



Northamptonshire County Council

Northampton Gateway Strategic Rail Freight Interchange

Written Representations

November 2018

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1. Introduction

1.1. These Written Representations are made by Northamptonshire County Council at the request of the Examining Authority to inform the Secretary of State's consideration of the application made by Roxhill (Junction 15) Limited for a Development Consent Order to permit the construction of the Northampton Gateway Strategic Rail Freight Interchange.

1.2. The proposed site of the Rail Freight Interchange, including construction of a rail freight terminal, rail-served warehousing and rail and road access to the site is located south of Northampton to the south-west of Junction 15 of the M1. Associated highway mitigation works are also proposed, including construction of a bypass to the village of Roade. All the works covered by the Development Consent Order are contained within the administrative area of Northamptonshire County Council.

1.3. These representations are variously made by the County Council:

- In respect of Compulsory Acquisition as landowner and highway authority;
- In respect of Highways as highway and local transport authority;
- In respect of Rail Services as local transport authority;
- In respect of Archaeological Impact as local planning authority;
- In respect of Flood Water Management and Drainage as lead local flood authority; and
- In respect of the Development Consent Order in all its relevant capacities

2. Compulsory Acquisition

Land owned by the County Council

- 2.1. Sections 24 and 25 of the draft Development Consent Order would give the undertaker power to compulsorily acquire land and rights as described in the book of reference and shown on the land plans. This includes a number of parcels of land owned by Northamptonshire County Council.
- 2.2. Plot references 1/17, 1/18 and 1/18a are woodland owned by the County Council to the south west of the motorway (M1). The County Council has no objection to the compulsory acquisition of this land and rights subject to the payment of compensation in accordance with the draft Development Consent Order and the Compulsory Purchase Act 1965.
- 2.3. Plot references 3/10, 6/29 and 6/31 are land owned by the County Council as highway authority in respect of the A508. As this land is required by undertaker to construct necessary highway mitigation works, the County Council has no objection to its acquisition subject to [the payment of compensation in accordance with the draft Development Consent Order and the Compulsory Purchase Act 1965] and the inclusion of appropriate works and Protective Provisions in the Development Consent Order.
- 2.4. Plot reference 4/22 is land owned by the County Council which is crossed by a public right of way for which the County Council is responsible as highway authority. The County Council has no objection to the compulsory acquisition of this land and rights subject to the payment of compensation in accordance with the draft Development Consent Order and the Compulsory Purchase Act 1965 and the permanent stopping up of the existing right of way and the creation of new rights of way as outlined in article 12 and Schedule 5 of the draft Development Consent Order.

Land occupied by the County Council as highway authority

- 2.5. Compulsory acquisition and/or rights to use land or carry out protective works are sought by the applicant on a number of parcels of land occupied by the County Council as highway authority where the land may not be owned by the County Council or may be unregistered but is currently highway maintained at the public expense.
- 2.6. As this land is required by undertaker to construct necessary highway mitigation works or for other purposes connected with the development, the County Council has no objection to its compulsory acquisition and/or use subject to the inclusion of appropriate works in accordance with the Protective Provisions as proposed in the draft Development Consent Order (as amended).

Land crossed by Public Rights of Way

2.7. Compulsory acquisition and/or rights to use land or carry out protective works are sought on a number of parcels of land crossed by Public Rights of Way for which the County Council is responsible as highway authority. The County Council has no objection to the compulsory acquisition and/or use subject to the temporary or permanent stopping up existing or creation of new rights of way as outlined in article 12 and Schedule 5 of the draft Development Consent Order.

3. Highways

- 3.1. The County Council has worked with the applicant and Highways England through the Transport Working Group to determine the impact of the development and appropriate mitigation proposals.
- 3.2. To mitigate the adverse impacts highlighted by their traffic modelling, the developers have proposed a series of highway improvement works, mainly comprising junction mitigation, but also the construction of a Road Bypass. The developers have also proposed a series of complementary traffic calming works, including some which address the potential negative impacts of other highway mitigations. Due to a possible increase in traffic on Knock Lane due to Road Bypass and other mitigations proposals, a financial contribution has also been agreed for possible future maintenance works to Knock Lane.
- 3.3. The Public Rights of Way diversions through the site will result in longer journey times for those members of the public using these routes, although the County Council has worked with the applicant to ensure that these routes are as safe and pleasant as possible.
- 3.4. As set out in the Statement of Common Ground between the applicant and the County Council in relation to highway matters (Doc 7.5, AS-006), the County Council accepts that the proposed highway works are necessary and appropriate to mitigate the impact of the proposed development.
- 3.5. It is proposed that the majority of mitigation works will be delivered by the applicant using the powers sought in the Development Consent Order. However, the County Council has agreed with the applicant that works to the Queen Eleanor junction and the southern ring road would be more appropriately delivered via a section 106 contribution so that they can be implemented as part of more comprehensive improvement schemes at the respective locations, should that be desirable.
- 3.6. The applicant is also proposing to commit to provide Bus Services, a Public Transport Strategy and Framework and Occupier Travel Plans through their Development Consent Obligations. These obligations have been agreed with the County Council subject to final agreement on wording.
- 3.7. The County Council does, however, remain concerned about the potential cumulative impact should both the Northampton Gateway and Rail Central Strategic Rail Freight Interchange proposals be consented. We do not believe that the two proposals are compatible from a highways perspective, and there appears no mechanism within the Development Consent Order regulations to consider that the mitigation requirements of more than one Development Consent Order scheme (only the requirement to undertake a cumulative assessment).

Detailed Comments on Development Consent Order – Schedule 13, Part 2: For the Protection of Northamptonshire County Council as Highway Authority

- 3.8. The County Council requires the defects and maintenance period, set out in paragraph 6(2) of the Protective Provisions, to be 24 months. The County Council's guidance documents *Section 38 Agreement – Notes for Guidance for Developers* and *Section 278 Agreement – Notes for Guidance for Developments* require a 24-month maintenance period. The County Council requires all internal and external developer schemes undertaken on its network to undergo Road Safety Audit in accordance with standard GG119¹. This requires a Stage 4 Road Safety Audit to be carried out using 12 months of validated post highway scheme-opening road traffic collision data so that any post highway scheme-opening road safety matters can be identified and remedial action taken. In order that 12 months of data can be collected, analysed and any necessary road safety works identified, designed, agreed and implemented within the defects and maintenance period, the County Council considers that a 24 month period is required. Given that the majority of the highway works to be undertaken are on A roads, the County Council consider that the likelihood of remedial action being required is high and exceptional agreement of a shorter defects and maintenance period would not be appropriate, as it exposes the County Council to too great a risk of having to undertake remedial action at its own expense.
- 3.9. The County Highway Works undertaken need to go through sufficient heat cycles of seasons and with recent variations in winter and summer temperatures and conditions, to ensure any latent defects become manifest, the County Council considers that two such seasonal cycles ensures the works carried out are robust. In addition, the County Council has experience of surface irregularities occurring adjacent to structures from settlement beyond the initial 12-month period which can be challenging and costly to rectify. The County Council considers that a 24-month defects and maintenance period minimises such risks and provides more protection to the County Council.
- 3.10. In this case the development is extensive and construction movements would extend beyond a 12-month period for many of the work packages concerned, with the additional risks of construction related damage which the County Council does not consider the public purse should meet. As such the 24-month defects and maintenance period reduces such risks and potential avoidable burdens on public funds. Considering how much of the County Highway Works are on made ground and the scale of such works, the County Council sees no reason to deviate from its standard provisions in this case.

¹ <http://www.standardsforhighways.co.uk/ha/standards/dmr/vol5/section2.htm>

- 3.11. The 24 month period also reflects and falls in line with the guarantee period quoted within section 1.2.2 of the Department for Transport's *Code of Practice Third Edition (England) April 2010 New Roads and Street Works Act 1991 Specification for the Reinstatement of Openings in Highways*² which references 2 years although it is noted that for deep excavations a guarantee period of 3 years should be required. The County Council therefore considers a 24-month defects and maintenance period is appropriate.
- 3.12. In addition, the County Council objects to the wording in paragraph 6(2) of the Protective Provisions highlighted in yellow in Appendix 1 in relation to limiting the maintenance duties of the developer. The County Council's guidance documents *Section 38 Agreement – Notes for Guidance for Developers* and *Section 278 Agreement – Notes for Guidance for Developments* make it clear at section 1.4 (in both documents) that developers should be responsible for all traffic damage whether accidental or otherwise, without the limitation propose. Further, as the undertaker will remain the relevant street works manager for the duration of the defects and maintenance period, the County Council, as local highway authority, would not be entitled to make claims from insurance companies to cover the cost of any remedial work required due to accidental damage. The applicant has not provided any explanation as to why the County Council should deviate from its standard processes and we do not see why use of the Development Consent Order should change this.

