

**From:** [Erin Banks](#)  
**To:** [Hinckley SRFI](#); [Davies, Emily](#)  
**Subject:** Hinkley NRFI - Applicant Response to Rule 6 letter  
**Date:** 05 September 2023 14:16:43  
**Attachments:** [image001.gif](#)  
[image002.jpg](#)  
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[Annex A - Template Compulsory Acquisition Schedule.pdf](#)  
[Annex B – Applicant's Draft Responses to ExA's Initial Observations on dDCO.pdf](#)  
[Rule 6 Letter Response.pdf](#)

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Good afternoon

Please find attached the Applicant's response to the Rule 6 letter, consisting of the main response letter and the two annexes. Please note it is correct that Annex B has a draft watermark and tracked change.

I would be grateful for confirmation of receipt of this. On a separate note, I have tried to call and left a voicemail as I just had a couple of follow up queries from our call yesterday, I wondered if it would be possible to catch up at some point this afternoon. I am free any time after 4.

Many thanks

Erin

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5<sup>th</sup> September 2023

Dear Robert Jackson

## **Hinckley National Rail Freight Interchange Response to Rule 6 Letter: Procedural Deadline A**

On 11 August 2023, the Examining Authority (“ExA”) issued a letter setting out a number of Procedural Decisions, under Sections 88 and 89 of the Planning Act 2008 (as amended) and Rules 4, 6, 9 and 13 of the Infrastructure Planning (Examination Procedure) Rules 2010 (“the Rule 6 Letter”), for the examination of the Development Consent Order (“DCO”) application for the Hinckley National Rail Freight Interchange Project.

This letter is Tritax Symmetry (Hinckley) Limited’s (“the Applicant’s”) response to the matters raised within the Rule 6 Letter for Procedural Deadline A on 5 September 2023.

### **1. Preliminary Meeting**

The Applicant will attend the Preliminary Meeting in person on Tuesday 12 September 2023 and will be represented by Paul Maile and Laura-Beth Hutton of Eversheds Sutherland, legal advisers to Tritax Symmetry (Hinckley) Limited. The Applicant will speak primarily on item 2 the examination process, item 4 Procedural Decisions and item 5 Draft Examination Timetable of the Preliminary Meeting agenda, as explained in further detail below. The Applicant will also respond to representations made by Interested Parties when asked to do so by the ExA and respond to any questions the ExA may have.

Members of the project team will also be in attendance in an observational capacity.

### **2. Annex B – Examination Process**

Noting the approach to written questions set out at Annex B, in the absence of written questions the Applicant considers that detailed agendas for the Issue Specific Hearings will be important in order to facilitate preparation and co-ordination of attendance by the Applicant team.

We note the ExA is reserving its position around raising additional questions earlier than 28 November. We would request that the ExA bears in mind the Applicant's existing concern around the timescales for substantive responses at Deadline 2 (see section 4 below) in this regard.

### **3. Annex D – Procedural Decisions by the ExA**

At paragraph 2 of Annex D it is advised that the ExA would be assisted by the preparation of SoCGs between the Applicant and certain interested parties. The Applicant questions the proposed scope of the SoCGs with Rugby Borough Council, Harborough District Council and Warwickshire County Council, it is suggested that the scope of these SoCGs needs only to relate to the impact of works within the administrative areas of those respective authorities.

It is noted that Annex D includes the dDCO as a matter to be included within the scope of the SoCG. The Applicant proposes to address the wording of the dDCO through discussions for efficiency and not necessarily in the SoCGs other than requirements which are being incorporated into SoCGs where relevant. Should final agreement on the wording of the dDCO not be reached it is suggested that this would be set out in the final SoCG.

For completeness, in addition to those SoCGs identified in Annex D, the Applicant still intends to submit SoCGs in line with the Statement of Common Ground Intent Schedule (Document 15.1 [PINS Ref APP-356]) unless the ExA confirms it does not require those SoCGs, or where, a Local Authority has advised they do not wish to cover a specific matter, this will be set out in the relevant SoCGs and will include the reason why the local authority do not wish to enter into a SoCG on a particular matter.

In response to the ExA's letter of 12 July under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010 (as amended) it is intended to update the Equalities Impact Assessment (EqIA). The comments in the letter indicate that the correct protected characteristics in Table 1 of the assessment, defining the scope and focus of the equality assessment have been identified. However, when applying them in the appraisal, there is a discrepancy in that Table 2 does not limit itself in the second column to those protected characteristics. The Applicant had in its EqIA been more descriptive than limiting the application to the broad characteristic. As an example, where it is noted that changes in transport distribution frequency and nature, column two indicates that "children, older people and disabled" individuals are those most sensitive, with the potential for a disproportionate risk. The Applicant understands the ExA requires the assessment to refer to the specific characteristic as described in the Equality Act 2010 and therefore the amendment proposed is to set out the exact wording for each of the protected characteristics to align with Table 1, which in this instance would be "Age and Disability". The Applicant wishes to confirm the acceptability of this approach at the Preliminary Meeting.

### **4. Deadline 2**

The Applicant has a concern in relation to the length of time available for the submission of comprehensive comments on Written Representations ("WR") and Local Impact Reports ("LIR"). The Applicant notes that with Deadline 1 being 10 October, WRs and LIRs are unlikely to be published until 11 October. With responses to those being due by Deadline 2, 24 October, whilst the Applicant cannot envisage the matters requiring a response, it is considered that consideration and provision of a substantive response to those documents

may be problematic, and the Applicant would request that it may need at that stage to reserve its position on certain issues, and where necessary, to make a more substantive response at Deadline 3.

It is noted that a status of negotiations / compulsory acquisition schedule is requested to be submitted at Deadline 2. The Applicant proposes to follow the template required by the Examining Authority for the West Midlands Rail Freight Interchange Examination, a copy of which is attached at Annex A. The Applicant would be grateful if the ExA could confirm whether it has any concerns with the proposal to use this template for HNRFI.

## **5. Issue Specific Hearing (ISH2)**

The Applicant notes that the operation of the rail network is identified under the 'Traffic and Transport' header of the ExA's Initial Assessment of Principal Issues and would be grateful for confirmation that the ExA intends that the Issue Specific Hearing 2 on Traffic and Transport is anticipated to cover rail matters as well as road traffic and transport matters.

## **6. Deadline 4**

Please can it be clarified if the response to First Written Questions issued 28 November 2023 shall be Deadline 4 (9 January 2023).

## **7. S106**

It is noted that no deadlines have been identified for the submission of an updated S106 Agreement. It is proposed that Deadline 4 would be a suitable time to submit an updated S106 with a final S106 Agreement to be submitted at Deadline 7, and the completed S106 Agreement to be submitted at Deadline 8 (if not before).

## **8. Annex F**

In terms of Funding, the CAH1 agenda suggests at item 6 that the ExA wants to understand the latest position in respect of funding. Please could the ExA confirm that this relates to the submission of more up to date accounts? The Applicant wishes to confirm this at the Preliminary Meeting.

The Applicant encloses at Annex B to this letter, its initial draft responses to the dDCO schedule of questions at Annex F(i) of the Rule 6 Letter. These draft responses are provided in advance of ISH1 in order to assist the ExA and provide clarity in advance of the hearing. It is intended that the responses will be updated and finalised following ISH1 and submitted to the ExA as part of the Applicant's post hearing submissions.

## **9. Additional Submissions – Change Notification**

The Applicant requests the ExA's permission to submit the additional material and amended application documentation "the Proposed Changes" as set out in the table below. A clear description of each Proposed Change is set out together with the rationale and need for making the change at this stage.

The Applicant can confirm that none of the Proposed Changes affect the Order land, and therefore the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 are not engaged by this change. The only changes to the compulsory acquisition documentation are

to reflect the alteration of some land parcel boundaries following Network Rail’s provision of their detailed boundary information and a request from Network Rail that those changes are made as well as requests from the Planning Inspectorate to update the Book of Reference in relation to the Public Trustee and a deceased person as well as a notification from Severn Trent Water in relation to the naming of Hinckley School at plot 113.

The Applicant also confirms that it has considered the environmental effects of the Proposed Changes and considers that they do not result in any new or different likely significant environmental effects.

The Applicant considers that the Proposed Changes can be accommodated in the timescales set out in the examination timetable as it is noted that at Deadline 1 and Deadline 2, the ExA has allowed for the opportunity to comment on any additional submissions accepted by the ExA, this would allow for review of additional submissions made at the Preliminary Meeting and at Deadline 1.

It is considered that due to the nature of the Proposed Changes no additional consultation outside of the response deadlines during examination would be required.

