutherland entity. For a full description of the structure and a list of offices, please visit www.eversheds-sutherland.com

Confidentiality: This e-mail and its attachments are intended solely for the person to whom they are addressed, are strictly confidential and may contain privileged information. If they have come to you in error you must not copy or show them to anyone; please reply to this e-mail and highlight the error to the sender and then immediately delete the message. Unless expressly agreed in writing, Eversheds Sutherland (International) LLP accepts no liability to persons other than clients of the firm in respect of the contents of emails or attachments.

www.eversheds-sutherland.com

We process your personal data in accordance with our Privacy Notice, www.eversheds-sutherland.com/privacy. If you have any queries or would like to exercise any of your rights in relation to your personal data, please contact dataprotectionoffice@eversheds-sutherland.com.

This email has been scanned by the Symantec Email Security.cloud service.
For more information please visit <http://www.symanteccloud.com>

THE NORTHAMPTON GATEWAY RAIL FREIGHT INTERCHANGE ORDER 201X
APPLICANT'S RESPONSES TO ExA QUESTIONS IN TABLE TO ISH3 AGENDA

Q. No	Persons in <i>addition to the applicant</i> to whom the question is directed	Part of DCO	Drafting Example (Where relevant)	Question	Applicant's response
1		Preamble	Exclusion of Sch 5 para 25 from the list of powers exercised by the SoS	Given the provisions of Art 21, why is para 25 of Sch5 omitted from the list of powers	<p>If the list of paragraphs of Schedule 5 is to be included then paragraph 26 (not 25) should be referred to, having regard to the provisions of article 21. However, on review of other DCOs, there seems to be a variety of approaches to the preamble. Some refer solely to s120 without reference to Sch 5, some refer to both s120 and Sch 5 but without reference to specific paragraphs within Sch 5 and some, as here, refer to specific paragraphs in Sch 5.</p> <p>On reflection, it is felt that it is unnecessary to refer to specific paragraphs of Sch 5 in the preamble and thus running an unnecessary risk of failing to refer to a relevant paragraph. The Applicant would therefore suggest the middle course be adopted with reference being made to Part 1 of Sch 5 but not to</p>

					specific paragraphs and will amend the dDCO accordingly for submission at Deadline 4.
2	RPAs, NCC	Authorised development Arts 2 & 3		S.26 PA 2008 defines a strategic rail freight interchange and states that it must be capable of receiving at least four goods trains per day. Is this an ongoing requirement which applies throughout the life of an SRFI and if so, should it be secured by a formal requirement in Sch 2?	<p>The purpose of s.26 is to set out the criteria which determine whether or not the consenting of a proposed development is to be dealt with under the Planning Act 2008 or under other legislation. That is, it governs the consenting route rather than the development itself.</p> <p>Whilst those criteria are not provided as governing criteria for the development following consent, the Applicant has provided, in requirement 3(3), that those criteria are to be met before any warehouses are occupied, thus going further than any previously approved SRFI. The Applicant does not consider that any further requirement is required, however, the Applicant will include, within the next dDCO, a further requirement which is to the effect that no rail infrastructure will be removed which would impede the capability of the terminal to handle four goods trains per day. The Applicant does not believe such a requirement is appropriate because, having delivered the SRFI, it is inappropriately constraining its operation into the future which may be affected by</p>

					matters completely outside the control of the Applicant. Nonetheless the requirement will be added for the ExA's consideration.
3	NCC	Art 10	<i>Permanent stopping up of streets</i>	<p>Art10 enables the permanent stopping up of streets, and provision of substitutes. The requirement in s136(1) PA 2008 is that an alternative is provided in the case of the stopping up a highway, or that the SoS is satisfied that no alternative is required.</p> <p>(a) Are the streets to be stopped up all highways?</p> <p>(b) Are there any cases where alternatives are not being provided?</p> <p>(c) If there are, is there evidence to enable the SoS conclude that an alternative is not required, and what is that evidence?</p>	<p>(a) Yes, the streets proposed to be stopped up are all highways</p> <p>(b) No, there are substitutes being provided for all streets being stopped up.</p> <p>(c) N/A</p>
4	HE	Art 10 and Sch 4 Column 2	<i>M1 slip road</i>	<p>The M1 slip road to be provided appears to be shorter but wider than the length to be stopped up. See doc 2.3B [APP-022]. This may be a realignment as well as widening. Other plans need to be consulted. See Doc 2.4B [APP-028]; which describes the new Jn 15. However, technically the new substitute appears to end short of the dumb-bell roundabout.</p> <p>(a) Is this the case?</p>	<p>In response to the questions raised:</p> <p>(a) The substituted M1 southbound diverge slip road</p>

