

Tritax Symmetry (Hinckley) Limited

## **HINCKLEY NATIONAL RAIL FREIGHT INTERCHANGE**

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### **The Hinckley National Rail Freight Interchange Development Consent Order**

Project reference TR050007

### **Applicant's written summary of oral submissions at CAH2**

Revision: 01

November 2023

## 1. INTRODUCTION

- 1.1. This document presents the written summary of the Applicant's oral submissions for **Compulsory Acquisition Hearing 2 (CAH2)**, that took place as part of the examination on HNRFI on Thursday 2 November 2023.
- 1.2. CAH2 took place at the Leonardo Hotel Hinckley Island venue and was a blended event with attendees on MS Teams.

## 2. SUBMISSIONS IN RESPONSE TO MATTERS RAISED AT COMPULSORY ACQUISITION HEARING 2 (CAH2)

Agenda item	Matter	Applicant's submission
1	<p><b>Welcome and introductions</b></p> <p>The ExA opened the hearing, introduced themselves and invited those parties present to introduce themselves.</p>	<p>On behalf of the Applicant, Tritax Symmetry Ltd.</p> <ul style="list-style-type: none"> <li>• Mrs Laura-Beth Hutton, Eversheds Sutherland LLP</li> <li>• Mr Paul Maile, Eversheds Sutherland LLP</li> <li>• Mr David Baker, Baker Rose (Rail Infrastructure)</li> <li>• Mr Samuel Carter, BWB Consulting (Highways Design)</li> <li>• Mr Jonathan Wallis, Tritax Symmetry Ltd (Development Director)</li> <li>• Ms Sinead Turnbull, Tritax Symmetry Ltd (Planning Director)</li> </ul>
2	<p><b>Purpose of the Issue Specific Hearing</b></p> <p>The ExA explained the purpose of CAH2.</p>	N/A
3	<p><b>General Case</b></p> <p>The ExA sought clarification as to whether there were any material changes to the Applicant's general case since CAH1 held on 14 September 2023.</p> <p>The ExA did not request an updated on the status of discussions and negotiations but requested that any updates which were relevant to the other agenda points were raised as part of the discussion on those points.</p>	<p>The Applicant confirmed that it did not have any updates to its general case presented at ISH1 and in the Application Documentation but that there were updates to the status of discussions and negotiations with various parties. It was agreed that general updates on negotiations did not need to be discussed at this stage and could be dealt with in writing throughout the Examination.</p>
4	<p><b>Individual Cases</b></p> <p>The ExA invited any Affected Persons to summarise its objection to the proposed compulsory acquisition or temporary possession and invited the Applicant to respond to those objections.</p>	

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	<p>Representations were made by:</p> <ul style="list-style-type: none"> <li>• Ms Stephanie Hall on behalf of Parker Strategic Land</li> <li>• Mike Parker on behalf of Hinckley and Bosworth Borough Council</li> <li>• Mr Thomas on behalf of Parker Strategic Land, Barwood Land and Ms Jennifer Taylor</li> </ul> <p>In summary Ms Stephanie Hall and Mr Thomas made the following representations:</p> <p>a) <u>Ms Stephanie Hall</u></p> <p><i>Plot 100</i></p> <p>In relation to Plot 100, the ExA queried whether:</p> <ul style="list-style-type: none"> <li>• the objector was claiming rights over Plot 100 or if the land referencing was incorrect?</li> <li>• whether Plot 100 was needed for the works, and if it was, whether Parker Land would object to its inclusion in the Book of Reference if it did have an interest in this land?</li> <li>• the Applicant was aware that if there were different rights over this land, then The Infrastructure Planning (Compulsory Acquisition) Regulations 2010 would apply if the Applicant could not get consent from the relevant persons who own the land. In such circumstances, the Applicant would need to set out a time timetable by which that can be delivered,</li> </ul>	<p>a) <i>Plot 100</i></p> <p>The Applicant confirmed that it believed the Book of Reference (Document Reference: 4.3B, Examination library reference: REP2-018) should be referring to Plot 100 as being public highway but agreed that it would check the position and confirm with Parker Strategic Land and Leicestershire County Council.</p> <p>The Applicant stated that the plot was needed for access into the temporary compound and that the point in respect of The Infrastructure Planning (Compulsory Acquisition) Regulations 2010 was understood and agreed.</p> <p>The Applicant has now reviewed the land interests and highway position in respect of Plot 100 and to update the Book of Reference (Document Reference: 4.3B, Examination library reference: REP2-018) if required. The Applicant can confirm that plot 100 comprises unregistered public highway, as confirmed by Leicestershire County Council in the hearing. LCC has since provided a copy of <i>The Leicestershire County Council (B4669 Hinckley Road</i></p>

