



NORTHAMPTON  
**GATEWAY**  
STRATEGIC RAIL FREIGHT INTERCHANGE

**APPLICANT'S POST HEARING SUBMISSIONS  
(ISH4, ISH5, CAH2 AND OFH2 ON 12, 13 AND 14 MARCH 2019)**

## **DOCUMENT 8.20**

The Northampton Gateway Rail Freight Interchange Order 201X

APPLICANT'S POST HEARING SUBMISSIONS  
(ISH4, ISH5, CAH2 AND OFH2 ON 12, 13 AND 14 MARCH 2019) | 19 MARCH 2019

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**ROXHILL**



## **THE NORTHAMPTON GATEWAY RAIL FREIGHT INTERCHANGE ORDER 201X**

### **Applicant's Post Hearing Submissions relating to ISH4 on 12 March 2019, ISH5 & CAH2 on 13 March 2019 and OFH 2 on 14 March 2019 – Document 8.20**

#### **1. Introduction**

1.1 This document comprises the post-hearing submissions on behalf of the Applicant in relation to the hearings held on 12 and 13 March 2019, as follows:

- Issue Specific Hearing 4 on cumulative and interaction issues;
- Issue Specific Hearing 5 on the draft Development Consent Order;
- Compulsory Acquisition Hearing 2; and
- Open Floor Hearing 2.

1.2 The submissions relating to these hearings are dealt with in turn below.

## **Issue Specific Hearing 4 on cumulative and interaction issues – 12 March 2019**

### **1. *Preliminary Matters***

1.1 In response to a note on the Agenda for ISH4, the Applicant provided, on 6 March 2019, annotated versions of Rail Central's traffic modelling work (Figures 1 and 2 to Technical Note 13) (Appendix 3 to the Applicant's updated Cumulative Impact Assessment with Rail Central (**Document 8.13** [AS-040])) showing labelled junctions, descriptions and road numbers.

### **2. *Submissions on behalf of the Rt. Hon. Andrea Leadsom MP***

2.1 The Applicant has responded to the submissions on behalf of the Rt. Hon. Andrea Leadsom MP in its Responses to Other Parties' **Deadline 5** Submissions (**Document 8.21**) submitted for **Deadline 6**.

### **3. *Update from Ashfield Land and Gazeley GLP Northampton (Rail Central) as to progress with its accepted application.***

3.1 The Applicant, having been notified immediately before the Examination of the Rail Central (RC) request to defer its Preliminary Meeting until the outcome of its strategic highway review, explained that it considers the RC strategic highway review significant in respect of the issues to be discussed at the hearing, given that the main purpose of the hearing is to understand the extent of the aggregated impacts of RC and Northampton Gateway (NG). However, because of the strategic review the reality is that the extent of the scheme is no longer known. This is particularly relevant in the context of highways and traffic and therefore any attempt to assess the cumulative impacts of the RC and NG schemes is necessarily, now, going to be highly provisional.

3.2 Furthermore, there are inevitably consequences for other environmental impacts which are sensitive to traffic and transport, most notably noise and air quality. It is also entirely possible that the implications of a strategic highway review extend further than that, because the measures required for mitigation of highways can impact on landscape and visual matters, etc. Therefore, the Applicant is clear that the assessment of cumulative impacts with RC must be provisional, since there is no certainty as to how and in what form RC will come forward. It must follow that dependent on the outcome of the strategic review, further substantive changes are required to the RC proposal. It may be that the highways cannot accommodate the scale of the proposed RC SRFI.

3.3 Similarly the comparative assessments of the two schemes provided by the Applicant previously now be must be considered provisional pending an understanding of the revised scheme.

3.4 The Applicant confirmed that requirements dealing with the potential interaction with RC have been agreed with RC and that the Applicant is content that requirements should be included in the NG DCO. Those are:

3.4.1 Requirement 30 – dealing with the footpath interaction;

3.4.2 Requirement 31 – dealing with Junction 15A; and

3.4.3 Requirement 32 – dealing with the rail connections.

At the time of ISH4, whilst the wording of requirement 30 was agreed, the footpath plan (**Document 2.15** [REP4-027]) was, and is, still the subject of discussion.

***Cumulative and interaction impacts with other schemes and projects (agenda items 4 – 17)***

**4. *RC Criticisms of the Applicant's Updated Cumulative Impact Assessment (Document 8.13[AS-040])***

4.1 In response to RC's criticisms of the Applicant's Updated Cumulative Impact Assessment (UCIA) (**Document 8.13** [AS-040]), and following the clarification by RC that it was not suggesting that there are other projects that should have been included in the UCIA, the Applicant explained its approach to the UCIA. The UCIA was prepared in response to ExQ1.9.1 specifically only to deal with the updated RC project given that the RC application had been accepted for Examination following the Applicant's original Cumulative Impact Assessment, which was based on RC's consultation documentation.

4.2 The approach taken to the Cumulative Impact Assessment and in particular, the choice of other sites was set out clearly in the Applicant's ES Scoping Report (October 2016). The Applicant paid very close attention to PINS Advice Notice 17 regarding CIA. The Scoping Report included the recommended matrices. At the scoping stage, the Applicant set out, with regards to zones of influence, the committed projects it considered to be relevant and that list consisted of closest SUE and the smart motorway scheme. The Applicant agreed to add the SUE at Brackmills following discussions on scoping with the local authorities. The exception to that approach in terms of scope of assessment is transport. The transport model takes into account a long list of sites and even goes beyond the list provided by the County Council. The transport model which underpins the transport assessment (and in turn, air quality and noise), takes into account that list.

4.3 The Applicant referred to paragraph 3.4.6 of PINS Advice Note 17 in the context of focusing on traffic impacts, which states that "*where significant cumulative effects of*

*proposed NSIP and other developments, are only likely to arise in relation to one topic area, the assessment should focus on that issue only”.*

4.4 The Applicant confirmed that of the various developments mentioned by Mrs Leadsom's representative, some are included in the transport model (i.e. Towcester Vale housing scheme and Brackley SUE) and some are not (i.e. HS2 Phase 1 construction traffic and the Cambridge to Milton Keynes corridor). The Applicant referred again to the PINS Advice Note on CIA which also clearly acknowledges that a CIA can only have regard to information that is available. Clearly, the Applicant cannot invent information that does not exist. This is applicable to those sites referred to by Mrs Leadsom's representative which are not included in the model.

4.5 In response to a concern by Mr Exley, the Applicant again confirmed that the traffic model does include the Northampton University sites.

5. ***Transportation cumulative and interaction impacts***

*i. Rail connections and capacity*

5.1 The Applicant confirmed its position, as submitted in its Rail Reports (**Document 6.7** APP-377]), that there is sufficient capacity on the rail network for both NG and RC SRFI to operate.

5.2 The Applicant referred to the Statement of Common Ground with Network Rail (**Document 7.13** [REP1-016]) which confirms that it is Network Rail's Stated intention in its Strategic Plan to facilitate an SRFI in Northampton (see paragraph 10) and accordingly this proposal and the implications for capacity on the network was not something that was being foisted upon Network Rail. It is aligned with Network Rail's own strategy. The Applicant also referred to Appendix 1 of the Statement of Common Ground explains how paths are allocated.

5.3 In terms of compatibility, the Applicant explained its position that it is confident that, were there a need to do so compatibility of the NG and RC accesses to the network can be achieved at the detailed design stage.

*ii. Highways and traffic*

*a) Junction 15A*

5.4 The Applicant confirmed its view that the highways mitigation works as proposed by RC in their submitted application will not serve the purpose of mitigating the RC development alone and therefore cannot mitigate both RC and NG. Now that RC are undertaking a strategic review of the highways mitigation package the Applicant suggested that discussion on the RC scheme is of no value given the extent of uncertainty.

- 5.5 In terms of cumulative assessment between NG and RC, the Applicant queried a meaningful cumulative assessment can be undertaken or considered, in light of the RC update presented at the beginning of the hearing, particularly in circumstances where all parties agree the RC highway package is not fit for purpose.
- 5.6 In response to a query from the ExA as to where to direct them to the relevant cumulative impact assessment with all schemes except RC the Applicant directed the ExA to the Transport Assessment contained in the Applicant's Environmental Statement (Appendix 12.1 to **Document 5.2**) (i.e. the Applicant's assessment of cumulative impacts of NG and all committed developments).
- 5.7 In response to a query from the ExA the Applicant confirmed that paragraph 3.38 of Technical Note 13 should read "under estimated" rather than "over estimated" (Appendix 3 to Updated CIA **Document 8.13**).

*b) Key routes and junctions in Northampton*

- 5.8 The Applicant reiterated its conclusions in respect of the RC data which shows queuing problems on the A43 and that the RC misrepresentation of the Junction 15A data may have knock-on effects for rat-running through villages.
- 5.9 The Applicant confirmed, in response to the ExA's query, that RC's failure to assess the Queen Eleanor junction is not a valid approach, given that the RC development will have a traffic impact at that junction. The Applicant confirmed that it is providing a financial contribution to the County's proposed highway scheme for the Queen Eleanor junction through the S106 Agreement.

**6. Socio-economic matters**

- 6.1 The ExA queried how the Applicant's assessment on commuting patterns of "minor beneficial" at paragraph 2.23 of the UCIA might change, given that it was predicated on the RC highways mitigation package being effective. The Applicant submitted that whilst it is not possible to say with any certainty, it is reasonable to assume that RC would only be approved if the highway mitigation package was effective, and agreed with RC that it would be a matter for the RC Examination, and not for NG.
- 6.2 The Applicant confirmed that the displacement figure of 10% for NG is different to RC's displacement figure, because the Applicant's figures are based on a wider study area than RC.
- 6.3 In response to the ExA queries in relation to:
- Temporal scope of socio economic assessment;
  - Commuting Patterns
  - Effects on agricultural employment; and

- Potential effects of a change in status of EU Nationals.

the Applicant has provided a note which is contained at **Appendix 1**.

6.4 The Applicant also noted that the existing commuting patterns demonstrate workers are moving out of NBC and SNC areas. NG would clearly provide employment opportunities inside these administrative areas.

## 7. ***Landscape and visual matters***

7.1 In response to the ExA's query in relation to the difference in assessment years between RC (1 year, 7 years and 15 years) and NG (1 year and 15 years) , the Applicant explained that it is standard to carry out an assessment at 1 year and 15 years. The Applicant does not consider that there is any real benefit in including a 7 year assessment. The Applicant noted that RC confirmed the inclusion of 7 years was following a particular request from SNC, whereas the Applicant received no such request.

7.2 The Applicant explained that it had taken the view, following comments by RC and others, to change its approach to flexibility on the proposed bund heights. This is explained in the document titled "Parameters Plan – Minor Amendments" **Document 8.15** ([REP5-020]), submitted at **Deadline 5**. The Applicant was keen to ensure that there was no confusion and therefore has proposed that the bund heights now have fixed spot heights, and that any points between those spots won't be any lower than the nearest lowest fixed point, or higher than the nearest highest fixed point.

7.3 It was agreed that RC would provide a note of its comments on its suggested changes to landscape and visual cumulative residual effects after the hearing. The note was provided and the Applicant has responded to those points in the note and table contained in **Appendix 2**.

## 8. ***Ecology and nature***

8.1 See paragraphs 20.1 and 20.2 below.

## 9. ***Noise and vibration***

9.1 The Applicant reiterated in response to the RC criticisms of the UCIA that in so far as the Applicant has sought to identify noise impact as being attributable to one project as opposed to another, this is in accordance with PINS CIA Advice Note 17.<sup>1</sup>

9.2 The Applicant explained its view on why there is a difference in background levels in the NG and RC assessments. The Applicant undertook to provide a summary of its

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<sup>1</sup> AN17 Table 1 Stage 4



position on background noise as part of this submission. This is contained at **Appendix 3**.

- 9.3 The Applicant confirmed that all noise sources likely to be found on both NG and RC sites are included in the Applicant's assessment.
- 9.4 In terms of operational noise, RC criticise the fact that the Applicant has not included specific items of plant associated with specific warehouse units. The issue is that this cannot be identified until there is a specific occupier. These noise sources are picked up at design stage. The Applicant has agreed this approach with SNC, and the dDCO includes a requirement which ensures that when the units are let there must be a noise assessment and mitigation applied as necessary. The Applicant does not agree with RC that the noise has been underestimated. In terms of construction, there is only a cumulative impact if the projects are to be built at the same time, and clearly at this stage it cannot be determined whether that is a possibility. Therefore, in the construction cumulative assessment, the Applicant has assumed the highest levels.
- 9.5 The Applicant reiterated that the requirement is that the CIA must only be concerned with likely significant effects. The only way to go any further is to assume certain occupants will occupy the warehouses with uniform needs for noise making plant and equipment, which is not realistic. The Applicant does not accept that the approach advocated by RC is appropriate. The Applicant has sought to make allowance for such noise omitting sources as can sensibly be predicted. As far as other noise sources can be introduced, it is entirely appropriate that such noises are dealt with in terms of mitigation through the requirement the Applicant has agreed with SNC and SNC is content that appropriate mitigation can be dealt with this manner.

## 10. ***Air quality***

- 10.1 The Applicant confirmed that since the construction of NG and RC is unlikely to occur at the same time, the cumulative dust impact is unlikely. Further, the CEMPs for both projects will secure the mitigation requirements during construction. That will also ensure that monitoring is carried out and any further measures (e.g. due to wind conditions) required can be put in place.
- 10.2 The Applicant confirmed that there is no likely cumulative impact of construction traffic because the construction route for RC is along the A43 and for NG along the A508. Please note that the reference to the A45 in paragraph 2.175 of the UCIA should refer to the A508 and not the A45.
- 10.3 The Applicant clarified to the ExA, in response to its query regarding the routing of construction traffic, that this must be agreed with the local highway authority through the CEMP (and relevant P-CEMP) (and therefore through requirement 12 of the dDCO).

- 10.4 The Applicant reiterated its view that in light of the RC strategic highway review, the confidence in the CIA based on RC data must be limited.
- 10.5 The ExA queried, with reference to the NPSNN, the meaning of “zone” and “agglomeration”. The Applicant referred to its position statement (Appendix 2 to the Applicant’s Responses to ExQ2 (**Document 8.17** [REP5-021]) submitted for **Deadline 5**, which explains how the scheme meets the policy requirements set out in the NPSNN, and specifically paragraph 26 of that statement, which confirms that the scheme does not cause a currently compliant zone/agglomeration to become non-compliant.
- 10.6 The Applicant referred the ExA to the definition of zone and agglomeration in the relevant Directive.
11. ***Geology soils and groundwater***
- 11.1 [No discussion.]
12. ***Water resources and drainage***
- 12.1 The Applicant confirmed there is agreement between NG and RC on cumulative impact and in reality, the implementation of the schemes would result in a betterment in terms of the drainage situation.
13. ***Agricultural land***
- 13.1 The Applicant agreed to provide a note on the impact of the loss of agricultural land on local employment. This is contained as part of the Socio Economic note at **Appendix 1**.
14. ***Cultural Heritage***
- 14.1 The Applicant confirmed there is agreement between NG and RC on cumulative impact.
15. ***Lighting***
- 15.1 The Applicant disputed RC’s assertion that there is a precisely defined methodology. RC refers to two documents; one is referred to in paragraph 32 of the RC comments on the Applicant’s UCIA – *Lighting Impact Assessment (Institute of Lighting Professionals ILP Guidance Notes for the Reduction of Obtrusive Light (2011))* – the guidance notes for the reduction of obtrusive light. This is not a methodology for assessment, but rather, a design guide to be used by planners. There is another document – “*Professional Lighting Guide 04 Institute of Lighting Professionals 2013*”, which the Applicant believes might be what RC means to refer to. In fact, the Applicant has used but also built on this guidance because it is limited for a

development like this. That guidance is currently being revised possibly because it's recognised that it needs to be enhanced. The Applicant has devoted several pages to explaining its methodology in its ES chapter (Chapter 11, **Document 5.2**).

- 15.2 In response to the criticism by RC that no physical lux level measurement has been taken, or virtual illumination created, the Applicant explained its view that the assessment of the sensitivity of receptors is dependent upon the night time environment in which they are located. The problem with undertaking an illumination measurement in a rural setting is that the results identify what is already known – i.e. that the receptor is in a dark location. It is a huge exercise with almost no value. The crucial point is to demonstrate that the scheme complies with the IPL guidance notes – this can be assured by good design and that is secured by the Applicant's lighting strategy (requirement 15 of the dDCO). There is therefore no possibility for NG to exceed those recommended limits.

