

Tritax Symmetry (Hinckley) Limited

HINCKLEY NATIONAL RAIL FREIGHT INTERCHANGE

The Hinckley National Rail Freight Interchange Development Consent Order

Project reference TR050007

Applicant's response to Deadline 7 Submissions [part 1 - BDC]

Document reference: 18.21

Revision: 01

8 March 2024

Planning Act 2008

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

HINCKLEY NATIONAL RAIL FREIGHT INTERCHANGE

Blaby District Council (IP ref. 20040018) Deadline 7 submission (ref. TR05007).

Deadline 7 – February 27, 2024

Comments on Deadline 6 submissions

1. This document outlines Blaby District Council’s (“BDC’s”) response to documents submitted by Tritax Symmetry (Hinckley) Limited (“the Applicant”) at Deadline 6.
1. BDC wishes to highlight the approach that has been taken in responding to these Deadline 6 submissions. In order to ensure that the response documents are not unnecessarily lengthy, BDC has only responded where it feels that a full response or clarification is required. Therefore, where BDC has not directly responded to a comment or document, it can be taken that BDC notes the comment and has nothing further to add.

Document Reference	Document Name	BDC Comments	Applicant’s Response
Noise			
18.19 [REP6-018]	Applicant's response to Deadline 5 Submissions [part 1 - BDC]	<p>Agenda item 6 – 6.2 BDC is content with the use of the Design Manual for Road and Bridges (DMRB) guidance (LA111 Noise and Vibration, May 2021), specifically, the short and long-term impact descriptors for the purposes of assessing the significance of impact.</p> <p>Notwithstanding this, BDC submitted that the Applicant should follow the methodology outlined in paragraphs 7.85 and 7.86 of the Institute for Environmental Management and Assessment (IEMA) guidance (version 1.2, November 2014) which requires cumulative impact to also be considered. This was to be enable for a better understanding of the overall impact of the Proposed Development in conjunction with committed development.</p> <p>Whilst the Applicant has not carried out a sensitivity test, their review of the traffic flow information, set out in their latest draft Statement of Common Ground (SoCG) submitted to BDC between Deadlines 6 and 7 showed, by way of percentage changes, that the impacts using the IEMA guidance approach would be negligible. Therefore, this is no longer a matter of disagreement and the SoCG has been updated accordingly.</p> <p>Agenda item 6 – 6.7 BDC has previously requested additional information regarding the gantry cranes which the Applicant provided. However, the request for further information on the proposed mitigation measures for maximum impacts</p>	<p>The Applicant acknowledges agreement on the Matter set out in Agenda item 6-6.2.</p> <p>The Noise and Vibration chapter (document reference: 6.1.10A, REP4-039 Revision 08) sets out the with mitigation predictions and associated effects before soft dock technology is employed. The chapter notes that the exceedances are only predicted when the source is operating near the receptor and</p>

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		<p>associated with soft docking were not provided at previous deadlines.</p> <p>The Applicant has stated that it has obtained further information regarding source noise measurements undertaken by another acoustic consultancy (Vanguardia Limited) on 24th February 2022 for soft dock technology at East Midlands Gateway. The measurements specifically relate to 'Eco' reach stackers but would also apply to gantry cranes adopting the same technology.</p> <p>BDC note the further information outlined on this soft dock technology however, no numerical evidence has been provided. In addition, these comments all relate to container 'lifting' and there is no reference to impact sound from placement of the containers. Therefore, BDC's position remains unchanged on this item.</p>	<p>the resultant levels do not account for screening provided by container stacks or other sources. Therefore, the with mitigation assessment presents a worst-case scenario.</p> <p>Beyond the numerical assessment, soft dock technology has been proposed to further reduce the number of maximum noise events over a night-time period from the rail port. However, this was never quantified within the assessment - it is a best available technique proposed as directed in the NPSNN paragraph 5.189.</p> <p><i>'Where a development is subject to EIA and significant noise impacts are likely to arise from the proposed development, the applicant should include the following in the noise assessment, which should form part of the environment statement:</i></p> <p>[...]</p> <ul style="list-style-type: none"> <i>measures to be employed in mitigating the effects of noise. Applicants should consider using best available techniques to reduce noise impacts.</i> <p>During the attendance by Vanguardia at EMG (previously referenced in SoCG Document 19.1DX), the subjective assessment of the site surveyor was that the impulsive noise from the spreader impact is effectively removed with the implementation of soft dock technology. This in turn removes one of the two main sources of operational maximum noise levels identified in the Noise and Vibration Chapter (document reference: 6.1.10A, REP4-039).</p> <p>In summary, the assessment does not rely on any numerical reduction as a result of soft dock technology. The adoption of this technology should significantly reduce the number of maximum noise events from the rail port.</p>
Ecology			
Appendix 12.2 [REP6-008]	Biodiversity Impact Assessment Calculations	BDC note the additions and amendments to Appendix 12.2 – Biodiversity Impact Assessment Calculations. BDC can confirm the details provided look to be in good order. However, BDC's position remains that the final biodiversity position will be subject to the detailed design stage and supported by a detailed version of the DEFRA metric. At that	Noted. This is also the Applicants position.

