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Applicants' Response to Examining Panel's Commentary on, or Schedule of Changes to, dDCO and dMCO

JULY 2026

The East Midlands Gateway Phase 2
and Highway Order 202X and The East Midlands Gateway
Rail Freight and Highway (Amendment) Order 202X

The East Midlands Gateway Rail Freight and Highway (Amendment) Order 202X

APPLICANTS' RESPONSE TO EXAMINING PANEL'S COMMENTARY ON, OR SCHEDULE OF CHANGES TO, DDCO AND DMCO

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1 - Applicants' Response to commentary / changes on dDCO

Article/Schedule	ExP's proposed changes	ExP's reasoning and comments	Applicants' Response
Articles			
Article 2(1)	Delete definition of "A453 Safeguarded land".	The proposed requirement to which this definition relates does not meet the tests set out, in particular it would not be related to the development being permitted (see below).	The Applicants have deleted the wording.
Article 2(1)	In the relevant place in the list insert: ""advanced manufacturing" means manufacturing within the automotive, aerospace, life sciences (pharmaceuticals and other biotechnology), clean energy or food and drink sectors.".	To ensure the option of "advanced manufacturing" on the site is defined and fully explored in light of the needs case advanced.	The Applicants have included a definition of "advanced manufacturing" in article 2(1). However, the wording proposed by the ExP is considered too narrow. Nor does the ExP's wording provide any flexibility to allow for changes in the future. The Applicants have accordingly provided alternative wording to address these points.
Article 5	Delete the word "only".	This is not required in light of article 41(6).	The Applicants have made this change.
Article 38	Delete provision.	Any provision outside the application site would be contrary to the Human Rights Act 1998, particularly with article 1 of the first	The Applicants note the comments and propose to retain the wording but to limit it the power to apply only to trees and shrubs on land

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		protocol as set out in schedule 1 of the act, given that there is a strong possibility, if not a likelihood, that there will be some persons with interests in the affected land that have not been notified under the PA2008. Furthermore, it would not represent a proportionate and appropriate interference which is in the public interest. Once completed, the mischief the article is designed to resolve could be dealt with under Highways Act powers.	within the Order limits. This should address the ExP's concern and is consistent with precedent created by other made DCOs.
Schedule 2 - Requirements			
Part 1			
Requirement 1	In the definition of "EMG2 travel Plan fund" after "consumer price index" add "based from the date this order comes into force".	To ensure there is a known base date from which to index link the contribution.	The Applicants have made this change.
Requirement 1	In the definition of "EMG2 bus fund" after "consumer price index" add "based from the date this order comes into force".	To ensure there is a known base date from which to index link the contribution.	The Applicants have made this change.

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Requirement 3	Delete sub-paragraph (2) and remove reference initially to (1).	The text is redundant in light of requirement 35.	The Applicants have made this change.
Requirement 4	In sub-paragraph (3) delete "with but subject to any amendments approved"	The text is redundant in light of requirement 35.	The Applicants have made this change save that the word "with" has been retained and the words "but subject to any amendments by" have been deleted.
Requirement 7	In sub-paragraph (1) delete "Those parts of the design approach document relating to the main site, the community park and the substation can be reviewed and updated by the undertaker in agreement with the local planning authority." Delete sub-paragraph (3) and renumber (4) as (3). In sub-paragraph (2)(d) replace "10%" with "ten per cent (10%)" and "11%" with "eleven per cent (11%)"	The text in sub-paragraphs (1) and (3) is redundant in light of requirement 35. The changes in sub-paragraph (2)(d) are to follow drafting conventions.	The Applicants have made these changes.
Requirement 10	In sub-paragraph (1) delete "on the main site" and after "local planning authority" replace ", such" with ". Such".	To improve clarity in sub-paragraphs (1) and (3). The text in sub-paragraph (4) is redundant in light of requirement 35.	The Applicants have made these changes.

