



# Department for Transport

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Dear Sirs,

## **PLANNING ACT 2008 APPLICATION FOR THE PROPOSED EAST MIDLANDS GATEWAY RAIL FREIGHT INTERCHANGE AND HIGHWAY ORDER**

1. I am directed by the Secretary of State for Transport (“the Secretary of State”) to say that consideration has been given to the report of the Examining Authority comprising a panel of three members, Paul Hudson, Lorna Walker and Gavin Jones, who conducted an examination into the application made by Roxhill (Kegworth) Limited (“the applicant”) on 29 August 2014 for the East Midlands Gateway Rail Freight Interchange and Highway Order (“the Order”) under section 37 of the Planning Act 2008 (“the 2008 Act”).
2. The examination of the application began on 12 January 2015 and was completed on 12 July 2015. The examination was conducted on the basis of written evidence submitted to the Examining Authority and by a series of hearings held in Kegworth and Loughborough between 4 February 2015 and 1 July 2015.
3. The Order would grant development consent for a Strategic Rail Freight Interchange (“SRFI”) on land to the immediate north of East Midlands Airport near Castle Donington, Leicestershire. The SRFI would include a new rail line, rail freight terminal, warehousing and an intermodal area. The Order would also grant development consent for improvements to Junctions 24 and 24A of the M1 and to the southbound carriageway of the M1 between those junctions; and a southern bypass of Kegworth to the east of the M1. (The whole project including the highway works is referred to in this letter as “EMGRFI”.) In addition the proposed Order would contain compulsory acquisition powers in relation to land and rights that would be required for the purposes of the project.
4. Enclosed with this letter is a copy of the Examining Authority's report. The proposed development is described in section 2 of the report. The Examining Authority's findings are set out in sections 4 to 7 of the report, and their overall conclusions and recommendations are in section 8 of the report.

## **Summary of the Examining Authority's recommendations**

5. The Examining Authority recommended that development consent should not be granted for the proposed SRFI on the grounds of non-compliance with the National Policy Statement for National Networks ("NPSNN") and that accordingly the Order should not be made.

## **Summary of Secretary of State's decision**

6. **The Secretary of State has decided under section 114 of the 2008 Act to make with modifications an Order granting development consent for the proposals in this application.** This letter is the statement of reasons for the Secretary of State's decision for the purposes of section 116 of the 2008 Act and regulation 23(2)(d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009.

7. Please note that, although this letter refers to the decision of "the Secretary of State", Patrick McLoughlin has not personally been involved in this decision because of his potential interest, since his constituency is near to the EMGRFI site. The decision has in practice been taken by the Minister of State for Transport, Robert Goodwill, but the decision has by law to be made in the name of the Secretary of State.

## **Secretary of State's consideration**

8. The Secretary of State's consideration of the Examining Authority's report is set out in the following paragraphs. Unless otherwise stated, all paragraph references are to the Examining Authority's report ("ER") and references to requirements are to those in Schedule 2 to the Order, as set out in Appendix D to the ER.

## ***Policy justification for the development***

9. The Secretary of State notes that, following the designation of the NPSNN on 14 January 2015, he is required by section 104(3) of the 2008 Act to decide this application in accordance with the NPSNN (subject to certain exceptions which are not relevant in this case). He has therefore considered first the Examining Authority's assessment (in section 4.2 of the ER) of the extent to which the EMGRFI project would meet the requirements of the NPSNN.

### *NPSNN requirements as to the location and scale of SRFIs*

10. The Examining Authority referred to paragraph 2.56 of the NPSNN which provides that it is important that SRFIs are located near the business markets that they will serve and are linked to key supply chain routes. They noted in this regard that the site of the proposed SRFI would be adjacent to the M1, in a central location in the Midlands providing access to a large proportion of the national population, and very close to the existing rail freight network providing access to key deep sea ports. For these reasons the Secretary of State agrees with the Examining Authority that the EMGRFI project complies with the locational criteria for SRFIs set out at paragraphs 4.84-87 of the NPSNN and he considers that the locational benefits of the project should carry significant weight (ER 4.2.4-9).

11. The Examining Authority also found that EMGRFI was compliant with the requirements as to scale set out in paragraph 4.89 of the NPSNN. This was on the basis that the SRFI would be capable of handling freight trains of the optimum length (up to 775

metres long); that there were no barriers to constructing both east and west facing connections onto the Castle Donington branch line; that capacity could be made available on the branch line to handle the likely level of freight trains using the SRFI; and that the SRFI would be capable of handling 16 trains per day each way in due course. The Secretary of State accordingly agrees with the Examining Authority that the scale requirements set out in the NPSNN are fully met (ER 4.2.29-32).