				<p>(b) Why does Art 10 stop up part of the slip road when there does not appear to be any stopping up of the other redundant parts of the Junction?</p>	<p>stops at the end of the special road that would be subject to motorway regulations and is consistent with the highway classification plan (Document 2.5A, APP-047). The extent of the special road stops slightly short of the enlarged dumbbell roundabout in order to provide a pedestrian and cycle crossing. This crossing cannot be provided where motorway regulations apply.</p> <p>(b) There is a difference between when a highway is widened as opposed to being reconstructed on a new alignment. The M1 southbound diverge slip road is clearly on a wholly new alignment and hence the existing slip road is to be stopped up and replaced with a new slip road on a new alignment. In the case of the other areas of the junction the change in the alignment is less, and hence the highway in these areas is to be widened.</p>
5	NCC	Art 10 and Sch 4 Column	A508 highway; The three stoppings up at	The three stoppings up at the Rookery Lane/ Ashton Road/ A506 jn (x, xii and xiv	This should refer to the A508 rather than A506.

		2	<i>the Rookery Lane/ Ashton Road/ A506 jn (x, xii and xiv on Doc 2.3E [APP-025])</i>	on Doc 2.3E [APP-025] are replaced by a new junction in three separated parts (xi, xiii, and xv), one for each of the stoppings up. When combined they appear to be an alternative. But taken separately they would be inadequate. For example if the portion of Rookery Lane to be stopped up, which is currently the mouth of the junction with the A506, was only replaced by the corresponding new highway it would not reach the A506 because the new part of the A506 is located further east. The stopped up part of Rookery Lane is marked xii and the alternative is marked xiii on Inset 5C. Is not something needed on sequencing to enable the SoS to be satisfied that there will be an alternative? If so, please could the Applicant provide suitable drafting?	<p>There is no intention to implement the stopping up referred to in part resulting in a new road ending in a field. This is dealt with in the protective provisions dealing with the carrying out of the County Highway Works.</p> <p>Paragraph 3(1) of Part 3 of Schedule 13 provides that no work can be carried out on any Phase until both the Detailed Design Information and a Programme of Works has been agreed for that Phase. Programme of Works is defined as “a document setting out the sequence and timetabling of the Phase in question”.</p> <p>Paragraph 4(3)(c) requires that the works be carried out in accordance with the approved programme.</p> <p>It would clearly not be acceptable to provide a programme for approval that sought to stop up and substitute one section of road that is then not connected into the wider road network.</p>
6	NCC, Messrs AW, W & R Irlam	Art 10 and Sch 4 Column 2	<i>A508 highway The three stoppings up at the Rookery Lane/ Ashton</i>	The Relevant Representation from Berrys on behalf of AW, W & R Irlam says this: “The current layout [of the junction]	The Applicant does not propose to

			<p>Road/ A506 jn (x, xii and xiv on Doc 2.3E [APP-025])</p>	<p>facilitates tractors with cultivators, long combine harvester headers, etc., to swiftly across [sic] the junction without any road furniture/ structures impeding the route. The revised layout includes a central island which will impede or possibly even prevent agricultural vehicles swiftly and safely crossing. ...</p> <p>The conclusion is that if the DCO is granted then it must incorporate a further revision to the road layout at this junction to ensure the on-going safety of large vehicles including agricultural machinery. Any change to junction layout must also minimise land taken from agricultural production.”</p> <p>Does the Applicant propose any redesign of the junction? If so, how?</p> <p>Does this representation go to the question of whether the stopping up can be approved at all, because of the design of the alternative? Or does it go to the question of whether the adverse impact of the NSIP would outweigh the benefits, rather than to whether there is an alternative highway? Or does it go to something else, and if so, to what?</p>	<p>amend the design of the junction from that submitted. The Applicant has provided a detailed response to this point in the response to the Relevant Representations (Document 8.3, REP1-022) ref RR-789 and can confirm that the layout has been agreed with Northamptonshire County Council.</p> <p>The proposed scheme provides significant improvements to visibility (as confirmed in the A508 Geometric Design Strategy Record, which is Appendix 29 of the Transport Assessment (TA), the TA being Appendix 12.1 of the Environmental Statement, Document 5.2) and removes the crossroads, replacing it with a staggered crossroads. Furthermore the tight bend to the south will be removed.</p> <p>The Applicant appreciates that the layout needs to accommodate the needs of large agricultural vehicles. Analysis of the tracking of large agricultural vehicles has been undertaken using vehicle information supplied by Messrs Irlam. This demonstrates that the proposed layout will not prevent such large vehicles from crossing from Rookery Lane onto Ashton Road and vice versa. This has been shared with</p>
--	--	--	---	---	---

