

# **Adequacy of Consultation Reponse**

Development Consent Order for the Hinckley  
National Rail Freight Interchange

February 2023

Confidential

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## Executive summary

The Promoter, Tritax Symmetry (Hinckley) Limited, (“**the applicant**”) has applied for a Development Consent Order for the Hinckley National Rail Freight Interchange (“**the Scheme**”). Prior to the application being accepted for examination, Section 55 of the Planning Act 2008 (“**TPA 2008**”) requires that certain local authorities must be consulted upon whether an applicant has “*complied, in relation to that proposed application, with the applicant’s duties under sections 42, 47 and 48*” (“the adequacy of consultation representation”).

This response, prepared by Hinckley and Bosworth Borough Council (“**the Council**”), is the Relevant Authority’s Adequacy of Consultation (“**AoC**”) response. The response comments on the Applicant’s consultation and the pre-application process. It also sets out the Council’s position in relation to whether the Applicant has complied with its duties under S42 PA 2008 and for completeness comments on compliance with S47 and S48 of the PA 2008.

Under the provisions of TPA 08, the onus on the promoter to effectively engage with section 42 Relevant Authority was acknowledged at the outset with Hinckley and Bosworth Borough Council making a clear commitment to be proactive in its responses to all consultations. The premise being that the Authority recognised the importance of close working as a means of ensuring effective levels of consultation. It is one of the driving principles of a successful Development Consent Order. To that end the Council also sought to co-ordinate resources and responses with neighbouring authorities including Blaby District Council and Leicestershire County Council. The Council’s objectives in responding to the promoter has always been to ensure wherever possible a co-ordinated and coherent technical response to the statutory and non-statutory consultations.

As with each of the neighbouring Authorities, the Council operates with constrained resources but understands the importance of effective consultation for DCOs of the scale proposed by the Promoter. While the Council has limited experience of Nationally Significant Infrastructure Projects, it nonetheless regularly advises and support applicants in their consultations on development proposals by encouraging early and effective engagements with stakeholders.

The applicant as the promoter of the DCO was contacted early on in their preparation of their Order with the Council and others offering early advice and commitment to support an “effective” consultation exercise. The Council’s advice to the applicant was to seek genuine dialogue between the parties with meaningful consideration of the consultation responses by the applicant. In addition, the Council advised that information provided by the applicant should set out how supporting information was made available and capable of being fully scrutinised by stakeholders.

The challenge that the Council (and other Relevant Authorities) has however been presented with, almost from the outset, is precisely the opposite of effective consultation in which throughout the early stages of the process multiple instances of failures by the applicant to offer baseline evidence and assessments that underpin the assumptions regarding the scheme. This despite the relevant authorities and the Council’s frequent requests for additional information made in both writing and verbally during working groups and at other liaison meetings between the Council, its neighbouring authorities and applicant’s team. The Council has consistently reminded the applicant that it considers the information provided as part of its submission as (a) incomplete without proper or transparent source evidence base, (b) inaccurate where assessments are often based on incomplete data and or baseline information and therefore not able to be accepted or was not provided, and (c) unclear and often conflated information provided against justifications for the design and the scheme

During the S42 consultation and throughout discussions relating to the preparation of the Statement of Community Consultation (“**SoCC**”), multiple elements of the proposed scheme are ambiguous. Despite a number of attempts to seek confirmation or clarity on the baseline modelling assumptions for example, the highways modelling is incomplete. The resulting conclusion being that at the very least, any proposed mitigation expected as a result of the assessment of impacts from the model are largely theoretical. The Council is reliant on the opinions of Leicestershire County Council as Highways Authority and where the parameters of modelling was not agreed, LCC could not review any mitigation, let alone comment or agree on mitigation strategy. In reality and without the Authority confirmation, the Council are left exposed without proper engagement with the applicant on their plans or commitments.

While transport modelling might plainly be one of the most significant concerns, additional and multiple examples of the lack of transparency in provision of baseline information were highlighted during statutory consultation across numerous technical

elements of the scheme. For example, the Council's formal response to statutory consultation highlights concerns around:

- development parameters, development programme and phasing
- implementation plans
- cumulative and comparative analysis on the Drivers of Need as it relates to the justifications of National Significance in National Policy
- Land Use and Socio-economic impact
- Climate Change
- Noise and Vibration
- Landscape and Visual Effects

In underpinning the concerns raised in this adequacy of consultation, the Council has included full details of its response to consultation in Appendix 1 of this submission. In summarised form the Council's S42 consultation response ("**S42 Response**") raised four main points which it considers significant and on which it does not believe has been given sufficient consideration: -

1. **Transportation and highways:** - In addition to the Council's comments in relation to highways mitigation and scheme fix, it has raised concerns on the lack of transparency and that the rationale is based on modelling which has not been agreed with the County Council. Crucially, the support of the Highway Authority to the assumptions and methodology used, and the methodology that flows from these assumptions, has not yet been confirmed. The applicant confirmed its position on the previously proposed bypasses during the S42 Consultation at a time when the County Council, as local highway authority, had been unable to confirm that the applicant's modelling, mitigations, and conclusions in relation to both bypasses was accurate and robust. Whilst the County Council is the relevant statutory authority in respect of matters relating to highways and transport, this is an issue which clearly influences a range of other impacts within the county such as noise, air quality and sustainable travel, many of which are also the responsibility of HBBC. Accordingly, the highways position is a key concern for the Council. As indicated in the Council's response to the applicant's SoCC and again as part of the S42 Responses, the Council's position is that the published SoCC and the S42 consultation material lacks proper consideration of impacts and

consequently confidence in the consultation process. The applicant should, at the very least, be required to undertake targeted consultation – as is often the case with other Orders - in relation to proposed highways mitigation strategy. The Council considers that many opportunities have been lost in supporting more robust highways mitigation plans that could have been included if the applicant had taken fuller opportunity to engage with the County Council as Highways Authority.

