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MEMORANDUM OF UNDERSTANDING BETWEEN THE SECRETARY OF STATE FOR TRANSPORT AND THE OLD OAK AND PARK ROYAL DEVELOPMENT CORPORATION OVER THE TRANSFER OF DEPARTMENT FOR TRANSPORT AND NETWORK RAIL OWNED LAND AT OLD OAK COMMON

Background

1. The Chancellor announced at Autumn Statement 2015 his intention to pool public sector land in order to enable the Old Oak and Park Royal Development Corporation's (OPDC) comprehensive regeneration of the area around the proposed new HS2 /Crossrail/Great Western Main Line interchange. This area has the potential to be one of London's largest regeneration sites, accommodating development for 25,500 new homes and 65,000 jobs with associated infrastructure and amenities. The area is identified in the London Plan as one of the Mayor of London's opportunity areas.
2. This Memorandum of Understanding (MoU) has been agreed between the Secretary of State for Transport and the OPDC (the Parties) to set out the basis upon which such land pooling might take place in respect of land owned by, or under the control of, Network Rail and Department for Transport. The attached letter from David Biggs, Managing Director of Property at Network Rail (Appendix A) confirms that Network Rail are content with the terms of this MoU in so far as it affects it.
3. However, it is recognised that the development opportunity represents a considerable challenge. Land to the north of the canal, alongside Willesden Junction Station, is in predominately private ownership (although Network Rail control some of the key strategic sites between the West Coast Main line, the North London and West London lines) and occupied by industrial users. The area south of the canal is currently a complex operational railway environment, which includes the Great Western Main Line, Crossrail construction and depots. The majority of this land is owned by either the Department for Transport or Network Rail. Work on the construction of Crossrail, HS2 and reconfiguration of existing railway operations affects all of the sites and creates significant constraints as well as opportunities.
4. In order to provide the OPDC with the maximum opportunity to secure comprehensive and coordinated redevelopment of the combined sites the Parties have agreed, in principle, that the Government will, subject to certain Conditions Precedent being fulfilled, procure the transfer on commercial terms of its land at Old Oak or consider the granting of air development rights on a case by case basis to the OPDC. The presumption is that all the Department for Transport and Network Rail land and/or air rights set out in this MoU are available for transfer to the OPDC – subject to the Conditions Precedent

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(included below – paragraph 21) being met. Signalling this agreement to transfer, the Department for Transport and Network Rail land will enable the OPDC to pool it with other public land in the area and will give the OPDC the *confidence and certainty* to undertake the necessary work to prepare its master plan, develop the required funding strategy, enter into partnerships with the private sector and take other steps necessary to attract investment and enable delivery of the Mayor's vision for the creation of 25,500 homes and 65,000 jobs at Old Oak over the next 30 years. It is a clear intention of the OPDC scheme that it releases as much land for housing as quickly as possible.

5. This MoU is a good faith document between parties (the OPDC and the Department for Transport) in the public sector acting in the public interest and is not legally binding. As a result, this document creates no legal and/or financial obligations on any party. This MoU contains the whole initial agreement between the parties in respect of the land outlined in Appendix C and supersedes any previous arrangement or agreements between the parties. The parties anticipate that, in order to give effect to the intentions set out in this MoU, they will need to enter into detailed heads of terms and legal agreements in the future.
6. The Parties have agreed the following principles:
 - i) The Department for Transport and the OPDC will work collaboratively and transparently together and with other stakeholders (including but not exclusively the GLA, Network Rail, TfL and the local authorities) towards meeting the Conditions Precedent to enable land to be transferred or the granting of air development rights. Each party will be responsible for their own costs incurred in meeting the Conditions Precedent unless and until otherwise agreed.
 - ii) Whilst acknowledging that this MoU concerns the transfer of land and granting of air development rights between public bodies acting in the public interest, the basis of such transfer should be subject to commercial discipline and, as far as is practicable, be on commercial terms unless otherwise agreed. The reason for basing transfers on commercial basis is to maintain discipline between public sector budgets.
 - iii) The parties acknowledge that a) DfT cannot bind decisions on land that is delegated to Network Rail or HS2 Ltd and b) the OPDC cannot bind decisions on matters not delegated to them via the GLA, including decisions by TfL. But both parties will use reasonable endeavours to secure the agreement of other stakeholders to abide by the terms of this MoU. The attached letter from the Managing Director, Property at Network Rail (Appendix A) confirms the organisation's commitment in

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principle to a land transfer and its agreement to the obligations in Appendix C.