4. Rail services

- 4.1. Under section 108 of the Transport Act 2000, the County Council has a statutory duty to develop policies for the promotion and encouragement of safe, integrated, efficient and economic transport to, from and within their area, and carry out their functions so as to implement those policies. This includes rail services.
- 4.2. Northampton has long suffered from being located on the Northampton Loop which form the slow lines of the West Coast Main Line and not on the fast lines which pass Northampton to the west. Despite improved journey times introduced in December 2012 under London Midland's Project 110, rail services from Northampton to London remain slower than those from places of equivalent size located further away, but served by faster services.
- 4.3. The following table compares journey times in the standard off-peak hour to London from Northampton with those from other nearby places on the West Coast Main Line.

	Population	Fastest Journey time (minutes)	Distance (miles)	Average speed (mph)
Northampton	212,100	55	66	72
Milton Keynes Central	207,057	35-36	50	83-85
Rugby	63,323	50	82	98
Coventry	315,700	61-62	94	90-92

Note: population figures shown are the best available information for the town/city in 2011.

- 4.4. The County Council considers that improved rail connections to London, Birmingham and other large cities are vital to ensuring the county town's growth and economic prosperity, and the Rail Strategy (January 2013)³ which forms part of the Local Transport Plan therefore supports a **step change** in the rail service provided for Northampton.
- 4.5. The southern end of the West Coast Main Line is one of the Britain's main rail freight corridors. Nearly all this traffic uses the slow lines through Northampton. A major constraint on performance of southbound freight trains is their ability to climb the approximately 1 in 200 gradient from Northampton to Roade following the speed restriction under West Bridge immediately south of Northampton station. An examination of Network Rail's working timetables⁴ shows a timing of 8 minutes from Northampton to Hanslope Junction of a

³ <https://www3.northamptonshire.gov.uk/councilservices/northamptonshire-highways/transport-plans-and-policies/Documents/Northamptonshire%20Rail%20Strategy.pdf>

⁴ <https://www.networkrail.co.uk/running-the-railway/timetabling/working-timetable/>

passenger train stopping at Northampton, and at least 11 minutes for freight services. The speed differential is increased where trains are diesel-hauled due to the lower horsepower of the locomotives used compared with electrically-hauled services. This is the section of line on which it is proposed that the rail freight interchange will be built.

4.6. The rail service aspirations for Northampton set out in the Rail Strategy are as follows:

Policy RAIL 7

The minimum train service at Northampton station should be:

- At least a half-hourly fast service to London Euston, stopping only at Milton Keynes Central, and reaching London in around 45 minutes.
~ With additional peak commuter services to match capacity
 - At least a half-hourly semi-fast service to Wolverton, Milton Keynes Central, Bletchley, Leighton Buzzard, Berkhamsted, Hemel Hempstead, Watford Junction and London Euston.
 - Good connections for services via the West London line to South Croydon
~ On Monday to Saturday this service should be increased to half-hourly frequency and extended to Gatwick Airport
~ The Sunday service should be extended to run between Milton Keynes Central and Gatwick Airport.
 - Good connections at Milton Keynes Central and Bletchley with future east-west rail services to Oxford, Reading, Aylesbury and High Wycombe.
 - At least a half-hourly service to Long Buckby, Rugby, Coventry, Birmingham International and Birmingham New Street, reaching Birmingham in around 50 minutes
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- At least an hourly through service to Rugby, Nuneaton, Atherstone, Tamworth, Lichfield Trent Valley, Rugeley Trent Valley, Stafford and Crewe
 - Hourly connections to Chester, Liverpool, Manchester, Preston, Lancaster, Carlisle and Glasgow with no more than one change of train and with journey time no more than the current journey times from those stations to London Euston.
 - Hourly connections to Derby, Leicester, Nottingham and Sheffield with no more than one change of train at Nuneaton or Tamworth

4.7. The planned opening of High Speed Two (HS2) in 2026 should result in the transfer of many long-distance passenger services from the southern end of the West Coast Main Line. Both HS2 Limited and Network Rail have identified Northampton as a location that should benefit from additional services enabled by the consequent released capacity on the existing network.

4.8. Rail industry timetabling processes mean that timetables for the southern end of the West Coast Main Line will not be drawn up until much closer to the opening dates for HS2. However, both Network Rail/Passenger Focus in *Future Priorities for the West Coast Main*

Line: Released capacity from a potential high speed line (January 2012)⁵ and the Department for Transport/HS2 Ltd in *The Economic Case for HS2: Assumptions Report* (October 2013)⁶ have identified that most or all Northampton – London services post-HS2 will use the West Coast Main Line ‘fast’ lines.

4.9. However, the proposals in these documents and in HS2 Ltd’s *PLANET Framework Model: PFM v7.1 Assumptions Report* (2017)⁷ fall short of the County Council’s aspirations, both in terms of frequency and geographic coverage and lack of information about future journey times. While the proposals in the various HS2 reports are produced as modelling assumptions for determining the economic, the County Council has been disappointed that the significant forecast rise in rail patronage from Northampton recognised elsewhere in HS2 Ltd’s modelling has not been matched by a commensurate improvement in the rail service.

4.10. The Long Term Planning Process is Network Rail’s procedure for identifying the long-term capacity and investment needs of the rail network. Network Rail’s Freight Network Study (April 2017)⁸ identifies an expected increase in rail freight paths on the West Coast Main Line following the opening of HS2. Section 8 of that report identifies as options for funders:

- a scheme to reduce headways on the Northampton Loop to accommodate additional passenger and freight traffic (cost estimate £75-175m); and
- the remodelling of Northampton station to allow freight services to pass at higher speed and reduce the speed differential between passenger and freight services (cost estimate £175-375m).

4.11. The inclusion of these schemes in the Freight Network Study would seem to confirm that Network Rail consider there to be future capacity constraints on the Northampton Loop.

4.12. The study work for the southern end of the West Coast Main Line is still ongoing. However, in their emerging West Coast Capacity Plus Study, Network Rail identified a significant future constraint in capacity between Denbigh Hall North Junction and Milton Keynes Central in particular, but also over the entirety of the Northampton

⁵ <https://www.transportfocus.org.uk/research-publications/publications/future-priorities-for-the-west-coast-main-line/>

⁶ <https://www.gov.uk/government/publications/planet-framework-model-assumptions>

⁷

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/699029/CS866_D_Assumptions_Report_PFM_7.1.pdf

⁸ <https://www.networkrail.co.uk/wp-content/uploads/2017/04/Freight-Network-Study-April-2017.pdf>

Loop, such that increasing freight services over the Loop might require a reduction in the passenger service to Northampton.

- 4.13. Warwickshire County Council are promoting a new station, to be known as Rugby Parkway, between Long Buckby and Rugby. Should this station be opened, it is expected to result in a slight lengthening of journey times for passenger trains between Northampton and Birmingham calling at the new station.

Impact of Northampton Gateway proposals

- 4.14. The Environmental Statement (Doc 5.2, APP-116) submitted by the Applicant does not include any analysis of the impacts of the proposal on the rail network. However, a series of Rail Reports have been submitted by the Applicant as part of their application (Doc 6.7, APP-378). These reports conclude that there is sufficient capacity on the rail network to accommodate the extra freight services from the proposed Rail Freight Interchange.

- 4.15. Addleshaw Goddard LLP, in their representation on behalf of Network Rail (RR-572), state “The ability of the RFI to realise its optimal rail service throughput will require detailed capacity studies to be undertaken and, until further capacity studies have been carried out, Network Rail’s position on the DCO application is neutral in this regard.”

- 4.16. At the Preliminary Meeting, Network Rail stated that they were negotiating a Statement of Common Ground in relation to (rail) capacity issues.

- 4.17. This would indicate that the Applicant’s conclusions that there is sufficient capacity to accommodate the extra freight services from the proposed Rail Freight Interchange have not yet been agreed by Network Rail.

- 4.18. The County Council remains concerned as to the potential impact of the proposed Northampton Gateway Strategic Rail Freight Interchange on both existing and future rail services.

- 4.19. As the only two stations which are currently located on the Northampton Loop, passenger services to Northampton and Long Buckby (and the proposed station at Rugby Parkway) have to use the slow lines for at least part of their journey. This means that inevitably they must share those slow lines with the proposed development and more generally. All other stations from Wolverton to Watford Junction inclusive have platforms on both the slow and fast lines.

