

Tritax Symmetry (Hinckley) Limited  
**HINCKLEY NATIONAL  
RAIL FREIGHT INTERCHANGE**

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**The Hinckley National Rail Freight  
Interchange Development Consent Order**  
Project reference TR050007

**Applicant's response to ExAs commentary on the  
dDCO**

Document reference: 3.5

Revision: 01

**20 February 2024**

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Planning Act 2008

The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations  
2009 Regulation 5(2)(q)

Draft DCO proposed changes

| Reference         | ExA's suggested changes  | ExA's Comments | Applicant's Response  |
|-------------------|--|----------------|---|
| <b>General</b>    |  |                |   |
| Drafting guidance | When the dDCO is finalised, all internal references, statutory citations and references and legal footnotes should be checked and updated as required. Drafting should be reviewed to follow best practice in Planning Inspectorate Advice Notes 13 and 15 and guidance on statutory instrument drafting from the Office of the Parliamentary Counsel (June 2020). |                | The Applicant confirms that all such checks will be made to the final dDCO to be submitted at Deadline 7. The Applicant is content that, subject to the proposed amendments described in these responses below, best practice as per Advice Notes 13 and 15 has been followed, as explained in the Explanatory Memorandum (document reference: 3.2B, REP4-029). |
| Drafting          | The Final DCO to be submitted in PDF by the Applicant at Deadline 7 (27 February 2024) must be accompanied by a MS Word copy in the SI template with the SI template validation report confirming that it is in accordance with the format for the official draft SI template and has passed through the draft SI checker. All outstanding format issues must be   |                | The Applicant confirms it will provide at Deadline 7 a MS Word copy of the SI template and a validation report confirming the dDCO has passed all outstanding format issues.  |

Draft DCO proposed changes

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|                        | addressed before submission and the Applicant must submit the checker reports to show that this has been done by Deadline 7.   |                |   |
| Use of "and/or"        | Check use of "and/or"; this is not considered to be suitable for statutory instruments.  |                | The Applicant will review the dDCO and ensure this is addressed.  |
| Explanatory memorandum | A robust justification should be provided in the Explanatory Memorandum for each Article and Requirement in the dDCO, explaining why the inclusion of the power or requirement is necessary, proportionate to the novelty or controversy relating to the provision. Account should be taken of equivalent provisions in made DCOs, recognising that practice has evolved and the model provisions set out in the infrastructure regulations may no longer be relevant. |                | The Applicant considers that the Explanatory Memorandum (document reference: 3.2B, REP4-029) provides robust justifications as requested and will undertake a final review of this with the final dDCO amendments. An updated final Explanatory Memorandum will be submitted at Deadline 7. |
| <b>Articles</b>        |  |                |   |

Draft DCO proposed changes

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|-----------|--|--|--|
| 25        | Replace sub-paragraph (2) with: "The undertaker must not under this Order acquire or take temporary possession under Articles 34 and 35 of a total of more than 200 square metres of common land." | To make clear in one location the maximum quantum of common land that can be affected by the Proposed Development. | The Applicant understands the intention of this proposed change and agrees with the proposal in principle. The Applicant is concerned to ensure that the provision does not preclude the exercise of a combination of powers of temporary possession and/or compulsory acquisition, but is content to retain the overall limitation on the area. The Applicant will consider appropriate drafting to reflect this and will explain its approach at Deadline 7.   |
| 26        | Delete the phrase "any contractors, servants or agents of the Undertaker".   | This is unnecessary.   | <p>The Applicant understands this comment relates to article 28. It is considered that the inclusion of this wording is important because this article operates automatically upon the exercise of an authorised activity and does not require the formal exercise of powers under Part 5, and such authorised activity may be taken by a contractor, servant or agent of the undertaker and not the undertaker itself. It is noted that the following made DCOs include this wording in their equivalent articles:</p> <ul style="list-style-type: none"> <li>- The Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 2024: (article 17)</li> <li>- A12 Chelmsford to A120 Widening Development Consent Order 2024: (article 32)</li> <li>- The Boston Alternative Energy Facility Order 2023: (article 29)</li> <li>- The Longfield Solar Farm Order 2023: (article 24)</li> <li>- The Portishead Branch Line (MetroWest Phase 1) Order 2022: (article 29)</li> </ul> |