<b>Additional submissions</b>	<b>Rationale and need for making the change</b>	<b>Proposed Submission</b>
Summary table 13.8 of Chapter 13 (Document 6.1.11 [PINS ref APP – 122]) Cultural Heritage is to be re-presented to identify individual designated heritage assets that would be affected. An updated Chapter 13 will be submitted.	Blaby District Council’s Heritage officer has requested this amendment to the presentation of table 13.8. The Applicant understands that this change will enable confirmation by BDC that all heritage matters are agreed.	11 September 2023
A technical note considering the newly published air quality objectives. This note will be an addendum to Chapter 9.	The application was originally submitted a matter of days after new air quality regulations were published and was therefore prepared considering the latest legislation at the time (The Air Quality Standards Regulation 2010). The Air Quality Standards Regulations required that concentrations of PM2.5 must not exceed an annual average of 20µg.m-3. The Applicant has been asked by Hinckley & Bosworth District Council to prepare a new technical note considering The Environmental Targets (Fine Particulate Matter) (England) Regulations 2023. These Regulations require that by 2040, concentrations of	11 September 2023

	<p>PM2.5 in England must not exceed an annual average of 10 µg.m-3. In addition, The Environmental Improvement Plan 2023 for England set interim targets that by 2028, an annual average of 12µg.m-3 for PM2.5 must not be exceeded. The modelled pollutant concentrations detailed in this Technical Note remain as per those reported in the previous air quality assessment and therefore there are no new or materially different significant environmental effects.</p>	
<p>Additional narrative to clarify the judgements made on susceptibility and value and magnitude of change in the Landscape and Visual Impact Assessment. Updates will be made to the Landscape and Visual ES Chapter (Document 6.1.11[APP-120]), Appendix 11.1- Landscape and Visual Baseline (Document 6.2.11.1[APP-191]), Appendix 11.5 Schedule of Landscape and Visual Construction Effects (Document 6.2.11.5[APP-195]) and Appendix 11.6 Schedule of Landscape and Visual Operational Effects (Document 6.2.11.5[APP-196]). The Applicant will also take the opportunity to correct a number of minor discrepancies in the assessment for clarification purposes.</p>	<p>Blaby District Council and Hinckley and Bosworth Borough Council have requested additional narrative be added to the Landscape and Visual Impact Assessment to provide further clarification. Providing this clarity will assist progressing matters that can be agreed in the SoCGs with BDC and HBBC.</p> <p>The additional narrative and minor corrections will not result in any additional significant effects.</p>	<p>These changes remain the subject of discussion and clarity with the local authorities and in order to allow some further progression of the details, the Applicant proposes to submit the updated documentation by 22 September 2023, such that comments on the changes could still easily be accommodated within the early deadlines of the Examination.</p>
<p>Additional narrative to clarify the judgements made on Night-time Assessment including, presentational</p>	<p>Blaby District Council and Hinckley and Bosworth Borough Council have requested</p>	<p>These changes remain the subject of</p>

<p>changes to separate the Night-time Assessment within Schedules to provide greater clarity and additional information. Updates will be made to the Landscape and Visual ES Chapter (document reference 6.1.11), Appendix 11.1- Landscape and Visual Baseline (document reference 6.2.11.1), Appendix 11.5 Schedule of Landscape and Visual Construction Effects (document reference 6.2.11.5) and Appendix 11.6 Schedule of Landscape and Visual Operational Effects. The Applicant will take the opportunity to correct some minor discrepancies in the assessment for clarification purposes.</p>	<p>additional narrative be added to the Night-time Assessment within the Landscape and Visual Impact Assessment to provide further clarification. Providing this clarity will assist to progress matters that can be agreed in the SoCGs with BDC and HBBC.</p> <p>The additional narrative, minor corrections and presentation of Night-time Assessment effects will not result in any additional significant effects.</p>	<p>discussion and clarity with the local authorities and in order to allow some further progression of the details, the Applicant proposes to submit the updated documentation by 22 September 2023, such that comments on the changes could still easily be accommodated within the early deadlines of the Examination.</p>
<p>Draft DCO Schedule 1 and Works Plans Sheets 1, 2 and 4</p>	<p>Draft DCO Schedule 1:</p> <p>The Applicant has noted some discrepancies between the descriptions of the works in Schedule 1 and the works plans and some further drafting clarifications and amendments that the Applicant considers should be made to improve the descriptions of the works in Schedule 1 (as also noted in the Applicant's draft responses to the ExA's initial observations on the dDCO, see Annex B to this letter).</p> <p>The Applicant proposes to submit an updated dDCO identifying these proposed Schedule 1 changes together with the relevant amended Works Plans</p>	<p>11 September 2023</p>



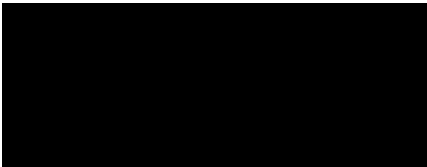
	<p>in advance of ISH1 so that they can be discussed at that hearing.</p> <p>Works Plans</p> <p>Amendment to works package areas to correct the discrepancy with the description of Work Nos. 1 and 2 in Schedule 1 and how these two works numbers are shown on the works plans - the loading and unloading railway sidings (and associated items such as gantry cranes) are described under works no. 2 but were incorrectly shown in works area 1 on the works plans. This change does not affect the parameters plan as all of the railway and rail terminal works are shown within the same parameter zone (zone ref J).</p> <p>Amendment of presentation of Work No. 3 to make it clear that Work No. 5 comprising development zones B1, D1, D2, E1 and E2 extend to all of the area shown as Work No. 3.</p>	
<p>Highway Plan (Sheet 8) (Document 2.4H [PINS Ref APP-029])</p>	<p>As noted in the Applicant's draft responses to the ExA's initial observations on the dDCO, (see Annex B to this letter), the Applicant now understands that the works shown green on this plan are no longer required or proposed to mitigate the Magna Park development and the Applicant will now complete these works as part of Work No. 16. The Applicant therefore proposes to alter the plan to reflect that, and to remove requirement 5(3) from the dDCO.</p>	<p>11 September 2023</p>

<p>Book of Reference (Document 4.3 [APP-090]), Land Plan Sheet 1 (Document 2.22A [APP-058]) and Statement of Reasons (Document 4.1 [APP-088])</p>	<p>Network Rail have identified a discrepancy in their land ownership boundary immediately to the north of Burbage Common Road Bridge and requested that the Book of Reference and Land Plan Sheet 1 are updated to reflect this amendment.</p> <p>The Applicant is also updating the Book of Reference to reflect minor changes to affected parties as notified to the Applicant by the Planning Inspectorate.</p> <p>The Statement of Reasons will also be updated to reflect the revised land parcel numbers.</p> <p>These changes do not alter the extent of compulsory acquisition and do not engage the CA Regulations.</p>	<p>11 September 2023</p>
<p>Summary note of outputs from Rugby Rural Area Model (RRAM). This note is to be submitted pursuant to paragraph 2.26 of the Transport Assessment (part 1 of 20) (Document 6.2.8.1 [APP-138]).</p>	<p>This note has been prepared to summarise the outputs of the RRAM. The purpose of the RRAM modelling was to sense check the HGV routing strategy and understand if any additional routes in rural Rugby need to be included in the HGV routing strategy. The minor nature of the outputs from RRAM confirm that an addendum to the Transport Assessment will not be required.</p>	<p>11 September 2023</p>
<p>Furnessing Methodology Report update. No fundamental changes in note and no changes to traffic figures.</p> <p>This is an update to the Transport Assessment document reference 6.2.8.1 (part 9 of 20) Furnessing Methodology.</p>	<p>The updated report has been requested by Leicestershire County Council Highways in the pre-examination phase and provides clarifications only to the original submission. Addressing this matter will assist to progress matters that can be agreed in the SoCG with LCC Highways.</p>	<p>11 September 2023</p>
<p>Update of Transport Assessment section 7 Tables 7.1 to 7.4 and parts</p>	<p>The Applicant has been asked to update and make some</p>	<p>11 September 2023</p>

17 to 20 (Document 6.2.8.1 [APP-155-158]).	clarifications and corrections by Leicestershire County Council during the pre-examination phase.	
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Please get in touch should you have any further comments or questions.

Yours sincerely



**Sinead Turnbull**

Planning Director

For and on behalf of Tritax Symmetry

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[redacted]

Encs:

Annex A – Template Compulsory Acquisition Schedule

Annex B – Applicant's Draft Responses to ExA's Initial Observations on dDCO

Compulsory Acquisition Status Report – table headings

1	2	3	4	5	6	7	8	9	10	11	12	13
Name of Affected Person	Plots in which party has an interest		Party Interested as:	Relevant Works No(s)	Freehold Acquisition (y/n)	Rights and/or powers intended to acquire over plot	Relevant Representation submitted? (y/n and RR-number if yes)	Written Representation submitted? (y/n and WR-number if yes)	Objection made y/n	Recent Progress/ Current position on negotiation	Matters outstanding and measures to be taken	Agreement Reached? (y/n)
	Plot nos	Category										

### **Applicant's Draft Responses to the ExA's Initial Observations on Drafting of dDCO**

This document is submitted to the Examining Authority (ExA) ahead of Issue Specific Hearing (ISH) 1 in respect of the draft Development Consent Order (dDCO). This document has been submitted as a draft and will be finalised following ISH1 and submitted to the ExA as part of the Applicant's post hearing submissions and where the Applicant confirms it proposes to make amendments to the dDCO, those amendments will be included in the next version of the dDCO to be submitted, which, the Applicant notes from the proposed Examination timetable, will be **Deadline 2**.