- 4.20. In the short-term, it seems clear (subject to confirmation by Network Rail) that there are spare freight paths available for use by additional services. However, the applicant has not demonstrated, as

far as the County Council can determine, that these paths be used to serve the proposed Rail Freight Interchange without conflict to other services. In particular:

- That there is time available with the headway of appropriate paths for services to slow down to enter or accelerate to depart from the site without delaying following trains.
- That it there are paths available which allow northbound ('down') trains to enter and depart the site, without conflicting with paths on the southbound ('up') line which they must cross to access the rail freight terminal.

4.21. We would anticipate that these are matters Network Rail would also wish the applicant to confirm, as they are vital to ensuring that operation of the site does not adversely impact on the rail network.

4.22. The County Council accepts that it is not possible for the applicant to demonstrate the impact of their development in the years following the planned opening of HS2 in 2026 in the same detail, since it is expected that the timetable would be completely rewritten by that time.

4.23. However we consider that both the applicant and Network Rail (as the statutory rail system operator) have a role in appropriately advising the Examining Authority and the Secretary of State on the likely impacts.

4.24. From the information we have seen as part of the Long Term Planning Process, we would expect that Network Rail will have determined notional timetables – at least in terms of indicative journey times and numbers of paths available for different classes of train (e.g. class 1 or 2 passenger, class 4 or 6 freight) to be able to make some sort of determination of potential conflicts in future scenarios as set out in paragraph 4.20 above. We would expect that this is information that the Examining Authority would request from the applicant and/or Network Rail in order to make an informed decision about the application.

4.25. As noted at 4.9 above, current indicative timetable set out by the rail industry falls some way short of the County Council's aspirations, particularly in not giving any indication of likely journey times. However, we consider that in order to demonstrate whether the proposed development is compatible with local aspirations set out in our statutory Local Transport Plan, we would ask that the Examining Authority to ask Network Rail and/or the applicant to undertake an appropriate sensitivity test of the analysis suggested at 4.24 of the impact of the development on a service pattern which meets the County Council's aspirations.

4.26. The County Council looks forward to the further information requested in 4.20, 4.24 and 4.25 being published, and the opportunity to respond to that information, in due course.

5. Archaeological Impact

- 5.1. Northamptonshire County Council provides archaeological planning advice to South Northamptonshire Council through a Service Level Agreement. The County Archaeological Advisor has been engaged in pre-application discussions with the applicant and their archaeological consultants (CgMs), in relation to Cultural Heritage specifically below ground archaeology.
- 5.2. The applicant was given advice in relation to the initial scoping in November 2016. We advised that as the submission was to adhere to EIA regulations, the assessment should include a suite of archaeological evaluation techniques to inform the Cultural Heritage chapter within the forthcoming Environmental Statement (Doc 5.1, APP-113).
- 5.3. A further joint response was provided by the County Council in January 2017 which reiterated the need for archaeological assessment. The County Council was contacted by CgMs who provided a specification for a geophysical survey in March 2017. The geophysical survey was undertaken by Sumo Survey in September 2017 but the report was only sent to the County Council on the 5th January 2018. In the intervening period the County Council had had discussions with CgMs in June 2017 regarding the need for the geophysical survey to be completed, the report submitted for comment and a discussion regarding the trenching strategy.
- 5.4. The results of the geophysical survey indicated that the survey had identified areas of potential archaeological activity within the proposed development area. The survey authors interpreted these as areas of Prehistoric or Romano British activity. The County Council was later contacted directly by the applicant in January 2018. In their e-mail of 23rd January 2018 they provided a trenching plan which it was suggested would “*enhance the understanding of the significance of the archaeological features identified by geophysical survey over the site*”. The applicant indicated that trenching would only be undertaken in areas which had been identified as foci of archaeological activity and in a limited number of areas to test whether the “natural “ responses were masking archaeological features. The rest of the main development area and the bypass corridor would be left until after consent had been granted.
- 5.5. The County Council provided a response to the applicant’s request in which we expressed our disappointment that neither the applicant nor their archaeological consultant had entered into any dialogue with us regarding the trenching strategy for this project. We disagreed with the applicant’s proposals to undertake the trenching of the main site and the bypass corridor in phases, with the majority post consent.

5.6. The County Council informed the applicant that the trenching proposals for the main site were extremely limited in coverage and would not provide sufficient information on which to assess the extent, preservation and therefore significance of the archaeology within the main site. We reiterated the approach that we had previously given using a variable sampling strategy for the anomalies identified by the geophysics and the areas unresponsive to the survey. We stressed that a 2% sample over the survey anomalies and 3% of unresponsive areas was successfully applied to the adjacent site, Rail Central which had led to a better understanding of the presence and extent of archaeology and enabling the design of full mitigation proposals.

5.7. The County Council questioned the applicant's interpretation of the Sumo Report (2017) that only the anomalies identified by the geophysical survey needed to be targeted in advance as "Given the success of the geophysical survey on the site, it is considered that any other archaeological features that have not been identified (if present), such as small isolated pits etc., will not be of the same significance as the settlement enclosures, nor of such significance to preclude development". This strategy is contrary to the Historic England (formerly English Heritage) guidance for geophysical survey (2008) which indicates that "Any reference to 'negative evidence' must be fully qualified and explained. Lack of geophysical anomalies cannot be taken to imply a lack of archaeological features, and in such cases an alternative evaluation procedure – e.g. trial trenching, or the use of a different geophysical technique – should be considered" (page 4). It is clear within the guidance that "blank" areas need to be ground tested. It is also important to recognise the limitations of geophysical survey. Magnetometer survey, in good conditions, can identify deposits of sufficient difference to the parent geological substrate; typically features of sufficient size containing relatively high densities of settlement waste. Features containing deposits with relative low densities of settlement waste, deposits where this material has degraded or, for example, dispersed unenclosed settlement, are often not identified by this survey technique. Similarly, stone structures will often not respond to this technique. It is also well known that certain types of archaeological features such as burials are not receptive to geophysical survey. Indeed, it is not unknown for significant archaeological activity to be missed by the geophysical survey, potentially resulting in the need to remove a large area from development.

5.8. In the European Archaeological Council *Guidelines for the use of geophysics in Archaeology Questions to ask and points to consider* (2016)⁹ it is highlighted that "data cannot be used as 'negative evidence', since the lack of geophysical anomalies cannot be taken to imply a lack of archaeological features. However, where a corpus of previous work is available for the same environmental and geological

⁹ <https://historicengland.org.uk/advice/technical-advice/archaeological-science/geophysics/>

conditions a statistical probability for the existence of archaeological features may be derived from the geophysical data, taking the resolving power of the used methodology into account. Such estimates have to be fully qualified and explained. Where decisions have to be made in the absence of geophysical anomalies an additional evaluation procedure – for instance the use of a different geophysical technique, or trial trenching – should be considered (p17).

5.9. CgMs submitted a trench plan for limited trenching within the main application area in 23rd February 2018. This represented a 0.38% sample of the total development area. This covered six areas of foci covering the anomalies identified in the geophysical survey and five areas that were identified as “blank”. These were to be undertaken according to the suggested 3% and 2% sampling strategy. CgMS explained that due to the applicant’s desire to submit in September it would not be possible to undertake all the trenching within the main site and the Bypass. They also indicated that the applicant had access issues. It could be surmised that it was time concerns rather than archaeological considerations that led to this approach. CgMs informed the County Council that “obviously this is not an ideal situation, and involves a degree of risk”, which had been explained to the applicant.

5.10. In our response to CgMs of the 28th February the County Council noted the comments made with regard to the timing and access. We highlighted that we had provided advice to the applicant in early 2016 regarding the need for further assessment. We had stressed the need for early engagement and indicated that in our opinion the applicant client had had sufficient time to undertake the archaeological assessment.

5.11. The County Council approved the *Written Scheme of Investigation for Archaeological Evaluation* undertaken by Cotswold Archaeology on behalf of the applicant subject to revisions on the 1st March 2018. We clearly indicated that we still did not agree with the trenching proposals however we believed that it would be beneficial for this extremely limited work to be undertaken in the hope that the applicant would be more proactive in gaining access and facilitating the outstanding trenching.

5.12. The County Council clarified our position in that acceptance of the Cotswold Archaeology methodology **was not approval of the trenching strategy as a whole** merely a process to ensure that this specific evaluation is undertaken according to the County Standards.

5.13. The archaeological evaluation was undertaken between 5th March and 7th April 2018 and the works were monitored by the County Council. The monitoring visits were satisfactory and the fieldwork was undertaken to a high standard.