Draft DCO proposed changes

| Reference | ExA's suggested changes   | ExA's Comments                    | Applicant's Response  |
|-----------|---------------------------|-----------------------------------|---|
|           |                           |                                   | <p>The Applicant therefore intends to retain the wording.</p> <p>The Applicant will update the Explanatory Memorandum to refer to the above DCOs for Deadline 7.</p>  |
| 34        | Delete sub-paragraph (14) | In light of change to Article 25. | As above in response to this suggestion.  |
| 35        | Delete sub-paragraph (12) | In light of change to Article 25. | As above in response to this suggestion.  |
| 39        | Delete provision.         | This provision is unnecessary.    | <p>The Applicant respectfully disagrees that this provision is unnecessary. It is important that the DCO is clear that any compensation payable under it is not to be paid more than once. If the provision is not included, the Applicant considers that there would be potential for disputes and litigation in future.</p> <p>The Explanatory Memorandum explains this position and refers to other made DCOs which include this common provision.</p> <p>In addition to those other DCOs noted in the Explanatory Memorandum the Applicant is aware that this provision is included in other made DCO such as:</p> <ul style="list-style-type: none"> <li>- A12 Chelmsford to A120 Widening Development Consent Order 2024 (article 35)</li> <li>- The Boston Alternative Energy Facility Order 2023 (article 51)</li> <li>- The Portishead Branch Line (MetroWest Phase 1) Order 2022 (article 41)</li> <li>- The Awel y Môr Offshore Wind Farm Order 2023 (article 42)</li> </ul> |

Draft DCO proposed changes

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|-----------|--|---|---|
|           |  |   | The Applicant will update the Explanatory Memorandum to refer to these for Deadline 7.  |
| 50        | <p>Replace sub-paragraph (4) with: (4) The undertaker must liaise with the relevant planning authority to ensure that:</p> <p>(a) as soon as practicable following the making of this Order, a copy of each of the documents listed in Schedule 15 is included under Part 2 of the local planning register as if this Order were a planning permission granted under the 1990 Act<sup>1</sup> ; and</p> <p>(b) a register of those requirements contained in Part 1 of Schedule 2 of this Order (requirements) that provide for further approvals to be given by the relevant planning authority is included within the local planning register under Regulation 40 of The</p> | <p>To ensure that a copy of any made Order and any approvals of requirements are included within the local planning register and thus within the public domain.</p> | <p>The Applicant is content to agree to liaise with the relevant planning authority to assist in the updates to the registers as requested. Appropriate drafting will be added to the final dDCO submitted at Deadline 7.</p> |

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|--------------------|---|--|--|
|                    | <p>Town and Country Planning (Development Management Procedure) (England) Order 20152 as if each requirement were a condition of a planning permission granted under the 1990 Act; and</p> <p>(c) the reference number, the date and the effect of any decision of the Secretary of State of an appeal under paragraph 4 of Part 2 of Schedule 2 of this Order is included within the local planning register under Regulation 40 of The Town and Country Planning (Development Management Procedure) (England) Order 2015.</p> |  |  |
| <b>Schedules</b>   |   |  |  |
| Schedule 2, Part 2 | <p>In paragraph 4:</p> <p>(i) Delete sub-paragraph (3).</p>   | <p>(i) To allow the appointed person flexibility to make a decision and to ensure natural justice.</p> | <p>i. As the ExA is aware from the Applicant's previous submissions, the Applicant had followed other SRFI drafting in respect of Part 2 Schedule 2 (West Midlands Interchange and Northampton Gateway).</p> |

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|-----------|---|--|---|
|           | <p>(ii) In sub-paragraphs (8) and (9) replace "is to" with "may".</p> <p>(iii) In sub-paragraph (13) replace "On application by the discharging authority or the undertaker, the" with "The", and "Planning Practice Guidance published by the Department for Communities and Local Government on 6th March 2014 or any circular or" with "Planning Practice Guidance".</p> | <p>(ii) To allow the appointed person flexibility and to ensure natural justice.</p> <p>(iii) To allow the appointed person to make a costs award on their own volition as well as in response to application, and for simplicity.</p> | <p>The Applicant considers it necessary for the inclusion of a timeframe for appeal decisions in order that the delivery of the nationally significant infrastructure project is not delayed. It is not considered unreasonable to impose this obligation. The Applicant notes that other recently made DCOs do impose a timeframe for appeal decisions with the following wording, which goes further than Advice Note 15 (the additional wording beyond Advice Note 15 is in bold text below).</p> <p><i>"the appointed person must make their decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable <b>and in any event within 30 working days of the deadline for the receipt of counter-submissions pursuant to sub-paragraph...</b>"</i></p> <p>The above paragraph is included in the following recently made DCOs:</p> <ul style="list-style-type: none"> <li>- The Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 2024 (Schedule 11, paragraph 5(2)(e)).</li> <li>- The Longfield Solar Farm Order 2023 (Schedule 16, paragraph 4(2)(e)).</li> </ul> |