16. **Waste**

- 16.1 The Applicant confirmed it would provide a written note of its submissions to the ExA in respect of the ExA's concerns regarding Ex Parte Hardy and the Applicant's waste assessment. This is contained at **Appendix 4**.

17. **Climate change**

- 17.1 The Applicant confirmed that its assessment in relation to climate change is not dealt with as a separate item, rather, it is intrinsic to the ES and CIA and is dealt with explicitly in a number of different topics. The Applicant is also conscious that RC have criticised the Applicant's approach to the consideration of climate change in both the ES and CIA. Accordingly, the Applicant has produced a document titled Climate Change Summary (**Document 8.22**) which has been submitted for **Deadline 6**. The document explains the Applicant's approach in relation to the legal and policy considerations and signposts the ExA to the relevant parts of the application documentation.

18. **Summary of the key differences between the Applicant's original Cumulative Impact Assessment and its updated version in respect of the proposal's cumulative effects with other schemes and projects**

- 18.1 The Applicant confirmed it would provide a table setting out the key differences between its original cumulative impact assessment and its updated cumulative impact assessment. This is enclosed at **Appendix 5**.

19. ***Impact interactions (the combined impacts of effects caused by a number of different likely impacts on particular receptors) in respect of the Northampton Gateway proposal alone, and summary of the key differences between the Applicant's original Cumulative Impact Assessment and its updated version in respect of impact interactions***
- 19.1 The Applicant reiterated that the UCIA was carried out specifically in response to ExQ1.9.1 and deals only with the updated RC scheme, as requested in that ExQ.
- 19.2 Acknowledging that the CIA does not contain a matrix of all effects and all receptors, the Applicant explained that its approach was to make a judgment on which receptors to consider when looking at cumulative impact, based on what the ES identifies as the effects on those receptors – this is considered to represent a common sense and pragmatic approach. The judgements about which receptors to use was informed by an understanding of the findings from the ES as a whole, and the selection of receptors was based on those which were likely to see the most significant effects. Also, consideration was given to those receptors which were considered most important or sensitive based on the emphasis and concerns raised through consultation responses and dialogue with Interested Parties.
- 19.3 The Applicant explained that Oxalis Planning, as co-ordinators of the ES, made the judgments, together with the consultant team, and all topics consider the same receptors.
20. ***Any other matters not covered by the above items, including matters arising from responses to the ExA's further written questions***
- 20.1 In response to the ExA's query in relation to the Natural England Letters of No Impediment (submitted by the Applicant to the ExA on 11 February 2019), the Applicant explained that providing such letters in this manner is the standard procedure at this stage of a proposed development. It is necessary for full consent (or outline permission with all relevant conditions/reserved matters discharged) to be in place in order to be able to provide the level of detail and certainty that Natural England requires to issue a licence.
- 20.2 Natural England provides the Pre-submission Screening Service under which draft applications can be submitted. This enables developers to submit a draft application to gain a view on whether the three licensing tests are likely to be met prior to having all necessary planning consents in place and the formal submission of the application. It also enables Letters of No Impediment to be issued confirming that the principles of a draft application are acceptable and thus providing some certainty that a licence would be issued at the appropriate time. At this stage, as is normal, some elements of the proposals are not fully known; such as where bat boxes should be placed relative to the proposals to maximise their value/chances of being used (as this can be affected by adjacent conditions such as lighting and the proximity to

habitat features which is not currently fully detailed). Furthermore, given the intervening period between the original surveys, application, examination and, subsequent, construction activities starting on site and the need for any licence application to be supported by up-to-date survey data, it will also be necessary to update the surveys, ideally within the year the final licence application is submitted. Natural England has therefore included caveats in its Letters of No Impediment to cover those detailed elements that will need to be addressed in the formal application.

**Issue Specific Hearing 5 on the draft Development Consent Order and the draft s106 Agreement – 13 March 2019**

1. ***The divergence between the Applicant and Highways England (HE) on timescales for approvals – Arts 9, 13(3), 17(7), 21(4), and (10), 22(6); and deemed approvals (Sch 13 Part 2 para 15)***
  - 1.1 The only issue between the Applicant and Highways England relates to the inclusion of deemed approval provisions in Article 13 (Accesses) and in Part 2 of Schedule 13 (Protective Provisions). Highways England object in principle and also would wish the period of 42 days to be increased to 56 days.
  - 1.2 The Applicant confirmed it would provide a note of its submissions. These are attached at **Appendix 6**.
2. ***The divergence between the Applicant and Network Rail (NR) – Sch 13 Part 1 para 4, possibly para 11(11) (omitted from Doc 3.1C – dDCO, but included in NR's Deadline 3 submission of 30 November) [REP3-017]***
  - 2.1 Agreement has been reached between the Applicant and Network Rail and this is reflected in revised wording of paragraph 22 of the protective provisions in favour of Network Rail contained in Part 1 of Schedule 13 to the dDCO.
3. ***The divergence between the Applicant and Northamptonshire County Council (NCC) over (i) the scope of the undertaker's liability during the Defects and Maintenance Period, and (ii) the duration of the Defects and Maintenance period***
  - 3.1 Agreement has been reached between the Applicant and NCC and this is reflected in revised wording to paragraph 6 of the protective provisions in favour of NCC contained in Part 3 of Schedule 13 to the dDCO.
4. ***Interaction with Rail Central***
  - a. *Junction 15A – arrangements to address the choice between the Applicant's and the Rail Central scheme, and implementation of that choice (see also Schedule of Questions, DCO:27).*
  - 4.1 Rail Central and the Applicant agree that the proposed Requirement 31, as referred to in the Second Letter to the ExA of 26 February 2019 submitted at **Deadline 5**, and included in the dDCO submitted for **Deadline 6 (Document 3.1E)**, deals appropriately with the interaction of the two schemes in respect of Junction 15A.
  - b. *Footpaths – arrangements for connections; see Schedule of Questions, DCO12 and 26 and ExQ2.0.3.*

- 4.2 Rail Central and the Applicant agree that the wording of the proposed Requirement 30 deals appropriately with the interaction of the two schemes in respect of the interaction of the footpaths. Discussions in relation to the Rail Central footpath connections plan are ongoing.
- 4.3 As the ExA were advised in the hearing Rail Central and the Applicant have also agreed the wording of a requirement dealing with the rail connections. This is requirement 32 which is included in the dDCO to be submitted for **Deadline 6**.
- 4.4 The context for the requirement is the scenario where both Rail Central and Northampton Gateway's DCO are approved and the Secretary of State has therefore determined it is in the public interest for both the nationally significant infrastructure projects to come forward. The intention behind the requirement is to ensure that the construction of Northampton Gateway in advance of Rail Central does not frustrate the delivery of Rail Central. That objective is appropriately identified in the requirement.
- 4.5 The public interest element is the reason why it is appropriate for the local authority to be the party referred to in this requirement. The relevant planning authority are required to approve all details under Requirement 8 and so will be considering these details in any event.
- 4.6 Network Rail's interest are private interests and are separately protected by Part 1 of Schedule 13. Network Rail will have to approve the details pursuant to the provisions of that schedule in any event. Network Rail has confirmed to the ExA that they are content with Requirement 32.
5. ***The arrangements for dealing with submissions and appeals – Part 2 of Sch 2***
- 5.1 The Applicant has included the time periods for consideration of approvals under Part 1 of Schedule 2 that are contained in PINS AN15. It is the local authority who are seeking longer time periods, not the Applicant. There is no reason to depart from AN15.
- 5.2 The Applicant is content with the periods in the dDCO as drafted. The periods are workable, given the frontloaded nature of the process, and have been shown to be so. The Applicant has experience of obtaining approval of such details under the East Midlands Gateway Order from North West Leicestershire District Council. Approvals have consistently been obtained within the periods referred to.

6. **The DCO and EIA**

a. *Tailpieces – submissions on the issue raised at paragraph 3 of the ExA's Commentary on the dDCO.*

6.1 The Applicant would refer the ExA to section 4 of Applicant's Response to the ExA's DCO Commentary (**Document 8.19**) [REP5-023]. Also see paragraph 32.1 (e) below.

b. *Screening in relation to applications made under tailpieces – submissions on the issue raised at paragraph 4 of the ExAs' Commentary on the dDCO.*

6.2 The Applicant would refer the ExA to section 4 of Applicant's Response to ExA DCO Commentary (**Document 8.19**) [REP5-023].

c. *Ex p Hardy - submissions on the issues raised at paragraph 5 of the ExA's Commentary on the dDCO.*

6.3 During ISH5 the ExA requested that the Applicant provide a written summary of its submissions regarding the concerns voiced by the ExA in respect of the Waste Chapter of the Environmental Statement in relation to Ex p Hardy. The summary is contained in **Appendix 4**.

7. **The s.106 agreement**

a. *The Community Fund*

7.1 The Applicant set out its position in the Revised S.106 Compliance and Confirmation Document (**Document 8.5A** [REP5-018]). The relevant law is set out in s.104 of the Planning Act 2008 not s.70 of the Town and Country Planning Act 1990. The issue is not what is a material consideration but is, as recognised by the ExA, what is "important and relevant".

7.2 The payment of the Community Fund complies with s.106. What needs to be considered is guidance at paragraph 4.10 of the NPSNN. The Applicant understands that there is a concern in relation to the "necessity" element of that guidance.

7.3 The Community Fund was a commitment made early on in the process which the Applicant wishes to, and will, honour in any event. It is a legal commitment and will remain so irrespective of compliance with paragraph 4.10.

7.4 The issue is whether regard should be had to it (or any weight to be given to it) by the decision maker. The Applicant acknowledged in the hearing that, were the Applicant to be asked whether the Community Fund was necessary to render the application acceptable, the answer would be that it is not necessary.



- 7.5 In light of that, if the ExA concludes that the Community Fund does not comply with paragraph 4.10, or, indeed has any doubt, then the Ex A should place no weight on that contribution in arriving at its recommendation and should say explicitly that no weight has been given to it.
- 7.6 Similarly, if the Secretary of State concludes that the Community Fund does not comply with paragraph 4.10, or, indeed has any doubt, then the Secretary of State should place no weight on that contribution in arriving at its decision and should say explicitly that no weight has been given to it.
- b. Securing and enforcing the scheme to control lorry routeing from the Main Site.*
- 7.7 A note setting out the position in relation to the monitoring and enforcement of the HGV “no right turn” is set out in **Appendix 7**.
- c. Schedule 4, para 3.2 – return of any unexpended Highway Capacity Contribution; the ExA requests submissions from the Applicant and County Council on the appropriateness of a five-year period for expenditure and therefore completion of the improvements to the Queen Eleanor Interchange and other mitigation specified at para 3.1.*
- 7.8 The five year period referred to runs from the date of payment. Both the Applicant and NCC confirmed that the period was appropriate.
- d. Air Quality contribution – comment and explanation for why this is not paid direct to the Borough.*
- 7.9 The reason why the Air Quality contribution is not paid direct to the Borough Council (NBC) is because any s.106 obligation needs to bind land and NBC can only enforce in respect of land within its administrative area. The Applicant currently has no land available within Northampton Borough to bind. Accordingly the obligation to pay the Air Quality contribution is to NCC (within whose administrative area the Obligation Land sits) for onward transmission to NBC. All parties are content with this.
- e. Update from the Applicant and relevant planning authorities (RPAs) and County Council on the current position in relation to the s.106 agreement, what further changes, if any, are intended and the schedule for its execution, and delivery of a certified copy of the executed document to the ExA.*
- 7.10 The Applicant advised that the s.106 Agreement was in an agreed form and would be engrossed and circulated for signature shortly after the hearings concluded. It is anticipated that the completed s.106 will be submitted to the ExA by **Deadline 7**.

- f. *Update from the Applicant on the Confirmation and Compliance document Doc 8.5 [REP1-024].*
- 7.11 It is anticipated that a completed Compliance Document will be submitted with the completed s.106 Agreement by **Deadline 7**.
- g. *Update from the RPAs and County Council on title investigation and confirmation.*
- 7.12 The local authorities confirmed at the hearing that they would update their title investigations and carry out the usual pre-completion searches.
8. **Regulation 123 (2)(2A) and (3) of the CIL Regulations 2010 (as amended)**
- 8.1 The Applicant confirmed to the ExA that neither Regulation 122 or 123 of the CIL Regulations apply to s.106 obligations relating to a DCO.
- 8.2 The CIL Regulations apply to “relevant determinations” and these are confined to determinations under the 1990 Act.
9. **Associated development – including discussion of the position on the Roade Bypass**
- 9.1 Rail Central advised that they no longer contest the inclusion of the Roade Bypass as Associated Development and had not done for some time. This was following receipt of the Applicant’s explanation contained in Appendix 1 to the Applicant’s Responses to Rail Central Deadline 2 Submissions (**Document 8.8A** [REP3-008]).
10. **Plans**
- a. *Schedule 1 to the dDCO – plans.*
- 10.1 The Applicant has checked the accuracy of all cross references in the dDCO submitted for **Deadline 6**.
- b. *Change to Inset Plan 1A of Doc 2.3A.*
- 10.2 The change to Doc 2.3A was explained in the DCO Changes Tracker (**Document 3.4B** [REP4-005]) relating to the dDCO submitted at **Deadline 4**. The change is explained on page 23.
- 10.3 The subsequent SoCG with Highways England (**Document 7.1A** [REP1-005]) confirmed Highways England agreement to the revised plan (paragraph 2.3).
- 10.4 The change to the inset does result in a need to change the key plan and accordingly a revised Doc 2.3 is being submitted for **Deadline 6** and the revision number in

Schedule 16 of the dDCO to be submitted for **Deadline 6 (Document 3.1E)** has been changed accordingly, from P4 to P5.

- c. *The M1 slip road – Submissions from the Applicant and Highways England, by reference to plans to answer Question ISH3:4(a) and (b).*
- 10.5 The Applicant's response to ISH3:4(a) and (b) is contained in Appendix 13 of **Document 8.10** [REP4-011] being the Applicant's responses to the ExA Question and Issues Raised in Table to Agenda for ISH3.
- 10.6 It is hoped that the explanation with plans at the hearing has also assisted.
- d. *Renumbered plans in Schedule 16. There may be two discrepancies; Appendix 2.1 of the Environmental Statement (Doc 5.2) and Plan 2.15. According to Schedule 16 a version of Appendix 2.1 was received on 8 January 2019 (Deadline 4). However, the last version actually received was on 30 November 2018 (Deadline 3). The other document, 2.15 (The Rail Central footpath connections plan), is mentioned in Schedule 16, however the ExA is having difficulty tracing this. If it has been submitted could the Applicant please say when and, if not, could it be supplied?*
- 10.7 Discussions took place with the case manager in advance of ISH5 to ensure that there is no ongoing confusion.
11. ***Any matters the ExA wishes to raise arising from responses to the Schedule of Questions (DCO 1-51) and Further Written Questions issued on 5 February 2019***
- 11.1 The ExA/other parties raised some additional matters at various stages of the hearing and the response to these is set out below:
- a) A discussion took place in relation to “**operational weight**” and “**maximum gross weight**”. Since the hearing NCC has confirmed to the Applicant that they are content with the dDCO as drafted.
- b) Reference was made by the ExA to the enforceability of the term “**reasonable endeavours**” in respect of **Requirement 4(5)**. The Applicant responded to this in its response to DCO:15 of the ExA DCO Commentary (**Document 8.19** [REP5-023] page 17).

The Applicant would also make reference to the fact that there is precedent for the term being used in requirements. For example:

- **East Midlands Gateway Order 2016** – requirement 5 states that the undertaker “must use reasonable endeavours to complete the highway works” set out in a table by the stages of development set out in the table.

- **Silvertown Tunnel Order 2018** – requirement 21 states that TfL “must make all reasonable endeavours to agree a business transitional support package with [various councils]” and that “As part of this business transitional support package TfL must make available to those councils the sum of one million pounds for the purpose of supporting local businesses”.

The term is also very frequently used throughout protective provisions in DCO.

- c) Reference was made by the ExA to **Requirement 8(2)(e)** and the level of provision of **electric charging points**. The Applicant has since reviewed the position.

Although the Government has clear policy and targets for the promotion and up-take of new zero-emission vehicles, it is yet to be supported by specific planning guidance around electric vehicle charging provision for new developments.

The National Infrastructure Commission’s National Infrastructure Assessment Report (2018), recommends that the government should “place a requirement on local authorities to work with charge point providers to allocate 5 per cent of their parking spaces by 2020 and 20 per cent by 2025 which may be converted to electric vehicle charge points.”

Given this, the Applicant proposes that the development has in place electric vehicle charge points for 5% of total parking spaces initially, with passive provision for an additional 15% of parking spaces – giving the potential for 20% of parking spaces to have electric vehicle charge points, in accordance with the above report.