- 5.14. The results of the evaluation are contained within Environmental Statement Chapter 10 Appendix 10.5: *Land off Junction 15, M1 Collingtree, Northamptonshire: Archaeological Evaluation* (2018) (Doc 5.2, APP-223).
- 5.15. The evaluation identified archaeological remains concentrated within five main areas of the site (Areas A to E) with a low density of archaeological remains identified within the other trenches. The majority of the activity can be attributed to one of five broad periods; the Middle Bronze Age, Middle Iron Age, Late Iron Age/Early Romano British (early to late 1st century), Romano-British (2nd to 4th century) and medieval. The excavators stated that the results of the evaluation correlated well with the preceding geophysical survey, which identified a number of anomalies representing potential archaeological features; which comprised circular, linear and discrete anomalies, indicative of prehistoric enclosures, trackways, pits, agricultural ditches, furrows and boundary features. This is not surprising as the trenching was targeting areas already identified by the geophysical survey. The County Council would stress that although the results of the limited evaluation correlate well with the geophysical survey the small scale nature of the trenching does not provide sufficient information to assess the archaeological potential of the site as a whole.
- 5.16. The County Council was contacted by CgMs on 20th July to discuss the Statement of Common Ground. We informed them that this was premature as we had yet to receive the Cotswold Archaeology Evaluation Report. A copy of the report was subsequently sent.
- 5.17. A draft version of the Statement of Common Ground relating to Archaeology was submitted to the County Council in July 2018. Following comments, a revised Statement of Common Ground was submitted by the applicant's consultant on the 1st November 2018. This clarified some technical issues but did not fundamentally change the current situation in that there remains a disagreement over the extent of trenching required to characterise the site and determine if any assets of significance are present.
- 5.18. The applicant's archaeological consultant, CgMs, contacted the County Council on 26th October 2018 and indicated that following discussions with a number of landowners, the applicant had informed them that they were now able to undertake trial trenching along much of the length of the proposed Roade Bypass. They intend to undertake a programme of trial trenching in this area in the near future and to that end are in the process of appointing an archaeological contractor to undertake the work. The County Council is currently waiting for a Written Scheme of Investigation for this work. We responded to CgMs indicating that the undertaking of the outstanding trial trenching within the road corridor was a welcome step. We noted that the applicant has managed to negotiate access to an area that was once inaccessible.

In light of this we suggested that access to the larger main site may also be possible if further negotiation took place. CgMs responded that they had not been involved in any discussions over access with landowners, so were not in a position to comment on accessibility/inaccessibility to any parcels of land.

- 5.19. The Environmental Statement Chapter 10 *Cultural Heritage* and the Statement of Common Ground suggest that any archaeological assets within the development area would not be of such significance as to preclude development or require amendments to the development masterplan. In the absence of ground testing, the extent and significance of identified assets cannot be adequately characterised. Furthermore, the potential for further presently unidentified assets, which may not be responsive to geophysical survey, remains unknown. The evaluation did identify some archaeological activity not shown on the geophysical survey plots.
- 5.20. The Environmental Statement also suggests that areas should be excluded from assessment as they will remain as open space or will be sealed under bunds as part of the development. The intention is that these areas will preserve any archaeology present in situ. The County Council would however advise that in order to be an effective mitigation strategy, preservation in situ must recognise the cohesion, legibility and significance of the archaeological asset the strategy is intending to preserve. Furthermore, the strategy takes no account of the potential impacts in these areas through landscaping, movement of heavy machinery, storage of materials and other ancillary works.
- 5.21. The applicant suggests that the outstanding evaluation can be undertaken once consent has been granted. They indicate that the mitigation will follow the outstanding evaluation. The illustrative masterplan clearly shows that the possibility for redesign, should significant archaeology be discovered, is limited due to the scale and nature of the project. Removing areas of archaeological sensitivity post determination of the application would likely reduce the capacity of the site to deliver the full extent of the proposed development.
- 5.22. Historic England have published on behalf of the Historic Environment Forum, Good Practice Advice on planning and the historic environment. The advice underpins the Government's Planning Practice Guidance which in turn expands upon the core policy principles of the National Planning Policy Framework. Good Practice Advice Note 2- *Managing Significance in Decision-Taking in the Historic Environment*¹⁰ discusses the assessment of significance and impact advising that evaluation should be sufficient to determine the nature of the archaeological resource.

¹⁰ <https://historicengland.org.uk/images-books/publications/gpa2-managing-significance-in-decision-taking/>

- 5.23. The Nationally Significant Infrastructure Projects website contains a number of advice notes for applicants, of relevance is Advice Note Seven *Environmental Impact Assessments - Preliminary Environmental Information, and Environmental Statements* (December 2017)¹¹: this highlights that 8.2 “The requirements of Schedule 4 of the EIA regulations will be considered carefully by the Planning Inspectorate”. They also stress that “care and regard should be given to the scoping process to ensure that aspects/matters included in the Regulations and particularly Schedule 4 (where relevant) are appropriately addressed”. It also in 8.5 encourages applicants “to invest time and effort in both formal and informal EIA consultation exercises. This should include allowing time to respond to comments from consultees including, if necessary, undertaking additional surveys and analysis.” In this case further archaeological assessment is required.
- 5.24. The Environmental Impact Directive also requires that decisions on whether to grant development consent for specific projects are taken in the full knowledge of the project's likely significant impact on the environment. The County Council has advised that there is insufficient information to allow an informed assessment of the direct and indirect effects of the development on the archaeology. The lack of information precludes the Environmental Statement from providing details of measures for mitigation except for those limited areas which have been evaluated. We would strongly advise against a “wait and see” approach to the archaeology as the Requirement 14 (1) in Schedule 2 of the draft Development Consent Order advocates. The County Council would advise that there must be more certainty that all of the likely environmental effects have been identified and taken into account before granting consent.
- 5.25. The Examining Authority has also highlighted the need to consider likely environmental effects in their reference to *R v Cornwall County Council ex parte Jill Hardy* [2001 JPL 786]. This refers to a case in which the applicant carried out an Environmental Impact Assessment and provided an Environmental Statement. In this case although it was known that the conditions at the site were those preferred by a protected species, bats, the applicant did not investigate for their presence as a part of the Environmental Impact Assessment. The planning authority, advised by English Nature, imposed a condition requiring the applicant to carry out a survey to establish whether bats were present prior to commencing the development. The Court held that this information should have been included in the Environmental Statement, otherwise the authority could not comply with the Environmental Impact Assessment Regulations (Regulation 3(2)). The planning permission was quashed. The County

¹¹ <https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/2017/12/Advice-note-7.pdf>

Council appreciates that this relates to a planning application and the natural environment however it demonstrates that those making development decisions should be sure that all of the likely environmental effects have been identified and taken into account before granting consent. In this case consideration of the archaeological potential would be pertinent. We would strongly advise that the Examining Authority ensure that it has in its possession all relevant environmental information about the likely significant environmental effects of the project before it makes its decision whether to grant planning permission. It is too late to address the issues after consent has been granted.

- 5.26. In the County Council's opinion the information provided within the Environmental Statement regarding the known significance of the archaeological potential is inadequate. The level of trenching currently undertaken to inform the assessment is 0.38 %. Even if the additional proposed trenching on the bypass was undertaken it would still be very low. This could be rectified by undertaking the trenching strategy as previously advised by the County Council. This covered the entire development area with variable percentages. The undertaking of the assessment as recommended by the County Council would result in sufficient information to make an informed decision as to the extent, nature and significance of the archaeological resource. It would ensure that the impact of the proposed development was mitigated whether by preservation, by record, or in situ. It would ensure that a fully informed mitigation scheme could be developed from the onset rather than requiring the use of an evaluation technique for mitigation as is suggested in Requirement 14 (1) in Schedule 2 of the draft Development Consent Order.

Comments on the Requirement 14 of Schedule 2 of the draft Development Consent Order

- 5.27. The County Council disagrees Requirement 14(1) should include provision for further exploratory investigation. The provision is for the completion of the evaluation stage which the applicant has decided to delay to after consent. The Order should cover the mitigation of the resource rather than having to deal with the inadequacy of the submitted assessment. In undertaking so little assessment as part of the submission the applicant has been forced to make provision for additional assessment within the Order. Requirement 14 (2) presupposes that all works will wait until the additional information is obtained and a revised mitigation strategy produced. The County Council would question how this will affect Requirements 13 - Earthworks, 20. - Foul Water Drainage and 10. - Landscaping. The production of Requirement 12. - Construction Environmental Management Plan will also be hindered by the lack of adequate archaeological assessment.

