

**Report on the Northern Junction Roundabout Scheme
and the Southern Junction Proposal, M181, Scunthorpe.**

Greater Lincolnshire LEP Directors Board, [20th July 2018]

Declarations of Interest – In line with the declaration of interest policy of the LEP. Any Director that has a declaration of interest with either the Northern Junction Scheme or the Southern Junction scheme will not receive papers nor will they be in the room during the decision, nor vote.

[https://www.greaterlincolnshirelep.co.uk/assets/documents/Code of Conduct Directors Board - Final signed off Feb2018.pdf](https://www.greaterlincolnshirelep.co.uk/assets/documents/Code_of_Conduct_Directors_Board_-_Final_signed_off_Feb2018.pdf)

Recommendation: A Report for decision

1. This report updates LEP Board Directors on recent developments regarding the proposed Northern Junction Scheme including, in particular, the need to make a final decision regarding whether to enter into the contracting stage with North Lincolnshire Council ("**NLC**") in respect of that scheme. The report updates the Board Directors on the application for judicial review made by Scunthorpe United Football Club ("**SUFC**") against the decision of the LEP and its Investment Board on 29 September 2017 that £1.9 million of Growth Deal Funding remains allocated to that Northern Junction Scheme and on the current position with the Southern Junction scheme proposed by SUFC. It further considers material representations which have been received on behalf of interested parties to the decision. Finally, the report seeks the Board's approval to proceed to enter into the contracting stage with NLC in respect of the Northern Junction scheme.

Background

2. Whilst the Investment Board members may be familiar with the background of both the Northern Junction scheme and the Southern Junction scheme, for ease of reference, this report sets out the necessary background context against which the decision of the LEP Board is to be taken.
3. In March 2016, NLC initially applied for £1.9m of growth deal funding to the GL LEP in respect of the scheme to construct the new northern junction which would enable access to the Lincolnshire Lakes housing development, and provide the primary access to SUFC's proposed new football stadium.
4. SUFC replaced NLC as the applicant for this scheme on 4th May 2016 given their interest in the scheme providing the access to their new proposed stadium. In May 2016, SUFC provided a business case and due diligence information for the Northern Junction scheme.
5. On 21st July 2016, the GL LEP Investment Board reviewed the due diligence report that had been undertaken and recommended that SUFC's application for funding in respect of the Northern Junction proceed subject to certain conditions including a copy of the final scheme proposals. The LEP's investment board supported the application which was considered to be essential to unlock and enable the

Lincolnshire Lakes scheme. The GL LEP therefore made a provisional decision to allocate funding to the Northern Junction proposal subject to conditions and a suitable contractual agreement being entered into.

6. A draft contract was provided to SUFC for consideration and comment on 23rd August 2016. However, this contract was never finalised or entered into. SUFC's proposal relied on the relevant landowner, KMG, transferring land to SUFC. KMG and SUFC could not agree terms for the land transfer meaning that the proposal could not proceed. Accordingly, the GL LEP never entered into a formal agreement with SUFC for the allocation of funding in respect of the Northern Junction, despite several attempts made by the GL LEP to seek progress from SUFC with regard to the draft agreement over the nine month period concerned.
7. On the 18th May 2017 SUFC hosted a meeting to update GL LEP Officers (the LEP Director and LEP Growth Deal Programme Manager) on the position with their proposal and to explain why the draft contractual agreement had not progressed. They explained the difficulties they were experiencing with KMG regarding the transfer of land which meant they could not proceed with the proposed Northern Junction scheme. They therefore discussed an alternative proposal idea for the £1.9m Growth Deal Fund to be contributed towards a scheme that included a proposed new stadium to be located off the intended new Southern Junction of the M181. At this meeting, the GL LEP was told that SUFC had entered into discussions with the relevant landowner in respect of the Southern Junction, Maltgrade, about a land transfer for this site. The officers considered that any new proposals coming forward would need to be measured against the original scheme submission and other schemes.
8. It was understood from discussions with SUFC and Highways England that Maltgrade were required by Highways England to make a private contribution match of 40% to the costs of the new southern junction.
9. Once it became clear that SUFC could not proceed with their proposal in respect of the Northern Junction, NLC made an application proposing their idea for the £1.9m growth deal funding to be retained for use in delivering the Northern Junction, with a business park replacing the football stadium within their proposal. It is their position that the £1.9m growth deal funding is crucial for enabling the Northern Junction to proceed to unlock the Lincolnshire lakes development and for the reasons which are further below.
10. Following discussions with SUFC and NLC regarding their respective proposals, the GL LEP Officers instructed an independent firm, Thomas Lister Limited ("**Thomas Lister**"), a firm of Chartered Surveyors and Development Consultants, to undertake an independent review of the revised Northern Junction scheme and to assess a proposed alternative scheme at the Southern Junction to include an assessment of the deliverability and outcomes of the 2 separate proposals.
11. Thomas Lister subsequently prepared a report dated 27 September 2017 which is attached at **Appendix A**. The conclusions of that report included the following:-

- a) The Southern Junction proposal is at a much earlier stage of feasibility than the Northern Junction proposal and is yet to complete the detailed design process;
 - b) The proposals for the new stadium have been confirmed by NLC to be contrary to the Area Action Plan for the site and would involve displacement of Lake 5 with major implications for the flood modelling and associated works currently approved by the EA;
 - c) The proposed location of the stadium was opposed by NLC and would be subject to calling in by the Secretary of State;
 - d) It is likely that the programme of delivery of the scheme could extend in excess of three years until the works are completed on site, however, at this stage none of the outputs realised by the scheme would have been delivered and are likely to fall outside of the Growth Deal programme deadlines of 2020/21.
12. Following consideration of that report, an officer report was prepared to the Investment Board recommending approval for the £1.9 million Growth Deal Fund to remain allocated to the Northern Junction scheme subject to a number of conditions listed on page 3 of that report. A copy of that report is attached at **Appendix B**.
 13. The GL LEP considered the findings of the Thomas Lister Report and the Officer's Report at an Investment Board meeting on 29 September 2017. The Investment Board decided that they were unable to support SUFC's proposal for funding in respect of the Southern Junction scheme and approved the investment of £1.9m growth deal for the northern junction on the basis of the recommendations and conditions provided in the Thomas Lister report and board paper.
 14. SUFC were informed of the decision of the LEP by an email sent on 03 October 2017. That email summarised the reasons for the Board's decision.
 15. On 17 January 2018, SUFC issued an application for permission to claim judicial review in the High Court seeking a judicial review of the Investment Board's decision referred to in the above paragraph.
 16. On 13 February 2018, the GL LEP's legal representatives responded to the judicial review setting out grounds of defence.
 17. NLC provided their completed full business case for the Northern Junction Scheme to the GL LEP on 23rd April 2018. This business case sets out NLC's position as to the importance of the northern junction scheme in unlocking the development of the Lincolnshire Lakes Project.
 18. Following the submission of the detailed business case from NLC, including the provision of evidence relating to existing grant conditions, the GL LEP then undertook a further due diligence appraisal regarding the Northern Junction scheme including the merits of the proposal. As part of this process, the GL LEP instructed Thomas Lister to undertake a due diligence assessment on the Northern Junction proposal business case and supporting information. A due diligence report dated 25th April 2018 was prepared by them in accordance with the standard due diligence

assessment requirement for all business case submissions. A copy of that report is attached at **Appendix C**. Their due diligence report included an assessment and verification of the works costs for the Northern Junction scheme and a review of outputs and outcomes given the passage of time since the original approval was issued.