Requirement 8(2)(e) has been amended accordingly in the dDCO submitted for **Deadline 6 (Document 3.1E)**.

- e) **Rail Central** drew attention to the wording of **Requirement 3(3)** and suggested that it might mean that no rail terminal was ever built (because an alternative timing could be agreed) and that, accordingly, the DCO might be unlawful as not permitting an NSIP within the definition of s.26 of the Planning Act 2008. The Applicant does not agree with Rail Central’s analysis and would refer the ExA to the Applicant’s response to DCO:13 in the Applicant’s Responses to ExA DCO Commentary (**Document 8.19 [REP5-023]**).

The Applicant is however concerned to ensure that there is no doubt as to the lawfulness of any Order and suggests that a fall-back position be added to the requirement which ensures that the flexibility offered within the requirement is restricted to the "initial stages" of the development in compliance with paragraph 4.88.

As advised in the response to DCO:13 there is only one interpretation available as to what is meant by "initial stages" in paragraph 4.88 and that is contained in the Secretary of State's decision on the East Midlands Gateway Order. The floorspace permitted to be occupied at East Midlands Gateway prior to the rail terminal being provided at East Midlands Gateway was 260,000m<sup>2</sup> (out of 555,476) i.e. 46.8% (Requirement 2(3)).

The other approved RFI DCO is The Daventry International Rail Freight Interchange Alteration Order 2014, which pre-dated the NPSNN. Although called an "Alteration" the Order authorises a new replacement rail terminal and a substantial amount of warehousing. The amount of floorspace permitted to be occupied in advance of the rail terminal in that case (governed by a s.106 obligation rather than a requirement) was 153,290m<sup>2</sup> (out of 731,000m<sup>2</sup>) i.e. 21%.

To meet the Rail Central point the Applicant suggests that a floorspace fall-back restricting the extent of the relevant planning authority's discretion be inserted. The figure suggested is 140,400m<sup>2</sup> which is at the lower end of the range exhibited by DIRFT and EMG. It represents 30% of the floorspace excluding mezzanines and 22.5% of the total floorspace. The figure would clearly be in accordance with the NPSNN as interpreted by the Secretary of State at East Midlands Gateway with some headroom besides.

Requirement 3(3) has been amended in the dDCO to be submitted for Deadline 6 accordingly.

## Compulsory Acquisition Hearing 2 – 13 March 2019

### 1. *Applicant's Update on Negotiations*

1.1 The Applicant confirmed it would provide a note confirming the final number of plots proposed to be subject to compulsory acquisition/temporary possession for **Deadline 7**, together with a final update on the status of negotiations with the various parties (to include the outcome of meetings to be held with Mr and Mrs Nola & their agent and with Mr and Mrs Bament & their agent).

#### *a) Plots 1/7 and 1/12 within the Main Site (Rail Central)*

1.2 Rail Central confirmed its position set out at CAH1 remains the same – in that RC does not object to the CA of plots 1/7 and 1/12 provided that the Requirements discussed at ISH5 are included in the NG DCO.

#### *b) Land at Hyde Farm (Mr and Mrs Nola)*

1.3 As explained in **Document 8.14** ([REP4-014]), the Applicant has removed all permanent acquisition of the Nola land from its proposed compulsory acquisition and that is reflected in the Book of Reference (**Document 4.3A** [AS-060] and updated Sheet 4 of the Land Plans (**Document 2.1D** [AS0-052]) submitted to the ExA on 8 February 2019. The only matter now proposed in respect of the Nola land is the diversion of the public footpath, for which temporary possession is required. The Applicant has made this change in order to seek to minimise any impact on the setting of Hyde Farm House, a historic asset, and also to reduce compulsory acquisition as far as possible.

1.4 Given that an alternative has been identified which avoids the need to compulsorily acquire land at Hyde farm there is now no basis to seek such powers.

1.5 The Applicant explained that the proposed change does not affect the environmental impact on the property and that the height of the bund is not reduced, rather, the taper of the bund is now longer.

1.6 The Applicant would refer to the Applicant's response to Mr and Mrs Nola's Deadline 5 submission (**Document 8.21**) which includes, at **Appendix 1**, a technical note which confirms that the noise protection measures are undiminished by the revised arrangement.

#### *c) Land fronting A508/Ashton Road (the Irlam family) including environmental considerations*

1.7 The Applicant confirmed that all matters are now agreed with the Irlam family. The agent representing the Irlam family confirmed the same.

*d) Hill View Farm and land at Rookery Lane/A508 (Mr and Mrs Bament)*

- 1.8 The Applicant confirmed that the only matter now outstanding is the finalisation of arrangements for the alteration to the private access (Plot 5/3), for which temporary possession is required. The Applicant is due to meet with Mr and Mrs Bament and their agent and will provide an update on the outcome of that meeting in its documentation to be submitted for **Deadline 7**.
2. ***Consideration of whether updates or revisions to the Statement of Reasons and Book of Reference are required, and any implications for the drafting of the DCO***
- 2.1 The Applicant explained that it does not propose to remove any plots from the compulsory acquisition.
- 2.2 The Book of Reference submitted on 8 February (**Document 4.3A** [AS-060]) represents the Applicant's final application for compulsory purchase and temporary possession powers. This also removed plot 2/47, as agreed with Highways England and confirmed in Appendix 13 to the Applicant's Responses to ExQ1 (**Document 8.2** [REP1-020 and REP1-021]).
3. ***Any other Compulsory Acquisition issues***
- 3.1 The Applicant confirmed it would, if publically available, submit the latest Annual Report and Financial Statement of SEGRO for **Deadline 7**.

**Open Floor Hearing 2 – 14 March 2019**

4. ***Councillor Adam Brown – Northamptonshire County Council***
- 4.1 Councillor Brown referred to the resolution by the County Council Cabinet on 12 March 2019 to formally object to both NG and RC proposals. A copy of the Agenda for the Council meeting containing the draft resolution is attached at **Appendix 8**.
- 4.2 The Applicant would remind the ExA that, with the exception of the extent of trial trenching (in respect of which the Applicant refers to its responses to NCC's Deadline 5 submissions (**Document 8.21**) submitted for **Deadline 6**), the Applicant has agreed all technical matters with the County Council and has submitted Statements of Common Ground with the County Council (**Documents 7.2** [APP-383], **7.3** [APP-384], **7.5** [AS-006], **7.5A** [REP1-009], **7.7** [REP1-011] and **7.8A** [REP3-005]).
- 4.3 The Council resolution refers to its outstanding concerns in respect of the impact on passenger services. The Applicant refers to Network Rail's response to ExQ1.11.15 [REP1-050] which states "*Any freight services which are added to the network will not be at the expense of passenger services and, accordingly, Network Rail confirms that the Proposed Development will not affect passengers. Network Rail also notes that the start of rail services on HS2 will result in additional rail capacity so it is likely*

*that Northampton will be served by additional passenger services as a result of West Coast released capacity*". The Applicant also refers to Network Rail's submission at ISH4, where it confirmed that in permitting any future paths on the railway network, consideration has to be given to existing paths.

- 4.4 It is noted from the resolution contained in **Appendix 8** that it refers to both Northampton Gateway and Rail Central and that the Council members indicate they are particularly concerned that the environment will "be seriously affected by air, noise and light pollution" which are matters that are dealt with, and have been considered by the relevant District Councils.
- 4.5 It is also noted that the Local Impact Report submitted by NCC for **Deadline 1** made no reference to these concerns.



## Appendix 1

### Applicant's Post Hearing Submissions in relation Socio-economic Issues

- 1.1 This Statement sets out the Applicant's position in response to matters raised at ISH4 in relation to socio-economics. Four specific matters are addressed:
- Temporal scope of the socio-economic assessment
  - Commuting patterns
  - Effects on agricultural employment
  - Potential effects of a change in status of EU nationals

#### Temporal scope of the socio-economic assessment

- 1.2 As confirmed at ISH4, the definition of 'long-term' and other time periods referred to in the ES are defined in paragraph 3.3.6 of the ES (Chapter 3, socio-economic assessment).
- 1.3 'Long-term' is defined as the period from 12 - 20 years, and beyond, and so as defined also encompasses permanent effects.

#### Commuting patterns

- 1.4 A discussion took place at the Hearing in relation to labour supply and existing commuting patterns. The Applicant referred to net commuting patterns and the potential for the application proposal to help rebalance current patterns of commuter flows.
- 1.5 The Applicant has set out details of commuting patterns at paragraphs 3.4.36-3.4.38 of the Environmental Statement. The information set out is obtained from the 2011 Census Travel to Work data, specifically Table WU03UK - *Location of usual residence and place of work by method of travel to work*. This shows that there are significant commuting flows between different areas within and outside of, the Study area. It is the Applicant's view that there are some important flows which it has sought to draw attention to.
- 1.6 There is a very significant net outflow from South Northamptonshire (to and from all areas) of over 11,000 people. Details from the 2011 census are shown below. Northampton Borough, as a major urban centre has a net inflow of people, with flows from the surrounding areas of Wellingborough, South Northants, Daventry and Kettering. However the Applicant has drawn attention to the net flow of people travelling between Northampton Borough and Milton Keynes, where there is a net flow of just over 2000 people from Northampton to Milton Keynes. The overall data shows a complex picture of travel to work. The application proposal will form a small part of the overall economy of the Study area but has the potential to balance the net flows of commuting within South Northamptonshire and potentially balance the net outflow of people from both South Northants and Northampton Borough to Milton Keynes.

## Location of usual residence and place of work by method of travel to work



### Effects on agricultural employment

- 1.7 The ES refers (at paragraph 3.4.1) to the current low levels of employment on-site from the existing agricultural operations, and no displacement effects were assumed.
- 1.8 Engagement with agricultural landowners, including responses to questionnaires sent to them by the Applicant, has not indicated any agricultural employment losses as a result of the proposed development. For most of the landowners involved, who are located along the Bypass corridor, the area of land lost would be minimal in the context of their wider holdings. As a result of selling land to the Applicant, most landowners and agricultural businesses have identified benefits as a result of the scheme.
- 1.9 Even on the main site, the majority of which is in a single agricultural ownership, the landowner (Courteenhall Estate) has reconfirmed to the Applicant (following the query raised by the ExA) that the loss of the land affected by the proposed development would not result in any loss of agricultural employment. For context, the land lost represents less than 10% of the land farmed by that business.

### Potential effects of a change in status of EU nationals

- 1.10 The ExA enquired about the future status of EU nationals working in the UK, and specifically, whether there might be a possible restriction on those earning less than £30,000/year which has implications for the labour supply for the scheme.
- 1.11 In response to that discussion the Applicant has produced a further note concerning the future status of EU nationals currently working in the UK and the likely future situation as is currently understood. To put this in context, the percentage of

employees in the East Midlands that have an EU country of birth is circa 7% (June 2018). UK employees represent circa 85%. The balance (c.8%) is represented by employees from all other countries.<sup>1</sup>

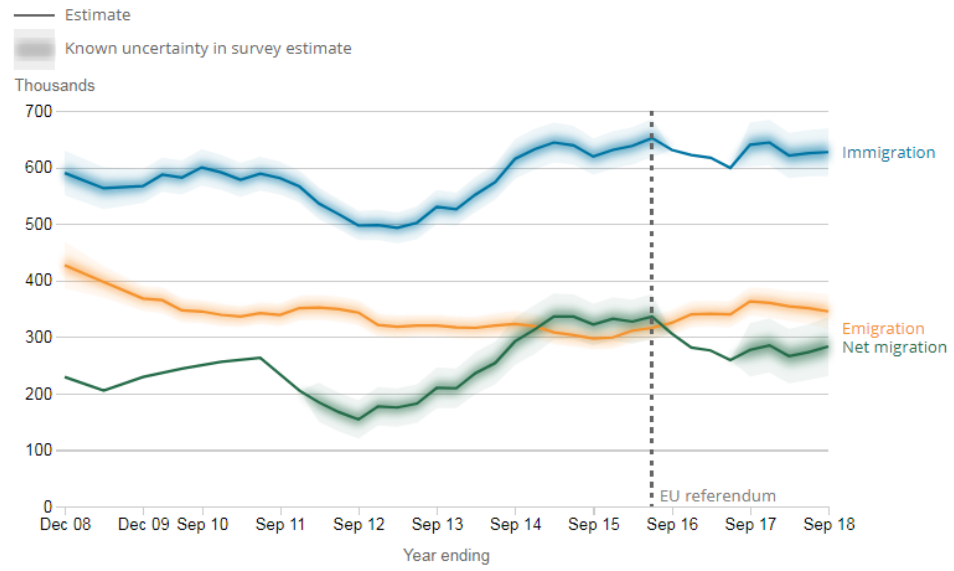
- 1.12 The Applicant has already provided a response to ExQ2.8.3, which referred to Government information on immigration - <https://www.gov.uk/staying-uk-eu-citizen>. This advises that the UK government has reached an agreement with the EU that will protect the rights of EU citizens and their family members living in the UK. It has also reached an agreement with Norway, Iceland and Liechtenstein, and a separate agreement with Switzerland. These agreements mean that after the UK leaves the EU, most of those citizens can continue living their lives here as they do now.
- 1.13 In respect of the future situation the Applicant has again made reference to the available Government information on this matter. The UK currently has two distinct immigration systems: the EU law of free movement regulates immigration of EU citizens to the UK. Non-EEA (European Economic Area) nationals are regulated by UK domestic immigration law.
- 1.14 On the 19<sup>th</sup> December 2018 the Government published a White Paper outlining proposals for the future border and immigration system. It also introduced the Immigration and Social Security Co-ordination (EU Withdrawal) Bill in the House of Commons.
- 1.15 If passed, the Bill would repeal free movement and other related rights derived from the EU, which have become part of UK legislation. It would not make any changes to the proposed settled status scheme.
- 1.16 The Bill sets the basis for the future immigration system, but it does not set out the detail of this system.
- 1.17 An outline of the proposals for a skills-based immigration system is set out in the December White paper. Basically, the future system will apply in the same way to all nationalities – EU and non-EU citizens alike, so that in future, EU citizens will be subject to the restrictions that apply to non-EU citizens (subject to exceptions where there are objective grounds to differentiate).
- 1.18 In consultation on the White Paper the Government has engaged with businesses and employers to seek feedback on skills requirements and possible salary thresholds to inform the implementation of the new system.
- 1.19 Accordingly, it is known that the situation for EU citizens will alter, but the matter of details is yet to be clarified.
- 1.20 Since the result of the 2016 EU referendum, net migration continues to add to the population of the UK, but the composition of migration has altered. Migration statistics from the Office for National Statistics (February 2019) show the relationship between net migration of EU citizens and non-EU citizens in Figure 1 below. This records a clear fall in the net migration of EU citizens after the EU referendum in 2016, followed by an upturn in the net migration of non-EU citizens.

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<sup>1</sup> Figures obtained from Annual Population Survey (September 2018), Official Labour Market Statistics, provided by the Office for National Statistics

**Figure 1: Net migration, immigration and emigration overall have remained broadly stable since the end of 2016**

**Long-Term International Migration, UK, year ending December 2008 to year ending September 2018**



**Source: Office for National Statistics - Long-Term International Migration**

## **Appendix 2**

### **Applicant's Response to Rail Central Cumulative LVIA Table**



Roxhill Developments Ltd

**Northampton Gateway SRFI**

**Response to Rail Central Cumulative LVIA Table**

March 2019

**FPCR Environment and Design Ltd**

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**TABLES**

Marked Up Table as provided by Rail Central on 13 March 2019



## 1.0 INTRODUCTION

- 1.1 This Note is provided in response to the Marked up Cumulative Landscape and Visual Effects Tables provided by Rail Central (RC) on 13 03 19.
- 1.2 For reference, the Marked up Tables provided by Rail Central (RC) are attached to this Note. The RC amendments are shown in red and additionally, references to the RC DCO Application are included after the Tables.
- 1.3 The original Cumulative Landscape and Visual Effects Tables were prepared by Northampton Gateway (NGW) (by FPCR Environment and Design Ltd) and formed part of the Updated Cumulative Impact Assessment (UCIA) (Document 8.13 [AS-040]) submitted in January 2019.
- 1.4 For reference, the original Cumulative Landscape and Visual Effects Tables are divided into three main columns, detailing the following:
  - The effect of the NGW proposed development;
  - The effect of the RC proposed development; and
  - The Combined Cumulative effect of the NGW and RC developments.

