

SNC - Final Comments on draft DCO (Doc 3.1E)

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Part 1 - Preliminary - Interpretation p. 2	Definition of 'maintain'	<p>The definition provided currently includes the words “clear, alter, refurbish or improve”. The inclusion of these activities extends the scope of maintenance beyond the commonly accepted definition of ‘maintain’.</p> <p>The definitions provided in the Cambridge, Oxford and Collins English dictionaries respectively are set out below.</p> <p>“ to keep a road, machine, building, etc. in good condition: https://dictionary.cambridge.org/dictionary/english/maintain</p> <p>"Keep (a building, machine, or road) in good condition by checking or repairing it regularly". https://en.oxforddictionaries.com/definition/maintain</p> <p>if you maintain a road, building, vehicle, or machine, you keep it in good condition by regularly checking it and repairing it when necessary. https://www.collinsdictionary.com/dictionary/english/maintain</p> <p>The definition within the dDCO would allow for works for ‘alteration’, ‘clearance’, ‘refurbishment’ or ‘improvement’. It however provides no parameters to define the extent of these activities; these would thus be open to interpretation, it is therefore ambiguous.</p>

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		<p>To what extent can a building or structure be altered ?</p> <p>Does 'clear' enable the demolition of a building or the removal of a structure?</p> <p>Does 'refurbish' enable the removal of cladding from an entire building and replacement with different materials ?</p> <p>What is an 'improvement'? Is this the replacement of a piece of equipment with a similar but more efficient version, or the replacement of fabric of a building to provide a more energy efficient building ?</p> <p>Taken together do clear, refurbish and improve enable the removal or the re-construction of a building or structure in accordance with the original parameters within the DCO ?</p> <p>The removal of the words 'alter',' clear', 'refurbish' and 'improve' from the definition would improve clarity by ensuring the definition is in accordance with the commonly accepted definition of maintain. This would not compromise the ability to maintain the development.</p>
<p>SCHEDULE 1 AUTHORISED DEVELOPMENT PART 1 NSIP: THE CONSTRUCTION OF A RAIL FREIGHT INTERCHANGE Regulation 46 (4)</p>	<p>Works No.4 (5) Works No6 (3) References to advertisements within areas S1 and s2 shown on the parameters plan.</p>	<p>References to the display of advertisements in Works No.4 and Works No.6 in the draft DCO should be omitted.</p> <p>No satisfactory argument is made to justify the inclusion within the DCO of works for the display of advertisements within areas S1 and S2. The Town and Country Planning (Control of Advertisements) (England) Regulations</p>

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	<p>46(4) dis- applies Regulation 4 of the T &CP Control of Advertisements) (England) Regulations 2007.</p>	<p>2007, as amended, provide s the appropriate regime for the control of advertisements and this should extend to all parts of the development site. The existing regulations provide the appropriate procedure to ensure the impact of advertisements on amenity and highway safety can be properly assessed.</p> <p>The location of site S2 will be visible from the M1 motorway. The display of advertisements in this location may not be desirable in principle, given the sole purpose will be to attract the attention of users of the motorway.</p> <p>The extent to which an advertisement will impact on highway safety must be assessed through consultation with the relevant highway authority. The details of the proposed signs and the appropriateness of the location are both significant to assessment of the impact on highway safety.</p> <p>It cannot be considered to be in the interest of proper planning to grant planning permission in principle for development where there is a reasonable prospect that whatever the eventual form this will be considered to give rise to an unacceptable impact for highway safety.</p> <p>This situation would be avoided by ensuring the appropriateness of the location for advertisements can be considered at the same time as the detail of the signs. The Town and Country Planning (Control of Advertisements) (England) Regulations 2007 provides the appropriate regime for this.</p> <p>Schedule 2 Part 1 Requirement 8(2)(n) makes provision for details of</p>

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		<p>advertisements within location S1 and / or S2 to be submitted to an approved in writing by the relevant planning authority. Regulation 46 (4) dis-applies Regulation 46 (4)of the T &CP Control of Advertisements) (England) Regulations 2007 with respect to locations S1 and S2.</p> <p>If the references to Works for advertisements in locations S1 and S2 are omitted from the draft DCO then Regulation 46 (4) and the requirement at 8(2)(n) is no longer required and should be omitted . If the provision is retained with respect to location S1 then the Regulation 46 (4) and Requirement 8(2)(n) should be amended to refer to S1 only.</p>
Requirement 8 (1)	Amendment to wording to clarify meaning and purpose.	<p>Revise to read as follows :</p> <p>8.(1) “The details of each component of the authorised development on the main site referred to in requirement 3 must be in accordance with the parameters plan and the principles set out in the design and access statement. The design and access statement can may be reviewed and updated by the undertaker. in agreement with A revised design and access statement will not take effect unless it has been submitted to and approved in writing by the relevant planning authority”.</p>
Requirement 9	Amendment to wording to clarify meaning and purpose.	Is it envisaged that the procedure for the approval of alterations to approved details will differ from the procedure set out in Requirement 8(2)