- iv) At the appropriate time both parties will enter into detailed Heads of Terms for Transfer Agreements that will give legal effect to the land and/or rights over land being transferred and until any such Agreements have been completed the land remains in the ownership of the Department of Transport and/or Network Rail.
- v) This MoU will remain in place until all land in Appendix C is transferred. [REDACTED] from signing the MoU is agreed for the OPDC to meet the Conditions Precedent for the [REDACTED] [REDACTED] to be transferred. At this stage the duration of the MoU will be reviewed.

Obligations of the Parties

7. The Department for Transport and Network Rail have a responsibility to secure good public outcomes from the ownership of their sites. The Department for Transport agrees in principle to procure the transfer of all non-operational Department for Transport and Network Rail owned land at Old Oak and to consider the granting of air development rights to the OPDC on a case by case basis in order to consolidate ownership of the site, enabling the OPDC to implement its vision for the regeneration of the area. The rights transferred may be either freehold or leasehold and may include, where appropriate, only air development rights. The choice of the right being transferred will be driven by the need to protect the current or future operational needs of the railway and clarity of what the OPDC need in order to move forward the comprehensive redevelopment of the area
8. The OPDC is charged by the Mayor with securing comprehensive redevelopment and regeneration in the Old Oak Common area. It will use its reasonable endeavours to deliver development within realistic timescales, having regard to the requirements of the railways (during design, construction and operation), the state of the development markets and the availability of funding. In particular it will take such steps as are necessary to enable the Conditions Precedents as set out in section 21 below to be met.
9. Prior to the transfer of any land, the Department for Transport and Network Rail will continue to undertake their responsibilities as owners and/or landlords and/or tenants of their holdings and the Department for Transport agrees that it will not allow (so far as it is legally able to do so) Network Rail to dispose of any interest in the land (either by way of sale or lease) to anyone other than the OPDC. No contractual arrangement should be entered into by either the Department for Transport or Network Rail that would inhibit the OPDC from developing the land. During this period they will inform the OPDC as

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appropriate on any ongoing contractual issues relating to this land including lease extensions. The Department for Transport will procure that Network Rail should also inform the OPDC on new leases and surrenders, assignments, break provisions and any other matters that might impact on the development potential or timing of development of transfer sites. However, this does not require them to inform OPDC on day to day issues arising out of normal landlord and tenant matters, such as rent reviews.

10. Prior to the execution of the transfer agreement, the OPDC shall not have any rights or obligations in relation to the land in question, other than any existing rights that it has, for example, those conferred on the OPDC by statute. In particular it will not enter the land or open negotiations or discussions with occupiers without first informing the Department for Transport and/or Network Rail and, if required, entering into any Agreements that may be needed.

Land agreed to be transferred

11. The OPDC area comprises 650 hectares. This MoU concerns only that land which is within an area shown on the attached plan (Appendix B) and which comprises some 134 hectares, 97 hectares of which are owned by the public sector, with [REDACTED] being the largest private sector land owner.
12. This plan and the attached table (Appendix C) provide summary details of the key land plots that are in scope in terms of the transfer. The table identifies for each plot the plot owner, the date of potential availability and the obligations attached to transfer. It highlights specific groupings of plots – Network Rail owned land to the north of the development zone where it may be possible to transfer the freehold, Network Rail owned land where it might be possible to transfer air rights to the OPDC, the key Old Oak South sites (HS2 and GWML stations site and the Crossrail depot site) and HS2 construction sites. All parties agree to working together expediently and in good faith to ensure the actions are undertaken and satisfied.
13. Where there are specific proposals for development above the railway, Network Rail agrees to consider them proactively in support of OPDC's proposals for comprehensive redevelopment and regeneration of the area. It is Network Rail's general position not to convey general rights over railway development because of the safety, performance and other constraints that are likely to be imposed on railway operations.

Terms of Land Transfer

14. Legal Agreements for the transfer of land covered by this MoU will contain the detailed terms upon which such land should transfer, including the tenure,

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covenants, rights and cross rights and liabilities that will apply in each case. The price to be paid by OPDC to the Department for Transport and/or Network Rail will also be set out in the legal Agreements and is intended to be on the following basis, unless otherwise agreed between the parties.