19. An Officer's Report was completed on 25 May 2018 following the due diligence assessment. The GL LEP Investment Board considered the report on 25 May 2018 and approved the £1.9m of funding from the Single Local Growth Fund towards the delivery of the Northern Junction scheme and to proceed to the contracting stage with NLC for that scheme accordingly. That decision was made as being subject to the court's judicial review permission decision, which it was reported at the time to be expected by the end of May 2018.
20. On 05 June 2018, the LEP Officers were informed that the Court had granted permission for the judicial review to proceed to a substantive hearing which is likely to take place later this year. A copy of the Order granting permission with the Judge's observations is provided at Appendix D.

Why a Further Decision is Required

21. The decision of the Investment Board taken on 25 May 2018 was made pending a decision of the Court as to whether or not permission would be granted for the legal challenge to proceed. Accordingly, the final decision as to whether to proceed to the contracting stage with NLC for the £1.9m of the growth funding was required to be taken once the Court's decision regarding permission was known.
22. The Court has granted permission for the application for judicial review to proceed to a hearing. The grant of permission for such a claim to proceed is ordinarily based on the notion that the claim is arguable and should be dealt with at a full hearing, but the decision does not mean that the claim will succeed. The Judge has made a determination on the papers that SUFC's claim is arguable and that it should therefore be fully considered at a substantive hearing. The Order granting permission does not prohibit or preclude the GL LEP from proceeding to make a final decision regarding whether to proceed to enter into the contracting stage with NLC and there is currently no legal impediment preventing the GL LEP from proceeding to enter into the contracting stage with NLC at present if that is what GL LEP wish to do. However if the Court were to quash the decision taken by the Investment Board in 2017 this would be likely to affect the current validity of the GL LEP's decision to proceed.
23. As permission has now been granted by the Court, the Board needs to make a final decision as to whether to proceed to the contracting stage in any event. Officers consider that it is therefore appropriate for the Board to make this decision taking into account both, a) the latest position with the Northern Junction Scheme and, b) the grounds of challenge in the legal challenge given the potential implications if the 2017 decision were found to be unlawful.

Update on the Northern Junction scheme

1. The GL LEP's investment board decision on the 29th September 2017, which is the decision subject to SUFC's judicial review was made on the basis that the Northern Junction scheme was deemed more deliverable within the timescales required by the SLGF Programme whereas it was considered the Southern Junction Scheme was not in a position where it was ready to proceed and ultimately may not be deliverable. There were also concerns about the proposed financial structure for the delivery of the Southern Junction scheme. The northern junction opened up the Lincolnshire Lakes Development, and gave road access into the first phases of the development. A comparable assessment of both the Northern Junction and Southern Junction proposals was undertaken to consider whether they could realistically expend all of the LEP funding for 2020/21 and whether the proposals would contribute to economic growth by 2020/21 which was required in order to meet the funding requirements as further explained below. Those conditions were required to be satisfied in order for a particular scheme to progress to a detailed business case for funding. The analysis undertaken and considered by the GL LEP for the purposes of that decision did not therefore involve a full business case at that stage for either proposal. Accordingly, the decision made was subject to a number of conditions which would need to be met if the GL LEP were to make a final decision to release the funding to NLC. Those conditions were as follows:-
 - i) Confirmation that the scheme can be delivered in accordance with the £4 million budget previously identified;
 - ii) Written confirmation that the terms have been agreed with the landowner so that they are or will shortly be legally obligated to vest the land into the scheme and will meet any cost overruns in the event that these arise;
 - iii) Written confirmation from NLC that the outputs relating to the commercial land will be delivered by 2020/21;
 - iv) Written confirmation that the Northern Junction scheme is deliverable as a non-terminating junction and is able to immediately proceed on this basis, notwithstanding that the Northern Junction may be required to operate temporarily as a terminating junction and that additional works to facilitate this are required to be agreed with Highways England. Categorically, NLC to confirm that implementation of the Northern Junction as proposed will not be delayed whilst the additional works are agreed with Highways England to enable temporary operation as a terminating junction;
 - v) A programme for delivery of the Northern Junction to be provided along with key milestones and a quarterly profile of drawdown for Growth Deal Funding.
2. Significant steps have been taken to progress the Northern Junction proposal since the GL LEP decision made on 29 September 2017 in order to discharge the conditions as set out above. Details of those steps are set out below.
3. **Confirmation that the scheme can be delivered in accordance with the £4 million budget previously identified.**

a) On 2nd March 2018, the GLLEP received a full breakdown of Bill of Quantities provided by NLC to demonstrate the project costs which confirmed the scheme can be delivered in accordance with the £4m budget identified.

b) Thomas Lister's report dated 25th April 2018 included an assessment and verification of the works costs for the Northern Junction scheme given the passage of time since the original approval was issued. Their findings are set out in section 6 of their report and were based on a technical review and verification exercise by professional service firm White Young Green. They found that there were some small areas of discrepancy within the project costs, the main areas being with the project preliminaries, optimism bias and contingency. However, they comment that these are not actual construction costs and are therefore capable of being managed as the project design is finalised and the scheme is competitively tendered. The actual physical work costs were deemed to be reasonable, realistic and in accordance with market rates (para 6.4).

c) The report therefore concludes at para 12.7 that given the number of public sector partners involved in the delivery of the scheme and given the advanced stage of design, it has been agreed with WYG that there is limited benefit in increasing contingency, optimism bias and preliminary costs at this time, providing that NLC are responsible for meeting any increased costs and costs overruns in this project.

d) It was recommended that it be a condition of any agreement to release the funding to NLC that the overall costs for delivering the project be confirmed based upon provision of the report on tenders and lowest tender received. This information will be required to demonstrate that the scheme is deliverable in accordance with the funding that has been secured to date. NLC have confirmed that the overall costs following the tender have come in with the budget for the scheme.

e) It will also be recommended that as a condition of any funding granted by the GL LEP to NLC that in the event that costs are higher than the current budget, NLC will be responsible for ensuring that any cost increases and cost over runs incurred on the project are met accordingly thereby ensuring the deliverability of the scheme.

4. **Written confirmation that the terms have been agreed with the landowner so that they are or will shortly be legally obligated to vest the land into the scheme and will meet any cost overruns in the event that these arise.**

a) On 19th February 2018, the GL LEP received a copy of the landowners executed counterpart Memorandum of Understanding in respect of both the Lake Development Land and Northern Junction from NLC. The land is now vested in a company called Lincolnshire Lakes Land Limited ("LLLL") which it is understood was incorporated as a joint venture vehicle between KMG and Homes England. The land required for the project will be vested at no cost to the project.

b) Under the Memorandum of Understanding, LLLL undertakes to transfer the land required for the works to create the new Northern Junction and to grant licence and

access rights for NLC to initiate the construction works in relation to the Northern Junction.