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	In sub-paragraph (3) delete "must be" the second time it occurs. Delete sub-paragraph (4) and renumber sub-paragraphs (5) and (6) as sub-paragraphs (4) and (5). In sub-paragraph (5) replace "(2), (3) and (4)" with "(2) and (3)".	The change in sub-paragraphs (5) and (6) are consequential on the change in sub-paragraph (4).	
Requirements 11, 17, 18, 22 and 23	Replace "their function" with "its function" relating to the Environment Agency each time it occurs.	The Environment Agency is a body corporate and thus a singular.	The Applicants have made these changes.
Requirement 14.	In sub-paragraph (2) delete "The details can be subject to alteration with the approval in writing of the local planning authority."	The text is redundant in light of requirement 35.	The Applicants have made this change.
Requirement 19	In sub-paragraphs (1) and (2) replace "Sundays and bank holidays" with "Sundays, bank holidays, Good Friday and Christmas Day".	As drafted works would be permitted on Good Friday and Christmas Day which is not the intent.	The Applicants have made this change.
Requirement 20	In sub-paragraph (2), after "the environmental statement" insert "the activities producing the exceedance shall cease until".	To prevent a noise nuisance continuing until mitigation measures are approved.	The Applicants have made this change.

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Requirement 21	In sub-paragraph (5), after "the environmental statement" insert "the activities producing the exceedance shall cease until", and in the penultimate sentence replace "must be" with "has been".	To prevent a noise nuisance continuing until mitigation measures are approved and in the interests of clarity.	The Applicants have made these changes.
Requirement 24	Delete "The scheme may be amended by agreement with the local planning authority."	The text is redundant in light of requirement 35.	The Applicants have made this change.
Requirement 25	In sub-paragraph (2) replace "in use of any warehouse" with "the occupier of any warehouse".	Article 41(6) prevents the change of use and the term "in use" is unclear. Setting out that it relates to occupiers ensures clarity.	The Applicants have made this change subject to retaining the word "in".
Requirement 27	Replace the provision with: "Internal floor space 27. –(1) No more than 100,000 square metres of internal floorspace (gross internal area) shall be provided within the warehouse elements of the authorised development. Such internal floorspace shall be used solely for the purposes of storage. (2) Prior to the installation of any internal floorspace, the undertaker	The proposal would not meet the dictionary definition of 'mezzanine' (see below) and, as discussed at ISH3, what would actually be permitted is not clear to allow for enforcement. Defining it as "internal floorspace" within the warehouse elements avoids this lack of clarity. The Transport Assessment assumed that "the mezzanine floorspace" would generate 50% of the traffic compared with the	The Applicants have deleted this requirement following further engagement with National Highways and Leicestershire County Council.

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	shall submit to and have approved by the local planning authority, in consultation with the local highway authority and National Highways, a detailed floor plan identifying the location and extent of such internal floorspace."	main warehousing floor area. Consequently, the floorspace allowed is 50% of that set out, as it would not be possible to enforce a lesser traffic quantum associated with some floorspace and not others, and this is the quantum which has been assessed. Furthermore, additional internal floorspace would not represent 'development' and thus would not need further consent. The requirement is also required to ensure that no effects not previously assessed could occur. <u>Concise Oxford English Dictionary:</u> mezzanine – n 1 a low storey between two others, typically between the ground and first floors. 2 N Amer. The lowest balcony of a theatre or the front rows of the balcony. As there is only a single floor in the warehouse section any floor area cannot be "between" two others.	

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		The second definition is not relevant.	
Requirement 30	Replace "shall be first occupied" with "shall be occupied" and replace "whilst ever the warehouse" with "while the warehouse".	To improve clarity.	The Applicants have made these changes.
Requirement 31	Delete requirement.	The proposed requirement does not meet the tests set out, in particular it would not be related to the development being permitted.	The Applicants have deleted the wording.
New Requirement 31	Insert "Advanced manufacturing 31. --(1) Twenty per cent (20%) of the total gross floorspace provided as part of the authorised development shall be for advanced manufacturing use. (2) No more than twenty per cent (20%) of the total gross floorspace provided as part of the authorised development shall be used for advanced manufacturing."	To ensure the option is advanced manufacturing on the site is fully explored in light of the needs case advanced. However, this also needs to be limited as only 20% has been assessed and a greater figure may lead to different effects. The 20% limit in requirement 31(2) is required even if the initial uses are not advanced manufacturing as it would be possible to use the buildings for advanced manufacturing as a second or subsequent use.	The Applicants have included the proposed wording of requirements 31 and 32 – see below - save for the following: Article 31(1) has not been included on the basis that it is unnecessary and unduly restrictive. The new requirement 32 will ensure that the advanced manufacturing use is marketed. If there is no demand for such use, then the requirement to provide should fall away. This is contemplated by the new requirement 32(4). If requirement 32(1) continued

