NORTHAMPTON GATEWAY
STRATEGIC RAIL FREIGHT INTERCHANGE

APPLICANT'S RESPONSES TO EXAMINING AUTHORITY DCO COMMENTARY

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The Northampton Gateway Rail Freight Interchange Order 201X

APPLICANT'S RESPONSES TO EXAMINING AUTHORITY
DCO COMMENTARY | 26 FEBRUARY 2019

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Northampton Gateway Rail Freight Interchange Order 201X

Applicant's Responses to ExA Commentary on the Draft Development Consent Order

1 Introduction

No response necessary

2 The s.106 Agreement

a) Please see:

i. the Applicant's Response to the ExA s.106 points (**Document 8.16**) submitted on 11 February 2019;
ii. the amended dDCO with additional requirement 4(9) (**Document 3.1D**);
iii. the DCO Changes Tracker referring to amendments to requirements (**Documents 3.4B and 3.4C**);

b) A draft s.106 agreement has been agreed with the local planning authorities and is attached to the Applicants Response to the ExA Points on the Draft s.106 Agreement (**Document 8.16** [AS-059]) submitted on 11 February 2019. It was also submitted as a standalone version on the same date (**Document 6.4B**).

c) In summary,

- some obligations that can be dealt with in the requirements have been added to Schedule 2 of the dDCO and deleted from the s.106 Agreement. These are identified in the DCO Changes Trackers submitted for **Deadlines 4 and 5** (**Documents 3.4B** [REP4-005] **and 3.4C** respectively);

- the compliance of each of the remaining obligations in the s.106 Agreement, with both s.106 and the criteria in para 4.10 of the NPSNN, is addressed in the updated Section 106 Confirmation and Compliance Document submitted for **Deadline 5** (**Document 8.5A**); and

- the question of whether the additional provisions included within the dDCO fall within the powers of the Planning Act 2008 is addressed in the updated Explanatory Memorandum submitted for **Deadline 5** (**Document 3.2A**). See also the Applicant's response to DCO:16 below.

d) Some of the s.106 obligations have been the subject of criticism (notably the Community Fund has been criticised by Rail Central). If the Examining Authority considers that any of the obligations do not comply with the criteria in para 4.10 of the NPSNN then it should make it clear that the existence of those obligations has been given no weight in respect of the ExA's recommendation to the Secretary of

State. In due course, if the Secretary of State agrees with the ExA, he also should make it clear that the obligation(s) concerned have been given no weight in arriving at the decision on whether or not to approve the DCO.

3 Environmental assessment, tailpieces and schemes

a) The Applicant has amended the drafting of articles 2(6), 4,6, 45 and "Further works" in the dDCO submitted for **Deadline 5** (**Document 3.1D**). The revised drafting is explained in the DCO Tracker submitted for **Deadline 5** (**Document 3.4C**).

b) The Applicant deals here, in summary, with each of the relevant articles below:

Article 2(6)

This has been amended to delete the reference to environmental effects. This is because the Applicant considers the cross reference to Article 4 is sufficient. However, if one were to add reference to the environmental assessment it would, in the Applicant's view, be necessary to also refer to any further environmental assessment carried out under the 2017 EIA regulations (whether by virtue of the amended articles 4 and 45 or otherwise). If that reference were not added then such relevant information would need to be ignored, which cannot be sensible where further information has been submitted, for example, in relation to a subsequent application.

Article 4 and 45

The words "not identified at the time this Order was made …[etc.].", although previously deleted from Article 4, were retained in article 45 to make it clear that it was impacts arising from the change being sought that were relevant rather than the environmental effects of the whole development. This has now been done by insertion of the words "a change to the" development in those articles, enabling the deletion of the words identified by the ExA. This retains the integrity of the test in relation to a change in that it is the same as that which applies under paragraph 13 of Schedule 2 of the EIA regulations.

Article 6 and Further works

The inclusion of the words "not identified at the time this Order was made …[etc.]." in article 6 and the Further works have been retained, but standardised, because those articles are not dealing with changes to the development but relate to the parameters applying to the development as authorised.

The words "or in any updated environmental information supplied under the 2017 EIA Regulations" ensure any further environmental assessment submitted pursuant to the 2017 EIA regulations (under the altered provisions of articles 4 and 45 or otherwise) is taken into account in the decision made and not just the environmental information available at the time the Order was made.

4 Screening under the EIA Regulations

a) The Applicant has given further thought to this issue in light of the ExA comments and the result is amended drafting in the revised dDCO submitted for **Deadline 5** (**Document 3.1D**).

b) The revised drafting is explained in the DCO Changes Tracker (**Document 3.4C**), however, in summary, the approach is to apply the provisions of the 2017 EIA Regulations to the relevant decisions as if those decisions related to "subsequent applications", without applying the narrow definition of subsequent applications.

5 Ex p Hardy

a) In response to the query raised by the Examining Authority regarding *ex parte Hardy* in ExQ1 (for example in the context of Archaeology and Requirement 14), the Applicant set out its position as in Appendix 1 to **Document 8.1** (Applicant's Post Hearing ISH1 Submissions [REP1-019]).

b) The Applicant is content with the summary of its position which the ExA now provides in its first paragraph of text at Issue 5. It does not reiterate the various points made in its earlier submission.

c) However, in light of the ExA's continuing inquiry, it is appropriate that the Applicant make a further short response in this regard.

d) Firstly, although the Applicant has – for reasons of expediency – sought to limit its references to case-law in this context, the ExA would be wrong to assume that the only support for the Applicant's position is provided by *ex parte Milne* (to which decision the ExA refers).

e) By way of example, to the extent it is necessary, the Applicant draws material support from the decision in *R (on the application of PPG11 Ltd) v Dorset County Council* [2003] EWHC 1311. In that case Mr Justice Mackay reviewed all relevant decisions in this area, including both *ex part Hardy* and *ex part Milne*. Having regard to the particular nature of the concern raised by the ExA in the present context – namely that it would be inappropriate to impose a requirement which provided for the undertaking of further surveys – it is notable that one of the principles which Mackay J identified following his exhaustive consideration of relevant case law, was to the following effect:

> "*The imposition of a condition requiring further investigation of a potential adverse effect is neither necessarily nor invariably an erroneous approach*

in law, or evidence of an irrational assessment of the adequacy of the environmental information"[1]

Such statement is a direct and clear response to the concern of the ExA.

f) Further, Mackay J also observed:

"Hardy does not mean that a defendant cannot form the decision that it does not need a survey to reach a conclusion about the absence of significant effect; and where such a defendant in fact goes on to obtain or make provision for a survey that is no more than a prudent approach…"[2]

As such, the Applicant respectfully submits that its position – as regards Requirement 14 and otherwise – is entirely sound. There is no 'in principle' difficulty with the imposition of a requirement which provides for further survey work as the Applicant now envisages. The approach advocated by Mr Smalley in the context of Archaeology is entirely orthodox, as the Courts have recognised.

g) The Applicant notes the two specific observations made by the ExA in the fourth and fifth paragraphs of its text at Issue 5.