5. **Written confirmation from NLC that the outputs relating to the commercial land will be delivered by 2020/21.**

a) On 11th April 2018 NLC confirmed via email that the commercial land has a planning permission for a business park which was approved in October 2013. NLC have confirmed that subject to discharge of conditions there are no other issues to address in terms of planning requirements to enable this scheme to be brought forward for delivery as the scheme remains unchanged.

b) A profile for output delivery has been provided by NLC which is set out at section 10.3 of the Thomas Lister report dated 25 April 2018. It can be seen from that profile that it is projected that 3,190 sq metres of commercial floorspace will be delivered by 2020/2021 and 100 jobs created. A further 15,370 sq. metres of floorspace is projected to follow by 2021/2022 which will be attributable to the LEP funding expended by 2020/21. All outputs have been assessed in terms of value for money as part of the due diligence appraisal.

c) It is understood that KMG are currently awaiting a decision from Homes England for further funding to develop the commercial land. NLC have confirmed in writing, in any event, that they are committed to proceed to deliver the commercial outputs directly should KMG be unable to do so within the timescale required.

d) Any funding agreement entered into will contain provisions entitling the GL LEP to clawback the funding provided should the outputs from the commercial land not be delivered by 2020/2021.

6. **Written confirmation that the Northern Junction scheme is deliverable as a non-terminating junction and is able to immediately proceed on this basis, notwithstanding that the Northern Junction may be required to operate temporarily as a terminating junction and that additional works to facilitate this are required to be agreed with Highways England. Categorically, NLC to confirm that implementation of the Northern Junction as proposed will not be delayed whilst the additional works are agreed with Highways England to enable temporary operation as a terminating junction;**

a) On 8th May 2018 the GL LEP received a copy of an email from Sujaid Hussain, Service Delivery Manager for Highways England confirming that they believe we can now move forward with the Northern Junction as a temporary terminating junction. As this proposal includes a departure from the standard design process, this requires formal sign off by Highways England. This process is expected to conclude within a matter of weeks and would not significantly affect the progression of the scheme on site.

b) It has therefore been confirmed by Highways England that the northern junction can proceed as a temporary terminating junction pending sign off of the departure from standard mentioned above until such time as the southern junction has been

delivered. They further confirm that the southern junction (not including the SUFC new stadium proposal) can proceed to be delivered, although the timescales and delivery body are still to be negotiated and determined in respect of this.

7. A programme for delivery of the Northern Junction to be provided along with key milestones and a quarterly profile of drawdown for Growth Deal Funding

a) On 23rd February 2018, the GL LEP was provided with a programme of delivery by NLC together with a quarterly profile of drawdown. This programme of delivery was then updated within the detailed business case submitted by NLC and key milestones were included covering the areas of design and approvals; land; planning and appointment; costings; and construction.

b) The report of Thomas Lister dated 25 April 2018 confirms at para 7.2 that WYG have confirmed that the programme for the scheme is reasonable and realistic although an updated programme of delivery will be required as a condition of any funding agreement following the appointment of a contractor and once Highways England have responded to the submitted section 6.

c) A contractor, Clugstons, has now been appointed by NLC following a competitive tender process.

d) A quarterly profile of expenditure has also been provided by NLC. This indicates that it is proposed the £1.9m of LEP funding would be expended in full by March 2019 with the expected completion date of the northern junction being June 2019. However following recent discussions with Highways England regarding timescales for sign off of the departure from standard, it is currently expected that the northern junction will be completed on site by September 2019.

8. Given the progress that has been made in finalising the Northern Junction scheme, the proposal has advanced to a position where the delivery of the works could commence during autumn 2018 subject to funding and formal Highways England sign off. WYG have confirmed this programme of delivery to be reasonable and realistic.

9. The Thomas Lister report dated 25th April 2018 at para 10.1 stated that "the outputs potentially deliverable by this project have been subject to ongoing discussions as outputs attributable to this scheme seem very low. NLC have confirmed that, as there are other elements of infrastructure being publicly funded as part of the wider Lincolnshire Lakes development, outputs have been primarily allocated and apportioned between their other publicly funded schemes."

10. Whilst the outputs that can be attributable to this funding are considered to be low, the outputs that will be delivered are considered to be good value for money (paras 10.6 and 10.7 of the report.) The report comments that the outputs "are considered to be good in terms of a total package of outputs and thus overall generally good value of money."

11. Whilst the outputs attributable to the scheme are considered low, this is partly because other outputs have been attributable to other public funding. However, the Northern Junction roundabout remains pivotal in unlocking the Lincolnshire Lakes Development as set out below and is therefore pivotal in ensuring that the wider outputs that are not directly attributable to this scheme can be realised. The outputs will contribute towards economic growth by 2020/21 and as the outputs delivered will be good value for money, it is considered that the scheme continues to satisfy the funding requirements for the SLGF.

The Judicial Review Challenge

12. The judicial review commenced by SUFC sets out 4 grounds of challenge regarding the decision of the GL LEP made on 29 September 2017 as follows:-
 - i) Ground 1 - The process of maintaining the grant for use in connection with the northern junction was unfair.
 - ii) Ground 2 - Failure to take account of the necessity of the southern junction and/or to treat the rival applications from NLC and SUFC on an even, fair or rational basis.
 - iii) Ground 3 - Failure to address the merits of the southern junction.
 - iv) Ground 4 - The reasons provided by the GL LEP are either factually incorrect or irrational
13. **Ground 1 - The process of maintaining the grant for use in connection with the northern junction was unfair.** SUFC argue that they were not informed by the GL LEP of the alternative proposal from NLC to maintain the allocation of funding for the northern junction. They say had they been made aware of this proposal, they would have investigated the proposal and made submissions on the deliverability of that proposal. They argue that as they were not made aware of the proposal by NLC, they have been unfairly prevented from commenting on that proposal.
14. **Ground 2 - Failure to take account of the necessity of the southern junction and/or to treat the rival applications from NLC and SUFC on an even, fair or rational basis.** SUFC argue that the creation of the southern junction is a pre-requisite for the development of the northern junction in its currently envisaged form. They also argue that if the funding is not allocated to the southern junction, the southern junction could not proceed which in turn would put at risk the future of the Lincolnshire Lakes Development. They argue it is irrational to proceed on the basis that the northern junction can deliver certain outputs when it cannot proceed at all without the southern junction being delivered shortly after.
15. SUFC also say it was unfair and irrational to agree to allocate the funding to the northern junction on the basis that certain details as to design, costings, planning permissions and construction timetable can all be finalised later but to reject the proposal from SUFC on the basis that some of these matters are yet to be finalised

and upon the basis that the final location of the stadium had yet to be agreed in respect of the southern junction.