5.28. Requirement 14(2) describes the process for archaeological mitigation. The County Council reiterates that we are of the opinion that further information regarding the impacts of the development are necessary. However, if the applicants are satisfied that sufficient assessment has been undertaken to determine the known and potential impacts of development, then we would suggest that in accordance with Environmental Impact Assessment regulation, there is an implicit acceptance by the applicant that sufficient assessment has been undertaken and that mitigation can be achieved through the excavation and recording of archaeological assets in advance of construction and the publication of the results. This would include full excavation of the development area excluding only the areas demonstrated to be of negligible importance by the evaluation undertaken by Cotswold Archaeology.

5.29. Requirement 14 (3) should be amended to add provision for the archaeological mitigation to be incorporated within the Construction Environmental Management Plan in order to ensure that all the specialists, contractors and subcontractors do not undertake works without first checking that all the archaeological requirements have been undertaken. This will provide a holistic approach to the development.

Statement of Common Ground- Archaeology- Comments November 2018

5.30. A draft version of the Statement of Common Ground relating to Archaeology was submitted to the County Council in July 2018. The County Council responded in early October 2018 and agreed to technical points 1 and 4 within Section. 3. Areas of agreement on technical matters: but disagreed with points 2, 3 and 4. Section 4 Areas of common ground; point 1 was agreed however in the case of points 2-5 the County Council agrees that the main site requires trial trenching in order to inform the mitigation strategy however disagrees that this work should be undertaken post consent. In relation to point 4, we have highlighted that archaeological mitigation may involve preservation in situ and as such the evaluation information submitted as part of the application should be sufficient to allow an informed assessment of the archaeological potential.

5.31. A revised Statement of Common Ground has now been agreed by both the applicant and county Council. This clarifies some technical issues but does not fundamentally change the current situation in that there is a disagreement over the extent of trenching required to characterise the site and determine if any assets of significance are present.

6. Flood Water Management and Drainage

- 6.1. Northamptonshire County Council is Lead Local Flood Authority in Northamptonshire, responsible for managing local sources of flood risk. The County Council has been in pre-application discussions with the developer and their drainage consultants (BWB Consultants), in relation to surface water drainage and local flood risk management matters.
- 6.2. In February 2018, the applicant submitted to the LLFA a draft Flood Risk Assessment [NGW-BWB-EWE-XX-RP-YE-0005_FRA rev P1 dated February 2018], which was supported by calculations and hydraulic modelling, and prepared based on those pre-application discussions. This Flood Risk Assessment was approved by the County Council, and forms the basis of the Flood Risk Assessment and Sustainable Drainage Statement that are included in Appendix 7 of the Environmental Statement (Doc 5.2, APP-182/183). A Drainage Statement of Common Ground (Doc 7.2, APP-384) has been reached between the applicant and the County Council on the basis of this Flood Risk Assessment to cover surface water management matters at this stage.
- 6.3. It is deemed that all potential impacts of the development on local flood risk and surface water drainage can be mitigated through appropriate design, the principles of which are set out in the approved Flood Risk Assessment. There is potential for the development to provide betterment to reduce existing flood risk to areas downstream of the site. The detailed design of the surface water drainage scheme will need to be submitted to and approved by the County Council in order to ensure it provides adequate mitigation. This therefore needs to be secured in the requirements documentation. Details of the key requirements for the design are set out below.
- 6.4. Further communication is currently underway to agree the requirements for the applicant to submit applications for Land Drainage Consent for all works within 9m of an ordinary watercourse. It is hoped that these details can be agreed for inclusion in the next draft of the Development Consent Order requirements and obligations documents to be submitted by the developer Key Design Requirements
- 6.5. The County Council requires that the detailed design of the mitigation measures, namely the site surface water drainage system, will need to be submitted to, and approved by the County Council to address the following key design criteria as detailed within our document *Local Standards and Guidance for Surface Water Drainage in Northamptonshire*¹².

¹² <https://www.floodtoolkit.com/planning/surface-water-drainage/>

- 6.6. This development is located in the Upper Nene catchment and must cater for the 0.5% annual probability (1 in 200 year) design storm event including an allowance for climate change, with any flooding of the site restricted to designated areas and flow routes.
- 6.7. Surface runoff should be discharged to one or more of the following, listed in order of priority:
1. Discharge into the ground (infiltration);
 2. Discharge to a surface water body or watercourse;
 3. Discharge to a surface water sewer, highway drain, or another drainage system;
 4. Discharge to a combined sewer
- 6.8. For greenfield developments, the peak runoff rate from the development to any surface water body, watercourse, highway drain or surface water sewer, for the 1 in 1 year rainfall event and the 1 in 200 year rainfall event should never exceed the peak greenfield runoff rate for the same event.
- 6.9. Where reasonably practicable, for greenfield development, the runoff volume from the development to any surface water body, watercourse, highway drain or surface water sewer, in the 1 in 100 year, 6 hour rainfall event should never exceed the greenfield runoff volume for the same event.
- 6.10. Surface water run-off should be controlled as near to its source as possible through a sustainable drainage approach to surface water management. Sustainable Urban Drainage Systems are an approach to managing surface water run-off which seeks to mimic natural drainage systems and retain water on or near the site as opposed to traditional drainage approaches which involve piping water off site as quickly as possible. Sustainable Urban Drainage Systems involve a range of techniques including soakaways, infiltration trenches, permeable pavements, grassed swales, ponds and wetlands. Sustainable Urban Drainage Systems offer significant advantages over conventional piped drainage systems in reducing flood risk by attenuating the rate and quantity of surface water run-off from a site, promoting groundwater recharge, and improving water quality and amenity. The full range of Sustainable Urban Drainage Systems techniques must be considered for all sites with the most appropriate technique(s) taken forward.
- 6.11. The drainage strategy must incorporate a Sustainable Urban Drainage Systems treatment train appropriate to the uses onsite, to protect water quality.
- 6.12. Current allowances for climate change must be factored into designs.

- 6.13. Within Northamptonshire, rainfall depths are often greater using more up to date Flood Estimation Handbook rainfall datasets than those using Flood Studies Report rainfall datasets, therefore for various storm events, greater run-off is produced and additional attenuation is likely to be required.
- 6.14. Flood Estimation Handbook rainfall data is more up to date than Flood Studies Report (England and Wales) therefore calculations should use this Flood Estimation Handbook data to determine the volume of surface water attenuation required on site. We recognise there are uncertainties associated with the use of any datasets. In particular, Flood Studies Report rainfall data should be used where the critical storm duration is less than 60 minutes, as Flood Estimation Handbook data is less robust for short duration storms. Flood Estimation Handbook rainfall data can be used to determine the volume of storage required if the critical storm duration is greater than 30 minutes.
- 6.15. If Flood Estimation Handbook rainfall data is not used as described above, then sensitivity testing to assess the implications of Flood Estimation Handbook rainfall must be provided. This should demonstrate that the development proposals remain safe and do not increase flood risk to third parties.
- 6.16. The use of infiltration must be supported by Building Research Establishment digest 365 infiltration test. Any infiltration storage features should be capable of half emptying within 24 hours of the rainfall event. This is to ensure capacity for further rainfall events. To protect groundwater, soakaways and other infiltration Sustainable Urban Drainage Systems must not be constructed in contaminated ground.
- 6.17. All surface storage features should provide a minimum 300mm residual uncertainty allowance (freeboard) above the design maximum water level to top of bank and to finished floor levels around the site.
- 6.18. Any flow control devices proposed as part of proposal should have a bypass feature to manage flows when a blockage occurs. The bypass can be an internal weir overflow within the chamber discharging to the outfall pipe or channel.
- 6.19. The County Council do not adopt Sustainable Urban Drainage Systems. The maintenance and/or adoption proposal for every element of the surface water drainage system proposed on the site should be considered for the lifetime of the development.
- 6.20. Any outfall from the site drainage system should fall within the ownership of the development site. If not then details or permission to discharge / cross third-party land will be required.

- 6.21. If the surface water from the development proposes to discharge into Main River, the developer will need to seek permission from the Environment Agency.
- 6.22. If the surface water runoff generated from the new development is discharged into any Ordinary Watercourse or site based ditch, the developer will need to consult the Bedford Group of Internal Drainage Boards for consent. Any other works within 9m of an ordinary water course will also need consent. Further information can be found at: <http://www.idbs.org.uk/documents/>.
- 6.23. A 9m buffer should be maintained between the edge of the watercourses and any building or structure of the development for the maintenance access. All the building and structures should be located outside of the area of flood risk.

PART 3

FOR THE PROTECTION OF NORTHAMPTONSHIRE COUNTY COUNCIL AS
HIGHWAY AUTHORITY

Application

1.—(1) The provisions of this part of this Schedule shall have effect unless otherwise agreed in writing between the undertaker and Northamptonshire County Council and shall apply to the County Highway Works.