2. **Drivers of Need and Operation of the Development:** - There is a network of existing and recently approved rail freight interchanges and distribution centres in the midlands. The Council is concerned that the applicant has not sufficiently demonstrated the specific market need for this Scheme in this location. In addition, the Scheme is already well served by the strategic highway network, albeit that the M69 north is already at capacity, a fact acknowledged by the Applicant. The Council are concerned that any requirement relating to a low minimum use of the rail freight interchange in effect means that the Scheme will operate substantially as a road served distribution centre and constitute a development type that should more properly have been assessed against the Council's adopted Development Plan under the Town and Country Planning Act 1990.
3. **Landscape:** - The Scheme will result in significant environmental effects in respect of landscape of the area. While it is acknowledged some level of impact is likely, the applicant has failed to adequately mitigate the impacts resulting in unnecessary and excessive harm to the rural landscape.
4. **Implementation Plans, Development Programme and Phasing:** - Proper appreciation given to the occupier demands as it reflects the phasing and programming and how this will be effectively tied to the implementation of management plans. There is a lack of information or clarity on each of these elements reflective of the lack of confidence in the scheme leading to the conclusion that at the very least targeted and additional consultation is necessary for assurance to be offered on commitments made to off-site highways works and other interfaces with the wider rail network as it will impact a proposed Railport.

The section 42 responses offered by the applicant on each of these were limited despite the arguments made by the Council on significance. It is clear from the applicant's responses across the whole scheme that they continue to regard these

considerations as limited in impact. Indeed, of the approximate 1,900 individual points raised in the statutory consultation with Relevant Authorities on barely 2% of these have been flagged as requiring further consideration by the applicant. It is the Council's view that there remains significant levels of concern on the scheme that are likely to have impacts on the surrounding area. The chorology of this consultation and the subsequent failings to provide sufficient additional information of the scheme is a lack of trust and confidence on a technical level that consultation was in fact adequate.

### **Comments on the Consultation Report**

In November 2022, two weeks ahead of the anticipated submission date, the applicant provided summaries of several Environmental Statement (“**ES**”) chapters and management plans. As before, much of this information is unclear, ambiguous and the Council argues is incomplete based on its understanding of the scheme as presented. Moreover, at that point the one critical area of greatest concern was the proposed mitigation measures that address impacts on highways which in the Council's view remain incomplete and certainly not sufficiently advanced for Local Highway Authority to adequately respond.

Following three sets of delays to the submission of the application by the applicant – once at the end of December 2022 and twice in the first weeks of January 2023 – a full set of submission documents were made available for review. A high-level review of the content of the submission documents, its completeness and relevance to the adequacy of response is described in section 6 of this report. Outstanding issues highlighted in this review are:

- The Council expressed concerns on the depth and effectiveness of the consultation in particular about the comments provided by the local authorities on the draft SoCC prepared for statutory consultation are contained at Appendix 7.2 of the Consultation Report (Doc 5.1).
- Chapter 11 of the Consultation Report (Doc 5.1) provides a summary of the responses received to the consultation under sections 42 and 47 and the publicity under section 48 of the Planning Act 2008 and how the applicant has had regard to those responses in preparing the application. An account of the consultation responses and the regard to those responses is provided in Chapter 8 and Appendix 8.15 (for s47 consultation) and Chapter 9 and Appendix 9.8 (for s42 consultation) of the Consultation Report. The Council has not had an opportunity to review the

veracity of the report in its final state and consequently seeks to challenge whether it does in fact comply with the statutory terms of the Act.

- The Council is of a firm view that these sections of the Consultation Report do not demonstrate that the applicant carefully considered all relevant responses when preparing the application and explains how the proposals put forward in the application evolved in response to the feedback received from consultees.
- Section 3.3 of the Consultation Report (Doc 5.1), in carrying out its pre-application consultation and publicity in relation to the proposed application, the applicant states and has confidence that they had regard to the guidance set out in 'Planning Act 2008: Guidance on the pre-application process' published by the Department for Communities and Local Government (as it was then known) in March 2015.
- The applicant has also stated that it has considered relevant non-statutory advice published by the Planning Inspectorate, particularly which contained in Advice Note 14.
- The Council is strongly of the view that the Appendix 3.1 of the Consultation Report (Doc 5.1) DOES NOT provide a strong enough case that the applicant has adhered to both the statutory guidance published by DCLG and the non-statutory advice published by PINS. On the contrary the Council is arguing that insufficient time and information was made available at the time to adequately consider options and impacts sufficient to have confidence in virtues of the Scheme as stated.

In effect, the Council is arguing that the information provided by the Applicant throughout the pre-application stage does not enable the Council and other Relevant Authorities to fully understand the scope of the scheme, its predicted impacts, and the proposed mitigation measures. Accordingly, information has not been provided that is crucial to fully understanding the impacts of the project.

### ***In conclusion***

The Council takes the view that whilst the applicant may have sought to demonstrate its compliance with the steps needed under the provisions of section 42 TPA 2008, this in the Council's view falls considerably short of demonstrating effective consultation. The Council does not consider that the applicant, in undertaking a statutory consultation of the project, has in fact afforded an opportunity for effective engagement on the project, and the Council draws attention to the multiple examples of limitations in baseline information and assessment, the gaps in materials for consultation where despite strenuous attempts at engaging on a technical level, the applicant's pre-

application consultation falls short of a standard expected for a Nationally Significant Infrastructure Project.