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			to apply then it could potentially sterilise the land and prevent alternative uses coming forward without a new consent, something that both the Applicants and East Midlands Freeport would want to avoid. • The Applicants have not incorporated the proposed wording in Article 32(4) referring to "or any other end date prescribed under powers provided in section 113 of the Finance Act 2021, whichever is the later". The current drafting already secures the marketing of advanced manufacturing use for an extended period, and the Applicants consider this to be sufficient and appropriate. Imposing a requirement capable of indefinitely extending that marketing period, irrespective of actual market demand for advanced manufacturing use, would introduce a significant and unwarranted risk of site blight. Further, the trigger for

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			any such extension would lie entirely outside the control of the Applicants, East Midlands Freeport, or the local planning authority, none of whom could take steps to bring it to an end. The Applicants' position is that, should there be no demand for advanced manufacturing use at the end of the Freeport window, alternative uses should be capable of coming forward. Any beneficial use of the site is preferable to none: it would deliver jobs, generate business rates, and support the growth and wider economic benefits that the local area needs. Tying the site indefinitely to a single use for which there may be no market would run directly counter to that objective.
New Requirement (to be inserted after requirement 31)	Insert "Marketing of the advanced manufacturing floorspace 32. --(1) Twenty per cent (20%) of the total gross floorspace provided	To ensure the option is advanced manufacturing on the site is fully explored in light of the needs case advanced. <u>Note:</u> The wording of the requirement has been amended	See response above.

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	as part of the authorised development shall be reserved for advanced manufacturing uses for the marketing period. (2) Save for ancillary buildings, no authorised building on the main site is to be occupied until a strategy has been submitted to and approved by the local planning authority, in consultation with East Midlands Freeport, for the marketing of the authorised development to advanced manufacturing occupiers. The strategy will include provision for collaborative working on marketing activity, the review and active management of all enquiries. The approved strategy shall be implemented for the duration of the marketing period. (3) If on expiration of the marketing period it has not been possible to secure advanced manufacturing uses on 20% of the total gross floorspace provided as part of the authorised development then, subject to the local planning authority, in consultation with East	from that proposed on a 'without prejudice' basis for clarity, and to allow for continued marketing in the event that the Freeport designation period is extended.	

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	Midlands Freeport, confirming that it is satisfied that reasonable efforts have been made to secure advanced manufacturing uses within the authorised development, the restrictions in requirement [31](1) shall cease to apply. (4) In this requirement, the "marketing period" shall mean the Freeport incentive end date relating to the application site of 31 December 2031 or any other end date prescribed under powers provided in section 113 of the Finance Act 2021, whichever is the later.		
Requirement 32	In sub-paragraph (1) replace "10%" with "ten per cent (10%)" and in sub-paragraph (3) replace "authority. . The" with "authority. The".	To follow drafting conventions and to deal with a typographic error.	The Applicants have made these changes.
Requirement 33	In sub-paragraph (1) replace "The approved plans, together with any variations to it that may be approved in writing by the local planning authority from time to time, must be implemented" with	The text is redundant in light of requirement 35.	The Applicants have made this change.

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	"The approved plans must be implemented".		
Requirement 34	In sub-paragraph (1) replace "The approved scheme, together with any variations to it that may be approved by the local planning authority from time to time, must be implemented" with "the approved scheme must be implemented". In sub-paragraph (2) replace "The approved scheme, together with any variations to it that may be approved by the local planning authority from time to time, must be implemented" with "The approved scheme must be implemented".	The text is redundant in light of requirement 35.	The Applicants have made these changes.
Part 2			
Paragraph 4(13)	Replace "On application by the discharging body or the undertaker, the" with "The".	To allow the appointed person to award costs on their own initiative.	The Applicants have made this change.