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|-----------|-------------------------|----------------|---|
|           |                         |                | <ul style="list-style-type: none"> <li>- The Slough Multifuel Extension Order 2023 (Schedule 3, paragraph 5(2)(e)).</li> <li>- The Awel y Môr Offshore Wind Farm Order 2023 (Schedule 11, paragraph 6(2)(e)).</li> </ul> <p>The Applicant therefore proposes:</p> <p><i>“The appointed person must make their decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable and in any event within 30 working days of the deadline for the receipt of counter-submissions pursuant to subparagraph (2)(e).”</i></p> <ul style="list-style-type: none"> <li>ii. Agreed and it is noted that this accords with Advice Note 15. The Applicant had sought to avoid the use of “may” in line with general SI drafting guidance but the Applicant will make this change in the final dDCO to be submitted at Deadline 7.</li> <li>iii. The Applicant considers that the retention of the wording to allow costs applications is important, but is content to alter the wording to provide for the making of a costs decision in the event that no such costs application has been made. The Applicant proposes the following, and will make</li> </ul> |

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|--------------------------------|--|--|--|
|                                |  |  | <p>this change in the final dDCO to be submitted at Deadline 7:</p> <p><i>(13) The appointed person may following an application by the discharging authority or the undertaker, or in the absence of such application, give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to the Planning Practice Guidance or guidance which may from time to time replace it.</i></p> |
| <b>Requirements</b>            |  |  |  |
| <p>New Requirement after 2</p> | <p><b>Securing land</b><br/>No commencement of construction works shall take place until details showing that the freehold ownership, with the exception of rights held by Network Rail and Leicestershire County Council, of Plots 13, 15a, 22, 22a, 24, 25, 26, 27, 28, 31, 32, 33, 34, 37, 39, 71, 72 and 73 as shown on the land</p> | <p>To ensure that the site would be comprehensively developed as a Nationally Significant Infrastructure Project, and to ensure that all relevant provisions can be delivered. Blaby District Council to be the approving body as the majority of the relevant plots are within its administrative area and this</p> | <p>Section 120(2) Planning Act 2008 states that a DCO may include “(a) requirements corresponding to conditions which could have been imposed on the grant of any permission, consent or authorisation, or the giving of any notice, which (but for section 33(1)) would have been required for the development.”</p> <p>The Applicant does not consider that the proposed requirement would satisfy the tests for a valid planning condition in paragraph 56 of the NPPF as it is not a necessary, relevant to planning nor a reasonable</p>                                      |

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|           | <p>plans has been transferred to the undertaker, or to any other undertaker permitted by the Secretary of State pursuant to Articles 7 or 8 of this Order, has been submitted to and agreed in writing by Blaby District Council.</p> | <p>needs to be approved as a whole.</p> | <p>requirement. The planning purpose that is purportedly served by the requirement is to ensure the comprehensive development of the NSIP. However, that purpose is secured through the operation of the articles, requirements and protective provisions in the DCO which relate to the provision of mitigation, the submission of phasing plans and detailed design and associated restrictions on the use and occupation of the development. Land ownership of itself does not secure any of those things and therefore is both unnecessary and unrelated to planning. If the ExA's concern was commonly addressed through the imposition of a condition as proposed by the ExA, then such conditions would be commonplace wherever planning permission is obtained for major development sites where the developer is reliant upon options or conditional contracts to subsequently acquire the land interest. The fact that they are not is indicative that such conditions do not meet the relevant test.</p> <p>The only circumstance where land ownership is relevant to securing mitigation for a development is in order to secure s106 planning obligations (which are delivered for HNRFI in respect of the plots of land the owner has under control through either ownership or option agreements).</p> |