#### *Need for the proposed SRFI*

12. As regards whether the proposed SRFI is needed, the Government has accepted at paragraph 2.56 of the NPSNN that nationally there is a compelling need for an expanded network of SRFIs. At the local level, the Secretary of State notes the applicant's view in its Planning Statement - which the Examining Authority accepted - that there is a strong market demand for SRFIs in the area of Leicester, Nottingham and Derby and that this is likely to continue to grow in the future. While he considers that it is for the market to determine the viability of particular proposals, he is satisfied that taking into account the applicant's assessment of alternative sites – which the Examining Authority also accepted - the EMGRFI site is in principle a suitable one for serving the area of Leicester, Nottingham and Derby (ER 3.2.20-23, 4.2.33-44).

#### *NPSNN requirements applicable to highways*

13. With regard to the highway proposals forming part of the EMGRFI project, the Examining Authority had some doubts as to whether these had been assessed strictly in accordance with the WebTag guidance normally required for such projects by the NPSNN. However, the Secretary of State is satisfied, like the Examining Authority, that taking into account the information provided in the applicant's Transport Assessment and the environmental analysis of the impacts of the highway proposals set out in the Environmental Statement ("ES"), the assessment requirements of the NPSNN have been met (ER 4.2.45-56, 5.18).

#### *NPSNN requirements as to the functionality and design of SRFIs*

14. The Secretary of State has considered very carefully the Examining Authority's conclusion that the EMGRFI project would not meet the requirements as to the functionality and design of SRFIs, set out in paragraphs 4.83 and 4.88 of the NPSNN, for the reasons given at ER 4.2.14-28 and 4.2.58-62.

15. The Examining Authority's first concern was that the SRFI would not be able to accommodate rail activities "*from the outset*" (paragraph 4.83 of the NPSNN) or be capable of providing "*for a number of rail connected or rail accessible buildings for initial take up*" (paragraph 4.88 of the NPSNN). The Examining Authority considered that these requirements would not be met because a number of warehousing units would be constructed at the outset of the development programme, but would not be rail accessible until the rail link was constructed, which would take 3 years. This meant that rail activities would not be available at the outset, nor the warehouse buildings rail accessible for initial take up (ER 4.2.14, ER 4.2.22-4.2.24).

16. The Secretary of State does not agree with the Examining Authority that the fact that a proportion of the warehousing would be made available for use in the period of 3 years during which the rail link was being constructed means that the project would fail to meet the functionality requirements of the NPSNN referred to above. He appreciates that the

construction of warehousing and the construction of a new railway will involve different timescales and he considers it entirely reasonable that a commercial undertaking should seek to generate income from the warehousing facilities before the railway becomes operational. The Secretary of State considers that the interpretation of these NPSNN requirements must allow for the realities of constructing and funding major projects such as this. Having regard to the terms of paragraph 4.83 of the NPSNN, he is satisfied that, from the outset, this SRFI is being developed in a form that can (that is, will be able to) accommodate rail activities. He considers further that it is not unreasonable to regard the requirement for rail accessible buildings to be available “for initial take up” as having been effectively met in the circumstances of this project, taking into account the time required for essential earthworks and for subsequent construction of the rail infrastructure, the 30 year period planned for the build-up of rail operations and the limitation on how much warehousing can be occupied before the rail line is operational (see paragraph 24 below).

17. The Examining Authority’s second concern was that the SRFI would not meet the requirement in the last sentence of paragraph 4.88 of the NPSNN, namely that “*it is not essential for all buildings on the site to be rail connected from the outset, but a significant element should be*’. The Examining Authority considered that, because none of the proposed warehousing would be directly rail-connected (according to the applicant’s Works Plan and Illustrative Masterplan), the proposals in the application would fail to meet this requirement, both at the outset and when the development was fully completed (ER 4.2.16-17).

18. The Secretary of State notes that the proposed arrangement at the SRFI is that rail-borne freight would be transported between the terminal and individual warehouses by road-based tractors. He considers that this would, at the least, mean that the warehouses would be “rail accessible” or “rail served”, even if not directly connected in terms of rail sidings being physically located in close proximity to warehousing units. He considers that the proposed form of connection between warehouses and the rail freight terminal is sufficient to satisfy the objective of this part of the NPSNN, namely to facilitate and encourage the transport of freight by rail.