## 2.0 NGW RESPONSE

- 2.1 No accompanying notes or information are provided by RC alongside the Marked up Tables to support the amendments.
- 2.2 Within the Marked up Tables, RC have amended the assessed effects for the RC development on its own (i.e. without the NGW development in place) and also the Combined Cumulative effects with the NGW development.
- 2.3 RC have not however amended any of the assessed effects for the NGW development on its own (i.e. without the RC development in place), although an understanding and judgement on these effects is required to be able to formulate the Combined Cumulative effect.
- 2.4 The following should be read alongside the attached RC Marked up Tables.

### **Cumulative Landscape Effects**

- 2.5 For the effects on Landscape Character at a National and Regional scale, RC have moderated the effect of the RC development and the Combined Cumulative effect of the development down (from Minor Adverse to Minor Adverse/ Negligible at year 15). Whilst we do differ on these judgements, none of the resultant effects are significant at these scales.
- 2.6 RC do not however include a landscape impact assessment at either of these National or Regional landscape character scales within their submitted DCO ES at Doc 6.1.
- 2.7 For the effects on landscape character at a County scale, RC have also moderated down the effect of the RC development (at each assessed stage) and the Combined Cumulative effect at year 15.
- 2.8 We do not concur that the RC development will only have a Minor Adverse effect (during construction and at year 1) and a Negligible/ Neutral effect at year 15 upon the County Landscape Character areas. This cannot be substantiated given the nature and size of the RC development, even at this County scale of landscape character assessment.

2.9 Most concerningly, RC have altered the assessed effect of the RC development at year 1 at the Site/ Local scale. This has been amended down from Major Adverse to Moderate Adverse. This cannot be substantiated or justified and more importantly does not even match the assessed effect of their development as stated in their own ES (Doc 6.1; Chapter 15). Paragraph 15.302 of their submitted DCO ES states under Operational landscape Effects;

*'15.302 Therefore, at year 1 of operation it is considered that the Main SRFI Site will give rise to a Major Adverse (Significant) level of effect to local landscape character.'*

2.10 It is thus not clear whether RC are now pursuing a different judgement. Our assessment of the landscape effect of the RC development at this scale (Major Adverse) matches that contained with their ES at paragraph 15.302 and Table 15.21.

2.11 Based upon the above amended judgement, RC have also altered downwards the Combined Cumulative landscape effect at this scale from Moderate/ Major Adverse to Moderate Adverse. Again, this is not justified.

### **Cumulative Visual Effects**

2.12 RC have pursued a similar approach in altering the visual effects, by reducing downwards the visual effects of their own development and some of the consequential Combined Cumulative visual effects. Again, these altered judgements cannot be substantiated or justified and include some of particular concern in the context of a robust cumulative impact assessment.

2.13 Properties and locations on the north eastern edge of Blisworth (NGW Ref P10; RC Ref R18) have been altered by RC from Major Adverse (at both years 1 and 15) to Moderate Adverse (at both years 1 and 15). Given the elevated and expansive views from these properties on the edge of Blisworth across the RC site and proposed development to the north and north east, this reduced visual effect judgement cannot be justified.

2.14 Compounding this unjustified assessment, the Combined Cumulative effect for these properties has been altered by RC to Minor Adverse (at both years 1 and 15). This would suggest that the combined visual effect arising from the RC and NGW developments together will be less than the RC development on its own.

2.15 Whilst there are potentially scenario`s where a combined effect could be less than one development on its own, in this instance this is not the case. The NGW development will lie beyond the RC development in elevated views from the north eastern edge of Blisworth and thus any combined visual effect is likely to be the same or greater than the RC development on its own; and not less.

2.16 Other similarly reduced and unsubstantiated Combined Cumulative visual effects are stated by RC and include the following:

- NGW Ref P2; RC ref 11a (63 Collingtree Road and Maple House): RC state a Moderate Adverse visual effect for their development alone at years 1 and 15 yet a Combined Cumulative visual effect with NGW of Minor Adverse at year 1 and Negligible at year 15.
- NGW Ref P12; RC Ref R5 (Hill Farm Gayton Rd): RC state a Moderate Adverse visual effect for their development alone at years 1 and 15 yet a Combined Cumulative visual effect with NGW of Minor Adverse at year 1 and Negligible at year 15.

- NGW Ref O1; not assessed by RC in their ES (Northampton Loop Railway Line): RC state for their development alone, a Minor Adverse visual effect at year 1 and a Moderate Adverse visual effect at year 15. It is recognised that this may be a simple drafting error.

2.17 In the context of the Marked up Tables provided by RC, it is also notable that the majority of the Major Adverse visual effects arising from the RC development alone and in combined cumulative terms have not been altered by RC. This includes the series of public footpaths (NGW Refs F1, F4, F5, F6, F7, F8, F10; RC Refs KX13, RD22, Rd3, KZ14, RD6, RD12) that largely exist close to the boundary of the RC site.

2.18 Thus, RC appear to acknowledge that a number of significant and Major Adverse visual effects at both year 1 and 15 will arise both as a result of the RC development alone and in combined cumulative terms.

### **3.0 CONCLUSIONS**

3.1 The RC Marked up Tables includes a series of amended assessments for the predicted landscape and visual effects of both the RC development alone and for Combined Cumulative effects of the RC and NGW developments together.

3.2 The RC amendments have reduced the predicted level of effect of their proposed development and the consequential Combined Cumulative effect for a number of the landscape and visual receptors.

3.3 There are concerns as to how the RC amended assessments have been determined and there is nothing to support the altered judgements. This includes how some of the Combined Cumulative visual effects are lower for the RC and NGW developments together, than they are for the RC development alone.

3.4 In landscape terms, the most concerning amended effect is to the landscape effect of the RC development at a Site/ Local scale. This has been adjusted to Moderate Adverse (at year1) from Major Adverse, when their own ES states that this will be Major Adverse. The consequential Combined Cumulative landscape effect at this scale is thus also unjustifiably reduced.

3.5 In visual terms, whilst there are many adjustments downwards for the RC development alone, it is still evident that even if these RC amended effects were adopted, the RC development will still have a greater visual impact than the NGW development, on the 'common' receptors. It will also still contribute a proportionately greater visual impact in Combined Cumulative terms.

## Cumulative Landscape Effects Table (CLET)

Northampton Gateway (NGW) Level of Landscape Effect as per ES Appendix 4.4				Rail Central (RC) Level of Landscape Effect of the RC SRFI proposed development as assessed by FPCR (based upon the RC Proposed Development as per the Examination Submission)			'Combined' Cumulative Landscape Effect ( <b>bold</b> identifying where the RC Proposed Development results in greater impacts than NGW alone)		
NGW Receptor	Level of Effect (Construction)	Level of Effect (yr 0)	Level of Effect (yr 15)	Level of Effect (Construction)	Level of Effect (yr 0)	Level of Effect (yr 15)	'Combined' Effect (Construction)	'Combined' Effect (yr 0/1)	'Combined' Effect (yr 15)
<b>Landscape Character: National</b>									
<i>Northamptonshire Vales (NCA 89)</i>	Minor Adverse	Minor Adverse	Minor Adverse/ Negligible	Minor Adverse	Minor Adverse	Minor Adverse / <u>Negligible</u>	Minor Adverse	Minor Adverse	Minor Adverse / <u>Negligible</u>
<b>Landscape Character: Regional The East Midlands Regional Landscape Character Assessment</b>									
<i>Undulating Mixed Farmlands LCT15</i>	Minor Adverse	Minor Adverse	Minor Adverse/ Negligible	Minor Adverse	Minor Adverse	Minor Adverse / <u>Negligible</u>	Minor Adverse	Minor Adverse	Minor Adverse / <u>Negligible</u>
<b>Landscape Character: County The Current Landscape Character Assessment for Northamptonshire</b>									
<i>The Tove Catchment (LCA 6a)</i>	Minor/ Moderate Adverse	Minor/ Moderate Adverse	Minor Adverse	Minor Adverse / <u>Negligible</u>	Minor Adverse / <u>Negligible</u>	<del>Minor Adverse</del> / <u>Negligible</u> <u>Neutral</u>	Minor/ Moderate Adverse	Minor/ Moderate Adverse	<del>Minor</del> / <b>Moderate Adverse</b>
<i>Bugbrooke and Daventry (LCA 13b)</i>	Minor Adverse	Minor Adverse	Minor Adverse/ Negligible	<del>Minor</del> / <b>Moderate</b> Adverse	<del>Minor</del> / <b>Moderate</b> Adverse	<u>Negligible</u> <u>Neutral</u> <del>Minor</del> / <del>Moderate</del> Adverse	Minor/ Moderate Adverse	<b>Minor</b> / <b>Moderate Adverse</b>	<del>Minor</del> / <b>Moderate Adverse</b>
<b>Landscape Character: Local / Site Context</b>									
NGW Site and Immediate Landscape Context – SRFI Site ('Main Site')	Major Adverse	Moderate/ Major Adverse	Moderate Adverse	Moderate Adverse	Moderate Adverse	Minor/ Moderate Adverse	Major Adverse	Moderate/ Major Adverse	Moderate Adverse
Rail Central (RC) Site and Immediate Landscape Context – SRFI Site ('Main Site')	Moderate Adverse	Minor/ Moderate Adverse	Minor Adverse	Major Adverse	<u>Moderate</u> / <del>Major</del> Adverse	<u>Moderate</u> / <del>Moderate</del> / <del>Major</del> Adverse	<b>Major Adverse</b>	<b>Major Adverse</b>	<u>Moderate</u> / <del>Moderate</del> / <del>Major</del> Adverse

## Cumulative Visual Effects Table (CVET)

Northampton Gateway (NGW) Level of Visual Effect as per ES Appendix 4.5				Rail Central (RC) Level of Visual Effect of the RC SRFI proposed development as assessed by FPCR (based upon the RC Proposed Development as per the Examination Submission)				'Combined' Cumulative Visual Effect ( <b>bold</b> identifying where the RC Proposed Development results in a greater impacts than NGW alone)	
NGW Receptor Location	NGW Ref	Level of Effect (yr 0)	<u>Level of effect Yr 15</u>	RC Equivalent Receptor Location	RC Ref	Level of Effect (yr 1)	Level of Effect (yr 15)	'Combined' Effect (yr 0/1)	'Combined' Effect (yr 15)
<b>Settlement and Residential Receptors</b>									
Properties and locations at Milton Malsor	<b>P1</b>	Moderate Adverse	Minor/Moderate Adverse	Properties on Barn Lane, Rectory Lane and Collingtree Rd, Milton Malsor	<b>R8a, R8b, R9, R10</b>	<u>R8a - Major Adverse</u> <u>R8b - Negligible</u> <u>R9 - Minor Adverse</u> <u>R10 - Moderate Adverse</u> <u>Up to Major Adverse</u>	<u>R8a - Minor Adverse</u> <u>R8b - Negligible</u> <u>R9 - Negligible</u> <u>R10 - Negligible</u> <u>Up to Moderate / Major Adverse</u>	<u>R8a - Major Adverse</u> <u>R8b - Minor Adverse</u> <u>R9 - Minor Adverse</u> <u>R10 - Moderate Adverse</u> <u>Up to Major Adverse</u>	<u>R8a - Moderate/Minor</u> <u>R8b - Minor adverse</u> <u>R9 - Negligible</u> <u>R10 - Negligible</u> <u>Up to Moderate Adverse</u>
Maple House and property south of road close to rail bridge	<b>P2</b>	Moderate Adverse	Minor/Moderate Adverse	63 Collingtree Rd and Maple House	<b>R11a, R11b</b>	<u>Minor Adverse and Moderate Adverse</u> <u>R11a - Moderate Adverse</u> <u>R11b - Minor Adverse</u>	<u>Minor Adverse and Moderate Adverse</u> <u>R11a - Moderate Adverse</u> <u>R11b - Minor Adverse</u>	<u>Moderate Adverse</u> <u>R11a - Minor Adverse</u> <u>R11b - Negligible</u>	<u>Minor/Moderate Adverse</u> <u>R11a - Negligible</u> <u>R11b - Negligible</u>
Properties and locations at Collingtree	<b>P4</b>	Minor/Moderate Adverse	Minor Adverse	Collingtree and Grange Park	<b>R15</b>	<u>Minor Adverse</u> <u>Negligible</u>	<u>Minor Adverse</u> <u>Negligible</u>	<u>Negligible</u> <u>Minor / Moderate Adverse</u>	<u>Negligible</u> <u>Minor Adverse</u>
West Lodge Cottages	<b>P5</b>	Moderate Adverse	Minor/Moderate Adverse	Courteenhall West Lodge & West Lodge Cottages	<b>R17b</b>	<u>Minor / Moderate Adverse</u> <u>Minor</u>	<u>Minor / Moderate Adverse</u> <u>Minor Adverse</u>	Moderate Adverse	<u>Minor / Moderate Adverse</u> <u>Minor Adverse</u>

Courteenhall West Lodge/ Farm	<b>P6</b>	Moderate /Major Adverse	Minor/ Moderate Adverse	Courteenha ll West Lodge & West Lodge Cottages	<b>R17b</b>	<del>Moderate</del> - <del>Minor</del> Adverse	<del>Minor</del> / <del>Moderate</del> <del>Minor</del> Adverse	Moderate/ <del>Major</del> Adverse	<del>Moderate</del> - <del>Minor</del> Adverse
Courteenhall House and associated dwellings / outbuildings (Grade II* listed)	<b>P7</b>	Minor Adverse/ Negligible	Minor Adverse/ Negligible	Courteenhall	<b>R16</b>	<del>Negligible</del> <u>No Change</u>	<del>Negligible</del> <u>no change</u>	<del>Minor Adverse</del> / <del>Negligible</del> <del>Nil</del>	<del>Minor Adverse</del> / <del>Negligible</del> <del>Nil</del>
Properties and locations at Courteenhall	<b>P8</b>	Negligible/ None	Negligible/ None	Courteenhall	<b>R16</b>	Negligible/ None	Negligible/ None	Negligible/ None	Negligible/ None
Blisworth Lodge	<b>P9</b>	Minor/ Moderate Adverse	Minor Adverse	Blisworth Lodge	<b>R19</b>	Major Adverse	Major Adverse	<b>Major Adverse</b>	<b>Major Adverse</b>
Properties and locations on north eastern edge of Blisworth	<b>P10</b>	Minor/ Moderate Adverse	Minor Adverse	64-82 Courteenhall Road, Blisworth	<b>R18</b>	<del>Major</del> - <del>Moderate</del> Adverse	<del>Major</del> - <del>Moderate</del> Adverse	<del>Major</del> - <del>Minor</del> Adverse	<del>Major</del> - <del>Minor</del> Adverse
Properties on Northampton Rd	<b>P11</b>	Minor Adverse	Minor Adverse/ Negligible	Includes Railway Cottages and Willow Lodge	<b>R1- R2</b>	Major Adverse	<del>Major</del> - <del>Adverse</del> <u>R1 – Moderate Adverse</u> <u>R2 – Minor Adverse</u>	<del>Major</del> - <del>Adverse</del> <del>Nil</del>	<del>Major</del> - <del>Adverse</del> <del>Nil</del>
Hill Farm, Gayton Road	<b>P12</b>	Minor Adverse	Minor Adverse/ Negligible	Hill Farm, Gayton Road	<b>R5</b>	Moderate/ <del>Major</del>	Moderate/ <del>Major</del>	<del>Moderate</del> / <del>Major</del> <del>Minor</del> Adverse	<del>Moderate</del> / <del>Major</del> <del>Negligible</del>

						Adverse	Adverse		<del>Adverse</del>
Properties and locations at Grange Park	<b>P13</b>	Minor Adverse	Minor Adverse/ Negligible	Collingtree and Grange Park	<b>R15</b>	<del>Minor Adverse/</del> Negligible	Negligible	Minor Adverse	Minor Adverse/ Negligible
Properties and locations at Spyglass Hill, Merefield and Blacky More	<b>P14</b>	Minor Adverse	Minor Adverse/ Negligible	Northampton	<b>R13/ R14</b>	Minor Adverse	Minor Adverse/ Negligible	Minor Adverse	Minor Adverse/ Negligible
Properties and locations at Wootton	<b>P15</b>	Minor Adverse	Minor Adverse/ Negligible	Northampton	<b>R13/ R14</b>	Minor Adverse	Minor Adverse/ Negligible	Minor Adverse	Minor Adverse/ Negligible