					<p>Northamptonshire County Council who have confirmed that the proposals are acceptable given the occasional use and such movements are by no means unusual on the rural road network.</p> <p>Whilst a road safety audit has already been undertaken on the proposed layout, the detailed design will be subject to a second road safety audit in due course – followed by further audits following completion of the works.</p> <p>The Applicant believes the representation simply refers to the previous preference that no works be undertaken to this junction. The Applicant further understands that Messrs Irlam now agree with the proposal.</p>
7	NCC	11	<i>Temporary stopping up of streets</i>	<p>Please can the Applicant explain how these temporary stoppings up relate to the development or to matters ancillary to the development (bearing in mind the words of s120(3) of PA 2008); or give some other power for the SoS to include Art 11.</p>	<p>As identified in Document 8.1 (REP1-019), the article is derived from the model provisions and is included in most DCOs. The article includes suitable protections for users of the streets and allows conditions to be attached to any consent issued by the relevant highway authority.</p> <p>The Applicant considers that the power is related to the various highway works included in the</p>

					<p>authorised development. Article 11(1) explicitly refers to the authorised development.</p> <p>The inclusion of Article 11 goes to submissions previously made in respect of the DCO being a 'one stop shop' and ensuring that the undertaker is able to exercise such powers, subject to the appropriate consents from the relevant highway authority, without having to undergo a further, separate application for the temporary stopping up, diversion or alteration of streets.</p> <p>It is necessary to close for a limited period, i.e. temporarily stop up, sections of highway in order to safely construct the highway works.</p>
8	NCC	12 and Sch 5 Pt 1	Stopping up of Bridleway KZ10 and RZ1	<p>In the case of the stopping up of Bridleways KZ10 and RZ1 and their replacement by a crossing of the new Roade Bypass from points 18-21-20 do they not need to be done together as KZ10 and RZ1 currently connect together. Otherwise, on the moving of one without the other, it would terminate in what appears currently to be a field. See Doc 2.3D [APP-024]. Currently the crossing 18-21-20 is provided in two parts, one relating to each of the two stoppings up.</p>	<p>The same applies here as applies to Article 10 (see point 5 above).</p>
9	NCC	12 and Sch 5	Stoppings up where no	As to the stoppings up in Part 2, where no	

		<p>Pt 2</p>	<p><i>alternative is to be provided</i></p>	<p>alternative is to be provided, a judgment is needed on each of them as to whether no alternative is required. They are KZ19, RZ3 and RZ6.</p> <p>In the case of the stopping up of Bridleway RZ6 at the roundabout on Stratford Road it is not clear whether or not the new highway will reach all the way to Point 25, where the stopping up begins. This needs to be clarified.</p> <p>Please will the Applicant explain why an alternative is not required?</p> <p>Will horses and pedestrians be able to reach the carriageway?</p>	<p>The extent of stopping up of RZ6 is between points 25 and 26 on Document 2.3E (APP-025). It is proposed to stop up Bridleway RZ6 within the area of land that would be dedicated as highway. This means that the termination point of RZ6 will be at the point of the new highway boundary.</p> <p>No alternative is required because, as with the existing situation, the bridleway will continue to join with the highway.</p> <p>A route within the new public highway will be available and will connect the revised termination point of RZ6 to:</p> <ul style="list-style-type: none"> a) the carriageway to enable horses to join the carriageway as they do at present; and b) to the footway/cycleway that is proposed to connect into the wider network along the Roade Bypass, thus providing a significant improvement for pedestrians and cyclists using the bridleway.
--	--	--------------------	---	--	--

10	NCC	12 and Sch 5 Pt 3	<i>New PROWs to be created</i>	<p>The Explanatory Memorandum does not explain why these new PROWs are to be created. Please will the Applicant explain why, and what power in PA 2008 they submit enables the SoS to include this, and guide the ExA to the evidence in the application which shows that the power may be exercised in this case.</p>	<p>The justification for the new public rights of way (i.e. those listed in Schedule 5 Part 3) is found within the Transport Assessment (ES Appendix 12.1) and more specifically within the Walking, Cycling, Horse-riding Assessment and Review (WCHAR) assessment report (TA Appendix 18) and review report (TA Appendix 19). These new rights of way are therefore considered a necessary requirement of the overall development proposals. The Applicant will include the appropriate reference to the justification in the updated Explanatory Memorandum.</p> <p>The Applicant considers that the power to create PROWs is contained in s.120(3) PA 2008, in that it is a provision 'relating to the development for which consent is granted'. The power in s.120(3) is a wide power which allows the inclusion of a provision in the DCO which is "<i>relating to, or to matters ancillary to, the development for which consent is granted.</i>" The only purpose for which the provisions relating to the creation of PROWs are included in the DCO is to facilitate the development consented by the DCO. In the Applicant's view, it is therefore clearly</p>