19. The Secretary of State accepts that on a narrow interpretation of paragraph 4.88 of the NPSNN the application proposals would not provide a significant element of directly rail-connected warehousing units. However he considers that, reading paragraph 4.88 with paragraphs 4.83 and 4.85 of NPSNN, the proposed SRFI would be compliant with the policy in the NPSNN as a whole in that from the outset it would be developed in a form that can accommodate both rail and non-rail activities and that the links to the road and rail networks would certainly be adequate. Moreover, in the Secretary of State’s opinion the need for and other benefits of the project recognised by the Examining Authority (at ER 5.1.57) are important and relevant matters, to which regard must also be had (under section 104(2)(d) of the 2008 Act), and which overcome, in any event, the Examining Authority’s concerns that were based on a narrow interpretation of the last sentence of paragraph 4.88 taken in isolation.

20. The Examining Authority’s third concern was that the SRFI would not meet the requirement in paragraph 4.88 of the NPSNN that the proposals should include “*rail infrastructure to allow more extensive rail connection within the site in the longer term*”. The Examining Authority considered that, as there were no proposals within the application to extend the rail connections within the site once the rail freight terminal had been fully completed, this criterion had not been met (ER 4.2.17).

21. The Secretary of State accepts that the application proposals do not provide specifically for future extension of the rail infrastructure beyond that which would be authorised by the Order. He considers, however, that the capacity which the currently proposed rail facilities would provide, without any future extension, is such as to allow a substantial volume of rail freight traffic to and from the site (the equivalent of up to 1800 HGV movements per day). He is satisfied that, if realised, this would make a significant and worthwhile contribution to modal transfer which is a key objective of the NPSNN policies for SRFIs.

22. The Examining Authority's fourth concern was that the SRFI would not meet the requirement of paragraph 4.88 of the NPSNN that "*the initial stages of the development must provide an operational rail network connection and areas for intermodal handling and container storage*". Aside from the issue of whether the timing of the completion of the rail facilities would satisfy the requirement of being provided in the "initial stages of the development" (considered above), the Examining Authority was concerned about the consequences of permitting the occupation of nearly 47% of the proposed total volume of warehousing before the rail connection was operational. The Examining Authority considered that there was a risk that the first phase at least of warehousing could remain essentially a road-based operation (ER 4.18-28).

23. The Secretary of State recognises that on a narrow interpretation of the phrase "the initial stages of development" this part of paragraph 4.88 of the NPSNN would not be satisfied. However, for the reasons given at paragraph 16 above, he considers that the rail network connection, the area for intermodal handling and the container storage would be provided as early as reasonably practicable in the carrying out of this development. He considers further that, as at paragraph 19 above, the application proposals are in compliance with the policy in paragraphs 4.83 to 89 of the NPSNN when considered as a whole.

24. With regard to the risk that a significant part of the development could remain road-based, the Secretary of State considers that the requirement for the rail freight terminal to be operational before the occupation of more than 260,000m<sup>2</sup> of rail served warehousing gives sufficient assurance that the rail facilities will be delivered as soon as is reasonably practicable in the programme for this development. While he accepts that in a commercial project of this sort there can be no absolute certainty that the rail facilities will be used to their fullest extent, he is reassured that the strong and growing demand for rail freight facilities including SRFIs recognised by the Examining Authority, and as expressed in the NPSNN (paragraph 2.45), means that there are reasonable prospects that as this SRFI is developed it will fulfil its potential for contributing to modal transfer in the freight sector, which is the clear purpose of this application.

25. In drawing together their conclusions on the extent to which the EMGRFI project complied with the NPSNN at ER 4.57-62, the Examining Authority said that they found it difficult to reconcile elements of the application as a SRFI against the functional and design requirements set out in the NPSNN. They therefore concluded that the application did not comply with paragraphs 4.83 and 4.88 of the NPSNN.

26. In contrast, the Secretary of State considers that in a number of respects the Examining Authority has taken too restrictive a view on how the NPSNN requirements for SRFIs should be applied to the particular features of this project. He notes in this regard that paragraph 2.45 of the NPSNN recognises that, given the commercial nature of SRFIs, some degree of flexibility is needed when schemes are being developed to allow the

development to respond to market requirements as they arise. While the Secretary of State accepts that in some limited respects the proposals in this application do not fulfil the letter of the NPSNN – particularly in not providing for future rail extensions and not providing for direct rail connection to individual warehouses – in other respects he considers that the requirements of the NPSNN are satisfied. He considers furthermore that the EMGRFI project displays overall a substantial degree of consistency with the objectives of the NPSNN, having the potential to contribute significantly to modal transfer and to meet the national need for an expanded network of SRFIs. The Secretary of State has therefore concluded that the EMGRFI project is substantially compliant with the NPSNN requirements for SRFIs when they are considered as a whole.