#### **Abbreviations:**

CA	Compulsory Acquisition	PA2008	Planning Act 2008
dDCO	Draft Development Consent Order [APP-085]	TP	Temporary Possession
EM	Explanatory Memorandum [APP-086]	TPR	Temporary Possession with Permanent Rights
ExA	Examining Authority		

#### **General Matters**

<b>Matter</b>	<b>Provision</b>	<b>Issue or Question Raised</b>	<b>Applicant's Response</b>
<b>1.</b>	Preamble	Could the Applicant please update the preamble as the Examining Authority panel consists of three members.	The Applicant will amend the dDCO accordingly following the appointment of the panel.

Matter	Provision	Issue or Question Raised	Applicant's Response
2. Drafting	Footnotes	<p>There are various occasions within the dDCO where footnotes to amending legislation have not been included. Examples are Articles 28(5) and (6) with references to sections 152 and 138 of the PA2008, and Article 30.</p> <p>Could the whole document be comprehensively reviewed to ensure that it is correct.</p>	<p>This is noted. The Applicant will review and amend the dDCO accordingly.</p>
	Precedents in EM	<p>The Applicant relies heavily in the EM on the Model Order which has now be withdrawn. As there are now a significant number of made precedent Orders, could the Applicant please review the EM with a view to removing references to the Model Order and replacing them with references to made Orders.</p>	<p>The Applicant is aware the Model Order has been repealed. However, as explained at paragraph 5.2 of the Explanatory Memorandum, the Model Order has been used as a starting point for the approach to the drafting of the dDCO as is the case with most DCOs. The Applicant has also considered many other recent made DCOs (particularly other rail freight DCO which are thought to be most relevant and appropriate). It is considered helpful still to refer to the Model Order since it explains the provenance the drafting.</p> <p>Although it is agreed that there are now a significant number of made precedent Orders, much of the drafting of these Orders are heavily based on the Model Order notwithstanding its repeal.</p>

Matter	Provision	Issue or Question Raised	Applicant's Response
			<p>The Applicant also notes the Government's current consultation on NSIP reforms<sup>1</sup> refers to the established practice of referring to the Model Order in explaining the approach to the drafting of dDCOs:</p> <p><b>Box 3 – the Model Provisions Order 2009</b></p> <p><i>The Model Provisions Order 2009 was intended as a guide for applicants in drafting the Development Consent Order rather than a rigid structure, but aided consistency, and assisted applicants in constructing a comprehensive set of lawful provisions. The Order included elements of a Development Consent Order which could be common to all NSIPs, others which relate to particular infrastructure development types, in particular railways and harbours, and model requirements. Whilst the Localism Act 2011 removed the statutory requirement to use the Model Provisions Order, it continues to be used by most applicants as the basis for the preparation of the draft Order, supplemented by the Planning Inspectorate's Advice Notes 13 and 15.</i></p> <p>However, if it is still considered necessary to remove references to the Model Order the Applicant will do so and submit a revised Explanatory Memorandum alongside the next version of the dDCO to be submitted. In any event, the Applicant will review the Explanatory Memorandum and update this to refer to additional made DCOs with similar provisions to the HNRFI dDCO.</p>

<sup>1</sup> [Department for Levelling Up, Housing and Communities: Consultation on operational reforms to the Nationally Significant Infrastructure Project \(NSIP\) consenting process \(25 July 2023, closing 19 September 2023\).](#)

Matter	Provision	Issue or Question Raised	Applicant's Response
	Clarity	<p>a) There appears to be some inconsistency between the use the terms "relevant ... authority" (either highway or planning) and "local ... authority for the area". A single terminology may improve the clarity of the drafting.</p> <p>b) In the same way that the definition of "maintain" includes derivates of that word, would including the same terminology improve clarity in respect of the definition of "owner"</p>	<p>a) The Applicant will review the dDCO in respect of each of these terms, however the terms "relevant highway authority", "relevant planning authority", are required because in each instance there are different bodies to which a provision might be referring.</p> <p>It is considered necessary to include the use of "relevant" because they have a particular meaning dependent upon their context. For example, in respect of the highway authority, some of the roads subject to highway works are strategic highways and so will be managed by Highways England rather than the local highway authority for that area.</p> <p>The Applicant agrees that clarity might be gained by removing the terms "local highway authority" but will review and consider this (particularly in terms of the protective provisions).</p> <p>This is noted. The Applicant will amend the dDCO accordingly.</p>



Matter	Provision	Issue or Question Raised	Applicant's Response
		<p>c) In the definition of "public sewer or drain" there are a number of bodies referred to, that is the Environment Agency, an internal drainage board or a lead local flood authority or a sewerage undertaker. There should only be reference to those which exist within the Order land and have such apparatus</p> <p>d) Although "statutory utility" includes a communications provider as well as a "statutory undertaker", could the drafting be improved by combining the use of the terms</p>	<p>This is a standard definition however the point is noted and the Applicant currently proposes to amend the definition as follows:</p> <p><i>"public sewer or drain" means a sewer or drain which belongs to <del>the Environment Agency, an internal drainage board or a lead local flood authority</del> a relevant highway authority or a sewerage undertaker;</i></p> <p>The approach to these separate definitions is commonplace in DCO and the separate term "statutory undertaker" is required to differentiate those provisions of the Order which are not intended to apply to communications providers.</p> <p>However, the Applicant notes that the term "statutory utility" is only used in Article 35 (this ensures that where communications providers have apparatus in stopped up streets, they have the benefit of the provisions of that Article) and the Applicant considers that the drafting could be improved or clarified and will do so in the next version of the dDCO to be submitted.</p>

Matter	Provision	Issue or Question Raised	Applicant's Response
		<p>e) Article 13(6) refers to various level crossings. However, none of these are formally defined. To ensure clarity could these please be identified on a specific plan, which is then referred to in this sub-paragraph or by some other mark with the Order, such as Ordnance Survey reference</p> <p>f) In Schedule 2, Part 1, Requirement 30 (Biodiversity net gain), the drafting is that net gain would be by each local planning authority, while the aim of the requirement is to achieve 10% net gain over the whole development. Could the Applicant please look at the drafting so that the aim is achieved<sup>1</sup>.</p>	<p>The level crossings are each identified on the Access and Rights of Way Plans (Document series 2.3 [PINS Ref APP-016 – APP-020]) and referred to in Part 1 of Schedule 5 of the dDCO as explained in paragraphs 5.41 – 5.50 of the Explanatory Memorandum, however the Applicant notes that those plans contain a lot of information and other points/references including to rights of way rather than specifically the level crossings. The Applicant agrees it would be beneficial to refer to a separate plan and will prepare a suitable plan and amend the dDCO accordingly.</p> <p>The requirement is drafted so that the biodiversity net gain strategy is to be submitted to and approved by the relevant planning authority. The drafting does not mean that the net gain will be provided in each local authority's area.</p> <p>The Applicant will consider whether the wording of the requirement could be improved to clarify this.</p>

Matter	Provision	Issue or Question Raised	Applicant's Response
	Typographic	a) In Art 30(6) there is reference to Article 30. This should be to Article 27  b) In Schedule 2 Part 1, it would appear that the word "any" has been omitted between "occupation of" and "warehouse".  c) In Schedule 8, Part 3 – Speed limits: Derestricted highways, In the second row points P and Q are entirely on Document 2.7B (and not 2.7C). Could this please be corrected.	These typographical errors are noted and the Applicant will review and amend the dDCO where necessary.

<sup>1</sup> There is a separate question as to whether the proposal would be able to deliver 10% Biodiversity Net Gain as set out in this provision. This will be explored elsewhere in the Examination.