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		time, further opportunities will potentially be identified to increase the level of biodiversity gain.	
Traffic and Transport			
17.4D [REP6-015]	HGV Route Management Plan and Strategy	<p>BDC's submissions at Deadline 6 [REP6-029], and Deadline 5 [REP5-054] outlined its key concerns relating to the HGV Route Management Plan and Strategy. To summarise these included:</p> <ul style="list-style-type: none"> • A lack of a clear mechanism to determine what would constitute a breach of the HGV Route Management Plan and Strategy. • Mischaracterisation of BDC's enforcement role and the legal basis upon which BDC could undertake public planning enforcement. • The proposed amount and location of ANPR cameras not being sufficient to capture all incidents where a prohibited route is used. • The trigger for a fine only taking effect when there had been multiple uses of the Prohibited Routes. Furthermore, the amount that a responsible party could be fined was proposed to be at a sliding scale up to £1000. • Lack of clarity on the measures that would be undertaken once a review panel meeting had occurred and how disagreement between the parties would be resolved to agree to additional measures. <p>The updated HGV Route Management Plan and Strategy submitted by the Applicant contains several improvements. The daily trigger thresholds in Table 4 are considered to be more appropriate and the language of the document is generally clearer about the obligations which are imposed by the Strategy.</p> <p>However, BDC does not consider it fully addresses the Council's concerns. As explained above, the revised HGV Route Management Plan and Strategy submitted by BDC at Deadline 6 [REP-030] seeks to resolve all of these concerns.</p>	<p>The HGV Route Management Plan and Strategy (document reference: 17.4E, REP7-055) has been updated within the Deadline 7 submission. Amendments included consideration of track changes and concerns submitted by BDC. Whilst not all track changes have been included directly, the context behind the majority have been included. Where changes have not been included, the Applicant considers that other paragraphs within the strategy provide the required content.</p> <p>The plan highlights that the enforcement responsibilities are with the Applicant and the designated Travel Plan Coordinator.</p> <p>Updates were added to account for additional sensitive routes within the Deadline 7 submission (document reference: REP7-055).</p> <p>The HNRFI HGV Review reports, issued quarterly for the first year occupation and annually thereafter for the duration of the HGV Strategy Steering Group. Reports will also be forwarded to Parish Councils if there is a breach in their Parish, which will include a report for Sapcote Parish Council with data on average HGV figures through their Parish. Additional requests may be made by the local planning and highway authorities. These reports will contain sufficient data and detail in order to discuss most appropriate measures as required. The Travel Plan Coordinator, as part of the HGV Strategy Steering Group, will ensure agreements on additional measures.</p> <p>Table 3 provides information on Potential Future Mitigation Measures in Sapcote. The measures relate to Sapcote specifically because as the Applicant plans to mitigate against any background HGVs that may use this route instead of alternative routes due to the south facing slip roads.</p>
18.19 [REP6-018]	Applicant's Response to the Written Summary of BDC's Oral Case for ISH6 as contained in the Applicant's Response to Deadline 5 Submissions Part 1 – BDC	<p>BDC submitted a revised HGV Route Management Plan and Strategy at Deadline 6 [REP-030]. An overview of the proposed changes and the rationale for these is given below.</p> <p><u>New threshold for breaches</u></p> <p>BDC agrees that it would not be proportionate for any use of a prohibited route to constitute a breach of the HGV Strategy and therefore a criminal offence under section 161 of the</p>	<p>Whilst local highway authorities will decide whether to take formal Enforcement Action at any stage upon notification of any reported breaches, a parallel process of escalating site management measures will also be operated to influence occupier behaviour and discourage breaches. These management measures will be dealt with by the Site Management Company.</p>