"The Applicant says that Hardy turns on its own facts and that the impact on bats was a material concern. Would the result in Hardy have been any different if the effect had been on a non-protected species" (**'Query 1'**); and

"The quoted paragraph (132) of ex parte Milne, by Sullivan J…appears to be of considerable significance in distinguishing ex parte Hardy" (**'Query 2'**).

h) As regards these two matters the Applicant makes the following comment:

Query 1

i) The Applicant does indeed maintain that *ex parte Hardy* turned on its own facts. Indeed, such is true of every case in this context. That this is the case has been expressly recognised by, amongst others, Mackay J in *PPG11 Ltd*. In that case, having reviewed the decision of the Court of Appeal in *Bellway Urban Renewal Southern v Gillespie* [2003] EWCA Civ 400, Mackay confirmed that it stood as authority for the principle that "*Each case will turn on its own particular facts*"[3].

j) Further, and as regards the significance of bats (and their protected status) to the decision in *ex parte Hardy*, Mackay J also expressly noted the following:

1 See paragraph 47(6) of PPG11 Ltd.
2 See paragraph 46 of PPG11 Ltd.
3 See paragraph 52(3) of PPG11 Ltd.

> *"It is interesting to read on in the Judgment. Harrison J quashed the grant solely on the basis of the Council's decision vis-à-vis the bats. The difference between their approach to the bats on the one hand and the badgers and the liverwort on the other was that the former, as he stressed in the Judgment, was a European Protected Species, the distinction on which the case appears to have turned.* ***He did not need to decide what the position would have been had the bats not have been in the picture, but paragraph 65 strongly suggests it would have been different****, there being no evidence of significant adverse effect on the badgers and it being open to the Council to conclude as a matter of judgement that the liverwort did not need to be significantly affected by the ditches and pipelines"* (emphasis added[4])

The judge later goes on to say that:

> *"In Hardy , had the decision rested on the badgers and liverwort alone, it is tolerably clear the Council would have succeeded on the basis that there was no evidence of significant adverse effects"[5].*

k) The successful defendant in PPG11 Ltd (Dorset County Council) is recorded as having emphasised the importance of the protected status of bats to the decision in *ex part Hardy*[6].The Applicant contends that it was right to do so; the special protection afforded to that species was evidently important to the decision which Harrison J reached. The position in *ex parte Hardy* is in no way comparable to that with which the ExA is concerned in the present case; the factual matrix is entirely different.

Query 2

l) The Applicant agrees with the ExA that paragraph 132 of the decision in *ex parte Milne* is relevant in distinguishing *ex parte Hardy* from the position at this Examination.

m) It is perhaps helpful therefore, that the decision of Sullivan J in *ex parte Milne* has been subject to subsequent approval in other decisions. Notably the Court of Appeal in *Bellway*, having adopted a particular approach as regards the screening of development, stated that "*This approach accords with that of Sullivan J in The Queen v Rochdale MBC ex parte Milne…*". In addition, Mackay J expressly noted

4 See paragraph 42 of PPG11 Ltd.
5 See paragraph 50 of PPG11 Ltd.
6 See paragraph 43 of PPG11 Ltd.

in *PPG 11 Ltd* that the Court of Appeal in *Bellway* had found that "*The approach of Sullivan J in Milne was correct*"[7].

n) Furthermore, of course the approach of Mackay J in *PPG 11 Ltd* is itself an endorsement of the approach adopted by Sullivan J in paragraph 132 of *ex parte Milne*. Indeed paragraph 47(6) of the judgement in *PPG11 Ltd* (set out above, subject to Footnote 2), **expressly relies upon** paragraph 132 of the decision in *ex parte Milne*.

o) Accordingly, the Applicant maintains that the approach of Sullivan J in paragraph 132 of PPG 11 Ltd is cogent and robust. It is entirely appropriate that the Applicant now rely upon it.

Amendment to Requirement 14

p) The Applicant notes the suggestion of the ExA that Requirement 14 be amended so as to state expressly that the further survey work envisaged is intended to assist with recording of any remains identified, rather than to determine whether significant environmental effects will ensue.

q) The Applicant does not consider that such amendment is necessary. However, to assist should the ExA consider it necessary, the Applicant has incorporated some wording in requirement 14 in the dDCO submitted for Deadline 5 (**Document 3.1D**).

6 The divergence between the Applicant and Highways England (HE) on timescales for approvals – Arts 9, 13, 17(7), 21(4), and (10), 22(6); and deemed approvals (Sch 13 Pt 2. Para 15)

a) Based on the SoCG submitted (**Documents 7.1C** [REP1-007] **and 7.1D** [AS-050] (para 2.7)) the area of disagreement with HE solely relates to the deemed approval provisions.

b) HE objects to the deemed approval provisions as a matter of principle in relation to article 13 and paragraph 15 of the Protective Provisions on Part 2 of Schedule 13.

c) HE do not object to the deemed approval provisions included in articles 11 (5),17(7), and 22(6) but would wish them to refer to 56 days rather than 42.

d) All other articles are agreed (See para 6 of **Document 7.1C** and para 2.7 of **Document 7.1D**). Accordingly, HE do not object to article 9 nor article 21(4).

[7] See paragraph 51(5) of PPG11 Ltd.

7 The divergence between Applicant and Network Rail (NR) – Sch 13 Pt 1 para 4, possibly para 11(11) (omitted from Doc 3.1C – dDCO, but included in NR's Deadline 3 submission of 30 November), para 22

The sole issue between the Applicant and NR is the drafting of paragraph 22 of the Protective Provisions. Following discussions with NR a revised version of paragraph 22 was submitted to NR on 13 February 2019 in a form thought to be acceptable on the basis of the discussions held. At the time of writing no response has been received from NR.

8 The Defence to nuisance claims

Please see response to DCO:51 in attached Schedule.

9 The timetable for dealing with submissions and appeals – Part 2 of Sch 2

Please see responses to DCO:29 - 33 in attached Schedule.

Applicant's Response to ExA's Schedule of Questions on the Draft Development Consent Order

Question No.	Person, in addition to the Applicant to whom the question is directed	Part of DCO	Drafting example (where relevant)	ExA Question	Applicant's Response
1.	NCC	Art 2,	definition of HGV referring to operational rather than max gross weight	The Applicant's reply to ISH3:23 was that 7.5 tonnes maximum gross weight is the usual weight applied to HGV. What is the difference between maximum gross weight and operational weight? As the definition is to be used for weight restrictions, the ExA is anxious that this may cause confusion and difficulty for drivers who are not acquainted with Art 2 of the DCO.	Operational weight is the weight of a vehicle at a particular time. The maximum gross weight is the permitted maximum weight for a type of vehicle. For example, the maximum gross weight of a 6 axle articulated vehicle is 44 Tonnes and it could be operating at 44 Tonnes if fully laden or considerably less if empty. It is important to refer to operating weight so as to ensure that an empty HGV is captured by the restriction. including such provisions contained within the dDCO. The Applicant does not agree that there would be confusion for HGV drivers as those drivers leaving the main site would have clear signage to show that they are not permitted to turn right if they are in a