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	<p>including all the necessary publicity before the close the Examination?</p> <p>Leicestershire County Council confirmed that the County's plans showed this land as being public highway.</p> <p>In response to the ExA's query as to whether the objector was claiming rights over Plot 100, Ms Hall confirmed that she could not assist and would need to take the matter away to check land ownership rights and discuss with the Applicant.</p> <p>In response to the ExA's query as to whether the objector would object to the inclusion of this plot as land which may be the subject of compulsory acquisition powers, Ms Hall confirmed she would need to take this away.</p> <p><i>Plot 101</i></p> <p>Ms Hall confirmed that her client's objection was in relation to Plot 101 and that they were not objecting to Plots 101a, 102 and 103. As discussed in Parker Land's Relevant Representation (Examination Library reference: REP1-218) and at CAH1, this was on the basis that (1) the Applicant had not shown there was a compelling case (specifically, that the compound needed to be located on this site and not another), (2) alternative means exist, and (3) there had been a lack of consideration of the alternatives to acquiring Plot 101.</p>	<p><i>to Aston Lane, Aston Flamville) (Prohibition of Motor Vehicles) Order 2012 (TRO) which restricts vehicular access over the highway except for the purpose of access.</i></p> <p>The Applicant is therefore content that the Sheet 4 of the Land Plans (Document Reference: 2.20D, Examination library reference: APP-061) is correct, and that no acquisition of this plot is required as use for the purposes of access is permitted in accordance with the Plot's status as public highway and in accordance with the TRO. The Applicant acknowledges that the Book of Reference (Document Reference: 4.3B, Examination library reference: REP2-018) referred to this Plot as a private access and this has now been amended in the Book of Reference submitted at Deadline 3 (Document Reference: 4.3C). The Applicant has also updated this entry to include adjoining the owners of subsoil, however, this does not reflect additional interests and the Applicant reiterates that no compulsory acquisition is required.</p> <p>As discussed at CAH2, the Applicant has discussed this position with the adjoining land owner and Parker Strategic Land Limited and understands the ownership position is understood and agreed by the parties.</p> <p><i>Plot 101</i></p> <p>The Applicant confirmed that in regards to the suitability of Plot 101 for use as a temporary compound, the reasons for this are set out in the Statement of Reasons (Document Reference: 4.1C, Examination Library reference: REP2-016), namely a mix of engineering, program and reasons relating to the Construction and Design Management Regulations. The Applicant offered to meet with Parker Strategic Land to talk them through these in greater detail.</p>

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	<p>After reviewing the Applicant's Responses to Relevant Representations (Document Reference 18.2, Examination Library reference: REP1-027), these concerns remained. Ms Hall noted that the Applicant stated that its justification for acquiring this plot was set out in the Statement of Reasons (Document Reference: 4.1C, Examination Library reference: REP2-016), namely that using the main site as a construction compound in place of Plot 101 would require interference with the B4669 road, would not fit with its phasing plans and that acquisition of Plot 101 would not affect the objector's plans for the land.</p> <p>Ms Hall considered that in relation to the Applicant's justification for not using the main body of the site for the construction compound, the site could accommodate some construction works particularly given that the first phase of construction would take place around 10 years before the last phase and so there would be a large balance of land at this time. It was also unclear from the explanation provided why the Applicant could not use the main site because of interference the B4669 road. In relation to phasing, it was also unclear why the sheds and development platforms which form part of Phase A could not be located elsewhere. It was considered this was a phasing choice and without further explanation, was not sufficient justification for interfering the objector's private rights.</p> <p>Ms Hall considered that the Applicant had also wrongly assumed that the temporary acquisition of Plot 101 would not clash with the objector's proposals. However, when considering the phasing put forward in Chapter 3 of the</p>	<p>The Applicant also stated that it is in active discussions to try to resolve the objection and it was the Applicant's view that very good progress has been made, with agreed terms for the acquisition by agreement of Plot 101a and that only timing was an issue for Plot 101.</p> <p>The Applicant also highlighted that Plot 101 had not yet been allocated in the Local Plan, but that if the local planning authority were to do so, the objector's proposed development would be dependent on delivery of the M69 slip roads on Plot 101a, and that the compound on Plot 100 is needed to deliver those slip roads.</p>