### Public Rights of Way (PROW)

Public Footpath	<b>F1</b>	Moderate/ Major Adverse	Moderate Adverse	Public Footpath	<b>KX13</b>	Major Adverse	Major Adverse	<b>Major Adverse</b>	<b>Major Adverse</b>
Public Footpath	<b>F4</b>	Moderate Adverse	Minor/ Moderate Adverse	Public Footpath	<b>KX13</b>	Major Adverse	Major Adverse	<b>Major Adverse</b>	<b>Major Adverse</b>
Public Footpath	<b>F5</b>	Moderate Adverse	Minor/ Moderate Adverse	Public Footpath	<b>RD22</b>	Major Adverse	Major Adverse	<b>Major Adverse</b>	<b>Major Adverse</b>
Public Footpath	<b>F6</b>	Minor/ Moderate Adverse	Minor Adverse	Public Footpath	<b>RD3</b>	Major Adverse	Major Adverse	<b>Major Adverse</b>	<b>Major Adverse</b>
Public Footpath	<b>F7</b>	Minor/ Moderate Adverse	Minor Adverse	Public Footpath	<b>KZ14</b>	Major Adverse	Major Adverse	<b>Major Adverse</b>	<b>Major Adverse</b>
Public Bridleway	<b>F8</b>	Minor/ Moderate Adverse	Minor Adverse	Public Bridleway	<b>RD6</b>	Major Adverse	Major Adverse	<b>Major Adverse</b>	<b>Major Adverse</b>
Public Footpath forming part of the	<b>F9</b>	Minor Adverse	Negligible/ Minor Adverse	Public Footpath forming part of the Grand	<b>GUCW</b>	Moderate/ <del>Major</del> Adverse	<del>Minor/</del> Moderate Adverse Negligible	<del>Moderate/</del> Major Adverse	<del>Minor/</del> Moderate Adverse Negligible

Grand Union Canal Walk				Union Canal Walk					
Public Footpath	<b>F10</b>	Minor Adverse	Negligible/ Minor Adverse	Public Footpath	<b>RD12</b>	Major Adverse	Moderate Adverse	<b>Major Adverse</b>	<b>Moderate Adverse</b>
Public Footpath forming part of the Midshires Way	<b>F11</b>	Minor Adverse	Negligible/ Minor Adverse	Public Footpath forming part of the Midshires Way	<b>MSW</b>	<del>Moderate</del> Minor Adverse	<del>Moderate</del> Minor Adverse	<del>Moderate</del> Minor Adverse	<del>Moderate</del> Adverse <u>Negligible</u>
Public Footpath	<b>F12</b>	Minor/ Moderate Adverse	Minor Adverse	Public Footpath	<b>KX10</b>	Moderate Adverse	Moderate Adverse	<b>Moderate Adverse</b>	<b>Moderate Adverse</b>

### Roads

Courteenhall Road	<b>R6</b>	Minor Adverse	Negligible/ Minor Adverse	Courteenhall Road	<b>CRd</b>	<del>Moderate</del> Minor Adverse	<del>Minor</del> Moderate Adverse	<del>Minor</del> Moderate Adverse	<del>Minor</del> Moderate Adverse
Gayton Road, Blisworth	<b>R7</b>	Negligible / Minor Adverse	Negligible	Gayton Road, Blisworth	<b>GRd1 GRd2</b>	<del>Minor/ Moderate</del> Adverse <u>GRd1 - Minor</u> <u>GRd2 - Minor</u>	<del>Minor</del> Adverse <u>GRd1 - Negligible</u> <u>GRd2 - Minor</u>	<del>Minor/ Moderate</del> Adverse <u>GRd1 - Minor/Negligible</u> <u>GRd2 - Minor/Negligible</u>	<del>Minor</del> Adverse <u>GRd1 - Negligible</u> <u>GRd2 - Minor/Negligible</u>



A43	<b>R8</b>	Negligible / Minor Adverse	Negligible	A43	<b>Not identified as a visual receptor by RC</b>	Moderate Adverse (No assessment by RC) <u>Moderate/Minor</u>	<del>Minor/Moderate Adverse</del> (No assessment by RC) <u>Minor / Negligible</u>	<del>Moderate Adverse</del> <u>Minor Adverse</u>	<del>Minor/Moderate Adverse</del> <u>Negligible</u>
Northampton/ Towcester Rd		Minor Adverse	Negligible/ Minor Adverse	Northampton/ Towcester Rd	<b>TRd</b>	Major Adverse	<del>Moderate</del> <u>Minor Adverse</u>	<b>Major Adverse</b>	<del>Moderate Adverse</del> <u>Minor/Negligible</u>

### Other Visual Receptors

Northampton Loop Railway Line (NLRL)	<b>O1</b>	Minor/Moderate Adverse	Minor Adverse	Northampton Loop Railway Line (NLRL)	<b>Not identified as a visual receptor by RC</b>	<del>Moderate</del> <u>Minor Adverse</u> (No assessment by RC)	Moderate Adverse (No assessment by RC)	<b>Moderate Adverse</b>	<del>Moderate</del> <u>Minor Adverse</u>
West Coast Mainline Railway (WCMLR)	<b>O2</b>	Minor Adverse	Negligible/ Minor Adverse	West Coast Mainline Railway (WCMLR)	<b>Not identified as a visual receptor by RC</b>	<del>Minor</del> <u>Moderate Adverse</u> (No assessment by RC)	<del>Minor/Moderate</del> <u>Negligible Adverse</u> (No assessment by RC)	<del>Moderate Adverse</del> <u>Minor/Negligible</u>	<del>Minor/Moderate</del> <u>Negligible Adverse</u>

Please also refer to the Rail Central DCO Application

<https://infrastructure.planninginspectorate.gov.uk/projects/east-midlands/rail-central-strategic-rail-freight-interchange/>

LVIA Chapter 15 of the ES, and associated Appendices, plans, figures and photomontage visualizations illustrating both the parameters and illustrative masterplan layouts at year 1 winter and year 7 & 15 summer views

<https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR050004/TR050004-003409-6.1.%20ES%20Chapter%2015.pdf>

## Appendix 3

### Northampton Gateway – Background Sound Levels

1. There was discussion at ISH4 held on 12<sup>th</sup> March 2019 regarding the approach used to determine the background sound levels used as part of the assessment of operational sound from the proposed SRFI. Rail Central had criticised the approach.
2. This note summarises the Applicant's position on this issue.
3. Paragraph 8.3.64 of the ES describes how the potential sound impacts from the operation of the Northampton Gateway SRFI have been identified based on the principles of BS 4142:2014 and how that approach requires a comparison between the expected level of operational sound from the SRFI and the existing background sound level at the receptor locations. Consequently, there was a need to quantify the background sound level at the various receptor locations.
4. As stated in paragraph 8.4.6 of the ES, wind direction can have a significant effect on noise levels, and it goes on to state that noise levels generally increase downwind of the source and decrease upwind of the source. The magnitude of these changes increases as the distance between the source and receptor increases; for a receptor very close to a source, little difference in noise level would be expected under different wind directions.
5. It is also the case that when compared to a neutral situation, i.e. with no wind, the reduction in noise levels when a receptor is upwind of the source is typically greater than the corresponding increase when a receptor is downwind of the source.
6. Road traffic noise from the M1 is a dominant noise source in the area around the SRFI and the wind direction will change how much the motorway affects the background sound levels at any location at any one time.
7. Paragraphs 8.4.23 – 8.4.26 of the ES explain how the results of the background noise surveys were differentiated depending on the wind direction that existed during the measurements. Where the wind direction is south-westerly, which is the prevailing wind direction in the UK, lower levels of road traffic noise from the M1 would be expected at the receptors to the west/south-west of the motorway, as they are located upwind of it.
8. The noise survey results presented in Appendix 8.11 of the ES indicate that this was indeed the case for monitoring positions that are west/south-west of the motorway, such as L4 and L5. For positions close to the motorway, such as L2, there was little variation in the measured noise levels for different wind conditions.
9. BS 4142:2014 requires that, when determining the background sound level, the approach taken should quantify what is typical during a particular time period.
10. As stated in paragraph 8.4.26 of the ES, the modal value (i.e. the most frequently occurring value) of the noise survey results at each monitoring location was used for the day and night-time assessment periods as a means of identifying what was typical.
11. However, Paragraph 8.4.27 of the ES notes that in some situations the background sound level was not evenly distributed around the modal value. Consequently, there was a risk that using the modal value alone might over-estimate the background noise

level and hence risk underestimating the potential impact of noise from the operation of the SRFI.

12. Paragraph 8.4.28, therefore, describes the approach used to see if that unevenness existed and how it was addressed. The outcome was that, for some locations, two background sound levels were identified for a given wind direction – the modal value; and where there was unevenness in the results, the lower quartile value was additionally used as a sensitivity test.
13. The sensitivity test therefore takes account of the potential differences in the distribution and range of measured background sound levels at the different locations.
14. Appendix 8.11 of the ES presents the results of noise surveys for each monitoring location, and indicates the modal value, the lower quartile value, and whether the difference between the two indicates that the latter should be used as an additional sensitivity test. Appendix 8.15 shows the detailed assessment comparing the predicted sound from operation of the SRFI with the modal value of background sound at the relevant receptors and, where required, in addition, the lower quartile sensitivity test value of the background sound.
15. As mentioned above, using only the modal value could risk over-estimating the level of background sound at the receptors, which in turn may under-estimate the potential impact of the operational sound from the SRFI as assessed according to BS 4142.
16. By adopting this approach, the applicant has provided a robust assessment of this element of the proposal.
17. The Rail Central approach to their assessment has been different. The background noise level was defined as a mean average value of the various results. Depending on the distribution of the measured noise level data, using this value may not always represent the typical (or modal) value of the data.
18. Furthermore, RC did not differentiate the background noise results for different wind directions with respect to the dominant existing sources of background noise, which is primarily road traffic on the M1. The data from Northampton Gateway shows that there are material differences in background noise levels depending on the direction of the wind relative to the M1.
19. Having said that, some allowance of wind direction was made by RC in their assessment, but only in terms of the relevant receptor being downwind from their SRFI site; clearly the SRFI site does not affect the existing background noise levels.
20. For night-time, RC focused on the hours between 23.00 and 01.00. The background noise level at that time may be higher than the typical value when the whole 8-hour night period is considered. As the method used for the assessment of operational noise uses the difference between the predicted noise from the SRFI site and the background noise level at the receptor, the impact may be underestimated if the value used for the background noise is higher than it might be.

## Appendix 4

### Applicant's summary submissions in respect of Waste Chapter and Ex Parte Hardy

1. During ISH5 the Examining Authority ('ExA') requested that the Applicant provide a written summary of its submissions regarding the concerns voiced by the ExA in respect of the Waste Chapter of the Environmental Statement<sup>1</sup> ('ES'), and in particular the relevance of the decision in *R v Cornwall County Council ex parte Hardy* [2001] Env LR 473 in that context.
2. This Note is intended to provide the requested summary. However, it should be read in combination with the two other written submissions which the Applicant has provided in respect of *ex parte Hardy*. These are:
  - Appendix 1 to Document 8.1 (submitted pursuant to Deadline 1); and
  - Section 5 of Document 8.19 (submitted pursuant to Deadline 5).
3. The Note avoids repetition of matters already stated in those earlier documents wherever possible, so it is imperative that those documents are considered also.

### **The ExA's Concern**

4. Paragraph 14.4.13 of the ES provides as follows:

*"A detailed review of the local waste facilities will be completed by the site contractor during the construction phase, and the site operator during the operational phase prior to waste disposal. This would establish the most appropriate waste management options for the given waste stream".*

5. The Applicant understands the ExA's concern to be that this approach as set out in the ES, in providing for a "detailed review of the local waste facilities" after a development consent order ('DCO') has been granted, could give rise to a material significant environmental effect that has not been considered by the decision-maker in determining to grant.
6. On that basis, the ExA queries whether the decision to grant would suffer the same failing as that in *ex parte Hardy*; where planning permission was granted by a decision-maker in ignorance of whether there was likely to be a significant adverse effect.
7. As the Applicant explained in the course of ISH5, the ExA's concern is misplaced.

### **The decision in ex parte Hardy**

8. In *ex parte Hardy* the Court was concerned with the likelihood of adverse impacts on a European Protected Species, enjoying strict protection under the Habitats Directive.

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<sup>1</sup> Chapter 14 of the Environmental Statement

The relevant circumstances were that it was not known whether bats were roosting in particular mineshafts on the development site. In this context Harrison J concluded:

- *“There was evidence in the ecological report that bats or their resting places may be found in the mine shafts if surveys were carried out”*; and
- *“If their presence were found by the surveys and if it were found that they were likely to be adversely affected by the proposed development [then] it [was]... an inescapable conclusion, having regard to the system of strict protection for these European protected species, that such a finding would constitute a significant adverse effect”*,

9. In such circumstances the Court found that it was not appropriate to impose a condition on a grant of planning permission requiring the undertaking of surveys to determine whether bats were present. Rather, the results of the survey should inform the decision whether or not to grant planning permission.

10. That is the extent of the decision in *ex parte Hardy*. Crucially, that case is **not** authority for either of the following propositions, namely that

- ‘it is not appropriate to impose conditions requiring the undertaking of surveys in respect of a potential adverse effect’; or that
- ‘assessment as to how best an adverse effect can be mitigated cannot be deferred until after the grant of permission/consent’.

Further, to a material extent, *ex parte Hardy* turned on its own particular facts.

11. These matters have all been recognised in subsequent caselaw, notably the decisions in *R v Rochdale Metropolitan Council (ex parte Milne)* [2001] Env LR 22 and *R (on the application of PPG11 Ltd) v Dorset County Council* [2003] EWHC 1311, to which the Applicant has already referred in its previous submissions. In this regard, the Applicant asks that the ExA note the following:

- First, as regards the proposition that each case will turn on its own particular facts, and that *ex parte Hardy* turned on its own particular facts:
  - In *PPG11 Ltd*, Mr Justice Mackay, stated:  
*“Each case will turn on its own particular facts”*<sup>2</sup>.
  - In the same case, when considering the decision of Harrison J in *ex parte Hardy*, Mr Justice Mackay observed:  
*“It is interesting to read on in the Judgment. Harrison J quashed the grant solely on the basis of the Council’s decision vis-à-vis the bats. The difference between their approach to the bats on the one hand and the badgers and the liverwort on the other was that the former, as he stressed in the Judgment, was a European Protected Species, the distinction on which the case appears to have*

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<sup>2</sup> See paragraph 52(3) of *PPG11 Ltd*.

*turned. He did not need to decide what the position would have been had the bats not have been in the picture, but paragraph 65 strongly suggests it would have been different...*<sup>3</sup> (emphasis added)

- Secondly, as regards the proposition that it is inappropriate to impose a planning condition (requirement) on a planning permission (development consent order) which provides for the carrying out of surveys in connection with a potential adverse effect

- o In PPG11 Ltd, Mr Justice Mackay, stated:

*“The imposition of a condition requiring further investigation of a potential adverse effect **is neither necessarily nor invariably an erroneous approach in law**, or evidence of an irrational assessment of the adequacy of the environmental information”*<sup>4</sup> (emphasis added).

*“Hardy does not mean that a defendant cannot form the decision that it does not need a survey to reach a conclusion about the absence of significant effect; and **where such a defendant in fact goes on to obtain or make provision for a survey that is no more than a prudent approach...**”*<sup>5</sup> (emphasis added)

- Thirdly, as regards the question of whether the determination as to how best an adverse effect can be mitigated can be deferred until after a grant of planning permission or development consent:

- o In Milne Mr Justice Sullivan observed

*“In the case of the bats and the greater crested newts that may be on this site (see above), I do not see why the “measures envisaged to avoid, reduce or remedy” possible harm to them should not comprise the undertaking of further surveys, **discussion of the findings of those surveys with English Nature and devising detailed mitigation in the light of those discussions**”*<sup>6</sup> (emphasis added).

12. In the light of the above legal summary, it is clear that

- Ex parte Hardy turned on its own facts;
- The inclusion of requirements providing for the undertaking of assessments following the grant of a DCO is in no way necessarily unlawful/irrational
- It is entirely acceptable for the detail of a mitigation strategy to be deferred until after the grant of the DCO.

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<sup>3</sup> See paragraph 42 of PPG11 Ltd.

<sup>4</sup> See paragraph 47(6) of PPG11 Ltd.

<sup>5</sup> See paragraph 46 of PPG11 Ltd.

<sup>6</sup> See paragraph 132 of Milne.

### **The Applicant's position as regards Waste**

13. As the Applicant confirmed in the response to ExQ1.15.5, "*The waste assessment recorded within the Environmental Statement, including the assessment of local waste facilities, is comprehensive so as capture the likely significant environmental impacts*".

### **Construction, demolition and excavation ('CDE') waste**

14. For CDE waste the ES confirms that the effect, after taking into account recycling, is negligible (ES Paragraph 14.5.19). Such assessment is grounded in the transparent scoring mechanism set out in the Chapter.