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		<p>2008 Planning Act. However, BDC's concern is that the HGV Strategy 'discourages' the use of prohibited routes without identifying any clear threshold which would enable BDC to take direct enforcement action against occupiers who persistently use the prohibited routes. The HGV Strategy as drafted could result in a situation in which the measures in the Strategy are being complied with, and yet unacceptable numbers of HGVs are still using the prohibited routes. BDC's proposed revisions to the Strategy are intended to address this.</p> <p>BDC proposes that an additional threshold of prohibited routes use is added to Table 4. The use of prohibited routes above that threshold would constitute a breach of the Strategy therefore allowing BDC to take enforcement action as a breach of Requirement 18 of the DCO.</p> <p>In practice, BDC would not expect to need to take any such enforcement action and would hope that the prior 'discouragement' measures included in the Strategy would be effective. However, without the new threshold proposed by BDC, the Council considers the HGV Strategy lacks an effective enforcement mechanism for repeated breaches.</p> <p><u>Additional ANPR camera locations</u> BDC has also proposed that additional locations for ANPR cameras are identified in the Strategy to ensure that all use by HNRFI HGVs of the prohibited routes are captured and recorded. BDC considers the identification of these additional locations should be determined by the Applicant in conjunction with the Highway Authorities.</p> <p><u>Other proposed changes</u> Other key changes to the HGV Route Management Plan and Strategy as proposed in BDC's deadline 6 submission include:</p> <ul style="list-style-type: none"> • The amalgamation of Stages 1 and 2 of the management interventions at paragraphs 5.46 – 5.50. This would mean management fines would be issued for any use of the prohibited routes. Fines would be set at £1000 rather than a maximum of £1000 per paragraph 5.50. • Wording to make clear that local residents have the ability to report use of prohibited routes directly to the Travel Plan Coordinator. • New wording at paragraph 5.58 to clarify that the Strategy Review Panel would be required to consider the additional measures set out at Table 3 which could be 	<p>Typical management interventions include a requirement for evidence being provided to display that action is being taken to avoid breaches.</p> <p>Details of Blaby District Council's statutory enforcement powers have been added to the HGV Route Management Plan and Strategy (document reference: 17.4E, REP7-055). Table 4 has also been updated to state that in the event of 10+ daily breaches, additional measures and/or revised HGV Route Management Plan will be implemented under agreement between the Travel Plan Co-ordinator in and the HGV Strategy Steering Group</p> <p>Private Fining protocols are enacted following management measures and those occupiers in persistent breach of the HGV Route Management Strategy. The HNRFI financial penalty will be set to a maximum of £1,000 per breach and be Consumer Price indexed linked.</p> <p>The ANPR cameras will need to be situated in public highway and the details of their implementation (precise location, power supply, signage etc) will be subject to approval by Leicestershire and Warwickshire County Councils and consultation with relevant Parish Councils through details to be submitted to the LPA for Requirement 18.</p> <p>In addition to the local planning and Highway Authorities, the parish councils of Sapcote, Stoney Stanton, Wolvey and Pailton will also be provided with the contact details of the nominated individual working on behalf of the Site Management Company, the TPC, to enable specific concerns to be raised and investigated. The contact details for this nominated individual will be displayed on the HNRFI website and a link will be distributed to the above parties to display on their websites should they choose, to enable any concerns to be raised directly with the TPC.</p> <p>The Applicant will manage a fund of £200,000 to pay for additional measures that the HGV Strategy Steering Group</p>

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		<p>implemented using the £200,000 fund proposed by the Applicant. BDC echoes the concerns of LCC in that measures already suggested by the Applicant have been ruled out. Additionally, Table 3 only references Sapcote and does not account for other locations where breaches could take place and mitigation would be needed. Therefore, it is unclear what realistic additional mitigation can be delivered and the Applicant has not provided any indication of the costs of delivering these measures and therefore an indication of how far £200,000 would realistically extend. Wording at paragraph 5.58 to clarify that if any proposed changes to the Strategy cannot be agreed by the parties, they will be referred to arbitration in accordance with Article 52 of the DCO</p>	<p>considers necessary. This fund would be topped up on an annual basis with any occupier fines collected for breaching the HGV Route Management Plan and Strategy.</p> <p>The Applicant will place £200,000 in a holding account. In the event of the HGV Strategy Steering Group agrees that additional measures are necessary, the Applicant will enter into a s278 agreement with the relevant highway authority and draw down funds from the holding account to cover the cost of the additional measures.</p>

Document and Provision	BDC Deadline 5 Comment and proposed Drafting	Applicant's Response	BDC Deadline 7 Response	Applicant's Response
<p>Applicant's response to Deadline 5 Submissions [part 1 - BDC] REF: 18.19 [REP6-018]</p> <p>Article 7 (Benefit of Order)</p>	<p>BDC maintains its position in relation to this provision as outlined in our Deadline 3 comments on the Applicant's revised dDCO [REP3-096]. It is not appropriate for a power of entry onto private land to be given to a person whose identity is not known.</p> <p>The Applicant's response to BDC's deadline 3 submissions [REP4-120] has stated that there 'may' be a need for persons to exercise the powers under Articles 22 and 23. Citing an event where the rail freight terminal operator needs to undertake protective works and / or the need for statutory undertakers to enter private land.</p> <p>Whilst the Applicant cites that compensation provisions are available, it is unknown if the authorised parties would have the financial capacity to pay this compensation if required.</p> <p>BDC does not consider the Applicant has provided ample justification based on both examples in light of the ability for the rail freight terminal operator to notify the undertaker of this requirement and for the agents of the undertaker to undertake the work themselves.</p> <p>The Applicant should be asked to provide a more substantive explanation for why entry onto land is required for unknown parties.</p> <p>As such, BDC consider that Article 7(2) should be amended to read as follows:</p>	<p>The Applicant disagrees with this change, the effect of which would be to frustrate par es [sic] expressly stated to benefit from the Order from realising those benefits. The Applicant does not consider that these provisions should be restricted. See recent precedent in Article 8(2) of the Sizewell C (Nuclear Generating Station) Order 2022.</p>	<p>BDC maintains its position.</p> <p>The Sizewell C (Nuclear Generating Station) Order 2022 cited by the Applicant is not a relevant precedent.</p> <p>Article 8(2) of the Sizewell C Order relates to specific works for which consent is granted for the express benefit of owners and occupiers of land, statutory undertakers and other persons affected by the authorised development.</p> <p>That is wholly different from the position in the Applicant's dDCO which seeks to give the benefit of all provisions of the order (except for the powers of acquisition) to persons with an interest in the land.</p> <p>BDC maintains that it is not appropriate for unknown persons to have the benefit of the powers of entry conferred by Articles 22 and 23, and those provisions should therefore be referred to in Article 7(2).</p>	<p>The Applicant disagrees with BDC's position. These powers are included in DCO because they grant the necessary ability to carry out surveys or works for NSIPs. Imposing limitations on the powers could restrict the delivery of what is accepted to be nationally significant development.</p>