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					vehicle that has an operating weight exceeding 7.5 Tonnes. In any event, the height barrier at the exit from the main site will operate to prevent a turn to the right (See Requirement 8(2)(l)).
2.	NCC	Art 2	Definition of Public Transport Strategy	Will NCC please state whether the definition accords with the document they were expecting to be used as shown in the draft s.106 agreement (Doc 6.4A [REP1003])	The definition simply cross refers to the agreed submitted strategy
3.	NCC, HE	Art 17	Revoked traffic regulation orders	The ExA asked at ISH1:25 for an SoCG with HE and NCC on this. Has this been reached and submitted? The ExA cannot see it on the Examination Library List.	Please see paragraphs 4 and 5 and Appendix 1 to SoCG with HE submitted for **Deadline 1** (**Document 7.1C** [REP1-007]). The SoCG contains agreement to this article subject to a minor amendment which was incorporated in the dDCO submitted for **Deadline 2**. Please see paragraphs 4 and 5 and Appendix 1 to SoCG with NCC submitted

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					for **Deadline 1** (**Document 7.5A** [REP1-009]). NCC confirmed agreement to the article in the SoCG.
4.	HE	21	Discharge of water	Is this now agreed with HE? The ExA notes HE's response to ExAQ1.29 [REP1-114]. Art 21(4) was added to address HE's concerns but the ExA understand they remain. The ExA would like to hear final submissions on this from the Applicant and HE at ISH5.	Please see paragraph 2.7 of the SoCG with HE submitted on 11 February 2019 (**Document 7.1D** [AS-050]). Article 21 is agreed.
5.	NR	39		Is NR content with the deletion of Art 39(2) (which happened in the 20 Nov submission - Doc 3.1B [REP2-005])? The ExA had asked its purpose in ISH:37 and the Applicant replied that it replicates para 19 of the protective provisions in favour of NR and can therefore be deleted.	NR have not indicated any concern to the Applicant with the deletion proposed.

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6.	NCC	46(1)(a)	Disapplication of s.23 Land Drainage Act 1991	Has this been agreed yet? What is the dispute?	This has now been agreed. The provisions of s.23 of the Land drainage Act 1991 are agreed to be unnecessary in light of the additional wording imported into Article 21(5) in the dDCO submitted for **Deadline 4** (**Document 3.1C** [REP4-002 and REP4-004]) which gives NCC the same control.
7.	NCC, SNC, NBC	46(4) and Reqts 3(1)(g) and 8(2)(n)		These deal with advertisements in lieu of the normal advertisement control regime. Please will the County Council and RPAs say if they are content with the provisions and, if not, propose any modifications they feel are necessary, in accordance with the necessary policy tests?	
8.		49	Arbitration	The response to ISH1:45 which asked how Art 49 relates to enforcement was that enforcement would be dealt with in the redrafted Art 49. However the ExA cannot see that this has been done. Breach of a DCO or its requirements is a	Please see amendment to article 49 contained in the revised dDCO submitted for **Deadline 5** (**Document 3.1D**).

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				criminal offence, and injunctions are available. Please could the Applicant explain how Art 49 would not cut across that, or alternatively supply additional drafting.	
9.		Schedule 1	Plans	Now that the Works are identified by reference to plans, as suggested by the ExA, it will be necessary to check they are the right ones. The ExA will do this after the Second Written Questions have been issued, with a view to raising any issues with the agenda for ISH5 although the Applicant is similarly asked to double check Sch 1 and the cross-referencing in the meantime.	Noted.
10.		Sch 1, Further Works		The answer to ISH1:49 said that a three metre height limit for fences would be incorporated in the dDCO submitted at Deadline 2. Please could that Applicant do this in the next dDCO and confirm in	Please see addition to Requirement 8 (2)(p) included in dDCO submitted for **Deadline 2** (**Document 3.1B** [REP4-002 and REP4-004]).

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				replies to these questions that it will be done. Or if the ExA has missed it, explain what is proposed instead.	Requirement 8 deals only with the main site and does not address the bypass fence heights, also referred to in the response to ISH1:49. These are now addressed in an additional requirement 5(2) contained in the dDCO submitted for **Deadline 5** (**Document 3.1D**).
11.		Sch 2	definition of ecological mitigation works	This definition has become out of alphabetical order. Please could the Applicant re-order it?	Corrected in the dDCO submitted for **Deadline 5** (**Document 3.1D**).
12.	RC	Sch 2	Definition of Rail Central footpath connections, and Rail Central	Please can RC and the Applicant confirm that this wording is agreed, or otherwise explain what is being done and why?	The Applicant submitted the plan to Rail Central in early January and received a response from Rail Central on 18 February 2019 rejecting the footpath connection proposed. The Applicant has since sent the explanatory note contained

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			footpath connections plan		in **Appendix 1** of the Applicants Response to ExQ2 (**Document 8.17** re Q2.0.3) inviting reconsideration.
13.	NCC, SNC, NBC	Reqt 3(4)	"unless the timing of the provision of the rail terminal is otherwise agreed in writing with the relevant planning authority"	To be an SRFI and therefore an NSIP the project must be capable of handling at least four goods trains per day. Please comment on why this wording is justified (or not). The ExA will wish to hear final submissions on this at ISH5	The Applicant believes this question refers to Reqt 3(3). There is nothing in the NPSNN which requires that the provision of the rail terminal be in place prior to any other part of the development. Indeed, until there is both the rail terminal and warehousing the development does not meet the criteria in s.26 of the Planning Act 2008. The NSIP is the combination of a rail terminal and warehousing, not the rail terminal alone. Nor does the NPSNN prescribe the order in which the elements should be provided other than to say in the guidance that "the initial stages of the development must provide an operational rail network

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					connection and areas for intermodal handling and container storage" (para 4.88). "Initial stages" is not defined. Requirement 3(3) imposes a very strict interpretation of "initial stages" and requires that the rail terminal be available prior to the occupation of any warehouses. The flexibility available in the rider is there to allow for unforeseen circumstances, or delay outside of the control of the Applicant, to be considered. If, as a result, the relevant local authority were to agree to a revised phasing, this would not take the development outside the confines of s.26, for reasons explained above. Nor, if the rail terminal were still to be required in, what could reasonably be considered, "the initial stages" would it conflict with the NPSNN.