15. The transfer price will comprise a Capital Payment and a Share of future Value.

Capital payment

16. The Capital Payment element of the price will be agreed between the Parties based on professional valuation and in the event of any dispute by Arbitration.

17. The Capital Payment will reflect the market value of the interests being transferred at the date of transfer ignoring any increase or decrease in value from the date of this MoU that is attributable to i) the scheme for regeneration of the Old Oak Common area that is being promoted by OPDC and ii) the impact of the delivery of HS2 and Crossrail.

18. For the Initial Sites – numbered [REDACTED] on the plan and other non-operational and landlocked sites the basis of valuation will be market value in existing use, subject to and with the benefit of the existing leases and taking into account the condition of the land.

19. For land that is currently operational or in railway use, and for any air development rights that may be transferred (where market value in existing use cannot apply) the basis of valuation will be market value (subject to the exclusions set out under i) and ii) above).

Share of future value

20. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

The share and the mechanism will be determined by agreement in light of the scheme to which the transfer relates and the basis and size of the Capital Payment being made. The Parties will explore whether the transfer or certain transfers could be by way of a statutory transfer as this could be a more cost efficient method of transferring the land.

Conditions precedent:

21. The OPDC having in place, approved by its Board:

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- i) A masterplan showing proposed land uses and associated social and economic infrastructure requirements for the whole of Old Oak Common and, specifically for Old Oak South, sets out how the OPDC vision for new homes and jobs can be delivered across the various sites (including both the HS2 and GWML stations and the Crossrail depot site);
- ii) A programme for the phased installation of infrastructure and development activity over time, aligned with construction (and operation) of HS2 and Crossrail;
- iii) A Business Plan that sets out the corporation's strategy for undertaking the role as a development and delivery body for Old Oak and the process for obtaining necessary planning consents; and
- iv) A Delivery Plan for the development over time, including the mechanisms for securing design, funding, financing and construction of the various phases of the scheme, including how other public sector and privately owned land will be incorporated into the scheme, using private capital wherever practicable.

22. The Department for Transport's and Department for Communities and Local Government's (DCLG) approval of the masterplan, programme and delivery plan (not to be unreasonably withheld) would need to be secured. The Department for Transport reserve the right unilaterally to waive any or all of the Conditions Precedent.

23. The parties agree to work together in order to develop an appropriate programme of activities and milestones needed to enable the Conditions Precedent to be met, taking account of the constraints around planning for HS2 and Crossrail delivery, negotiations with existing operators and utilities and the fiscal calendar. Separately, the Department for Transport's agreement to the transfer of land and air rights is conditional upon it receiving appropriate credit towards its target under the Public Sector Land for Housing programme. OPDC and the Department for Transport will work with DCLG to agree how this credit will be recognised by September 2016.

24. For each site there will also be specific conditions and assurances required. These can be grouped into the following packages:

Network Rail Sites [REDACTED] (Freehold)

25. The Department for Transport and Network Rail agree in principle to the transfer of these sites to OPDC.

26. The exact financial terms of the sale are yet to be confirmed. Network Rail and the OPDC will now begin negotiations over heads of terms detailing the

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financial terms of the sale. Network Rail will progress railway clearance (Network Rail's internal process to ensure the land is surplus) of the land referred to as [REDACTED] for disposal and will seek the necessary approvals with regard to the disposal of this land and will begin informal consultation with the train operating companies and freight operating companies affected by the transfer of these plots in spring 2016. It is recognised that the land between the site leased to [REDACTED] and the canal is currently designated as railway operational land and Network Rail will begin working with OPDC immediately following the signing of the MoU, with a view to seeking to release this along with the other plots.

27. Network Rail will apply to the Office of the Rail Regulator for LC7 approval for transfer of these sites once their clearance process has confirmed that they are not required for operational purposes; the target date to do this is autumn 2016.

28. The expectation is that final approval for the transfer will be sought in Quarter 2/3 in 2017.

Air Development Rights for Network Rail owned land

29. These sites [REDACTED] have been identified by the Department for Transport as being required for railway operations and therefore not available for freehold transfer to the OPDC. However, air development rights for future over railway or over station development (OSD) could be agreed on a case by case basis subject to assurances that any development will safeguard the running of the station or depot, have no negative impact on the railway and hold Network Rail financially harmless.