16. **Ground 3 - Failure to address the merits of the southern junction.**

SUFC argue that the decision of the GL LEP failed to consider the substantive proposed outcomes of the southern junction. In particular, they say there was no mention in the Thomas Lister report dated 27 September 2017 of the significant number of houses to be built, the stadium, the marina or indeed any of the outcomes associated with the Southern Junction proposal. They also contend that the report failed to recognise that the most significant outputs in respect of the Northern Junction, the creation of 3,000 new homes, could not be a relevant output for the grant and that there are no outcomes that have been properly costed and considered by the LEP arising from the northern junction apart from the junction itself. They therefore contend that the report is one-sided and inadequate and could not be relied upon when making the decision.

17. **Ground 4 - The reasons provided by the GL LEP are either factually incorrect or irrational.** SUFC contend that it was unfair for the GL LEP to take into account concerns as to whether the southern junction could be delivered in the timescales required by this tranche of SLGF by 2020/21 when they had been waiting for a decision from the GL LEP regarding their proposal since July 2017. They also say that the exact same points could be made in respect of the Northern Junction scheme as there is no way that all of the proposed outcomes of the northern junction will be complete by 2021.

18. SUFC also contends that the GL LEPs reliance on the following factors when making their decision were wrong and/or unreasonable.

a) That a decision on planning permission is awaited for the southern junction proposal and that NLC has yet to propose a site for the new stadium. They contend that NLC supports the stadium and it is artificial and unrealistic for the GL LEP to rely on these matters to reject SUFC's bid in circumstances where the southern junction has always been a definitive part of the Lakes masterplan and NLC is in full support;

b) The possible re-design of the southern junction. They say Highways England have submitted a planning application for the southern junction and the design has been finalised and that this therefore was not a reasonable ground of objection.

c) That the funding package for the southern scheme has not been finalised. SUFC contend that Highways England had agreed to pay for 60% of the cost of the junction with Maltgrade funding the remaining 40% subject to the GL LEP agreeing to transfer the £1.9m grant to the southern junction. They therefore argue that the only uncertainty as regards to funding was the GL LEP's decision on the grant. They also say that the issue of funding would have been known from the outset and it was unreasonable for the GL LEP to purport to analyse the merits of the proposal only to reject it on this basis which must have been known from the outset.

d) That the proposed location of the new stadium conflicts with the current proposed location of Lake 5, and that the flood risk strategy for the area would require

substantial rethinking. SUFC contend these facts are simply wrong. They contend that the proposed site of the stadium was indicative only and subject to change in light of detailed investigation. Further, their plans for the stadium were resubmitted with the lake remaining in almost exactly the same place as originally intended. They also contend that it is very difficult to understand how the stadium would have any impact on the flood strategy given that the masterplan for the Lakes scheme envisages the construction of 100 houses on the west side of Lake 5.

Consideration of the points raised in the Application for Judicial Review

19. As the Board now needs to take a decision on whether to proceed, it is an appropriate time to consider the points of challenge in the judicial review with an open mind so that the Board so that if any of the errors that SUFC allege were made, the Board would or would not decide to proceed with the northern junction funding proposal in all the circumstances. The points being made by SUFC are considered below.
20. **Ground 1 - The process of maintaining the grant for use in connection with the northern junction was unfair.** At the time the decision of the GL LEP Investment Board was taken on 29 September 2017, SUFC were not proceeding with any proposal in relation to the Northern Junction scheme but were solely concerned with an alternative proposal for funding for the Southern Junction scheme. It is not the usual practice of the GL LEP to consult with third parties such as SUFC on proposals for a specific scheme simply because that party have made an alternative proposal for the funding to be used in respect of a different scheme. Officers of the GL LEP did not consider that there was any duty to consult with third parties in this situation.
21. Officers believe that SUFC were aware that the GL LEP was considering retaining the funding for the Northern Junction scheme by July 2017 as SUFC had made some representations regarding the merits of that scheme which were taken into account by Thomas Lister during their due diligence assessment completed before the decision of the GL LEP was taken.
22. Notwithstanding this, a letter has now been sent to SUFC on 28 June 2018 inviting them to submit any further comments they may wish to make on the Northern Junction scheme and upon their own proposals before the GL LEP makes a final decision as to whether to enter into the contracting stage with NLC. A copy of that letter together with the response of SUFC are attached at **Appendix E**. A copy of this report will also be sent to SUFC inviting them to submit any comments in respect of the report prior to the Board Meeting on 20 July 2018. Any response from SUFC will be reported to the Board at the meeting. The Board is therefore asked to make any final decision on whether or not to proceed taking into account all of the information that has been provided, including the representations received from SUFC and regardless of its previous decision of 29 September 2017.
23. **Ground 2 - Failure to take account the necessity of the southern junction and/or to treat the rival applications from NLC and SUFC on an even, fair or rational basis.** The GL LEP's decision made on 29 September 2017 was subject to a condition requiring written confirmation that the northern junction would be

deliverable as a non-terminating junction and is able to immediately proceed on this basis, notwithstanding that the Northern Junction may be required to operate temporarily as a terminating junction and that additional works to facilitate this are required to be agreed with Highways England. Officers therefore consider that the decision of the GL LEP made on 29 September 2017 did take account the question of points raised regarding the necessity of the southern junction.

24. Highways England have confirmed that the Northern Junction can proceed as a temporary terminating junction subject to sign - off from the standard design in respect of the northern junction. Clearly, any formal agreement will only be entered into once the required sign-off has been received from Highways England, which is expected very shortly.
25. The approach to the assessment of the two proposals requested the same information within the same timescales from both parties and determined whether the proposals could meet the funding requirements. The assessment was undertaken by an independent third party which was considered by the GL LEP. The analysis undertaken for the purposes of the GL LEP's decision on 29 September 2017 did not involve a full business case for either proposal. The assessment of officers was that the northern junction proposal would be deliverable by 2021 but that the release of funding should be subject to certain conditions requiring further details such as a programme of delivery to follow. The reasons for that assessment were further set out in the Thomas Lister Report dated 27 September 2017 attached at **Appendix A**. That report also set out the rationale for the assessment that the proposal made by SUFC in respect of the Southern Junction would not fully expend all of the funding by 2020/21 and that it would not realistically achieve any outputs by 2020/21.
26. Highways England have also confirmed that they believe they have a way forward for delivering the Southern Junction. Further details about this are set out below. The information currently in the possession of the GL LEP from Highways England does not suggest that the southern junction can only be delivered if funding from the SLGF is allocated to that scheme. However, officers consider that even if that were the case, the Southern Junction proposal would still not meet the funding requirements for funding from the SLGF.