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					The ExA may recall that the Secretary of State's interpretation of "initial stages" in the East Midlands Gateway decision allowed for the occupation of 260,000sq.m. prior to the provision of an operational rail terminal. The terminal at East Midlands Gateway and relevant mainline connection is under construction and will be in operation by the end of 2109. See also Applicant's response to ExQ2.9.13 (**Document 8.17**).
14.	NCC, SNC, NBC	Reqt 3(4)	Following the provision of the rail infrastructure no rail infrastructure must be	The ExA notes the Applicant's response to ISH3:2 and the comments on this in the Changes Tracker. The ExA is currently minded to include this Reqt 3(4), but is willing to hear arguments from the named parties in column 2 at ISH5. As the Applicant has set out its position already, it would be helpful to have the	

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			removed which would impede the ability of the rail terminal to handle four goods trains per day unless otherwise agreed in writing by the relevant planning authority	views of NCC, SNC and NBC in writing at Deadline 5, which may make the discussion at ISH5 on the dDCO on 13 March 2019 more focussed and shorter.	
15.	NCC	Reqt 4(4)		Will the County Council please comment on whether reasonable endeavours meets its requirements. Will both the Applicant and NCC reflect on the vagueness inherent in the phrase? In earlier responses on the same phrase the	The previous consideration of "reasonable endeavours" was in the context of Requirement 6 and the Applicant deleted "reasonable endeavours" on the basis that there was the ability in Requirement 6 to agree a change with the relevant body, not

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				Applicant readily accepted that there would be difficulties in enforcing on that test.	on the basis that there would be difficulties with enforcement (See Applicant response to ISH1:53 (Applicant's Post Hearing Submissions (ISH1) **Document 8.1** [REP1-019]). Reasonable endeavours is a common term used and imposed on parties in legal documentation and cannot therefore be considered unenforceable as a matter of principle. It is accepted that whether or not the obligation has been met is a judgement to be made and may have to be adjudicated upon. The requirement in respect of Euro VI compliant vehicles cannot be an absolute requirement since the Applicant simply will not, and cannot, have that level of control over HGV fleets and public transport. The

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					Applicant would have no means of complying.
16.	NCC	Reqt 4		Will both the Applicant and the County Council please explain how they consider Reqt 4(3) – (7) meets the legal and policy tests for Requirements. What do they consider are the effective sanctions for breach?	The legal test for requirements is contained in s.120 of the Planning Act 2008 which provides the power to impose requirements "in connection with the development for which consent is granted". There is no limit to the general scope of requirements set out in s.120 (1). S.120 (2) does not limit the scope but simply serves to confirm that requirements "may in particular include" requirements (a) corresponding to conditions which could have been imposed on consents that would have been required had the development not been an NSIP; and

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					(b) requirements to obtain the approval of the Secretary of State and any other person if they do not fall within (a). The ability to impose requirements in law is therefore unconstrained other than that the requirement must be connected to the development. The NPSNN provides guidance as to the imposition of requirements and states that they should only be imposed if they are necessary, relevant to planning, relevant to the development to be consented, enforceable, precise and reasonable in all other respects (Paragraph 4.9). <u>Requirement 4(3)</u> The requirement to comply with the public transport strategy is connected to the development and meets the criteria in

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					paragraph 4.9. The strategy already exists. The enforcement of compliance with the strategy will , as Part 8 of the Planning Act 2008 sets out, be a matter for the relevant planning authority – as it would be were it to be a planning permission. The enforcement regime which applies is different and is set out in Part 8 of the Act. It would be for the relevant planning authority to determine who was responsible for the failure to comply with the public transport strategy and consider whether to take action under s.161 of the Act. This would involve similar consideration of the situation as would apply if enforcement of a planning condition were being considered.

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					The sanctions available initially under the Act are prosecution and/or injunctive relief. <u>Requirement 4(4) (now 4(5))</u> The Applicant believes that Requirement 4(4) in respect of Euro VI compliance, as drafted, meets the criteria in paragraph 4.9. In particular, it is clear what is being asked of the Applicant and a reasonable endeavours obligation is enforceable. If Requirement 4(4) were to be amended to delete "reasonable endeavours" then the requirement would not be enforceable since the Applicant would have no means of complying. The Applicant is not aware of any other development which has had an absolute requirement applied to it to exclude any vehicle other than Euro VI compliant

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					vehicles visiting or serving the development. The failure to take reasonable endeavours would be a breach of the order and the enforcement regime in Part 8 of the Act would apply, as referred to above. <u>Requirement 4(5) – (7) (now (6) – (8)</u> These requirements all relate to the sustainable transport working group. They all meet the criteria in paragraph 4.9. The wording of requirement 4 (5) has been amended to make it clear that the obligation is on the undertaker to establish the STWG. In the event of the sustainable working group failing to operate in the manner required by the requirements then it will be for the relevant planning authority to consider if injunctive relief or a

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					prosecution would be appropriate. If the failure was due to the actions/inactions of a person involved in the development then the relevant planning authority can enforce against that party pursuant to the provisions of s.161.
17.		Reqt 7	within six months of the date upon which the undertaker wishes to commence Works No. 8;	Following up on ISH1:55 the ExA concludes this is referring to six months AFTER the undertaker wishes to carry out Works No. 8? Please can the Applicant confirm this?	That is correct and to try and be clearer some amended wording has been suggested in the dDCO submitted for **Deadline 5** (**Document 3.1D**)
18.	NCC	Reqt 8(2)(e)	Electrical charging points	Please will NCC confirm (or otherwise) that this, which is part of mitigation (see	

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				Applicant's response to ExQ1.1.33) is agreed with them.	
19.		Reqt 14	Archaeology and ex p Hardy	Would the Applicant please consider whether it would like to add a statement of the purpose of the further investigation, which the ExA understands is not to ascertain whether there are likely significant effects, so as to demonstrate that *ex p Hardy* and *ex p Milne* are met? The posing of this question does not mean the ExA has yet reached a conclusion on this issue.	Some additional wording has been included in requirement 14 in the dDCO submitted for **Deadline 5** (**Document 3.1D**)
20.	NCC	Reqt 18		Please will NCC confirm (or otherwise) that this Reqt now conforms with the SoCG between it and the Applicant, and is acceptable.	Please see paragraph 11 of the SoCG with NCC submitted for **Deadline 1** (**Document 7.7** [REP1-011]) which confirms this is acceptable.
21.		Reqt 21(1)		Please will the Applicant specifically exclude Sundays (which the ExA assumes is the intention, perhaps by	It is accepted that the specific exclusion of Sunday might be helpful for the avoidance of doubt and the wording suggested by the

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				adding "and not at all on Sundays, nor on public holidays" after "on Saturdays"; deleting the words "excluding public holidays".	ExA has been added in the dDCO submitted for **Deadline 5** (**Document 3.1D**).
22.	SNC	Reqt 21(1)(c)	Construction hours noise and vibration - "cause an adverse impact"	This appears rather vague. Please will SNC and the Applicant consider and comment on whether this is sufficiently certain to be enforceable. The previous draft had "audible" and "detectable".	It was realised, on further reflection, that there would be uncertainty over what is meant by audible. For example, not all sounds at the same level would necessarily be audible in the same way to all people. Furthermore, as written there would be a non-compliance simply because the works were momentarily audible. As described in the ES, Government policy is concerned with managing adverse effects and Tables 8.1 and 8.2 set out thresholds for when adverse effects from construction noise and vibration respectively might be expected to occur at residential premises. These threshold can