[REDACTED] Crossrail depot site [REDACTED]

30. The Department for Transport is content in principle to enter into discussions with the OPDC with regard to rights for OSD at the Crossrail site, subject to this not having a negative impact on the current or future operation of Crossrail, national rail network or the construction of HS2, and the OPDC gaining the support of TfL and Network Rail. This will form part of the overall funding and financing strategy for the entire development area. [REDACTED]
[REDACTED]

31. [REDACTED]
[REDACTED]
[REDACTED] Separately, Network Rail have commissioned a review of depots and stabling on the wider Great Western Main Line. Any final decision over the reconfiguration of the site will be informed by the impact on the national rail network.

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Air Development Rights for HS2 & GWML Stations [REDACTED]

32. The Department for Transport agrees in principle to the provision of air and land development rights to the OPDC on and around the HS2 and GWML stations on the basis that:

- i) The development promoted by the OPDC must not impact on GWML train performance, operational safety and maintenance of the railway and the timetable and/or budget for delivering HS2 into operation; and
- ii) The cost of providing enabling works and a deck structure and any changes required to the station are underwritten by the GLA including associated asset protection costs, the design works and any reasonable costs incurred keeping options open (e.g. contingency planning should the OPDC be unable to provide financial funding for OSD enabling works). The GLA would be responsible for all such costs should it subsequently change its mind about above station development rights. The GLA would also be liable for any increased long term running costs for the railway resulting from the OSD enabling works.

33. To ensure that this remains consistent with the HS2 critical path to delivery, the Department for Transport requires that the OPDC develop an outline business case identifying the preferred development option over the HS2 and GWML stations to be presented to the Department for Transport Business Investment & Commercial Committee in autumn 2016, ahead of HS2 Ltd's publication of the station design PQQ in October 2016. At this stage, the Mayor of London will need to confirm his agreement in principle to underwrite any extra costs resulting from OSD enabling works, without any recourse to Government and without it adversely impacting on HS2 construction. The OPDC will need to provide clarity around the scale of funding and what this would cover and how the OSD plans would relate to the OPDC's funding for its wider vision for housing and commercial development at Old Oak. The OPDC would also need to provide assurance that there would be no disproportionate impact on future station operating costs and commit to working with HS2 Ltd on the detail of OSD options going forwards.

34. The Mayor would need to provide a binding commitment to funding OSD works in quarter 3 2017 in advance of the station design and build contract being in place.

Freehold of HS2 Ltd construction sites: [REDACTED]

35. HS2 Ltd are proposing to acquire a number of sites to use in the construction of HS2. At the end of the HS2 project, these parcels may be available as development sites, [REDACTED]

[REDACTED]. A Deed of Undertaking agreed between the Secretary of

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State for Transport and the Greater London Authority, signed in October 2015, contains an obligation for HS2 Ltd to offer the transfer of surplus land to the OPDC.

36. Information Page C6 of the Hybrid Bill contains a provision that, although the Secretary of State will normally offer surplus land, acquired permanently under compulsory powers, back to the former owner at market value, there may be exceptions – such as where the site is needed for railway purposes or associated redevelopment or regeneration.

37. [REDACTED] The position with regard to these sites will be reviewed after Royal Assent for the HS2 Phase 1 Hybrid Bill.

Governance

38. The parties agree that implementing this MoU will require additional governance and agree to work together to develop a governance structure that ensures;

- i) The Department for Transport can properly manage its responsibilities and accountabilities, particularly in relation to the requirements of Network Rail, HS2, train operators and land owned by the Department;
- ii) Any requirement for public capital is properly presented to DCLG, which is the accountable Government department for the delivery of the Old Oak HS2 Growth Strategy and implementation plan;
- iii) All stakeholders have sufficient visibility and information to enable them to take informed decisions in timely fashion and, where necessary, secure the appropriate approvals from within their respective governance structures - including HM Treasury; and
- iv) Sufficient clarity and transparency around how it is determined that the Conditions Precedent have been fulfilled. This is on the understanding that Department for Transport's and DCLG's approval to these conditions having been fulfilled would need to be secured.