The Board is asked to make any final decision on whether or not to proceed taking into account all of the information that has been provided on this topic, including the representations received from SUFC, and regardless of its previous decision of 29 September 2017

27. **Ground 3 – Failure to address the merits of the southern junction.** Officers did not consider it was necessary for the GL LEP to undertake a full review of the potential merits of the southern junction proposal given that they considered that the proposal failed to meet the required conditions to make it eligible for funding from the GL LEP. Officers considered that it would be an entirely academic exercise to consider the merits of the Southern Junction proposal when the proposal does not meet the fundamental funding requirements

28. It was the assessment of Thomas Lister on 27 September 2017 that it is likely that the programme of delivery for the Southern Junction proposal could extend in excess of three years until the works are completed on site, however, at this stage none of the outputs realised by the scheme would have been delivered and are likely to fall outside of the Growth Deal programme deadlines of 2020/21. So far as officers are concerned, SUFC has not explained or contended that their Southern Junction proposal could meet the funding requirements. Given the passage of time since that assessment was made, officers are concerned that it remains that the Southern Junction proposal cannot realistically meet the funding and output requirements and believe it would still be an academic exercise in principle to consider the substantive merits of the Southern Junction scheme they proposed for eligibility for this funding.
29. The due diligence assessment completed by Thomas Lister dated 25 April 2018 does recognise that the creation of 3,000 new homes cannot be directly attributable to the funding from GL LEP. This has been addressed earlier in this report.

Again, notwithstanding officers' view, the Board is asked to make any final decision on whether or not to proceed taking into account all of the information that has been provided on this topic, including the representations received from SUFC, and regardless of its previous decision of 29 September 2017.

30. **Ground 4 - The reasons provided by the GL LEP are either factually incorrect or irrational.** Following the discussion with SUFC where they proposed the idea of allocating funding to the Southern Junction proposal on 18 May 2017, the GL LEP instructed Thomas Lister to undertake an independent assessment of that proposal to include its deliverability by 2021. Thomas Lister reported their findings on 27 September 2017 and a decision was made by the GL LEP to approve the funding of £1.9 of SLGF to the Northern Junction on 29 September 2017. Officers did not consider that there were any unreasonable delays by the GL LEP in their decision making. Officers of GL LEP consider that it is relevant to consider the timescales in which a scheme can be delivered when assessing whether funding may be allocated to that scheme.
31. Officers consider that the assessment that the Northern Junction scheme would satisfy the requirement of contributing to economic growth by 2021 was one that the GL LEP were entitled to reach previously based on the Thomas Lister report dated 21 September 2017.

Again, the Board is asked to make any final decision on whether or not to proceed taking into account all of the information that has been provided on this topic, including the representations received from SUFC, and regardless of its previous decision of 29 September 2017.

32. With regard to the concern that factors relied upon by the GL LEP when making their decision were wrong or incorrect, officers note the following:
- a) NLC have confirmed in writing that they support SUFC's application for a new stadium but not at the location suggested by SUFC. NLC, as the local planning

authority, had made clear their opposition to a new stadium in the location suggested by SUFC.

b) The report from Thomas Lister dated 27 September 2017 commented that Maltgrade had yet to complete the detailed design process. The proposal now proceeding for the Southern Junction Scheme, and for which a planning application has been made, does not involve the construction of a new stadium. No planning application has been made for the Southern Junction proposal to include the construction of a new football stadium.

c) Highways England are still currently in discussions with Maltgrade regarding the costs of delivering the southern junction and therefore the costs of that junction have still not been finalised. Highways England advised at a meeting on the 25th September 2017 that they required a 40% private sector match funding contribution to the southern junction scheme. Therefore there were concerns that growth deal funding could not be utilised to contribute towards the 40% private sector contribution match required for the SUFC's proposal for the southern junction, the growth deal funding being public funds. GL LEP was being asked to give £1.9m to SUFC, who would then release it to Maltgrade who would then be seeking to contribute it as part of their 40% required payment to Highways England of total scheme costs. The Thomas Lister Report dated 27 September 2017 states:

'Clearly there are inherent risks with transfer of public funds between private sector organisations before they are passed on to HE as intended recipient and the financial structure in this regard is therefore not deemed appropriate for investing Growth Deal funding in the proposed infrastructure works.'

d) As set out above, NLC did not support the location of the new stadium suggested by SUFC. NLC have also stated that the proposal from SUFC would require a substantial review of the flood modelling works, highways and infrastructure for the area, as these had all been predicated on the basis of the land uses set out in the approved Area Action Plan. It is considered that it is reasonable for the GL LEP to take into account the views of the relevant planning authority when undertaking due diligence in respect of a specific scheme.

Again, the Board is asked to make any final decision on whether or not to proceed taking into account all of the information that has been provided on this topic, including the representations received from SUFC, and regardless of its previous decision of 29 September 2017.

Timescales

33. It is important for the GL LEP when considering whether to proceed to enter into the contracting stage with NLC to have regard to the funding requirements under the Growth Deal and in particular the timescales by which the funding must be expended to ensure that any particular scheme can contribute to economic growth within the Growth Deal period.

34. The Government's Cities and Local Growth Unit have emphasised the importance of all LEP's and the GL LEP achieving and evidencing progress on Local Growth Fund spend in year in line with the grant profile. They have also made it clear that if positive progress is not made by the GL LEP in ensuring growth funding is spent in driving economic growth for the period in respect of which funding has been provided, there is the potential for funding to be withheld.
35. It follows that when making decisions regarding the allocation of funding, the GL LEP must be satisfied that spend in relation to schemes will be achieved within the relevant period for which growth funding is provided. This is to ensure that growth funding is spent on driving economic growth for the period in respect of which funding has been provided. As the £1.9m of funding which is the subject of this report forms part of the tranche of growth deal funding provided by Central Government up to 2020/21, it follows that the funding must be expended within that period.
36. The GL LEP must also assess any scheme proposed to ensure that it can contribute to economic growth by 2020/2021 in order to fulfil the purpose of the funding of driving economic output during that period. Whilst it is not necessary for all of the outputs arising from a scheme to have been provided within the growth deal period by 2020/21, it is important that any particular proposal needs to be capable of realistically delivering some of the outputs arising from the scheme in order to contribute towards economic growth by 2020/21.
37. NLC have submitted a quarterly profile of their expected capital expenditure on the Northern Junction Scheme on the basis that the construction of the scheme would commence during summer 2018. That profile indicates that the scheme would be completed in 12 months from commencement and that the funding would be expended by March 2019. As set out above due to final sign off requirements from Highways England, it is now expected that the scheme can commence during autumn 2018, with completion of the junction in autumn 2019.
38. The Thomas Lister Report dated 25 April 2018 sets out the outputs arising from the Northern Junction scheme and which are attributable to GL LEP funding. Those outputs include the new junction roundabout with 30 associated construction jobs by 2018/2019. Following the construction of the roundabout, which will provide access to the commercial business park, it is projected that 3,190 sq.M of commercial floorspace with 100 associated jobs will be delivered by 2020/21 with 15,370 sq.M of commercial floorspace and 394 associated jobs to be delivered by 2021/22.
39. Accordingly, if the Northern Junction scheme proceeds in accordance with the timescales currently projected, the funding requirements that the funding will be expended on the scheme by 2020/2021 and that that the scheme will realistically contribute to economic growth during that period can be satisfied.
40. It is estimated that the earliest a hearing of the judicial review would take place would be around September/October 2018. However, it may be later. It is likely that the Judge hearing the challenge will then need to take time to write their judgment. It is therefore considered likely that the Court's decision in respect of the challenge will not be known until in the latter part of 2018. Following the Court's decision, it is

possible that either of the parties may make an appeal in respect of that decision. If an appeal is made, it is likely that the appeal process will mean that the final outcome of the legal challenge will not be known until some months into 2019 but possibly much longer if the Court of Appeal were to grant permission for a full appeal.