				<p>Please will the Applicant explain how the PROWs listed in Sch 5 Pt 3 fall within the Works described in Sch 1.</p>	<p>related.</p> <p>Notably, s.120(3) does not contain a test of “necessary or expedient”, in contrast to s.120(5)(b) and (c). Regarding the link between the new rights of way in Schedule 5 Part 3 and the definitions of the works in Schedule 1, the Applicant will provide this in the updated Explanatory Memorandum.</p> <p>If it is desired, column (3) of Part 3 Sch 5 of the dDCO can be amended to include reference to the Works in which the relevant PROWs are contained. This amendment can be made in the next dDCO to be submitted for Deadline 4.</p>
11	NCC	12 and Sch 5 Pt 3	<p><i>New PROWs to be created: cycle track between points 9 and 10 on Doc 2.3C [APP-023]</i></p>	<p>The new cycle track between points 9 and 10 on Doc 2.3C [APP-023] however runs straight into and becomes a footpath at point 10. Looking at the illustrative masterplan [APP-066] an entrance into the site is anticipated there, with a 20 cycle rack space. A cycle track might therefore be acceptable as long as the entrance is there. But if it is not, the cycle path will not be needed but will still be available and there might be a temptation to ride on along the footpath. That might be an adverse impact to weigh under s104(7) against benefits.</p>	<p>Schedule 5 Part 3 provides that the detailed alignment of the cycle track between points 9 and 10 is to be agreed with the local highway authority. This will enable the detail to reflect the actual form of development.</p> <p>It is also proposed to add an extra element to Requirement 8 (Detailed design approval) whereby the design of public footpath and cycle track access points will be included so that, if it is felt necessary to include measures to deter access to the footpath by cyclists, this can be</p>

				<p>Please could the Applicant comment and address how the adverse impact could be avoided or mitigated?</p> <p>This cycle path is in the area of Works No 6 but does not appear to be described in Sch 1. Please can the Applicant comment and clarify? Is it necessary to describe it in Works No 6? (For clarity, the posing of the last question does not imply that the ExA has a view.)</p>	<p>secured. The same would apply to prevent vehicles using the cycle track. Thus no adverse impact would arise.</p> <p>The provision of cycle tracks is included in the "Further works" (paragraph (2)(b)) along with footways, permissive cycle tracks, bridleways and footpath linkages. This is because the precise alignment has not been fixed.</p>
12	NCC	Art 13 - accesses	<p><i>Art 13(5) permits some closures without substitutions. The justification is given in para 7.41 of the EM</i></p>	<p>Please will the Applicant explain why closing access H is acceptable? The adjacent land appears to be the development site (in which case would not the reason for the closure of E be applicable – the site is being developed and the access is not needed), but the reason refers to the adjacent landowner having a nearby alternative access?</p> <p>Please will the Applicant explain and clarify the reason no replacement is needed for J?</p>	<p>Closure of access H is needed because it is accessing the land that would form the main SRFI development site and the existing access is incompatible with the development proposals. Hence the Applicant agrees that the description should match that for access E and the description in an updated Explanatory Memorandum will be amended accordingly.</p> <p>Access J is another existing access into the land that would form the main SRFI development site. It is effectively replaced by M, but due to the significant difference in size, scale and use between J and M it is considered that in reality J is closed without substitution and M is a new access.</p>

				<p>The ExA is having difficulty seeing that the closure of AG on the Roade Bypass is explained in the EM.</p> <p>The same applies to AR (which includes a crossing of the WCML which may already be in existence). Note that Land Plan 2.1D [AS-019] has rights to be acquired on the line of this access, presumably so as to provide it (shaded blue). (There is also a khaki thick dashed shading on this route, which is not listed in the Legend to that plan. Please could the Applicant address that also?).</p> <p>And also to C on Inset 1A of Doc 2.3A [APP-021].</p>	<p>Access AG is a new means of access created from the bypass and is not an access to be closed. This can be seen from Document 2.3D [REP2-004] where the access is shown hatched turquoise (not shaded purple as for a closure) and cross reference is made to it in Schedule 6 Part 3. Hence it is not listed in the Explanatory Memorandum. AG is required in order to maintain access to farmland in this location i.e. the land beyond parcel 4/18 shown on the Land Plans.</p> <p>Again, AR is a new means of access provided rather than an existing access to be closed. AR is required to provide access to severed land on the southern side of the bypass and direct access from the bypass is not possible at this location. The length of AR is due to the need to connect the severed land to the end of the public highway on Bailey Brooks Lane. The khaki line on the land plan is a public right of way. It is the yellow line as shown on the plan and referred to in the legend. It may look more khaki than yellow on the blown up inset.</p> <p>Access C was originally incorrectly identified as a new access from Collingtree when in fact simply the</p>
--	--	--	--	---	--