Matter	Provision	Issue or Question Raised	Applicant's Response
<p><b>3.</b> Novel provisions</p>	<p>Articles 32 and 33 – temporary use of land for carrying out the authorised development and temporary use of land for maintaining the authorised development</p>	<p>Arts 32(3) &amp; (8) and Art 33(9) appear to be novel provisions and the ExA would like to understand why they are proposed to be included in this particular case.</p>	<p>Article 32(3) and Article 33(9) follow the drafting in Article 33(3) and Article 34(4) of The Boston Alternative Energy Facility Order 2023 and are required to ensure that the Applicant has the ability to enter land to put right a danger without being required to give notice.</p> <p>Article 32(8) follows the drafting in Article 34(6) of West Midlands Interchange Rail Freight Interchange Order 2020 (S.I. 2020 511) and 34(6) of The Northampton Gateway Rail Freight Interchange Order 2019 (S.I. 2019 1358) and is required to provide certainty as to the method of calculating such compensation.</p>
	<p>Articles 36 and 37 – recovery of costs of new connections and no double recovery</p>	<p>Neither of these provisions have been seen in recently made transport DCOs and the ExA would like to understand why they are proposed to be included in this particular case.</p>	<p>The Applicant has included article 36 (which has its provenance in article 33 of the Model Provisions) to cover the circumstance where a person's supply of utilities is interrupted. This article is increasingly included in DCOs (such as The A1 Birtley to Coal House Development Consent Order 2021 (S.I. 2021 No. 74) and The A57 Link Roads Development Consent Order 2022 (S.I. 2022 No. 1206)) and the Applicant considered it prudent to include the provision.</p> <p>Article 37 is contained in many DCO and is based on drafting within both The Northampton Gateway Rail Freight Interchange Order 2019 (S.I. 2019 1358) (Article 37) and The West Midlands Interchange Rail Freight Interchange Order 2020 (S.I. 2020 511)</p>

Matter	Provision	Issue or Question Raised	Applicant's Response
			<p>(Article 37) and is necessary to clarify and ensure that compensation is not payable in respect of the same loss or damage under both the draft DCO and other compensation regimes.</p>
	<p>Article 38 – guarantees in respect of payment of compensation</p>	<p>a) The ExA would like to explore whether this provision should cover all matters relating to the implementation of any part of the DCO, if made, rather than just those cited.</p> <p>b) The ExA would like to explore whether the 15-year period after the date on which the relevant power is exercised appropriate, or should it be X years after the completion of the development. If that were to be the case, what would be an appropriate trigger and timescale?</p>	<p>As explained in the Explanatory Memorandum, this article is based on other DCO including East Midlands Gateway Rail Freight Interchange and Highway Order 2016 (S.I. 2016 17), Northampton Gateway Rail Freight Interchange Order 2019 (S.I. 2019 1358), West Midlands Interchange Rail Freight Interchange Order 2020 (S.I. 2020 511). It is specifically intended to apply to compensation for potential claims as a result of the exercise of compulsory acquisition or temporary possession powers. It is not considered necessary or appropriate for a guarantee or other form of security to be provided for any other provision or implementation of the DCO.</p> <p>It is considered that 15 years from the exercise of the relevant power is a reasonable time period for such a guarantee/security, and indeed this time period has been accepted in many recent DCOs (e.g. The Triton Knoll Electrical System Order 2016 (S.I. 2016 880), the Wrexham Gas Fired Generating Station Order 2017 (S.I. 2017 766), the Boston Alternative Energy Facility Order 2023 (S.I. 2023 778), The Boston Alternative Energy Facility Order 2023 (S.I. 2023 778), The Riverside Energy Park Order 2020 (S.I. 2020 419)). The Applicant's view is that it would be inconceivable that a claimant would legitimately take</p>

Matter	Provision	Issue or Question Raised	Applicant's Response
			<p>longer than 15 years from the exercise of the power to pursue a claim for compensation (of which that party will be aware), or for compensation to be resolved, even in the event that a compensation claim was referred to the Upper Tribunal.</p>
<p><b>4. Funding</b></p>		<p>The ExA would like to explore whether there should be a single 'lead' approving authority for the whole funding rather than four different ones to provide simplicity and rigour. If this is the case, who should this be?</p>	<p>There are no proposed powers of compulsory acquisition or temporary possession within the District of Harborough or the Borough of Rugby, therefore the relevant authorities for the approval of the guarantee or other form of security would only be Blaby District Council and/or Hinckley and Bosworth Borough Council dependent upon the location of the land which is subject to the exercise of the relevant powers.</p> <p>The Applicant considered it appropriate that the authority in whose area the powers would be being exercised should approve the security necessary for the relevant land. The approach to the approval of the security follows Northampton Gateway, where there were two authorities.</p> <p>However, the Applicant would be willing to consider and accommodate alternative drafting where one authority is responsible for the approvals – this will require discussion with Blaby District and Hinckley &amp; Bosworth Borough authorities.</p>

**Articles**

Matter	Provision	Issue or Question Raised	Applicants Response
5. Definitions	Article 2	<p>a) The drafting of "Order land" could be interpreted as that it only applies to land the subject of proposed CA, TP or TPR. This has implications for the delivery of the Proposed Development and for the use of the term throughout the dDCO. Art 23(1) would seem to imply that CA could apply to all the land set out in Book of Reference and this goes beyond that identified for CA, TP or TPR.</p> <p>b) It is not clear as to why the definitions of both "Order land" and "Order limits" has been included, and whether there is a need for the use of the two terms.</p>	<p>The definition of "Order land" is intended to only relate to that land which may be subject to the powers in Part 5 of the dDCO as described in the book of reference, however the Applicant agrees that the definition may benefit from some clarity. The Applicant proposes to amend the definition as follows:</p> <p><i>"Order land" means the land shown on the land plans which is within the limits of land to be acquired or used permanently or temporarily and described in the book of reference;</i></p> <p>As above, the term "Order land" is intended to refer to land and interests which are subject to the powers of Part 5 of the dDCO as described in the book of reference and shown on the land plans.</p> <p>The term "Order limits" means the limits shown on the works plans represented by a red line within which the authorised development may be carried out – this is to cover all land including that land in respect of which no compulsory acquisition or temporary possession powers are needed such as highway works.</p>

Matter	Provision	Issue or Question Raised	Applicants Response
		<p>c) In the same way that the definition of "maintain" includes derivatives of that word, would including the same terminology improve clarity in respect of the definition of "owner"?</p> <p>d) Could the Applicant please check that all abbreviations are fully and consistently defined, an example being "Working Days", and the abbreviations "No." and "Nos.".</p>	<p>This is noted. The Applicant will amend the dDCO accordingly.</p> <p>This is noted. The Applicant will amend the dDCO accordingly.</p>
<p><b>6.</b> Permanent stopping up of streets</p>	<p>Articles 11 and 13 and Schedule 4</p>	<p>a) Under the terms of Article 11 various streets are to be stopped up. As drafted the Order does not make provision for an alternative route for Smithy Lane which would be stopped up to the northwest of junction 2 of the M69. It would appear that alternative bridleway arrangements (effectively points 18 to 17 to 14 to 37 to 16 of the Access and Rights of Way Plan (2.3D)) would provide such a route. Should this be rather a diversion and thus should this be provided before Smithy Lane is stopped up under Art 11.</p>	<p>a) The section of Smithy Lane (an all-purpose highway) being stopped up by the dDCO is a section which provides vehicular access to the private means of access to Hobbs Hayes Farm only and this private means of access will be removed, and the buildings are to be removed as part of the development. This section of Smithy Lane, also serves all other users of the V29/7 bridleway, but it is only the bridleway elements that need to be diverted, not the vehicular access. The ExA is correct that the new bridleway proposals between 18 - 17 - 14 - 37 - 16 are the replacement/substitute arrangements for the V29/7 bridleway. The replacement bridleway will be provided before the stopping up of Smithy Lane and bridleway V29/7 - this is secured through article 13, however, the Applicant will review the articles and consider whether clarity could be added to article 11 so that Smithy Lane is not stopped up until the replacement bridleway has been provided.</p>



Matter	Provision	Issue or Question Raised	Applicants Response
		<p>b) Could the Applicant also consider whether this aligns with the provisions in Article 13 in relation to bridleway V29/7?</p>	<p>b) As above.</p>
<p><b>7.</b> Temporary closure of streets</p>	<p>Article 12</p>	<p>Sub-paragraphs (4) of the dDCO states that the undertaker will be a street authority. This is normally a statutory body rather than a private company. The ExA would therefore like to examine this, particularly to understand whether there are any precedents for such a provision and the implications for self-approval under sub-paragraph (7).</p>	<p>It is intended that the estate roads will remain private and therefore that the undertaker will be the street authority for those roads.</p> <p>The article is based on Northampton Gateway Rail Freight Interchange Order 2019 (S.I. 2019 1358), West Midlands Interchange Rail Freight Interchange Order 2020 (S.I. 2020 511) which A similar provision is set out in Article 14(4) (<i>Temporary alteration, diversion, prohibition and restriction of the use of streets</i>) of The A57 Link Roads Development Consent Order 2022.</p>
<p><b>8.</b> Public rights of way - creation, substitution, stopping up and closure of level crossings</p>	<p>Article 13</p>	<p>The drafting allows for temporary closure of public rights of way. If a route is to be temporarily closed then this period should cease either after a period, or at an event. The ExA would like to explore whether an indicator should be specified within the dDCO.</p>	<p>The Applicant agrees this would be a helpful addition to the provision and proposes that a further column is added to Part 4 of Schedule 5 to set out the trigger for which the temporary closure must cease. The Applicant proposes that the trigger would be "Completion of Work No. 6".</p>