41. As the construction of the northern junction roundabout is a 12 month programme, it is possible that if the GL LEP were to await the outcome of the substantive judicial review hearing before making a final decision whether to proceed to enter into the contracting stage for the funding of that scheme, the northern junction roundabout could still be constructed and the £1.9m of funding could still be expended within the required timescale of 2020/21. However, if the case were to proceed to a full appeal in the Court of Appeal, there would then be a significant degree of doubt as to whether the northern junction could be constructed within the required timescale of 2020/21 if the GL LEP were to await the outcome of that appeal before making a final decision in respect of the funding.
42. Further, it is important to take into account that it is considered the northern junction roundabout needs to be constructed before the commercial business park can be developed. The roundabout provides the access to the commercial business park site. The development of the business park requires inward investors for the site. It is considered unlikely that such investors will be attracted to the site if there is no access and that realistically, investment will only be attracted to the site once access to the site has been completed.
43. Accordingly, it is considered that there is a direct correlation between delivery of the construction of the northern junction roundabout and the timescales by which the outputs arising from the commercial business park can be delivered. At present, if the roundabout is completed by autumn 2019, it is projected that some of the outputs of the commercial business park will be delivered by 2020/21. It follows that if the construction of the business park is delayed by a number of months in order to await the outcome of the judicial review, it is likely that this will have the knock-on effect of delaying delivery of the outputs arising from the business park by a similar length of time. That in turn means that there will be a high risk that the outputs arising from the commercial business park will not be capable of being delivered by 2020/2021 which jeopardises the ability of the Northern Junction scheme to contribute to economic growth within that period. Accordingly, delaying the decision as to whether to proceed to release the funding to the Northern Junction scheme would seem to be wholly contrary to the purpose of the decision in ensuring that funding is granted to contribute to economic growth by 2020/21.

The Importance of the Northern Junction Roundabout

44. The potential delay from awaiting the outcome of the judicial review may jeopardise the ability of the Northern Junction scheme to contribute to economic growth within the required timescales. There would also be uncertainty as to whether a decision could be made by the GL LEP following the outcome of the judicial review to enter into the contracting stage with NLC for the Northern Junction as the funding requirements may not be capable of being met at the time such a decision is made. The officers of the GL LEP therefore consider that the Board should review the

decision now and take into account the challenges being advanced in the Judicial Review and consider the decision assuming that it were deciding the matter afresh today taking into account all relevant considerations that are now known. In so doing, officers consider that the GL LEP needs to be aware of the importance of the Northern Junction roundabout and the potential implications that are likely to arise should that scheme not be able to proceed.

45. In 2016 Tata Steel announced significant redundancies at the Scunthorpe site. The local and national response was delivered through the Tata Steel Task Force. Both the Task Force and NLC approached the LEP with a proposal for a short-medium term solution to enable job creation in the area. The proposal from NLC was for the LEP to consider moving £2.9m of provisional funding from the Berkeley Circle project originally approved by Government to the Northern Junction Roundabout scheme (£1.9m) and Normanby Enterprise Park Site 7 (£1m). The proposals would unlock sites that would enable housing and jobs growth.
46. The Northern Junction will serve as one of the primary roundabouts providing access to the new villages 1, 2, 5 and 6 of the Lincolnshire Lakes development. This is a £1.2 billion development project seeking to deliver over 6,000 new homes in Scunthorpe. The development is to be built within 6 villages set beside 5 lakes. The Lincolnshire Lakes Scheme is to be built out in stages with the first phase being developed around the northern junction. The northern junction is therefore pivotal in providing the infrastructure to access the development. It will also provide access to the Strategic Mixed Use Area which has an existing planning permission to host a commercial park. The Northern Junction is therefore crucial in order to unlock the Lincolnshire Lakes Development.
47. The Northern Junction scheme, by unlocking access to the Lincolnshire Lakes Development, will also serve to alleviate congestion issues around Berkeley Circle roundabout in Scunthorpe. NLC have confirmed that they are dependent on the Northern Junction scheme to deliver a key work package in the overall Lincolnshire Lakes Project as demonstrated in the Lincolnshire Lakes Area Action Plan and that it is pivotal to a timely delivery of that project.
48. Homes England have approved 2 loans to LLLL as part of the Northern Junction scheme. However, these cannot be drawn until the £1.9m SGLF has been confirmed as secured. This comprises of:-
 - a) A loan to enable acquisition of all the land necessary to enable the Lincolnshire Lakes scheme and Northern Junction works to proceed.
 - b) A loan to contribute towards specific infrastructure costs.
49. The cost of the Northern Junction scheme is proposed to be funded by the £1.9m of SGLF from the GL LEP with the remainder of the £4m cost being funded by NLC. NLC have confirmed that they cannot fund the costs of the Northern Junction scheme without the funding from the GL LEP. It follows that without the funding from the GL LEP, it is unclear as to how the Northern Junction scheme can proceed.

The Position with the Southern Junction

50. The Southern Junction has a longer-term function as the terminating junction for the M181. However it is not deemed essential in the short-term in relation to progression of the Lincolnshire Lakes development. The Southern Junction when complete will provide an early exit from the north-south de-trunked stretch to Villages 2, 3, 4 and 5 and Lake 5, as well as to southern Scunthorpe beyond, with the intention that it is used by HGVs that do not need to travel north to the A18. Unlike the Northern Junction scheme, the Southern Junction scheme will not of itself unlock the Lincolnshire Lakes Development because certain land required for the housing and commercial development will be landlocked without the Northern Junction.
51. Highways England have confirmed that they believe they have a way forward for the delivery of the Southern Junction. Highways England are currently in discussions with Maltgrade and the NLC highways team regarding delivery of the southern junction via Aone+ who are Highway England's Asset Support contractor. It is understood that Maltgrade do not currently support this approach and would still prefer to deliver the entire scheme themselves, stating that it is the most viable option for them. Highways England have agreed to provide Maltgrade with a price to deliver all the works including civil engineering functions for the southern junction through Aone+ and to discuss these costs further with Maltgrade, but there currently remains uncertainty about the southern junction delivery approach. The timescales for the Southern Junction will be significantly affected if Maltgrade insist on being the delivery body due to the additional legal processes necessary in such an approach.
52. Whilst Highways England have indicated they believe they have a way forward for the Southern Junction subject to discussions regarding the delivery approach, it does not follow from this that the Southern Junction scheme as proposed by SUFC could have been delivered within the timescales required for the purposes of funding from the GL LEP.
53. The key difference with the Southern Junction proposal now proceeding and the Southern Junction scheme proposed by SUFC is that the proposal made by the SUFC centred on the construction of a new football stadium. This was contrary to the adopted development plan as its location would involve the displacement of Lake 5. NLC had made clear their opposition to a new stadium in the location suggested by SUFC and that the proposal would require a substantial review of the flood modelling works, highways and infrastructure for the area. There were therefore significant additional hurdles which needed to be overcome for the achievement of SUFC's southern junction proposals. The proposal for the Southern Junction scheme which is now proceeding does not involve the construction of a new football stadium. Accordingly, the current Southern Junction design being explored by Aone+ would have had to be different had it provided the access to a new football stadium for safety purposes in order to accommodate the number of football fans using it. Highways E have also confirmed that the development of the proposed stadium at that location could not have begun until the Southern Junction was in place.

