



NORTHAMPTON
GATEWAY
STRATEGIC RAIL FREIGHT INTERCHANGE

**DCO DRAFTING AND WATER FRAMEWORK DIRECTIVE
STATEMENT OF COMMON GROUND BETWEEN
THE APPLICANT AND NORTHAMPTONSHIRE COUNTY COUNCIL**

DOCUMENT 7.7

The Northampton Gateway Rail Freight Interchange Order 201X

DCO DRAFTING AND WFD STATEMENT OF COMMON GROUND BETWEEN
THE APPLICANT AND NORTHAMPTONSHIRE COUNTY COUNCIL | 6 NOVEMBER 2018

www.northampton-gateway.co.uk

ROXHILL

STATEMENT OF COMMON GROUND IN RESPECT OF NORTHAMPTON GATEWAY RAIL FREIGHT INTERCHANGE

Parties

1. This statement is agreed between:-
 - 1.1 Roxhill (Junction 15) Limited ("Roxhill"); and
 - 1.2 Northamptonshire County Council ("the County Council").

Scope

2. This statement deals with the following matters in respect of the proposed development of a strategic rail freight interchange (SRFI) known as Northampton Gateway ("NG"): (a) the views of the parties in relation to the articles contained within the draft Development Consent Order ("DCO"); and (b) the views of the parties in relation to the protective provisions for the protection of the local highway authority (being currently Northamptonshire County Council) contained in part 3 of Schedule 13 to the draft DCO.
3. Other statements of common ground between Roxhill and the County Council deal with various other elements of the proposed development, being drainage, the transport assessment and proposed mitigation relating to the proposal (see Documents 7.2 (APP-383), 7.5 (AS-006) and 7.5A).

DCO Articles

4. The table in Appendix 1 to this statement sets out the position of the parties in relation to various articles in the draft DCO, including the articles upon which the Examining Authority asked for the County Council's views in Table 1 to Annex G of the Rule 6 Letter, issued ahead of the Issue Specific Hearing on the draft DCO and in the Examining Authority's First Written Questions (ExQ1).
5. The parties are in agreement in respect of the articles in the DCO, subject to the amendments referred to in the table in **Appendix 1**. The amendments to the Articles will be incorporated within the version of the draft DCO to be submitted for Deadline 2.

Protective Provisions

6. The protective provisions contained in Appendix 2 to this statement of common ground are agreed save for those issues explained in paragraph 7 below. They will be incorporated within the version of the draft Development Consent Order to be submitted for Deadline 2.
7. The parties are currently not in agreement on two parts within Schedule 13, Part 3 of the draft Development Consent Order. These relate to paragraph 6 and relate to:-
 - 7.1 The scope of the undertakers liability during the Defects and Maintenance Period. The County Council does not agree with the limitation of this liability;
 - 7.2 The duration of the Defects and Maintenance Period. The County Council requires a 24 month Defects and Maintenance Period whilst the undertaker has proposed 12 months.

Other Matters

General

8. The parties have agreed that all references to "Northamptonshire County Council" in the draft DCO will be amended to refer to the "local highway authority" or ("lead local flood authority" as appropriate). which will be defined as "*Northamptonshire County Council or any successor in function as local highway authority*" (or flood authority as appropriate). The amendment will be incorporated within the version of the draft Development Consent Order to be submitted for Deadline 2.
9. Other items specifically requested by the ExA to be covered in a statement of common ground are dealt with below. Where this statement of common ground is silent on a particular matter (e.g. if a specific requirement or Schedule of the DCO is not mentioned), the parties are in agreement on the drafting of the DCO.

Requirements

10. Roxhill has proposed to amend **requirement 6** (design and phasing of highway works) to remove the words "use reasonable endeavours to". The requirement is agreed between the parties subject to that amendment. The wording will be updated within the version of the draft Development Consent Order to be submitted for Deadline 2.
11. Alternative wording has been agreed between the parties for **requirement 18** (flood risk and surface water drainage), as follows:

"No component of the authorised development on the main site (excluding archaeological investigation, geotechnical or ground contamination investigation [and ecological mitigation works]) may commence until a surface water drainage scheme for that component based on sustainable drainage principles has been submitted to and approved in writing by the lead local flood authority. The scheme must be in accordance with the sustainable drainage statement and must be informed by additional infiltration testing in accordance with BRE standard 365 "Soakaway design", the extent of which is to be approved in advance by the lead local flood authority, the aim of which is to identify the maximum extent of reliance upon infiltration in accordance with the drainage hierarchy set out in the sustainable drainage strategy."

The wording will be updated within the version of the draft Development Consent Order to be submitted for Deadline 2.