Matter	Provision	Issue or Question Raised	Applicants Response
<p><b>9.</b> Private rights</p>	<p>Articles 28 and 44</p>	<p>The drafting of sub-paragraphs (9) in Article 28 and (a) in Article 44 would appear to relate to land outside the Order lands. Given the statutory notification requirements of the PA2008, could the Applicant show that those who may be affect are so aware. This concern relates to Human Rights Act issues.</p>	<p>The provisions of these articles are frequently found in other DCOs (The Northampton Gateway Rail Freight Interchange Order 2019 (S.I. 2019 1358), The West Midlands Interchange Rail Freight Interchange Order 2020 (S.I. 2020 511), The A47 Wansford to Sutton Development Consent Order 2023 (S.I. 2023 218), The M25 Junction 28 Development Consent Order 2022 (S.I. 2022 573) and The Boston Alternative Energy Facility Order 2023 (S.I. 2023 778)) and ensure that, in the case of article 28(9), private rights do not prevent the delivery of the authorised development. In respect of persons outside the order land who have a relevant right that is interfered with under that article will, so far as they have been identified following diligent enquiry be listed in the Book of Reference (Doc Ref 4.3 [PINS Ref APP-090]) and consulted pursuant to sections 42 and 44 PA2008.</p> <p>In the case of article 44(1)(a) as above, this provision is in many DCO and specifically the distance of 15 metres follows Northampton Gateway. It is necessary to ensure the undertaker is able to remove obstruction or interference with the authorised development. Some DCO do not specify a particular distance and simply refer to trees, shrubs or hedgerows "near" the Order limits.</p> <p>Both of these provisions were included in the draft DCO which was consulted upon as part of the Applicant's pre-application statutory consultation in 2022. There were no objections to these provisions.</p>

Matter	Provision	Issue or Question Raised	Applicants Response
		<p>It is noted that the extension to land outside the Order limits in Article 28(9) does not occur in the precedents cited in the EM.</p>	<p>The drafting at Article 28(9) is consistent with both the A47 Wansford to Sutton Development Consent Order 2023 and the M25 Junction 28 Development Consent Order 2022 at Article 29(9). The Applicant will update the Explanatory Memorandum to refer to these DCOs.</p>
<p><b>10.</b> Rights under or over streets</p>	<p>Article 29</p>	<p>Because of the drafting, particularly in relation to the definition of "Order lands" and "Order limits", this provision would allow the non-strategic highway to be adversely affected, and effectively blocked by an above ground, or overhanging, obstruction. Could this provision please be looked at again.</p>	<p>Please see response to Q5 above in respect of "Order land" and "Order limits".</p> <p>This article follows other DCOs and is based on the Applicant's understanding that it is not appropriate for the power to relate to the strategic road network. However, the power is relevant for other streets in the Order limits because it enables the undertaker to use and work within those streets, including the lawful interference/obstruction of the passage along a street (such as oversailing or installing apparatus) without needing to acquire the land.</p>

Matter	Provision	Issue or Question Raised	Applicants Response
<p><b>11.</b> Temporary use of land for carrying out the authorised development</p>	<p>Article 32</p>	<p>a) Article 32(1) provides for greater effect than that provided for in the Northampton Gateway Rail Freight Interchange Order 2019 DCO cited. Could The ExA wishes to understand why additional powers in paragraph (c), for example for the temporary construction of haul roads, fencing and other means of enclosure, bridges and structures, are necessary in this case.</p> <p>The ExA is particularly interested in relation to bridges and how these powers may affect access rights on both road and rail.</p> <p>b) In addition, the ExA wishes to understand why sub-paragraph (1)(e) is required, if this is for permanent works. The Applicant is asked to provide an example as to why this provision is required.</p>	<p>a) The powers listed in paragraph (c) are considered a necessary addition and clarification of the types of works and activities that the land will be needed for. The inclusion of bridges is important because the authorised development includes the erection of two bridges over the railway, one being part of the A47 link road and the other being the new footbridge in place of the Outwoods level crossing, and the land adjoining those areas will be required for the construction of the bridges. The installation of the bridges will be carried out in accordance with the protective provisions in the Order and with a framework agreement with Network Rail (for the Outwoods bridge) and a tri-partite agreement with the local highway authority and Network Rail (for the A47 link road bridge).</p> <p>b) The inclusion of this wording is necessary so that the type of activity that may be undertaken is clear. The Applicant considers it a reasonable power for the land to be used to carry out mitigation works (such as at the Outwoods and Thorney Fields Farm level crossings) and further to simply specify that the land may be used for the purpose of the authorised development.</p> <p>In addition to the specific parcels of land identified in Schedule 10, the article authorises the temporary possession of any Order land in respect of which the compulsory acquisition powers have not yet been exercised, so that there is no undue delay in being able to carry out works or use the land. The ability to do</p>

Matter	Provision	Issue or Question Raised	Applicants Response
			<p>this allows the undertaker to use some land and potentially reduce the scope of permanent acquisition required for example in respect of highway works, which is considered an appropriate use of the powers. It is also considered that this approach would benefit the owner since it could ultimately limit or reduce the permanent land take where highway works limits of deviation are lesser than the full extent of the works area identified, which wouldn't be known until the works had been finalised.</p>

Matter	Provision	Issue or Question Raised	Applicants Response
<p><b>12.</b> Operational land</p>	<p>Article 41</p>	<p>Could the Applicant please explain, why the whole of the Order lands should be considered "operational"? The ExA appreciates the reasons for the road and rail elements, but would like explanation for the rest. When clarified this should be set out in the EM.</p>	<p>It is considered prudent for this provision to relate to all land within the Order limits (please refer to the Applicant's response to Q5 above in respect of "Order land") particularly given the Rochdale envelope and limits of deviation approach to defining the authorised development. This provision is included so that statutory undertakers have the ability to carry out any necessary works within their statutory responsibility within the full extent of the Order limits. For example, it is likely that the spatial extent of rail related land would not simply be confined to the area of the tracks themselves.</p>
<p><b>13.</b> Statutory nuisance</p>	<p>Article 43</p>	<p>Given the recent Supreme Court case in <i>Fearn and others v Board of Trustees of the Tate Gallery</i> [2023] UKSC 3 the ExA would like to explore whether there any implications for the Proposed Development or the drafting utilised.</p>	<p>Article 43 of the draft DCO provides for defences to proceedings brought under section 82(1) of the Environmental Protection Act 1990 ("EPA") in relation to statutory nuisances falling within section 79(1) of that Act. Paragraphs (a)-(d) sets out the terms of those defences. Causing a statutory nuisance is a criminal offence. The classes of statutory nuisance as set out in section 79(1) are:</p> <p>" ...the following matters constitute "statutory nuisances" for the purposes of this Part, that is to say—</p> <p>(a) any premises in such a state as to be prejudicial to health or a nuisance;</p> <p>(b) smoke emitted from premises so as to be prejudicial to health or a nuisance;</p> <p>(c) fumes or gases emitted from premises so as to be prejudicial to health or a nuisance;</p> <p>(d) any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance;</p>

Matter	Provision	Issue or Question Raised	Applicants Response
			<p>(e) any accumulation or deposit which is prejudicial to health or a nuisance;            (ea) any water covering land or land covered with water which is in such a state as to be prejudicial to health or a nuisance;            (f) any animal kept in such a place or manner as to be prejudicial to health or a nuisance;            (fa) any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance;            (faa) any insects emanating from premises and being prejudicial to health or a nuisance;            (fb) artificial light emitted from premises so as to be prejudicial to health or a nuisance;            (fba) artificial light emitted from—            (i) premises;            (ii) any stationary object, so as to be prejudicial to health or a nuisance;            (g) noise emitted from premises so as to be prejudicial to health or a nuisance;            (ga) noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street [or in Scotland, road];            (h) any other matter declared by any enactment to be a statutory nuisance;"</p> <p>In the case of <u>Fearn and Others v Board of the Tate Gallery</u> ("<u>Fearn</u>"), the Supreme Court was not concerned with a statutory nuisance but whether an actionable common law nuisance could be established. The creation of a common law nuisance is not a criminal offence but a civil law tort for which the remedy will normally be the grant of an</p>

Matter	Provision	Issue or Question Raised	Applicants Response
			<p>injunction to stop the continuation of the nuisance and/or the award of damages.</p> <p>By their nature, common law nuisances are not the subject of statutory definition but are governed by principles established in decided cases. Broadly a private, common law nuisance, is one which, firstly, interferes with a person's use or enjoyment of land or of some right connected with land and, secondly, represents a substantial and unreasonable interference having regard to various factors such as the nature of the locality and the need for "give and take" between neighbouring uses of land. The principles are set out in paragraphs 9-47 of Lord Leggat's judgment. The facts of the Fearn case concerned the issue as to whether the intrusive viewing of residential flats located close to Tate Modern's viewing gallery could represent an actionable private, common law, nuisance. The Court held that it could.</p> <p>The defences contained in article 43 of the dDCO are not available in respect of common law nuisance. However, it is a long and well established principle of common law nuisance that there is the defence of statutory authority to claims for such a nuisance. Paragraph 192 of Halsbury's Laws (2018) explains the scope of the principle:</p> <p><i>"Although the Crown cannot grant to a person a right to commit a public nuisance, an act or omission may have been specifically authorised by statute, and may, therefore, not be actionable either as a public or as a private nuisance. For the defence of statutory authority to be successfully raised, however, it must</i></p>