### ***Cumulative impacts with other development proposals***

27. The Secretary of State agrees with the Examining Authority that the applicant's assessment of the potential cumulative impacts of the EMGRFI project with other development proposals was appropriate. He agrees also that the planning of the HS2 route is not sufficiently far advanced or certain for in-combination effects to be considered (ER 4.3.1-8, 5.1.9).

### ***Transportation***

28. The Secretary of State has considered and agrees with the Examining Authority's findings on the transportation impacts of the EMGRFI project, set out at ER 4.4.1-75 and summarised at ER 5.1.10-16. In particular he agrees that:

- there are no over-riding impediments to the proposed SRFI development as regards the availability of train paths to accommodate the forecast volumes of trains and containers;
- the applicant's Transport Assessment was appropriate and acceptable;
- the package of highway proposals would more than mitigate the impact of the SRFI within the Area of Influence and satisfy the requirements of paragraph 5.213 of the NPSNN;
- the proposed arrangements for encouraging alternatives to car usage and balancing their success with vehicle parking provision on the SRFI site are acceptable and meet the requirements of paragraph 5.208 of the NPSNN;
- the proposed changes to local access and public rights of way are satisfactory;
- construction traffic generated by the EMGRFI project would not have a significant effect on the existing highway network and would be adequately controlled by requirement 11 and Schedules 19 and 20 to the Order; and
- the benefits to the existing Strategic Road Network from the transport improvements proposed as part of the project (summarised at ER 4.4.17) would be substantial and should be accorded significant weight in the decision on this application.

## ***Land use***

29. The Secretary of State has considered the Examining Authority's assessment of the impacts of the EMGRFI project on land use at ER 4.5.1-21. He agrees with the Examining Authority that the loss of 91 hectares of grade 2 and 134 hectares of grade 3a agricultural land quality would have a major adverse effect on the availability of the best and most versatile land. He accepts that this would be a significant disbenefit of the project which would conflict with the NPSNN and with saved policies in the Local Plan on the protection of the countryside. However, in assessing the significance of this for the decision on this application, the Secretary of State notes that paragraphs 4.84 and 5.163 of the NPSNN recognise that it may not be possible to develop SRFIs without using countryside; and with regard to paragraph 5.176 of the NPSNN, he agrees with North West Leicestershire District Council that the likely financial contribution of the agricultural land to the local economy would be far outweighed by that generated by the EMGRFI project (ER 4.5.13).

## ***Landscape and visual impacts***

30. With regard to the Examining Authority's assessment of the landscape and visual impacts of the project at ER 4.6.1-31, the Secretary of State agrees that although the existing character and appearance of both the SRFI site and the area for Kegworth Bypass would clearly be altered, the wider landscape impacts would not be significantly detrimental. This is because the surrounding area already contains significant elements of built development and because the proposed earthworks and landscaping would screen views of the large warehouse buildings from the surrounding area. The Secretary of State agrees with the Examining Authority that the landscape and visual impacts of the proposed development, including lighting, are acceptable and accord with paragraphs 4.30, 4.35, 5.144-146 and 5.160-161 of NPSNN in relation to design considerations, assessment methodology and mitigation (ER 4.6.29-31, 5.1.18-20).

## ***Historic environment***

31. The Secretary of State has considered the likely impacts of the EMGRFI project on the historic environment described at ER 4.7.1-25. He notes that apart from a listed milepost there are no heritage assets within the application site and no significant archaeological remains have been discovered. He notes also the Examining Authority's view that, due to the proposed screening of the SRFI site, the development would not cause substantial harm to the settings of any of the conservation areas or listed buildings in the nearest settlements; and that, subject to compliance with requirements 2 and 13, there would not be significant impacts on any archaeological features. The Secretary of State agrees with the Examining Authority that the impacts of the project on the historic environment are acceptable and that the proposal accords with paragraphs 5.126-127 of the NPSNN (ER 4.7.26-29).

## ***Noise and vibration***

32. The Secretary of State has noted the Examining Authority's assessment at ER 4.8.1-16 of the noise and vibration impacts of the project. He agrees with the Examining Authority that the relatively high levels of existing and background noise make it unlikely that there would be any discernible changes as a result of the proposed EMGRFI development as a whole, either during construction or when operational; and that vibration levels during the construction and operation of the development are unlikely to be significant. As regards the highway proposals, the Secretary of State notes that these are likely to result in noise reductions in some areas, particularly as a result of the Kegworth Bypass, and agrees that

this would be an overall benefit of the project. He agrees further that the proposed requirements covering construction and operational noise are appropriate and meet the tests in paragraph 5.196 of the NPSNN (ER 4.8.17-18, 5.1.23-24).

