

## **Representations by Highways England in respect of the proposed Northampton Gateway Strategic Rail Freight Interchange**

These are the Written Representations of Highways England in respect of the application by Roxhill Limited (the Applicant) for a Development Consent Order (DCO) to authorise a Strategic Rail Freight Interchange at Junction 15 of M1 Motorway.

Highways England has been appointed by the Secretary of State for Transport as a strategic highway company under the provisions of the Infrastructure Act 2015 and is the highway authority, traffic authority and street authority for the Strategic Road Network (SRN). The SRN is a critical national asset and as such Highways England works to ensure that it operates and is managed in the public interest, both in respect of current activities and needs as well as in providing effective stewardship of its long-term operation and integrity.

In the vicinity of the proposed development the SRN comprises the M1 Motorway and the A45 Trunk Road.

Highways England has been actively engaged in discussion with the undertaker (including its consultants) since 2016 with a view to ensuring that the proposed development will not have a severe and detrimental impact on the SRN. Highways England and the undertaker have reached agreement on a number of matters and there are four Statements of Common Ground (SoCG) completed at the time of writing:

1. Document 7.1 - SoCG relating to transport matters.
2. Document 7.1a - SoCG addendum relating to transport matters.
3. Document 7.1b - SoCG relating to HE's M1 J13-16 Smart Motorway Scheme.
4. Document 7.1c - SoCG relating to the draft DCO and Protective Provisions

The significant amount of work carried out to date means that few issues remain in dispute that Highways England and the undertaker have been unable to come to an agreed position on (and therefore requires the submission of these detailed Written Representations by Highways England). The two main topic areas where the parties have been unable to reach agreement are:

1. Drainage.
2. Articles of the dDCO and the Protective Provisions containing provisions for deemed approval (e.g. see Article 13 of the dDCO and paragraph 13 of the Protective Provisions).

### **1. Drainage**

Specialists in Highways England's drainage team have reviewed the undertaker's Sustainable Drainage Statement. Highways England's has two main areas of concern in this regard which relate to the assessment of two of the main outfall locations - 'Collingtree village via 300mm culvert under M1 (to Wootton Brook)' and 'Wootton Brook (via culvert under M1 roundabout)'. The assessments are not considered to be satisfactory, for example there is no clarity of the existing gradient, structural or service condition of the pipes. Highways England requires further information to make an informed decision as to whether or not the proposals are acceptable.

DfT Circular 02/2013, states *'In order to ensure the integrity of the highway drainage systems, no water run off that may arise due to any change of use will be accepted into the highway drainage systems, and there shall be no new connections into those systems from third party development and drainage systems. Where there is already an existing third party connection the right for connection may be allowed to continue provided that the input of the contributing catchment to the connection remains unaltered'*.

The change of use of the application site will alter the current discharge rate for the site and therefore must be assessed against Dft Circular 02/2013. Based on information available to date Highways England cannot be certain that the undertaker's proposals will be acceptable in accordance with the Circular. We have proposed further work with the undertaker to obtain clarity and resolve this matter and we shall update the Examining Authority in due course.

## **2. Deemed Approval**

Highways England strongly objects to being the subject of the proposals for deemed approval that appear within the articles of the dDCO and the Protective Provisions. Highways England is subject to a statutory direction under the Infrastructure Act 2015 (and set out in paragraph 4.2 of its Licence) to, inter alia, ensure the effective operation of, and to protect and improve the safety of, the SRN. It is our belief that deemed approval provisions compromise our ability to comply with this statutory direction. These submissions apply to both the deemed consent provisions with the articles of the DCO as well as the Protective Provisions.

Where it is considered that the deemed approval provisions could significantly compromise safety then Highways England does not consider them to be appropriate at all and strongly objects to their inclusion. Certain articles within the dDCO contain deemed approval provisions which are considered to present less of a safety risk and as such Highways England would not object to their inclusion however it is considered that a reasonable period for Highways England to make a decision on any applications that are subject to deemed approval must be far greater than that being proposed by the applicant. Highways England suggests a period no less than 56 days following receipt of all relevant information. Highways England's

position in this regard is set out in the Statement of Common Ground (document 7.1c).

It is important to note that the required traffic mitigation that it is considered necessary to make the development acceptable requires significant works to the SRN. The DCO, if granted, would permit the undertaker to enter the SRN to carry out those works. As the highway authority for the SRN it is therefore of vital importance that we ensure there are appropriate checks and balances in place.

The Protective Provisions have been drafted in such a way to mirror a standard section 278 agreement and largely reflect the process that Highways England would expect a developer to follow should it wish to carry out work on the SRN. As the highway authority for the SRN and the body that will become responsible for those works on completion, it is considered absolutely vital that Highways England has a role to play in both the design of those works and how they are carried out. Highways England is a competent network operator with a tried and tested asset protection team in place to address these issues and therefore the appropriate body to ensure that these works are designed and carried out safely and correctly.