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	<p>2) Tritax Symmetry (Hinckley) Limited, has the sole benefit of the provisions of –</p> <p><i>a) Part 5 (powers of acquisition); b) Article 22 (protective works to buildings); and c) Article 23 (authority to survey and investigate the land),</i></p> <p>unless the Secretary of State consents to the transfer of the benefit of those provisions.</p>			
<p>Applicant's response to Deadline 5 Submissions [part 1 - BDC] REF: 18.19 [REP6-018]</p> <p>Article 9 (Street Works)</p>	<p>BDC maintains its position in relation to this provision as outlined in our Deadline 3 comments on the Applicant's revised dDCO [REP3-096]. The activities listed in Article 9(1)(e) to (i) go well beyond the model provisions and should be deleted. The Applicant's draft explanatory memorandum states that "the inclusion of this Article in the draft DCO provides a statutory right to undertake street works within the specified streets and means that the undertaker will not need to obtain a separate licence</p> <p>from the street authority under the New Roads and Street Works Act 1991."</p> <p>The drafting of this Article represents a misunderstanding of the scope of 'street works' in the 1991 Act. The activities listed in Article 9(1)(e) to (i) do not fall within the definition of 'street works' in section 48 of the 1991 Act and therefore do not require (and would not be capable of being consented by) a street works licence under the 1991 Act.</p> <p>To be clear, the deletions suggested by BDC would not prevent the Applicant from being able to carry out the works listed in 9(1)(e) to (i). Alterations to</p>	<p>The Applicant refers to its response at pages 54 and 55 of the Applicant's Response to Deadline 3 submissions (document reference: 18.13, REP4- 120) in respect of the rationale and precedent for retention of this drafting.</p> <p>Further precedent is in Article 8(1) of the Northampton Gateway Rail Freight Interchange Order 2019 and Article 10(1) of the East Midlands Gateway Rail Freight Interchange and Highway Order 2016.</p> <p>The Applicant accepts that the power to carry out the works at (f) to (i) are provided pursuant to Article 10(1) and accordingly will delete (f) to (i).</p>	<p>BDC acknowledges the Applicant's removal of article 10(1)(f) - (i).</p> <p>BDC maintains its position that, regardless of precedent, the construction of bridges and tunnels does not constitute "Street works" for the purposes of the New Roads and Street Works Act 1991 and therefore, 10(1)(e) should also be deleted.</p>	<p>The Applicant maintains its position. It has already removed some paragraphs, but the reference to bridges and tunnels is included in the authorised Northampton Gateway Rail Freight Interchange Order 2019 and Article 10(1) of the East Midlands Gateway Rail Freight Interchange and Highway Order 2016 and the Applicant does not consider this to be problematic.</p>

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	<p>streets are authorised by Article 10. The point of the deletion from Article 9 is that such works do not require (and would not be capable of being consented by) a street works licence under the 1991 Act.</p> <p>BDC consider the provision should be amended to read:</p> <p><i>9. —(1) The undertaker may for the purposes of the carrying out of the authorised development, enter on so much of any of the streets specified in Schedule 3(streets subject to street works) as are within the Order limits and may—</i></p> <p><i>(a) break up or open the street, or any sewer, drain or tunnel under it;</i></p> <p><i>(b) tunnel or bore under the street;</i></p> <p><i>(c) place apparatus in the street;</i></p> <p><i>(d) maintain apparatus in the street or change its position; and</i></p> <p><i>(e) construct bridges and tunnels;</i></p> <p><i>(f) increase the width of the carriageway of the street by reducing the width of any</i></p> <p><i>kerb, footpath, footway, cycle track or verge within the street;</i></p> <p><i>(g) alter the level or increase the width of such kerb, footway, cycle track or verge;</i></p> <p><i>(h) reduce the width of the carriageway of the street;</i></p> <p><i>(i) make and maintain crossovers and passing places; and</i></p> <p><i>(e) (j) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (d) (i).</i></p>			
<p>Applicant's response to Deadline 5 Submissions [part 1 - BDC] REF: 18.19 [REP6-018]</p>	<p>BDC maintains its position in relation to this Article. The Applicant has not justified why it is necessary for this power of entry to apply outside the order limits.</p>	<p>The Applicant refers to its response to comments on Article 7 (Benefit of Order) above. With respect to the geographic extent of this power, the Applicant does not agree that the</p>	<p>BDC maintains its position.</p>	<p>The Applicant considers that it has justified why this provision is necessary and refers to its Deadline 6 submission (document reference: 18.19, REP6-018) which is included in the third column of this table.</p>