Interpretation

2.—(1) The terms used in this Schedule are as defined in article 2 of this Order save where inconsistent with subparagraph (2) below which shall prevail; and

(2) In this Schedule—

“As Built Information” means one digital copy of the following information where applicable to the Phase in question—

- (a) As constructed drawings in both PDF and AutoCAD DWG formats for anything designed by the Undertaker;
- (b) List of suppliers and materials used, test results and CCTV surveys;
- (c) Product data sheets, technical specifications for all materials used;
- (d) As constructed information for any Utilities discovered or moved during the works
- (e) Method Statements for works carried out;
- (f) In relation to road lighting, signs and traffic signals any information required by Series 1400 of the Specification for Highway Works;
- (g) Plan of temporary signage indicating new road layouts;
- (h) Populated post construction inventory in the form of the Northamptonshire County Council post construction inventory dated November 2018;
- (i) Organisation and methods manuals for all products used in the construction of the authorised development;
- (j) As constructed programme;
- (k) Test results and records required by the Detailed Design Information and during the construction phase of the project;
- (l) RSA3 and exceptions agreed; and
- (m) Health and Safety File;

“the Bond Sum” means the sum equal to 110% of all the costs of the carrying out of the Phase of the County Highway Works concerned and 100% of the Commuted Sum relating to that Phase or such other sum agreed between the undertaker and the local highway authority;

“Commuted Sum” means such sum as shall be calculated for each phase as provided for in paragraph 9(2) of this Schedule and to be used to fund the future cost of maintenance the County Highway Works.

“Contractor” means any contractor or sub-contractor appointed by the undertaker to carry out the County Highway Works or any Phase of the County Highway Works and approved by the local highway authority pursuant to paragraph 3(2) below;

“County Highway Works” means those parts of the authorised development to be carried out in the areas identified as Works Nos. 7, 9, 12, 13, 14, 15, 16 and 17 on the works plans the general arrangement of which is shown on the highway plans and any ancillary works thereto;

“Detailed Design Information” means drawings, specifications and other information which shall be in accordance with the general arrangements of the County Highway Works shown on the highway plans unless otherwise agreed between the local highway authority and the undertaker—

- (a) site clearance details;
- (b) boundary environmental and mitigation fencing;
- (c) road restraints systems supporting Road Restraint Risk Assessment
- (d) drainage and ducting;
- (e) earthworks including supporting geotechnical assessments required by HD22/08 and any required Strengthened Earthworks Appraisal Form certification (SEAF);
- (f) pavement, pavement foundations, kerbs, footways and paved areas;
- (g) traffic signs and road markings;
- (h) traffic signal equipment and associated signal phasing and timing detail;
- (i) road lighting (including columns and brackets);
- (j) electrical work for road lighting, traffic signs and signals;
- (k) highway structures;
- (l) Stage 2 Road Safety Audit and exceptions agreed and in the event that any works are not commenced within five years of the date of this Order comes into force a further Stage 1 Road Safety Audit and exceptions agreed;
- (m) landscaping;
- (n) Utilities diversions;
- (o) topographical survey;
- (p) identification of any land to be dedicated as highway; and
- (q) pre- construction health and safety information

where relevant to the Phase concerned.

“Estimated Costs” means the estimated costs in respect of each Phase agreed pursuant to paragraphs 5(1) and (5) of this Schedule;

“the Excess” means the amount by which the local highway authority estimates that the costs referred to in paragraph 5(1) will exceed the Estimated Costs pursuant to paragraph 5(5)(b);

“Nominated Persons” means the undertakers representatives or the Contractors representatives on site during the carrying out of the County Highway Works as notified to the local highway authority from time to time;

“Phase” means that part of the County Highway Works which is to be carried out in separate phases in the areas identified as separate works numbers on the works plans or such other phasing arrangements as shall be agreed with the local highway authority;

“Programme of Works” means a document setting out the sequence and timetabling of the Phase in question;

“Road Safety Audit” means an audit carried out in accordance with the Road Safety Audit Standard

“Road Safety Audit Standard” means the Design Manual for Roads and Bridges Standard GG 119 or any successor document;

“Utilities” means any pipes wires cables or equipment belonging to any person or body having power or consent to undertake street works under the New Roads and Street Works Act 1991; and

“Winter Maintenance” means maintenance of the road surface to deal with snow and ice during the winter months.

Prior Approvals and Security

3.—(1) No work must commence on any Phase of the County Highway Works until the Detailed Design Information and a Programme of Works in respect of that Phase has been submitted to and approved by the local highway authority.

(2) No works must commence on any Phase of the County Highway Works other than by a Contractor employed by the undertaker for that Phase but first approved by the local highway authority.

(3) No work must commence on any Phase of the County Highway Works until the local highway authority has agreed the Bond Sum for that Phase and the undertaker has provided security for the carrying out of those works as provided for in paragraph 8 below or some other form of security acceptable to the local highway authority.

(4) No work must commence on any Phase of the County Highway Works until a Stage 2 Road Safety Audit has been carried out in respect of that Phase and all issues raised incorporated into an amended design approved by the local highway authority or any relevant exceptions approved by the local highway authority.

(5) No work must commence on any Phase of the County Highway Works until a scheme of traffic management provisions have been agreed with the local highway authority.

(6) No work must commence on any Phase of the County Highway Works until the local highway authority has approved the audit brief and CVs for all Road Safety Audits and exceptions to items raised if appropriate for that Phase in accordance with the Road Safety Audit Standard.

(7) No works must commence on any Phase of the County Highway Works until the undertaker has agreed the Commuted Sum for that Phase with the local highways authority to be calculated in accordance with paragraph 9(2) of this Schedule.

(8) No works must commence on any Phase of the County Highway Works until the undertaker had provided confirmation of ownership to the local highway authority for any land which is to be dedicated as highway following completion of the County Highway Works.

Carrying out of works

4.—(1) The undertaker must prior to commencement of each Phase of the County Highway Works give the local highway authority 28 days’ notice in writing of the date on which that Phase will start unless otherwise agreed with the local highway authority.

(2) The undertaker must comply with the local highway authority’s usual road space booking procedures prior to and during the carrying out of each Phase of the County Highway Works and no County Highways Works for which a road space booking is required must commence without a road space booking having first been secured.

(3) Each Phase of the County Highway Works must be carried out to the satisfaction of the local highway authority in accordance with—

- (a) the relevant Detailed Design Information and a Programme of Works approved pursuant to paragraph 3(1) above or as subsequently varied by agreement between the undertaker and the local highway authority;
- (b) the Design Manual for Roads and Bridges, the Specification for Highway Works (contained within the Manual of Contract Documents for Highways Works) all relevant interim advice notes, the Traffic Signs Manual and the Traffic Signs Regulations and General Directions 2016 and any amendment to or replacement thereof for the time being in force save to the extent that they are inconsistent with the highway plans or a departure from such standards has been approved by the local highway authority;

- (c) such approvals or requirements of the local authority that are required by the provisions of paragraph 3 to be in place prior to the relevant Phase of the County Highway Works being undertaken; and
 - (d) all aspects of the Construction (Design and Management) Regulations 2015 or any statutory amendment or variation of the same and in particular the undertaker as client shall ensure that all client duties (as defined in the said regulations) are undertaken to the satisfaction of the local highway authority.
- (4) The undertaker must permit and require the Contractor to permit at all reasonable times persons authorised by the local highway authority (whose identity must have been previously notified to the undertaker by the local highway authority) to gain access to the land upon which the County Highway Works are being carried out for the purposes of inspection and supervision and the undertaker must provide to the local highway authority contact details of the Nominated Persons with whom the local highway authority should liaise during the carrying out of the County Highway Works.
- (5) At any time during the carrying out of the County Highway Works the Nominated Persons must act upon any reasonable request made by the local highway authority in relation to the carrying out of the County Highway Works as soon as practicable following such request being made to the Nominated Persons or the undertakers obligations in this Order.
- (6) If at any time the undertaker does not comply with any of the terms of this Schedule in respect of any Phase of the County Highway Works having been given notice of an alleged breach and an adequate opportunity to remedy it by the local highway authority then the local highway authority shall on giving to the undertaker 14 days' notice in writing to that effect be entitled to either (i) carry out and complete that Phase of the County Highway Works and any maintenance works which the undertaker would have been responsible for on the undertaker's behalf; or (ii) carry out such necessary works of reinstatement of the highways and other land and premises of the local highway authority and in either case the undertaker must within 28 days of receipt of the itemised costs pay to the local highway authority the costs so incurred by the local highway authority in undertaking this work.
- (7) If at any time the undertaker in carrying out any Phase of the County Highway Works causes any damage or disruption to the local road network not hereby authorised then the local highway authority shall give notice of such damage or disruption and allow the undertaker 14 days to remedy the problem. Should the undertaker fail to adequately remedy the problem to the satisfaction of the local highways authority then the local highway authority shall on giving the undertaken 7 days' notice in writing to that effect be entitled to carry out such necessary works deemed appropriate to remedy the damage or disruption and the undertaker shall within 28 days of receipt of the itemised costs pay to the local highway authority the costs so incurred by the local highway authority in undertaking this work.
- (8) Nothing in this Schedule shall prevent the local highway authority from carrying out any work or taking such action as deemed appropriate forthwith without prior notice to the undertaker in the event of an emergency or danger to the public the cost to the local highway authority of such work or action being chargeable to and recoverable from the undertaker if the need for such action arises from the carrying out of the County Highway Works.
- (9) For the avoidance of doubt it is confirmed that the undertaker in carrying out each Phase of the County Highway Works must at its own expense divert or protect all Utilities as may be necessary to enable the County Highway Works to be properly carried out and all agreed alterations to existing services shall be carried out to the reasonable satisfaction of the local highway authority.
- (10) In the event that the local highways authority incur additional costs in the Winter Maintenance of the highways as a result of traffic management measures regulating the Phase concerned (over and above the costs that would have been incurred in the absence of the County Highway Works being carried out) then the undertaker must reimburse the local highway authority those additional costs such costs to include any administration costs incurred.