# 1 Context for Consultation

The Council does not wish to repeat the guidance and advice already issued by the Planning Inspectorate around statutory consultation with Relevant Authorities a (as defined and prescribed in section 42 of TPA 08), the general view is consultation with local authorities is at the heart of the statutory planning process. It is regarded as a key element of the pre-application process.

## 1.1 General Principles of Consultation

A central tenet of the 2008 Act is the notion of “front loading” the preparation of an application for development consent. The purpose is to ensure that detailed matters are consulted upon, and solutions or mitigation negotiated with the local community and other consultees before the submission of the application for development consent. This included requirements placed upon Tritax as the promoter to:

- a. Conduct pre-application consultation with statutory consultees, local authorities, landowners and significantly affected persons (under section 42 of the Act);
- b. Conduct pre-application consultation with the local community in accordance with a Statement of Community Consultation (the content of which must be the subject of consultation with the local authority and then publicised) (see section 47 of the Act);
- c. Further pre-application publicity under section 48, coupled with a duty to take account of responses under section 49;
- d. Prepare a consultation report under section 37, which should explain how the applicant has responded to representations made in response to the consultation.

The Council sits within a group of Relevant Authorities that have offered an informed opinion on a wide number of matters relevant to the proposed project, over a lengthy pre-application period. This has included how the proposals relate to local and regional development plans, what requirements should be included in the draft consent order, and the scope of the environmental impact assessment. Section 60 of the Act also provides that relevant local authorities have the opportunity to prepare a local impact report, giving details of the likely impact of the proposals on the local authority’s area. Given this, Tritax were encouraged to make early informal contact with the the Council

and continue to liaise closely with a technical working group of council officers through the consultation process and beyond.

To enable the benefits of early consultation, there are several 'principles' broadly identified in numerous guidance notes provided by Government and the Inspectorate, a clear strategy is expected to be defined and adhered to. The expectation at the outset was for Tritax to be active and engaged with stakeholders at a sufficiently early stage to allow consultees a real opportunity to influence the proposals. The expectation was of Tritax to draw upon this local knowledge and expertise offered early on and in a wholly unconstrained manner whereby sufficient details of the project were made available to allow consultees to properly understand the nature of the proposal. However, Tritax as the promoter has limited the opportunities for such technical advice from consultees. The Council believes that there were numerous opportunities to gain insights into the site-specific impacts and that the valuable inputs on the scheme were missed.

## 1.2 Compliance with pre-application Requirements of the Planning Act 2008

Ultimately, the Council appreciates that the Planning Inspectorate must be satisfied that the promoter has properly complied with the pre-application requirements of the Planning Act before it can accept the application, and promoters must be prepared to justify how they have fulfilled them. To that end the Council also understood that consultees have a critical role in proactively responding to the promoter and that this is done in a timely and comprehensive manner.

At the outset and in preparation for the presentation of the scheme as a Nationally Significant Infrastructure Project (NSIP), the Council set out to understand the level of information that they would expect to receive and respond to. The focus of Senior Leadership in the Council was to seek to programme the right level of experience needed to respond effectively ably illustrated on through **Regulation 12 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 ("the 2017 Regs")** as it relates to consultation statement requirements and requires that the consultation statement must set out if the development is EIA development, how the applicant intends to publicise and consult on the preliminary environmental information. Regulation 12 (2) provides that "Preliminary Environmental Information is information which is *reasonably required for the consultation bodies to develop an informed view of the likely significant environmental effects of the development...*"

In addition, Government guidance, “Planning Act 2008: Guidance on the pre-application process” (March 2015) (“**the 2015 Guidance**”) helped to define those steps and resources need to respond to consultation. The following paragraphs of the 2015 Guidance are particularly pertinent: -

- Paragraph 15 states, “Effective pre-application consultation will lead to applications which are better developed and better understood by the public, and in which the important issues have been articulated and considered as far as possible in advance of submission of the application to the Secretary of State. This in turn will allow for shorter and more efficient examinations”.
- Paragraph 20 states, “Experience suggests that, to be of most value, consultation should be based on **accurate information that gives consultees a clear view of what is proposed including any options**....”.
- Paragraph 88 states, “It is important to stress that pre-application consultation is a statutory duty for applicants, and it should, as this guidance makes clear, **be carried out to a certain standard**.”
- Paragraph 93 states, “For the pre-application consultation process, applicants are advised to include sufficient preliminary environmental information **to enable consultees to develop an informed view of the project...The key issue is that the information presented must provide clarity to all consultees**”.

The courts have also provided guidance on the general principles of consultation. These principles were set out in R. v North and East Devon HA Ex p. Coughlan | Westlaw UK. At [108], Lord Woolf MR specified that: “It is common ground that, whether or not consultation of interested parties and the public is a legal requirement, **if it is embarked upon it must be carried out properly**”.

Furthermore, if consultation is to be effective four guiding principles are set out in R v London Borough of Brent, ex p Gunning [1985] LGR 168 and are frequently referred to as “**the Gunning principles**”. These are generally regarded as the foundation of any tests around adequacy of consultation and are used in underpinning the Council’s responses to the consultation undertaken by Tritax, namely: -

- 1. To be proper, consultation must be undertaken at a time when proposals are still at a formative stage.**

If consultation is to be meaningful, it needs to be undertaken at a point where the mind of the decision-maker is still open to change and can, therefore, be

influenced by the responses to the consultation - *Royal Brompton & Harefield NHS Foundation Trust v Joint Committee of Primary Care Trusts & Another [2011] EWHC 2986 (Admin) (07 November 2011)*. In relation to this principle, it is clear that applicant had already ruled out providing for specific landscape or traffic provisions not only before the consultation process but also before it had sufficient justification for the same and before the County Council as local highway authority could verify that position. Accordingly, at the time of the consultation and notwithstanding the factual position between the parties, the Applicant had closed its mind on the provision/necessity for these additional provisions.