### ***Biodiversity, ecology and nature conservation***

33. The Secretary of State has considered the Examining Authority's assessment of the impacts of the EMGRFI project on biodiversity, ecology and nature conservation described at ER 4.9.1-45. He agrees with the Examining Authority that the project would not be likely to give rise to a significant effect on the River Mease Special Area of Conservation or on any other European designated site and that no appropriate assessment is therefore required. He agrees also that the project would not adversely affect the Lockington Marshes SSSI or the Oakley Wood SSSI. More generally, he notes that the habitats at the application site are unremarkable and agrees that the arable fields that would be lost are of limited conservation significance. He notes also that the proposed landscape strategy would include a substantial bund to the north of the SRFI site to be planted with new areas of wildlife grassland, hedgerows and trees.

34. The Secretary of State agrees with the Examining Authority that the impact of the proposed development on biodiversity, ecology and nature conservation would be broadly neutral and generally meets the requirements of paragraphs 5.23-38 of the NPSNN. The exception would be the unavoidable loss of veteran trees, and the loss of calcareous grassland which would be relocated (ER 4.9.43-45, 5.1.25-28). The Secretary of State confirms that in deciding this application he has had regard to the purpose of conserving biodiversity in accordance with section 40(1) of the Natural Environment and Rural Communities Act 2006.

### ***Climate change adaptation and carbon emissions***

35. The Secretary of State notes that, although climate change adaptation had not been presented as a specific matter in the applicant's ES, the Examining Authority were satisfied that it had been considered throughout the design of the project and that the requirements of paragraphs 4.36-47 of the NPSNN had been met. He notes also that the design approach for the proposed warehouses should lead to energy efficiency maximisation and a small reduction in CO<sub>2</sub> emissions. With regard to the predicted reduction in carbon emissions as a result of the removal of HGVs from the transport network, the Secretary of State agrees with the Examining Authority that the uncertainty as to the extent of the use of the new rail line is a disbenefit to be weighed in the balance. He nevertheless considers that this is offset by the potential significant benefit of the shift of freight traffic from road to rail that could be achieved if the rail line is used to its full capacity, and by the reduction in air pollution and carbon emissions which the highway improvements would deliver (ER 4.10.1-17, 5.1.29-30). The Secretary of State is satisfied that the EMGRFI project does not conflict with the objectives of paragraphs 5.16-19 of the NPSNN in relation to carbon emissions.

### ***Flood risk***

36. The Secretary of State notes that the applicant had carried out a comprehensive review of the possible impact on flooding of the EMGRFI project as a whole, the adequacy of which has been confirmed by the Environment Agency and the local authorities, and he is satisfied that it meets the requirements of paragraphs 5.98-99 of the NPSNN. He agrees with the Examining Authority that the risk of localised flooding in Hemington and Lockington as a direct result of implementing the project would not be worsened, and may be somewhat



alleviated by the flood protection measures. He notes also that the flood plain compensation measures should ensure that no extra flooding is caused by the development and agrees with the Examining Authority that, overall, there would be a benefit from the project in terms of reduced risk from flooding (ER 4.11.1-22, 5.1.31-33).

### ***Water quality and resources***

37. The Secretary of State is satisfied that the applicant has carried out a comprehensive assessment of the possible impacts of the project on controlled waters and has proposed suitable mitigation measures. He agrees with the Examining Authority that the proposed development would meet the requirements of paragraphs 5.1.219-231 of the NPSNN and that the impacts on water quality and resources would be broadly neutral (ER 4.12.1-9).

### ***Civil aviation***

38. The Secretary of State agrees with the Examining Authority that the effects of the proposed development on civil aviation have been properly assessed in line with paragraph 5.59 of the NPSNN and that the proposed development would not significantly impede or compromise the safe operation of the East Midlands Airport as required by paragraph 5.63 of the NPSNN. He is satisfied also that the protection of the airport would be appropriately secured by requirement 7 and by Schedule 16 to the Order (ER 4.13.1-24, 5.1.35-36).