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	<p>Environmental Statement (Document Reference 6.1.3, Examination Library reference: APP-112) and Articles 30 and 32 of the dDCO (Document Reference: 3.1B, Examination Library reference: REP2-010), the objector's interpretation was that Applicant could hold onto Plot 101 for six years from consent being obtained. The objector was intending to submit a planning application to develop this land in 2025, alongside the emerging local plan, and to implement this no later than 2026/27. As a result, acquisition of Plot 101 could result in a four year delay to the proposed development, which was not just an economic inconvenience, but which also required for the Borough's land supply.</p> <p>Regarding the Applicant's submission that the objector's development was dependant on the delivery of the slip roads, this was agreed, but as there is another development to the north east being promoted under the local plan which would also be required to deliver these, delivery was not dependant on the Applicant's scheme.</p> <p>b) <u>Mr Parker – Hinckley &amp; Bosworth Borough Council</u></p> <p>It was noted that the revised plan provided by the Applicant to reduce the land take to 200sqm but this isn't reflected in the Book of Reference (Document Reference: 4.3B, Examination Library reference: REP2-018)</p>	<p>b) The Applicant confirmed that the plan provided and appended to the Applicant's Post Hearing Submissions relating to CAH1 (Document Reference: 18.1.6, Examination Library reference: REP1-023) was a plan that was to demonstrate that the permanent and temporary works required for the bridleway connection could be and will be delivered within less than 200sqm. The precise location of the connection is still not fixed, which is the reason the Land Plans (Document Reference 2.20, Examination Library Reference: APP-057</p>

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	<p>c) <u>Mr Thomas:</u> Plot 122 is to be taken temporarily for use as a construction compound and it was noted that the issues were similar to those raised by Ms Hall in relation to Plot 101. The objector's position in relation to Plot 122 is as set out in its written representations (Examination Library Reference: REP1-217), that there was no compelling case, alternative means to bring about the scheme exist elsewhere and there has been a lack of consideration of the alternatives.</p> <p>These points were responded to in the Applicant's Responses to Relevant Representations (Document Reference 18.2, Examination Library reference: REP1-027), which broadly confirmed that the justification is as set out in the Statement of Reasons (Document Reference 3.1B, Examination Library reference: REP2-010), that this location is justified because it is closest and most suitable location for a temporary construction compound associated with the traffic lights and junction works at the Stanton Lane / Hinckley Road junction, and that temporary possession would not interfere with the Consortium's development plans. It was noted that the Statement of Reasons (Document Reference 3.1B, Examination</p>	<p>to APP-065) in the Book of Reference (Document Reference: 4.3B, Examination Library reference: REP2-018) have not been updated. As a result, the update to the draft DCO (Document Reference: 3.1B, Examination Library reference: REP2-010), that was provided at Deadline 2, added some further clarification to the temporary possession articles, but that was to further clarify the area of land required for the works to provide the comfort and certainty that the full extent of Plots 120 and 121 are not required, just that the flexibility to provide the connection anywhere within those plots, subject to the 200sqm limit is there.</p> <p>c) The Applicant confirmed that it had heard these comments and that it was continuing to work with landowners' agent. The Applicant stated that its position is reflected in the Responses to Relevant Representations (Document Reference 18.2, Examination Library reference: REP1-026 to REP1-032) and that the plot shape has been carefully drawn with the Applicant's team, including ecologists, to avoid hedgerow removal and make use of existing tracks and to allow sufficient circulation at the compound for construction vehicles.</p> <p>As indicated in its Responses to Relevant Representations (Document Reference 18.2, Examination Library reference: REP1-026 to REP1-032) and in discussions with the landowner's agent, the intention was not to take exclusive possession of this plot and the leave the centre shape unusable. The Applicant accepted that a restriction on this power was not contained in the draft DCO (Document Reference: 3.1B, Examination Library reference: REP2-010) but the intention is that the voluntary agreement it is hoping to conclude will provide for this.</p>



