

Northampton Gateway Rail Freight Interchange Order 201X

Northamptonshire County Council's Response to ExA's Schedule of Questions on the Draft Development Consent Order

Question No.	Person, in addition to the Applicant to whom the question is directed	Part of DCO	Drafting example (where relevant)	ExA Question	
1.	NCC	Art 2,	definition of HGV referring to operational rather than max gross weight	The Applicant's reply to ISH3:23 was that 7.5 tonnes maximum gross weight is the usual weight applied to HGV. What is the difference between maximum gross weight and operational weight? As the definition is to be used for weight restrictions, the ExA is anxious that this may cause confusion and difficulty for drivers who are not acquainted with Art 2 of the DCO.	It would be NCC's preference to see the definition refer to maximum gross weight (as the intention is to apply to all vehicles capable of carrying 7.5 tonnes rather than the operational weight at the time of transit).

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2.	NCC	Art 2	Definition of Public Transport Strategy	Will NCC please state whether the definition accords with the document they were expecting to be used as shown in the draft s.106 agreement (Doc 6.4A [REP1003])	Yes NCC is happy with this definition.
3.	NCC, HE	Art 17	Revoked traffic regulation orders	The ExA asked at ISH1:25 for an SoCG with HE and NCC on this. Has this been reached and submitted? The ExA cannot see it on the Examination Library List.	NCC confirms that this is covered in the Statement of Common Ground (document 7.1C).
6.	NCC	46(1)(a)	Disapplication of s.23 Land Drainage Act 1991	Has this been agreed yet? What is the dispute?	<i>The additional wording included in Article 21(5) of the draft DCO (document 3.1C has enabled NCC to agree to the disapplication of Section 23.</i>

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7.	NCC, SNC, NBC	46(4) and Reqts 3(1)(g) and 8(2)(n)		These deal with advertisements in lieu of the normal advertisement control regime. Please will the County Council and RPAs say if they are content with the provisions and, if not, propose any modifications they feel are necessary, in accordance with the necessary policy tests?	NCC is content with this provision.
13.	NCC, SNC, NBC	Reqt 3(4)	“unless the timing of the provision of the rail terminal is otherwise agreed in writing with the relevant	To be an SRFI and therefore an NSIP the project must be capable of handling at least four goods trains per day. Please comment on why this wording is justified (or not). The ExA will wish to hear final	NCC has been able to see the Applicants response to this question prior to the date of submission and agrees with its response. It is noted that the Applicant has imposed requirements for the rail terminal to be available prior to occupation of the warehouses, and this is welcome, but also recognises the need for flexibility (whilst still complying with the NNNPS) and therefore is content with the wording in Requirement 3(3).

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			planning authority”	submissions on this at ISH5	
14.	NCC, SNC, NBC	Reqt 3(4)	Following the provision of the rail infrastructure no rail infrastructure must be removed which would impede the ability of the rail terminal to handle four goods trains per day unless otherwise agreed in writing by	The ExA notes the Applicant’s response to ISH3:2 and the comments on this in the Changes Tracker. The ExA is currently minded to include this Reqt 3(4), but is willing to hear arguments from the named parties in column 2 at ISH5. As the Applicant has set out its position already, it would be helpful to have the views of NCC, SNC and NBC in writing at Deadline 5, which may make the discussion at ISH5 on the dDCO on	NCC is happy to agree the wording in Requirement 3(4) as it can understand that there may be need in the future to remove rail infrastructure in order to develop/expand railway provision or to cope with any changing needs of the rail operator. As the RPA’s have the power to veto any removal (as their agreement must be obtained) NCC is happy that each application will be considered on its merits should the situation arise.

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			the relevant planning authority	13 March 2019 more focussed and shorter.	
15.	NCC	Reqt 4(4)		Will the County Council please comment on whether reasonable endeavours meets its requirements. Will both the Applicant and NCC reflect on the vagueness inherent in the phrase? In earlier responses on the same phrase the Applicant readily accepted that there would be difficulties in enforcing on that test.	NCC accepts and supports the intention of the Requirement. However it also acknowledges the limitations on the Applicant in ensuring that all operators comply. Therefore NCC believes that it would be unreasonable to expect more than “reasonable endeavours” which is measurable for the purposes of enforcement (if the Applicant did nothing to encourage the use of Euro VI vehicles this would be an enforcement trigger where the Applicant would be encouraged to do more).
16.	NCC	Reqt 4		Will both the Applicant and the County Council please explain how they consider Reqt 4(3) – (7) meets the legal and policy tests for	NCC has considered the requirements of Section 120 of the Planning Act 2008 and the guidance in NNNPS on the imposition of requirements. NCC is of the view as follows:- Requirement 4(3) – It is NCC’s view that this Requirement complies with the requirements in NNNPS. The Public Transport

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				Requirements. What do they consider are the effective sanctions for breach?	<p>Strategy clearly sets out the requirements for compliance and appropriate enforcement action would be taken if this is not followed.</p> <p>Requirement 4(4) – NCC believes that this Requirement does fall within the guidance given in the NNNPS. It is clear that the Applicant should use its reasonable endeavours to maximise the use of such vehicles but also recognises that this cannot be an absolute requirement. Enforcement would be possible in line with Part 8 of the Planning Act.</p> <p>Requirement 4(5)(6) and (7) – NCC considers that all three of these requirements comply with the guidance in NNNPS all are precise and it is possible to enforce against identifiable individuals.</p>
18.	NCC	Reqt 8(2)(e)	Electrical charging points	Please will NCC confirm (or otherwise) that this, which is part of mitigation (see Applicant's response to ExQ1.1.33) is agreed with them.	NCC confirm that this is agreed.