Matter	Provision	Issue or Question Raised	Applicants Response
			<p><i>be shown that the act was within the powers conferred by the statute.</i></p> <p><i>If a nuisance is the inevitable consequence of what has been authorised the defence will be available by necessary implication even if the statute does not expressly authorise the commission of a nuisance in so many words. If, on the other hand, the statute authorises a particular act only if no nuisance is caused, statutory authority will be no defence to a claim in nuisance. But a body acting under a statutory duty, as distinct from a mere power, will not be liable for nuisance, even if such liability is expressly preserved by the statute, unless the nuisance was caused negligently.</i></p> <p><i>A grant of planning permission under statutory powers must not be confused with statutory authority, since such a grant cannot license nuisances”.</i></p> <p>The Applicant does not consider that the Fearn case has implications for the Proposed Development or the drafting utilised. Firstly, the case was concerned with whether the overlooking of residential property by vast numbers of people in the course of a year (note the estimate cited by Lord Leggat in paragraph 1 of the judgment the number of annual visitors to the viewing platform was between 500,000 and 600,000). The Proposed Development has no such feature. Secondly, there is nothing in the judgment which is considered to expand the general principles of common law nuisance in a way that might affect the Proposed Development. Thirdly, the Applicant considers that the long established principle of</p>

Matter	Provision	Issue or Question Raised	Applicants Response
			<p>statutory authority would apply as a defence as the statutory authorisation would be supplied by the DCO, which is a statutory instrument. It should be noted that the common law defence of statutory authority would not apply to a statutory nuisance under the EPA and therefore it was necessary that the provisions of article 43 of the dDCO should include such a defence.</p>
<p><b>14.</b> Disapplication of provisions</p>	<p>Article 27</p>	<p>The ExA would like to explore explicitly and precisely why each provision should be amended as set out. When clarified this should be set out in the EM.</p>	<p>It is understood that this question relates to article 47.</p> <p>The Explanatory Memorandum seeks to explain the rationale for the inclusion of these provisions at paragraphs 5.150 - 5.158 however the Applicant notes the ExA would like to explore this in more detail and any amendments thought necessary will be included in the next updated Explanatory Memorandum to be submitted.</p> <p>The Applicant has noted that some wording intended to be included as explained in paragraph 5.153 of the Explanatory Memorandum in relation to the <i>Hillside</i> case has been omitted from the dDCO - this will be added to the next version.</p>

Matter	Provision	Issue or Question Raised	Applicants Response
<p><b>15.</b> Certification of plans and details of requirements</p>	<p>Article 48 and Schedule 2</p>	<p>Recent transport DCO, such as the M54 to M6 link and A47 Wansford to Sutton have included within that the documents should be published on a website to show the details and make them available to the public. The ExA would like to explore whether this should be provided for this Proposed Development. Additionally, this provision sometimes makes provision for a register of requirements. Alternatively, provision could be made within Schedule 2</p>	<p>The Applicant notes that National Highways, a public body with a statutory function, has proposed to add electronic versions of certified documents on a website. However, the Applicant does not consider the permanent retention of documents on a private website would be proportionate. The Applicant considers this might be appropriate perhaps for a local authority or Planning Inspectorate website.</p>
<p><b>16.</b> Human remains and protection of buildings</p>	<p>Potential additional articles</p>	<p>Many made transport DCOs have provisions relating to human remains and the protection of buildings. The ExA would like to explore whether they are required in this case.</p>	<p>With regard to human remains, the Applicant notes that not all DCO include such a provision, however the Applicant is content to add such a provision for completeness and will insert a new article dealing with this in the next draft of the DCO to be submitted.</p> <p>With regard to the protection of buildings, it was not considered that this was necessary, however, the Applicant accepts that this may be a sensible provision to include and would propose that an article dealing with protective works to buildings and structures is inserted to the next draft of the dDCO to be submitted.</p>

**Schedule 1 – Works**

Matter	Provision	Issue or Question Raised	Applicant's Response
17.	Works 1 to 7	<p>The ExA would like to explore whether there is a logical inconsistency as to the way elements of Part 1 have been drafted. For example, Work 1(g) and (j). These are to provide as part of the main NSIP something which is ancillary to the associated development. Philosophically, can something in an NSIP be ancillary to associated development?</p> <p>The ExA would look for precedent or legal justification for this, or a potential redrafting of Parts 1 and 2 of Schedule 1 so as to ensure that the main NSIP development and the associated development have the appropriate logical relationship.</p>	<p>The Applicant's approach to the drafting of Schedule 1 has followed other DCO and specifically other rail freight DCO, and has sought to separate the NSIP and Associated Development as appropriate. The approach to the drafting has been to seek to include a comprehensive list of the works that will be undertaken within a particular works package, so where works that might be considered "ancillary" take place within a package, they are noted in that package, regardless of whether it falls within what is defined as the NSIP and what is defined as Associated Development.</p> <p>The Applicant is undertaking a review of the Schedule and has noted some improvements and amendments that need to be made. The Applicant will also consider as part of this review whether amendments ought to be made to address the question raised by the ExA.</p>
18.	Work 9	<p>None of the Masterplans show a "dedicated left-turn slip road into the main site" from the B4669 to the west of Junction 2 of the M69 nor is it shown on the highway plans (Doc 2.4D). The ExA would like to clarify whether such a slip road is proposed. The highway drawings indicate a route, but as this is not separate from the main roundabout it could not be described as "dedicated".</p>	<p>This is an error in the description of the works, there is no proposed dedicated left-turn slip road into the main site, only a new arm onto the Junction 2 roundabout. The Applicant will correct this in the next version of the dDCO to be submitted.</p>
19.	Work 20	<p>The ExA would like to confirm whether that the footbridge would be accessible to all, including those using wheelchairs</p>	<p>The proposal is to close an existing level crossing and to provide a footbridge as a replacement. The current level crossing provision is from a public right</p>

Matter	Provision	Issue or Question Raised	Applicant's Response
		<p>and buggies, and is concerned as to whether the plans show sufficient land to indicate the maximum size to accommodate this usage. If such a provision for access for all is proposed how is this to be secured</p>	<p>of way through a field which is not easily accessible to those using wheelchairs and buggies. It is understood that the current level crossing is understood to have stepped access to the railway. The highway authority has not raised any concern with regard to accessibility proposals. The design of the proposed overbridge is currently under discussion with Network Rail and several potential options for the structure are being considered. The Applicant has ensured that there is sufficient land available on both sides of the railway to provide a ramped bridge if this were to be required.</p>

**Schedule 2 – Requirements**

Matter	Provision	Issue or Question Raised	Applicant's Response
<p><b><u>Part 1</u></b></p>			

Matter	Provision	Issue or Question Raised	Applicant's Response
20.	General matters	a) Please could the Applicant ensure that all requirements have implementation clauses within them. There are a number which while requiring submission and approval of relevant matters do not require the approved matters to be actually implemented. Examples are requirements 13 and 18. There are many others. Requirement 34 deals with amendments and, for reasons set out below may not meet the tests for requirements.	a) The Applicant is aware that the draft requirements do not all specifically include implementation provisions. It was intended that implementation of all plans/schemes/details and relevant matters was covered by requirement 34(1). Should the ExA consider that the requirements each need their own implementation wording, the Applicant will review and amend the dDCO accordingly.