**2. *The proposer must give sufficient reasons for any proposal to allow those consulted to give intelligent consideration and an intelligent response - those consulted should be aware of the criteria that will be applied when considering proposals and which factors will be considered decisive or of substantial importance at the end of the problem:***

Unless consultees have some idea of the decision-maker's rationale for the proposals put forward or the key factors that are likely to be important in the decision-making process, it may be difficult for any effective response to be made. Therefore, consultees should be made aware of the basis on which a proposal for consultation has been considered and will be considered afterwards. They should be aware of the criteria that will be applied by the decision-maker when considering proposals and the factors that will be decisive or of substantial importance at the end of the process - *R (Capenhurst) v Leicester City Council [2004] EWHC 2124 (Admin) (15 September 2004)*.

Throughout the process of consultation the principal difficulty has always been to align partial data and incomplete information as part of the overall assessment of impacts. While the Council has undertaken to provide as clear and "intelligent" response to the applicant, this is always constrained by the lack of full disclosure of information. None more so where the Environmental Assessment has only be made available on formal submission of the draft Order made available in February 2023.

**3. *Adequate time must be given for consideration and response:***

Whether the time given for responding to proposals is "adequate" depends on the context and relevant considerations, including the: size of the group to be consulted; capabilities and resources of consultees; urgency involved; means of consultation; and complexity of the issues. The S42 consultation time period, once extended to April, was acceptable to the Council but it is noted that some members of the public felt the volume, technicality and presentation of the consultation information made it difficult to understand within the prescribed time.

**4. The product of consultation must be conscientiously taken into account when the ultimate decision is taken.**

Finally, the question of what lawful consultation entails is one for the court: the test is not one of "best practice", but of what fairness requires - R. (on the application of Greenpeace Ltd) v Secretary of State for Trade and Industry | Westlaw UK:

Working on the basis that as a Relevant Authority the Council has **substantive legitimate expectations** where a proposal will have significant impacts on the community in which it sits and that the requirements on the management of the impacts are onerous; consultation responses not conscientiously taken into account should in our view require additional engagement on the project before the Secretary of State determines the application.

### 1.3 Statutory Consultation with the Council as a Relevant Authority

The Applicant has undertaken the following consultation exercises on the proposed Scheme: -

- **22nd Oct – 7th Dec 2018:** First round of non-statutory public consultation
- **8th Jul – 6th Sept 2019:** Initial consultation with the Highways Authority on baseline modelling.
- **26 August – 24 September 2021:** Engagement with relevant authorities on the Statement of Community Consultation
- **12th January and 8th April 2022:** S42 Consultation
- **November 2020 to present:** Local Authority Officer Working Group meetings.

### **1.3.1 Section 42 PA 2008 – Duty to Consult**

In relation to S42(1)(a), certain prescribed persons are listed in Schedule 1 to the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (the Regulations). The list of those consulted during each phase of consultation will be provided by the applicant in its supporting schedule of consultees within the final Consultation Report. This has only been made available to the Council in its finalised form on 8<sup>th</sup> February 2023 as part of the submitted application.

The Council can confirm it was engaged by the applicant on the statutory consultation that took place between 12th January and 8th April 2022.

As required by S42(b), the S42 consultation material was at that time not complete and therefore not sufficient to enable the Council to give a full and informed consultation response. The Council raised a series of concerns on the content of the material with particular emphasis on the transport modelling, landscape provisions, needs case for example. Whilst some of this information was provided in outline terms, the ability of the Council to provide meaningful input has been restricted due to the information available.

### **1.3.2 Section 45 of Planning Act 2008**

Section 45 of the PA 2008 requires the applicant to notify the consultee of the deadline for receipt of comments in relation to the consultation which must not be earlier than 28 days after the consultation documents are received.

The S42 statutory consultation took place between 12th January and 8th April 2022. This time period, once extended to April, while acceptable to the Council, many of its Members considered that the volume, technicality and presentation of the consultation information made it difficult to understand within the prescribed time available to them.

### **1.3.3 Section 47 of Planning Act 2008**

Section 47 requires the applicant to prepare and publish a statement setting out how it proposes to consult local people about the proposed application (the SoCC). The applicant must consult with the relevant local authority before publishing the statement, and the local authority must reply within 28 days. The consultation must be carried out in the manner set out in the statement.

The applicant originally published its SoCC in December 2021. Prior to finalising and publishing the SoCC, the applicant formally consulted with the Council in August 2021, and informally in June 2021. Prior to 2021, the Council had previously been provided with two other versions of the SoCC, in August 2018 and December 2020.

Section 47(3) provides that the deadline for the receipt by the applicant of a local authority's response to consultation is the end of the period of 28 days that begins with the day after the day on which the local authority receives the consultation document. The Council confirm that a period in excess of 28 days was provided within which to respond to the consultation document.

#### 1.4 Consultation with Tritax

The proposition presented in this report is that level of information and materials provided throughout the consultation process is in the Council's view inadequate. In reaching this conclusion, the Council consider that

- a. incomplete information has been provided – critically that the methodology and the assumptions that purport to have informed the highways mitigation strategy have not been verified by the local highway authority,
- b. inaccurate information was presented late in the day and with limited time to rectify or challenge
- c. vague information has been provided (including that there is uncertainty in relation to the scheme fix) and
- d. information requested remains outstanding.

The effect of the above is that the information provided does not enable the Council, and all those affected by the proposal, to fully understand and scrutinise the scope of the scheme, its predicted impacts and the proposed mitigation measures. Accordingly, information has not been provided that is crucial to fully understanding the impacts of the project.

As part of the Council's responsibilities to respond to the project under the provisions of s42 of TPA 08, the Council respectfully requests that these representations are properly considered in full. The Council continues to have significant concerns on the issues around materiality of scheme design and have significant misgivings at the limited nature of targeted consultation following a design freeze.