15. The ES cannot identify exactly which waste arising would be sent to which facility at the present time; any attempt to do so would be wholly premature. Crucially however, the ES does set out at Paragraph 14.4.10 that sufficient capacity is available at a regional level to accommodate the relevant wastes produced<sup>7</sup>.

16. In addition, the Applicant provided further detail in this regard when responding to ExQ1.15.16. In answering that question the Applicant identified the available waste management capacity for different types of waste arising.

17. The purpose of paragraph 14.4.13 is, in regard to CDE waste, that the Contractor confirm the exact waste facility(ies) to be used, depending on the particular waste arising. This will be set out as part of the phase specific construction environmental management plan (P-CEMP) under Requirement 12 which, for waste, is to be provided in accordance with the Framework Site Waste Management Strategy (ES Appendix 14.2).

18. However, this detailed review is solely for the purpose of determining the exact facility to be used and, as capacity is available locally/regionally, whichever facility is used **it would not alter the conclusion in the ES that the impact of CDE waste is negligible.**

### **Operational waste**

19. The same analysis holds good in respect of Operational Waste. In this regard the only material difference is that the conclusion which the ES reaches in respect of this category of waste is that the effect is Minor Adverse (ES para 14.5.28).

20. Again the ES cannot identify precisely at this stage which landfill facility will be used. Again, however, it sets out at para 14.4.10-12 that sufficient capacity is available

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<sup>7</sup> In fact, as is stated at ES Paragraph 14.4.12, "*...most waste types can be disposed of locally*". However, to the extent that it may not be possible to dispose of certain non-inert wastes locally, there is demonstrable capacity for such wastes at a regional level and for robustness in the assessment the entire waste stream is taken to be disposed of regionally

at either a local or regional level. Further, as explained above in respect of CDE waste, the Applicant elaborated on the position in its response to ExQ1.15.16 which set out the available waste management capacity. In this regard the Applicant confirmed that there is 0.87mpta (million tonnes per annum) of inert landfill waste capacity available, along with 0.11mpta of both non-inert and hazardous landfill capacity available. The predicted waste arising is only 84,027 tonnes per annum (0.084mpta), and can clearly be accommodated.

21. As in respect of CDE waste, the intention of ES Paragraph 14.4.13 is to allow for the particular waste facility(ies) to be identified by each operator within the site. This will be confirmed within the scheme for waste management that is to be submitted for Requirement 27. However, this “detailed review” is solely for the purpose of determining the exact facility to be used and this **would not alter the conclusion in the ES that the impact of operational waste is minor adverse.**

### **Conclusions**

22. It is entirely appropriate for identification of this aspect of the waste mitigation strategy to be deferred, as Para 14.4.13 of the ES provides, until after the grant of DCO (during the construction and operational phases, prior to waste disposal).
23. The ES has comprehensively and transparently assessed the environmental effects of the wastes generated by Northampton Gateway, and has concluded such effects to be negligible (CDE) and minor (Operational) respectively. Detail as to the anticipated waste arisings, and the very extensive local/regional capacity to accommodate those arisings, has been provided to the ExA through the ES and in answer to the ExA's Written Questions. Accordingly, the ExA has more than sufficient environmental information to reach a positive conclusion as regards this aspect of the proposed development and to conclude there is no likely significant effect in terms of distance to be travelled to dispose of waste and available capacity.
24. The fact that ES Paragraph 14.4.13 defers the identification of a particular detail of the proposed mitigation (ie where the waste will be disposed of) in no way causes the proposed development to fall foul of the decision in ex parte Hardy. Rather, it is precisely the type of deferral envisaged by Sullivan J in Milne at Paragraph 132 of that decision (see above).
25. The decision in ex parte Hardy quite simply has no application or relevance in the present context.



## **Appendix 5**

### **Summary of Key Differences between Application Cumulative Impact Assessment and Updated Cumulative Impact Assessment with Rail Central**

### **Comparison of the original (submitted, 2018) Cumulative Impacts Assessment (CIA), and the updated CIA (January 2019)**

The following table compares the original CIA (as submitted by NGW) of Northampton Gateway with committed development, plus Rail Central, based on the information available in March/April 2018, and the updated CIA submitted in January 2019 which reflects further analysis of the submitted (accepted) Rail Central proposals of November 2018.

This comparison has been prepared in response to **agenda item 17 of ISH4 (12<sup>th</sup> March 2019)**.

A more detailed assessment of the submitted Rail Central application has been taken across many topics of the ES, and this is reflected in the table below – for example, detailed work is referred to below with regard to landscape and visual, noise, lighting and transport. However, overall there are relatively few changes to the overall conclusions of the original CIA. The **main changes are with regard to Transport** due to the changes made to the Rail Central highway mitigation strategy since March/April 2018. This is exacerbated by the ongoing uncertainty regarding the final Rail Central mitigation package and the likely impacts of the scheme with regard to highways and traffic. Associated impacts of Rail Central on air quality and noise are therefore also uncertain and potentially subject to change. Further, given the uncertainty as to both the extent and location of the traffic mitigation works that would ultimately be required in connection with Rail Central, there remains uncertainty as to a host of other issues (such as landscape and visual impacts, effect on heritage assets, etc).

Overall, both the original CIA, and the updated CIA identify potentially significant cumulative impacts with regard to:

- Socio-Economic (beneficial effects)
- Landscape and Visual effects (adverse effects)
- Noise (adverse effects)
- Cultural Heritage (adverse effects)
- Lighting (adverse effects)
- Agricultural Land (adverse effects)

The cumulative impacts on climate change would also be beneficial with regards to carbon dioxide reduction as a result of modal shift of freight from road to rail enabled by the two SRFIs, plus the provision of energy efficient buildings with on-site renewable energy generation, and sustainable drainage systems across both sites which reduce flood-risk on and off-site.

<b><u>ES Topic</u></b>	<b><u>Conclusions regarding cumulative impact of NGW (and committed development) plus Rail Central from the <b>original submitted CIA 2018</b></u></b>	<b><u>Conclusions regarding cumulative impact of NGW (and committed development) plus Rail Central from the <b>updated CIA (January 2019) – Section 2.0</b></u></b>
<b>Socio-Economic</b>	<p>ES Section 3.9 - the length of the envisaged delivery period for these large projects from approval to complete or fully occupied provides opportunities to plan for the increase in job opportunities and training. The <b>cumulative effects would be positive</b> from a socio-economic perspective over the longer-term.</p>	<p>Page 10 – 13. <b>Unchanged</b> – long-term <b>positive effects</b> are likely. Significant new employment and inward investment would result from both schemes. Benefits include a potential reduction in out-commuting from South Northamptonshire and Northampton to other areas including Milton Keynes, and an increase in more sustainable commuting patterns (shorter distances, and increased access to job opportunities by alternative, more sustainable modes of travel) – this is based on an assumption that Rail Central’s final transport mitigation package is demonstrated to be effective. Also, significant business rate generation and retention locally, and GVA of around £716 million per annum.</p> <p><b>Major beneficial</b> socio-economic cumulative impacts at the regional level over the longer-term.</p>
<b>Landscape and Visual</b>	<p>ES Section 4.7</p> <p><u>Landscape effects</u> In combination, the urbanising and large scale development influences is likely to result in a <b>Major Adverse</b> landscape effect (during construction and upon completion) at a localised and combined site wide scale.</p>	<p>Pages 14 – 21, and the detailed tables (Appendix 2 of the updated CIA) presenting the likely cumulative effects.</p> <p><u>Landscape effects</u> Landscape impact conclusions overall are <b>unchanged</b> - a <b>Major Adverse</b> cumulative landscape effect is likely at a site wide and localised scale.</p> <p>The change in the Rail Central ES which now assesses the landscape value of the site is ‘medium’ (increased from ‘low’</p>

<b><u>ES Topic</u></b>	<b><u>Conclusions regarding cumulative impact of NGW (and committed development) plus Rail Central from the <b>original submitted CIA 2018</b></u></b>	<b><u>Conclusions regarding cumulative impact of NGW (and committed development) plus Rail Central from the <b>updated CIA (January 2019) – Section 2.0</b></u></b>
	<p><u>Visual effects</u> Receptors likely to be most affected in cumulative terms will include properties on the edge of Milton Malsor and Blisworth and a number of PROW, principally around and to the east of Blisworth. Cumulative visual effects are likely to vary <b>up to Major Adverse</b> for some settlement edge properties at Milton Malsor and Blisworth. For those properties with the clearest views in these directions, the Rail Central proposal would be closer and more prominent.</p> <p>Users of a number of Public Rights of Way (PROW) west of the Main Site and south of the West Coast Main Line (WCML) will experience some significant cumulative visual effects. This includes PROW around and to the east of Blisworth. The cumulative visual effects upon users of these PROW (Refs F3 – F8) is likely to be <b>Major Adverse</b> (during construction and upon completion) and significant visual effects would arise either as a result of the Rail Central scheme only, or predominantly as a result of the Rail Central scheme. There will also be some likely <b>significant visual effects</b> arising from the Rail Central proposal on PROW to the north of Blisworth, including from</p>	<p>in 2018) is noted and considered a fair judgement. Agree with the Rail Central assessment that there are likely significant landscape effects on site and nearby at every assessed stage.</p> <p><u>Visual effects</u> Impact <b>conclusions unchanged</b> in terms of the most affected receptors, and the scale of the likely cumulative impacts. In summary this includes:</p> <p><b>Major adverse</b> effects for some settlement edge properties at Milton Malsor and Blisworth. Other similar cumulative visual effects are likely to arise for some properties on Courteenhall Rd, Northampton Rd and Gayton Rd.</p> <p><b>Major adverse</b> effects for PROWs on the edge of and to the east of Blisworth, with Rail Central clearly visible as a dominant feature in the landscape.</p>

<u>ES Topic</u>	<u>Conclusions regarding cumulative impact of NGW (and committed development) plus Rail Central from the <b>original submitted CIA 2018</b></u>	<u>Conclusions regarding cumulative impact of NGW (and committed development) plus Rail Central from the <b>updated CIA (January 2019) – Section 2.0</b></u>
	<p>the Great Union Canal Walk (Refs F9 &amp; F10).</p> <p>Unlikely to be any cumulative visual effects arising upon any properties at Collingtree where NGW is more visible, and receptors at urban Northampton locations are unlikely to experience any significant cumulative visual effects.</p> <p>Rail users will experience some visual effects. The Rail Central proposal is also likely to be screened yet to a lesser degree than NGW and would result in a relatively greater degree of visual change and effect. The cumulative visual effect for users of the NLRL over this short stretch of the line is likely to be <b>Moderate/ Major Adverse</b> (during construction and upon completion) and significant.</p> <p>Users of Courteenhall Road will experience visual effects with views from stretches of the road towards both the Rail Central proposal and the Proposed (Northampton Gateway) Development. In these views, the Rail Central proposal would be the more visually prominent of the two schemes and the resultant cumulative visual effect is likely to be up to <b>Major Adverse</b> (during construction and upon completion) and significant where visible. Similar visual effects are likely for users of the A43, Northampton Road, and Gayton Road (Blisworth).</p> <p>There would be <b>no cumulative landscape or visual effects with Rail Central arising from the Bypass Corridor proposals and no significant cumulative visual</b></p>	<p>The cumulative visual effect for users of the NLRL is likely to be <b>Moderate Adverse</b> upon completion) and significant – this is slightly reduced from the original CIA (which referred to Moderate/Major adverse on completion).</p> <p><b>No cumulative landscape or visual effects</b> with Rail Central arising from the <b>Bypass</b> Corridor proposals and no significant cumulative visual effects with Rail Central arising</p>

<u>ES Topic</u>	<u>Conclusions regarding cumulative impact of NGW (and committed development) plus Rail Central from the <b>original submitted CIA 2018</b></u>	<u>Conclusions regarding cumulative impact of NGW (and committed development) plus Rail Central from the <b>updated CIA (January 2019) – Section 2.0</b></u>
	<p><b>effects</b> with Rail Central arising from the <b>Highway Mitigation Measures</b>.</p>	<p>from the <b>Highway Mitigation Measures</b>.</p> <p><u>Overall:</u> The updated Visual Impact assessment is therefore <b>materially unchanged</b> regarding the likely cumulative and interaction effects of the two schemes, with the dominance of Rail Central on many shared receptors to the west and south-west noted, and the benefits of the NGW landscaping, screening, and site topography, identified in contrast to the characteristics of the Rail Central site.</p>
<p><b>Ecology and Nature</b></p>	<p>ES Section 5.8 – No significant residual effects are considered likely from NGW alone, or with committed development.</p> <p>As a result of the proposed mitigation measures and landscape/habitat provision by both NGW and Rail Central to off-set the majority of potential adverse impacts to ecological receptors, <b>no additional significant cumulative impacts of Rail Central with NGW are anticipated</b>.</p> <p>Regarding farmland birds specifically, both schemes support only common and widespread species common to much of the wider countryside in both the local and wider context – it is unlikely that any cumulative effects from displacement of farmland birds would be of any more than of <b>Local significance</b>.</p>	<p>Pages 22-26. <b>Assessment conclusions unchanged, but updated.</b></p> <p>Notwithstanding a number of deficiencies and problems identified with the information provided in the submitted Rail Central ES, <b>no additional significant cumulative impacts of Rail Central with NGW are anticipated</b> and the potential for significant cumulative effects is unlikely.</p> <p>The updated assessment notes the loss of four ancient and ten veteran trees as a result of the Rail Central proposal – this loss is significant.</p> <p>Unlikely that any cumulative effects from displacement of farmland birds would be of any more than of <b>Local significance</b>.</p> <p>Residual cumulative effects are likely to be <b>negligible or no</b></p>

<b><u>ES Topic</u></b>	<b><u>Conclusions regarding cumulative impact of NGW (and committed development) plus Rail Central from the original submitted CIA 2018</u></b>	<b><u>Conclusions regarding cumulative impact of NGW (and committed development) plus Rail Central from the updated CIA (January 2019) – Section 2.0</u></b>
		<b>worse than minor adverse, and not significant.</b>
<b>Geology and Soils</b>	ES Section 6.7 - <b>not anticipated to be any likely direct interfaces</b> with respect to geology, soils and groundwater the emerging 'Rail Central' SRFI.	Pages 27 – 28. <b>Assessment conclusions unchanged.</b>  NGW shares the view of Rail Central that there is <b>limited potential for any significant cumulative impacts.</b>
<b>Water Resources and Drainage</b>	ES Section 7.8 As the proposed Rail Central development would adhere to the same principles as outlined in the NPSNN with regard to reducing flood risk and limiting surface water runoff it can be considered likely that there would be <b>no cumulative adverse impact</b> of both developments being constructed. Therefore, the cumulative impact were both schemes approved and delivered is <b>minor, beneficial.</b>	Pages 29 – 30. <b>Assessment conclusions unchanged.</b>  The cumulative impact were both schemes approved and delivered is at least <b>minor beneficial.</b>  The reliance of the Rail Central drainage and surface water attenuation strategy on underground storage is noted – this is unusual for a greenfield site, and will require justification and agreement with the Lead Local Flood Authority.
<b>Noise and Vibration</b>	ES Section 8.8	Pages 31 - 41. <b>Assessment conclusions mostly unchanged, but updated</b> to consider construction noise, and railway noise and vibration. The focus remains on the two shared receptors common to both schemes regarding operational and construction noise.  <b>No adverse significant effects</b> from <u>construction</u> are expected (noise or vibration).