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Article 22 (Protective Works to buildings and structures)	<p>This power should be amended so that it can only be exercised (a) by Tritax Symmetry Limited; and (b) within the Order limits. As drafted the Article provides a power of entry onto any land regardless of whether that land is within the Order limits. BDC does not consider the Applicant has provided sufficient justification for this.</p> <p>Whilst the Article provides that compensation is payable by the undertaker for loss or damage caused by the exercise of this power, this liability is not subject to the guarantee in Article 40.</p> <p>Whilst the Applicant's DCO Explanatory Memorandum [REP4-030] cites The Boston Alternative Energy Facility Order 2023 and the Drax Power (Generating Stations) Order 2019 as precedent for this approach. Both orders include the specific amendment sought by BDC.</p> <p>The Article should be amended as shown.</p> <p><i>22(1) - Subject to the provisions of this Article, the undertaker may at its own expense carry out the protective works to any building or structure lying within the Order limits which may be affected by the authorised development as the undertaker considers necessary or expedient.</i></p>	<p>provision should be limited in this way, since it may be possible that a building or structure which adjacent to the Order limits or near the works being undertaken is "affected by the authorised development" and it is considered that the power to undertake protective works, in addition to the compensation provisions related to it, should apply.</p> <p>The Applicant's current provision is included in the A12 Chelmsford to A120 Widening Development Consent Order 2024 (Article 25) and not restricted to the Order limits.</p>		
Applicant's response to Deadline 5 Article 23 (Authority to survey and investigate the land)	BDC maintains its position in relation to this article as outlined at our Deadline 3 comments on the Applicant's revised dDCO [REP3-096], the powers conferred by this Article should be restricted to Tritax Symmetry (Hinckley) Limited. See the suggested amendment to Article 7 which would restrict the exercise of Article 23 solely to Tritax	The Applicant refers to its response to comments on Article 7 (Benefit of Order) above.	BDC maintains its position.	As above.

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	Symmetry (Hinckley) Limited. The liability to pay compensation under this Article should also be subject to the guarantee in Article 40 as per the suggested amendment to that provision.			
Applicant's response to Deadline 5 Submissions [part 1 - BDC] REF: 18.19 [REP6-018] Article 34 (Temporary use of land for carrying out the authorised development)	BDC maintains its position in relation to this Article as outlined at our Deadline 3 comments on the Applicant's revised dDCO [REP3-096]. The Applicant wrongly asserts this is a standard provision. It is not. If there is a specific safety risk that would justify a power of entry onto private land without notice the Applicant should be asked to explain. An unspecified safety risk is not a sufficient justification for this power. Article 34(3) should be deleted.	The Applicant disagrees with deletion of Article 34(3). By its very nature a safety risk may be unforeseeable and necessitate urgent action to safeguard the authorised development (a nationally significant development) the public or surrounding environment. Without this provision, the undertaker would be frustrated from taking such remedial action as may be necessary in an emergency which could cause substantial and entirely avoidance harm to the aforementioned receptors. Nothing in Article 34 permits the undertaker to not give notice – on the contrary it is still obliged to do so for “such period as is reasonably practicable in the circumstances”. This is a prudent and reasonable safeguard, and a common provision included in development consent orders (whether or not BDC treat it as a “standard provision”). For example see precedent in Article 41(4) of the Sizewell C (Nuclear Generating Station) Order 2022.	BDC maintains its position.	The Applicant maintains its position set out at Deadline 6 (document reference: 18.19, REP6-018) (see column 3 of this table).
Applicant's response to Deadline 5 Submissions [part 1 - BDC] REF: 18.19 [REP6-018] Article 35 (Temporary use of land to maintain the authorised development)	BDC maintains its position in relation to this Article as outlined at our Deadline 3 comments on the Applicant's revised dDCO [REP3-096]. The Applicant wrongly asserts this is a standard provision. It is not. If there is a specific safety risk that would justify a power of entry onto private land without notice the Applicant should be asked to explain. An unspecified safety risk is not a sufficient justification for this power.	See response to Article 34. The same principles apply in respect of Article 35(9).	BDC maintains its position.	The Applicant maintains its position set out at Deadline 6 (document reference: 18.19, REP6-018) (see column 3 of this table).