While this additional consultation plainly addresses some of the concerns, the Council is not convinced - nor have gained confidence – that the response has been anything other than piecemeal and largely inconclusive. The Council remains unclear on the final form “fix” of the proposed development and whether its concerns have been addressed or simply disregarded.

In relation to items (a) to (d), (and whilst there is inevitably some overlap between headings), by way of a summary only the Council’s conclusions on the adequacy of the consultation as defined in terms of consultation under the Act :-

#### **1.4.1 Incomplete Information**

The Council has continuously found it difficult to obtain full or unabridged copies of the supporting information that provides the background to the views of the applicant on the impact of the scheme on the communities and environment of the local area. While the information now provided in the submission (published and made available to the Council on the 8<sup>th</sup> February 2023) appears to present this case in full terms, prior to this the Council and other consultees have through the process of consultation struggled with rational and evidence base, invariably incomplete where seeking to understand the justification or applicant rationale for the proposals. In many instances there has been a lack of transparency on the key factors important in the decision-making process. It has as a result been difficult to offer full or even effective response to the proposed scheme.

As set out in full in the Council’s S42 Response and as consistently re-iterated in informal meetings, the Council are gravely concerned about the proposed highway/transport proposals and mitigation. This includes transport modelling which could have knock-on effects to other technical reports such as noise and air quality. The methodology and the assumptions that purport to have informed the highways mitigation strategy have not been verified by the local highway authority.

Other absent/incomplete information includes: -

- Lack of holistic assessments of impacts of air quality, health, connectivity etc.
- Ongoing trial trenching for archaeological evaluation.
- Further background assessment of highway noise.
- Unconfirmed details for gantry crane to be included in noise assessment (and mitigation implications).

- No details for technical assessment of Combined Heat and Power (CHP) proposed.
- Need for further ground water monitoring.
- Inadequate Assessment of Tranquillity; needs expanding to cover whole area and incorporation of visual element.
- No light assessment.
- Unquantified construction phase impacts.
- No Health Impact Assessment.

#### 1.4.2 Inaccurate Information

The Council's S42 Response also sets out concerns relating to inaccurate/inconsistent information relating to the expected number of employees and the potential affect of any inaccuracy when assessing the environmental impacts of the proposal (air quality, noise, landscape and visual settings). In response the Council is told that "*Transport impacts are-as established practice- calculated on floorspace rather than employee numbers and the transport modelling has been done on a worst-case scenario basis in terms of trip generation. Trip generation has been agreed with the Transport Working Group. The appropriate transport data has been used to inform the air quality and noise modelling*". This matter needs further discussion to ensure there has been an appropriate degree of consistency and quality control for figures used across the technical topic areas.

An illustration of the frustrations experienced by all of the Relevant Authorities is well illustrated with Blaby District Council in which their S47 response on the SoCC dated 17 September 2021 and the S42 Response in refer to the potential EVL/EVB. The response on the SoCC clearly states that "*Until the necessity of the EVL is known, the Council does not expect the next stage of public consultation to be carried out. Moreover, a decision by Tritax Symmetry (Hinckley) Ltd to consult the public at this stage will have a bearing on the Council's adequacy of consultation representation.*" Despite this response, the applicant published the SoCC without providing any further technical justification or statutory consultee approval in relation to the EVL/EVB. Furthermore, the Council's S42 response reads, "*The transport impacts are addressed fully in Chapter 8, but there appears to be errors in the assumed impact severity to Stoney Stanton and Sapcote, underplaying the impact upon these villages. For Sapcote in particular, traffic increases are very high, and it is considered that further consideration of a bypass should be re- evaluated once the highway modelling has*

*been refined. As part of the current proposals, the scheme creates a preferred link road as far as the M69, but then does not extend this route any further, leaving the extra traffic to travel through the villages with little upgrades proposed, causing notable permanent harm to these settlements.”* In response the applicant notes, *“The need for an eastern villages bypass has been reviewed in light of the modelling data, much of the new traffic is diverted from existing routes and local villages. The modelling demonstrates that the volumes are not high enough to justify a full bypass.”*

Nonetheless, this position is not, as yet, supported by Leicestershire County Council in its capacity as the local highway authority. Given the lack of support from the Highway Authority, the Council remains uncertain as to whether the final scheme will include the Eastern Village By Pass/the Eastern Village Link Road. After briefly considering the submission documents the Council remain doubtful the scheme accurately describes the highways works required. It is noted that Leicestershire County Council Highways Department have still been unable to review/approve the proposed highways mitigation, including the necessity of the EVL/EVB.

In relation to Air Quality, the Council's S42 Response reads, *“The baseline transport movement figures need to be finalised, so all assessments within this report need to be updated once this has occurred. Current assessment work is also undertaken on an incorrect assumption that train arrivals/departures are spread out across the whole day. Timetabling slots will result in clustering of trains which may affect the air quality outcomes”*. In response, we are told that, *“Updated air dispersion modelling will be undertaken and presented in the ES which will utilise the updated traffic data as agreed with the Transport Working Group. Clustering of trains cannot take place as no more than two trains in any one hour can the site.”* Again, the above provides another example of where the Council are told to wait for the ES to be finalised before a proper/full assessment can be made. Moreover, if the highways mitigation measures change following further modelling and highway authority consultation, which the Council understands is likely, the air quality impacts presented in both the Preliminary Environmental Information Report (“**PEIR**”) and ES could prove to be inaccurate.

In relation to the business rates the Council will retain from the Scheme once operational, the potentially significantly overstated the benefits to the Council; failing to account for a 50 per cent levy on any additional rates above our baseline funding which could demonstrably undermine the financial benefits -and therefore the justification of Need of the Scheme to the Council. The Council understands that a Needs Case is also critical to the Drivers of Needs as it applies to National Policy.