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	<p>Library reference: REP2-010) did not provide specific justification in respect of Plot 122, which was raised as a concern at CAH1.</p> <p>Plot 122 is approximately 1.5 acres of land and given that in the objector's view, the works for which the compound was required were fairly minor, this appears excessive. The Applicant had stated that the shape of the Plot had been carefully drawn to minimise impacts, and that it would not take exclusive possession of the access way. However, Article 32 of the draft DCO (Document Reference: 3.1B, Examination Library reference: REP2-010) does not provide for non-exclusive possession, and due to its size and shape, it would be a greater interference with the landowner's rights. It was also noted that there would be plenty of space on the main site for a construction compound and that if the Applicant were to be able to justify the Plot's inclusion on the basis of proximity, there are clear alternatives which could be used, for example Plot 125. Accordingly, the Applicant had not demonstrated a compelling case.</p> <p>In relation to the objector's development proposals, the wider site (of which Plot 122 forms part) is being promoted as part of the emerging local plan for a 5,000 dwelling scheme, with planning permission anticipated to be granted in 2025 and implementation shortly after. As a result, the draft DCO (Document Reference: 3.1B, Examination Library reference: REP2-010) could allow Plot 122 to be held for some years after the Consortium would hope to be on site developing out their scheme.</p>	<p>The Applicant noted that it had sat around the table several times with the landowners' agent with plans out and so it did not agree there had been a lack of communication.</p>

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	<p>Mr Thomas stated that the level of interaction and engagement with the Applicant had been limited and any further discussions would be welcomed.</p> <p>d) The ExA raised questions in relation to plots 16 and 17, which were shown on Sheet 1 of the Land Plans (Document Reference: 2.20A, Examination Library reference: REP2-007) and which comprise a septic tank and shrub land:</p> <ul style="list-style-type: none"> <li>• What was the Applicant proposing in relation to securing drainage and maintenance rights (given that interference with drainage rights could have a Human Rights implication in respect of the peaceful enjoyment of the homes which are served by the septic tank? And</li> <li>• How is the continued provision of drainage secured in the dDCO?</li> </ul>	<p>d) The Applicant confirmed that the Book of Reference (Document Reference: 4.3B, Examination Library reference: REP2-018) showed plots 16 and 17 as unregistered. The septic tank is located on Plot 16. The Applicant noted that it had included this land as there was a potential pollutant discharge from this onto Plot 15 and so the Applicant requires the ability to compulsorily acquire this land so that the Applicant has control and can resolve any pollutant issues. If and when Plot 16 is acquired by the Applicant it would grant rights to the homes served by the septic tank.</p> <p>The Applicant confirmed its understanding that Plot 16 is subject to pending registration at Land Registry by one of the owners, and that if the registration were to go through, the Applicant would liaise with the owner to secure the necessary arrangements.</p> <p>The Applicant confirmed that the draft DCO (Document Reference: 3.1B, Examination Library reference: REP2-010) does not make provision for securing drainage rights for the properties served by the septic tank and that it would consider if such drafting should be included to provide for this.</p>
<b>5</b>	<p><b>Special Category Land</b></p> <p>The ExA asked the Applicant to update its case for the Compulsory Acquisition of part of Burbage Common as Special</p>	<p>The Applicant confirmed that the change since the last hearing was the addition to the temporary possession provisions in the draft DCO (Document Reference: 3.1B, Examination Library reference: REP2-010)</p>

