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For Addressee Only

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Date: 10 December 2024
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Dear Sirs,

APPLICATION FOR THE PROPOSED HINCKLEY RAIL FREIGHT INTERCHANGE DEVELOPMENT CONSENT ORDER

APPLICANT'S RESPONSE TO THE SECRETARY OF STATE'S LETTER DATED 10 SEPTEMBER 2024

1. INTRODUCTION

1.1 On 10 September 2024 the Secretary of State issued a letter ("the Letter") and published the Examining Authority's report ("the ExA's Report") in respect of the application by Tritax Symmetry (Hinckley) Limited ("the Applicant") for the proposed Hinckley National Rail Freight Interchange Development Consent Order.

1.2 The Applicant is grateful for the work undertaken by the Secretary of State and the Department of Transport in reviewing the ExA's Report, before publishing it alongside the Letter.

1.3 The Applicant is also grateful for the opportunity to respond to the issues raised by the ExA and noted in the Letter, given Government policy on rail freight growth and the associated need case both nationally and locally for HNRFI which is reflected in the Statements of Common Ground with the local authorities [ER 3.2.74 and 3.2.75]. Meeting that need is predicated on major investment being required from the private sector, not least into new rail freight interchanges.

1.4 Intrinsic to the overall private investment in HNRFI, a consent will also deliver at no public expense:

1.4.1 a by-pass for Hinckley and Burbage (the A47 link road)

1.4.2 an all-movements junction at M69 J2

1.4.3 50 acres public open space adjacent to Burbage Common

1.4.4 Up to 49.9MW roof mounted solar PV

1.4.5 More than 8,000 jobs

1.4.6 £24million (per annum) in business rates.

1.5 The Applicant has spent 10 years bringing this scheme forward at very considerable cost. As part of Tritax Big Box REIT Plc., a company with a long and strong track record of delivering and holding major logistics schemes as long-term investments, with a current UK portfolio of over £6bn, that investment decision has not been taken lightly and has been against a background of published and demonstrated economic need.

1.6 The current location was confirmed following a robust alternative site analysis [ER 3.2.82 and 3.2.88] and is the only one possible for a rail freight terminal within the market area. The ExA agreed that there is a compelling need for a SRFI in the south-west Leicestershire area [ER 3.2.78]. It has considerable market support. This is reflected in Maritime Transport Ltd having already contracted with the Applicant to deliver the rail terminal. The scheme will provide considerable national and regional benefits, including moving freight by rail to and from our major ports, particularly Felixstowe and London Gateway, vital for trade.

1.7 Under the applicable legal and national policy framework, HNRFI benefits from a presumption in favour of consent being granted. That presumption is, of course, only a starting point, but Parliament's decision to create that presumption reflects the scale of the need and the public interest importance of meeting it through projects such as this. The residual local impacts of HNRFI are very clearly outweighed by its extensive and nationally significant benefits. Striking the appropriate balance between national and local pressures is essential if Government policy of economic growth and investment in infrastructure is to be delivered, as the Prime Minister has very recently made clear.

1.8 In responding to the Letter, the Applicant has taken the opportunity afforded by the last three months to further engage with stakeholders and, where the response to such engagement has been constructive, it has used the feedback to refine its proposals to seek to resolve the issues raised by the Secretary of State. It trusts that this will assist the Secretary of State in reaching her final decision.

1.9 In the Letter, the Secretary of State requested additional information from the Applicant, as now provided in this submission, which:

1.9.1 provides further evidence to demonstrate how matters listed at paragraph 169 of the Letter can be addressed satisfactorily;

1.9.2 comments on the matters referred to in paragraph 170 of the Letter;

1.9.3 addresses a further additional matter referred to in the Letter where the Secretary of State invited the Applicant to comment but which was not listed in paragraphs 169 or 170; and

1.9.4 highlights other matters arising from the Letter and the ExA's Report which the Applicant considers need to be addressed and which it believes are important and relevant to the Secretary of State's final decision in the light of the ExA's Report and the Letter.

1.10 A list of the documents submitted as part of this response is set out in Section 8. The Applicant responds in sequence to the matters raised under the following sub-sections of its response to the Secretary of State.

2. APPLICANT'S RESPONSE TO THE MATTERS LISTED AT PARAGRAPH 169

M1 Junction 21/M69 Junction 3

2.1 At para 169 of the Letter the Secretary of State invited the Applicant to:

2.1.1 provide National Highways with the signal specification used in its 'M1 J21 Modelling Note'

2.1.2 provide further evidence on the adequacy of the modelling of the junction; and

2.1.3 address the safety concerns noted by the ExA.

2.2 Following publication of the Letter, the Applicant has had further and extensive constructive engagement with National Highways. As a result, it has made substantive progress in positively resolving the issues raised by the ExA to which the Secretary of State referred at paragraphs 49 to 52 of the Letter. This submission is accompanied by an updated Statement of Common Ground with National Highways (19.7C) which the Applicant considers satisfactorily addresses the issues raised as a result of the further agreement described below.

2.3 As noted by the ExA [ER 3.3.467] "*There is no up to date VISSIM model which the Applicant could have utilised which means it would have had to build one from scratch*". For the reasons explained in its Deadline 8 submission [REP8-027], the Applicant does not consider that building a VISSIM model from scratch a reasonable and proportionate requirement that is necessary to assess the impacts of the proposed development at the junction. The Applicant is mindful of the requirement of Regulation 14(3)(b) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 that an environmental statement must "*include the information reasonably required for reaching a reasoned conclusion on the significant effects of the development on the environment, taking into account current knowledge and methods of assessment".* It highlights the relatively minor number of additional trips passing through the junction in the peak periods – being a reduction of 10 vehicles in total in the AM peak and an addition of 114 vehicles out of a total number of 6,481 in the PM peak (a 1.8% increase), and the ExA's conclusion that this number of vehicles would "*adversely affect the operation of the junction in a minor way*" [ER 3.3.474]. It also notes that no other development has been required to build a VISSIM model from scratch in order to assess the impacts on this junction.

2.4 Consequently, the Applicant has engaged with National Highways, and its external consultants AECOM, to further validate the LinSig modelling, including providing the signal specification used in its 'M1 J21 Modelling Note'. Through this engagement, National Highways confirmed that "*As a proactive effort in trying to find a way forward, we concluded that LinSig could be considered acceptable, provided that a good level of validation is achieved".*

2.5 In order to confirm that "*good level of validation*", the Applicant submitted a number of Technical Notes to National Highways/AECOM. These are submitted as part of this response at Appendix 1. As a result of these Technical Notes and discussions with the Applicant, National Highways have now confirmed that the LinSig modelling of the junction and its validation is agreed. It should therefore be considered acceptable. This is recorded in the updated Statement of Common Ground with National Highways (19.7C). The Applicant therefore considers that the Secretary of State can conclude that the junction has been adequately modelled and that the outputs of that model provide a sound basis for assessment (inter alia) of the safety of the junction.

2.6 At ER 3.3.471 the ExA stated that due to its concerns about the adequacy of modelling "*the Applicant had not demonstrated that the Proposed Development would minimise the risk of road casualties and an overall improvement in the safety of the SRN*".

2.7 The Applicant is not proposing to undertake any works to mitigate its impact on the junction. This is because current capacity constraints at junction 21 are longstanding and driven by the restricted width of the M1 underbridges on the circulatory carriageway. Improvements to address these constraints would be of a significant magnitude and require considerable Government investment. Whilst there is a clear aspiration from both Leicestershire County Council and National Highways to improve the junction, there is currently no scheme identified. It is acknowledged by all parties that the junction is over capacity as a result. In simple terms, the impact of the proposed development would be to put a minor amount of additional vehicles through the junction in the PM peak. This would add to existing queues.

2.8 To place this increase in context, even taking the worst case scenario, the total percentage impact at junction 21 attributable to the Development would only be 4.9%. This includes all projected development traffic on top of the without development scenario - i.e. it assumes that there will not be any diversion of existing traffic as predicted. This falls

comfortably within the weekday variation values of 11.8 (variation for Motorways in 2023 between Monday and Friday for all vehicles is between indices of 99.9 Tuesday and 111 Friday) evidenced through DfT indices contained within TRA306 dataset[1]

2.9 As no works are proposed, the question of safety at the junction needs to consider the extent to which these minor additions to queues present an additional safety risk compared to the without development scenario. The Applicant has undertaken a highway safety assessment for the study area comprising a Personal Injury Collision Review and a future highway safety assessment using industry standard software COBALT. This assessment was included within the ES Transport and Traffic Chapter APP-117 (see 4.77-4.79) and the Transport Assessment included a detailed review of collisions (2015-2019) [REP3-157]. The Applicant also undertook a review of the most recent 5 year period (2018-2023) [REP4-116]. This notes (see paragraph 3.5) that the position of the DfT was to compares collision rates and patterns to pre-pandemic data which was unaffected by lockdowns, hence the use of the more historic data by the Applicant as recommended. The additional model validation now agreed with National Highways does not change the outcome of this assessment, but rather should give the Secretary of State added confidence as to its robustness.

2.10 ES Table 8.25 includes an assessment of junction 21 in the forecast year of 2036. This which shows a baseline calculation without development (WoD) of 6.2 annual average collisions per year and then the with development (WD) average annual collisions per year remain unchanged at 6.2 PICs. Therefore the With Development (WD) scenario does not present an increased safety risk over the Without Development (WoD) scenario.

2.11 National Highways has indicated to the Applicant that it will further review and provide feedback on the COBALT assessment during the consultation period on this response, and the Applicant will continue to liaise with them in that regard.

Sapcote

2.12 The Secretary of State invites the Applicant at paragraph 169 of the Letter, to provide a response and further evidence in response to the ExA's assessment of increased highway safety risk at Sapcote. The ExA considered that the proposals would lead to an unacceptable highway safety risk which could not be mitigated within the terms of the Application [ER 3.3.539].

2.13 The Applicant's detailed response to this matter is included in the Sapcote Highway Mitigation Technical Note at Appendix 2. In brief summary, this addresses what appears to be a misunderstanding by the ExA in relation to the proposed kerb realignments [ER 3.3.522 – see paragraphs 5.2 – 5.4 of the Sapcote Highway Mitigation Technical Note] and what appears to be the ExA's failure to take into account the proposed mitigation when identifying what it understood to be the HGV traffic impact on the village [ER 3.3.525 – see paragraph 5.5 of the Sapcote Highway Mitigation Technical Note]. It also responds to the ExA's concerns by proposing some additional amendments and enhancements to the proposed works at Sapcote. These are explained in the Sapcote Highway Mitigation Technical Note and the overall package of works is described as the 'enhanced Sapcote scheme'. The additional enhancements comprise improvements to the pedestrian area outside the Co-Op store, delivery of the originally proposed zebra crossing, additional footway widening and the re-location of the bus stop from outside the Co-Op eastwards along the B4669. The Applicant has liaised with the Co-Op on these proposals and they have confirmed that the proposals will not affect their deliveries which are taken from the loading bay to the side of the store. Whilst the Applicant would highlight that the original proposal had been subject to road safety audit and considered to be safe, these further improvements are intended to respond to the ExA's conclusions and to provide the Secretary of State with the reassurance that has been sought, that the Proposed

[1] https://www.gov.uk/government/statistical-data-sets/road-traffic-statistics-tra tra0306-traffic-distribution-by-day-of-week.ods

Development will ensure road safety in Sapcote, which the Applicant is wholly committed to.

2.14 The enhanced Sapcote scheme includes numerous elements of the original scheme with further mitigation proposed to address the ExA's concerns in respect of 'future year' HGV traffic in Sapcote. The enhanced works are secured as follows:

2.14.1 The improvements to the pedestrian area outside the Co-Op store, delivery of the originally proposed zebra crossing and additional footway widening are all within the original Work No. 12 area and the amended proposals have been added to Work No. 12 described in Schedule 1 of the dDCO. The relevant Works Plan (Document 2.2G, Appendix 4) and Highway Plan (Document 2.4G, Appendix 4) have been updated to reflect the amendments and this is reflected in Schedule 15 of the dDCO.

2.14.2 There is a small part of the proposed 'enhanced' works which are outside of the Order limits. This is part of the proposed relocated bus stop. This is wholly within the existing highway boundary and can therefore be delivered through the conventional method of delivering works to a highway, by agreement with the local highway authority pursuant to s278 of the Highways Act 1980. These 'enhanced' works are secured by a new DCO requirement (requirement 5(4) of the Applicant's dDCO) to ensure that the Applicant enters into an agreement with the local highway authority pursuant to s278 of the Highways Act 1980 before commencing the development. The requirement refers to a s278 plan (new Document 2.33, Appendix 2C Part 2) which has been added to Schedule 15 of the dDCO as a certified document.

2.15 As explained in the Sapcote Highway Mitigation Technical Note, the Applicant has submitted the enhanced Sapcote scheme for stage 1 road safety audit with two independent auditors and all auditor recommendations have been agreed. The audit teams did not raise any fundamental safety concerns and the Applicant has either already implemented the auditor recommendations within the design appended to the Sapcote Highway Mitigation Technical Note or the audit teams agree that the minor design suggestions recommended through the audits can be achieved through the detailed design process pursuant to the protective provisions contained in the DCO (Part 3 of Schedule 13) (see paragraph 6.55 of the Sapcote Highway Mitigation Technical Note). Just prior to submission of this response the Applicant received LCC's comments on the stage 1 road safety audit. These comments are submitted at Appendix 2 Response Report Sapcote Enhanced Scheme (LCC). The Applicant will continue to liaise with LCC during the consultation period to this response but is of the view that their comments will be capable of satisfactory resolution either as part of the stage 2 safety audit process, as part of the detailed design approval under the protective provisions contained in Part 3 of Schedule 13 to the Order or through any s278 Agreement referred to in the previous paragraph.

2.16 Whilst all of the Sapcote works can be delivered within the existing highway boundary, the Applicant has considered ownership of the subsoil beneath the highway of the land outside of the Order limits which will be subject to the s278 agreement so that those parties can be consulted following this submission along with all other interested parties who were consulted as part of the DCO Application and Examination. The relevant interested parties are identified by reference to a plan delineating their subsoil ownership in Appendix 2.

2.17 The Applicant has considered the environmental impact of the 'enhanced' Sapcote works and includes updated Addenda to the Air Quality and Noise chapters of the Environmental Statement as part of this submission (document reference 6.4.2, Appendix 5 and document reference 6.4.3[2], Appendix 5 respectively). These assessments conclude that the enhanced works do not materially change the conclusions of the original Environmental Impact Assessment.

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[2] The Noise chapter is accompanied by updated Figures 10.10A (document reference 6.3.10.10A), 10.11A (document reference 6.3.10.11A), 10.12A (document reference 6.3.10.12A), 10.13A (document reference 6.3.10.13A), 10.14A (document reference 6.3.10.14A), 10.15A (document reference 6.3.10.15A), and new Figures 10.16 (document reference 6.3.10.16) and 10.17 (document reference 6.3.10.17)

Narborough Level Crossing and the Aston Firs Travellers Site

2.18 The final two issues on which the Secretary of State sought further evidence from the Applicant concern the ExA's conclusions on the impact of the proposals on people who share a protected characteristic under the Equality Act 2010. In responding to the specific issues on which the Secretary of State requested further evidence, the Applicant has first outlined below the legal duty arising under the Equality Act, in so far as it relates to the Secretary of State's determination, before turning to the factors informing the application of that duty in the specific context of the impacts at Narborough Level Crossing and the Aston Firs Travellers Site.