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	<p>Article 35(9) should be deleted for the same reasons given above in relation to Article 34(3).</p>			
<p>Applicant's response to Deadline 5 Submissions [part 1 - BDC] REF: 18.19 [REP6-018] Article 40 (Guarantees in respect of payment of compensation)</p>	<p>BDC maintains its position in relation to this Article as outlined at our Deadline 3 comments on the Applicant's revised dDCO [REP3-096]. Without the amendments suggested by BDC the DCO provides a power of entry onto private land to a person whose identity is not known and whose financial standing may not be sufficient to meet any compensation liability that arises as a result.</p> <p>The guarantee in respect of compensation should be extended to all Articles which impose an obligation to pay compensation.</p> <p>The Article should be amended to read as follows:</p> <p><i>40.—(1) The undertaker must not exercise the powers conferred by the provisions referred to in paragraph (2) in relation to any land unless it has first put in place a guarantee or alternative form of security approved by the relevant planning authority in respect of the liabilities of the undertaker to pay compensation under this Order in respect of the relevant power in relation to that land.</i></p> <p><i>(2) The provisions are—</i></p> <p><i>(a) Article 12 (temporary closure of streets)</i></p> <p><i>(b) Article 22 (protective works to buildings);</i></p> <p><i>(c) Article 23 (authority to survey and investigate the land)</i></p> <p><i>(d) Article 25 (compulsory acquisition of land);</i></p> <p><i>(e) Article 26 (compulsory acquisition of land - incorporation of the mineral code);</i></p> <p><i>(f) article 27 (compulsory acquisition of rights);</i></p>	<p>The Applicant refers to its response to comments on Article 7 (Benefit of Order) above and fundamentally disagrees that Articles 12, 22 and 23 should be subject to this provision. Furthermore, the nature of some of these works could be time sensitive and requiring a guarantee or form of security in respect of compensation to be in place (which would require agreement on the likely extent of compensation, involving valuers and the execution of agreements or bonds) before they are undertaken is unreasonable and imposes undue delay. Indeed, valuation may not be possible before any works commence since some of these provisions allow the powers to be exercised in a reactive manner and in emergency circumstances.</p>	<p>BDC maintains its position.</p>	<p>The Applicant maintains its position set out at Deadline 6 (document reference: 18.19, REP6-018) (see column 3 of this table).</p>

Document and Provision	BDC Deadline 5 Comment and proposed Drafting	Applicant's Response	BDC Deadline 7 Response	Applicant's Response
	<p>(g) Article 30 (private rights); (h) Article 31 (rights under or over streets); (i) Article 34 (temporary use of land for carrying out authorised development); (j) Article 35 (temporary use of land for maintaining authorised development); and (k) Article 36 (statutory undertakers).</p>			
<p>Applicant's response to Deadline 5 Submissions [part 1 - BDC] REF: 18.19 [REP6-018] Requirement 10 (Rail)</p>	<p>BDC maintains its position as set out in our Deadline 3 comments on the Applicant's revised dDCO [REP3-096] and paragraphs 3.1 – 3.6 of it's Written Representation [REP1-050]. BDC are still concerned about the uncertainty regarding highways related impacts and as such consider that the provision of rail from the outset is appropriate. Notwithstanding the above concerns, BDC do acknowledge that the Applicant has provided market evidence regarding the uptake of rail freight.</p> <p>Without prejudice to BDC's maintained position, BDC would be willing to accept an amendment to requirement 10 which enables the Applicant to occupy 105,000 sqm prior to the completion of the rail terminal whilst also providing added transparency to ensure that BDC and the other Local Authorities have visibility over how the rail terminal is used.</p> <p>BDC submit requirement 10 should be amended to read as follows: 10. (1) <i>No more than 105,000 square metres of warehouse (including ancillary office) floorspace to be provided as part of the authorise development may be occupied until the rail freight terminal which is capable of handling a minimum of four 775m trains per day and any associated infrastructure has been completed.</i></p>	<p>This is a repetition of BDC's response to the ExA's Further Written Questions. The Applicant has responded to that response separately in document reference: 18.19.</p> <p>The Applicant's position in respect of the timing for the provision of the rail terminal has been clear throughout the Examination, with clear reference to the current policy requirements, the emerging draft NPS and all other made SRFI DCOs.</p> <p>As per the Applicant's Responses to HBBC's comments on the dDCO at Deadline 5 (document reference: 18.17, REP5- 041), the Applicant has agreed to add wording to requirement 10 which accommodates paragraphs 1 and 2 of BDC's response (notification of occupation and in respect of the retention of the rail terminal throughout the occupation of the warehousing). This will be reflected in the final dDCO submitted at Deadline 7.</p> <p>The further wording is not agreed. There is no policy basis for the inclusion of this wording and the Applicant does not consider that the proposed wording meets the tests for the inclusion of a requirement in a Development Consent Order pursuant to section 120(2)(a) PA 2008 or to the NPS (paragraph 4.9).</p> <p>The current wording of Requirement 10 is sufficient to ensure that the authorised development meets the</p>	<p>BDC maintains its position as set out in its Deadline 5 submissions. There is clear policy basis for a Requirement which serves to provide transparency as to the actual usage of the rail terminal.</p> <p>The drafting clearly meets the tests for the inclusion of a Requirement in a Development Consent Order and there is a direct precedent - see paragraph 38 of Part 2, Schedule 2 of the West Midlands Rail Freight Interchange Order 2020.</p>	<p>As the Applicant confirmed it would do, the Applicant has included paragraphs 2 and 3 of BDC's request in Requirement 10 of its final dDCO submitted at Deadline 7 (document reference 3.1D, REP7-011).</p> <p>The Applicant does not agree that there is policy basis for requiring paragraph 4 as it serves no planning purpose in the context of the scheme. In particular, the ExA has heard evidence in ISH2 from Maritime in their role as the intended operator of the HNRFI terminal and their confidence about the market in which it operates. Those discussions have since progressed further and all legal documents are now in agreed form, with exchange anticipated in the week beginning 18th March 2024, to enable Maritime to become the operator of the terminal. A joint statement from Tritax and Maritime is provided in Appendix A of this document. Paragraph 4 is therefore wholly unnecessary in those circumstances.</p> <p>Further, the Applicant understands that the position in relation to this matter at West Midlands Rail Freight Interchange was very different and therefore the West Midlands Interchange Order is not comparable.</p> <p>The Applicant therefore maintains that there is no need in policy terms for the imposition of this requirement. It is not needed for the authorised development to comply with the requirements of the Act or the NPS.</p>