Schedule 7

12. Parts 1 and 2 of Schedule 7 are agreed between the parties.

Schedule 8

13. This schedule is agreed between the parties.

Schedule 14

14. This schedule is agreed between the parties.

ExQ1.9.6.

- ## Water Framework Directive

- Signed on behalf of **Roxhill (Junction 15) Limited:**

EXPRESSIONS SURTHERLAND, KATHIRON

Authorised Signatory

Name and Position:

APPENDIX 1

DCO ARTICLES

Article	Topic	Position
7(3)(b)	Benefit of Order (highway works) – ability of highway authority to carry out works if default provisions set out in Part 3 Schedule 13 are triggered	This is agreed between the parties.
9(1)	Power to alter streets within the main site	This is agreed between the parties.
9(2)	28 days for deemed approval	<p>The parties have agreed the article subject to the addition of the red wording below and the change from 28 days to 42 days:</p> <p><i>“(2) The powers conferred by paragraph (1) must not be exercised without the consent of the local highway authority but such consent must not be unreasonably withheld and if the local highway authority has received an application for consent to exercise powers under paragraph (1) accompanied by all relevant information and fails to notify the undertaker of its decision before the end of the period of 42 days beginning with the date on which the application is submitted with all relevant information made, it is deemed to have granted consent.”</i></p>
11(3)	Temporary stopping up of streets	<p>Roxhill confirmed at the DCO ISH that it intends to amend article 11(3) to insert some wording to provide comfort that any consent by the street authority can impose a time period for the stopping up. The proposed wording is shown red below:</p> <p><i>“(3) The undertaker must not temporarily stop up, alter or divert any street for which it is not the street authority without the consent of the relevant street authority which may attach reasonable conditions to any consent (including specifying the time period during which the street may be stopped up, altered or diverted) but such consent must not be unreasonably withheld.”</i></p> <p>The article is agreed between the parties subject to the inclusion of this additional wording.</p>
14	Maintenance of highway works	At the DCO ISH Roxhill proposed an amendment to article 6 to clarify that the definition of “maintenance”

		<p>does not apply to the maintenance of the highway works. That proposal is agreed between the parties.</p> <p>To further clarify this Roxhill proposes a new subparagraph to article 14 as follows:</p> <p><i>"(6) For the purposes of this article, the definition of "maintain" in article 2 shall not apply and the word "maintain" shall be given its ordinary meaning when applied to highways."</i></p> <p>This is agreed between the parties.</p> <p>The parties have also agreed an amendment to paragraph (3) of article 14 to accord with the amendments agreed to the protective provisions, so that the maintenance of the highway works governed by Part 3 of Schedule 13 begins with effect from the issue of the final certificate as referred to in the amended paragraph 6 of Part 3 of Schedule 13.</p>
15	Classification of highways	The article is agreed between the parties.
16	Speed limits	The article is agreed between the parties.
17	Traffic regulation	The article is agreed between the parties.
18	Clearways	The article is agreed between the parties.
19	Motor vehicle restrictions	The article is agreed between the parties.
20	Agreements with highway authorities	The article is agreed between the parties.
21	Discharge of water	<p>The parties have agreed an amendment to this article, as shown in red below, and subject to those amendments, the article is agreed between the parties:</p> <p>21.—<i>(1) Subject to paragraphs (3), (4) and (5), the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.</i></p> <p><i>(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker under paragraph (1) must be determined as if it were a dispute under section 106 of the Water Industry Act 1991 (right to communicate with public sewers).</i></p>

		<p>(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.</p> <p>(4) The undertaker must not discharge any water into any watercourse except with the approval of the lead local flood authority; and such approval may be given subject to such terms and conditions as the lead local flood authority may reasonably impose, but must not be unreasonably withheld.</p> <p>(5) The undertaker must not make any opening into any public sewer or drain except—</p> <p>(a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and</p> <p>(b) where that person has been given the opportunity to supervise the making of the opening.</p> <p>(6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.</p> <p>(7) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2016.</p> <p>(8) In this article—</p> <p>(a) “public sewer or drain” means a sewer or drain which belongs to the Environment Agency, an internal drainage board, a local authority or a sewerage undertaker; and</p> <p>(b) other expressions excluding watercourse, which are used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.</p> <p>(9) If a person who has received an application for consent under paragraph (3) or approval under paragraphs (4) or (5)(a) fails to notify the undertaker of its decision within 28 days of receiving the application, that person is deemed to have granted consent or given approval as the case may be.</p>
46(8)	Disapplication of CIL	The wording is agreed between the parties.

**APPENDIX 2
PROTECTIVE PROVISIONS**

**FOR THE PROTECTION OF NORTHAMPTONSHIRE COUNTY COUNCIL
AS LOCAL HIGHWAY AUTHORITY**

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.

Commuted 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 13 thereby 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]