The Protective Provisions have in general been agreed on the basis that they ensure that no work is either accepted as an appropriate design, or constructed on site if it would not be compliant with the Design Manual for Roads and Bridges (DMRB). Deemed approval is not workable with this requirement. These provisions are written to ensure the safety of the travelling public is paramount with only suitable work being taken forward and implemented for use. Should deemed approval apply in terms of design and specification work then the risk of unsuitable work being constructed on site and the likelihood of adverse safety incidents occurring increases. This is something that Highways England cannot tolerate as highway authority and network operator with statutory obligations to protect the safety of the SRN. Highways England's concerns predominantly relate to safety and can be summarised as follows:

1. Deemed approval would mean a presumption that a design (procured via an unknown contract from a third party design firm of unknown provenance in terms of highways design) is appropriate for construction and without the necessary checks and balances would put both contractors building the scheme and the travelling public utilising the built scheme at an adverse safety risk.
2. Highways England's technical review process is not in place to confirm whether a scheme is the most suitable design for a particular location and reason, but rather it is to check and confirm that the work as presented is compliant with DMRB, the Manual of Contract Documents for Highways Works and other associated interim advice notes. These standards have been developed over numerous years and incorporate lessons learned. If

applied then the works as designed should be safe for public use without the substantial risk of an incident occurring.

3. Presuming that a design is fit for construction because of an arbitrary timescale introduces the risk that it is not DMRB compliant and therefore not in accordance with standards that have been developed to ensure the safety of the travelling public. If a single incident occurs because sub-standard design works is deemed to be approved, it is one incident too many. Notwithstanding the loss of life and the devastation that can cause the average cost of dealing with a fatality on the SRN is over £1 million (a cost that would have to be picked up by the tax paying public if liability rested with Highways England as a result of deemed approval).
4. Presuming that a design is fit for construction also removes the checks and balances that would otherwise need to be followed in terms of the road safety audit process. To presume that this has been done (as a result of deemed approval) overrides the checks and balances written into HD 19/15 for any deviation from the auditors recommendations to be approved by a divisional director within Highways England. This also increases the risk of sub-standard design work being constructed, and of audits being procured from teams that do not hold appropriate qualifications or experience.
5. To presume that a design and specification is correct may well lead to Highways England accruing large maintenance liabilities if errors are present (e.g. choices of materials, location of drainage ducts, positioning of street lighting columns, thickness of sub base, inadequate visibility splays etc.) or large costs to remediate works that are not fit for purpose and become apparent following completion.
6. Deemed approvals would override the requirement for departures from standard to be separately applied for and approved if not identified by the designer prior to submission. A logical system for departures from standard being applied for and considered by an appropriately qualified discipline specific engineer is in place that ensures all departures are judged on a safety basis. Overriding this consideration increases the risk of dangerous work being constructed on site.
7. If deemed approvals run to structural and geotechnical reporting and design, this could lead to inappropriate or ill prepared submissions being considered appropriate. Again, this increases the chance of inappropriate works being built and safety incidents occurring. Recent bridge collapses in America and Italy emphasise the strength of our concerns in this regard and we do not consider there to be any justification, least of all time, to even minutely increase the chances of such incidents occurring.

Whilst a secondary issue to our safety concerns it is also considered unjustified for the undertaker to seek to ensure that their submission is put to the front of the queue for approval. This is not equitable for other developers who also have a valid consent for their scheme (that may also be an NSIP) and who would have submitted their application with an expectation that it would be reviewed in order of submission. Forcing the prioritisation of Highways England's workload in favour of a single applicant is not acceptable.

Finally, it is noted that the undertaker refers to deemed approval appearing in Highways England's own DCOs (e.g. A19 Testos) and relies on the same as justification for seeking deemed approval in its application. Highways England does not consider its DCOs to be relevant or comparable to this application. It is important to note two factors in this regard:

- (i) This is not setting a precedent for Highways England agreeing to be subject to deemed approval. The relevant statutory bodies in those cases had the opportunity to consider the deemed approval provisions requested and any implications of the same and concluded them to be acceptable to them on the basis of the case presented by Highways England.
- (ii) Highways England is a responsible public body and competent highway authority with vast experience. Our supply chain is set up via very strict tender requirements to produce 100% complaint design work with safety as the number one imperative. As such the safety concerns that are identified above will not apply and this would have been a factor in any decision to accept those deemed approval provisions as being acceptable.

In addition to the aforementioned concerns with the application as proposed there are a couple of further issues which cause some concern for Highways England and have yet to be completely resolved. These are:

- a. The provision of necessary signage and correct procedure.
- b. Land acquisition.

#### **a. Signage**

The undertaker has submitted two departures from standard applications to Highways England. The two applications are proposed for the northbound and southbound M1 J15 diverge layouts in order to maximise the slip road length.