Document and Provision	BDC Deadline 5 Comment and proposed Drafting	Applicant's Response	BDC Deadline 7 Response	Applicant's Response
	<p><i>2. The undertaker must notify the local planning authority of the date of the first occupation of more than 105,000 square metres of warehousing within 28 days of such occupations occurring.</i></p> <p><i>3. Following completion of the rail terminal works the undertaker must retain, manage and keep the rail terminal works available for use.</i></p> <p><i>4. The undertaker must appoint a rail freight co-ordinator prior to the completion of the rail terminal works who must report to the local planning authority no less than once a quarter on the operation of the rail terminal when open including—</i></p> <ul style="list-style-type: none"> <i>a. the appointment of a rail operator to operate the rail terminal;</i> <i>b. the amount of rail freight usage of the rail terminal;</i> <i>c. the number of trains using the rail terminal;</i> <i>d. the warehousing receiving or sending goods through the rail terminal; and</i> <i>e. the amount of goods being received or sent through the rail terminal by freight</i> <p><i>The undertaker must maintain a person in the position of rail freight co-ordinator throughout the life of the authorised development unless otherwise agreed with the local planning authority</i></p>	<p>requirements of the Act and the NPS for the delivery of the NSIP.</p>		<p>The Applicant refers to its Final Summations and Signposting document submitted at Deadline 8 (document reference: 23.1).</p>

Response to Rule 17 Request for further information from the ExA [PD-015]

BDC's Response	Applicant's Response
<p>The ExA has made the following request under Rule 17:</p> <p><i>At D4 the Applicant submitted revised text as to a draft Planning Obligations under Section 106 of the Town and Country Planning Act 1990 (as amended) into the Examination at Deadline 5 [REP5-019] and [REP5-021].</i></p> <p><i>The Councils are asked to provide detailed comments on the draft Planning Obligation, both as to its drafting and to what it would seek to deliver. The ExA would particularly welcome representations on whether the Councils consider that the draft Planning Obligation has any drafting defects that would mean that the Planning Obligation was unenforceable or otherwise deficient. The Applicant is asked to liaise with the Councils over this so as ensure that any areas of disagreement are minimised.</i></p> <p><i>Should the text not be agreed, the Councils are requested to explain why they hold the position that they do, and what amendments are necessary to make it acceptable to the Council. As regards to Leicestershire County Council it should explain why it considers it would be unable to complete the Obligation by agreement.</i></p>	
<p>Negotiations between BDC and the Applicant have been ongoing since the submission of the draft Planning Obligation [REP5-019] ("Planning Obligation"). BDC and the Applicant have reached agreement on the terms of the s. 106 agreement.</p>	<p>The Applicant notes BDC's comments and is pleased to confirm that the s106 agreement has been agreed between the parties. The Applicant has no further comment to make in response to BDC's points below.</p>
<p>Accordingly, BDC can confirm that it is satisfied with the drafting of the s. 106 agreement and what it would deliver in terms of obligations which are relevant to BDC. A small number of drafting amendments have been made to the agreement. In particular, clause 2.2 has been amended to remove the wording which expressly excluded the option agreements in favour of the Developer from constituting a legal interest in the Obligation Land. Furthermore, it has been confirmed that the Applicant now holds a freehold interest in part of the Obligation Land. The definition of 'Owner' includes the 'Developer'. Accordingly, BDC is satisfied the relevant obligations are enforceable against the Applicant.</p>	
<p>By virtue of clause 3.1 the obligations within the agreement (with specific exceptions) will not come into effect until the commencement of material operations.</p>	
<p>The key obligations of concern to BDC which require implementation prior to the commencement of construction are specifically stated to apply from when the DCO is granted.</p>	
<p>As noted in BDC's deadline 5 submission [REP5-054], BDC did seek to ensure that the obligation to implement the Work and Skills Plan was effective prior to the commencement of construction works. This was addressed in the deadline 5 version of the draft Planning Obligation [REP5-019]. At that stage, BDC had concerns as to the drafting of clause 3.1. These concerns have since been addressed and the amended wording has been agreed between BDC and the Applicant.</p>	
<p>The Work and Skills Plan secured by the s. 106 agreement seeks to ensure that Blaby District Council, Hinckley & Bosworth Borough and Leicestershire County Council share the socio-economic benefits of the Proposed Development. It outlines contractual requirements and commitments which the Applicant, contractors and occupiers will be required to adhere to. Broadly, these commitments will see, a target for local employment, the provision of school and college visits, on-site training and up-skilling opportunities, a Mobile Employment Unit to promote employment opportunities as well as opportunities for local businesses to supply goods and services during the construction and operation phases. Implementation of the Work and Skills Plan will be via a Work and Skills Co-ordinator and will be monitored on a collaborative basis between BDC, HBBC, LCC, the Applicant and the Principal Contractor.</p>	