### ***Socio-economic impacts***

39. The Secretary of State agrees with the Examining Authority that the applicant's assessment of job generation during construction and operation is credible. According to this assessment, the development would be likely to have a minor beneficial effect on employment during construction (generating an average of 688 jobs per year) and a major beneficial effect at the regional level during operation (creating 7,272 new jobs). He agrees also with the Examining Authority that the generation of employment would be unlikely to lead to substantial additional housing requirements in the locality; and that the health and well-being impacts of the project would be broadly neutral. The Secretary of State accordingly agrees with the Examining Authority that there would be significant benefits from the proposed development in terms of potential employment creation, and he attaches considerable importance to this factor in coming to a decision on this application (ER 4.14.1-36, 5.1.37-40).

### ***Construction***

40. The Secretary of State notes that the applicant's Construction Management Framework Plan sets out the general principles of the systems and controls to be used for minimising the adverse environmental effects of the project; and that a Construction Environmental Management Plan ("CEMP") for each phase of the project, to be approved by the local planning authority, would provide the detailed mitigation, monitoring and enforcement measures for that phase. He agrees with the Examining Authority that these Plans can form an acceptable basis for mitigating the environmental impacts of the project and that requirement 11 as proposed by the Examining Authority would ensure that all matters relating to construction activities would be covered by the CEMPs (ER 4.15.1-15).

### ***Land instability, geology, soils, groundwater, earthworks and contamination***

41. The Secretary of State has considered the Examining Authority's assessment of these matters at ER 4.16.1-20. Taking into account the evidence submitted by the applicant, including the ES and the Statement of Common Ground with the local authorities, the Environment Agency and Highways England, he agrees with the Examining Authority that the underlying geology and soils are suitable for the proposed development. He notes also that there is no evidence that the applicant's earthworks calculations and modelling are incorrect, nor that an overall materials balance could not be achieved. He agrees, however, that additional information about the detailed design of the earthworks should be subject to approval by the local planning authority under requirement 12 as recommended by the Examining Authority (ER 4.16.21).

42. The Secretary of State notes that none of the assessment work carried out so far has indicated the presence of any contamination. He is satisfied that requirements 24 and 25 as recommended by the Examining Authority would deal adequately with the issue of any contamination that was encountered during implementation of the project (ER 4.16.22).

43. The Secretary of State agrees with the Examining Authority that the impacts of the project on land instability, geology, soils, groundwater, earthworks and contamination environment are acceptable. He is satisfied also that the applicant's assessment of the predicted impacts of the project complies with the requirements of paragraphs 5.116-117 of the NPSNN (ER 4.16.23).

### ***Air quality***

44. The Secretary of State has considered the Examining Authority's assessment of the air quality impacts of the project at ER 4.17.1-15. He agrees that, on the basis of the applicant's assessment modelling, there would not be any significant air quality impacts as a result of either the construction or operational phases of the project. He notes, however, that the CEMP would be an important factor in safeguarding air quality during construction (4.17.16). As regards the operational phase, the Secretary of State agrees that the worsening of air quality at a few locations would not be unacceptable and would be outweighed by the air quality benefits that would arise elsewhere as a result of the project. While he accepts that this is dependent on the modal shift of freight from road to rail taking place as envisaged, as noted at paragraph 24 above, he considers that there are reasonable prospects that the proposed SRFI will in due course realise its potential in this regard (ER 4.17.17).

45. For these reasons, the Secretary of State agrees with the Examining Authority that the applicant's assessment of the air quality impacts of the project comply with paragraphs 5.7-9 of the NPSNN. He is satisfied also that the impacts of the project on air quality are acceptable and comply with the decision-making requirements in paragraphs 5.10-13 of the NPSNN (ER 4.17.18).

### ***Dust and other potential nuisance***

46. The Secretary of State agrees with the Examining Authority that appropriate mitigation of dust and other emissions during construction would be secured through the submission to the local planning authority of dust management plans ("DMPs") within the CEMP for each phase of the development in accordance with requirement 11. He is satisfied also that, due to the nature of the construction and operational activities, other potential

nuisances such as odour, steam and insect infestations would not be a significant issue. The Secretary of State has concluded, like the Examining Authority, that dust and other nuisance impacts during either construction or operational phases of the proposed development would be broadly neutral. He agrees further that the applicant's assessment of these matters accords with paragraphs 5.84-86 of the NPSNN, and that the requirement for the preparation of DMPs satisfies paragraphs 5.87-89 of the NPSNN (ER 4.18.1-15).

### ***Waste management***

47. The Secretary of State has considered the Examining Authority's assessment of waste management issues during the construction and operational phases of the project at ER 4.19.1-11. He recognises, in particular, that the extent of waste management during the construction phase would depend almost entirely on the accuracy of applicant's earthworks modelling - specifically whether a materials balance could be achieved between the amount of earth cut and the amount used for fill in constructing the SRFI (see paragraph 41 above). Subject to that, and to the inclusion in the Order of additional requirements for dealing with controlled wastes and for the submission of a waste management scheme for all the operators at the site, he agrees with the Examining Authority that the arrangements for waste management are acceptable and that the proposals accord with paragraphs 5.42-44 of the NPSNN (ER 4.19.12-13).