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					be applied to the site boundary providing the necessary enforceability. Furthermore, given that the focus of requirement 21 (1) (c) is on the site boundary, if the noise or vibration from any works is managed so that there is not an adverse effect at the boundary, no adverse effect would be expected at residential properties which are further away from the boundary. The wording of the noise requirements is agreed with SNC.
23.	SNC	Reqt 23	Noise monitoring 2032-2042	Does this work? This imposes a requirement for the undertaker to carry out a scheme of monitoring in 2042 if there is an increase in the number of train movements at night arising between 2032 and 2042. What happens if the	Requirement 23(2) and Requirement 23(3) have been included at the request of SNC to provide a safeguard. At Paragraph 8.6.11 of the ES it was stated that:

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				number increases in the early years of this period? There appears to be no obligation for the undertaker to do anything for many years during which there may be significant unmitigated effects. Also, how is 'increase' measured? Is it an average over a ten year period? Is it year by year compared to 2032? The ExA notes that Reqt 23(2) is concerned with 'significant adverse effects' while Reqt 23(3) concerns the numbers of trains.	"Work is being carried out at a European level to reduce the noise from freight trains and it is likely that by 2043, quieter rolling stock will be in use compared with that assumed for this assessment. Therefore, the potential significant adverse effect would be mitigated by the use of quieter rolling stock." The function of these requirements is to provide a means a checking that the quieter rolling stock has come into use as expected. The years included in the requirements reflect the assessment years for the scheme. For the ES, it was the average daily number of train movements associated with the development that was used in the assessment. It is proposed that a similar basis would be used when discharging this requirement.

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					As reflected in paragraphs 7.1 – 7.4 of the SoCG with SNC submitted on 11 February 2019 (**Document 7.11** [AS-058]) the noise requirements are now all agreed.
24.	NBC, SNC	Reqt 28	Employment	1 Please will the relevant planning authorities state if they agree to these provisions, which derive from the earlier s.106 agreement. 2 Please will the Applicant and relevant planning authorities comment on whether they consider this requirement would be enforceable, including enforcement against employers, bearing in mind that employers will not necessarily be lessees or landowners.	1. The Applicant is not aware of any concerns of NBC or SNC regarding the wording of these employment provisions. 2. This requirement is enforceable under the enforcement regime of the Act. It meets the criteria of para 4.9. In the event of the relevant planning authority concluding there has been a breach of the requirement, such as a failure of an occupier to comply with its approved employment scheme then it will be for the relevant planning authority to consider whether injunctive relief or

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					prosecution, or subsequently service of a Notice of Unauthorised Development, would be appropriate, utilising the powers contained in ss 163 – 169 of the 2008 Act. The relevant planning authority can enforce against the party it concludes is responsible for the breach in accordance with the provisions of Part 8.
				3 In relation to Reqt 28(2); there will be changes in the occupiers of each warehouse. Is it intended that new occupiers will be able to submit their own employment schemes? And what will be the position in cases where there is more than one occupier?	3 The text in Requirement 28(2) in the dDCO submitted for **Deadline 5** (**Document 3.1D**) has been amended to clarify that each new occupier would be required to submit an employment scheme. Each warehouse will have only one occupier at a time.

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				4 Please will the Applicant give consideration to and comment upon SNC's proposed reqt, to be found at para 4 of their post ISH2 and 3 submissions [REP4-015]: 'No development shall commence until a Local Employment and Training Strategy along with a timetable for its implementation and monitoring/reporting mechanisms has been submitted to and approved in writing by the Local Planning Authority. The Strategy shall set out initiatives to engage the local labour force and local businesses and to develop training opportunities in construction skills and logistics operations associated with the the development. The approved strategy shall then be implemented.'	4 The drafting set out in para 4 refers to a Local Employment and Training Strategy but there is no definition set out for that term nor is it fully explained within the draft requirement. Neither is it considered practical for there to be only a single scheme set out in advance of commencement of development in advance of occupiers being known. SNC had not had the advantage of seeing the Applicant's proposed requirement in advance of the Deadline 4 submissions. The Applicant believes that the definition of "employment scheme" included in the dDCO covers the elements envisaged by SNC with the addition of reference to monitoring which has been added in the

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				'Reason - In order to secure the promotion of employment opportunities to the local labour force and to support local based skills training to strengthen labour force skills and reduce unemployment."	dDCO submitted for **Deadline 5** (**Document 3.1D**)
25.	NBC, SNC	Reqt 29	Community Liaison Group (CLG)	1 Please will the Applicant explain what the functions and duties of the CLG will be.	1 The CLG is intended to facilitate liaison between the various bodies involved in the construction and operation of the development, as stated in requirement 29(1). It has no specific duties (and in that respect a minor wording change is suggested to 29(4) in the dDCO submitted for **Deadline 5** (**Document 3.1D**). The intention is that it discusses whatever is important and relevant at the time to the participants. The only specific topic upon which it is expected to opine is the use of

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					the Community Fund but that is referred to in the s.106 Agreement and is an opportunity for the CLG, not an obligation on it. The importance of the requirement is that there is an obligation to establish and service the CLG.
				2 If there is a breach of Reqt 29, against whom would enforcement action be taken? The ExA seeks the views of the Applicant, NBC and SNC.	2 The requirement to establish and service the CLG is enforceable – the requirement has been amended to ensure that obligation sits with the undertaker.
				3 Please will the Applicant and relevant planning authorities comment on whether they consider these provisions would be fully and practicably enforceable as a requirement.	3 There is no difficulty in enforcing the requirement as drafted - the relevant planning authority has the tools available to it under Part 8 of the 2008 Act.

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				4 When in the s.106 agreement, there was considerably greater detail about functions. The ExA appreciates that Reqt 29(3) is a powerful provision, but asks whether some skeleton of functions might not be helpful especially in case of dispute or enforcement.	4. The Applicant does not believe there was any additional detail in the previous draft s.106 Agreement relating to functions of the CLG, nor does the Applicant think it would be helpful but may only serve to constrain debate, see 1. above.
26.	RC, Applicant	Reqt 30	Rail Central footpath connections	Does the NG undertaker have the necessary land rights? Should this be dealt with by the s.106? Can RC please confirm the locations are agreed? What will be the consequence if the connections cannot be made for (a) RC and (b) NG? Will there be any likely significant environmental effects if they are not made and what will be the implications for each SRFI individually and cumulatively?	This Requirement does not change the footpaths that form part of the Northampton Gateway scheme and hence does not require any additional land or changes to the access and rights of way plans submitted for Northampton Gateway. It is for Rail Central to obtain the powers in their Order to construct their additional footpaths.