				<p>Please can the Applicant fully explain AG, AR and C so that the SoS can know how they relate to the development and are within s120(3), or provide explanation and evidence of the use of some other power to which the Applicant directs the ExA.</p>	<p>status quo was being maintained. It has now been removed from the proposals.</p> <p>Therefore Access C was removed from Part 3 of Schedule 6 and from the relevant Access and Rights of Way plan (Document 2.3A (REP2-003)). The revised Access and Rights of Way Plan (Document 2.3A revision P6) was issued for Deadline 2 and reference to C has been removed from the dDCO (Document 3.1B, REP2-005), again issued for Deadline 2. Please refer to the Applicant's submissions for Deadline 2 (in particular, the explanation of the changes to Schedules 5 and 6 of the dDCO in the dDCO Tracker (page 16), Document 3.4A, REP2-007).</p> <p>The above explains the position in relation to AG, AR and C, and also the need for creation of AG and AR.</p>
13	NCC	Art 17(1)	<i>Art 17(1) revokes the Northampton Church Lane, Blisworth) Weight Restriction) Order 1971 which imposes a 3 ton (sic) restriction on Church Lane, Blisworth.</i>	<p>It is currently not clear to the ExA that Art 17(1) makes a provision which is "related to, or to matters ancillary to, the development" – the test in s120. The EM appears to give no explanation. Will Church Lane be covered by a new weight restriction? Please can the Applicant and</p>	<p>For the cross reference to where the need for weight restrictions is explained please see the response to point 14. below.</p> <p>There is an existing environmental weight limit on Church Lane in</p>

			<p><i>According to Google Maps Church Lane is a short lane of about 100 metres leading from Stoke Road to the High Street.</i></p>	<p>NCC explain the reason for this revocation, direct the ExA to the relevant evidence or otherwise explain the connection?</p>	<p>Blisworth. The new environmental weight restriction is to include Stoke Road in Blisworth which connects to the eastern end of Church Lane. As the two roads meet each other they need to be included within the same environmental weight restriction zone and this has been agreed with Northamptonshire County Council. This requires that the existing weight limit order is revoked and that the new restriction will include Church Lane. This can be seen by the extent of Zone B including Church Lane and there is a zone termination point at the High Street end of Church Lane. These are shown on the Traffic Regulation Plan (Document 2.6B APP-053).</p> <p>The Applicant will include appropriate references to the justification in an updated Explanatory Memorandum.</p>
14	NCC	Art 19	<p><i>There are zones, which the EM explains are shown on Doc 2.6C [APP-054] where a weight restriction of 7.5 tonnes is applied.</i></p>	<p>The ExA presumes that the reason is mitigation explained in the transport section of the ES. Please can the Applicant however explain and point the ExA to the relevant sections? Please can the Applicant also demonstrate that the Article satisfies the tests in s120(3)?</p>	<p>Paragraphs 8.63 to 8.66 of the TA (ES Appendix 12.1) and the HGV traffic flow plots provided at TA Appendix 43 demonstrate that, if unmitigated, there is potential for development HGV traffic to use unsuitable local roads when travelling to and from the south of the development; through Road, on Blisworth Road (Courteenhall); the unnamed road to Quinton, and on Main Road (Shutlanger).</p>

					<p>Paragraph 8.67 of the TA concludes that “...a scheme of HGV management measures to control and restrict HGV movements on the local roads, in combination with the proposed A508 Road Bypass, would be beneficial”. The Applicant also received feedback from members of the public as part of the Stage 2 consultation, who were concerned about the potential for HGV traffic from the Proposed Development to use Rowtree Road in East Hunsbury. A series of 7.5T environmental weight restrictions, as described at paragraph 4.40 of the TA, were therefore proposed. The principle and extent of the restrictions were agreed with Northamptonshire County Council. Paragraph 4.41 of the TA describes how the proposed 7.5T environmental weight restrictions would complement the existing 7.5T environmental weight restrictions that are in place on Watering Lane and Pury Road.</p> <p>Appropriate references to the justification for the weight limits will be included in an updated Explanatory Memorandum.</p> <p>The Applicant considers that the power to apply weight restrictions is</p>
--	--	--	--	--	---

					<p>contained in s.120(3) PA 2008, in that it is a provision 'relating to the development for which consent is granted'. The power in s.120(3) is a wide power which allows the inclusion of a provision in the DCO which is "relating to, or to matters ancillary to, the development for which consent is granted." The only purpose for which the provisions relating to the application of the weight restrictions are included in the DCO is to facilitate the development consented by the DCO. In the Applicant's view, it is therefore clearly related.</p> <p>Notably, s.120(3) does not contain a test of "necessary or expedient", in contrast to s.120(5)(b) and (c).</p>
15	NCC, Highways England	Art 20	<i>The EM says this is for agreements to construct highways and alterations in accordance with the DCO.</i>	<p>Please will the Applicant explain how these meet the "relate" test in s120. Without limiting the generality of this question, please consider particularly how the works in Art 20(1)(a) and (d) meet the "relate" test.</p>	<p>All of the matters listed in Article 20 are included to provide a power for further agreements relating to the authorised development to be entered into with the relevant highway authority.</p> <p>The Applicant has experience of needing to enter into such an agreement at East Midlands Gateway, as a direct result of the development authorised by the DCO because there were inadequate powers within the Highways Act 1980 to deal with the issue in question.</p>