<u>ES Topic</u>	<u>Conclusions regarding cumulative impact of NGW (and committed development) plus Rail Central from the <b>original submitted CIA 2018</b></u>	<u>Conclusions regarding cumulative impact of NGW (and committed development) plus Rail Central from the <b>updated CIA (January 2019) – Section 2.0</b></u>
	<p><u>Road traffic noise</u> - broadly, any changes are a result of small increases in road traffic noise levels and largely result in <b>negligible impacts</b>.</p> <p>At the Roade Bypass receptor R41 Blisworth Rd during the daytime period, <b>a minor adverse impact of NGW alone will increase to a moderate adverse impact</b> due to an increase of 0.6 dB(A) between the two scenarios.</p> <p><u>Operational noise</u> – there would be only two receptor locations remaining that are likely to be affected by operational noise from both proposals.</p> <p>The rating levels from the RC development are expected to be greater than those from NGW at the two receptors by between 3 and 5 dB(A) during the day and between 4 and 6 dB(A) during the night. The initial estimates of cumulative operational sound impact under broadly south-westerly winds are generally dominated by the RC SRFI.</p>	<p><u>Road traffic noise</u> - <b>No significant changes in the road noise assessment</b> (there was no updated traffic data available), with reference made to the same receptor close to the Roade Bypass (R41) which is expected to see increased effects <b>from minor adverse to moderate adverse</b>. However, based on the submitted mitigation package from Rail Central, which may yet change, the noise impacts will not be materially altered from the original CIA – <b>negligible impacts</b> are likely.</p> <p><u>Operational noise</u> – overall conclusions <b>unchanged</b>.</p>



<b><u>ES Topic</u></b>	<b><u>Conclusions regarding cumulative impact of NGW (and committed development) plus Rail Central from the <b>original submitted CIA 2018</b></u></b>	<b><u>Conclusions regarding cumulative impact of NGW (and committed development) plus Rail Central from the <b>updated CIA (January 2019) – Section 2.0</b></u></b>
	<p>Based on the results of both the initial estimate of impact and the consideration of context, the cumulative assessment of sound from operational activities taking place at both the Northampton Gateway and Rail Central under broadly south-westerly winds has indicated that <b>adverse impacts and effects could occur during both the daytime and night-time period</b> at the two shared receptor locations. In particular, the impact would be greater with the addition of RC compared with NGW operating on its own.</p>	<p><u>Railway noise</u> – potentially additional significant night-time railway noise effects could arise as a result of both schemes operating concurrently. This is based on an assumed cumulative noise from the forecasts of rail traffic in the longer-term. The detail of the timing of individual rail paths to either site is unknown at this stage, so this assessment is relatively high-level and worst-case.</p> <p><b>Overall</b>, the cumulative impact of both NGW and Rail Central operating at the same time is likely to result in a <b>greater number of adverse noise effects</b> when compared to NGW alone.</p>
<b>Air Quality</b>	<p>ES Section 9.8</p> <p><u>Construction</u>            There is some overlap in terms of local receptors being within 350m of both RC and NGW (e.g. east of Milton Malsor village and at Courteenhall West Lodge) if both schemes were approved and constructed at the same time. However, given the predominant wind direction (south-west), it is unlikely that construction dust from both schemes would frequently be blown into these areas. Overall cumulative effects from construction are considered <b>negligible</b>.            Furthermore, if both schemes mitigate their own dust impacts, there should be no significant cumulative impacts.</p>	<p>Pages 42 – 45.  <b>Assessment conclusions unchanged.</b></p> <p><u>Construction</u>            If both schemes effectively mitigate their own dust emissions, there should be no significant cumulative construction dust effects. (i.e. Construction dust effects will <b>not be significant (negligible)</b>).            Cumulative construction traffic effects would <b>not be significant</b> based on the limited likely overlap of construction traffic routeing on minor roads, and the fact that construction traffic would avoid Northampton’s central AQMAs.</p>

<b><u>ES Topic</u></b>	<b><u>Conclusions regarding cumulative impact of NGW (and committed development) plus Rail Central from the <b>original submitted CIA 2018</b></u></b>	<b><u>Conclusions regarding cumulative impact of NGW (and committed development) plus Rail Central from the <b>updated CIA (January 2019) – Section 2.0</b></u></b>
	<p><u>Operational</u> – adding assumptions about Rail Central and the highways mitigation measures emerging at MARCH 2018 to the assessment of cumulative effects of NGW with committed developments (a comprehensive list contained within the NSTM transport model) results in no change in the significance of any effect at any receptors – the likely cumulative effects on air quality are considered <b>negligible</b>.</p>	<p><u>Operational</u> – traffic impacts on air quality is likely to be <b>negligible</b> at all receptors, but it is understood that further transport assessment work is being undertaken by Rail Central. However, NGWs assessment is that there is likely to be sufficient headroom at each shared sensitive receptor locations to prevent any significant impacts.</p>
<b>Cultural Heritage</b>	<p>ES Section 10.9</p> <p>The likely cumulative effects will be limited to the Milton Malsor Conservation Area, and Mortimers Grade II listed building in Milton Malsor. The combination of the two sites would result in the further reduction of these two assets and result in increased, <b>Moderate Adverse</b> impacts. This is consistent with the likely effects on those receptors identified by the Rail Central draft ES – the primary and most apparent impacts will arise from Rail Central which would have a much more direct relationship with these assets.</p> <p>No significant cumulative effects on archaeology are identified.</p>	<p>Pages 46 – 48.</p> <p><b>Assessment conclusions unchanged.</b></p> <p>The likely cumulative effects will be limited to the Milton Malsor Conservation Area, and Mortimers Grade II listed building in Milton Malsor. The combination of the two sites would result in <b>Moderate Adverse</b> impacts.</p> <p>RC alone is assessed by both RC and the NGW ESs to have a moderate adverse impact on these receptors.</p> <p>No significant cumulative effects on archaeology are identified.</p>
<b>Lighting</b>	<p>ES Section 11.8</p> <p>Even assuming best practice lighting measures, the cumulative effects are likely to be <b>moderate adverse</b> for</p>	<p>Pages 49 – 60.</p> <p><b>Assessment conclusions updated but largely unchanged overall.</b></p>

<u>ES Topic</u>	<u>Conclusions regarding cumulative impact of NGW (and committed development) plus Rail Central from the <b>original submitted CIA 2018</b></u>	<u>Conclusions regarding cumulative impact of NGW (and committed development) plus Rail Central from the <b>updated CIA (January 2019) – Section 2.0</b></u>
	<p>many receptors. This is a result of a number of site specific issues, with the Rail Central site sitting lower in the landscape than many surrounding receptors and in a more exposed open area of countryside close to large parts of the boundaries of both Milton Malsor and Blisworth. Likely effects will be visual in the form of increased light presence and local sky glow.</p> <p>Nuisance effects (glare, hazard, loss of amenity, ecological disturbance) are likely to be eliminated, but even so cumulative effects are <b>likely to be significant</b> (i.e. greater than minor adverse).</p>	<p>A fuller assessment is provided, including completed tables of likely cumulative effects at construction and operational phases on the receptors used in the NGW ES. It includes a third table summarising and comparing the likely effects with and without Rail Central, and shows <b>a range of minor and moderate adverse effects</b>, as well as <b>negligible effects</b> on other receptors. The shared receptors most affected are:</p> <ul style="list-style-type: none"> <li>• Milton Malsor – properties on the east and south-east fringe with full or partial views;</li> <li>• Manor farm bungalow;</li> <li>• Blisworth – properties at the north-east fringe with full or partial views;</li> <li>• Grand Union Canal.</li> </ul> <p>Overall this confirms the conclusions reached in the original ES chapter (Section 11.8) remain valid: cumulative adverse effects will be <b>significant for many receptors</b>. The most common likely effects will be visual (light presence and sky glow).</p>
<b>Transportation</b>	<p>ES Section 12.8, and Technical Note 12 (Appendix 12.2 of the ES).</p> <p>Tentative conclusions were made, based on the information available from Rail Central at that time. This included a larger highway mitigation scheme at M1 Junction 15A than is now proposed by Rail Central. Assessment comprised modelling the combined impact of the two SRFI sites using the NSTM2, followed by detailed junction modelling</p>	<p>Pages 61 – 69, and Technical Note 13 (Appendix 3 of the Updated CIA report).</p> <p><b>Assessment and conclusions updated.</b> The Rail Central highway mitigation strategy changed since the original CIA. Changes include a move away from identifying highway impacts and proposing appropriate mitigation where required, to a strategy that actively encourages drivers to use the A43 corridor, including M1</p>

<u>ES Topic</u>	<u>Conclusions regarding cumulative impact of NGW (and committed development) plus Rail Central from the <b>original submitted CIA 2018</b></u>	<u>Conclusions regarding cumulative impact of NGW (and committed development) plus Rail Central from the <b>updated CIA (January 2019) – Section 2.0</b></u>
	<p>and VISSIM assessment. The assessment also considered the emerging mitigation package from Rail Central at their Stage 2 consultation.</p> <p><u>Construction effects</u> - Through agreement of construction traffic routing details and management with NCC and Highways England, adverse cumulative impacts from construction traffic would be <b>minimised</b>.</p> <p><u>Operational effects</u> - Assessment of the likely cumulative effects with both schemes operational shows <b>significant increases</b> in traffic on the:</p> <ul style="list-style-type: none"> <li>• <b>A508 corridor</b> – largely due to the NGW proposed Roade Bypass and M1 Junction 15 improvements;</li> <li>• <b>A43 and A5 corridor</b> – largely due to Rail Central, which takes access off the A43 and the M1 Junction 15A improvements.</li> </ul> <p>The assessment showed <b>reductions in traffic</b> through:</p>	<p>Junction 15A and the western half of the A5076 ring road. A reduced package of highway mitigation measures are proposed by Rail Central (from 13 junctions to 8 junctions), including significantly reduced measures at Junction 15A in comparison to that assessed in the original CIA NSTM2 and VISSIM modelling.</p> <p>Building on the earlier CIA, plus using detailed junction modelling, quantitative assessment of the likely cumulative effects was undertaken by NGW. However, there was insufficient time to update the NSTM2 and VISSIM modelling. The approach to the updated CIA was agreed with the NGW Transport Working Group in December 2018.</p> <p><u>Construction effects</u> – <b>unchanged</b> - through agreement of construction traffic routing details and management with NCC and Highways England, adverse cumulative impacts from construction traffic would be <b>minimised</b>.</p> <p><u>Operational effects</u> – <b>Junction 15</b> would continue to operate with <b>significant improvements</b> to performance compared to the 2031 reference case, although queuing on the M1 northbound and southbound diverge slips would worsen as compared to NGW alone.</p> <p>There would continue to be little interaction between the A508 and A43 corridors. Therefore, the <b>A508 corridor benefits</b> delivered by NGW would remain and be <b>largely unaffected</b> by the Rail Central proposals.</p>

<b><u>ES Topic</u></b>	<b><u>Conclusions regarding cumulative impact of NGW (and committed development) plus Rail Central from the <b>original submitted CIA 2018</b></u></b>	<b><u>Conclusions regarding cumulative impact of NGW (and committed development) plus Rail Central from the <b>updated CIA (January 2019) – Section 2.0</b></u></b>
	<ul style="list-style-type: none"> <li>• Blisworth;</li> <li>• Milton Malsor;</li> <li>• Roade.</li> </ul> <p>The cumulative modelling demonstrated that there would be generally little interaction between the A508 and A43 corridors.</p> <p>The addition of Rail Central and its proposed mitigation at that time, would lead to <b>increased traffic</b> on parts of the network:</p> <ul style="list-style-type: none"> <li>• Large increases in traffic along the A5076 Mere Way from the A45 Queen Eleanor Interchange;</li> <li>• Increased westbound traffic from the A45 Wootton Interchange through residential areas of Wootton and East Hunsbury;</li> <li>• Significant increases around the ring road corridor – on the A5123, A5076, and Swan Valley Way corridors;</li> <li>• Additional effects at the A45 Barnes Meadow Interchange, A45 Lumbertubs Interchange, and the A4500/A5076 gyratory – locations not adversely affected by NGW alone.</li> </ul> <p>It was noted that the <b>combined mitigation works</b> provided by NGW or proposed by Rail Central at their Stage 2 consultation (<b>in March/April 2018</b>) <b>could potentially mitigate</b> the cumulative impacts.</p>	<p>The <b>M1 northbound diverge at Junction 15A</b> would continue to operate with improvements to performance compared to the 2031 reference case. However, as in the original CIA, queuing of the slip road would increase (as compared to the NGW only scenario) and would reach back to the M1 mainline.</p> <p>The revised Rail Central strategy, with reduced scale and extent of their highway mitigation package results in <b>significant adverse and potentially severe impacts</b> – the proposed mitigation at key parts of the network does not adequately accommodate the forecast traffic demand in 2031 for Rail Central alone, and are therefore not sufficient to accommodate the combined impact of both SRFI schemes.</p> <p>The likely cumulative adverse impacts are therefore more significant than those forecast in the original CIA (when a greater package of mitigation was proposed by Rail Central). The main adverse effects are identified at:</p> <ul style="list-style-type: none"> <li>• the A5076/Towcester Road/Tesco roundabout;</li> <li>• on the A43 approach to M1 Junction 15A – this is forecast to see average queues of 1.8km in the evening peaks.</li> </ul> <p>These impacts are considered likely to be unacceptable to Highways England and NCC, and would result in a <b>‘severe’ impact</b>.</p>

<b><u>ES Topic</u></b>	<b><u>Conclusions regarding cumulative impact of NGW (and committed development) plus Rail Central from the original submitted CIA 2018</u></b>	<b><u>Conclusions regarding cumulative impact of NGW (and committed development) plus Rail Central from the updated CIA (January 2019) – Section 2.0</u></b>
	<p>Even with the additional likely effects identified, the cumulative impact VISSIM modelling undertaken by NGW shows that M1 Junctions 15 and 15A would see <b>significantly improved performance</b>, with journey times for cars and HGVs reduced in both morning and evening peaks compared to the ‘reference case’. Nonetheless, there would be some <b>cumulative impacts in terms of queuing</b> not present in the NGW only scenario, including:</p> <ul style="list-style-type: none"> <li>• on the <b>M1 Junction 15</b> northbound and southbound diverges which are forecast to exceed storage capacity on the slip roads and could impact on the M1 mainline;</li> <li>• the M1 northbound diverge at <b>Junction 15A</b> in the evening peak would extend to the M1 mainline (although still an improvement on the reference case);</li> <li>• on the <b>A43</b> approach to Junction 15A average and maximum queue lengths in the evening peak would increase significantly.</li> </ul> <p>The above conclusions are explicitly presented as tentative in the absence of the final Rail Central mitigation scheme.</p> <p><u>Public transport</u> - There would be no interaction between the two public transport strategies, and <b>no adverse impacts</b>.</p> <p><u>PROW</u> - The proposed footpath connectivity for the two scheme is incompatible as proposed in March/April 2018.</p>	<p>Further analysis and detailed assessment is required to identify and quantify the <b>likely further residual adverse impacts</b> from this outcome, but are likely to include:</p> <ul style="list-style-type: none"> <li>• increased rat-running traffic in villages, and/or using the A45 and M1 Junction 15;</li> <li>• reduced performance on key routes in urban Northampton.</li> </ul> <p><u>Public transport</u> – <b>unchanged</b>. <b>No adverse</b> cumulative impacts.</p> <p><u>PROW</u> – <b>essentially unchanged</b>. The two schemes overlap with regard to route KX13. Conflicts can be avoided through amendments to the proposed Rail Central crossing of KX13</p>

<b><u>ES Topic</u></b>	<b><u>Conclusions regarding cumulative impact of NGW (and committed development) plus Rail Central from the original submitted CIA 2018</u></b>	<b><u>Conclusions regarding cumulative impact of NGW (and committed development) plus Rail Central from the updated CIA (January 2019) – Section 2.0</u></b>
		<p>over the Loop Line.</p> <p>The Rail Central proposed works at Junction 15A of the M1 do not make any provision for route KX2/LA13 which crosses the A43 south of the junction – the route would need to be incorporated (diverted) as proposed for the NGW proposed works at Junction 15A.</p> <p><b>Overall</b>, the updated CIA identifies areas where the highway network would continue to see benefits as compared with the Reference Case in 2031 (i.e. with neither scheme). However, the updated CIA also identifies <b>unacceptable adverse impacts</b> – most notably at M1 Junction 15A on the A5123 and A43 approaches, and the A5076/Towcester Road/Tesco junction in Northampton. Additional adverse impacts are possible at the on the Towcester Road corridor, and on the A5076 Upton Way corridor.</p>
<b>Agricultural Land</b>	Section 13.7 - if the Rail Central development were approved it would result in <b>a cumulative major adverse impact</b> on the agricultural land resource in the site specific and immediate local context.	<b>Assessment conclusions are unchanged.</b>
<b>Waste</b>	Section 14.8 – a <b>minor adverse</b> cumulative impact is likely.	<b>Assessment conclusions are unchanged.</b>

## Appendix 6

### Applicant's Position on Deemed Approval

1. The Applicant first set out its position in respect of deemed approval in its Post Hearing Submissions in respect of ISH1 (at **Deadline 1** see ISH1:18 **Document 8.1** REP1-019) and in response to Highway's England's comments in its response to Written Representations at **Deadline 2 (Document 8.7** [REP2-010] (pages 13 and 14)).
2. Highways England set out, in section 2 of their written submissions, paragraphs 1 – 7 [REP1-115] its concerns in relation to deemed approval, but in doing so, it is clear that they have both misunderstood the purpose of the deemed approval provisions and taken the view that they are distinct from every other statutory body and are a special case which should exempt them from such provisions..
3. The provisions are not designed to impose upon HE a design, specification or action which is unacceptable, nor do they do so. The deemed approval provisions are designed to ensure that there is engagement by HE in the approval process within a certain period, and, only failing that engagement, does the deemed approval provision operate.
4. No design, specification or other approval can be imposed upon HE because they can simply refuse to approve that within the relevant period, thus preventing the deemed approval applying..
5. The whole purpose of the deemed approval provision is to ensure that there is reasonably prompt action in response to a request for a consent. If it is felt a positive decision cannot be made within the days before a deemed consent is triggered, then a response refusing consent will prevent the deemed consent applying. The driver behind the provision is to secure engagement within a timely period.
6. Given the wide spread use of deemed approval provisions in DCO it is not credible to argue they should not apply to HE because they may have an IT failure, as was argued at the hearing. This is especially the case since the deemed approval provisions in the Northampton Gateway dDCO provide for a significantly longer period for a response than most DCO, including DCO promoted by HE.
7. Neither is it credible to argue that only HE have safety considerations and statutory obligations in relation thereto that mean they should be exempt from deemed approval provisions. HE are no different from Network Rail and other statutory authorities, such as local highway authorities, who all have a need and indeed obligations in relation to safety in the carrying out of their duties.
8. In response to the concerns raised by Highways England we have increased the response period to 42 days to give ample to time for HE to engage. This is much longer than the time period commonly seen in DCO, of 28 days.
9. As indicated, deemed approval provisions are commonly seen in approved DCO's and indeed are a common feature of DCO promoted by Highways England. As can be seen from the list at the end of this note.