(11) the undertaker must notify the local highway authority of the intended date of opening of each Phase to public traffic not less than 14 days in advance of the intended date and the undertaker must notify the local highway authority of the actual date that each Phase is open to public traffic on each occasion within 14 days of that occurrence.

Payments

5.—(1) The undertaker must fund the whole of the cost of the County Highway Works and all costs incidental to the County Highway Works and must also pay to the local highway authority in respect of each Phase of the County Highway Works a sum equal to the whole of any costs and expenses which the local highway authority incur including costs and expenses for using external staff and resources as well as costs and expenses of using in house staff and resources in relation to the County Highway Works and arising out of them and their implementation including without prejudice to the generality thereof—

- (a) the checking and approval of all design work carried out by or on behalf of the undertaker for that Phase;
- (b) costs in relation to agreeing the Programme of Works for that Phase;
- (c) the carrying out of the inspection of that Phase; and
- (d) all administrative costs in relation to (a) and (b) and (c) above

(the costs in (a),(b), (c) and (d) being together “the Estimated Costs”).

(2) The undertaker must pay to the local highway authority upon demand and prior to such costs being incurred the total costs that the local highway authority believe will be properly and necessarily incurred by the local highway authority in undertaking any statutory procedure or preparing and bringing into force any traffic regulation order or orders necessary to carry out or for effectively implementing the County Highway Works provided that this paragraph shall not apply to the making of any orders which duplicate orders contained in this Order.

(3) The undertaker and the local highway authority must agree a schedule of the Estimated Costs to be incurred pursuant to sub-paragraph (1) above in respect of each Phase prior to the commencement of that Phase.

(4) The undertaker must make the payments referred to in subparagraph (1) as follows—

- (a) the undertaker must pay a sum equal to the agreed Estimated Costs to the local highway authority prior to the local highway authority undertaking those tasks in respect of any Phase of the County Highway Works;
- (b) if at any time or times after the payment in respect of a Phase referred to in paragraph (5)(4)(a) above has become payable the local highway authority reasonably estimates that the costs in respect of that Phase referred to in paragraph (1) above will exceed the Estimated Costs for that Phase it may give notice to the undertaker of the amount by which it then reasonably estimates those costs will exceed the Estimated Costs (“the Excess”) and the undertaker must pay to the County Highway Authority within 28 days of the date of that notice a sum equal to the Excess.

(5) Within 91 days of the issue of the final certificate for each Phase of the County Highway Works pursuant to paragraph 7 the local highway authority must give the undertaker a final account of the costs referred to in sub paragraph (1) above and within 28 days from the expiry of the 91 day period—

- (a) if the account shows a further sum as due to the local highway authority the undertaker must pay to the local highway authority the sum shown due to it in that final account; and
- (b) if the account shows that the payment or payments previously made have exceeded those costs the local highway authority must refund the difference to the undertaker.

(6) If any payment due under any of the provisions of this Schedule is not made on or before the date on which it falls due the party from whom it was due must at the same time as making

the payment pay to the party to whom it was due interest at 1% above the rate payable in respect of compensation under Section 32 of the Land Compensation Act 1961 for the period starting on the date upon which the payment fell due and ending with the date of payment of the sum on which interest is payable together with that interest.

Provisional Certificate and Defects and Maintenance Period

- 6.—(1) As soon as each Phase of the County Highway Works has been completed and—
- (a) a Stage 3 Road Safety Audit for that Phase has been carried out;
 - (b) any resulting recommendations have been complied with and any exceptions agreed;
 - (c) the undertaker has provided a plan clearly identifying the extent of any land which is to become highway maintainable at public expense by the local highway authority upon the issue of the final certificate referred to in paragraph 7;
 - (d) the undertaker providing confirmation that any additional land which is to be dedicated as highway maintainable at public expense is so dedicated; and
 - (e) the As Built Information has been provided to the local highway authority,

the local highway authority must issue a provisional certificate of completion in respect of that Phase of the County Highway Works such certificate not to be unreasonably withheld or delayed.

(2) The undertaker must at its own expense remedy any and all defects and of any and all imperfections and all other faults arising out of defective design materials or workmanship or of any other nature whatsoever (which for the avoidance of doubt shall include all traffic damage whether accidental or otherwise (but only that attributable to defective design materials or workmanship and excluding Winter Maintenance) in that Phase of the Highway Works as reasonably required to be remedied by the local highway authority and identified by the local highway authority during a period of 12/24 months from the date of the provisional certificate in respect of that Phase.

(3) The undertaker must submit Stage 4 Road Safety Audits for each Phase of the County Highway Works as required by and in line with the timescales stipulated in the Road Safety Audit Standard. The undertaker must comply with the findings of the Stage 4 Road Safety Audits and be responsible for all costs of and incidental to such audits.

Final Certificate

7.—(1) The undertaker shall apply to the local highway authority for the issue of the final certificate in respect of each Phase at the expiration of the 12/24 month period in respect of that Phase referred to in paragraph 6(2) or if later on the date on which any defects or damage arising during that period which are the responsibility of the undertaker under the provisions of paragraph 6, have been made good to the reasonable satisfaction of the local highway authority.

(2) If the provisions of sub-paragraph 7(1) are satisfied the local highway authority must issue a final certificate for the Phase of the County Highway Work concerned such certificate not to be unreasonably withheld or delayed.

Security

8.—(1) Subject to paragraph 3(3) above the undertaker must provide security for the carrying out of the County Highway Works as follows—

- (a) prior to the commencement of each Phase the County Highway Works within that Phase will be secured by a bond from a bondsman first approved by the local highway authority substantially in the form of the draft bond attached at Annex 1 or such other form that may be agreed between the undertaker and the local highway authority to indemnify the local highway authority against all losses, damages, costs or expenses arising from any breach of any one or more of the obligations of the undertaker in respect of that Phase of the County Highway Works under the provisions of this

Schedule provided that the maximum liability of the bond shall not exceed the Bond Sum relating to that Phase.

- (2) Each Bond Sum shall be progressively reduced as follows—
- (a) on receipt of written confirmation (including receipt of receipted invoices evidencing payments made by the undertaker to the Contractors) from the undertaker of the payments made from time to time to the Contractor (“the submission”) the local highway authority may in writing authorise the reduction of the Bond Sum by such proportion of the Bond Sum as amounts to 75% of those payments provided that (i) there shall not be more than two submissions of written confirmation to the local highway authority during each phase of the county Highway Works (ii) an evaluation of the County Highway Works completed and remaining has been carried out by the undertaker and audited and agreed by the local highway authority to ensure that the stage of completion of the works is relative to the payments made by the undertaker to the Contractors. The local highway authority shall only be required to provide the said authorisation should it be satisfied that the monies remaining secured by the Bond Sum shall be sufficient to cover all remaining costs and liabilities anticipated to be incurred in completing the County Highway Works plus an additional 10% and (iii) the operation of this paragraph will not enable the overall reduction of the bond to be greater than 70% of the original Bond Sum;
 - (b) within 20 working days of completion of each Phase of the County Highway Works (as evidenced by the issuing of the provisional certificate in respect of that Phase pursuant to paragraph 6(1)) the local highway authority must in writing release the bond provider from its obligations in respect of 75% of the Bond Sum relating to that Phase save insofar as any claim or claims have been made against the bond and/or liability on its part has arisen prior to that date; and
 - (c) within 20 working days of the issue of the final certificate for each Phase of the County Highway Works referred to in paragraph 7 the local highway authority must in writing release the bond provider from all its obligations in respect of the bond relating to that Phase save insofar as any claim or claims have been made against the bond or liability on its part has arisen prior to that date.