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		<p>(a) to (u) for the approval details ? If so, it is not clear what procedure is to be followed for the approval of ‘alterations’ .</p> <p>Requirement 8(2) (a) to (u) provides for details to be submitted to and approved by the relevant planning authority. Following approval of details ,if alteration is required, then a further application seeking approval of the revised details can be submitted for approval under Requirement 8(2) (a) to (u).</p> <p>The words “from time to time” should be omitted. It is not clear is meant by this. Once details are approved then these could be implemented.</p> <p>Requirement 9 would be clearer if it read as follows: (1) “Details approved pursuant to Requirement 8(2) (a) to (u) may be amended. Amended details must be submitted to and approved in writing by the relevant planning authority. (2) The authorised development must be carried out in accordance with details approved in writing by the relevant planning authority.”</p>
Requirement 11	Amendment to wording to clarify meaning and purpose.	<p>11.—(1) The authorised development must be carried out in accordance with the landscape and ecological management plan (LEMP). The LEMP may be subject to alteration with the agreement with the relevant planning authority. A revised LEMP will not take effect unless it has been submitted to and approved in writing by the relevant planning authority.</p> <p>The purpose of Requirement 11(2) is unclear. It is presumed the purpose is to ensure details of the management and maintenance of the green</p>

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		<p>infrastructure can be approved.</p> <p>Amending the wording to read as in red below would make this clearer</p> <p>(2) The ongoing management and maintenance of the green infrastructure (as described in the landscape and ecological management plan) following their completion must be maintained in accordance with the principles set out in the landscape and ecological management plan. A Management and Maintenance Schedule to provide details of the management and maintenance to be undertaken to maintain the green infrastructure with relevant timings must be submitted to and approved in writing by the relevant planning authority. carried out as approved. must be agreed in writing with the relevant planning authority prior to the occupation of any warehouse,. The approved schedule shall then be implemented.</p>
Requirement 12 (2)	Amendment to wording to clarify meaning and purpose.	<p>As drafted this only requires each revised PCEMP to be submitted for approval in writing; this drafting does not expressly require the submitted document to be approved in writing by the relevant planning or highway authority.</p> <p>The following revised wording for Requirement 12(2) would remedy this.</p> <p>Each A P-CEMP is to may be reviewed and updated if necessary to address unacceptable impacts arising from construction works. Each A revised P-CEMP must be submitted to and be approved by the undertaker for approval in writing by the relevant planning authority or the relevant highway authority where the P-CEMP relates to the highway works. All construction works must be carried out in accordance with the relevant</p>

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Requirement 15	Amendment to wording to clarify meaning and purpose.	<p>approved P-CEMP as approved.</p> <p>15.—(1) Prior to the commencement of each component of the authorised development on the main site which includes permanent lighting, details of the proposed permanent external lighting, in that phase, including hours of illumination, must be submitted to and approved in writing by the relevant planning authority (following consultation with Northampton Borough Council or any successor authority). The lighting details must accord with the principles established in the lighting strategy.</p> <p>Requirement 15(2) would be clearer as follows :</p> <p>15(2) (a) The approved lighting scheme ay be reviewed by the undertaker. A revised lighting scheme will not take effect unless it has been submitted to and approved in writing by the relevant planning authority”.</p> <p>15(2)(b) The approved lighting scheme must be implemented and maintained at all times. No external lighting other than that approved may be installed.</p>
Requirement 32	The outcome this seeks i.e. to protect another proposed development is inappropriate for to a requirement within this specific DCO.	<p>The final decision of whether to permit a connection to the rail network is a matter for Network Rail, the body responsible for operation of the rail network, in doing so it will necessarily rely on in-house technical expertise and knowledge of the railway assets.</p> <p>A decision as to whether a proposed rail connection would preclude the making another rail connection not only requires the assessment of the details of the proposed rail connection but also an assessment that the</p>

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		<p>required second connection could be made. The requirement does not require the applicant to demonstrate the second rail connection referred to is feasible.</p> <p>In the absence of details to demonstrate the feasibility of the second rail connection, would the decision maker be expected to seek a design of a possible second rail connection. This would be unreasonable. Not least the local planning authority cannot be expected to incur the expense of producing a design for the second rail connection.</p> <p>The issue of details could be resolved if the requirement makes clear that the details submitted must demonstrate how the second rail connection could be achieved.</p> <p>However even if the LA has details to demonstrate that a second rail connection is possible, the final decision as to whether a second rail connection would be permitted would rest with Network Rail, so without confirmation from Network Rail that the second connection is feasible, the LA could have no confidence in making a decision.</p> <p>The Requirement is thus dependent on the engagement of the rail network operator to be effective, however the requirement includes no reference to this critical role for Network Rail.</p> <p>PINs Advice Note 15 in paragraph 15.2 is clear that <i>“The law and policy relating to planning conditions 9, imposed on planning permissions under the TCPA1990, will generally apply when considering Requirements to be imposed in a DCO in relation to the terrestrial elements of a proposed NSIP. Requirements should therefore be precise, enforceable, necessary, relevant</i></p>