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					There are no implications for Northampton Gateway if the Rail Central Order is not granted.
27.	RC, Applicant	Reqt 31	Rail Central and Jn 15A	1 Do the works expected by the Rail Central Order mitigate the likely significant effects for which Works No 11 are designed? And as this is akin to a tailpiece, should not this be subject to EIA safeguards at the time?	As stated in the Applicant's updated cumulative impact assessment with Rail Central (**Document 8.13** [AS-040]), following a review of the Rail Central application, the Applicant considers that Rail Central proposes inadequate mitigation and improvement at Junction 15A of the M1, and Rail Central's submitted transport assessment appears to underestimate the likely extent of local traffic queuing and congestion. Accordingly, at present it is not believed that the Rail Central works mitigate the development for which they are designed. The requirement is put forward on the premise that the Rail Central works No. 11, whether in their current form or another form, are found to be acceptable

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					by the Secretary of State when making a decision on the Rail Central Order and that if the Rail Central Order is approved it will have been approved on the basis that the cumulative impact of both schemes is acceptable. In this event the Applicant would construct the works to Junction 15A (Works No. 11) consented by the Northampton Gateway Order unless advised by the HE and LHA otherwise under the provisions of requirement 31. These works have been fully assessed.
				2 What happens if, after Rail Central DCO is made (if it is made), HE or the LHA take the view that the works to Jn 15A in the Rail Central DCO, do not satisfactorily address the combined effects with Northampton Gateway and therefore do not give the counter-notice? There could be other reasons why the counter-notices are not given. It would appear that NG will have to construct their Jn 15A works and RC will have to construct theirs.	3. The Applicant's position is set out above.

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				3 Please will the Applicant and Rail Central comment. 4 How are the environmental effects properly mitigated in such a case? 5 Is it necessary to have corresponding provisions in any RC DCO? If so, how will that be achieved given that the Secretary of State must not fetter his own discretion?	4. The environmental effects of a scheme with no Rail Central J15A works have been assessed in the assessment of the NG proposals. If RC subsequently follow on then that scenario will come within the envelope of the cumulative impact assessment of the RC scheme. 5. The Applicant will be seeking to protect the ability of NG to develop its scheme by seeking appropriate requirements in the RC Order. Any decision on the RC DCO to be taken by the Secretary of State will be after the decision on the NG DCO and can therefore at that time take into account the existence of the NG DCO and the desirability of not impeding its delivery.

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					A decision on the NG DCO cannot be prevented or delayed on the basis of an application the Examination of which has not even commenced. This is especially the case in a situation where there are clearly fundamental issues with the highway mitigation for the Rail Central proposal which may delay, or even prevent, the approval of the Rail Central Order.
28.	Historic England			Historic England asked for the inclusion of a Requirement regarding the recording of the buildings that are to be demolished on the Main Site (see also the suggested wording in unsigned SoCG [REP1017]. Please can the Applicant and Historic England comment and indicate if it should be included, as drawn.	A requirement with wording the Applicant feels appropriate has been included in the dDCO submitted for **Deadline 5** (**Document 3.1D**). See requirement 14(4).

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29.	NBC, SNC	Sch 2 Pt2	Applications and appeals under Reqts	1 Is this the same as the form in Advice Note 15? If not, please can the Applicant explain and justify the changes?	1 It is in substantially the same form. The changes of note, other than those referred to below in items 29 - 33,, are: - 3(2)(b) a seven day period has been allowed in which to provide other parties with the appeal documentation – the obligation in the Appendix of AN15 is to provide copies on the same day as the appeal is lodged which may not be practicable, and is unnecessary. - definitions of "appeal documentation" and "discharging authority" have been added because those terms are used in the Appendix to AN15 but are not defined.
				2 Why has para 3 on fees been removed? Comments from Applicant and the relevant authorities and any other "discharging authority" within this procedure are invited.	2 The expectation, and basis of discussion with SNC, has been that a planning performance agreement would be entered into in due course. That is how this has been addressed at East Midlands Gateway.

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30.		Sch 2 Pt2 continued (a)		1 3(2)(b) – square bracketed section. AN15 advises against being specific since the machinery of government changes. 2 3(3) - why so specific a time scale? Appx 1states " The appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable".	1 It is important that the undertaker knows how to submit a valid appeal and part of that is knowing with whom, and where, to lodge appeal papers.. Otherwise how is an undertaker to know that his appeal has been lodged with a party who will deal with it? Can the Planning Inspectorate (including any successor body) be named for this purpose? Unlike planning appeals under the T&CP Act 1990 there will be no other material advising how to submit an appeal – it all needs to be contained in this DCO. 2 The intention was to impose a discipline of a decision within a certain timescale – similar to the timescales imposed on actions of others under 3(3) however, if desired, this either revert to the wording in the AN or there could at least be an

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					objective noted of a decision within those timescales.
				3 3(8) and 3 (9) – "must" is used rather than "may" in Appx 1.	3 This was changed to accord with the emerging convention of using must when there is an imperative action. In both of the paragraphs concerned may (or may not) does not impose any action.
				4 3(11) There are differences in wording here which follow from 3(1)(a): "If an approval is given by an appointed person under this Schedule, it is deemed to be an approval for the purpose of any consent, agreement or approval required under the requirement as if it had been given by the discharging authority." Appx 1 has: "If an approval is given by the appointed person under this Schedule, it is deemed to be an approval for the purpose of any consent, agreement or approval required under the Order or for	4 The intention was that Part 2 be confined to decisions of the relevant planning authority under the requirements and that it not apply to any other parts of the Order to ensure it did not cut across other provisions in the Order to which it is not directed. The Applicant is clear regarding the effect of Part 2 in relation to Schedule 2 but not clear as to the effect of the

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				the purpose of Schedule [X] (requirements) as if it had been given by the discharging authority". Please will the Applicant comment on the effect and reason for the differences?	underlined words on other parts of the Order. The wording proposed by the Applicant is consistent with the wording of the operative article, article 45(3).
31.	NBC, SNC	Sched 2 Pt 2 continued (b)		NBC have raised three points in their D4 post-hearing (ISH3) submission; firstly the timeframes for decision (42 days), secondly on the effect that will have on the opportunity for consultation , and thirdly the 10 day period for requesting further information. SNC make similar submissions. Whilst the ExA appreciates that the timeframes are those set out in the Appendix to Advice Note 15, please will the Applicant comment and explain why	The purpose of the DCO regime is to ensure swifter delivery than would be the case had a development progressed through a conventional planning application. In that spirit the Applicant has adopted the timeframes included in AN15. The front loaded system is intended to reduce the need for consultation when details are being approved and there is no requirement for any consultation to take place.

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				the timeframes for applications pursuant to conditions on a planning permission are inappropriate, or might properly be adopted for this NSIP.	If the ExA wishes to extend the timeframes then the Applicant would suggest that the period in para 2(2) might be doubled to 20 from 10, which would give the authority four working weeks in which to consider any request for further information during which period they can also consult if desired. They would then have a further period of six weeks within which to reach a decision. Of course under the anticipated PPA there would have been the equivalent of pre submission discussions so the relevant planning authority would not be commencing consideration at that stage but continuing it.
32.		Sched 2 Pt 2 continued (c)		Note also that AN15 uses 'business days' rather than 'working days' and Schedule 13 Part 1 – protective provisions for rail interests - has a newly inserted definition of 'working day'. Please will the	Part 2 was changed to refer to working days rather than business days since working days is already an expression used in the dDCO and they amount to the same thing. Working days is felt to be a

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				Applicant explain why "working days" is used in the dDCO.	more appropriate description and a more relevant description for most people.
33.		Sched 2 Pt 2 continued (d)		Part 2 Appeals. There are some differences compared with Appendix 1 of AN15, with the Appendix indicating that where amendments are to be made to the standard wording they should be justified in full in the Explanatory Memorandum. Please could the explanation also be given in replies to this Schedule, for ease of reference. The differences include: 3(1) (a) Appx 1 refers to " the discharging authority refuses an application for any consent, agreement or approval required or contemplated by any provisions of this Order or grants it subject to conditions" , rather than as the	Please see response to DCO:30 Para 4 above. The intention is that Part 2 refer only to consents under Schedule 2. This also applies to the change to Para 1(1).