BDC's Response	Applicant's Response
<p>As noted in BDC's Deadline 5 Submission [REP5-054] there were outstanding concerns on the definitions and terminology provided for in the Work and Skills Plan. However, these have since been agreed and BDC is satisfied that the obligations in the Work and Skills Plan are enforceable.</p>	<p>The Applicant acknowledges agreement on the matter.</p>

Statements of Common Ground

<p>1 At 16:09 on 27 February 2024 the Applicant issued what it considered to be a final draft of the consolidated SoCG with BDC that included significant changes to the way the agreed requirements were presented. Having previously made it clear that all changes must be clearly shown as tracked changes, at 17:34 BDC informed the Applicant that some deleted text to the document was not shown as tracked changes, that BDC did not have comfort that the changes made to the document since it was last reviewed were clear and asked for a revised version. BDC asked the Applicant to confirm that every single change made was shown as a tracked change.</p> <p>2 At 17:49 the Applicant has confirmed that the version provided at 16:09 is in their eyes the final version and will be submitted at Deadline 7. Unfortunately, BDC has not had the time to carry out a full review of the 87-page document, bearing in mind that some changes are not properly tracked, and confirm its agreement. Notwithstanding this, BDC will endeavour to work with the Applicant to resolve these issues, considers the version the Applicant is submitting at Deadline 7 is a very advanced version and hopes to be able to sign an agreed final SoCG in the coming days.</p> <p>3 The Applicant also issued a "final" list of Requirements to BDC at 18:26 on 26 February 2024 requesting agreement to wording and then later appending this list to what it considered its final SoCG. This was not a tracked changed document and BDC have not had an opportunity to review all 19 pages prior to making this Deadline 7 submission. Moreover, BDC understand that the Applicant submitted the final dDCO in line with Parliamentary Procedure on 26th February 2024 and therefore there appears no opportunity for BDC to comment and suggest further amendments. Notwithstanding this, BDC will endeavour to review these requirements as soon as it is provided with a tracked changes version.</p> <p>4 In the event that BDC and the Applicant cannot agree on a final version, BDC will make a submission at Deadline 8 clearly outlining its final position.</p>	<p>BDC requested a final SoCG from the Applicant by 9am on 19 February. The Applicant sent this on Sunday 18 February to ensure that it was received in advance of Monday morning. The document was due back to the Applicant in line with agreed timeframes between the parties on the 20th February but was not received by the Applicant until the 23rd February. With the Ecology SoCG still outstanding at that stage. The council's ecology consultants were unable to have a meeting until 23rd February.</p> <p>The Ecology SoCG was sent to the Applicant with comments at 2.08pm on 23rd February with significant changes made and some outstanding points to address. The Applicant responded sending the SoCG back at 4.09pm with the amendments referred to by BDC.</p> <p>As BDC is aware, the Applicant was required to submit the final dDCO for Parliamentary validation in order to comply with the Examination timetable.</p> <p>The Applicant has agreed to a further requested change from BDC in respect of requirement 28 and this is noted in the DCO section of the Applicant's Final Summations and Signposting document (Document 23.1).</p>
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Appendix A: Tritax-Maritime Letter



Grange Park Court
Roman Way
Northampton
NN4 5EA

tritaxsymmetry.com

The Parties

Tritax Symmetry (Hinckley) Limited
Maritime Group Limited

Dated: 8th March 2024

The Parties confirm that following extensive discussions, they have reached agreement on the terms of the development and occupational contracts for the Hinckley National Rail Freight Interchange Rail Terminal.

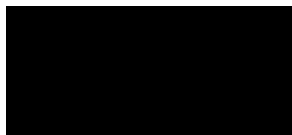
The following documents are in agreed form, and are proceeding to engrossment:

- Development Funding Agreement (DFA)
- Agreement for Lease (AFL)
- Lease

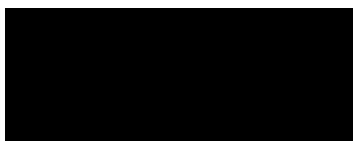
It is anticipated that exchange of signed documents will take place in the week beginning 18th March 2024.

Following exchange, the legal completion of all documents will then be subject to the grant of the Development Consent Order.

Signed by the Parties



for Tritax Symmetry (Hinckley) Limited



for Maritime Group Limited