Confidentiality and FOI

39. All parties agree to work together and agree to comply with their statutory duties under The Freedom of Information Act 2000, Environmental Information Regulations 2004 and to create a protocol for dealing with ministerial/mayoral correspondence.

Communications

40. The Department for Transport and OPDC agree to co-operate on any media activity relating to any issues covered in the MoU and to co-ordinate any media announcements.

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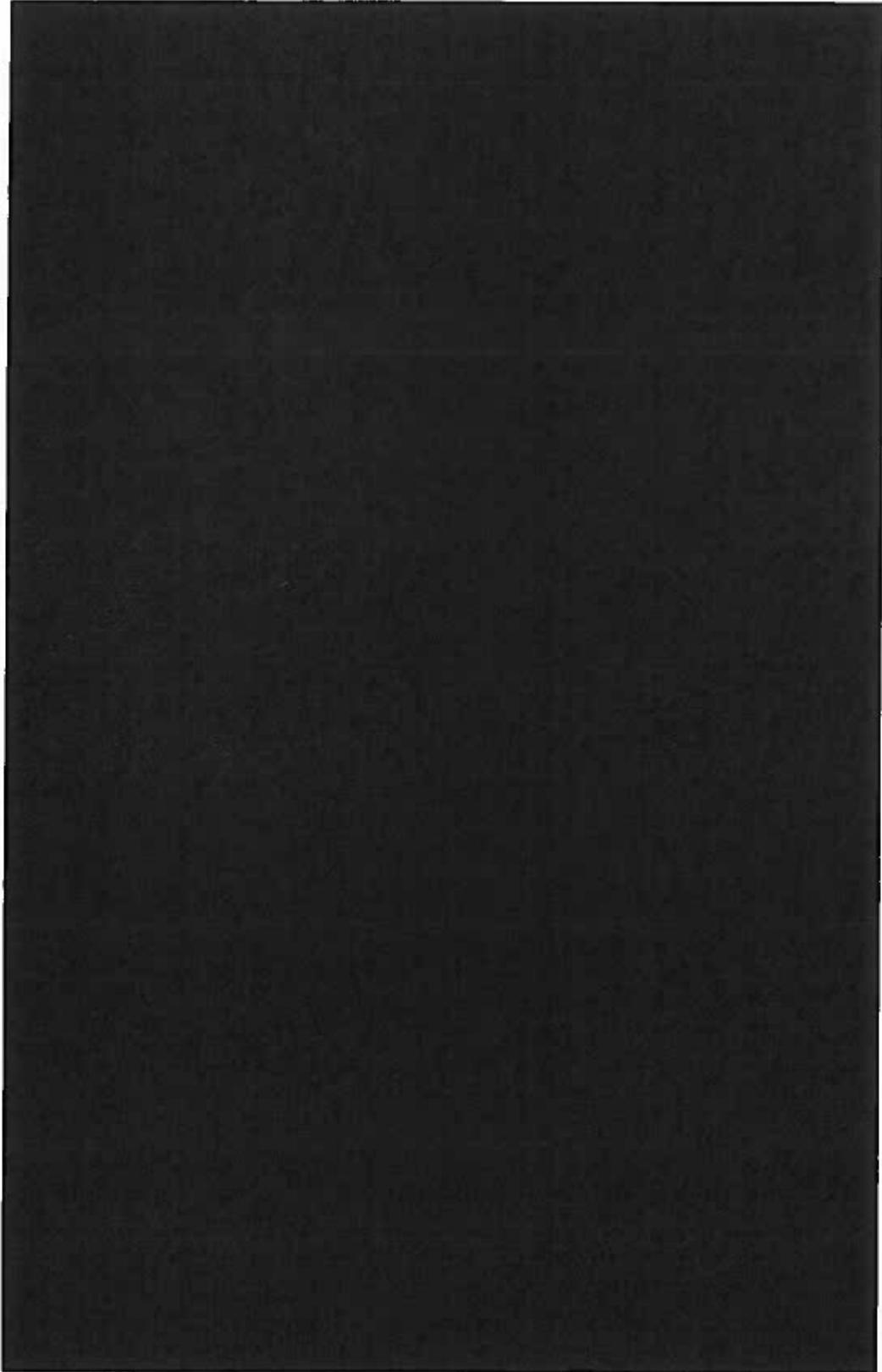
David Prout
Director General, High Speed Rail Group
Department for Transport