10. Just looking at DCO approved in the last 2/3 years, there are four approved DCO's promoted by HE all of which include extensive use of deemed approvals, including imposing deemed approvals on
  - a. Highway Authorities
  - b. Street Authorities
  - c. Traffic Authorities
  - d. Owners/guardians of watercourses and public sewers and drains including LLFA
  - e. Environment Authority
  - f. Network Rail
11. In almost all cases the period given by HE for a response is 28 days.
12. Recent DCO promoted by other parties also commonly include deemed approvals in relation to a whole variety of matters (consistently including approvals from statutory authorities). The provisions are not only contained in articles but also widespread use of them is made in protective provisions. The period of days varies but there is a preponderance of 28 days.
13. Of particular note are two overarching deemed approval provisions in recently approved orders :
  - a. Article 57 (2) of the Port of Tilbury (Expansion) Order 2019 (just approved) which operates a deemed approval after 28 days in respect of any consent or approval sought from any relevant authority – defined in the article as an owner of a watercourse, public sewer or drain, a local authority, a traffic authority, a highway authority or a street authority; and
  - b. Article 69(2) of Silvertown Tunnel Order 2018 which operates a deemed approval after 28 days in respect of a variety of consent under various articles particularly in relation to highway works and traffic regulation in respect of consents sought from the planning authority, traffic authority, highway authority or a street authority.
14. At the hearing HE indicated that it had a carve out in respect of Article 57(2) of the Tilbury Order. The Applicant is not clear on what basis this is being said. Article 57(5) provides that the deemed approval provisions do not apply to Part 3 of Schedule 10. Schedule 10 is the schedule which contains all the Protective Provisions. Part 3 relates to the protective provisions for the benefit of the Port of London Authority. Part 9 contains the protective provisions in favour of HE and it is not excluded from the operation of Article 57(2).
15. The deemed approvals included in this dDCO are much more targeted than the overarching provisions referred to in 13. above, and the period of time more generous, when compared with the recently approved DCO, including the HE DCO.
16. There is a real life context for retaining the deemed approvals process, which is the Applicant's experience in relation to the development of large projects, such as East Midlands Gateway, and the difficulties experienced of obtaining responses from HE. If deemed approval provisions were not retained in the protective provisions then it would be necessary to amend the protective provisions to provide for the dispute resolution to apply when no response is received rather than simply to where a difference or dispute has been identified.

17. Set out below is a list of approved DCO where deemed approval provisions have been included. The provision and the subject matter to which it relates is identified and so is the number of days after which an approval is deemed.

<b>Highways England DCOs</b>			
<b>The A19/A184 Testos' Junction Alteration DCO 2018 (S.I. 2018 No. 994)</b>			
<b>Article/Provision</b>	<b>Subject Matter</b>	<b>Authority Affected</b>	<b>Period of days</b>
Article 12(6)	Temporary stopping up/diversion of streets etc.	Street authority	28 days
Article 16(11)	Traffic regulation orders	Traffic authority	28 days
Article 17(9)	Consent to discharge water	Owner of watercourse, public sewer or drain	28 days
Article 19(6)	Authority to make trial holes	Highway authority/street authority	28 days
<b>The M20 Junction 10a DCO 2017 (S.I. 2017 No.1202)</b>			
<b>Article/Provision</b>	<b>Subject Matter</b>	<b>Authority Affected</b>	<b>Period of days</b>
Article 14(6)	Stopping up/diversion of streets etc.	Street authority	28 days
Article 18(7)	Consent to discharge water	Owner of watercourse, public sewer or drain	28 days
Article 20(6)	Authority to make trial holes	Highway authority/street authority	28 days
Article 47(11)	Traffic regulation orders	Traffic authority	28 days
<b>The M4 Motorway (Junctions 3 to 12) (Smart Motorway) DCO 2016 (S.I. 2016 No. 863)</b>			
<b>Article/Provision</b>	<b>Subject Matter</b>	<b>Authority Affected</b>	<b>Period of days</b>
Article 10(4)	Alteration of layout of streets etc.	Street authority	6 weeks
Article 14(6)	Stopping up/diversion of streets etc.	Street authority	6 weeks
Article 17(9)	Consent to discharge water	Owner of watercourse, public sewer or drain	6 weeks

<b>Highways England DCOs</b>			
Article 19(6)	Authority to make trial holes	Highway authority/street authority	6 weeks
Article 43(11)	Traffic regulation orders	Traffic authority	28 days
Part 3 of Schedule 9 (protective provisions) Paragraph 24(2)	Approval of design of specified work	Network Rail	28 days + 28 days
<b>The A14 Cambridge to Huntingdon Improvement Scheme DCO 2016 (S.I. 2016 No. 547)</b>			
<b>Article/Provision</b>	<b>Subject Matter</b>	<b>Authority Affected</b>	<b>Period of days</b>
14(6)	Stopping up/diversion of streets etc.	Street authority	28 days
17(8)	Consent to discharge water	Owner of watercourse, public sewer or drain	28 days
19(6)	Authority to make trial holes	Highway authority/street authority	28 days
45(11)	Traffic regulation orders	Traffic authority	28 days
Part 3 of Schedule 9 (protective provisions) Paragraph 21(4)	Approval of design of specified works	Environment Agency	8 weeks
Part 4 of Schedule 9 (protective provisions) Paragraph 33(3)	Approval of design of specified works	Highway Authority	2 months
Part 5 of Schedule 9 (protective provisions) Paragraph 59 (2)	Approval of design of specified works	Network Rail	28 days + 28 days

**Other DCOs**

**The Port of Tilbury (Expansion) Order 2019 (S.I. 2019 No. 359)**

<b>Article/Provision</b>	<b>Subject Matter</b>	<b>Authority Affected</b>	<b>Period of days</b>
Article 22(7)	Approval for suspension of public rights of navigation	Port of London Authority	28 business days
Article 57(2)	Any application for consent, agreement, certification or approval	“relevant authority” defined as: an owner of a watercourse, public sewer or drain, a local authority, a traffic authority, a highway authority or a street authority	28 days
Part 3 of Schedule 10 (protective provisions) Paragraph 18(5)	Approval of detailed design	Port of London Authority	40 business days or 30 business days depending on the subject matter
Part 3 of Schedule 10 (protective provisions) Paragraph 20(3)	Consent to discharge	Port of London Authority	35 days
Part 4 of Schedule 10 (protective provisions) Paragraph 41(4)	Approval of design of specified works	Environment Agency	8 weeks/4 weeks
Part 5 of Schedule 10 (protective provisions) Paragraph 51(4)	Approval of details of specified works	Lead Local Flood Authority	2 months
Part 6 of Schedule 10 (protective provisions) Paragraph 64(2)	Approval of design of specific work	Network Rail	28 days + 28 days

<b>Other DCOs</b>				
Part 7 of Schedule 10 (protective provisions)	Approval of highway works	Highway Authority	28 days	
Paragraphs 85 and 86				
<b>The Eggborough Gas Fired Generating Station Order 2018 (S.I. 2018 No. 1020)</b>				
<b>Article/Provision</b>	<b>Subject Matter</b>	<b>Authority Affected</b>	<b>Period of days</b>	
Article 40(2)	Request for any consent, agreement or approval	Relevant planning authority, highway authority, street authority or the owner of a watercourse, sewer or drain	8 weeks	
Part 3 of Schedule 12 (protective provisions)	Approval of design of specified works	Canal and River Trust	35 days	
Paragraph 21(2)				
<b>The Silvertown Tunnel Order 2018 (S.I. 2018 No. 574)</b>				
<b>Article/Provision</b>	<b>Subject Matter</b>	<b>Authority Affected</b>	<b>Period of days</b>	
Article 69(2)	Application for any consent, agreement or approval under articles 6 (street works), 8 (construction and maintenance of new, altered or diverted streets), 10 (temporary stopping up and restriction on use of streets), 11 (access to works), 16 (authority to survey and investigate land) and 61 (traffic regulation measures)	Planning authority, traffic authority, highway authority or a street authority	28 days	
Part 4 of Schedule 13 (protective provisions)	Authority to discharge water under article 14	Port of London Authority	35 days	

<b>Other DCOs</b>			
Paragraph 37			
Part 6 of Schedule 13 (protective provisions)  Paragraphs 68 and 69	Approval of design of highway operations	The appropriate Council – being The London Borough of Newham or the Royal Borough of Greenwich	56 days
<b>The York Potash Harbour Facilities Order 2016 (S.I. 2016 No. 772)</b>			
<b>Article/Provision</b>	<b>Subject Matter</b>	<b>Authority Affected</b>	<b>Period of days</b>
Article 10(6)	Street works	Highway authority	28 days
Article 11(5)	Temporary stopping up of streets	Highway authority	28 days
Article 12(2)	Access to works	Highway authority	28 days
Schedule 5 (Deemed Marine Licence)  Paragraph 17(1)	Approval of method statements for the operation of licenced activities	Marine Management Organisation	3 months
Schedule 7 (protective provisions)  Paragraph 5(2)	Approval of design of specified works	Network Rail	28 days + 28 days
Schedule 9 (protective provisions)  Paragraph 7(1)	Works details	Pipeline owners/operators	45 days/30 days
Schedule 9 (protective provisions)  Paragraph 25(7)	Exercise of the identified powers (being a power conferred by articles 10 (street works), 11 (temporary stopping up of streets), 14 (discharge of water), 16 (authority to survey and investigate), 24 (compulsory and other acquisition of rights), 25 (power to override easements and other	Pipeline owners/operators	30 days + 10 days

**Other DCOs**

		rights), 29 (rights under or over streets and 30 (temporary use of land)		
Schedule 10 (protective provisions) Paragraph 7(3)		Construction methodology	Asset owners	45 days/30 days
Schedule 11 (protective provisions) Paragraph 4(11)		Detail of tidal works	Tees Port Authority	28 days

## Appendix 7

### Northampton Gateway – HGV Site Egress Restriction

1. The rationale for the imposition of a no right turn ban on HGVs leaving the main site is explained in paragraphs 12.6.24 and 12.6.25 of Chapter 12 of the environmental statement. It is further referred to in paragraphs 4.23- 4.25 and paragraphs 4.38 to 4.41 of the Transport Assessment included in Appendix 12.1 of the ES.
2. The rationale for the HGV site egress ban is not based upon a traffic impact issue but is, as explained in the ES, a response to concerns raised by the local community at an early stage in the consultation on the proposals. It has been adjudged to be a “necessary” restriction (and therefore “necessary” in the context of paragraph 4.9 of the NPSNN) to respond to the sensitivities of the local community in relation to HGV traffic.
3. The requirement 8(2)(l) provides that there will be a physical barrier at the site entrance which makes it physically impossible for the HGV traffic to turn right out of the main site and will force that traffic towards Junction 15. The monitoring system imposed by requirement 4(9) is required in addition to the physical barrier to ensure that HGVs do not simply use Junction 15 to turn and travel southwards down the A508 and thus avoid the right turn restriction.
4. Requirement 4(9) and the definitions used therein provide that the precise nature of the monitoring equipment and monitoring system (including its enforcement) be agreed at the time with the local highway authority. The local highway authority are content with this.
5. The paragraphs in the Environmental Statement and Transport Assessment referred to above make reference to automatic number plate recognition systems (such as that used for the London Ring and elsewhere), however the technology in relation to the monitoring of vehicle movements has proceeded apace and it is thought that it is desirable for there to be flexibility in the actual system to be used so that it may embrace the latest technology available at the time of it being implemented. Requirement 4(9) allows for the advances in technology to be taken advantage of at the time the appropriate monitoring system is agreed.
6. The ES Transport Assessment, and the drafting of the relevant requirement allows for the detail of the enforcement mechanism also to be discussed and agreed in detail at the time.
7. The principle of the movement which is to be prevented and the monitoring of HGVs is agreed and provides sufficient certainty that the measure proposed will be regulated through the DCO.
8. The requirement in the dDCO clearly accords with section 120 of the Planning Act 2008 in that the requirement is clearly in connection with the development for which consent is granted (120(2)). The requirement also complies with section 120(2), although it is not necessary for it to do so since section 120(2) contains only examples of what might comply with section 120(1).



9. The requirement also complies with paragraph 4.9 of the NPSNN in that, for the reasons given in paragraph 2 above, it is considered necessary. It is clearly relevant to planning and relevant to the development to be consented. No party has suggested that it would not be enforceable and that it is not precise and reasonable.
10. Whilst in response to the ExQ1.11.6 reference is made to a fine, it is acknowledged that does rather pre-empt the outcome of the discussion with the local highway authority as to the enforcement approach that they would wish to take. It is however anticipated that such a sanction would be within the range of enforcement possibilities available to the local highway authority, as envisaged in the Stanion Lane Section 106 agreement entered into in respect of another site within Northamptonshire County Council's area. That is the agreement referred to by NCC at the hearing. The Section 106 agreement relating to that development is attached at **Annex 1** to this note. The relevant parts of the s.106 agreement are sections 5 and 6 of the First Schedule.
11. There are many other examples of monitoring HGV movements. These include:-
  - (a) the SRFI at Howbury in the London Borough of Bexley which was the subject of an approval on appeal by the Secretary of State in December 2007 (Decision Letter attached at **Annex 2**). The related s.106 Undertaking is attached at **Annex 3**. The relevant parts of the undertaking are Schedule 1 paragraphs 10 to 13 and Schedule 5.
  - (b) the SRFI at Howbury which has recently been the subject of a planning inquiry in respect of which a decision is awaited from the Secretary of State. The 2007 permission had never been implemented due to the global financial crisis. The related Section 106 agreement entered into with the London Borough of Bexley is attached at **Annex 4** to this note. The relevant paragraphs are in the Fourth Schedule, paragraphs 1.1, 1.4 i) to m), 1.5.2, 1.6 and 1.7. The movements being monitored in that case were the imposition of a cap on HGV movements in relation to the very sensitive issue of the impact of HGVs on Junction 2 of the M20. Those movements relate principally to the SRN and Highways England and Kent County Council were content with the monitoring and enforcement proposed; and
  - (c) a system has been in place in relation to the development at Andover Business Park in relation to a 2010 planning permission. The s.106 Agreement is attached at **Annex 5** and the relevant section is Schedule 6 Part IV A and B. A recent appeal decision (APP/C1760/W/17/3183289) in relation to that development (relating to the constraint by HGVs on certain "barred" routes) did not suggest that the requirement to monitor HGV traffics or the ability to do so was unacceptable in relation to the CIL regulations (as was relevant in that case). The Inspector did however query the use of a standard fine in that case and suggested that there was no evidence that a fixed fine which had been imposed was the appropriate level of fine. The Inspector also disapplied the Section 106 provisions to certain barred routes which were able to be dealt with by way of traffic regulation orders. The Inspector maintained the s.106 constraint (including the barred route and fine) in relation to some routes.

12. The complexity of the Howbury arrangements and the recent Andover decision and its comments in relation to the level of fine, and use of the fine, is another reason why, having established the principle, it is appropriate to leave the precise enforcement mechanism to discussion between the local highway authority and the applicant at the relevant time.