Equality Act 2010

2.19 The Applicant agrees that the public sector equality duty in section 149 of the Equality Act 2010 ("the PSED") is engaged in the Secretary of State's determination of the application.

2.20 In the Letter, the Secretary of State at paragraph 165 indicated that she was minded to agree with the recommendations of the ExA that the Proposed Development would not advance equality of opportunity for those protected characteristics of disability or race in respect of impacts at:

2.20.1 Narborough Level Crossing for the reasons set out at paragraphs 72-75 of the Letter; and

2.20.2 the Aston Firs Travellers Site for the reasons set out at paragraphs 105-106 of the Letter.

2.21 The Applicant has addressed each of these matters in turn below, but before doing so considers it important to address the application of PSED in a planning decision making context informed by case-law in *R(on the application of Coleman) v Barnet LBC [2012] EWHC 3725 (Admin)*. In doing so, the Applicant has assumed on the basis of the Letter that the Secretary of State's concerns are confined to those noted in paragraph 165 of that Letter and accordingly it has not engaged with other aspects of the PSED in its response and assumes that the Secretary of State is content they have been satisfactorily addressed. If that assumption is incorrect, we would be happy to address any other aspects of the application of the PSED that the Secretary of State considers to be relevant and important to the decision in this case.

2.22 Section 149(1) of the Equality Act 2010 provides:

A public authority must, in the exercise of its functions, have due regard to the need to—

(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

2.23 As noted above, the Secretary of State has only raised concerns relating to (b).

2.24 In so far as the application of s149(1)(b) is concerned s149(3) then provides:

Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—

(a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;

(b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;

(c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

2.25 Section 149(7) then further provides:

The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities

2.26 In *Coleman* Lindblom J (as he then was) set out what is required to comply with the PSED at paras 66-70 of the judgment with particular reference to the earlier judgments in *R(Brown) v Secretary of State for Work and Pensions [2009] PTSR 1506* and *R(Baker) v Secretary of State for Communities and Local Government [2009] PTSR 809* (Applicant's underlining in emphasis):

66. As Dyson LJ said in Baker (in paragraph 31), the duty is not a duty to achieve a result, but to have due regard to the need to achieve the statutory goals. This distinction, said Dyson LJ, is "vital". The failure of a decision-maker to make explicit reference to the relevant statutory provision (in that case section 71(1) of the Race Relations Act 1976) would not determine whether the duty under the statute had been performed, for this "would be to sacrifice substance to form" (ibid., paragraph 36). Dyson LJ went on to say this:

"37 The question in every case is whether the decision-maker has in substance had due regard to the relevant statutory need. Just as the use of a mantra referring to the statutory provision does not of itself show that the duty has been performed, so too a failure to refer expressly to the statute does not of itself show that the duty has not been performed. … To see whether the duty has been performed, it is necessary to turn to the substance of the decision and its reasoning.

38 Nevertheless, although a reference to section 71(1) may not be sufficient to show that the duty has been performed, in my judgment it is good practice for an inspector (and indeed any decision-maker who is subject to the duty) to make reference to the provision … in all cases where section 71(1) is in play. In this way, the decision-maker is more likely to ensure that the relevant factors are taken into account and the scope for argument as to whether the duty has been performed will be reduced."

67. The court must consider whether due regard has been paid to the equality duty, and not simply whether the failure to have due regard to that duty was Wednesbury unreasonable (R (Child Poverty Action Group) v Secretary of State for Work and Pensions [2011] EWHC 2616 (Admin), at paragraphs 70 to 72). "Due" regard means, as Dyson LJ said in Baker (at paragraph 31), "the regard that is appropriate in all the circumstances". The circumstances include "the importance of the areas of life of the members of the disadvantaged … group that are affected by the inequality of opportunity and the extent of the inequality" and "such countervailing factors as are relevant to the function which the decision-maker is performing" (ibid.).

68. As Aikens LJ said in Brown (at paragraph 35), "the general duty [in section 49A(1) of the Disability Discrimination Act 1995] is expressed in broad and wide-ranging terms of the needs or targets to bring about a change of climate, but the section is silent as to how it should be done". He emphasized (at paragraph 82) the need for the decision-maker to "pay regard to any countervailing factors which, in the context of the function being exercised, it is proper and reasonable for the public authority to consider". What these factors are in a particular case will depend on the function being exercised and all the circumstances that bear upon it. Aikens LJ added:

"… Clearly, economic and practical factors will often be important. Moreover, the weight to be given to the countervailing factors is a matter for the public authority concerned, rather than the court, unless the assessment by the public authority is unreasonable or irrational … "

69. Where disabilities are concerned, the duty encompasses due regard being given to "the need to take steps to gather relevant information in order that [the public authority] can properly take steps to take into account disabled persons' disabilities in the context of the function under consideration" (Brown , at paragraph 85). The court suggested (in paragraphs 90 to 96) six principles applying to the discharge by a public authority of its duty to have due regard to the goals set out in section 49A(1) of the Disability Discrimination Act 1995 . First, the public authority must be made aware of its duty to have due regard to the identified goals (paragraph 90). Secondly, the due regard duty must be fulfilled before and at the time that a policy affecting people with disabilities is being considered by the public authority (paragraph 91). Thirdly, the duty "must be exercised in substance, with rigour and with an open mind". It must be "integrated within the discharge of the public functions of the authority", which is "not a question of "ticking boxes"" (paragraph 92). Fourthly, the duty is not delegable (paragraph 94). Fifthly, the duty is a continuing one (paragraph 95). And sixthly, it is good practice for public authorities to keep an adequate record "showing that they had actually considered their disability equality duties and pondered relevant questions" (paragraph 96).

70. Performance of the due regard duty must be an integral part of the formation of the decision, not merely the justification for the making of that decision (see Kaur, at paragraph 24). Because the performance of the duty is a matter of substance, to be judged according to the facts of the case in hand, there must be enough information to enable the necessary balancing exercise to be carried out, and that information must be before the decision-maker (see Child Poverty Action Group , at paragraphs 70 to 76). In Brown it was held that the underlying objective of the general duty under section 49A(1) of the 1995 Act was "to create a greater awareness on the part of public authorities of the need to take account of disability in all its forms and to ensure that it is brought into "the mix" as a relevant factor when decisions are taken that may affect disabled people" (paragraph 30).

2.27 From that analysis the Applicant draws the following conclusions in relation to the application of the PSED:

2.27.1 The duty is one of having "due regard", it is not to ensure that a particular outcome is achieved.

2.27.2 Having "due regard" requires decision makers to take into account the circumstances of the group affected by any inequality and the extent of such inequality and to balance that against countervailing factors. Countervailing factors may include economic and practical factors which in a planning context can include the wider need, benefits and policy imperative to deliver the project giving rise to the effect and the extent to which the impact might reasonably be mitigated.

2.27.3 Application of the duty requires the decision maker to take steps to gather the relevant information both in relation to the effect and countervailing factors in order to undertake the required balance.

2.28 It is against that legal background that the Applicant now responds to the matters raised by the Secretary of State.

Narborough Level Crossing

2.29 At paragraph 75 of the Letter the Secretary of State invited the Applicant to comment on the concerns raised by the ExA regarding the effect on ambulatory impacted pedestrians at Narborough Level Crossing. Specifically, the Secretary of State referred to the conclusions at ER 3.3.561 and ER 5.4.10.

2.30 At ER 3.3.561 the ExA noted:

"the additional closure time would result in delay for those who are not willing or those with ambulatory issues, including those pushing buggies, or cyclists, (except for those who are prepared to carry their bicycles over the bridge, which would then conflict with pedestrians)"

2.31 Before concluding at ER 5.4.10:

"The additional delays at Narborough would, to our mind, not advance equality of opportunity for those with the protected characteristics of age or disability. This is because the effects of the additional delays are most likely to be on those who would be less able to cross the existing bridge, that is those with ambulatory issues. This applies to those who are disabled, and for the youngest and the oldest in society, the protected characteristic of age"

2.32 The Applicant notes that the Secretary of State at paragraph 165 of the Letter, when referring to her "minded to" conclusions, only refers to the protected characteristic of disability and not that of age. It is not clear to the Applicant whether this omission was intended, but it submits that it is entirely correct. The ExA's reference to those pushing buggies and cyclists exemplifies that any impact would affect all ages, and those not old enough to not be able to climb and descend stairs will certainly be accompanied and likely to either be carried or in a buggy. Accordingly, the Applicant's response focusses upon the application of the PSED in relation to those with an ambulatory related disability preventing them from using the footbridge. Should the Secretary of State disagree however, the proposals outlined below would equally address the issue with respect to the protected characteristic of age.

2.33 As noted in the legal analysis above, to engage with the PSED requires the decision maker to formulate an understanding of the nature of the inequality and the extent of any related impact and then to balance that against any countervailing factors. In terms of the impact side of the balance, this requires the Secretary of State to pose the question "*to what extent would those with disabilities be affected by the additional barrier down time arising as a result of HNRFI trains?*". This in turn requires a detailed understanding of the evidence submitted by the Applicant and accepted by the ExA as to the paths available to HNRFI trains, the additional down time that results from those paths, and how that might interact existing train paths to elongate any down time.

2.34 These details are explained in the Hinckley NRFI Narborough Level Crossing Report enclosed at Appendix 3 which, in summary, notes:

2.34.1 The additional down time arising from any HNRFI freight train would be 2 minutes 31 seconds. This is considerably shorter than the down time for any stopping passenger trains calling at Narborough for which the down time is 4 minutes per train, as noted in the Letter. This is because the freight train would not stop at the station.

2.34.2 The theoretical worst-case scenario would be an HNRFI train either closely preceding or following a stopping passenger train and extending that 4 minute down time to approximately 7 minutes on a single down time occurrence. This is highly unlikely to occur in practice as it would require a full barrier down time for the first service and then the timing of the second service to be such that there is insufficient time for the barrier to raise before it needed to lower again for the second service. In practice, where trains pass in the station, the barrier down time overlap would be considerably shorter in total, with the effect of reducing the overall barrier down time in an hour. Indeed, if an HNRFI train went through while a passenger train was stopped for 4 minutes, there would be no additional time required by the HNRFI train at all.

2.34.3 The time period between consecutive down times would not be so short as to not allow sufficient time for any person with a disability to cross the level crossing.

2.34.4 Options for removing or minimising the need for those who might not be able to use the existing footbridge to wait for additional 2 minutes 31 seconds have been considered by the Applicant as set out in the Hinckley NRFI Narborough Level Crossing Report. As this explains, the level crossing itself is the existing provision to enable those with disabilities to cross the railway and it is not considered that there is a feasible implementable mitigation option which would

enable those with ambulatory issues to cross the railway in a significantly shorter time than they would be able to achieve by waiting.

2.35 Accordingly, the Applicant is proposing to fund the provision of improved waiting facilities at Narborough Station which would also be accessible by those waiting to cross the level crossing who are unable to use the existing footbridge. In addition, it will also fund improvements to the Customer Information Service to provide information to those seeking to catch trains. These arrangements are secured through a Supplemental Framework Agreement with Network Rail confirmation of which is evidenced through the correspondence within the Narborough Level Crossing Report at Appendix 3. This will assist in minimising any disadvantage which those suffering with ambulatory issues may suffer as a result of the short periods of downtime due to the passing of HNRFI trains.

2.36 The extent of any disadvantage experienced by those with disabilities as a result of additional downtime at Narborough Level Crossing due to HNRFI trains has therefore been addressed as far as reasonably practicable and consequently, the Applicant has considered the duty to "have regard" to those effects in formulating its proposals in compliance with the PSED. When the substantial countervailing factors in the form of the benefits of this nationally significant infrastructure project are taken into account it is plain that they substantially outweigh any limited residual disadvantage that may be experienced by those with disabilities as a result.

Aston Firs Travellers Site

2.37 The Secretary of State has asked the Applicant to provide further evidence to demonstrate how it is possible to avoid or mitigate the potential harm from the construction of the acoustic barrier to the occupiers of the Aston Firs Travellers Site as referred to at paragraphs 106-107 and 165 of the Letter.

2.38 The Applicant notes that the Secretary of State's indication (para 106) that based on the material before her at the time of the Letter, she was minded to agree with the ExA's judgment at ER 3.6.76 and ER 3.6.79 which in turn informed its conclusions at ER 3.6.81 and ER 3.6.82. The Applicant highlights that the ExA found that the 4m barrier along the north western boundary of Aston Firs would not appear unduly oppressive (ER 3.6.73) and therefore that the ExA's conclusions were derived from effects arising from that element of the barrier which was proposed along the south-eastern boundary at 6m in height.

2.39 In responding to the Secretary of State's request, the Applicant has therefore focused on this 6m high section. The extent of this section of the barrier is more particularly shown on ES Figure 10.10 [APP-279] as referred to at Note 2 on the parameter plans [REP4-106]. Conformity of the final design of the barrier with the parameter plans is secured through requirement 4 of the draft DCO.

2.40 The Applicant was surprised to read the ExA's conclusions on this matter, since it was an issue that received only limited attention during the examination itself. This matter had been subject to only a single written question during the Examination. The Secretary of State is referred to Question 2.9.2 under the heading of "Socio-economic effects" in the ExA's Further Written Questions [PD-013][3] which asked:

Could the Applicant clarify whether the impact of the proposed acoustic fence to be provided on the site access from Hinckley Interchange has been assessed for the effect on the adjacent Travellers sites as part of the Health Impact Briefing, and if so, what were the conclusions and is there any further mitigation to be provided?

2.41 Responses to the ExA's Further Written Questions were due at Deadline 5 of the Examination. In between issuing of the ExA's Further Written Questions and Deadline 5, the ExA held ISH6. The Applicant draws the Secretary of State's attention to the related hearing agenda [EV12-001] and highlights, that it was held to deal with the issues of traffic, transport and noise. The detailed agenda for ISH6, issued in advance to alert the Applicant and others to the issues to be discussed at the hearing and to allow adequate preparation,

[3] The ExA's Report at paragraph 3.6.72 mistakenly refers to the ExA's First Written Questions [PD-011]

contained no reference to acoustic barriers. Nor did the information which the ExA asked the Applicant to be prepared to display at the hearing include the section drawings or any other material relevant to the landscape and visual assessment of the acoustic barrier adjacent to Aston Firs which it had submitted at Deadline 4 [REP4-026] and as part of the ES respectively.

2.42 The ExA's Report at paragraph ER 3.7.6 refers to a short exchange with the Applicant at ISH6 (lasting less than one minute) in the midst of a wider discussion on noise impacts and mitigation during which the ExA asked the Applicant whether it had considered the impact of the barrier on living conditions on residents of Aston Firs and whether alternative locations and design solutions had been considered. It was during the course of that exchange that the Applicant indicated its view that the barrier had been located in its "optimum position".

2.43 At the close of this exchange, the ExA did not ask the Applicant to provide any further information in its subsequent response to question 2.9.2 of its Further Written Questions, nor did it set any follow up actions arising from ISH6 relating to this matter [EV012-010].

2.44 The Applicant duly submitted its written response to question 2.9.2 at Deadline 5 [REP5-039] of the Examination. No further questions were asked by the ExA nor clarifications sought on the issue subsequent to this submission, either in the three Rule 17 letters that the ExA issued in the latter stages of the Examination (in which it sought further information on other matters, as to how further mitigation could be secured at the detailed design stage or within the design principles which would inform any detailed design submission) or otherwise.