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Schedule 16 – Certification of plans and documents			
Row relating to A453 Safeguarded land plan	Delete row.	The provisions relating to this plan within the order are recommended for deletion as does not meet the tests set out, in particular it would not be related to the development being permitted	The Applicants have made this change.

2 - Applicants' Response to commentary / changes on dMCO

Article	ExP's proposed changes	ExP's reasoning and comments	Applicants' Response
Article 2(2), (3) and (4)	Reorder so that they appear in alphabetical order, in the main Order (although they should be renumbered so they appear what is currently the order 2(4), 2(3) and 2(2)).	To ensure consistency.	The Applicants have made this change.
Article 2(4) (to be 2(2))	Replace ", insert" with ", in the appropriate places insert".	To follow normal drafting conventions.	The Applicants have made this change.
Article 2(10)	Replace "Part 1" with "Part 1, in Works No. 2".	To clarify where inserted.	The Applicants have made this change.
Article 2(17)	Replace "paragraph (2)" with "paragraph (3)".	To deal with a typographic error.	The Applicants have made this change.
Article 2(19)	In the replacement text replace "in agreement with the local planning authority" with "in agreement in writing with the local planning authority".	To ensure consistency within the order.	The Applicants have made this change.
Article 2(20)	Replace "local planning authority)" with "local planning authority".	To deal with a typographic error.	The Applicants have made this change.

Article	ExP's proposed changes	ExP's reasoning and comments	Applicants' Response
Article 2(21)	Replace "10%" with *ten per cent (10%)" and "11%" with "eleven per cent (11%)".	To follow normal drafting conventions.	The Applicants have made this change.
Article 2(25)	Ensure that the footnote referencing for the Flood and Water Management Act 2010 displays correctly – it is also currently in both 16(1) and 16(2).	To deal with a typographic error (it is only required the first time it occurs).	The Applicants have made this change.
Article 2(30)	After "agreed by" insert "the local planning authority in writing following consultation with".	To ensure the approval is given in writing which requires an appropriate body to do so and consistency within the order.	The Applicants have made this change.
Article 2(31)	In the first line replace "new requirement 28" with "new requirements 28 and 29", remove the last double inverted comma at the end of the current insert, and after new requirement 28 add: "Internal floor space 29. –(1) No more than 1,750 square metres of internal floorspace (gross internal area) shall be provided within the warehouse elements of Plot 16. Such internal floorspace shall be	The proposal would not meet the dictionary definition of 'mezzanine' (see below) and, as discussed at ISH3, what would actually be permitted is not clear to allow for enforcement. Mezzanine space is referred to in the additional parameters plan [REP1-013M] but there is no definition of this or restricting its use. Defining it as "internal floorspace" within the warehouse elements avoids this lack of clarity.	The Applicants have not included this wording following agreement with National Highways and Leicestershire County Council that no requirement is necessary.

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	used solely for the purposes of storage. (2) Prior to the installation of any internal floorspace, the undertaker shall submit to and have approved by the local planning authority, in consultation with the local highway authority and Highways England, a detailed floor plan identifying the location and extent of such internal floorspace.""	The Transport Assessment assumed that "the mezzanine floorspace" would generate 50% of the traffic compared with the main warehousing floor area. Consequently, the floorspace allowed is 50% of that set out, as it would not be possible to enforce a lesser traffic quantum associated with some floorspace and not others, and this is the quantum which has been assessed. The reference to 'Highways England' is to ensure consistency within the amended order. Furthermore, additional internal floorspace would not represent 'development' and thus would not need further consent. The requirement is also required to ensure that no effects not previously assessed could occur. <u>Concise Oxford English Dictionary:</u> mezzanine – n 1 a low storey between two others, typically between the ground and first	

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		floors. 2 N Amer. The lowest balcony of a theatre of a theatre or the front rows of the balcony. As there is only a single floor in the warehouse section any floor area cannot be "between" two others. The second definition is not relevant.	