### ***Utilities***

48. The Secretary of State agrees with the Examining Authority for the reasons given that there would be no significant impact on existing utilities or difficulties in providing for future demands arising from the proposed development (ER 4.20.1-12).

### **Overall conclusion on the case for development consent**

49. The Examining Authority concluded at ER 5.1.5 and 5.1.52-55 that, in the light of its analysis of the policy justification for the development (considered at paragraphs 9 to 26 above), the application did not meet all the requirements for SRFIs specified in paragraphs 4.83 and 4.88 of the NPSNN; and that, as these went to the heart of the objectives for SRFIs, development consent should be refused. For the reasons given at paragraph 26 above, the Secretary of State does not agree with the Examining Authority's assessment as to the extent or significance of the project's non-compliance with the NPSNN requirements for SRFIs. He considers, specifically, that the extent to which EMGRFI proposals do not comply with the letter of the NPSNN criteria for SRFIs is relatively limited and acceptable. He is satisfied also that the extent of non-compliance does not undermine potential for EMGRFI to contribute significantly to achieving the objectives of NPSNN for modal transfer.

50. Turning to other aspects of the NPSNN, the Secretary of State agrees with the Examining Authority that the EMGRFI project is broadly compliant with the assessment principles and generic impacts set out in the NPSNN, taking into account the conclusions on the matters considered in paragraphs 27 to 48 above. He agrees further that, balancing all the adverse impacts of the development identified in those paragraphs against the need for the proposed SRFI and the significant benefits of the project there is a clear justification in favour of granting development consent for the project (ER 5.1.56-57). With regard to section 104(2)(d) of the 2008 Act, the Secretary of State considers that the need for this project and the transportation, socio-economic and noise benefits which it would bring are important and relevant matters for the purposes of his decision and that they outweigh the

Examining Authority's concerns based on the narrow approach to interpreting the policy requirements of the NPSNN.

51. The Secretary of State has therefore concluded that, having regard to section 104(3) of the 2008 Act, it is in accordance with the NPSNN to give development consent for the EMGRFI project. He is satisfied also that, taking into account his foregoing conclusions, none of the exceptions referred to in section 104(4) to (8) of the 2008 Act apply so as to require him not to decide the application in accordance with the NPSNN.

### **Infrastructure Planning (Environmental Impact Assessment) Regulations 2009**

52. The Secretary of State agrees with the Examining Authority that the environmental information provided by applicant in its ES meets the definition given in regulation 2(1) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 ("the 2009 Regulations") (ER 1.1.8). He confirms for the purposes of regulation 3(2) of the 2009 Regulations that, in coming to the above conclusions, he has taken into consideration all the environmental information in accordance with regulation 3(2) of the 2009 Regulations. For the purposes of regulation 23(2)(d)(iii) of the 2009 Regulations, the Secretary of State considers that the main measures to avoid, reduce and, if possible, offset the major adverse environmental impacts of development are those specified in the requirements.

### **Compulsory acquisition and related matters**

53. The Secretary of State has considered the compulsory acquisition powers sought by the applicant against the tests concerning compulsory acquisition in sections 122 and 123 of the 2008 Act, relevant guidance and the Human Rights Act 1998, and has taken into account the case of the one objection to those powers from Lafarge Tarmac. He agrees, firstly, with the Examining Authority that alternatives to the proposed development have been satisfactorily considered (ER 6.1.38). He notes also that as the applicant already controls a substantial amount of the land required for the development, the compulsory acquisition of freehold land would be limited to 11.5 hectares. The remainder of the compulsory acquisition powers in the Order would be for rights over third party and unknown interests (ER 6.1.40-42). The Secretary of State, therefore, agrees with the Examining Authority that the risk that compensation liabilities could not be met is relatively low. He nevertheless considers that it is appropriate to include a provision in the Order requiring a guarantee to be in place before compulsory acquisition powers are exercised (ER 6.43-45).

54. The Secretary of State is satisfied that, in the light of his conclusion that development consent should be granted for the EMGRFI project, a compelling case in the public interest has been made for the compulsory acquisition of the land and rights that are needed to implement the project. He agrees also with the Examining Authority that all of the interests subject to the powers of compulsory acquisition under the Order are required to carry out the development; and that the tests in section 138 of the 2008 Act in relation to the extinguishment of rights and the removal of apparatus of statutory undertakers are met. The Secretary of State agrees further that the requirements of Article 1 of the First Protocol to, and Articles 6 and 8 of, the European Convention on Human Rights have been met. (ER 6.1.46-60).