54. It was the view of the GL LEP on 29 September 2017 that the Southern Junction proposal made by SUFC would have failed to meet certain of the essential requirements for SLGF funding. It would not have realistically expended all of the funding as required by 2020/21 given all of the obstacles that SUFC would have had to overcome for the project to commence. Having considered afresh all the relevant updated information available regarding the proposals, including the points made in SUFC's legal challenge and representations, this remains the Officer's opinion. With the increasing passage of time, there is simply no realistic prospect that the Southern Junction scheme as proposed by the Claimant would be in a position to expend the funds by 2020/2021 or to contribute to economic growth within that period. To the extent that if the Southern Junction proposal were to be pursued by SUFC, it simply would not be viable for growth deal funding for those reasons.
55. Notwithstanding various invitations, including prior to the drafting of this report, officers consider that SUFC has not satisfactorily addressed the fundamental problem with their Southern Junction proposal that it would not satisfy the funding requirements to make it viable for growth deal funding.
56. Further, it is reported that SUFC have confirmed that the club's plans to build a new stadium have been abandoned and they intend to redevelop their existing stadium instead. SUFC has now submitted proposals to NLC for an EIA screening opinion on that scheme and SUFC have indicated that they are "just weeks away from a planning application." Indeed, it appears from SUFC's Reply to GL LEP's Summary Grounds in the judicial review claim that this is now the confirmed position (see para 17, Reply – in **Appendix F**). Accordingly, it seems that SUFC are currently proceeding with their plans to redevelop their existing stadium rather than seeking to build a new stadium. Because of this uncertainty, officers have sought clarification of SUFC's plans prior to the drafting of this report.
57. Therefore there is no live proposal for the Southern Junction scheme currently proceeding for which SLGF is sought. To the extent that if the Southern Junction were to be pursued by SUFC at this late stage, it is considered for the reasons set out above that it would not be viable for SLGF as it would not meet the funding requirements with regard to timescales.

Options and Recommendations

1. The following options are considered below in deciding how to proceed:-
 - i) Await the outcome of the judicial review challenge before deciding whether or not to enter into the contracting stage with NLC;
 - ii) Consider whether or not to proceed with the contracting stage with NLC now, after taking into account all information currently known, including the proposal made by SUFC for the funding to be allocated to their Southern Junction scheme;
2. It is not recommended that the GL LEP await the outcome of the judicial review challenge before deciding whether to enter into the contracting stage with NLC. The

outcome of the claim is not likely to be known until later in 2018 and if an appeal is made, the outcome of that challenge will not be known until some time in 2019 or later. If GL LEP wait to make a decision once the outcome of the challenge is known then the consequential delay may affect the ability to apply the Growth Funding as it still needs to be fully expended on the project by 2020/21 and the scheme which is subject to funding would need to contribute towards economic growth by 2020/2021. Delaying a decision until the outcome of the judicial review is known therefore runs contrary to the objectives of the GL LEP to ensure funding is utilised to unlock and drive economic growth during the period to which the funding relates.

3. There is currently no legal requirement that prevents the GL LEP from making a final decision as to whether or not to enter into the contracting stage for funding before the outcome of the legal challenge is known.
4. If the Court were to find there had been any error with regard to the decision of 29 September 2017, the court would need to decide what relief to grant in consequence. The Claimant is seeking an order that the decision of 29 September 2017 should be quashed. If the Court were to grant that relief, that would mean GL LEP would need to take a fresh decision about allocation of the funding.
5. In these circumstances, given that GL LEP needs to make a further decision before deciding to proceed, it is considered appropriate for that decision to be taken now and to review all of the information currently available regardless of the decision of 29 September 2017. SUFC has been provided with an opportunity to contribute to this process and GL LEP can take into account its concerns about the previous decision..
7. There is currently no live proposal for the Southern Junction scheme by SUFC including the construction of a new stadium. SUFC have confirmed that they intend to proceed with the redevelopment of their existing stadium. Even if SUFC were to pursue their proposal for the Southern Junction, officers consider that the scheme simply could not realistically expend the funding by 2020/21 or contribute to economic growth within that period.
8. In light of the above, it is recommended that the GL LEP proceeds to enter into the contracting stage with NLC. NLC have confirmed that the works could commence on site in a matter of weeks. If the scheme commences as planned, the scheme will satisfy the funding requirements as set out in the Thomas Lister report dated 25th April 2018. Officers consider this is the only option available that will meet the necessary funding requirements for the provision of the £1.9m of SLGF funding, namely that the funding is fully expended by 2020/21 and that the funding utilised will contribute towards economic growth within that time period. There is a clear and overwhelming need to proceed with the Northern Junction scheme given the importance of the Northern Junction and it is recommended that a decision to proceed to the contracting stage for that scheme is taken now to ensure that the deliverability of the scheme is not placed at risk.

Conditions

9. Should the GL LEP decide to enter into the contracting stage with NLC, it is recommended that the following conditions shall apply:-

- i) The overall costs for delivering the project be confirmed based upon provision of the report on tenders and lowest tender received. This information is required to demonstrate that the scheme is deliverable in accordance with the funding that has been secured to date;
- ii) That NLC provide written confirmation that they will be responsible for meeting any increased costs and overruns that may arise;
- iii) A programme for the delivery of the project and quarterly forecast for the drawdown of the SLGF to be provided;
- iv) NLC shall ensure that outputs are delivered by 2021 and the contract shall contain clawback provisions if a proportion of the outputs are not achieved within that timescale;
- v) GL LEP are provided with written confirmation of sign off of the scheme by Highways England.