The proposals seek to amend the layout of the diverge so that the parameters used are in accordance with the '*Rural all-purpose 120kph road class*' rather than the '*motorway road class*' as there are physical restrictions in terms of structures that prevent a motorway road class diverge layout. To support this departure the signage must guide drivers to exit the motorway appropriately and additional and improved signage has been sought by Highways England to mitigate risks.

At the time of writing no agreement has been reached as to the acceptability of the undertakers proposals but these proposals are being reviewed and assessed by Highways England's *Safety, Engineering and Standards* team. We shall update the Examining Authority in due course.

### **b. Land Acquisition**

It should be stated that generally Highways England has no objection to the proposals for land acquisition set out in the undertaker's application. This includes the proposal to acquire plot 806 and for the avoidance of doubt Highways England does not have an objection in principle to the undertaker acquiring this land. However, the terms of any disposal in respect of this plot will need to ensure that Highways England continues to have rights over such land and without securing such Highways England would have no choice but to object to the acquisition. This is not considered to be a problem that cannot be overcome and negotiations in this regard are ongoing with the undertaker. We expect to be able to update the Examining Authority on this matter later in the Examination.

### **Summary & Conclusion**

To conclude, a significant amount of work has gone in to reaching a position whereby 99% of all issues have been agreed with the undertaker. Unfortunately a couple of important issues remain. Highways England would not be taking this position if its concerns were not serious and we respectfully ask that these submissions are taken into account when the a decision is made as to whether the undertaker's application as proposed is acceptable.

## **Summary of Representations by Highways England in respect of the proposed Northampton Gateway Strategic Rail Freight Interchange**

This is a summary of the Written Representations of Highways England in respect of the application by Roxhill Limited (the undertaker) for a Development Consent Order (DCO) to authorise a Strategic Rail Freight Interchange at Junction 15 of M1 Motorway.

Highways England has been actively engaged in discussion with the undertaker since 2016 with a view to ensuring that the proposed development will not have a severe and detrimental impact on the Strategic Road Network (SRN). Highways England and the undertaker have reached agreement on a number of matters and there are four Statements of Common Ground completed at the time of writing:

Few issues now remain in dispute. The two main topic areas where the parties have been unable to reach agreement are:

### **1. Drainage**

Highways England has two main areas of concern regarding the undertaker's drainage proposals having reviewed the Sustainable Drainage Statement. The assessments for the two main outfall locations are not considered to be satisfactory. Highways England requires further information to make an informed decision as to whether or not the proposals are acceptable and in accordance with Circular 02/2013. We have proposed further work with the undertaker to obtain clarity and resolve this matter and we shall update the Examining Authority in due course.

### **2. Deemed Approval**

Highways England strongly objects to being the subject of the proposals for deemed approval that appear within the articles of the dDCO and the Protective Provisions. It is our belief that deemed approval provisions compromise our ability to comply with a statutory direction to protect and improve the safety of the SRN.

Where it is considered that deemed approval provisions could significantly compromise safety then Highways England does not consider them to be appropriate at all and strongly objects to their inclusion. In other cases it is considered that for such provisions to be reasonable a period of at least 56 days should be given to make a decision. Highways England's position on each article where these provisions appear (as well as the protective provisions) is set out in the Statement of Common Ground (document 7.1c).

The required traffic mitigation that it is considered necessary to make the development acceptable requires significant works to the SRN. As the highway

authority for the SRN it is therefore of vital importance that we ensure there are appropriate checks and balances in place.

The Protective Provisions have in general been agreed on the basis that they ensure that no work is either accepted as an appropriate design, or constructed on site if it would not be compliant with the Design Manual for Roads and Bridges (DMRB). Deemed approval is not workable with this requirement. These provisions are written to ensure the safety of the travelling public is paramount. Our concerns can be summarised as follows:

In addition to the aforementioned concerns with the application as proposed there are a couple of further issues which have yet to be completely resolved. These are:

**a. Signage**

The undertaker's proposals for the diverge layout at J15 are being reviewed and assessed by Highways England's *Safety, Engineering and Standards* team. We shall update the Examining Authority in due course.

**b. Land Acquisition**

Highways England has no in principle objection to the undertaker's proposal to acquire plot 806. However, the terms of any disposal in respect of this plot will need to ensure that Highways England continues to have rights over such land. We expect to be able to update the Examining Authority on this matter later in the Examination.

**Summary & Conclusion**

A significant amount of work has gone in to reaching a position whereby the majority of all issues have been agreed and we commit to updating the Examining Authority on progress with three of the four issues referred to above as soon as we can. We have however reached an impasse with the undertaker on the issue of deemed approval. These provisions cause significant safety concerns for Highways England and we respectfully ask that our submissions are taken into account when a decision is made as to whether the undertaker's application as proposed is acceptable.