					<p>The Applicant is therefore satisfied that the powers are “related” to the authorised development, however, if it would assist to be more specific it is suggested that the first line of Article 20 of the dDCO be amended with the words “related to the authorised development” being inserted after “agreements”.</p>
16	<p>Environment Agency, NCC, Highways England</p>	<p>Art 21</p>	<p><i>This Article allows for drainage into watercourses, public sewers and drains in connection with the carrying out or maintenance of the development. Consent is needed, not to be unreasonably withheld, from the watercourse etc owner. Consent is deemed after 28 days unless there is an express decision. There are other safeguards – see the terms of the Article for details.</i></p>	<p>Is this Article affected by s150 PA 2008? See also the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015/462 Sch 1 and the reference to the Water Resources Act 1991 Sch 25 paras 5 and 6. Please will the Applicant supply evidence that s150 does not apply, or direct the ExA to where the consent under s150 can be found.</p>	<p>The Environment Agency has confirmed that it is content with Article 21 - see paragraph 3.8 of SoCG (Document 7.12, REP1-015).</p> <p>Discussions in relation to Article 21 are ongoing with NCC and Highways England.</p> <p>Section 150 provides that a DCO may include provisions the effect of which is to remove a requirement for a prescribed consent or authorisation to be granted only if the relevant body has consented.</p> <p>Prescribed consents are identified in the 2015 regulations referred to in the question. They are set out in Part 1 Schedule 2 of those regulations.</p> <p>Schedule 2 refers to a consent under byelaws made by the Environment Agency under paras 5 or 6 of Sch 25</p>

					<p>of the Water Resources Act 1991.</p> <p>There were byelaws issued under the WRA 1991 which relate to the Order Limits (Land Drainage and Sea Defence Byelaws Anglian Region October 2008).</p> <p>However, the Applicant has established that all the requirements in these byelaws for a person to obtain the Environment Agency's consent were repealed by the Environmental Permitting (England and Wales) (Amendment) (No. 2) Regulations 2016. The byelaws introduced a requirement to obtain an environmental permit for certain flood risk activities. That requirement is now contained in the Environmental Permitting (England and Wales) Regulations 2016.</p> <p>Article 21(8) makes it clear that Article 21 does not override the need for any environmental permit.</p>
17		42	<i>Defence to statutory proceedings in nuisance</i>	<p>The ExA notes that this is based on the model order. Would the Applicant please comment on the necessity for this given Article 5 and the decision of the House of Lords in Allen v. Gulf Oil Refining [1981] A.C. 1001?</p>	<p>The 1981 House of Lords decision is authority for the proposition that development carried out pursuant to a statutory powers confers immunity for any nuisance which might be the inevitable result of exercising those powers.</p>

					<p>The Applicant feels that it is far preferable for the position in relation to nuisance to be expressly dealt with in the DCO rather than being left to case law which is capable of being distinguished or interpreted differently in the future. This provides certainty for the Applicant and any potential claimant. For this reason Article 42 is included in this dDCO, as it is in virtually every DCO.</p>
18	Natural England	43	<i>Felling or lopping of trees and removal of hedgerows</i>	<p>Is this Article affected by s150 PA 2008?</p> <p>The list in the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015/462 includes s.16 of the Wildlife and Countryside Act 1981, which is a power to grant licences for various activities to do with fauna and flora. The ExA notes that Natural England has not raised any objection. How does Art 43 relate to s.16? Is s16 abrogated by anything in the DCO as a whole?</p>	<p>As the ExA are aware, Article 43 is another commonly used article. The purpose of the article is clearly not to dis-apply the need to obtain any licences relating to the protection of flora and fauna. The ExA are concerned this might be an unintended consequence.</p> <p>The ExA are concerned that the power in Article 43 may be a provision “the effect of which is to remove a requirement for a prescribed consent” which, by virtue of s.150, would need the consent of Natural England.</p> <p>That interpretation of the power in Article 43 is new to the Applicant.</p> <p>In so far as any physical works are capable of impacting on flora and fauna then the consequences of the interpretation are wider than Article 43</p>