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	Category Land and in particular the interaction with s132 of the PA2008 and any material changes since CAH1 held on 14 September 2023.	submitted that Deadline 2 to add further comfort around the extent of land that will be interfered with on a temporary basis and that it was in discussions with Hinckley and Bosworth Borough Council in respect of a licence to enable the provision of those connection works.
<b>6</b>	<p><b>Crown Land</b></p> <p>The ExA noted that the Applicant had indicated in the Applicant's Responses to Relevant Representations (Document Reference 18.2, Examination Library reference: REP1-025) that no land was crown land and crown interests had been removed from the Book of Reference (Document 4.3B, Examination Library reference: REP2-018). The ExA confirmed that no parties had any objections to this</p>	N/A
<b>7</b>	<p><b>Statutory Undertakers</b></p> <p>The ExA asked the Applicant to update its case as to the latest position in respect of Operational Land of Statutory Undertakers, as to whether it has obtained agreement for the land to be acquired and whether there are, and if so what, any outstanding matters to be resolved, particularly in regard to Network Rail</p>	<p>The Applicant confirmed that all land arrangements in respect of statutory undertakers largely aligned with the protective provisions, and that an update would be provided in respect of these at ISH5.</p> <p>The Applicant confirmed that discussions were positive and ongoing and that in the case of Network Rail, the Applicant had agreed with Network Rail that Network Rail understands that the Applicant needs to reserve its rights to use Compulsory Acquisition Powers and Network Rail has agreed in principle that the Applicant can use these as a last resort providing in so doing it does not risk either safety or compromise the operation of the railway. The position will be dealt with in the Protective Provisions and the framework agreement between the parties.</p>
<b>8</b>	<p><b>Funding</b></p> <p>The ExA asked the Applicant to update it as to the latest position in respect of funding, with a particular focus on</p>	The Applicant confirmed that there were businesses trading on site but that all these were on plots which were subject to voluntary agreements with the relevant landowners which required these plots to be delivered

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	<p>whether this needed to be updated to provide for business extinguishment costs, as these were not currently provided for in the Funding Statement (Document Reference: 4.2A, Examination Library Reference: REP1-007) but the site inspection had revealed the existence of two businesses and the Applicant was asked to explain what the situation is in relation to business extinguishment or relocation for these</p>	<p>with vacant possession by the landowners to the Applicant as part of those agreements. The Applicant was in the process of checking leases to see if any amendments were needed to the Funding Statement (Document Reference: 4.2A, Examination Library Reference: REP1-007) submitted at Deadline 1, but that this was not anticipated this this would need to be reflected at this time.</p> <p>The Applicant confirmed it had no update since the Funding Statement (Document Reference: 4.2A, Examination Library Reference: REP1-007) submitted at Deadline 1 but that it was keeping the position under review and will update as necessary during the Examination.</p>
<b>9</b>	<p><b>Next Steps</b></p> <p>The ExA set out the next steps and agreed action points.</p> <p>The ExA queried the changes which had been made to Sheet 1 of the Land Plans (Document Reference: 2.20A, Examination Library reference: REP2-005) which had been submitted at Deadline 2 and noted that it would require a statement from Network Rail confirming that it did not object to plot 22a being included as land which may be subject to compulsory acquisition otherwise the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 would be engaged.</p> <p>Network Rail confirmed that such a statement could be provided at Deadline 3.</p>	<p>The Applicant confirmed that it has noticed that the Compulsory Acquisition Schedule (Document Reference: 4.4, Examination Library reference: REP2-020) submitted at Deadline 2 contained some errors and that an updated Compulsory Acquisition Schedule would be submitted at Deadline 3.</p> <p>The Applicant confirmed that the change related to Plot 22a, and that an amendment had been made to correct the Network Rail ownership boundary of this Plot and at National Rail's request, and so this has been included as pink land (land which may be subject to compulsory acquisition). The plot is also registered to the adjoining owner, that of Plot 22, and so the Book of Reference (Document Reference: 4.3B, Examination Library reference: REP2-018) reflects this position and clearly that uncertain position is the reason for the need for full acquisition to ensure that the Applicant has full control. This has been agreed with Network Rail. Given that the amendment was made at the request of Network Rail, and that it was the only party requiring consultation, the Applicant did not consider that the Infrastructure Planning (Compulsory</p>

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		<p>Acquisition) Regulations 2010 would be engaged and that any consultation is required.</p> <p>The Applicant confirmed it would work with Network Rail to provide a statement at Deadline 3 confirming this position.</p>
10	Close of the Hearing	N/A