Sir Edward Lister
Chairman
Old Oak and Park Royal Development
Corporation

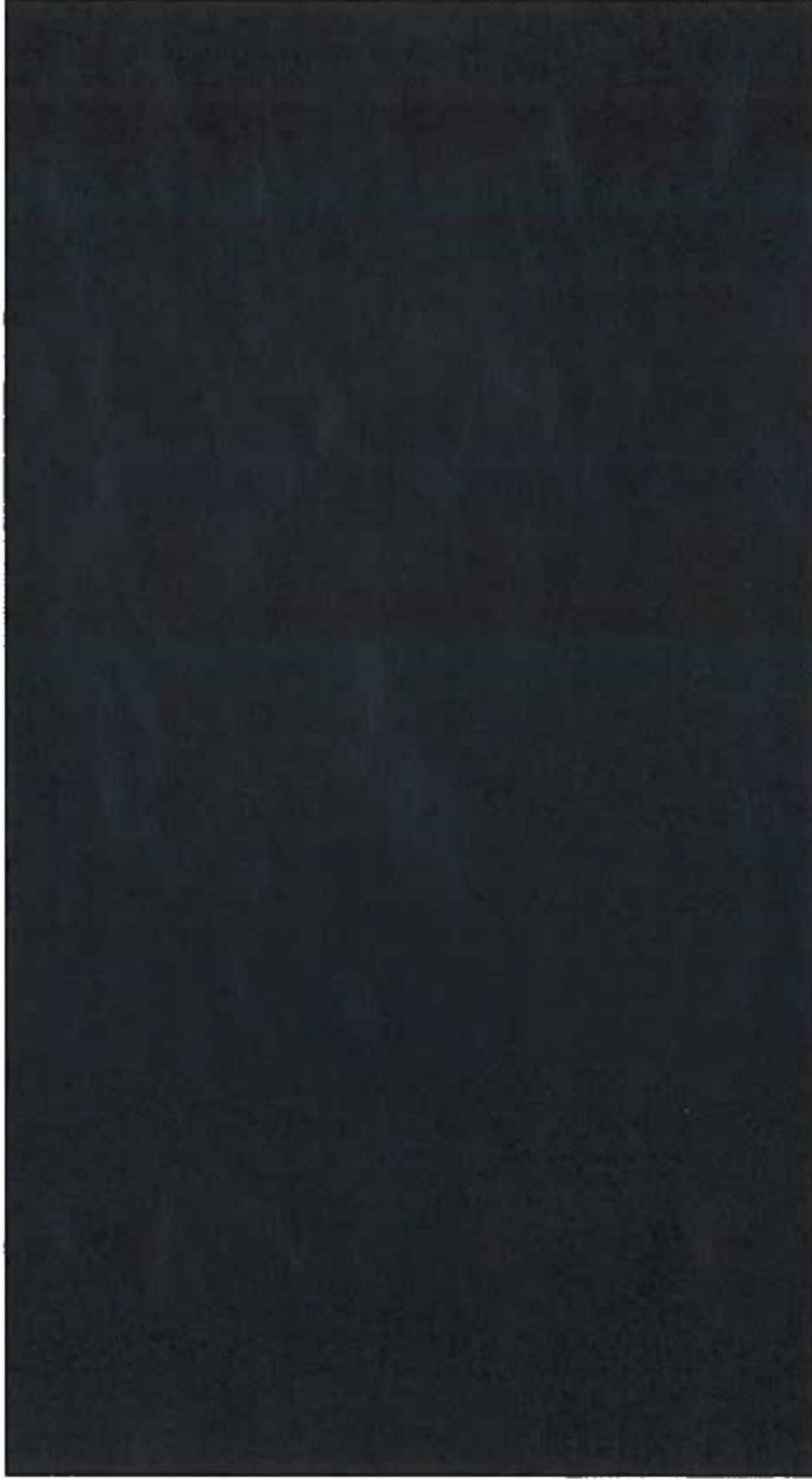
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Appendix A – letter from Network Rail



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Appendix B



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[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

* For the Initial Sites [REDACTED] to be transferred, Network Rail, have agreed to satisfy its Obligations contained within Annex C within reasonable time for OPDC to fulfill their Conditions Precedent [REDACTED] (as outlined in Paragraph 6 v).