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20.	NCC	Reqt 18		Please will NCC confirm (or otherwise) that this Reqt now conforms with the SoCG between it and the Applicant, and is acceptable.	NCC confirms that this is agreed and acceptable.
36.		Sch 7		In its reply to ISH1:80 (Doc8.1 [REP1-019]) the Applicant indicated that it would seek the SoCG confirming agreement to this classification from HE and NCC. Has that SoCG been obtained and submitted (or perhaps the ExA has missed it)? Please could the Applicant clarify?	Please see the statement of common ground between NCC and the Applicant (document 7.5A)
37.		Sch 8		In its reply to ISH1:80 (Doc8.1 [REP1-019]) the Applicant indicated that	Please see the statement of common ground between NCC and the Applicant (document 7.5A)

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				it would seek the SoCG confirming agreement to this classification from HE and NCC. Has that SoCG been obtained and submitted (or perhaps the ExA has missed it)? Please could the Applicant clarify?	
44.	NCC	Sch 13 Pt 3 - Protective provisions for NCC		The ExA understands from the SoCG with NCC and the DCO Changes Tracker Doc 3.4B [REP4-005] that the only issues between the Applicant and NCC on the protective provisions are:	<p>The County Council's position was stated in its Written Representations Document REP1-035. However in summary and for clarity:-</p> <p><i>(i) Scope of Undertakers liabilities</i> The scope of the Undertaker's responsibilities during the maintenance / defects correction period is clearly set out in the County Council's <i>Notes for Guidance for Developers</i> on both Section 38 Agreements and Section 278 Agreements confirming that developers should be responsible for all traffic damage whether accidental or otherwise. The DfT's <i>Advice Note – Highway Adoptions</i></p>

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				<p>(i) the scope of the undertaker's liability during the Defects and Maintenance Period, and</p> <p>(ii) the duration of the Defects and Maintenance period.</p> <p>Please will the Applicant explain, using the DCO Doc 3.1C, what changes are necessary to para 6 of Sch 13 Pt 3 (Protective Provisions for NCC) to make it acceptable to the Applicant.</p> <p>Please will the NCC explain, using the DCO</p>	<p>https://www.gov.uk/government/publications/adoption-of-roads-by-highway-authorities) supports this position.</p> <p>In addition, the Undertaker will remain the street works manager for the duration of the defects/maintenance period and would be entitled to make claims from insurance companies to cover the cost of any remedial work required due to accidental damage.</p> <p><i>(ii) Duration of defects and maintenance period</i> The County Council's standard defects and maintenance period is 24 months and has been since July 2016. The requirement is set out in the County Council's Notes for Guidance for Developers for Section 38 Agreements and Section 278 Agreements.</p> <p>In summary the reasons for the 24 month period include, (in no particular order): -</p> <ul style="list-style-type: none"> • The works will be subject to Road Safety Audits in accordance with standard GG119 (Design Manual for Roads and Bridges). This includes a Stage 4 Road Safety Audit to be carried out using 12 months of validated post highway scheme-opening road traffic collision data. In order that 12 months of data can be collected, analysed and any necessary road safety works identified, designed, agreed and implemented within the

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				<p>Doc 3.1C [REP4-002], what changes are necessary to para 6 of Sch 13 Pt 3 (Protective Provisions for NCC) to make it acceptable to NCC.</p> <p>The ExA will wish to hear concise final submissions from the Applicant and NCC on these issues at ISH5 on 13th March 2019.</p>	<p>defects and maintenance period, the County Council considers that a 24 month period is required.</p> <ul style="list-style-type: none"> • The majority of the highway works are to be undertaken are on A roads and the likelihood of remedial action being required is high due to the scale of the works proposed. • The works need to go through sufficient heat cycles of seasons and with recent variations in winter and summer temperatures and conditions, to ensure any latent defects become manifest, the County Council considers that two such seasonal cycles ensures the works carried out are robust. • The County Council has experience of surface irregularities occurring adjacent to structures from settlement beyond 12 months post opening. • This development is extensive and construction movements would extend beyond a 12-month period with the additional risks of construction related damage which the County Council does not consider the public purse should meet. • The 24 month period also reflects and falls in line with the guarantee period quoted within the Department for Transport's <i>Code of Practice Third Edition (England) April 2010 New Roads and Street Works Act 1991 Specification for the Reinstatement of Openings in Highways</i> which references 2 years although it is noted that for deep excavations a guarantee period of 3 years should be required. Reference is also made to the Department

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					for Transports <i>Advice Note – Highway Adoptions</i> which confirms that maintenance periods may be longer than 12 months. It also confirms the scope of the developer's responsibilities during such periods.
49.		Schedule 15	Membership Role and Protocol of the STWG	Please will the County Council and HE confirm that they agree these provisions. Do they require anything in addition?	NCC confirm that these provisions are agreed.
50.		Schedule 15 (g)		Should the Northampton Gateway Transport assessment be more precisely defined by reference to the Environmental Statement?	NCC has been fortunate to see the additional wording added to the draft DCO by the applicant and is happy with this amendment.