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		<p><i>to the development, relevant to planning and reasonable in all other respects”.</i></p> <p>The additional requirement being proposed:</p> <ul style="list-style-type: none"> • is not necessary for the Northampton Gateway development proposed, • It is not clear at this stage whether it may be relevant to planning, but it is not relevant to the proposed development, • the requirement does not ensure all the details required would be provided, it is therefore not precise, • the LA could not take enforcement action against itself, it thus not enforceable, • without the engagement of Network Rail, the LA would be unable to assess the feasibility of a second rail connection, it could have no confidence that a connection would be permitted, it is thus not reasonable in all other respects. <p>Government guidance is clear “Any proposed condition that fails to meet any of the 6 tests set out in the NPPF 2017 should not be used”.</p>
<p>SCHEDULE 2 PART 2 PROCEDURE FOR APPROVALS ETC. UNDER REQUIREMENTS</p>	<p>Paragraph 1</p>	<p><u>Schedule 2 – Part 2 Procedure for Approvals pursuant to Requirements</u></p> <p>Paragraph 1 - Time periods for determination of applications for approvals of details pursuant to Requirements</p> <p>1. The draft DCO sets out a determination period of 42 days. This draws</p>

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		<p>on guidance set out in PINS Advice Note 15. It is not clear from the advice Note how these periods were determined. The suggested periods are considerably shorter than those determined within general planning provisions as being appropriate for proper determination.</p> <ol style="list-style-type: none"> 2. Details required to be submitted in Requirement 2 are effectively tantamount to reserved matters pursuant to an outline planning permission. The determination of such matters must be subject to a robust and inclusive consideration that should where appropriate include relevant interested parties. The short time scale proposed would constrain this. 3. Under the Town & Country Planning Acts and Regulations the time period allowed for the LPA to determine an application for approval of reserved matters is 8 weeks, 13 weeks for major development or 16 weeks for EIA development. The time period for approval of details required by condition is 8 weeks. See Part 5 - 27(2) & Part 6 34(2) of the Town and Country Planning (Development Management Procedure) (England) Order 2015. 4. The timescales proposed seem restrictive compared to the periods allowed within general planning provisions and particularly with respect to facilitating consultation, statutory or otherwise, and to resolving any issues that may emerge. Whilst the provision allows for extension of time by agreement the appropriate period should be the default period and not subject to further agreement. which may

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		not be forthcoming.
	Paragraph 2 Further Information	<p>5. This sets out a process related to requests by the LPA for further information pursuant to applications submitted for approval pursuant to requirements within the DCO.</p> <p>6. Paragraph 2 (2) sets out a period of 10 working days within which the LPA to must assess whether it requires further information and then to request this. Where consultation with relevant consultees is necessary this is relatively a short period for consultations to be sent, for consultees to assess details and respond to the relevant planning authority who then will need to request any further details required. This will require all involved to prioritise this work above other work and will increase the burden on available resources.</p> <p>7. The provisions provide no opportunity for the submission of details to address issues that arise from consultations or that may have been inadvertently overlooked in the original submission.</p> <p>8. It is not clear what this provision is designed to achieve it is however foreseeable that this could lead to refusal of an application which might otherwise be avoided. The provision of any further details will facility the speedier determination as opposed to refusal and appeal or a re-submission.</p> <p>Additional Burdens, Resources, Charges and Cost recovery.</p>

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		<p>9. In formulating the procedures set out in Schedule 2 Part 2 the applicant has said they have relied on the guidance included in Appendix 1 to PINS Advice Note 15 ‘Drafting Development Consent Orders’. This PINS guidance however also makes provision for the payment of fees for applications submitted, this element is however not included in the procedure set out by the applicant.</p> <p>10. The DCO will place additional burden on the relevant authority and will require resources to be allocated to this work. It is appropriate that the DCO should include an appropriate provision for the relevant authorities to recover the costs of the resources employed to undertake the additional work and in the development of procedures to meet the required timescales.</p> <p>11. The DCO should either define the application fees payable for application for approvals required by the DCO or make provision for a ‘Service Level’ agreement between parties to define the service required from the relevant authority, and the means through which the authority will recover the costs incurred from the applicant. The High Speed Rail (London to West Midlands) Act 2017 incorporates this approach through the setting application fees payable or alternatively enabling parties to enter into a service level agreement.</p> <p>12. The ‘The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012’ as amended set fee for applications submitted for approval of</p>

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		reserved matters following the grant of outline planning permission this would provide an appropriate fee for applications submitted pursuant to Requirement 8.