Matter	Provision	Issue or Question Raised	Applicant's Response
		<p>b) No requirement should have within it a tailpiece of the type deprecated in the cases of <i>Midcounties Co-operative Ltd v Wyre Forest DC</i> [2009] EWHC 964 and <i>Hubert v Carmarthenshire CC</i> [2015] EWHC 2327 (Admin). That is "or as may be agreed in writing by the relevant local planning authority" (or similar wording). Examples where it has been used are requirements 5 and 6. See also Advice Note 15, paragraph 17.4. Please delete.</p> <p>c) Could The Applicant please check all the requirements for technical terms which should be defined. An example being "Qbar" in requirement 14.</p> <p>d) After the 'definitions' requirement, could the requirements please be re-ordered over time, that being pre-construction, construction, operation.</p>	<p>b) The drafting in the draft DCO is consistent with the drafting in recently made DCOs - The M54 to M6 Link Road Development Consent Order 2022 (S.I. 2022 475), The A47 Wansford to Sutton Development Consent Order 2023 (S.I. 2023 218) and The Boston Alternative Energy Facility Order 2023 (S.I. 2023 778). The Applicant considers that the tailpieces referred to relate to the triggers, rather than the matters covered by the relevant requirements, such as those which might relate to the timing for provision of highway works where the ability to agree variations is necessary and appropriate for the safe co-ordination of the operation of the highway network, and also when replacement planting should be provided e.g. variations around planting seasons.</p> <p>c) The Applicant proposes that "Qbar" is deleted since the requirement is clear without this.</p> <p>d) The Applicant's approach was to list requirements by topic rather than particular trigger dates, given that most contain a pre-commencement trigger, however the Applicant will look to amend the drafting to re-order where possible.</p>

Matter	Provision	Issue or Question Raised	Applicant's Response
		<p>e) As a general rule, requirements should not reference external standards or documents as they often change and may lead to the Proposed Development not being constructed to the latest standards. Examples are requirements 14 and 27. Please redraft as necessary.</p> <p>f) Discharging of requirements should be by each local planning authority rather than different elements being approved by other bodies. The local planning authorities can consult where appropriate. There may be wider issues than a single subject that should be co-ordinated. For example, requirement 25 deals with more than highway safety.</p>	<p>This is noted. The Applicant will consider amendments to the dDCO accordingly.</p> <p>The Applicant will review this, however it is noted that s120(2) PA2008 states that requirements may in particular include requirements corresponding to conditions which could have been imposed on the grant of a permission, consent or authorisation, or the giving of any notice, and a requirement to obtain the approval of the Secretary of State <i>or any other person</i> (our emphasis). The Applicant cannot see that the Act nor any guidance precludes the approval and discharge of requirements by bodies other than the local planning authorities. Indeed, the Government's guidance on the pre-application process refers under the heading "Drafting the Development Consent Order" (paragraphs 97 – 105) refers to the inclusion of requirements in respect of other statutory bodies and "<i>any necessary requirements, along with the mechanisms for discharging these, including the responsible authority and any appeal mechanisms</i>" (our emphasis).</p> <p>The Applicant also notes that other DCO such as Northampton Gateway and West Midlands Interchange have also adopted this approach and allow for the discharge of requirements by other</p>



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			bodies such as National Highways and the local highway authority.
<b>21.</b>	R4 – Detailed design approval	<p>Sub-paragraph (2) needs the following clarifications:</p> <ul style="list-style-type: none"> <li>• “passive provision” needs to be defined;</li> <li>• “electrical charging” should it be “electric vehicle charging”;</li> </ul> <p>the minimum rating for both the electric vehicle charging and passive provisions should be included in kilowatts hours (kWh).</p>	This is noted. The Applicant will review and amend the dDCO accordingly.
<b>22.</b>	R5 – Design and phasing of highway works	<p>The ExA would like to explore the situation of Works 16 and 17 having been commenced, but not completed in relation to the effect of the Proposed Development on the highway network. What arrangements can be put in place to prevent the Proposed Development having harmful effects should the Proposed Development become operational, but these works are not completed.</p>	<p>It is considered that if the third party has commenced the works shown coloured green on the relevant highway plans, the s278 agreements pursuant to which those works are being carried out will govern the completion of those works including the situation where they are commenced but not completed including the ability for the highway authority to step in and complete the works and recover the costs for doing so from the relevant developer. The Applicant understood that these works are required to mitigate other developments and so should reasonably be provided by those developers, however the Applicant has built into the dDCO the potential for the Applicant to carry out those same works but under the DCO in the event that the developers haven't started to undertake those works at the stage by which, the Applicant acknowledges, the works should be commenced and will be required to be in place.</p>

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		<p>Equally the RR from Gazeley UK Limited (GLP) [RR-0410] indicates it is unclear how any future mitigation to the Cross in Hand Roundabout would be delivered given works to the A5 that are being implemented.</p>	<p>In respect of Work No. 16, the Applicant now understands that the position with regard to the works coloured green on the highway plans is that those works are no longer proposed or required for the Magna Park development. The Applicant has therefore re-reviewed these works and the dDCO will be amended to remove requirement 5(3) so that the Applicant will deliver the works pursuant to requirement 5(1). The relevant highway plan will also be amended to remove the green works.</p> <p>Please see above.</p>
<b>23.</b>	R6 – Public rights of way and level crossing closures	<p>a) See matter 2 e) above relating to definitions</p> <p>b) Given nature of works and crossings, the ExA would like to explore whether any of the level crossings should be closed earlier than "operation"? Does operation include testing? If so, this should be clear. Would an earlier closure be possible and practicable?</p>	<p>a) This is noted. The Applicant will amend the dDCO accordingly.</p> <p>b) Commercial operation is referring to the first time a train would be entering the terminal and therefore might have the potential to extend down the rail track to the level crossing. The Applicant will consider whether the drafting of the requirement could be improved to more clearly reflect this.</p>

Matter	Provision	Issue or Question Raised	Applicant's Response
		c) Could this requirement be combined with requirement 26 (public rights of way strategy)?	c) The Applicant will review and consider this as part of the request to re-order the requirements in Q20 d) above.
<b>24.</b>	R7 – Construction Environmental Management Plan, R23 – Site waste and materials management plan and R24 – Construction traffic management plan	<p>a) The ExA would like to explore why there would be a Construction Environmental Management Plan, a Site waste and materials management plan and a Construction Traffic management plan for each phase? Could they not be combined given the duplications and interactions between the three.</p> <p>b) The ExA would like to explore whether any updates to the (combined) Construction Management Plan be subject to approval by the relevant local planning authority by way of submission?</p>	<p>a) It is common for schemes of this nature to have separate management plans dealing with these matters and this is also partially to assist with clarity in terms of matters approved by the discharging authority. The consultation and discharge of these matters is also considered to be more efficient and constructive if they are dealt with separately, as opposed to consideration of what could be potentially lengthy documents. This approach also follows other SRFI DCOs.</p> <p>b) The Applicant agrees that the drafting of the requirement could be clarified to ensure that as the CEMP is kept under review that review is to be with the approval of the relevant planning authority.</p>
<b>25.</b>	R8 – Travel Plan	The ExA would like to ask the Applicant to explain why a five-year period has been chosen for the travel plan given the traffic and transport implications of the development will remain for the whole of the life of the Proposed Development?	There is an error in the drafting of this requirement – it is intended that the occupier travel plans are to be complied with for the lifetime of the occupation of the unit. Reference to five years refers to active monitoring of the travel plans. A five year monitoring period following meaningful occupation of each unit has been proposed as is typical in developments of this nature. This is generally to manage the new impacts on the local transport network and engrain positive travel habits from the earliest occupation.

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			<p>The Applicant will amend the requirement and this will be reflected in the next version of the dDCO to be submitted.</p>
<p><b>26.</b></p>	<p>R12 – Archaeology and buildings recording</p>	<p>a) See matter 16 above.</p> <p>b) The ExA would like to explore what arrangements are in place for any analysis, reporting, publication or archiving required as part of the works to be secured?</p> <p>c) The ExA would like to explore what arrangements are in place to deal with any archaeological remains not previously identified which are revealed when carrying out the Proposed Development</p> <p>The Applicant may wish to consider the drafting of recently made transport DCOs, for example the A47 Wansford to Sutton.</p>	<p>b) and c) The Applicant agrees that the requirement needs further detail to cover these matters and proposes to add wording along the lines of the A47 Wansford to Sutton DCO similar to:</p> <p><i>"No part of the authorised development is to commence until for that part a written scheme of investigation ("WSI") of areas of archaeological interest, reflecting the relevant mitigation measures set out in the AMS, has been submitted to and approved in writing by the relevant planning authority"</i></p> <p><i>A copy of any analysis, reporting, publication or archiving required as part of the WSI must be deposited with the Historic Environment Record of the relevant planning authority within one year of the date of completion of the authorised development or such other period as may be agreed in writing by the relevant planning authority or specified in the WSI.</i></p> <p><i>"Any archaeological remains not previously identified which are revealed when carrying out the authorised development must be retained in situ and reported by way of a notice to the relevant planning authority, as soon as reasonably practicable from the date they are identified."</i></p>