55. The Secretary of State has accordingly concluded that the compulsory acquisition and other powers over land included in the Order as recommended by the Examining Authority are appropriate and justified (ER 6.1.63-64).

## **The Draft Development Consent Order**

56. The Secretary of State has considered the Examining Authority's description of the evolution of the Order and their comments on the content of the Order in section 7 of the ER. Having concluded above that development consent should be granted for the EMGRFI project, he is satisfied that the form of the Order recommended by the Examining Authority at ER 7.1.46 is appropriate, subject to the modifications referred to below. In reaching this decision he has taken into account the development consent obligations completed by the applicant for the benefit of Nottinghamshire County Council, North West Leicestershire District Council and Leicestershire County Council.

57. The modifications which the Secretary of State has decided to make to the Order are as follows:

- in article 8 (application and modification of legislative provisions), to delete paragraph (3) because he does not consider that it is appropriate for the Order (as secondary legislation) to alter the provisions in the 2008 Act (as enacted by Parliament) which specify that the Secretary of State is "the appropriate authority" for agreeing to modify or discharge development consent obligations;
- to modify paragraph (1) of article 24 (guarantees in respect of payment of compensation) to provide that the approval of guarantees or other form of security should be given by the local planning authority, rather than the Secretary of State; the Secretary of State considers that it would be more appropriate for the local planning authority to perform this function as it is the body mainly responsible for approving such detailed matters under the requirements;
- in Schedule 2, requirement 5, to correct the drafting error relating to the triggers for the provision of highway improvements, as explained in the letter of 14 October 2015 from the applicant's legal adviser, Eversheds LLP;
- in Schedule 2, requirements 11(2), 12, 13(3) and 24, to delete wording which would appear to allow the local planning or highway authority to dispense with compliance with the requirements in question; the Secretary of State considers that article 42(2) (governance of requirements and protection of interests relating to highway works) provides appropriately for the amendment of details, plans or other matters that have previously been approved by the relevant authority under those requirements;
- to amend Schedule 21 as a consequence of the change of the name of Lafarge Aggregates Limited to Tarmac Aggregates Limited, as requested in the letter of 27 August 2015 from their legal adviser, Nabarro LLP; and
- to make a number of further drafting changes in the interests of clarity, consistency and precision; the Secretary of State considers that none of these changes substantively alter the effect of the Order.

## **Representations since the close of the examination**

58. In addition to the correspondence referred to in paragraph 57 above, the Secretary of State received further representations from Lockington cum Hemington Parish Council on 17 November 2015 and from Castle Donington Parish Council on 7 December 2015 referring

to geological testing being carried out by the applicant on the site of the proposed development. He does not, however, consider that anything in the correspondence constitutes new evidence, or raises a new issue, which needs to be referred to interested parties before he proceeds to a decision on this application. They do not cause him to take a different view on the matters before him than he would otherwise have taken based on the Examining Authority's report.

### **Secretary of State's overall conclusions and decision**

59. For all the reasons given in this letter, the Secretary of State is satisfied that it is appropriate to grant development consent for the EMGRFI project and to give the powers required by the applicant to implement the project. He confirms that, in reaching his decision on this application he has, as required by section 104(2) of the 2008 Act, had regard to the NPSNN, to the local impact reports submitted by Leicestershire County Council, the North West Leicestershire District Council and Derbyshire County Council, and to all other matters which he considers important and relevant to his decision. The Secretary of State has accordingly decided to make the Order in the form recommended by the Examining Authority, subject to the modifications referred to at paragraph 57 above.

### **Challenge to decision**

60. The circumstances in which the Secretary of State's decision may be challenged are set out in the note attached at the Annex to this letter.

### **Publicity for decision**

61. The Secretary of State's decision on this application is being publicised as required by section 116 of the 2008 Act and regulation 23 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009.

Yours faithfully,

**Martin Woods**

## ANNEX

### LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the High Court during the period of 6 weeks beginning with the day after the day on which the Order is published. The East Midlands Gateway Rail Freight Interchange and Highway Order 2016 is being published on the Planning Inspectorate website at the following address:

<http://infrastructure.planninginspectorate.gov.uk/projects/east-midlands/east-midlands-gateway-rail-freight-interchange/>.

**These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (020 7947 6655).**