### 1.4.3 Vague information

Often the information contained in the consultation document has been vague and unsubstantiated. The provision of detailed evidence and information could have enabled a better understanding of these issues, and potentially resolved some of them.

By way of an example, the Council's S42 Response notes that the proposed Public Rights of Way Scheme reduces connectivity, is marginalised to the edge of the complex, is squeezed in adjacent to the M69 and does not consider horse riders. In response the Council are told that *"This element is being reviewed for both setting and additional connectivity throughout the park..."*.

In relation to policy and need, the Council's S42 Response states, *"With a large number of rail freight interchanges in the surrounding area, the proposal needs to clearly demonstrate how it relates to those other interchanges and does not oversaturate the market."* and further that, *"NPS paragraph references not completed in a number of places – e.g. 5.83, 5.91"*. Establishing the need for the proposal and economic viability of the same is crucial. To date the information provided has been incomplete and vague.

Whilst it is accepted that the S42 consultation process is iterative, it should not be the case that proposals are not sufficiently advanced to be meaningful with proposals which affect the public being an after-thought.

### 1.4.4 Outstanding information

The Council have consistently requested further information from the applicant to reach more informed judgements about the impacts of the scheme and to allow it to work more effectively on any mitigation proposals. This has often been the case on many of the baseline assumptions around the modelling leading to further issues around noise, air quality, volumes of traffic, economic case as illustrations of concerns raised on the veracity of the evidence base and subsequent the impacts of the proposed scheme.

The Council has been unable to fully engage in the pre-application consultation process as a result and having shared these concerns with other Relevant Authorities highlighted in Blaby District Council's section 42 Response that concluded, *"As it currently stands, we have considerable misgivings on the indicative weighting of the magnitude of the effects of the Proposed Development at this stage, given the concerns raised above on the methodology of the assessments and the lack of*

*information and detail in the documentation*". Tritax's response indicates that several the Council's comments will be addressed in the ES which we will now review. Nonetheless, the Council's broad position as set out the Council's own section 42 Response remains unchanged.

The lack of care in the preparation of the section 42 Statutory Consultation material is indicative of the approach of Tritax as Promoter in seeking to gloss over significant issues or seek to deal with those issues "down the line". The resulting loss of confidence in the assessment material and its supporting justifications is in the Council's view material to a determination and certainly in terms of the AoC, inconsistent with government guidance and the legal principles of consultation described in the previous sections of this report. The Council would expect consultation as part of the Duty to Consult to be meaningful, provide accurate information that gives consultees a clear view of what is proposed, of the required standard and sufficient to enable consultees to develop an informed view of the project. No true clarity on the scheme, its effects and accordingly the proposed mitigation was provided during the S42/47 consultation.

## 1.5 Other Stakeholders

The Development Consent Order ("**DCO**") process is predicated on co-operation and collaboration between key stakeholders. The Council has held regular joint-working groups for the last 18 months with Blaby District Council and Leicestershire County Council and are aware that they, like the Council, have significant concerns about the level of information provided.

The Council is also aware that Elmesthorpe Parish Council, Stoney Stanton Parish Council, Sapcote Parish Council and Sharnford Parish Council have each formally expressed concerns to the applicant in relation to the consultation exercise undertaken as part of their respective S42 consultation responses. Copies of those responses are attached for ease at **Appendix 2**. Elmesthorpe Parish Council's S42 consultation response states at paragraph 2.1 that residents, "were unable to obtain basic information at the public consultation events" and the Stoney Stanton Parish Council's response refers frequently to errors in data, significant shortcomings in information provided to date and unclear information. It is clear from reviewing the various Council's and Parish Councils' S42 consultation responses that concerns relating to a lack of scheme fix, insufficient information and factually inaccurate information are a common theme running through the S42 consultations responses.

There has been insufficient data for stakeholders, including technical consultees, to be adequately informed during the consultation exercises. The concern is that this lack of information for all parties has diminished the quality of their responses to the consultation exercise and in turn this makes it more difficult for the Council to consider the potential impacts in terms of its administrative area.

## 2 The practical reality of consultation with Tritax Symmetry

The expectations of Tritax as promoter in its engagements with the Council was to ensure that all the consultation requirements in Chapter 2 of Part 5 of the Act and in the Infrastructure Planning (Applications: Prescribed Forms & Procedure) Regulations 2009 are complied with during the process of statutory consultation. Tritax was expected to demonstrate compliance with those statutory requirements in their consultation report. However, the reality was a largely iterative consultation with [the Relevant Authorities such as the Council] directly affected by proposals. Despite multiple requests for further and more detailed information – particularly baseline data on which much of the modelling is based - the final designs of the scheme at submission appears to have reflected a scheme unchanged to the one presented prior to statutory consultation.

While the Council understand that some promotions may require to provide high level options in the early stages where further design iterations emerge because of optioneering or value engineering exercises, it is reasonably clear that minimal (non-material) amendments were made throughout the process of consultation. The consultation exercise was in the Council's view an exercise in process with evidence in the exchanges between the Relevant Authorities that no material amendments had been completed nor was there any intention to do so. The reality in other words was a strategy by the promoter that is reliant on Examination to explain and justify a case. The Council is arguing that at the very least some material changes would be expected following robust modelling and that it would certainly shift the arguments around the Drivers of Need to such a degree that the legitimacy of the consultation is in question. The Council is arguing that Tritax should be required to undertake additional and targeted consultation based on amended options and scale of a project. In these circumstances Tritax should supply consultees with sufficient information to enable the Council and other Relevant Authorities to fully understand the nature of the change.