2.45 In reaching a conclusion that "*in part, this would have a significant overshadowing and dominant effect resulting in a loss of outlook on a small number of units on the site with a major adverse permanent effect that cannot be mitigated*" [ER 3.6.78], the ExA seems to have misunderstood the evidence put before the Examination. In particular, it appears to have misunderstood the Applicant's statement in the wider context of a hearing topic on noise, that the barrier is located in the "optimum position" for the purposes of reducing noise impact, as meaning that there was no ability to mitigate its visual impact further at the detailed design stage or that a similar outcome could not be achieved by alternative means.

2.46 It should have been clear to the ExA from the Applicant's Deadline 5 response [REP5-039] that there was scope for mitigation of the visual impact of the barrier if needed. The Applicant's Deadline 5 response referred to the potential for additional landscaping to be provided for example as part of the detailed design approval under requirement 4. If the ExA was uncertain about this issue, it could and should have asked for further information, which the Applicant would have been happy to provide.

2.47 The Applicant acknowledges that the ExA and the Secretary of State can legitimately disagree with the Applicant's conclusions in its Deadline 5 response [REP5-039] and in its Equalities Impact Assessment Statement [REP5-007]. However, it was clearly incumbent on the ExA, in relation to a matter which, on its own, the ExA concluded should result in the order being withheld, to examine this matter thoroughly, transparently and fairly, and in particular to invite the Applicant to consider and respond to its specific concern about the (incorrectly) perceived inability to mitigate an impact that it evidently considered to be unacceptable. Had that specific concern been brought to the Applicant's attention during the examination it could and would have addressed it in the way now proposed. The Applicant therefore does not consider that the ExA took sufficient steps to gather the relevant information both in relation to the effect, the scope for mitigating that effect, and countervailing factors in order to undertake the required balance under the PSED as referred to above.

2.48 In response to the Letter the Applicant has undertaken further work to reduce the visual impact upon the residents of Aston Firs arising from the 6m acoustic barrier whilst maintaining a suitable level of noise attenuation, safe road alignment, and amenity for users of public rights of way.

2.49 This has resulted in the introduction of a commitment to a buffer of at least 12m between Aston Firs and the southern section of the barrier and a reduction in its height to a maximum of 3m (new DCO requirement 4(4)(b) which refers to Figure 10.10A where the buffer and heights[4] are identified). Further details of this design evolution are set out in the Applicant's accompanying submission Hinckley NRFI Aston Firs Technical Note at Appendix 4 which further explains the measures undertaken and the updates to the application documents, plans and to the DCO to give effect to these commitments and to secure an improved level of amenity for the residents of Aston Firs, which the Applicant believes satisfactorily addresses the concerns raised by the ExA and the Secretary of State. The Applicant has also added a small bridleway link in response to a comment from LCC that bridleway users may be inclined to follow a desire line across a grassed area, so that now instead there is a formal bridleway link from the Pegasus crossing to the realigned bridleway.

2.50 Furthermore, with respect to the duty under s149(1)(b) Equality Act, whilst it is not possible to completely eliminate all impacts on the residents of Aston Firs, the Applicant has through the measures outlined, sought to minimise the disadvantages suffered by them to within established standards and acceptable levels of amenity. In reaching this position, the Applicant has been in further contact with the Service Manager in the Multi-Agency Travellers Unit and the Aston Firs Site Manager at Leicestershire County Council who have endorsed the positive effect of the Applicant's evolved design in addressing the issues raised. These responses were received by email and are enclosed at Appendix 4 (F) (Aston Firs Gypsy and Traveller Liaison Officers and Residents Response). In responding in this way, the Applicant has demonstrated that it has considered the Secretary of State's duty to "have regard" imposed under that section, taken such measures as are reasonable further to that duty, and that countervailing measures outweigh the limited residual effect. There remains scope for further design refinement as part of the details to be submitted under requirement 4.

3. APPLICANT'S RESPONSE TO THE MATTERS LISTED AT PARAGRAPH 170

Sustainable Transport Strategy

3.1 The ExA's conclusions [ER 3.3.425] in relation to the Applicant's Sustainable Transport Strategy ("STS"), upon which the Secretary of State invites comments from the Applicant (paragraphs 33 – 37 and 170) were that:

3.1.1 the mode-change targets were insufficiently challenging;

3.1.2 the subsidy for employees using the Demand Response Transport ("DRT") service should be as for the existing bus services (a free six-month bus pass); and

3.1.3 the Applicant did not investigate sustainable travel modes related to the provision of a rail passenger station sufficiently.

3.2 The ExA considered that the Applicant's STS could be amended to deal with the first two conclusions above and that, as the ExA's perceived failure to investigate the provision of a rail passenger station cannot be mitigated as part of the Application, with the ExA's proposed amendments to the STS, little harmful weight should be applied in the planning balance [ER.3.3.427]. The Applicant considers the ExA's conclusions in respect of a rail passenger station were unsound, as set out in paragraphs 3.15-36 below.

3.3 The ExA suggested that the STS should be amended to deal with two specific measures and proposed that the DCO requirement be amended to ensure a revised version is submitted to the relevant planning authority for approval to include those specific measures as noted in the ExA's proposed draft requirement and which must accord with the document submitted with the Application. The ExA then suggested that the Application version is removed as a certified document [ER 7.4.106 and ER Table 11].

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[4] Figure 10.10A limits the height on the fence to 3m above ground level but also to a maximum height AOD at stated locations that have informed the assessment

3.4 The specific measures the ExA required to be dealt with [ER Table 11, ExA's proposed amendments to requirement 9] were:

3.4.1 the inclusion of a six-month free bus pass for employees using the DRT service; and

3.4.2 a more ambitious target for the reduction of single car occupancy.

3.5 It appears from ER 3.3.408 and 3.3.425 that the ExA may not have fully understood that single occupancy car trips were not reported in the Applicant's original STS because the Applicant used the DfT's standard Journey to Work modes which do not differentiate between single occupancy drivers and car drivers who also car share.

3.6 In order to address this, the Applicant has amended the STS to differentiate more clearly between single occupancy car trips and car sharing. This is because car sharing for a development of this nature will be an important tool in reducing overall vehicle use to and from the site.

3.7 The amended STS now includes the specific measures noted by the ExA (Document 6.2.8.1H). The amended commitments are outlined in Table 1 of the STS. The Applicant commits to a modal shift target from 66% to 40% of single occupancy vehicles in 10 years (Table 1, item 1) and the provision of a free six-month DRT pass for employees from first occupation (Table 1, item 7).

3.8 The original modal shift target was from 75% to 60% over 10 years. This has been changed to a single occupancy vehicle target of 66% to 40%. As stated above, the Applicant's original target figures were based on Census data reporting of travel to work modes which reports car trips as 'car drivers' and 'passengers' only. It does not differentiate between single occupancy trips and car sharers who drive, and a number of the 'car drivers' are expected to be car sharers and not only single occupancy trips – i.e. 'car driver' covers more than single occupancy. The new, more ambitious, target specifically addresses the single occupancy concern of the ExA [ER 3.3.408 – 3.3.409].

3.9 In addition to the two specific measures raised by the ExA, the Applicant has also added an additional private bus service for which there will also be a free six-month bus pass. This service is to connect the south east of Leicester City area to the site, where sustainable transport journey times are above 60 minutes for potential employees in that area. This additional service will cover key shift changeover times. The expected catchment for employees as outlined in the STS shows a significant draw from Leicester. The service will be available from occupation and usage will be monitored and reviewed by the Site Wide Travel Plan Coordinator and reported to the Travel Plan Steering Group. The Framework Site Wide Travel Plan has also been amended to reflect this new service (Document 6.2.8.2E). It is considered that this additional service also reduces the impact at M1 Junction 21 by reducing reliance on car journeys through the junction.

3.10 The Applicant's amended STS secures those extra measures identified by the ExA and the reason for the ExA's recommended amended requirement has been superseded as a result. The Applicant's proposed requirement secures compliance with the now updated Sustainable Transport Strategy. The Applicant has amended Schedule 15 of the DCO to reflect this updated version and the updated Framework Site Wide Travel Plan.

3.11 This approach ensures that the Secretary of State can be satisfied that the ExA's specific measures are secured, but also provides certainty to the Applicant as to the measures to be provided and avoids the real risk of prolonged post-consent debate with the local authorities as to what measures ought to be required and/or a potential appeal in seeking to discharge the DCO requirement. This allows delivery of this nationally significant infrastructure project without undue delay.

3.12 With regard to the ExA's commentary on decked parking [ER 3.3.410 and 7.4.107], the Secretary of State's attention is drawn to the Design Code, which is secured by DCO requirement 4. This specifically ensures that "*the amount of car parking on each plot will be determined by the local authority standards*" – see bullet point 3 of paragraph 9.2 (document reference 13.1D). The provision of decked parking does not therefore relate to

or affect the number of parking spaces to be provided, rather, it only relates to the layout in which the parking is to be provided, to respond to occupier requirements. Decked, or multi-storey, parking could, for example, be a more efficient use of space on a plot. The number of parking spaces is not linked to the layout for its provision, it is linked to the third bullet which confirms that the amount will be determined by the authority's standards.

3.13 The Applicant therefore does not consider that the ExA's proposed amendment to the Detailed Design requirement (ER 7.4.107 and ER Table 11, requirement 6 of the ExA's recommended DCO ("rDCO")) is appropriate or necessary. Indeed, it appears to indicate that the ExA's recommendation is based on a misunderstanding of the material before the Examination.

3.14 The ExA concluded that the inclusion of the additional measures which are now contained within the Sustainable Transport Strategy and secured by DCO requirement, would reduce the weight this matter should be given in the planning balance to only little adverse weight [ER 3.3.427 and ER 5.2.9]. The Applicant considers that having addressed the matters raised by the ExA, limited positive weight should be given to this matter, as noted in the table following paragraph 5.44 below.

Passenger Rail Station

3.15 This section addresses the approach to a specific local planning policy that is addressed in the ExA's Report in relation to the issue of the provision of sustainable transport. The ExA stated [ER 3.3.424] that the Applicant has failed to give due consideration to Policy 5 of the Hinckley and Bosworth Borough Council (HBBC) Core Strategy (CS). Policy 5 identifies 'transport interventions' as detailed in the Hinckley Core Strategy Transport Review 2007. In addition to these measures the Policy states:

'The Council will support the re-opening of the Elmesthorpe passenger railway station to serve Earl Shilton and Barwell'

3.16 The Applicant notes that the Local Impact Report prepared by HBBC [REP1-138] does not suggest that there would be any adverse impact to the achievement of the objectives of Policy 5 arising from HNRFI. That is important, because this part of the policy does not set development control tests, and in any event the CS does not and could not set policy tests for the determination of applications for development consent for NSIPs under the Planning Act 2008. Local Plans do not and cannot set such tests, which Parliament has decided is exclusively the role of National Policy Statements under the Act. That is reflected in the process of preparation and scrutiny of Local Plans, whose soundness is not tested by reference to their suitability for guiding development control decisions for nationally significant infrastructure projects.

3.17 The Applicant also highlights to the Secretary of State three applications for development at the sustainable urban extensions (SUE) at Earl Shilton and Barwell that have been considered by the Planning Committee at HBBC:

3.17.1 Firstly, 21/01511/OUT (SUE at Earl Shilton for up to 1000 dwellings and up to 5.3 hectares for employment uses) the planning officer's report for which is attached at Appendix 7A; and

3.17.2 Secondly, 23/00330/OUT (SUE at Earl Shilton for up to 500 dwellings) the planning officer's report for which is attached at Appendix 7B; and

3.17.3 Finally, 12/00295/OUT (application for up to 2500 dwellings at the Barwell SUE) the planning officer's report for which is attached at Appendix 7C

3.18 These officers' reports are relevant to the determination of the current application for development consent in so far as they reveal the approach taken to Policy 5 by the local planning authority (the author of the policy) in the determination of planning applications at the two SUEs in circumstances where Policy 5 supports the reopening of the passenger station at Elmesthorpe to serve these developments. None of the applications proposed a re-opening of the station.

3.19 In relation to 21/01511/OUT[5], the planning officer's report to the Planning Committee makes reference to Policy 5. No issue was taken against the SUE application on the basis that there was perceived to be any conflict with Policy 5.

3.20 Similarly in relation to 23/00330/OUT[6], no issue was taken in reporting the planning application to the Planning Committee, and no conflict with Policy 5 was identified.

3.21 Finally, although 12/00295/OUT[7] was submitted in 2012 it has yet to be formally determined. The application was reported to the planning committee on the 23 April 2013. Again, no reference was made to the proposal being in conflict with Policy 5.

3.22 Following the allocation of the SUEs in its CS, HBBC prepared the Earl Shilton and Barwell Area Action Plan (adopted September 2014). The only reference to a railway station within the AAP is to Hinckley Rail Station in the context of the proposal for an extension of bus services 'to provide' linkages between the two SUEs and the existing settlements.

3.23 The Inspector's Report into the examination of the Earl Shilton and Barwell AAP states (paragraph 78):

'Section 4 of the STA provides detail on the proposed bus strategy and that is summarised in paragraphs 4.15-4.18 of the AAP headed 'Public Transport' although reference is made in paragraph 4.25 to it being a Public Transport Strategy. The Council's suggested amendments (PCs 37 and 48) to those paragraphs are for clarification of the purposes of the bus strategy. This involves enhancements and re-routing of the existing services and recognition that some subsidies will be required in the early years of the developments funded by s106 contributions (included in the Infrastructure Schedule). Despite the emphasis given in Core Strategy Policy 5 to the particular need to improve links to Hinckley Railway Station there is no reference to that either in the STA or in the AAP. As nothing has been done to progress the re-opening of Elmesthorpe station on the Birmingham-Nuneaton-Leicester railway line the need for improved connectivity between the SUEs and Hinckley station is a matter which requires further consideration by the County Council as a transport authority. It is not so critical as to render the AAP unsound but would enhance the sustainability of the proposals.' The Local Impact Report submitted by Leicestershire County Council ("LCC") on the HNRFI [REP1-154] does not suggest any conflict with HBBC CS Policy 5 when addressing *'Rail impacts and the LRN'*.

3.24 Thus it is plain, both from the terms of Policy 5 itself, and from HBBC's decision taking on the SUEs, that this Local Plan policy does not impose a policy requirement for those proposing development to include within their applications measures designed to achieve or even to promote the reopening of the Elmesthorpe Passenger Station. That is the case for development proposals that fall to be determined under the Town and Country Planning Act 1990 by reference to the Local Plan. It applies with even more force to nationally significant infrastructure proposals to which the Local Plan policies do not directly apply. Policy 5 only amounts to a policy aspiration of the Council. The NPS is the primary policy basis for making decisions on applications for development consent, and there is no specific policy requirement in the NPS (or even the Local Plan) for applicants promoting a SRFI to make provision for or investigate provision of a passenger station.

3.25 The Government acknowledges (NPS Footnote 61) that *'investment decisions on strategic rail freight interchanges will be made in the context of a commercial framework'*. Realistically the delivery and operation of a passenger station could not be made in a commercial framework, as the revenue and operational costs would fall outside of the control of the Applicant.