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				wording in the dDCO which states; "the discharging authority refuses an application for any consent, agreement or approval required or contemplated under the requirements or grants it subject to conditions"	
34.		Scheds 5 and 6	Change to Inset plan 1A of Doc 2.3A	Please note that the ExA will check this after the issue of Second Written Questions and raise any questions with the agenda for ISH5.	Noted.
35.		Sch 6 Pt 1	Row 9	The ExA regrets to say that it does not find the explanation for the deletion of (ii) in row 9 of Pt 1 of Sch 6, given in the DCO Changes Tracker Doc 3.4B [REP4-005], to be very clear. The use of the words "remove" and "removed" appears to be ambiguous. Please could the Applicant clarify and produce the confirmation from the owner of Parcels	This relates to a change made in the dDCO submitted at **Deadline 2** (**Document 3.1B** [REP2-005 and REP2-006]) and first explained in the DCO Changes Tracker, also submitted for **Deadline 2**, (**Document 3.4A** [REP2-007]). The private means of access reference "AC" which was proposed on the access

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				4/10, 4/12, 4/14-4/17 that they agree this wording	and rights of way plans as submitted (**Document 2.3D** revision P5 [APP-024]) is no longer proposed because the only landowner affected prefers to retain the existing access arrangements rather than the altered ones proposed. Accordingly, the altered access arrangements have been removed from the scheme proposals and are not shown on the access and rights of way plans (**Document 2.3D** revision P7 [REP2-004]). Confirmation of the owner's position is found at **Appendix 1.**
36.		Sch 7		In its reply to ISH1:80 (Doc8.1 [REP1-019]) the Applicant indicated that it would seek the SoCG confirming agreement to this classification from HE and NCC. Has that SoCG been obtained and submitted	Please see paragraph 2.3 of the SoCG with HE submitted for **Deadline 1** (**Document 7.1A** [REP1-005]) in which

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				(or perhaps the ExA has missed it)? Please could the Applicant clarify?	HE confirmed agreement to the classification plans. Also see paragraph 2.2 of the SoCG with NCC submitted for **Deadline 1** (**Document 7.5A** [REP1-009]) in which NCC confirmed agreement to the classification plans.
37.		Sch 8		In its reply to ISH1:80 (Doc8.1 [REP1-019]) the Applicant indicated that it would seek the SoCG confirming agreement to this classification from HE and NCC. Has that SoCG been obtained and submitted (or perhaps the ExA has missed it)? Please could the Applicant clarify?	The Applicant assumes that this question relates to speed limits rather than highway classifications. Please see paragraph 2.3 of the SoCG with HE submitted for **Deadline 1** (**Document 7.1A** [REP1-005]) in which HE confirmed agreement to the speed limit plans. Also see paragraph 2.2 of the SoCG with NCC submitted for **Deadline 1** (**Document 7.5A** [REP1-009]) in which

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					NCC confirmed agreement to the speed limit plans.
38.	NR	Sch 13 Pt 1, protection of Network Rail		The Changes Tracker says Sch 13 Pt 1 para 11(11) is not agreed by NR. But it is deleted now. What is the up to date position please?	Please see response to Section 7 of the first part of this document.
39.	NR	Sch 13, Pt 1, para 22		Are the time limits and expert determination provisions now agreed with Network Rail?	Please see response to Section 7 of the first part of this document.
40.				The DCO Changes tracker says, when explaining the position on Sch 13, that the SoCG with NR (Doc 7.13, REP1-016) states: "Amendments to several paragraphs in Part 2 as agreed with Network Rail. The protective provisions are agreed except for paragraphs 4(1), 11((11) and 22, as explained in the Statement of Common	Please see response to Section 7 of the first part of this document.

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				Ground agreed with Network Rail (Document 7.13) (REP1-016)." Please could the Applicant help the ExA by indicating which pages of the 129 page document do this. Is the position that para 4 is acceptable to both parties, but that in the Applicants' case that is subject to para 22 as it appears in the Deadline 4, January 2018 draft DCO, Doc 3.1C [REP4-004]? Is the result that the ExA is required to consider and recommend to the Secretary of State whether there should be a timeline for decision and if so what the timeline should be?	This is referred to, but not explained, in paragraph 33. of the SoCG.

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				Please could Network Rail and the Applicant confirm that there are no other issues between them? The ExA will expect to hear concise final submissions from the Applicant and NR on the matters in dispute at ISH5 on 13th March 2019.	Noted. Also, please see response to Section 7 of the first part of this document which deals with the entirety of any issues with Network Rail as currently understood by the Applicant.
41.	HE	Sch 13 Pt 2, Protection of Highways England		1 Please will the Applicant and HE confirm that the drafting of the DCO (Doc 3.1C and onwards [REP4-004])) now reflects all the drafting set out in the SoCG (Doc 7.1C, REP 1-007) and that the only items where they have not been able to agree are those set out in the Applicant's responses to HE's written representation	Please see response to Section 6 of the first part of this document which deals with the entirety of any issues with Highways England.

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				[REP1-115] and HE's responses to ExQ1 (REP1-114)? 2 Please will the Applicant and HE confirm that the result is that the only matters between the Applicant and HE and which are for the ExA to decide are the time limits for certain approvals and the principle of deemed approvals (para 15). 3 What is the HE position on ExQ1.102 (Sch 14 Misc Controls para 3. In its response [REP1-114] an update by Deadline 2 was promised.	
42.	HE	Sch 13, Pt 2,	Bond sum	This is under discussion with HE according to the Changes Tracker (Doc3.4B [REP4-005]). Has the amendment to the definition of Bond Sum now been agreed with Highways	The Applicant has been advised that HE has very recently changed its policy and now requires that the bond sum include (rather than exclude as previously) the

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				England? Is the Commuted Sum to be included in the Bond Sum?	commuted sums and the Applicant has accepted that position. The appropriate amendment has been made to the definition of bond sum in Part 2 of Sch 13 of the dDCO submitted for **Deadline 5** (**Document 3.1D**).
43.	HE	Sch 13 Pt 2		The ExA will wish to hear concise final submissions from the Applicant and HE on the issues in dispute at ISH5 on 13th March 2019.	Noted. Also, please see response to Section 6 of the first part of this document which sets out the entirety of any issues with Highways England.
44.	NCC	Sch 13 Pt 3 - Protective provisions for NCC		The ExA understands from the SoCG with NCC and the DCO Changes Tracker Doc 3.4B [REP4-005] that the only issues between the Applicant and NCC on the protective provisions are:	The ExA understanding is correct. The situation is as set out in paragraph 7 of the SoCG with NCC submitted for **Deadline 1** (**Document 7.7** [REP1-011]).