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|           |                         |                | <p>It is not necessary for the Applicant to have freehold ownership of the entire extent of the Order land set out in the proposed requirement prior to commencement in order to deliver to project in accordance with the terms of the Order. The authorised development may be delivered in phases, not all of these plots of land need to be within the Applicant's freehold ownership before commencement. The phased acquisition of land, should the Applicant decide to assemble land in such a manner, does not prevent the comprehensive development of the scheme since the delivery of the works are secured through the detailed design and phasing requirements.</p> <p>Imposing such an obligation could:</p> <ul style="list-style-type: none"> <li>a) In respect of those plots where the Applicant does not have an option agreement at this point in time, force the Applicant to exercise compulsory acquisition powers when it might not otherwise be necessary – the Applicant may still consider acquisition through voluntary agreements but that might not be possible due to the timing restriction suggested by the ExA; and</li> <li>b) In respect of those plots where the Applicant does already have an option agreement in place at this point, force the Applicant to exercise the option before it is needed, simply to demonstrate ownership.</li> </ul> |

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|           |                         |                | <p>It is also noted that no other consented SRFI DCO has imposed such an onerous provision and all of those DCOs approached land assembly in the same way – i.e. not seeking ‘back up’ compulsory acquisition where voluntary agreements had been reached with the landowners. As per the Applicant’s Post Hearing Submissions (ISH) (Document Reference 18.12, page 12, REP3-077), the Applicant is also aware of other made DCO where compulsory acquisition was not sought (The Little Crow Solar Park Order 2022, The Port of Tilbury (Expansion) Order 2019, The Boston Alternative Energy Facility Order 2023 and The Riverside Energy Park Order 2020) on a similar basis. The Applicant should not be penalised and forced to assemble land earlier than needed because it has chosen not to impose compulsory powers where they are not needed. Indeed, the Applicant’s approach of not seeking compulsory acquisition is compliant with Government Guidance on compulsory acquisition<sup>1</sup>. In particular, paragraph 25 of that guidance states that <i>“Applicants should seek to acquire land by negotiation wherever practicable. As a general rule, <u>authority to acquire land compulsorily should only be sought as part of an order granting development consent if attempts to acquire by agreement fail.</u>”</i> (our emphasis) It is considered</p> |

<sup>1</sup> Planning Act 2008 Guidance related to procedures for the compulsory acquisition of land, September 2013 Department for Communities and Local Government.

Draft DCO proposed changes

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|----------------|--|--|---|
|                |  |  | <p>that compulsory acquisition would not have been justified where voluntary agreements have been reached.</p> <p>The Applicant already has control over plot 13, albeit in a different company name.</p> <p>The Applicant already has control of the freehold (with the exception of rights held by Leicestershire County Council where relevant) over plots 22, 24, 25, 26, 27, 31, 32, 33, 34, 37, 39, 71, 72 and 73.</p> <p>The Applicant already has control of the freehold (with the exception of rights held by Network Rail and Leicestershire County Council) over plot 22a.</p> <p>The Applicant owns the freehold of plot 28.</p> |
| Requirement 8  | <p>In (2):</p> <p>(i) After second sentence "site wide travel plan" add "and include provisions for promoting the travel plan across the occupiers work force for the site".</p> <p>(ii) Replace last sentence with: "Each occupier must monitor the operation of the occupier specific travel plan for the period of their occupation."</p> | <p>To ensure that travel plan obligations continue throughout the occupation rather than for five years only and that sustainable travel methods are continuously promoted to encourage take up.</p> | <p>The Applicant is content to make these changes and they will be reflected in the final dDCO submitted at Deadline 7.</p>   |
| Requirement 10 | <p>Add at end: "The rail infrastructure shall thereafter</p>   | <p>To ensure that the rail aspects of the Proposed Development</p>   | <p>As per the Applicant's Responses to HBBC's comments on the dDCO at Deadline 5 (Document Reference 18.17), the</p>  |

Draft DCO proposed changes

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|-----------|---|---|---|
|           | be retained in a condition suitable for use.” | are retained as part of the overall proposal. | Applicant has agreed to add wording to requirement 10 in respect of the retention of the rail terminal throughout the occupation of the warehousing and this will be reflected in the final dDCO submitted at Deadline 7. |