3.26 Furthermore, the Applicant approached Network Rail, the national rail infrastructure owner including passenger railway stations in response to comments made during the statutory consultation. In response to the issue having been raised in the examination of the

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5 21/01511/OUT - lists policy 5 as a relevant policy at section 8, but contains no further discussion

6 23/00330/OUT - lists policy 5 as a relevant policy at section 8, but contains no further discussion

7 12/00295/OUT lists Policy 5 as a relevant policy at section 19 and discusses it at paragraph 21.12.

Applicant's proposal for a SRFI, Network Rail made clear its position that a passenger station at Elmesthorpe would not be supported [REP5-087 section 9.3].

3.27 In response to the ExA's subsequent Rule 17 request [PD-016], Network Rail commented on the business case implications for a station in the vicinity of the rail freight terminal [REP7-090]. Network Rail advised that the additional hourly passenger service being proposed was a fast service between Birmingham Coventry and Leicester and would not be stopping at intermediate stops. For such a service a station at this location would offer no benefits.

3.28 In addition, in that response, Network Rail also set out the view of the Train Operating Company, Cross Country Trains on the business case:

"Cross Country Trains have confirmed that inclusion of an additional station call in their Birmingham to Leicester stopping service would add journey time and hence compromise the ability to platform these trains at both Birmingham New Street and Leicester. The increased journey time would also mean that additional rolling stock and traincrew would be needed to operate the service. For these reasons Cross Country Trains believes that provision of a new station is unlikely to be viable in business case terms".

3.29 In light of the policy position as set out above, and the clearly expressed views of Network Rail (the national rail infrastructure owner of passenger railway stations) and Cross Country Trains (the relevant Train Operating Company), it would be both inaccurate and unfair for the Applicant to be criticised for failing to explore the provision of a passenger railway station 'at or near the site' (ER 3.3.424). The Applicant plainly did explore with Network Rail the provision of a passenger railway station, but its position on this issue was made very clear throughout the process. The Applicant similarly cannot fairly be criticised for not itself promoting the development of a passenger station in circumstances where Network Rail does not consider this to be either necessary or desirable, and its own assessment shows that this is not necessary to make the proposed development reasonably accessible by sustainable modes of transport.

3.30 The ExA's conclusion that the Proposed Development would be contrary to NPS paragraph 5.211 (ER 3.3.426) was neither reasonable nor justifiable on the evidence. In the Statement of Common Ground with HBBC [REP8-021], the Council did not identify Policy 5 as being relevant to the consideration of impacts on the local transport network (under matters not agreed – other matters arising from the policy provisions of the development plan). The Applicant has given due consideration to the transport impacts of the development through a transport assessment and has provided details of proposed measures to improve access by public transport and sustainable modes that are appropriate to the location of HNRFI.

3.31 The ExA refer to paragraph 5.278 of the draft NPSNN and contend that the Applicant has *'not maximised opportunities to allow journeys associated with the development to be undertaken by sustainable modes'.* Paragraph 5.278 draft NPSNN states *'consideration should also be given to whether the applicant has maximised opportunities to allow for journeys associated with the development to be undertaken via sustainable modes'.* The Applicant has considered with Network Rail whether a passenger railway station would be supported at Elmesthorpe. Network Rail does not support such provision and the Applicant could not provide a passenger railway station within a commercial framework. In those circumstances, neither the absence of a proposal by the Applicant to develop such a station nor the extent to which the potential for such a development has been explored by the applicant, provide any proper basis for concluding that there is a conflict with paragraph 5.278 of the draft NPSNN. Any such conclusion would be unsupported by the relevant policy and the evidence, and hence manifestly unreasonable.

3.32 Following the publication of the ExA's Report by the Secretary of State, the Applicant has approached Network Rail to consider this issue again. In response, Network Rail has provided a further report titled ***Hinckley National Rail Freight Interchange - Evaluation of the Viability of Providing a New Passenger Station to Serve the Proposed Development and Local Community Travel Needs*****.** The Applicant has appended a copy of this Report at Appendix 7 with Network Rail's permission, and understands that Network Rail has separately submitted a copy of this report to the

Secretary of State under cover of a letter dated 10th December. The Applicant highlights that Network Rail is more than simply the *'acknowledged expert in the area'* [ER 3.3.423]. Network Rail holds the licence from the Office of the Rail Regulator to operate, manage and invest in the railway and of course, has to agree where new passenger stations may be provided on the rail network with the Department for Transport.

3.33 The ExA state at ER 3.3.427

'…..as the failure to investigate the provision of a rail passenger station cannot be mitigated within this Application, we consider that even if this were to happen that little harmful weight should still be applied in the final planning balance.'

3.34 It is considered that more appropriately the provisions of Policy 5 relating to the HBBC's support for the re-opening of the railway station at Elmesthorpe should be a neutral consideration in the planning balance.

3.35 Since the receipt of the ExA's Report and the Letter, further provision has been made for sustainable travel in response to the considerations raised at ER 3.3.425 as detailed above and which the Applicant submits are more appropriate to address the issues raised.

HGV Route Management Plan and Strategy

3.36 The ExA raised three concerns with the Applicant's HGV Route Management Plan and Strategy ("HGVRP") [ER 3.3.435 – 3.3.348] and proposed that the relevant DCO requirement be amended to ensure a revised version is submitted to the relevant planning authority for approval to address those three concerns. The ExA then suggested that the Application version is removed as a certified document [ER 7.4.128]. The Secretary of State has invited comments from the Applicant on this matter (paragraphs 38 – 41 and 170 of the Letter).

3.37 The three measures the ExA required to be dealt with in an updated HGVRP and proposed to be secured through the ExA's proposed amended requirement 18 [ER Table 11] were:

3.37.1 triggers based on a proportional approach to the overall floorspace and the use of the rail freight terminal;

3.37.2 fixed financial penalties; and

3.37.3 revised measures to deliver further mitigation.

3.38 The Applicant has amended the HGVRP in the manner described below to address these three concerns (Document 17.4F).

3.38.1 Triggers: the Applicant has removed the triggers so that now all occupiers of the warehousing and rail freight terminal will be subject to a financial penalty immediately and each time a HNRFI HGV is recorded on a prohibited route unless a mitigating circumstance applies as described in the document. The removal of the triggers addresses the ExA's concerns at ER 3.3.435 that the Applicant's original proposal would result in the triggers being less likely to be reached during the first phase of the development, reducing the likelihood of intervention and leading to undesirable travel patterns in those initial phases.

3.38.2 Penalties: the ExA agreed with Blaby District Council that the financial penalties for breach should be set at a fixed amount of £1,000 subject to indexation [ER 3.3.436]. The amended HGVRP now sets the penalty for each breach at £1,000, subject to indexation.

3.38.3 Revised measures to deliver further mitigation: the Applicant's originally proposed fund of £200,000 is now secured by planning obligation rather than the HGV Route Management Plan and Strategy, by way of Unilateral Undertaking to LCC. This is detailed in the HGVRVP commitments (Table 1, item 13 and in

paragraphs 6.30 – 6.31). The planning obligation is detailed further in paragraph 7 below.

3.39 The ExA suggested that the £200,000 fund should not be taken into account because the ExA considered it was not clear how the sum was derived and therefore whether it was reasonably related in scale and kind to the development [ER 3.3.438]. The Applicant sets out examples of measures to which such fund could be applied in the HGVRP (paragraph 6.32 and Table 3) and provides with this response (see Appendix 9) some costed examples of these measures, demonstrating how the fund could deliver such measures, should they be necessary, and thus the reasonable relationship between the size of the fund and the proposed development.

3.40 The updated HGVRP also deals with some minor amendments requested by Warwickshire County Council ("WCC") in respect of road names and numbers. The Applicant has discussed these changes with WCC and has actioned all comments received. As such, the Applicant understands that there are no outstanding issues between it and WCC.

3.41 The Applicant's amended HGVRP, together with the new planning obligation, secures the amendments suggested by the ExA. This approach ensures that the Secretary of State can be satisfied that the ExA's specific measures are secured, but also provides certainty to the Applicant as to the measures to be provided and avoids the real risk of prolonged post-consent debate with the local authorities and/or a potential appeal in seeking to discharge the DCO requirement. This allows delivery of this nationally significant infrastructure project without undue delay.

3.42 The Applicant notes that the ExA suggested that the inclusion of the additional measures which are now contained within the HGV Route Management Plan and Strategy and secured by DCO requirement and planning obligation, would reduce the adverse effects and therefore this matter would be considered neutral in planning balance [ER 3.3.442]. The Applicant agrees that having addressed the matters raised by the ExA, neutral weight should be given to this matter.

The Deadline 8 submissions of Dr Moore and Mr Moore relating to noise

3.43 As requested by the Secretary of State in paragraphs 103 and 170 of the Letter, the Applicant has considered the submissions made by Dr Moore and Mr Moore (the "Interested Parties", or "IP"s) at Deadline 8 relating to the noise levels at Billington Lakes.

3.44 The Applicant's detailed response to these submissions is provided in the Applicant's Technical Note: Applicant's Response to Deadline 8 Submissions from Dr Moore and Mr Moore contained in Appendix 10 to this response.

3.45 The Applicant considers that:

3.45.1 the IPs' data is limited in its coverage, being over a very short time duration and covering a period that the Applicant does not consider to be representative;

3.45.2 the IPs' data does not align with longer term, annualised rail traffic noise mapping produced by Defra and road traffic noise mapping from annualised baseline road traffic flow data, whereas the Applicant's data does;

3.45.3 in the event the IPs' data was considered to be appropriate and robust, and used as an input to the noise assessment, this only has the potential to affect one strand of the context assessment of operational noise for a limited number of noise sensitive receptors;

3.45.4 irrespective of its validity, the use of the new data in the change in ambient noise level contextual assessment does not make any material difference to the potential increases across the wider project, those being less than 3.0dB; and

3.45.5 the inclusion of a contextual assessment based on absolute noise levels within the Noise Chapter, which effectively removes the consideration of ambient noise

level changes and disputes between one noise measurement dataset and another, provides comfort that final, residual effects from noise generated by the Proposed Development are likely to be permanent, minor adverse with the proposed mitigation in place.

3.46 For those reasons, even if the Secretary of State were minded to accept the IPs' noise monitoring results as a reliable input for the purposes of assessment, the Proposed Development would remain compliant with national noise policy.

3.47 The Applicant concludes that whilst the Applicant does not agree with the IPs' approach to the noise measurements for the reasons explained in the detailed response, the Applicant has undertaken an assessment using the IPs' data and confirms that the increase in noise levels is not materially different from and would not alter the Applicant's environmental assessment conclusions.

3.48 The Applicant has responded to the submissions made by the Moore's at D8 in Hinckley NRFI Applicant's Response to Deadline 8 submissions made by Dr Moore and Mr Moore. This technical note has been shared with Blaby District Council and Hinckley and Bosworth Borough Council. Following this engagement the Councils have advised the Applicant they have no further comments to make on this issue. The position of the Councils therefore remains as stated in their respective Statements of Common Ground at the end of the examination [REP8-020 and REP8-021] .

Plot 73

3.49 In line with Government guidance on the compulsory acquisition of land, the Applicant has not sought compulsory acquisition for those interests on plots where voluntary agreements have been reached[8]. The Applicant has the benefit of an option to purchase Plot 73, as is confirmed in the DCO Application and during the Examination (Book of Reference (REP8-005), Statement of Reasons (REP4-033) and Sheet 4 of the Land Plans (APP-061)). The powers sought on this plot are therefore limited to the ability to extinguish third party rights should they be inconsistent with the authorised development. This proportionate and reasonable approach is consistent with other made Development Consent Orders. As the ExA notes at ER 7.4.87 the Applicant referred to other SRFI DCOs which have adopted the same approach without any such land assembly requirement being imposed[9]. The Applicant also referred to other made DCO where either compulsory acquisition was not sought at all, or there were certain plots of land where no compulsory acquisition was sought but no requirement relating to land assembly has been imposed, these are: The Little Crow Solar Park Order 2022, The Port of Tilbury (Expansion) Order 2019, The Boston Alternative Energy Facility Order 2023 and The Riverside Energy Park Order 2020.

3.50 The Applicant understands that the ExA's concern in relation to Plot 73 is linked to the ExA's position that there should be a DCO requirement to ensure that the development may not commence until the Applicant has acquired the freehold of the site, to ensure its comprehensive development.

3.51 Dealing first with Plot 73 itself and notwithstanding the Applicant's position on the land assembly requirement which is dealt with below, the Applicant confirms that the terms of the option agreement with the landowner require that the Applicant must serve notice to acquire Plot 73 before development may commence on the land shown coloured orange and coloured pink on the plan attached as Plan 2 of the Option Agreement. A redacted version of the Option Agreement is appended at Appendix 11 to this response and the relevant provision is clause 2.3 of the agreement. The Applicant notes the quality of the

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8 Paragraph 25 Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land, Department for Communities and Local Government, September 2013 states "*Applicants should seek to acquire land by negotiation wherever practicable. As a general rule, authority to acquire land compulsorily should only be sought as part of an order granting development consent if attempts to acquire by agreement fail.*"

9 This is all of the made SRFI DCOs, being: The Daventry International Rail Freight Interchange Alteration Order 2014 (S.I. No 1796), The East Midlands Gateway Rail Freight Interchange and Highway Order 2016 (S.I. 2016 No. 17), The Northampton Gateway Rail Freight Interchange Order 2019 (S.I. 2019 No 1358) and the West Midlands Rail Freight Interchange Order 2020 (S.I. 2020 No. 511).

plan is somewhat faded and therefore encloses a further plan at Appendix 11 which shows the pink and orange land more clearly, for assistance. The pink and orange land constitute the vast majority of the main site and this provision therefore means that the owners and occupiers of Plot 73 will not remain in situ whilst the development is underway on the neighbouring land. No harmful effects or prevention of peaceful enjoyment would therefore occur.

3.52 Notwithstanding the above, the Applicant confirms that it is in fact in advanced discussions with the landowner in respect of the acquisition of this land due to the timing provisions in the option agreement. Exchange of this early agreement has taken place with completion anticipated to follow imminently.

3.53 The Applicant made submissions to the ExA in respect of its proposed land assembly requirement during Examination [REP6-004], which the ExA mentions at ER 7.4.82 – 7.4.93. The ExA nevertheless concluded that the land assembly requirement meets the necessary tests.

3.54 As submitted during Examination, the Applicant considers the imposition of the ExA's proposed requirement 3[10] to be problematic, inappropriate and concerning as a potential precedent for the following reasons:

3.54.1 The ExA stated at ER 7.4.90 that it was "*concerned to ensure that the Proposed Development would meet the criteria of an SRFI as set out in the PA 2008...*" and add that "*This would only be the case if the site was developed as a whole*". It is simply not correct that the site needs to be developed "as a whole" for the development to meet the criteria of an SRFI. Nor is it correct, or necessary, for the Applicant to have freehold ownership of the entire extent of the Order land prior to commencement in order to deliver the project in accordance with the terms of the Order. The authorised development may be delivered in phases, not all of these plots of land need to be within the Applicant's freehold ownership before commencement. The phased acquisition of land, should the Applicant decide to assemble land in such a manner, does not prevent the comprehensive development of the scheme since the delivery of the works are secured through the detailed design and phasing requirements.

3.54.2 The Government's Guidance on the Use of Planning Conditions[11] confirms that conditions requiring a development to be fully implemented will fail the test of necessity by requiring more than is needed to deal with the problem they are designed to solve. The same principle applies equally in the context of requirements imposed on development consent orders.