					<p>and could apply to all powers to carry out works contained within the order.</p> <p>Further consideration will be given to this point (other DCO may have addressed it), however one possible outcome would be the inclusion of an overriding provision – perhaps within Article 46 – making it clear that any power to carry out works within the order does not override the need to obtain any of the licences required to be obtained under the provisions of section 16 of the Wildlife and Countryside Act 1981. This would be similar to the carve out in Article 21(8) relating to the need to obtain an Environmental Permit.</p>
19	Environment Agency	46(1)(a)(formerly 46(3))	“(a) Regulation 12(1)(a) (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016 () in relation to the carrying on of a relevant flood risk activity for the purpose of the works” does not apply	Will the Applicant please explain how Reg 12 relates to the development (so that Art 46(1)(a) is within s120(5) PA 2008 and direct the ExA to where evidence of the consent of the Environment Agency as required by s150 PA 2008 and the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015/462 is to be found, or provide such consent?	<p>The Applicant has reviewed the provision and, having regard to the acceptance that environmental permits may be required and would need to be applied for (as contained in Article 21(8)), is content to delete this provision.</p> <p>Article 46 (1)(a) and 46 (2) will be deleted in the next dDCO to be submitted for Deadline 4.</p>
20		46(1)(b)(formerly 46(3))	“(b) the provisions of any byelaws made under, or having effect as if made under,	(a) Will the Applicant please explain how these paragraphs of Sch 25 WRA 1991 relate to the development (so that Art 46(1)(b) is within PA s120(5).	<p>See response to item 16 above.</p> <p>Given that there is no intention to dis-apply the Environmental Permitting</p>

			<i>paragraphs 5, 6 or 6A of Schedule 25 (byelaw- making powers of the authority) to the Water Resources Act 1991” do not apply</i>	(b) Will the Applicant please explain who are the “appropriate agencies” under paragraphs 5 and 6 of Sch 25 WRA 1991 and direct the ExA to where provide evidence of the consent of the Environment Agency as required by s150 PA 2008 and the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015/462 can be found, or provide such consent?	Regulations, Article 46(1)(b) will be deleted in the next version of the dDCO to be submitted for Deadline 4 .
21		46(1)(c) (formerly 46(3))	<i>“(c) section 23 (prohibition of obstructions, etc. in watercourses) of the Land Drainage Act 1991() in relation to watercourses for which Northamptonshire County Council is the drainage board concerned;” does not apply</i>	(a) Will the Applicant please explain whether there are any such watercourses to which the development relates, or whether s.23 relates to another matter for which provision may be made in the order? That is needed if s120(5) (a) is to authorise the provision. (b) s23 of the Land Drainage Act 1991 is listed in Schedule 2 Pt 1 of the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015/462 and therefore s150 applies. Please will the Applicant direct the ExA to where evidence of the consent of the drainage board can be found, or provide such consent?	There are watercourses to which section 23 applies. One outcome of ongoing discussions with Northamptonshire County Council regarding the drafting of Article 21 is NCC being prepared to give consent for the purposes of s.150(1) in relation to (s.23) because their interests will be adequately protected. However, if consent is not forthcoming Article 46(1)(c) will need to be deleted.
22		46(7) (formerly 46(9))	<i>“(7) Schedule 14 (miscellaneous controls) to this Order which makes provision applying/ modifying and excluding statutory</i>	(a) The Article says these relate to matters for which provision may be made by the order. Please will the Applicant to confirm this statement and explain the connection so as to demonstrate with evidence that there is a power for the SoS to make Art	(a) This provision adopts the approach taken in Thames Tideway Tunnel DCO. It is included to ensure that the statutory provisions referred to do not constrain the ability to carry out the authorised works and is

			<p><i>provisions which relate to matters for which provision may be made by this Order has effect”</i></p>	<p>46(7), and state which power is being relied on?</p>	<p>included by virtue of s.120(5)(a).</p> <p>Unlike, s.120 (5) (b) or (c) there is no test of necessity or expediency. All that is required is for the statutory provision to “relate to any matter for which provision may be made in the order”.</p> <p>The disapplication of the statutory provisions is with the intent that the power given in the order to carry out certain works are not negated by controls under other legislation which might constrain those works in circumstances where:</p> <ul style="list-style-type: none"> - the acceptability of the works has already been adjudicated on; or - the control of the works concerned by virtue of the statutory provisions is rendered superfluous by virtue of controls contained within the DCO. <p>So, for example, Sch 14 para 2 dis-applies parts of the Highways Act 1980. S. 141 of the HA 1980 may conflict with the detail of the landscaping to be agreed under the requirements and Sch 13 protective provisions and s.167 is unnecessary because any retaining walls included in the authorised works are governed</p>
--	--	--	--	---	---