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27.	R15 – Contaminated land	The ExA would like to explore why this relates to controlled waters only, and not to potentially contaminated land which may be used, say, for recreational purposes.	The Applicant had utilised the drafting sought by the Environment Agency for this requirement but agrees this should relate to all land and not only controlled waters. This will be amended in the next version of the dDCO.
28.	R18 – Energy Strategy and R29 – Combined heat and power	The ExA would like to explore whether it would be possible to combine these requirements given the overall use of energy within the site. In any event, the ExA would like to explore whether requirement 29 meets the tests for requirements and particularly the test of necessity.	The Applicant notes the ExA's comments and will be ready to discuss this at the ISH.
29.	R20 – Landscape Ecological Management Plan, R21 – Ecological mitigation management plan, R22 – Landscape scheme and R33 - Woodland Access management plan	<p>a) The ExA would like to explore why there would be a Landscape Ecological Management Plan, Ecological mitigation management plan, Landscape scheme and Woodland access management plan for each phase? Could they not be combined given the duplications and interactions between them.</p> <p>b) The ExA would like to explore whether any updates to the (combined) Landscape and Ecology Management Plan be subject to approval by the relevant local planning authority by way of submission?</p>	<p>a) It is common for schemes of this nature to have separate management plans dealing with these matters and this is also partially to assist with clarity in terms of matters approved by the discharging authority. The consultation and discharge of these matters is also considered to be more efficient and constructive if they are dealt with separately, as opposed to consideration of what could be potentially lengthy documents. This approach also follows other SRFI DCOs.</p> <p>b) There is no specific drafting dealing with updates to these plans but the Applicant is content to discuss at the ISH.</p>

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		c) There are also typographic errors in requirement 33	c) This is noted. The Applicant will amend the dDCO accordingly.
<b>30.</b>	R34 – Amendments to approved details	As a matter of legal principle, requirements should be complete within their terms; see matter 20 f). If an applicant wishes to change a proposal following an approval, the appropriate procedure is to submit fresh details pursuant to the requirement. The ExA would like to explore how this requirement complies with the legal principle set out.	This is noted. It is considered sensible for the DCO to contain a mechanism for amendments and this principle is covered in other DCO although perhaps not in a requirement. The Applicant's approach was to seek to include this in the relevant schedule, but the Applicant notes this could be covered perhaps elsewhere in the dDCO. The Applicant notes that the principle of changes or variations, so long as they do not give rise to materially greater environmental effects, are provided for in most DCO and this is an established principle. Examples are: The Able Marine Energy Park Order 2014 (S.I. 2014 No. 2935 (requirement 6)), The Northampton Gateway Rail Freight Interchange Order 2019 (S.I. 2019 No. 1358 (article 44)), and The West Midlands Rail Freight Interchange Order 2020 (S.I. 2020 No. 511 (article 43)).
<b>Part 2</b>			

Matter	Provision	Issue or Question Raised	Applicant's Response
31.	General provision	Although it is implied, the ExA would like to explore whether an additional provision explicitly giving the local planning authority the power to determine applications for approval of requirements is required. Section 70(1) of the Town and Country Planning Act 1990 (as amended) may provide outline drafting.	The drafting of this Schedule follows Appendix 1 to PINS Advice Note 15: Drafting the Development Consent Order. The Applicant does not consider such an amendment to be necessary but will review this and is content to discuss at the ISH.
32.	R4 – Appeals	<p>a) The Applicant has cited the Northampton Gateway DCO as precedent in the EM. However, in the equivalent provision to sub-paragraph (3) there is no timetable for the Secretary of State (or the appointed person) to make a decision. The ExA would like to explore why such a provision is justified in this case?</p> <p>b) Sub-paragraph (8) could be seen as fettering the discretion of the decision maker and thus being against the rules of Natural Justice. The ExA would like to explore why such a provision is justified in this case?</p>	<p>The inclusion of a timeframe for making a decision mirrors the drafting in Schedule 2, Part 3, paragraph 45(3) of West Midlands Interchange Rail Freight Interchange Order 2020 (S.I. 2020 511) to ensure that a decision is taken promptly and within a clear timeframe to avoid delays to the Proposed Development. This is considered necessary to ensure there are no undue delays to the delivery of the nationally significant infrastructure project.</p> <p>The wording follows the Appendix in PINS Advice Note 15: Drafting the Development Consent Order and is included in many DCO. It is included in Schedule 2, Part 3, paragraph 45(8) of The West Midlands Rail Freight Interchange Order 2020. The drafting allows for extensions of time where it appears to the decision maker that such an extension is justified and should therefore prevent parties from being unfairly prejudiced where there is a good reason for late submission.</p>

Matter	Provision	Issue or Question Raised	Applicant's Response
		<p>c) The ExA would like to explore whether sub-paragraph (11) is designed to allow the discharging authority to continue to make a decision after an appeal has been lodged. If this is the case the ExA would like to explore whether there is a precedent for such a provision has been made or otherwise explore why this is justified in this case. If not, whether this should be made clearer.</p> <p>d) The ExA would like to explore whether sub-paragraph (13) should be amended so that the appointed person is able to award costs on their own initiative.</p>	<p>The wording follows the Appendix in PINS Advice Note 15: Drafting the Development Consent Order and is included in many DCO. It is included in Schedule 2, Part 3, paragraph 45(11) of The West Midlands Rail Freight Interchange Order 2020.</p> <p>The Applicant understands that it is intended to allow the discharging authority to confirm the wording in writing as may be referred to in any requirement requiring them to do so to evidence that it has issued a decision but makes it clear that it is not necessary for them to do so for the determination to have effect as discharging the requirement.</p> <p>The Applicant does not have a concern with such a change, however would simply note that the wording follows the Appendix in PINS Advice Note 15: Drafting the Development Consent Order and is included in many DCO. It is also included wording in Schedule 2, Part 3, paragraph 45(13) of The West Midlands Rail Freight Interchange Order 2020.</p>
<b>33.</b>	R5 – Fees	a) The ExA would like to explore whether this proposal as set out is appropriate.	The wording follows the drafting in Schedule 2, Part 3, paragraph 46 of The West Midlands Rail Freight Interchange Order 2020 and the Applicant considers this to be a reasonable approach. The drafting does also allow for agreement between the parties in respect of such fees.
		b) There is no reference to "requirements" in the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits)	The wording follows the drafting in Schedule 2, Part 3, paragraph 46 of The West Midlands Rail Freight Interchange Order 2020. However, the Applicant would



Matter	Provision	Issue or Question Raised	Applicant's Response
		<p>(England) Regulations 2012 (the Fee Regulations). This would therefore lead to uncertainty and the ExA will want to explore alternative drafting.</p> <p>c) The Fee Regulations has a refund if a decision is not made within 12 weeks in respect of an application to discharge a condition. The ExA would like to explore why the 42-day period has been chosen and whether it is justified in this case.</p>	<p>be open to consider alternative drafting if this is considered necessary.</p> <p>The wording follows the Appendix in PINS Advice Note 15: Drafting the Development Consent Order and is included in many DCO. It is included in Schedule 2, Part 3, paragraph 46(2) of The West Midlands Rail Freight Interchange Order 2020.</p>

### Remaining Schedules

Matter	Provision	Issue or Question Raised	Applicant's Response
<b>34.</b>	Schedule 8 – Speed limits and Schedule 9 – Clearways and no waiting	In each case, the 'event' is said to be on "completion". This term is not defined. The ExA would like to explore whether, if defined, this term is appropriate or whether alternative drafting, such as "open for traffic" is more appropriate.	The drafting is consistent with the drafting of other DCO schedules but is content to consider whether the term could be clarified and agrees that wording such as "open to traffic" might be appropriate. The Applicant will review this and amend the dDCO accordingly.
<b>35.</b>	Schedule 12 - Modifications of compulsory purchase enactments for creation of new rights	The ExA would like to explore whether there are precedents for these provisions. When clarified this should be set out in the EM.	The drafting is consistent with other DCO schedules, for example The West Midlands Interchange Rail Freight Interchange Order 2020 (S.I. 2020 511) (Schedule 12) and The Northampton Gateway Rail Freight Interchange Order 2019 (S.I. 2019 1358) (Schedule 12), The M25 Junction 28 Development Consent Order 2022 (S.I. 2022 573) (Schedule 7)

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36.	Schedule 13 – Protective provisions	<p>a) The ExA would like to explore the current situation in respect of protective provisions.</p> <p>b) Given that National Grid Electricity Distribution (East Midlands) plc has its own Part (Part 8) the ExA would like to explore whether this should be specifically 'carved out' from Part 6. Various made transport DCOs (for example, M54 to M6 Link Road) have such provisions.</p> <p>c) In Part 7, the ExA would like to explore why, given the drafting set out, there are different definitions for "electronic communications code operator" and "operator"? Could these definitions be combined, and the necessary amendments made?</p>	<p>This is noted.</p> <p>This is noted and agreed. The Applicant will amend the dDCO accordingly.</p> <p>This is noted, however, the provisions are based on standard provisions applied in many DCO and required by such operators, such as Openreach. The Applicant has had no formal comment from Openreach on the drafting but will consider this and if appropriate, amend the dDCO accordingly.</p>
37.	Schedule 14 – Miscellaneous controls	<p>The ExA would like to explore the reasoning for each and every one of the proposed modifications and exclusions of statutory provisions and why they are necessary in this case. When clarified this should be set out in the EM.</p>	<p>This is noted and the Applicant will be ready to discuss at the ISH.</p> <p>The Applicant will then review and amend the Explanatory Memorandum accordingly.</p>