3.54.3 The planning purpose that is purportedly served by the ExA's recommended requirement is to ensure the comprehensive development of the NSIP. However, that purpose is already secured through the operation of the articles, requirements and protective provisions in the DCO which relate to the provision of mitigation, the submission of phasing plans and detailed design and associated restrictions on the use and occupation of the development. Land ownership in and of itself does not secure any of those things and therefore is both unnecessary and unrelated to planning.

3.54.4 The Applicant considers that the imposition of the recommended requirement would unreasonably dictate the programme for its delivery of development and its engagement with the affected parties. Imposing such an obligation could:

a) In respect of those plots where the Applicant does not have an option agreement at this point in time, force the Applicant to exercise compulsory acquisition powers when it might not otherwise be necessary – the Applicant

10 The Applicant notes that the numbering of Requirements in Schedule 3 of the ExA's Recommended DCO is incorrect, with the Header for proposed requirement 3 "Securing Land" given a number and the actual new proposed requirement then being numbered 4.

11 Paragraph: 005 Reference ID: 21a-005-20190723 Revision date: 23 07 2019

may still consider acquisition through voluntary agreements but that might not be possible due to the timing restriction; and

b) In respect of those plots where the Applicant does already have an option agreement in place at this point, force the Applicant to exercise the option before it is needed, simply to demonstrate ownership at a certain point, when many other matters might be progressed in parallel with the land assembly exercise.

3.54.5 The Applicant should not be penalised and forced to assemble land earlier than needed because it has chosen not to impose compulsory powers where they are not needed. To do so would not only manifestly be unnecessary to make the proposed development acceptable in planning terms, it would also be unreasonable in imposing an unjustified and disproportionate commercial burden on the Applicant.

3.54.6 Finally, the wording of the recommended requirement is not sufficiently clear and precise. It is not expressly stated what is meant by "details showing that the freehold ownership has been transferred". This could be a copy of a freehold transfer not yet registered at HM Land Registry, or, since such details must be "agreed in writing by Blaby District Council", the Council could refuse to agree such details until the transfer has been registered at HM Land Registry which could result in very long and unacceptably excessive delays in the commencement of development.

3.55 As confirmed to the ExA during Examination (Book of Reference (REP8-005), Statement of Reasons (REP4-033) and the Applicant's response to the ExA's commentary on the dDCO (REP6-004)):

3.55.1 the Applicant already owns the freehold of plot 28;

3.55.2 it also already has control of plot 13, as it is owned by a different Tritax group company; and

3.55.3 the Applicant has control of the freehold of the remaining plots listed in the recommended requirement through voluntary option agreements with the landowners.

3.56 The Applicant therefore does not consider that the imposition of the ExA's recommended requirement would satisfy paragraph 4.9 of the National Policy Statement for National Networks[12], which also requires that Guidance on the use of planning conditions or any successor to it, should be taken into account where requirements are proposed (see paragraph 3.54.2 above).

4. THE APPLICANT'S RESPONSE ON M69 JUNCTION 2

4.1 Whilst not noted at paragraphs 169 or 170 of the Letter, at paragraph 48, the Secretary of State also invited comments from the Applicant to address safety concerns identified by the ExA relating to M69 Junction 2 as noted at paragraphs 44-47 of the Letter.

4.2 The Applicant has engaged with National Highways further in respect of this junction and the ExA's concerns in respect of the modelling and design of the junction works [ER 3.3.450-3.3.463]. Details of this engagement are set out in the attached HNRFI M69 J2 Modelling Note at Appendix 12.

4.3 The ExA noted that National Highways considered that the furnessing had been applied incorrectly and resulted in double discounting in the 2036 with development model, which National Highways considered resulted in an under-estimation of traffic flows at the junction

[12] December 2014, which is the relevant NPS for the purposes of determination of this DCO Application as noted in paragraph 22 of the Secretary of State's letter dated 10 September.

and the impact on the strategic road network (paragraph 44 of the Letter). This is turn partly informed the ExA's conclusions that the junction had not been properly assessed.

4.4 Through its further engagement with National Highways, the Applicant has been able to establish that National Highways position as recorded at ER 3.3.450 arose as a consequence of a misunderstanding within the National Highways team . As is confirmed in the Technical Note, the furnessing methodology has now been confirmed as agreed with National Highways and LCC, and has been applied correctly in accordance with that agreed methodology.

4.5 As also confirmed in the M69 Junction 2 Modelling Note, the VISSIM model has been updated to include the Pegasus crossing. This takes account of a modelled 17 second crossing once in every minute to accommodate a typical time for a horse crossing. A review was also undertaken to assess the traffic flows as a result of the crossings at the junction.

4.6 As a consequence National Highways have confirmed that the modelling is agreed in the updated Statement of Common Ground (Document 19.7C).

4.7 On the resultant safety issues [ER3.3.457-3.3.459] the Applicant notes:

4.7.1 LCC signed off the Stage 1 RSA brief during examination on 20th February 2024.

4.7.2 A Stage 1 RSA report was completed in accordance with GG119, and this, along with the relevant response report was submitted during the Examination (REP8-025).

4.7.3 The RSA was subsequently revised following approval of a brief by National Highways relating to the elements of work affecting the SRN. A response report was provided to National Highways by the Applicant who subsequently agreed with the recommendations which are deliverable through the detailed design process pursuant to the protective provisions contained in the DCO (Part 3 of Schedule 13).

4.8 Completion of the RSA1 process in line with GG119 remains outstanding for the proposed changes to the SRN at this junction. The Applicant will continue to liaise with National Highways and LCC on this matter and will update the Secretary of State in due course. The Applicant therefore concludes that the safety concerns raised in respect of this junction have been fully addressed insofar as is required at this stage of the design process and will be fully mitigated in accordance with the agreed recommendations of the RSA through the detailed design process.

4.9 The final point raised by the ExA in respect of this junction concerned the design of the slip roads which warranted a departure from standards. It was noted that this had not been agreed with National Highways due to the absence of agreement on modelling. However the ExA did note [ER 3.3.462] that if the model proved to be robust (as is now the case) they believed that with appropriate discussion and agreement on the departures, the slip roads would be satisfactory. Agreement in principle to those departures is recorded in the updated Statement of Common Ground [19.7C].

5. THE APPLICANT'S COMMENTS ON OTHER MATTERS

5.1 In addition to the specific matters on which the Secretary of State sought comments from the Applicant, upon review of the Letter and the ExA's Report there are a number of additional areas which the ExA considered should weigh against the scheme and which the Applicant is able to positively address.

5.2 Further, the Applicant also wishes to draw the Secretary of State's attention to certain matters referred to in the ExA's Report where it feels that the ExA's conclusions, whilst a matter of planning judgment for them, are not consistent with those reached by the Secretary of State in other comparable decisions.

5.3 The Applicant considers that these matters are important and relevant to the Secretary of State's final balancing exercise in determining the application in accordance with s104 Planning Act 2008.

Desford Crossroads

5.4 As noted in paragraph 78 of the Letter, the Applicant did not agree a planning obligation in respect of Desford Crossroads during the Examination.

5.5 The Applicant was unable to agree a contribution with LCC because during Examination as LCC had failed to provide any justification, or any calculation or method for ascertaining a proportionate contribution for the impact of the Proposed Development at the junction. Following a request in their Local Impact Report for the inclusion of this junction, amongst others, in the Applicant's Transport Assessment, the Applicant first learned of LCC's request for a proportionate contribution (unquantified) at Deadline 4 (9 January) [REP4-181], confirming that there was an existing costed scheme referred to by LCC as their preferred scheme of improvements that would be delivered when all necessary funds had been raised. LCC identified the level of contribution it considered to be appropriate (£1,516,344.42) shortly prior to Deadline 5 but did not explain how this figure had been derived. Both parties noted their positions in their Deadline 5 submissions [Applicant – REP5-042, LCC - REP5-075] but LCC provided no detail or justification for the sum of money that it had asked to be given.

5.6 The ExA noted the impact of the Proposed Development on the junction would be to reduce reserve capacity by 0.6% in the AM peak and 2.1% in the PM peak[13] and considered that the Applicant should make a contribution towards mitigation, placing little weight against the absence of a contribution due to the limited degree of effect [ER 3.3.570 - 3.3.572].

5.7 Noting the ExA's conclusions, the Applicant re-engaged with the County Council over the period between late September – early December following receipt of the Letter to seek to agree an appropriate contribution to the junction. The Council initially requested the significantly increased sum of £1,878,696.29, stating that this was based on their methodology, but the methodology was not provided. The Applicant is aware of another recent grant of planning permission on appeal for development with a similar impact at the junction which was accompanied by an obligation to make a contribution of just £263,498.00[14] It therefore asked the Council to justify the substantially higher figure it was seeking here, requested sight of the Council's methodology. In response to this engagement the Council has provided to the Applicant a revised request for a substantially reduced contribution of £1,060,272.19 together with the calculation. The Applicant has agreed to this request, and the contribution is secured in the new planning obligation as detailed in section 7 below.

Gibbet Hill

5.8 As noted by the ExA [ER 3.3.493], the Applicant agreed with LCC, WCC and National Highways that the appropriate mitigation for the impact of the Proposed Development on this junction was a financial contribution, in lieu of physical works by the Applicant. WCC is holding on behalf of National Highways a number of financial contributions from other developers and the Applicant's contribution is to be added to those other funds and used by National Highways to implement a comprehensive scheme of works to the junction.

5.9 The Applicant notes that the ExA considered the Applicant's proposed contribution towards works to be undertaken by National Highways at the Gibbet Hill roundabout was insufficient [ER 7.5.23]. The Applicant's original proposal was the provision of a financial contribution of £344,967.07. This was secured by way of a Unilateral Undertaking to LCC and the

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13 The Proposed Development flows were identified in Table 7-2 of the Transport Assessment [REP3-157] which shows 17 vehicles in the AM peak and -7 in the PM peak and this results in a minimal 1% increase in the AM Peak and a beneficial decrease in the PM Peak in terms of traffic flow of the HNRFI development when fully built out.

14 This was the Enderby Hub development, St John's Enderby (APP/T2405/W/24/3342111) and the developer has confirmed to the Applicant that the contribution was based on the scheme's 23 additional vehicle movements through the junction.

obligation was "*not to Commence Development unless and until written evidence has been provided to the County Council that [the contribution] has been paid to [Warwickshire County Council] or National Highways in full".* The ExA confirmed it was satisfied that the s106 planning obligation would allow the relevant sum to be transferred to a delivery body [ER 7.5.24].

5.10 The Applicant has undertaken further sensitivity testing of the modelling work at this junction. This involved redistributing the furnessed flows around the junction and this updated modelling, and the impacts of the Proposed Development on the junction, are now agreed with National Highways and its advisors, AECOM. The updated modelling has led to some minor alterations to the design of the mitigation scheme and a topographical survey has also been undertaken to inform a revised mitigation scheme in order to quantify an appropriate and proportionate contribution to the junction works and this has informed an updated cost plan. This new cost plan increases the total required contribution to £1,668.240.02 and the Applicant has therefore proposed a new planning obligation to pay a further £1,323,272.95. This planning obligation is payable in addition to and in the same manner as the original planning obligation. Further detail on the planning obligation is set out in section 7 below.

5.11 National Highways have not formally confirmed that the revised contribution is finally agreed, however the Applicant would highlight that this revised figure is consistent with National Highways' suggestion of a proportionate contribution in the region of £1.5m - £2m [ER 3.3.302 and REP8-041]. Further detail on the Gibbet Hill proposals is included in the Gibbet Hill – Cross in Hand Modelling Note at Appendix 14 together with the Applicant's proposed plans including swept paths, RSA1 and a detailed cost plan and calculations of the contribution, which includes a 46% contingency (as per the ExA's suggestion at ER 3.3.502 and an increased allowance for compound works in response to the ExA's concern at ER 3.3.499). The Applicant will continue to liaise with National Highways regarding the contribution and will update the Secretary of State further as required.

5.12 Completion of the RSA1 process in line with GG119 remains outstanding for the proposed changes to the SRN at this junction. The Applicant will continue to liaise with National Highways and LCC on this matter and will update the Secretary of State in due course.

Cross in Hands

5.13 The Applicant notes the concerns of the ExA as recorded at paragraphs 55 and 56 of the Letter and ER 3.3.290-3.3.292 arising from an absence of agreement with National Highways on modelling of the junction.

5.14 The Applicant has since undertaken further sensitivity testing of the junction modelling to address the concerns of National Highways. This involved redistributing the furnessed flows around the junction in proportion to the observed 2023 turning movements as explained in more detail in the Gibbet Hill - Cross in Hand Modelling Note (Appendix 14).

5.15 As a result of information provided in the Technical Note, the Applicant has been able to agree that its proposed mitigation scheme (Work No 16) at the A5 Cross in Hands roundabout, will suitably mitigate the traffic impacts of the proposed development on the A5. This agreement is recorded in the updated Statement of Common Ground with National Highways (19.7C).

5.16 A Stage 1 RSA report was completed following LCC approving the brief in accordance with GG119 identifying no safety concerns with the proposals at this junction. The Stage 1 RSA report was submitted during the Examination [REP8-025].

5.17 The RSA was subsequently revised on 29 August 2024 as NH approved a brief relating to the elements of work affecting the SRN. This RSA also identified no safety concerns with the proposals at this junction (Appendix 15 – Cross in Hand Road Safety Audit Stage 1).

5.18 Completion of the RSA1 process in line with GG119 remains outstanding for the proposed changes to the SRN at this junction. The Applicant will continue to liaise with National Highways and LCC on this matter and will update the Secretary of State in due course.

M69 Junction 1

5.19 The ExA noted at ER 3.3.480 and ER 3.3.481 that National Highways had not been able to agree the modelling of the junction and verify the Applicant's position. Through further engagement with National Highways as set out in the Hinckley NRFI M69 J1 Modelling Note, they are now able to agree the modelling undertaken by the Applicant as noted in the updated Statement of Common Ground with National Highways [19.7C]. Accordingly, they are content that the impacts are not severe and that no mitigation at this junction is required.

Public Right of Way

5.20 The ExA and Secretary of State note that it should be possible to dedicate a public footpath through the site once detailed design has been finalised [ER 3.3.606 and the Letter paragraph 86]. The Applicant has reflected on this position and proposes the addition of a formally dedicated footpath which will be provided alongside the internal estate road as part of the detailed design.

5.21 The amendments submitted ensure that a new public footpath will be dedicated between points 40 and 41 on the Access and Rights of Way Plans. The plans then show an indicative alignment between those points, with the precise alignment and detail to be agreed with LCC as part of the detailed design process for the internal estate road. The Applicant confirms that details of this approach have been provided to LCC along with the proposed drafting to be included in the Applicant's dDCO. LCC has not indicated any disagreement or concerns with the approach taken by the Applicant.

5.22 This proposal is reflected in updates to article 13 and a new Part 4 of Schedule 5 in the Applicant's dDCO, Access and Rights of Way Plans (Documents 2.3A, 2.3B and 2.3C, Appendix 17), the Public Rights of Way Appraisal and Strategy (Document 6.2.11.2E, Appendix 5) and ES Figure 11.14 which details the Public Rights of Way and Informal Open Space Strategy (Document 6.3.11.14D, Appendix 5) which are also updated in the list of documents to be certified in Schedule 15 of the DCO.

The Planning Balance

5.23 As noted at the outset of this response, the proposed development is one which benefits from a presumption in favour of consent being granted.