				<p>(b) Please will the Applicant state whether s150 does or does not apply to Art 46(7) and, if it does, point the ExA to evidence of the relevant consents or provide the consents?</p>	<p>by detailed approvals to be obtained under the requirements and protective provisions.</p> <p>(b) None of the statutory provisions referred to in Schedule 14 include prescribed consents or authorised consents as set out in Part 1 of Schedule 2 to the Infrastructure Planning (Interested parties and Miscellaneous Prescribed Provisions) Regulations 2015. Therefore s.150 does not apply.</p>
23	NCC, Highways England	2	Definition of HGV	<p>The Article 2 definition Uses 7.5 tonnes. But other websites including https://www.gov.uk/government/publications/guide-to-lorry-types-and-weights HGV = vehicle over 3,500 kgs, i.e.3.5 tonnes. Please will the Applicant, Highways England and the County Council clarify and if 7.5 tonnes is intended explain and justify, so as to avoid any confusion.</p>	<p>The 7.5 tonne limit is the usual weight limit applied to HGV in this situation and it is definitely intended. It equivalent to the definition of a heavy commercial vehicle within Section 138 of the Road Traffic Regulation Act 1984.</p> <p>It is also the limit used for environmental weight restrictions (Article 19).</p> <p>As mentioned in Document 3.4A, (REP2-007 (page 1)) a change to the definition has been agreed with the County Council to ensure that vehicles which might be carrying very low weight goods (but are capable of carrying 7.5 tonnes) are captured by the definition.</p>

			Explanatory Memorandum		
24		1.2	<i>States the DCO has been drafted in accordance with the October 2015 version of Advice Note 15. Since then, in July 2018, a new version was issued.</i>	Please will the Applicant confirm that the DCO has been drafted in accordance with the new version?	This is confirmed. As noted in Document 8.1 (REP1-019) and Document 3.4A (REP2-007), some amendments have been made to accord with the new version of AN15, issued since first dDCO was submitted with the Application in May 2015.
25		3.2	<i>This says the Main Site is the area for Works 1-7. But the August and November drafts of the DCO definition of Main Site says it is Works 1-6.</i>	Will the Applicant please explain which it is to be?	The latest dDCOs are correct. The Explanatory Memorandum will be corrected when updated.
26		3.2	<i>This also says the highways works are Works 8, 9 and 11 – 17. But the August and November drafts of the DCO say they are 7, 8, 9 and 11-17.</i>	Will the Applicant please explain which it is to be? (Work 7 is the work on the A508 to create the new access, temporary access, widening of the A508 up to Jn 15 and associated work)	The latest dDCOs are correct. The Explanatory Memorandum will be corrected when updated.
27		All		Given the above questions on powers, and bearing in mind also para 1.4 of Advice Note 15, please will the Applicant update the Explanatory Memorandum to explain, for each and every provision of the DCO, which power in the PA is being used to make that provision, having regard also to, for example, s120 and all its subsections,	The Applicant will provide an updated Explanatory Memorandum for Deadline 5 .

				s.150, and any other limits on the powers to make the DCO and its provisions? (The ExA appreciates that in many cases the provisions have appeared in other DCOs but that is not necessarily an assurance of validity.) Please can the update also include an explanation of how the tests for the powers in PA 2008 being used to make this DCO are met?	
			Section 106 Agreement		
28	SNDC, NBC and NCC			Please will the relevant planning authorities and the County comment on the fact that some parts of the main site are not to be bound by the s106 agreement? Please will those of them who are to be parties to the s106 agreement (currently SNDC and NCC) please confirm that they are satisfied, after proper consideration, that the development cannot be constructed, occupied or used by any person without compliance with the obligations entered into by the First Owners, the Second Owner and the Developer in the s106 agreement? Should any other parts of the land over which the proposed development is to be carried out (whether on or off the Main Site) be bound by the s106 agreement and if so, why?	Discussions have progressed with both the County Council and District Council and the s.106 is to be re-drafted, with some matters to be dealt with by amendments to requirements instead. A revised draft s.106 agreement will be submitted with the next version of the dDCO for Deadline 4 . The parts of the main site proposed to be bound by the Section 106 Agreement are those parts which are currently within the control of the Applicant. As with many DCO applications, it is not possible to bind the entirety of land required to secure the s.106 obligations prior to the DCO being approved because some of the land has yet to be acquired. The DCO

					<p>application itself includes an application for compulsory powers to acquire that land.</p> <p>Equally, it is not necessary for all the land within the "order limits" to be bound since the order limits do not equate to a conventional planning application area but are related instead to the contents of the works plans and land plans, being land "affected by the development". The limits therefore include land such as parts of existing roads, railway and also include the proposed Roade Bypass. These areas are affected by the Application but are not required for compliance with the obligations in the Section 106 Agreement.</p> <p>Binding a substantial part of the main site is sufficient secure payment the payment of contributions and occupier obligations which will be bound within the Section 106 initially. Notably, the vast majority of the land on which the warehousing will be located is bound.</p> <p>This is the same approach as was taken at East Midlands Gateway.</p>
--	--	--	--	--	--