It is clear from the Council's consultation responses and through other informal discussions that there has been an ongoing concern throughout each stage of the informal and formal public consultation that the technical evidence is not yet concluded on some fundamental elements of the scheme which could influence the proposed scheme and the mitigation required. Prominent amongst this was the fact that the local

Highway Authority does not feel the project is at a sufficient stage to reach such a conclusion. Given the scale and magnitude of this piece of infrastructure, certainty by way of scheme fix is key to allow parties to gain a full understanding of what is being proposed.

More specifically, whilst it is acknowledged that the S42 statutory consultation material responds to the PEIR, which is 'preliminary' in nature and that such assessments will be completed for submission of the application and included in the ES, the Council is not content with the information provided at the S42 stage, nor is the Council content with the applicant's informal response to the Council's concerns. Consequently, the Council lacks confidence that any of the concerns highlighted during formal consultation have been given sufficient weight. As yet and without more detailed assessment of the submission recently submitted, the Council is placed in an impossible position, unable to offer a complete view on the current, and arguably incomplete, mitigation measures as proposed.

### 2.1.1 Requirements and S106

PINS Advice Note 13 states that the draft DCO should be made available to parties and recommends that the applicant should seek to agree wording for proposed requirements with the body to whom details are to be submitted for subsequent approval. The draft DCO consulted upon did not include any draft requirements and only following repeated requests during formal consultation was outline requirements set out by the applicant until 19 December. The Council understands that the justification for this was, and it suspects continues to be, that the applicant was unable to complete the heads of terms of any requirements without a completed Environmental Assessment.

In the Council's minds there are several fundamental concerns being raised in these exchanges around the competency and completeness of the assessments – bearing in mind the Council's repeated concerns around baseline material informing the modelling – with the corollary of continued vagueness around grounded evidence on competency of any proposed requirements in a section 106 Agreement. The lack of certainty on scheme fixes which in turn informs the assessment of impacts and mitigation requirements, underpins the level of uncertainty that we as Council continues to have around the scheme.

If the applicant is unable itself to assess and confirm what mitigation measures are required, then it is not reasonable for the Council to be able to understand the scheme and its effects.

The same rationale as set out above applies to the S106 Agreement. To date there have been no discussions between the Council and the applicant in relation to producing and progressing a S106 Agreement.

### 2.1.2 Statements of Common Ground

To date there have been no substantive discussions between the applicant and the Council in relation to preparing a Statement of Common Ground, despite the Council querying progress in one of the pre application meetings with the applicant.

PINS Advice Note 2, notes at paragraph 22.2, "*It is often beneficial (and can reduce resourcing requirements) if you work proactively to prepare a SoCG in the pre-application and pre-examination stages*". It is telling that the applicant has not engaged with the Council to date.

## 3 High Level Review of Tritax DCO Submission

On the 3<sup>rd</sup> February 2023, Tritax Symmetry (Hinckley) Ltd formally submitted to the Planning Inspectorate an Application pursuant to section 37 for a Development Consent Order in respect of the construction of a rail freight interchange and associated development (Hinckley National Rail Freight Interchange). The Council was sent the supporting information and contents of this submission in electronic format on the 8<sup>th</sup> February 2023.

### 3.1 Checklist of Compliance

In completing a AoC report the Council has also undertaken a high-level review of the submission and reports which it believes underpin its arguments around the substantive legitimate expectations for full consultation. Moreover, this material has only now been made available in its full format as Development Consent Order. Specifically, where the Council has raised issues and evidence around lack of transparency, incomplete, vague, and indeterminate information, so now the Council has an opportunity to at least challenge the veracity of the information provided by the Promoter.

Checklist of Compliance	Adequacy of Consultation
<b>Section 42: Duty to consult</b>	While the details of the local authorities consulted and their status pursuant to s43 of the Planning Act, there was limited confidence in completion of a AoC report without detailed information on the project.
<b>Section 42(1)(b) each local authority within s43</b>	Paragraph 9.3.9 and Paragraph 9.3.10 of the Consultation Report (Doc 5.1) set out the local authorities that the applicant consulted in accordance with section 42(1)(b) of the Planning Act 2008 and explains which categories those local authorities within under section 43 of the Planning Act 2008.
<b>Section 45: Timetable for s42 consultation</b>	The Council was contacted by letter on 7th January 2022 informing it of the consultation and specifying the deadline for receipt by the applicant of

	<p>consultation responses, which was 9th March 2022 (see paragraph 9.4.1 and Appendices 9.1 and 9.2 of the Consultation Report (Doc 5.1)).</p> <p>The deadline for responses to the consultation was subsequently extended to 8th April 2022 (see section 9.2 and Appendices 9.3, 9.4 and 9.5 of the Consultation Report (Doc 5.1)) for further details regarding the extension to the consultation period). As such, the argument is being made that the Section 42 consultees were provided with a significantly longer period than the statutory 28 days required by Section 45 of the Planning Act 2008 to provide responses to the consultation and were notified of the deadline for responding in accordance with section 45 of the Planning Act 2008.</p> <p>The Council is arguing that the depth and extent of information was inadequate and the timescales however long did not furnish the authority with sufficient time to adequately respond.</p>
<p><b>Section 47: Duty to consult local community</b></p>	<p>Details of the consultation undertaken on the SoCC is detailed in Paragraph 7.3.1 to Paragraph 7.3.10 and Appendix 7.2 of the Consultation Report (Doc 5.1) including details of the consultation with the 'B' and 'C' authorities. The formal consultation on the SoCC ran between 26th August 2021 to 24th September 2021 giving a period of 28 days for comments in accordance with Section 47(3) of the Planning Act 2008. A copy of the letters issued to the local authorities is contained at Appendix 7.3 of the Consultation Report (Doc 5.1).</p> <p>Additional informal consultation was also carried out on the draft statutory SoCC from January to July 2021 (see paragraphs 7.3.3 and 7.3.4 of the Consultation Report) and on an earlier initial SoCC which guided the approach to earlier phases of non-statutory consultation (see Chapter 4 of the Consultation Report).</p> <p>The Council remains concerned and has strong misgivings on the completeness of these consultations given so much information was not made available at the time on the detailed baseline and the justification of the scheme against its impacts.</p>
<p><b>Was regard to any responses received when preparing the SoCC?</b></p>	<p>The Council expressed concerns on the depth and effectiveness of the consultation about the comments provided by the local authorities on the</p>