5.24 That presumption is set out in paragraph 4.2 NPSNN:

> *Subject to the detailed policies and protections in this NPS, and the legal constraints set out in the Planning Act, there is a presumption in favour of granting development consent for national networks NSIPs that fall within the need for infrastructure established in this NPS. The statutory framework for deciding NSIP applications where there is a relevant designated NPS is set out in Section 104 of the Planning Act*

5.25 The policy presumption is then reinforced by the statutory framework for the determination of the application set out in s104(3) Planning Act 2008:

> *(3) The Secretary of State must decide the application in accordance with any relevant national policy statement, except to the extent that one or more of subsections (4) to (8) applies*
>
> In the context of the noted exceptions, the only one warranting detailed consideration for the purposes of this application in that at subsection (7):
>
> *(7) This subsection applies if the Secretary of State is satisfied that the adverse impact of the proposed development would outweigh its benefits.*

5.26 The operation of the statutory framework was commented on by the Court *in R (Aquind) v. SSBEIS [2023] EWHC 98 (Admin)*:

99. In respect of Ground Two, on the facts of this case I consider the SoS had to make clear whether he considered the proposal accorded with EN-1 or not, pursuant to s.104(3). It is important for the Court not to be too mechanistic in its approach to planning decisions, and not to require an obstacle course of analysis which then needlessly trips up decision makers. However, s.104 imposes a very clear structure on the decision-making process. The scheme of the Planning Act 2008 is to give a particular status in the decision-making process to a National Policy Statement. Part 2 of the Act sets out the process for adopting NPSs and s.9 establishes the Parliamentary requirements, which then give an NPS a particular status different from any other government statement of planning policy. Therefore, an NPS is not simply another policy document which is weighed in the planning balance and to which the SoS can give more or less weight. The amount of weight is a matter for him, but that is subject to the presumption in s.104(3) and the specific matters in subsections (4) to (7).

The Applicant will return to this framework in commenting on the revised balance consequent upon the submissions contained in this response below.

5.27 Parliament has created the presumption though the NPS to reflect the public interest importance of meeting the need for more Strategic Rail Freight Interchanges. The benefits to be delivered by a proposed development which helps to meet that need at a nationally significant scale should therefore attract weight in the planning balance that is commensurate with that context. On any view, a nationally significant contribution such as this ought to be placed in the highest category of weighting in any scale applied by a decision maker for these purposes.

5.28 That is not reflected in the ExA's Report. Furthermore, the ExA also appears to have ascribed little or indeed negative weight to matters which are regularly given substantial positive weight in other comparable decisions.

5.29 Having analysed the ExA's Report, the ExA utilises a weighting scale for the assessment of benefits ranging from substantial to little. Within this it ascribes substantial positive weight to the need for HNRFI [ER 3.2.90].

5.30 However, when considering impacts on the negative side of the balance, the ExA adopts a scale ranging from very substantial to little. This means that either (a), the ExA has effectively "tilted" the balance by adopting inconsistent weighting scales for benefits and impacts, or that (b) it has not placed the benefits associated with the nationally significant contribution to meeting the identified need that this scheme would deliver in the highest category of weighting. If the ExA has adopted the latter approach then its judgment as to weight does not reflect and would serve to undermine the presumption in favour and thereby the realisation of the clear objectives of the national policy statement.

5.31 The Applicant therefore submits that need should be given very substantial positive weight in the Secretary of State's final balance.

5.32 Furthermore, the Applicant would suggest that it is appropriate for the associated benefits which support the overarching need for HNRFI to be given at least significant weight. This includes the associated benefits for the efficient and effective operation of the rail network, and climate change benefits arising from the transition of freight movements from road to rail. These are matters to which the ExA ascribed only moderate positive weight.

5.33 The Applicant notes the ExA's conclusions at ER 3.11.35 that the energy production elements of the development should be ascribed "limited beneficial weight". However, it earlier stated [ER 3.11.34] that had this energy production been above the NSIP threshold (50MW) then it would have ascribed it "substantial weight", but reduced the weight for the current proposals because they would not reach that threshold and would only produce energy predominantly for onsite use.

5.34 The Applicant is concerned that the ExA appears to have conflated its consideration of a 'lost opportunity' [ER 3.11.30] in the Applicant not pursuing a separate NSIP for a roof mounted solar array (with a generating output in excess of 50mw), with the appropriate weight to be given to the Applicant's proposals for a solar array generating up to 49.9MW.

5.35 It is plainly inappropriate for a solar generating station up to 49.9MW to be afforded 'little weight' in the planning balance. That does not reflect and is not consistent with the established urgent imperative to deliver more renewable energy in national policy. Nor is it consistent with the way equivalent solar generating stations have been treated in decision-making by and on behalf of the Government. By way of illustration, we would draw the Secretary of State's attention to the decision of the Secretary of State for Levelling Up Housing and Communities to grant planning permission for a solar array (49.9MW) at Aldenham Hertfordshire (APP/N1920/W/22/3295268). At paragraph 52 of the Decision Letter under the heading 'contribution to the Government's Climate Change and Programme and Energy Policies' the SoS states:

'The Secretary of State considers that the renewable energy benefits of this scheme carry substantial weight' (IR 578).

5.36 Inspectors appointed by the Secretary of State commonly ascribe substantial weight to the public interest benefit attributable to renewable energy generated by asolar farms of a scale to be determined under the Town and Country Planning Act. By way of example, reference is made to the decision of Planning Inspector J Woolcock in a decision letter dated 23rd October 2024 (PINS Ref: APP/P3040/W/23/333045) who refers in his decision letter to the:

'substantial public benefits that would be attributable to the renewable energy generated by the proposed solar farm' (paragraph 69).

5.37 In undertaking the planning balance, Inspector Woolcock stated *(emphasis added)*:

'Against this overall harm must be weighed the benefits of the proposed development. Chief amongst these is the significant contribution of the appeal scheme towards the generation of renewable energy, the resultant reduction in greenhouse gas emissions and energy security benefits, which ***warrant substantial weight****. This, along with moderate weight to be given to biodiversity gain and limited weight for the benefits to the local economy would, in my judgement, outweigh the harm I have identified' (paragraph 101).*

5.38 It is inappropriate to 'discount' the weight to be given to a proposed equivalent contribution to renewable energy generation on the basis of a view that even more might be possible in a theoretical alternative scheme. That is to fail to assess the proposed development on its merits. The courts have made clear that in the absence of conflict with planning policy and/or other planning harm, the relative advantages of alternative uses on an application site are normally irrelevant in planning terms (R (Mount Cook Land Ltd.) v. WCC [2004] 2 P&CR 405).

5.39 Finally, at ER 3.4.44 in relation to landscape and visual impacts, the ExA states:

'With a development of the scale proposed it is inevitable that there is likely to be some degree of adverse landscape and visual harm. Indeed, paragraph 5.158 of the NPSNN and paragraph 5.169 of the dNPSNN recognise that the aim should be to avoid or minimise harm to the landscape and, where adverse impacts are unavoidable, provide reasonable mitigation ***and deliver landscape enhancement measures where possible and appropriate****'.(Emphasis added)*

5.40 Paragraph 5.169 of the dNPSNN restates paragraph 5.158 of the NPSNN. This states:

'In taking decisions the Secretary of State should consider whether the project has been designed carefully taking account of environmental effects on the landscape and siting, operational and other relevant constraints to avoid adverse effects on landscape or to minimise harm to the landscape, including by reasonable mitigation'.

5.41 The NNPS does not require the Applicant to "deliver landscape enhancement measures where possible and appropriate". Paragraphs 3.3-3.4 of the NPS state:

'In delivering new schemes, the Government expects applicants to avoid and mitigate environmental and social impacts in line with the principles set out in the NPPF and the Government's planning guidance. Applicants should also provide evidence that they have

considered reasonable opportunities to deliver environmental and social benefits as part of schemes. The Government's detailed policy on environmental mitigations for developments is set out in Chapter 5 of this document. The Appraisal of Sustainability accompanying this NPS recognises that some developments will have some adverse local impacts on noise, emissions, landscape/visual amenity, biodiversity, cultural heritage and water resources. The significance of these effects and the effectiveness of mitigation is uncertain at the strategic and non-locationally specific level of this NPS. Therefore, whilst applicants should deliver developments in accordance with Government policy and in an environmentally sensitive way, including considering opportunities to deliver environmental benefits, some adverse local effects of development may remain'.

5.42 The policy guidance at paragraph 3.4 is particularised in respect of SRFIs at paragraph 4.30 which states:

'It is acknowledged however, that given the nature of much national network infrastructure development, particularly SRFIs, there may be a limit on the extent to which it can contribute to the enhancement of the quality of the area'.

5.43 The ExA's expectation that a SRFI should deliver landscape enhancement measures where possible and appropriate is considered not to be aligned with the NPS.

5.44 In the following section the Applicant has presented a table which summarises the ExA's weighting of the relevant factors as presented in the ExA Report. Alongside that, the Applicant has then presented an alternative revised balance which sets out firstly what it perceives to be the appropriate weight to be applied to the relevant factors as explained above, and secondly re-addresses the ExA's conclusions on the impacts based upon the responses to the impacts dealt with in this response. In doing so it has been mindful of the ExA's position on those impacts as stated in the ExA's Report if each of those impacts are addressed as envisaged by the ExA (* where marked with an asterisk reference the weighting following mitigation as identified by the ExA):

	Lane Use Consideration as Concluded by EXA				The Applicant's position following the submissions to SOS Dec 2024		
		FOR	AGAINST	NEUTRAL	FOR	AGAINST	NEUTRAL
1	Need and Alternative - 3.2.90	Substantial			Very Substantial		
2	* Sustainable Transport Strategy - addressing the 3 bullet points in paragraph - 3.3 425/ 3.3 620		Little		Limited		
3	Construction Traffic -3.3.40/3.3.620			Neutral			Neutral
4	* HGVRP if amended - 3.3 442/ 3.8 620			Neutral			Neutral
5	M1 J21/M69 J3 - 3.3 478/ 3.3 620		Very Substantial				Neutral
6	M69 J2 - 3.3 463/ 3.3 620		Very Substantial				Neutral
7	M69 J1 - 3.3 481	Little			Little		
8	A5/A47 Longshoot and Dodwells - 3.3 485			Neutral			Neutral
9	A5 Cross in Hand - 3.3 492		Limited (little)				Neutral
10	A5 Gibbet Hill - 3.3 503/ 3.3 620		Limited (little)				Neutral
11	Junction A47 Link and B4668 - 3.3 509/ 3.3 620			Neutral			Neutral
12	B4669/Station Lane Sapcote Junction - 3.3 517/ 3.3 620			Neutral			Neutral
13	Sapcote Village Centre - 3.3 539		Unacceptable				Neutral
14	Stoney Stanton - 3.3 545/ 3.3 620		Limited (little)				Neutral
15	B4114 Coventry Road/Croft Road B581 - 3.3 549/ 3.3 620			Neutral			Neutral
16	SRN Closures - 3.3 576			Neutral			Neutral
17	Narborough Crossing - 3.3 562/ 3.3 620		Moderate				Neutral
18	Desford Crossroads - 3.3 572/3.3 620		Limited				Neutral
19	Rail - 3.3 595	Moderate			Very Substantial		
20	PRoW - 3.3 619		Moderate			Limited	
21	Landscape and Visual - 3.4 52		Substantial			Moderate	
22	Policy 6 HBBC Strategy - 3.4 53		Moderate			Limited	
23	Criteria for Good Design Requirement 4 - 3.4 63			Neutral			Neutral
24	Noise and Vibration - 3.5 142		Moderate			Limited	
25	Aston Firs G&TS -3.6 80		Very Substantial			Limited	
26	Job creation/skills - 3.6 65/3.6 81	Substantial			Substantial		
27	Local Housing Market - 3.6 81			Neutral			Neutral
28	Agricultural Land - 3.6 71/3.6 81		Limited (Little)			Limited (Little)	
29	Air Quality - 3.7 50		Limited			Limited	
30	Climate Change - 3.7 57/59	Moderate			Substantial		
31	Biodiversity - 3.8 84	Little			Limited		
32	Cultural heritage - 3.9 88		Limited 'less than sustantial harm'			Limited	
33	Water and Flood risk - 3.10 106		Little			Limited	
34	Energy - 3.11 34		Little		Substantial		

5.45 Necessarily by reason of the form and scale of a SRFI such development cannot occur without some residual adverse impacts within the locality of the proposed development. The NPSNN paragraph 4.30 acknowledges that '*particularly SRFIs there may be a limit on the extent to which it can contribute to the enhancement of the quality of the area'*

5.46 The Applicant has, in response to the Letter, addressed the areas of concern with further evidence, and some significant enhancements to the scheme. The weighting applied to the planning balance by the Applicant is considered to be proportionate and reasonable in these circumstances.

5.47 In undertaking an overall planning balance it is submitted that the public benefits demonstrably outweigh the residual adverse impacts of HNRFI. In this context the Applicant respectfully submits that the exception at s104 (7) of the Act is not engaged.

6. THE DRAFT DEVELOPMENT CONSENT ORDER

6.1 The Applicant has updated its draft DCO (dDCO) submitted at Deadline 7 of the Examination to deal with the changes it has made in response to the Letter. It has also updated the Explanatory Memorandum (Document 3.2D) and a provides a Schedule of Changes to the dDCO (Document 3.4D) to explain the changes that have been made.

6.2 In brief summary, the changes to the dDCO to accommodate the changes explained in this response are:

6.2.1 Amendments to the description of Work No. 12 and the addition of requirement 5(4) in relation to the 'Enhanced' Sapcote works;

6.2.2 Reference to the acoustic barrier being provided as part of the A47 Link Road works (Work No. 7) in Work No. 9, where part of the barrier has been moved into this work area as explained in paragraph 2.49 above;

6.2.3 Amendments to requirement 4(4) to include a new sub-paragraph to provide further detail and commitments in respect of the maximum height and location of the acoustic barriers, including those near to the Aston Firs Travellers Site which are to comply with ES Figure 10.10A;

6.2.4 Amendments to article 20 and Part 3, paragraph 5 of Schedule 13 to reflect the agreed position with LCC that the Applicant will maintain the acoustic barriers provided as part of the development and to reflect that the parties may enter into a licence to govern any necessary access to the highway for the carrying out of such maintenance;

6.2.5 Amendments to article 13 and Schedule 5 to address the newly proposed footpath through the site;

6.2.6 Updates to Schedule 15.

6.3 The amended dDCO also includes the following wording, not related to the changes made in response to the Letter, but which are updates to the Applicant's Deadline 7 dDCO to reflect the Applicant's requests and suggestions to the ExA in the Applicant's Final Summations and Signposting submission at Deadline 8 [REP8-027]:

6.3.1 Amended requirement 28 (combined heat and power) as agreed between the Applicant and Blaby District Council – these amendments were made by the ExA in its rDCO;

6.3.2 Amendments to the protective provisions for the benefit of Network Rail and for Leicestershire County Council to reflect the adoption of the A47 Link Road Bridge. The Applicant notes that the ExA did not consider that Leicestershire County Council should be required to adopt and maintain the A47 Link Road bridge over the railway [ER 7.4.39 – 7.4.46] in circumstances where the Council did not

agree to it. As confirmed by the Applicant and Network Rail[15], Network Rail is willing to adopt and maintain the bridge and the Applicant proposed appropriate wording and amendments to the relevant provisions of the dDCO to reflect this in its Final Summations and Signposting submission at Deadline 8 [REP8-027]. The ExA included this suggested wording in its rDCO and recommended that the Secretary of State consult with LCC on that wording. The Applicant notes that LCC will have the opportunity to respond to this wording in response to this submission. The Applicant confirms that it is content for the bridge to be adopted and maintained by Network Rail and has therefore made those changes to the dDCO;

6.3.3 Amendments to the protective provisions for the benefit of National Highways dealing with the Applicant's responses to National Highways' Deadline 7 submission in relation to the land provisions and ensuring adequate drainage of the strategic road network. These changes were not made by the ExA in its rDCO due to the ExA's conclusions at ER 7.4.157 – 7.4.165. The Applicant does not intend to repeat its submissions made during Examination in this regard, the most recent of which is [REP8-016];

6.3.4 Updated version of the Book of Reference in Schedule 15 to reflect the version submitted at Deadline 8. This amendment was not made by the ExA in its rDCO.