Commutated sums

9.—(1) Within 28 days following the issue of the final certificate in respect of any Phase the undertaker must pay to the local highway authority any commuted sums payable in respect of that Phase calculated as provided for in subparagraph (2).

(2) The rates to be applied in calculating the Commuted Sums payable must be calculated in accordance with Northamptonshire County Council’s Commuted Sum Calculator or as otherwise agreed between the undertaker and the local highway authority prior to commencement of work on any Phase.

Insurance

10. The undertaker must prior to commencement of the County Highway Works effect public liability insurance with an insurer in the minimum sum of £10,000,000.00 (Ten million pounds) for any one claim against any legal liability for damage loss or injury to any property or any person arising out of or in connection with the execution of the County Highway Works or any part thereof by the undertaker.

Indemnification

11.—(1) The undertaker must in relation to the carrying out of the County Highway Works take such precautions for the protection of the public and private interest as would be incumbent upon it if it were the highway authority and must indemnify the local highway authority from and against all costs expenses damages losses and liabilities arising from or in connection with or

ancillary to any claim demand action or proceedings resulting from the design and carrying out of the County Highway Works ;

provided that—

- (a) the foregoing indemnity shall not extend to any costs expenses liabilities and damages caused by or arising out of the neglect or default of the local highway authority or its officers servants agents or contractors or any person or body for whom is responsible;
- (b) The local highway authority must notify the undertaker upon receipt of any claim;
- (c) The local highway authority must following the acceptance of any claim notify the quantum thereof to the undertaker in writing and the undertaker must within 14 days of the receipt of such notification pay to the local highway authority the amount specified as the quantum of such claim..

Warranties

12. The undertaker must procure warranties from the contractor and designer of each Phase to the effect that all reasonable skill care and due diligence will be exercised in designing and constructing that Phase including the selection of materials, goods, equipment and plant such warranties to be provided to the local highway authority before that Phase commences.

Approvals

13.—(1) Any approvals, certificates, consents or agreements required or sought from or with the local highway authority pursuant to the provisions of this Schedule must not be unreasonably withheld or delayed and must be given in writing save that any such approvals, certificates, consents or agreements shall be deemed to have been given if it is neither given nor refused within 42 days of the specified day.

(2) In this paragraph “specified day” means—

- (a) the day on which particulars of the matter are submitted to the local highway authority under the provisions of this Schedule; or
- (b) the day on which the undertaker provides the local highway authority with any further particulars of the matter that have been reasonably requested by the local highway authority or within 28 days of the date in sub paragraph (2)(a), whichever is the later

Expert Determination

14.—(1) Article 49 (arbitration) does not apply to this part 3 of Schedule 13 except in respect of sub-paragraph (5) below.

(2) Any difference under this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 28 days of the notification of the dispute.

(4) The expert must—

- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert’s appointment;
- (b) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submission;
- (c) issue a decision within 42 days of receipt of the submissions under paragraph (b); and
- (d) give reasons for the decision.

(5) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 49.

(6) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

Annex 1

BY THIS BOND [] [(Company Regn No)] whose registered office is situate at [] (“**the undertaker**”) and [] [(Company Regn No)] whose registered office is situate at [] (“**the Surety**”) are jointly and severally bound to [] of [] (“the []”) this [] day of [] 200[] in the sum of [] pounds (£[Surety Sum to the payment of which sum the undertaker and the Surety hereby jointly and severally bind themselves their successors and assigns

WHEREAS under a Development Consent Order known as The Northampton Gateway Rail Freight Interchange Order 201[X] (“the DCO”) the undertaker is empowered to commence execute perform and complete the highway works mentioned therein in such manner and within such time and subject to such conditions and stipulations as are particularly specified and set forth in the DCO and also to pay to the local highway authority such sums as are therein provided **NOW THE CONDITIONS** of this Bond are such that if the undertaker shall duly observe and perform all the terms provisions covenants conditions and stipulations of Part 3 of Schedule 13 of the DCO on the undertaker’s part to be observed and performed according to the true purport intent and meaning thereof or if on default by the undertaker the Surety shall within 28 days of receipt of any written demand pay to the local highway authority such sum or sums of money as may be estimated to be required to complete or properly observe and perform all the stipulations of Part 3 of Schedule 13thereby up to the amount of this Bond and the works are duly completed by the local highways authority then this obligation shall be null and void but otherwise shall be and remain in full force and effect in accordance with the provisions of the DCO (and including any reductions as provided for in the DCO) but no allowance of time by the local highway authority under the DCO nor any forbearance or forgiveness in or in respect of any matter or thing concerning the DCO on the part of the local highway authority shall in any way release the Surety from any liability under this Bond

It is hereby agreed that this Bond will be reduced and released in accordance with paragraph 8 of Part 3 of Schedule 13 of the DCO.

[Attestation]



Northamptonshire County Council

Northampton Gateway Strategic Rail Freight Interchange

Summary of Written Representations

November 2018

1. Introduction

1.1. These Written Representations are made by Northamptonshire County Council to inform consideration of the application made by Roxhill (Junction 15) Limited for a Development Consent Order to permit the construction of the Northampton Gateway Strategic Rail Freight Interchange.

2. Compulsory Acquisition

2.1. Sections 24 and 25 of the draft Development Consent Order would give the undertaker power to compulsorily acquire land and rights as described in the book of reference and shown on the land plans.

2.2. The County Council has no objection to the acquisition of its land or rights over of land as set out in the book of reference subject to the inclusion of appropriate works, Rights of Way alterations and Protective Provisions in the Development Consent Order and, where appropriate, payment of compensation in accordance with the draft Development Consent Order and the Compulsory Purchase Act 1965

3. Highways

3.1. As set out in the Statement of Common Ground between the applicant and the County Council in relation to highway matters, we accept that the proposed highway works are necessary and appropriate to mitigate the impact of the proposed development.

3.2. Proposed Development Consent Obligations to provide Bus Services, a Public Transport Strategy and Framework and Occupier Travel Plans have been agreed with the County Council subject to final agreement on wording.

3.3. The County Council does, however, remain concerned about the potential cumulative impact should both the Northampton Gateway and Rail Central Strategic Rail Freight Interchange proposals be consented. We have also made detailed comments about wording of the Protective Provisions.

4. Rail services

- 4.1. In the short-term, it seems clear (subject to confirmation by Network Rail) that there are spare freight paths available for use by additional services. However, the applicant has not demonstrated, as far as the County Council can determine, that these paths can be used to serve the proposed Rail Freight Interchange without conflict to other services.
- 4.2. While timetables for the period following opening of HS2 have not been determined, we would expect the applicant and/or Network Rail to be able to perform a similar analysis of pathing conflicts in this future scenario based on notional timetable paths. We would ask that this includes a sensitivity test that meets the County Council's aspirations.

5. Archaeological Impact

- 5.1. Northamptonshire County Council provides archaeological planning advice to South Northamptonshire Council through a Service Level Agreement. The County Council has been in discussions with the applicant and their consultants since initial scoping in November 2016.
- 5.2. A geophysical survey identified areas of potential archaeological activity within the proposed development area. The survey authors interpreted these as areas of Prehistoric or Romano British activity.
- 5.3. In the County Council's opinion the information provided within the Environmental Statement regarding the known significance of the archaeological potential is inadequate. The level of trenching currently undertaken to inform the assessment is 0.38 %. Even if the additional proposed trenching on the bypass was undertaken it would still be very low. This could be rectified by undertaking the trenching strategy as previously advised by the County Council. It would ensure that a fully informed mitigation scheme could be developed from the onset.

6. Flood Water Management and Drainage

6.1. The Flood Risk Assessment which forms the basis of the Flood Risk Assessment and Sustainable Drainage Statement that are included in Appendix 7 of the Environmental Statement has been approved by the County Council. A Drainage Statement of Common Ground has been reached between the applicant and the County Council on the basis of this Flood Risk Assessment to cover surface water management matters at this stage.

6.2. It is deemed that all potential impacts of the development on local flood risk and surface water drainage can be mitigated through appropriate design, the principles of which are set out in the approved Flood Risk Assessment. There is potential for the development to provide betterment to reduce existing flood risk to areas downstream of the site. The detailed design of the surface water drainage scheme will need to be submitted to and approved by the County Council in order to ensure it provides adequate mitigation. This therefore needs to be secured in the requirements documentation.