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				(i) the scope of the undertaker's liability during the Defects and Maintenance Period, and (ii) the duration of the Defects and Maintenance period. Please will the Applicant explain, using the DCO Doc 3.1C, what changes are necessary to para 6 of Sch 13 Pt 3 (Protective Provisions for NCC) to make it acceptable to the Applicant. Please will the NCC explain, using the DCO Doc 3.1C [REP4-002], what changes are necessary to para 6 of Sch 13 Pt 3 (Protective Provisions for NCC) to make it acceptable to NCC. The ExA will wish to hear concise final submissions from the Applicant and NCC	The version of Part 3 of Sch 13 of the dDCO acceptable to the Applicant is that contained in the dDCO submitted for **Deadline 4** and unchanged in the dDCO submitted for **Deadline 5** (**Documents 3.1C and 3.1D respectively**) Noted

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				on these issues at ISH5 on 13th March 2019.	
45.	Applicant, Cadent	Sch 13 Pt 4 – Protective Provisions for Cadent		Since Cadent agreed its SoCG the Aug 2018 version (3.1A) and Art 49 has changed. Please will the Applicant obtain Cadent's approval, or otherwise explain why it is unnecessary.	The Applicant has requested such confirmation from Cadent but at the time of writing, has yet to receive a response. The Applicant has no reason to believe the amended article 49 would not be agreed.
46.	Applicant, Anglian Water	Sch 13 Pt 5 – Protective Provisions for Anglian Water		Please will Anglian Water and the Applicant confirm that these Protective Provisions are exactly those contained in the SoCG with AW dated May 2018 [AS-016]?	The protective provisions are the same in substance as those in the SoCG dated 24 May 2018. The differences are only the typographical changes made in the dDCO submitted for **Deadline 2** (Document 3.1B (REP2-005 and REP2-006).
47.		Sch 13, Pt 3 - Protective provisions for		Please can the Applicant update the ExA on the progress of this and the SoCG requested at ISH1:99?	The Applicant has agreed some amendments to the protective provisions for the benefit of the Electricity Undertaker and these are included in the version of the dDCO submitted for **Deadline 5**

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		Electricity Undertakers			(**Document 3.1D**). The Applicant and is finalising the SoCG with the Electricity Undertaker to confirm this and expects to be in a position to submit this SoCG to the ExA shortly.
48.		Sch 13, Pt 3 - Protective provisions for ECC		Please can the Applicant update the ExA on the progress of this and the SoCG requested at ISH1:100?	The Applicant has provided one SoCG in respect of these protective provisions (**Document 7.16** [REP2-008]). With regard to the SoCG for the second communications mast, the ExA will recall that this operator intends to move off the site, regardless of the proposed development. The Applicant has sought confirmation of the proposed relocation date but the operator has not been able to confirm this yet.
49.		Schedule 15	Membership Role and Protocol of the STWG		Schedule 15 has been agreed with NCC subject to the changes made in the dDCO

Question No.	Person, in addition to the Applicant to whom the question is directed	Part of DCO	Drafting example (where relevant)	ExA Question	Applicant's Response
				Please will the County Council and HE confirm that they agree these provisions. Do they require anything in addition?	submitted for **Deadline 5 (Document 3.1D)**.
50.		Schedule 15 (g)		Should the Northampton Gateway Transport assessment be more precisely defined by reference to the Environmental Statement?	An addition of a cross reference to the environmental statement has been added to Schedule 15 Paragraph 5 (g) of the dDCO submitted for **Deadline 5** (**Document 3.1D**).
51.			Defence to nuisance claims	NNNPS says at para 5.88 "If development consent is granted for a project, the Secretary of State should consider whether there is a justification for all of the authorised project (including any associated development) being covered by a defence of statutory authority against nuisance claims. If the Secretary of State cannot conclude that this is justified, then the defence should be disapplied, in whole or in part, through a provision in the Development Consent	Paragraph 5.88 of the NPSNN is preceded by 5.87 which advises that all reasonable steps should be taken to minimise (note, not eliminate) any detrimental impact on amenity for emissions etc.. It is in that context that the justification of the application of a defence of statutory nuisance for all of the authorised development falls to be considered.

Question No.	Person, in addition to the Applicant to whom the question is directed	Part of DCO	Drafting example (where relevant)	ExA Question	Applicant's Response
				Order." What is the evidence to justify the application of the defence to nuisance claims?	The Applicant has taken all reasonable steps to minimise impacts, by parameters relating to layout and landscaping and other mitigation measures referred to in the Commitments Tracker (updated version to be supplied at **Deadline 6**). Accordingly it is appropriate for a defence against nuisance to be included to ensure that this nationally important infrastructure is not constrained in its construction or operation, subject of course to the statutory compensation rights granted by s.152. The NPSNN gives no guidance as to what might be the basis for further justification.

Appendix 1

DCO:35 – Landowner Confirmation of Revised Access Arrangements

Bletsoes
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Agricultural & Development
Consultants, Chartered Surveyors,
Auctioneers & Estate Agents

Oakleigh House, Thrapston,
Northamptonshire NN14 4LJ

01832 732241
www.bletsoes.co.uk

Your Ref:
Our Ref: AYB/FEA/2218/5

15 February 2019

Mr Ian Rigby
Infrastructure Director
SEGRO plc
Lumonics House
Valley Drive, Swift Valley
Rugby
Warwickshire
CV1 1TQ

By email to: Ian.Rigby@segro.com

Dear Ian

Northampton Gateway – Private Means of Access AC

With reference to the above matter, I **attach** a copy of a letter written in connection with the above matter, which I trust is appropriate. Can I rely upon you to submit it to the Examination please?

If it needs changing, please let me know.

Yours sincerely

[redacted]

A Y Brodie
Email: alistair.brodie@bletsoes.co.uk

Enc.

Bletsoes
EST. 1881

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Your Ref:
Our Ref: AYB/FEA/2218/5

15 February 2019

Examining Authority
The Planning Inspectorate
National Infrastructure Planning
Temple Quaty House
2 The Square
Bristol
BS1 6PN

Dear Sirs

In relation to the application by Roxhill (Junction 15) Ltd for an order granting development consent for the Northampton Gateway Rail Freight Interchange

I confirm that we act on behalf of Mr S G Dunkley of Hyde Farm, Brixworth Road, Roade, Northampton NN7 2LX, one of the landowners affected by the proposed Roade Bypass.

I can confirm that the private means of access reference (AC) which was originally proposed on the Access and Rights of Way plans as submitted (document 2.3D revision P5) has been removed as a result of discussions between the parties. I confirm that the removal of this access has been agreed by Mr Dunkley.

Yours faithfully

[redacted]

A Y Brodie
Email: alistair.brodie@bletsoes.co.uk