6.4 The Applicant has also taken the opportunity to correct some minor typographical changes to the Deadline 7 dDCO which are explained in the Schedule of Changes to the dDCO (Document 3.4D).

6.5 The Applicant's preferred dDCO continues to be the version included with this response (Document 3.1E) and it does not agree with all of the ExA's recommended changes. The Applicant relies on and invites the Secretary of State to consider its position as presented during Examination in respect of the necessary provisions of the DCO[16] The Applicant has not addressed every single recommended change in this response, respecting that was not the purpose of the Secretary of State's request in her Letter and that she will form her own view on the drafting of any DCO (in the event of a positive decision) in any event. The Applicant provides amended versions of both its own preferred DCO and the ExA's rDCO to reflect the changes made in response specifically to the Letter in order to assist the Secretary of State in the drafting of the Order, should the Secretary of State be minded to grant consent.

6.6 The Applicant would, however, like to highlight the following concerns with the ExA's rDCO which the Applicant considers to be important flaws in the drafting of that document. The Applicant has not amended the version of the ExA's rDCO to address these flaws, but wishes to draw attention to its concerns:

6.6.1 The Applicant notes the ExA has recommended that the article requiring a guarantee or alternative security is in place in respect of likely compensation as a result of the exercise of certain powers[17] be extended to cover the powers conveyed by articles 12 (temporary closure of streets) and 23 (authority to survey and investigate land) [ER 7.4.60]. As confirmed during Examination [REP4-120] the Applicant does not consider it is appropriate for the exercise of these powers to be prohibited until the process of agreeing and securing

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15 Addendum to the Statement of Common Ground between the Applicant and Network Rail - REP8-024.

16 As set out in the Explanatory Memorandum (Document 3.2D); the Applicant's written summary of oral submissions at ISH1 and CAH1 (REP1-017) including Appendix C (REP1-020); the Applicant's written summary of oral submissions at ISH5 (REP3-077); the Applicant's response to ExA Written Questions (REP4-141); the Applicant's response to ExA's Further Written Questions (REP5-036); the Applicant's response to ExA's Commentary on the dDCO (REP6-004); the Applicant's Final Summations and Signposting (REP8-027) and the Applicant's responses to third party comments (in particular REP1-028, REP1-029, REP2-063, REP2-064 REP2-067, REP2-068, REP2-070, REP4-120-122 REP5-040-45, REP6-018-22, REP7-061, REP7-063, REP7-066, REP8-012, REP8-015, REP8-016).

17 Article 40 of the Applicant's dDCO and what should be article 39 of the ExA's rDCO but which is drafted as article 38, noting that the ExA's rDCO incorrectly removes an article number from the Private Rights article, which should be article 30, and the subsequent articles re-numbered.

potential compensation has been undertaken with the local authority. The provision of a guarantee or security is intended to ensure that the powers of acquisition or temporary possession cannot be exercised without that security in place, and the process for agreeing such security can entail a sometimes protracted exercise of agreeing valuations between the parties. The powers to temporarily close streets and in particular the entry on to land for the undertaking of surveys which may be restricted by seasonal requirements, and which needs to be underway to allow the discharge of requirements for commencement of development should not be encumbered and delayed by such a process. The Applicant would also note that section 172 of the Housing and Planning Act 2016 authorises the entry onto land for these purposes and whilst that section also envisages that compensation may be payable, no equivalent guarantee or security mechanism is required in those circumstances. The ExA's rDCO is excessively restrictive in this regard.

6.6.2 The ExA recommends that the Applicant's draft article 39 (No double recovery) is removed [ER 7.4.57 and Table 11]. As confirmed during Examination [REP6-004], the Applicant respectfully disagrees with the ExA that this article is unnecessary. It is important that the DCO is clear that compensation payable under it is not to be paid more than once. The ExA states that the compensation code would deal with the Applicant's concern. The Applicant does not agree. The compensation code encompasses the principle of equivalence, that is to say, someone should not receive more (or less) than their actual loss – that deals with losses arising from the exercise of the compulsory acquisition powers. The 'no double recovery' article goes further to protect the promoter in the event that there is a risk of double recovery under other powers of the Order outside of compulsory acquisition that can give rise to loss – including for example temporary possession, protective provisions and the survey power. The Applicant provided examples of other made Orders which contain this provision in its Explanatory Memorandum[18] (Document 3.2D) and in its response to the ExA's commentary on the dDCO [REP6-004][19]. There is no differentiation between the provisions in those made DCO and the dDCO in this regard. The Applicant also notes that this provision continues to be applied in made DCO notwithstanding the ExA's preference and citation of two Orders which relate to highway schemes. The Applicant is aware that different approaches are taken but understands that the three most recent made DCO have included this provision[20] and considers its inclusion important for the reasons stated.

6.6.3 The Applicant has explained its concerns in respect of the ExA's recommended land assembly requirement at paragraphs 3.55-3.57 above as part of its response in respect of Plot 73.

6.7 The Applicant would also highlight that the ExA's proposed amended requirement 10 relating to the Sustainable Transport Strategy appears to contain an incorrect reference to the figure showing the Middle Super Output Areas. The ExA refers to *… (a) revised targets based on reducing single car occupancy, with the existing target being set based on data from the Middle Super Output Areas of the Modelled HNFRI Employee Trips set out in Figure 6-3 of the Technical Appendix to the Transport Assessment (document reference 6.2.8.1B Revision: 09)*. As stated above, following the Applicant's amendments to the STS, the Applicant does not consider that this amended requirement is necessary, but in the event the Secretary of State considers that the ExA's proposed approach to the requirement should be adopted, the Applicant believes that the requirement should instead refer to Figure 6-2 of the Appendix 8.1 of the environmental statement (Transport Assessment (Part

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18 The Northampton Gateway Rail Freight Interchange Order 2019 (S.I. 2019 No 1358) and the West Midlands Rail Freight Interchange Order 2020 (S.I. 2020 No. 511).

19 A12 Chelmsford to A120 Widening Development Consent Order 2024 (S.I. 2024 No 60), The Boston Alternative Energy Facility Order 2023 (S.I. 2023 No 778), The Portishead Branch Line (MetroWest Phase 1) Order 2022 (S.I. 2022 No 1194) and The Awel y Môr Offshore Wind Farm Order 2023 (S.I. 2023 1033).

20 The Cottam Solar Project Order 2024 (S.I. 2024 No. 943), The National Grid (Bramford to Twinstead Reinforcement) Order 2024 (S.I. 2024 No. 958) and The Associated British Ports (Immingham Eastern Ro-Ro Terminal) Development Consent Order 2024 (S.I. 2024 No. 1014).

1 of 20)) (document reference 6.2.8.1B Revision: 09). The Applicant has proposed this correction in its mark-up of the ExA's rDCO.

6.8 For reasons explained in this response, the Applicant does not agree with all of the changes the ExA recommends to the DCO, however, as stated above, for the Secretary of State's ease of reference, and in the event the Secretary of State agrees with the ExA's rDCO the Applicant has also submitted a version of the ExA's rDCO with the appropriate amendments reflecting the changes to the Application described in paragraph 6.2 above and correcting some numbering errors. The Applicant notes the significant numbering and cross referencing changes that are required to the rDCO Schedule 13 (protective provisions) as the paragraph numbering has been amended in the rDCO to be sequential and not to commence in each Part with new paragraph numbering. The Applicant was not requested to change the numbering during Examination, but in the interest of assisting the Secretary of State with the significant drafting exercise that would be required, has corrected that numbering in the marked up version of the ExA's rDCO as well as other typographical and numbering errors in the rDCO.

6.9 Finally, the Applicant notes that the title of the Order in the ExA's rDCO is "Hinckley Rail Freight Interchange Order 202X" which the Applicant has corrected[21].

7. NEW PLANNING OBLIGATIONS

7.1 This section provides a summary of the further planning obligations secured in respect of the Proposed Development following consideration of the Letter and the ExA's Report.

7.2 The Secretary of State will be aware that the Applicant and landowning parties executed and completed a Section 106 Unilateral Undertaking on 8 March 2024 to secure planning obligations in favour of LCC [EEAS-002] and a separate bilateral Section 106 Agreement with Blaby District Council and Hinckley & Bosworth Borough Council [EEAS-001].

7.3 The Applicant and relevant landowning parties have executed and completed a further Section 106 Unilateral Undertaking (Unilateral Undertaking) in favour of LCC to secure planning obligations (Document 9.4), in addition to the planning obligations secured on 8 March 2024. The Applicant's explanation and position in respect of each of the additional planning obligations secured by the Unilateral Undertaking is set out in paragraphs 3.39 (HGV related obligations), 5.10 (Additional Gibbet Hill Contribution) and 5.7 (Desford Crossing Contribution) above.

7.4 The new Unilateral Undertaking secures the following planning obligations. The capitalised terms below refer to the as defined terms in the S106 Unilateral Undertaking.

Additional Gibbet Hill Contribution

7.5 The Additional Gibbet Hill Contribution (£1,323,272.95) is to be paid to WCC as a contribution towards the Gibbet Hill Contribution Purposes.

7.6 The Owners must provide written evidence to LCC that the Additional Gibbet Hill Contribution has been paid to WCC in full, prior to Commencing Development and there is a restriction on Commencing Development until evidence that the contribution has been paid has been provided to LCC. This obligation mechanism is the same as the original planning obligation, with which the ExA was satisfied [ER 7.5.24].

7.7 The Additional Gibbet Hill Contribution is payable in addition to the £344,967.07 (Gibbet Hill Contribution) secured by the S106 Unilateral Undertaking dated 8 March 2024 payable to WCC towards the Gibbet Hill Contribution Purpose.

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21 The Applicant notes that the word version of the DCO submitted at Deadline 7 inadvertently omitted "National" from the Order title and therefore understands the title of the ExA's DCO to be typographical error which has carried through from this word version. Retention of "National" in the Order title in necessary to ensure consistency with other Order provisions and document titles referred to therein.

7.8 The total financial contribution secured through the S106 Unilateral Undertaking dated 8 March 2024 and this new Unilateral Undertaking, towards the Gibbet Hill Contribution Purpose, is £1,668,240.02 (subject to indexation).

HGV Routeing Enforcement Fund

7.9 As explained above (paragraph 3.38), the Applicant's original proposal in relation to the HGV Routeing Enforcement Fund was secured by the HGV Route Management Plan and Strategy, which required that the HGV Enforcement Fund (£200,000) be paid into a holding account prior to Commencement of Development. The fund was part of the future 'monitor and manage' approach outlined in the HGV Route Management Plan and Strategy for use towards potential highway measures that could be put in place should the HGV Strategy Steering Group consider that further measures were necessary. The Applicant notes that the ExA and the SoS have commented on this commitment not being secured by planning obligation [ER3.3.438 and paragraph 39 of the Letter] and that the ExA considered it should not be taken into account, stating that it was not clear how the sum was derived and therefore whether it was reasonably related in scale and kind to the development. The Applicant has therefore secured this commitment in the new Unilateral Undertaking and provided some costed examples of these measures, demonstrating how the fund could deliver such measures, should they be necessary.

7.10 The new Unilateral Undertaking also secures that:

7.10.1 if LCC serves written notice on the Owners (at LCC's discretion) at any time between the date the DCO comes into force and Commencement of Development, requesting that the HGV Routeing Enforcement Fund is paid to LCC, the Owners shall pay the HGV Routeing Enforcement Fund to LCC prior to the Opening of the Slip Roads.

7.10.2 The HGV Routeing Enforcement Fund can be increased, if agreed by members of the HGV Monitoring meetings, from the date of the first HGV Monitoring Meeting until a period of 5 years following first Occupation of the final Unit. Any agreed increase shall be paid into the holding account or directly to LCC (as appropriate) within 30 days of the increase being agreed.

7.11 The Unilateral Undertaking does not (and could not) place any obligation on LCC to request / take and administer the HGV Routeing Enforcement Fund. In the event that notice is not served on the Owners by LCC, the Owners obligation to set up and transfer the HGV Routeing Enforcement Fund into a holding account pursuant to paragraph 5.2 of Schedule 1 of the Section 106 Unilateral Undertaking dated 8 March 2024 will subsist.

HGV Routeing Fines

7.12 The new Unilateral Undertaking also secures that, if HGV Routeing Fines are collected from occupiers of the proposed development, the Owners will pay the HGV Routeing Fines:

7.12.1 into the holding account set up in accordance with the Section 106 Unilateral Undertaking dated 8 March 2024; or

7.12.2 directly to LCC if the HGV Routeing Enforcement Fund is to be paid to LCC pursuant to the Unilateral Undertaking.

7.13 The HGV Routeing Fines are to be paid on an annual basis with the first payment (if any) falling due on the first anniversary of the date of first Occupation of the Development.

Desford Crossroads Contribution

7.14 The new Unilateral Undertaking also secures the payment of the Desford Crossroads Contribution (£1,060,272.19 (subject to indexation)) to LCC towards the Desford Crossroads Contribution Purpose prior to Commencement of Development.

7.15 There is a restriction on Commencing Development until the Desford Crossroads Contribution has been paid to LCC.

Confirmatory Deed

7.16 Since entering into the S106 planning obligations submitted as part of the Examination (dated 8 March 2024 [EEAS-001 and EEAS-002]), Mrs Madeline Mace has unfortunately passed away. Mrs Mace owned the land registered under title number title numbers LT260280 and LT278346, which forms part of the Obligation land.

7.17 The new Unilateral Undertaking is being entered into by the Executors of Mrs Mace's estate, Matthew David Johnson and Rachel Jean Johnson.

7.18 At the date of the new Unilateral Undertaking, probate has not yet been granted in respect of the estate of Mrs Mace. As set out in the Unilateral Undertaking however, the Executors are entitled to enter into the Unilateral Undertaking as the Executors of the estate of the late Madeline Mace under the powers derived from the last will and testament of Madeline Mace.

7.19 In the unlikely event that a probate is not granted for the benefit of the Executors, the Applicant (defined as in the Unilateral Undertaker as the Developer) has the enduring benefit of an option to acquire Mrs Mace's land and has covenanted in the Unilateral Undertaking (clause 5) to enter into a Confirmatory Deed (in the form appended to the Unilateral Undertaking) prior to Commencement of Development for the purposes of effectively binding Mrs Mace's land. This provision has been agreed with LCC.

Travel Plan

7.20 The Applicant notes the ExA's confusion at ER 7.5.7 in relation to the Occupier Travel Plan Monitoring Fee in the Unilateral Undertaking dated 8 March 2024 [EEAS-002] and confirms for the avoidance of doubt that the Occupier Travel Plan Monitoring Fee (£6,000) is payable per Occupier Travel Plan, as noted in the definition of Occupier Travel Plan Monitoring Fee. It is therefore payable for each individual unit and not only once for the whole site.