	<p>draft SoCC prepared for statutory consultation are contained at Appendix 7.2 of the Consultation Report (Doc 5.1).</p>
<p><b>s49: Duty to take account of responses to consultation and publicity</b></p>	<p>Chapter 11 of the Consultation Report (Doc 5.1) provides a summary of the responses received to the consultation under sections 42 and 47 and the publicity under section 48 of the Planning Act 2008 and how the applicant has had regard to those responses in preparing the application. An account of the consultation responses and the regard to those responses is provided in Chapter 8 and Appendix 8.15 (for s47 consultation) and Chapter 9 and Appendix 9.8 (for s42 consultation) of the Consultation Report. As section 48 publicity occurred in parallel with the s42 and s47 consultation, any responses to the s48 publicity are incorporated within responses to s42 and s47 consultation. The Council is of a firm view that these sections of the Consultation Report <b>DO NOT</b> demonstrate that the applicant carefully considered all relevant responses when preparing the application and explains how the proposals put forward in the application evolved in response to the feedback received from consultees.</p>
<p><b>To what extent has the Applicant had regard to statutory guidance ‘Planning Act 2008: Guidance on the pre-application process’<sup>12</sup>?</b></p>	<p>Section 3.3 of the Consultation Report (Doc 5.1), in carrying out its pre-application consultation and publicity in relation to the proposed application, the applicant states and has confidence that they had regard to the guidance set out in ‘Planning Act 2008: Guidance on the pre-application process’ published by the Department for Communities and Local Government (as it was then known) in March 2015.</p> <p>The applicant has also stated that it has considered relevant non-statutory advice published by the Planning Inspectorate, particularly that contained in Advice Note 14.</p> <p>The Council is strongly of the view that the Appendix 3.1 of the Consultation Report (Doc 5.1) <b>DOES NOT</b> provide a strong enough case that the applicant has adhered to both the statutory guidance published by DCLG and the non-statutory advice published by PINS. On the contrary the Council is arguing that insufficient time and information was made available at the time to adequately consider options and impacts sufficient to have confidence in virtues of the Scheme as stated.</p>

## 4 Summary & Conclusions

The expectations of Tritax as promoter in its engagements with the Council was to ensure that all the consultation requirements in Chapter 2 of Part 5 of the Act and in the Infrastructure Planning (Applications: Prescribed Forms & Procedure) Regulations 2009 are complied with during the process of statutory consultation. Tritax was expected to demonstrate compliance with those statutory requirements in their consultation report. However, the reality was a largely iterative consultation with [the Relevant Authorities such as the Council] directly affected by proposals. Despite multiple requests for further and more detailed information – particularly baseline data on which much of the modelling is based - the final designs of the scheme at submission appears to have reflected a scheme unchanged to the one presented prior to statutory consultation.

To that end the principal reasoning for our view that there has been inadequate consultation on the scheme by the applicant is on 6 grounds:

### 4.1 Section 42: Duty to consult

While the details of the local authorities consulted and their status pursuant to s43 of the Planning Act, there was limited confidence in completion of a AoC report without detailed information on the project.

### 4.2 Section 45: Timetable for s42 consultation

The Council is arguing that the depth and extent of information was inadequate and the timescales however long did not furnish the authority with sufficient time to adequately respond.

### 4.3 Section 47: Duty to consult local community

The Council remains concerned and has strong misgivings on the completeness of these consultations given so much information was not made available at the time on the detailed baseline and the justification of the scheme against its impacts.

### 4.4 Due regard to the consultation responses when preparing the SoCC?

The Council expressed concerns on the depth and effectiveness of the consultation about the comments provided by the local authorities on the draft SoCC prepared for statutory consultation are contained at Appendix 7.2 of the Consultation Report).

#### **4.5 s49: Duty to take account of responses to consultation and publicity**

The Council is of a firm view that these sections of the Consultation Report DO NOT demonstrate that the applicant carefully considered all relevant responses when preparing the application and explains how the proposals put forward in the application evolved in response to the feedback received from consultees.

#### **4.6 Statutory guidance 'Planning Act 2008: Guidance on the pre-application process'12?**

The Council is strongly of the view that the Appendix 3.1 of the Consultation Report (Doc 5.1) DOES NOT provide a strong enough case that the applicant has adhered to both the statutory guidance published by DCLG and the non-statutory advice published by PINS. On the contrary the Council is arguing that insufficient time and information was made available at the time to adequately consider options and impacts sufficient to have confidence in virtues of the Scheme as stated.

The Council takes the view that whilst the applicant may have sought to demonstrate its compliance with the steps needed under the provisions of section 42 TPA 2008, this is in the Council's view a considerable way from demonstrating effective consultation. The Council does not consider that Tritax in undertaking a statutory consultation of the project has in fact afforded an opportunity for effective engagement on the project, where the Council draws attention to the multiple examples of limitations in baseline information and assessment, the gaps in materials for consultation where despite strenuous attempts at engaging on a technical level, the applicant's pre-application consultation falls short of a standard expected for a submission of a Nationally Significant Infrastructure Project.