8. UPDATED DOCUMENTATION

8.1 The table below sets out the full suite of documents that have been submitted as part of the response to the SoS, the order set out in the table below for each of the Works Packages is the suggested order in which the documents within each Works Package should be read.

Document title (*including document reference where applicable*)
Letter to the Secretary of State
Applicant's Response to the SoS
Appendix 1: M1 Junction 21 / M69 Junction 3
Hinckley NRFI Appendix 1 - M1 J21 Modelling Note
Appendix 2: Sapcote
Hinckley NRFI Appendix 2 - Sapcote Technical Note
Hinckley NRFI Sapcote Technical Note [Appendix 2 (A) – Sapcote Proposals put Forward at DCO Stage] • Appendix A Part 1 – General Arrangement Plan • Appendix A Part 2 – Vehicle Tracking Sheet 1 • Appendix A Part 3 – Vehicle Tracking Sheet 2 • Appendix A Part 4 – Vehicle Tracking Sheet 3
Hinckley NRFI Sapcote Technical Note [Appendix 2 (B) – Additional information Provided to Auditor and Auditor Response] • Appendix B Part 1 - Area outside Co-op Detail • Appendix B Part 2 - Crossing Visibility Drawing • Appendix B Part 3 - RSA1 Response Report

Hinckley NRFI Sapcote Technical Note [Appendix 2 (C) – Details of Enhanced Scheme] • Appendix C Part 1 - General Arrangement Plan • Appendix C Part 2 - s278 General Arrangement • Appendix C Part 3 - Crossing Visibility Drawing • Appendix C Part 4 - Oncoming Vehicle Visibility drawing • Appendix C Part 5 - Vehicle Tracking Sheet Part 1 • Appendix C Part 6 - Vehicle Tracking Sheet Part 2
Hinckley NRFI Sapcote Technical Note [Appendix 2 (D) – Enhanced Scheme Stage 1 RSA and Designers Response Report] • Appendix D Part 1 - Stage 1 RSA – Midlands Road Safety • Appendix D Part 2 - Stage 1 RSA Response Report – Midlands Road Safety • Appendix D Part 3 - Stage 1 RSA BWB Consulting • Appendix D Part 4 - Stage 1 RSA Response Report – BWB Consulting
Hinckley NRFI Sapcote Technical Note [Appendix 2 (E) – Sapcote Enhanced Option Noise Technical Note]
Hinckley NRFI Sapcote Technical Note [Appendix 2 (F) – Sapcote Enhanced Option Air Quality Technical Note]
Hinckley NRFI Appendix 2 - Works Plans [Sheet 7 of 8] *(document reference 2.2G)*
Hinckley NRFI Appendix 2 - Highway Plans [Sheet 7 of 8] *(document reference 2.4G*)
Hinckley NRFI Appendix 2 - Sapcote NMU survey
Hinckley NRFI Appendix 2 - Sapcote Enhanced Option s278 Works *(document reference 2.33*)
Hinckley NRFI Appendix 2 - Schedule of subsoil owners for enhanced works outside Order Limits and associated plan
Hinckley NRFI Appendix 2 Response Report Sapcote Enhanced Scheme (LCC)
Appendix 3: Narborough Level Crossing
Hinckley NRFI Appendix 3 - Narborough Level Crossing Report
Appendix 4: Aston Firs Travellers Site
Hinckley NRFI Appendix 4 - Aston Firs Technical Note
Hinckley NRFI Aston Firs Technical Note [Appendix 4 (A) – Acoustic Fence Option] • Appendix A Part 1 - Work No. 7 A47 Link Road Acoustic Fence Location • Appendix A Part 2 - Work No. 7 A47 Link Road Roundabout 1 Realignment Cross Sections (Acoustic Fence) • Appendix A Part 3 - A47 Link Road Acoustic Fence Maintenance and Vehicle Tracking
Hinckley NRFI Aston Firs Technical Note [Appendix 4 (B) – Acoustic Gabion Wall Option] • Appendix B Part 1 - Work No. 7 A47 Link Road Gabion Wall Option Location • Appendix B Part 2 - Acoustic Barrier Sections Gabion Option • Appendix B Part 3 – Gabion Wall Tracking and Maintenance Access
Hinckley NRFI Aston Firs Technical Note [Appendix 4 (C) – Noise Modelling] • Appendix C – Acoustic Barrier Noise Modelling Note
Hinckley NRFI Aston Firs Technical Note [Appendix 4 (D) Road Restraint Risk Assessment Process (RRRAP) • Appendix D Part 1 – A47 North Bound RRRAP • Appendix D Part 2 – A47 North Bound RRRAP (Gabion Option) • Appendix D Part 3 – A47 South Bound RRRAP • Appendix D Part 4 – B4669 East Bound RRRAP • Appendix D Part 5 – B4669 East Bound RRRAP (Gabion Option)
Hinckley NRFI Aston Firs Technical Note [Appendix 4 (E) Road Safety Audit 1 (RSA1)] • Appendix E – RSA1 Aston Firs
Hinckley NRFI Aston Firs Technical Note [Appendix 4 (F) Aston Firs Gypsy and Traveller Liaison Officers and Residents Response]
Hinckley NRFI Appendix 4 - Parameters Plan [Sheet 2] (*document reference 2.12B*)
Hinckley NRFI Appendix 4 - Highway Plans [Sheet 4 of 8] (*document reference 2.4D*)
Hinckley NRFI Appendix 4 - Works Plans [Sheet 4 of 8] (*document reference 2.2D*)
Hinckley NRFI Appendix 4 - Illustrative Masterplan (*document reference 2.8D*)
Hinckley NRFI Appendix 4 - Illustrative Context Masterplan (*document reference 2.9D*)
Hinckley NRFI Appendix 4 - Acoustic Fence Repositioning Rev C (Masterplan Inset)
Hinckley NRFI Appendix 4 - Design and Access Statement (*document reference 8.1C*)
Hinckley NRFI Appendix 4 - Design and Access Statement (Tracked) (*document reference 8.1C*)
Hinckley NRFI Appendix 4 - Design Code (*document reference 13.1E*)
Hinckley NRFI Appendix 4 - Design Code (Tracked) (*document reference 13.1E*)

Appendix 5: Environmental Statement Addendums
Hinckley NRFI Appendix 5 - ES Figure 3.1 - Illustrative Masterplan (*document reference 6.3.3.1D*)
Hinckley NRFI Appendix 5 - ES Figure 3.2 Parameters Plan (*document reference 6.3.3.2C*)
Hinckley NRFI Appendix 5 - ES Appendix 7.2 Equalities Impact Assessment Statement addendum (*document reference 6.2.7.2D*)
Hinckley NRFI Appendix 5 - ES Chapter 9 Air Quality Addendum (*document reference 6.4.2*)
Hinckley NRFI Appendix 5 - ES Chapter 10 Noise and Vibration Addendum (*document reference 6.4.3*)
Hinckley NRFI Appendix 5 - ES Figure 10.10A Acoustic Barrier Locations (*document reference 6.3.10.10A*)
Hinckley NRFI Appendix 5 - ES Figure 10.11A Short-term Development Generated Road Traffic Assessment with Mitigation (*document reference 6.3.10.11A*)
Hinckley NRFI Appendix 5 - ES Figure 10.12A Short-term Development Generated Road Traffic Assessment Difference Contours (*document reference 6.3.10.12A*)
Hinckley NRFI Appendix 5 - ES Figure 10.13A Long-term Development Generated Road Traffic Assessment with Mitigation (*document reference 6.3.10.13A*)
Hinckley NRFI Appendix 5 - ES Figure 10.14A Long-term Development Generated Road Traffic Assessment Difference Contours (*document reference 6.3.10.14A*)
Hinckley NRFI Appendix 5 - ES Figure 10.15A Operational Noise Contours (*document reference 6.3.10.15A*)
Hinckley NRFI Appendix 5 - ES Figure 10.16 Short-term Noise Difference Contours (*document reference 6.3.10.16*)
Hinckley NRFI Appendix 5 - ES Figure 10.17 Long-term Noise Difference Contours (*document reference 6.3.10.17*)
Hinckley NRFI Appendix 5 - ES Appendix 11.2 Public Rights of Way Appraisal and Strategy (*document reference 6.2.11.2E*)
Hinckley NRFI Appendix 5 - ES Appendix 11.2 Public Rights of Way Appraisal and Strategy (Tracked) (*document reference 6.2.11.2E*)
Hinckley NRFI Appendix 5 - ES Appendix 11.5 Schedule of Landscape and Visual Construction Effects (*document reference 6.2.11.5C*)
Hinckley NRFI Appendix 5 - ES Appendix 11.5 Schedule of Landscape and Visual Construction Effects (Tracked) (*document reference 6.2.11.5C*)
Hinckley NRFI Appendix 5 - ES Appendix 11.6 Schedule of Landscape and Visual Operational Effects (*document reference 6.2.11.6C*)
Hinckley NRFI Appendix 5 - ES Appendix 11.6 Schedule of Landscape and Visual Operational Effects (Tracked) (*document reference 6.2.11.6C*)
Hinckley NRFI Appendix 5 - ES Figure 11.14 Public Rights of Way and Informal Open Space Strategy (*document reference 6.3.11.14D*)
Hinckley NRFI Appendix 5 - ES Figure 11.20 Illustrative Landscape Strategy (*document reference 6.3.11.20D*)
Hinckley NRFI Appendix 5 - ES Figure 11.23 Photomontages from Astons Firs Gypsy and Travellers Site (Low Resolution) (*document reference 6.3.11.23*)
Hinckley NRFI Appendix 5 - ES Figure 11.23 Photomontages from Astons Firs Gypsy and Travellers Site (*document reference 6.3.11.23*)
Hinckley NRFI Appendix 5 - ES Figure 11.24 Illustrative Sections through Aston Firs Boundary (*document reference 6.3.11.24*)
Appendix 6: Sustainable Transport Strategy
Hinckley NRFI Appendix 6 - ES Appendix 8.1 Transport Assessment [Part 15 of 20] Sustainable Transport Strategy and Plan (*document reference 6.2.8.1F*)
Hinckley NRFI Appendix 6 - ES Appendix 8.1 Transport Assessment [Part 15 of 20] Sustainable Transport Strategy and Plan (Appendices) (*document reference 6.2.8.1F*)
Hinckley NRFI Appendix 6 - ES Appendix 8.1 Transport Assessment [Part 15 of 20] Sustainable Transport Strategy and Plan (Tracked) (*document reference 6.2.8.1F*)
Hinckley NRFI Appendix 6 - ES Appendix 8.1 Transport Assessment [Part 15 of 20] Sustainable Transport Strategy and Plan (Appendices) (Tracked) (*document reference 6.2.8.1F*)
Hinckley NRFI Appendix 6 - ES Appendix 8.2 Site Wide Framework Travel Plan (*document reference 6.2.8.2E*)
Hinckley NRFI Appendix 6 - ES Appendix 8.2 Site Wide Framework Travel Plan (Tracked) (*document reference 6.2.8.2E*)

Appendix 7: Rail Passenger Station Feasibility
Hinckley NRFI Appendix 7 - Evaluation of the Viability of Providing a New Passenger Station to Serve the Proposed Development and Local Community Travel Needs
Hinckley NRFI Appendix 7 (A) Planning officers report 21/01511/OUT
Hinckley NRFI Appendix 7 (B) Planning officers report 23/00330/OUT
Hinckley NRFI Appendix 7 (C) Planning officers report 12/00295/OUT
Appendix 8: HGV Route Management Plan and Strategy
Hinckley NRFI Appendix 8 - HGV Route Management Plan and Strategy (*document reference 17.4F*)
Hinckley NRFI Appendix 8 - HGV Route Management Plan and Strategy (Appendices) (*document reference 17.4F*)
Hinckley NRFI Appendix 8 - HGV Route Management Plan and Strategy (Tracked) (*document reference 17.4F*)
Hinckley NRFI Appendix 8 - HGV Route Management Plan and Strategy (Appendices) (Tracked) (*document reference 17.4F*)
Appendix 9: Village Example Highways Mitigations Cost Plan
Hinckley NRFI Appendix 9 - Village Example Highways Mitigations Cost Plan
Appendix 10: Noise - Deadline 8 Submissions of Dr Moore and Mr Moore
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Hinckley NRFI Appendix 11- Redacted Option Agreement with owner of Plot 73
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Appendix 12: M69 Junction 2
Hinckley NRFI Appendix 12 - M69 J2 Modelling Note
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Hinckley NRFI Appendix 14 - Gibbet Hill Mitigation General Arrangement
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Hinckley NRFI Appendix 14 - Gibbet Hill Mitigation Road Safety Audit Stage 1
Hinckley NRFI Appendix 14 - Gibbet Hill Mitigation Road Safety Audit Stage 1 Response Report
Hinckley NRFI Appendix 14 - Revised Gibbet Hill Cost Plan
Hinckley NRFI Appendix 14 – Gibbet Hill Cost Plan Commentary on Changes
Appendix 15: Cross in Hand
Hinckley NRFI Appendix 15 - Cross in Hand Road Safety Audit Stage 1
Appendix 16: M69 J1
Hinckley NRFI Appendix 16 - M69 J1 Modelling Note
Appendix 17: Public Rights of Way
Hinckley NRFI Appendix 17 - Access and Rights of Way [Sheet 1 of 4] (*document reference 2.3A*)
Hinckley NRFI Appendix 17 - Access and Rights of Way [Sheet 2 of 4] (*document reference 2.3B*)
Hinckley NRFI Appendix 17 - Access and Rights of Way [Sheet 4 of 4] (*document reference 2.3D*)

Appendix 18: Draft Development Consent Order
Hinckley NRFI Appendix 18 – draft Development Consent Order [Applicant's version] (*document reference 3.1E*)
Hinckley NRFI Appendix 18 – draft Development Consent Order [Applicant's version] (Tracked) (*document reference 3.1E*)
Hinckley NRFI Appendix 18 - DCO Explanatory Memorandum (*document reference 3.2D*)
Hinckley NRFI Appendix 18 - DCO Explanatory Memorandum (Tracked) (*document reference 3.2D*)
Hinckley NRFI Appendix 18 – Applicant's mark up of the ExA's rDCO
Hinckley NRFI Appendix 18 – Schedule of changes made to the draft Development Consent Order – December 2024
Hinckley NRFI Appendix 18 - DCO Validation Report (*document reference 3.3B*)
Appendix 19: Unilateral Undertaking
Hinckley NRFI Appendix 19 - Unilateral Undertaking (*document reference 9.2C*)

9. CONCLUSION

9.1 The Applicant notes that it is the Secretary of State's intention to now allow Interested Parties until 31 January 2025 to submit comments on its response. Whilst the Applicant has endeavoured to engage with Interested Parties where appropriate in formulating this submission, it will seek further constructive dialogue with the key stakeholders in respect of the issues addressed in this response to agree further common ground wherever possible.

9.2 The Applicant also anticipates that the Secretary of State will want to afford the Applicant a final right of reply to any Interested Party submissions in due course prior to her making her decision on the application in accordance with established practice.

9.3 The Applicant would welcome such an opportunity and looks forward to hearing further from the Secretary of State in that regard.

Yours faithfully

[redacted]

Eversheds Sutherland (International) LLP