Report in respect of

Growth Deal Funding Applications

Received for

Northern and Southern Junctions/Lincolnshire Lakes
Scunthorpe, Lincolnshire

On Behalf Of

Greater Lincolnshire Local Enterprise Partnership
Unit 4 Witham Park House, Lincoln LN5 7JN

27th September 2017

Paper 5.1 Commercial in Confidence

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1.0 Purpose of the Report

- 1.1 Rachel Lister at Thomas Lister Limited has been commissioned by Halina Davies at Greater Lincolnshire Local Enterprise Partnership (GL LEP) to undertake assessment of two applications competing for £1.9 million of Growth Deal Funding to open up land as part of the Lincolnshire Lakes development.
- 1.2 The applications relate to projects being the Northern Junction, proposed to be delivered by North Lincolnshire Council (NLC), seeking a reallocation of the £1.9 million Growth Deal Funding from Scunthorpe United Football Club (SUFC), to deliver the scheme originally proposed by SUFC working with NLC in this location.
- 1.3 The second approach to GL LEP has been by SUFC who are seeking to retain the £1.9 million Growth Deal allocation and invest this into a new terminating junction known as the Southern Junction. SUFC were originally intending to redevelop and expand on the site adjacent to the proposed northern junction ; however due to terms of agreement for the land being subject to dispute between SUFC and KMG as landowner and relations irretrievably breaking down in this regard, SUFC sought to relocate to an alternative site.
- 1.4 This land is in the ownership of Maltgrade who will be working with the Highways England (HE) in relation to the construction of the Southern Junction, in order to enable a new access to be provided to the proposed stadium site and Lincolnshire Lakes development.
- 1.5 A description of each of the projects and latest position is detailed in Section 2 below.
- 1.6 We would report as follows;

2.0 Project Description

- 2.1 A brief description of each of the project applications are as follows;

- i) **Northern Junction**

The application for the Northern Junction was submitted originally by SUFC, working in partnership with NLC and was to deliver a terminating junction and major new gateway into the Lincolnshire Lakes project. The junction was to serve as one of the primary roundabouts providing access to the new villages 1, 2, 5 and 6 along with providing access to the new £35 million stadium redevelopment of SUFC.

The appraisal of this project was undertaken in July 2016 and included an analysis of proposed works and associated costings by WYG working in conjunction with Rachel.

Essentially these works were;

- A terminating junction to be created in the vicinity of Brumby Common Lane over-bridge, with new infrastructure to some villages 1 to 5 to be delivered by Lucent over land forming part of their comprehensive land ownership.
 - The creation of a new East-West link running from the terminating junction to Scotter Road, being the cornerstone of the masterplan for the wider Lincolnshire Lakes scheme.
 - Construction of the new roundabout
 - De-trunked M181
 - Works to retained section of M181 to reduce speed limit
- 2.2 The works subject to this application were to design and build the Northern Junction terminating from the M181 along with the required new roundabout. The works to be undertaken would also have served as the primary route of access to SUFC's proposed stadium expansion and new development. This stadium project was to provide a 12,000 seated capacity stadium, new sports pitches, hotel, gym, coach and car parking areas.
- 2.3 The primary objective of the proposed works in addition to servicing the Lincolnshire Lakes wider development is noted as follows:
- Encourage safe and efficient dispersal of vehicle movements into the local highway network, with natural resilience in the local route network with a choice of routes available for key destinations.
 - Divert traffic away from the Doncaster Road/Berkeley Circle junction providing sustained and much need congestion relief.
 - Provide a deliverable solution as the junction is located on land that is in a single land owners responsibility, who is supportive of the Council aspirations for the Lincolnshire Lakes Area and is prepared to provide the land for free to implement the junction.
- 2.4 Planning permission for the Northern Junction works was secured in 2014 and we are advised by NLC that there are no other issues to address in terms of planning requirements to enable this scheme to be brought forward for delivery; the scheme and remains unchanged, however the detail of outputs will depend on whether KMG or SUFC develop the commercial land opposite the Lincolnshire Lakes site.
- 2.5 SFUC were to be the applicant of the funding, the reasons for this given at the time being that the procurement process, whilst being wholly compliant in terms of public sector funding, would be faster and more efficient than NLC utilising their own procurement process.
- 2.6 NLC are therefore seeking to essentially become the recipient of the Growth Deal Funding and to implement the works on an identical basis and at the same cost as previously appraised within SUFC's funding application. The key difference will be that a business park is now proposed on the site previously to considered by SUFC for development.
- 2.7 It is also noted that the HCA has approved two loans to KMG as part of the Northern Junction scheme. Following discussions with Neil McMilligan at the HCA, the two loans were awarded to KMG are briefly summarised as follows;

- i) A loan to enable acquisition of all of the land necessary to enable the Lincolnshire Lakes scheme and Northern Junction works to proceed.
 - ii) A loan to contribute towards infrastructure costs being;
 - Section 278 works at Scotter Road
 - Construction of the East West Link Road
 - £2m towards the construction of the Northern Roundabout providing sufficient match funding can be found for its delivery, either via KMG/NLC or SUFC should decisions regarding the adjacent site alter.
- 2.8 Neil Milligan at the HCA has also confirmed that KMG will not have the ability to drawdown any of the loan funding towards the infrastructure costs if the £1.9 million Growth Deal Funding is not allocated to this project.
- 2.9 Following more detailed discussions held with NLC in the light of the emergence of the application for the Southern Junction, it has subsequently been clarified that the Northern Junction will not be the terminating junction from the M181 motorway and has therefore not been designed to this standard.
- 2.10 It is therefore currently intended that the Southern Junction will be delivered in some point in time and will operate as the terminating junction from the M181.
- 2.11 Notwithstanding the above, and at this time, it has been confirmed by NLC and Highways England (HE) that the Northern Junction works can be implemented and will open up a primary means of access into the Lincolnshire Lakes development including the housing land and Lake 1 which is due to commence on site imminently.
- 2.12 It has further been confirmed that in the intervening period prior to the Southern Junction being constructed, that variations to the design of the proposed East West Link Road and Burringham Road could be upgraded along with the internal estate roads in order to provide capacity on a temporary basis to enable the Northern Junction to operate as a terminating junction.
- 2.13 NLC have therefore been requested to provide written confirmation that Highways England have approved implementation of the Northern Junction at this time without this being constructed to terminating junction standard, on the basis of the ability to upgrade the proposed and existing road network in the short term.

ii) **Southern Junction**

A description and specification of the works proposed to be undertaken as part of the Southern Junction scheme is very brief, beyond the fact that it is now understood that the Southern roundabout would provide the terminating junction from the M181 and that the Northern Junction is not therefore the intended terminating junction from the motorway.

The proposed works essentially comprise three roundabouts; with a central roundabout to comprise the terminating junction from the M181, with two smaller roundabouts either side linking to the main terminating junction which will provide the means of access into the Lincolnshire Lakes development.

We understand at this stage that feasibility and site surveys are yet to be undertaken, which will inform the detailed design of the scheme by HE, who will also be responsible for procuring planning approval tendering and procuring works.

We further understand from SUFC that the Southern Junction works were originally estimated to cost in the region of £13.65 million, for which a 40% private sector contribution was being sought from private landowners benefiting from the scheme, which in the first instance would be via Maltgrade. Part of Maltgrade contribution relates to the land they have acquired all for the implementation of the Southern Junction project.

From information provided by consultants representing SUFC, we have now been made aware that the costs of the Southern Junction have been reviewed and current estimates are that cost of delivery could be in the region or circa £23million. SUFC have stated that whilst Maltgrade are prepared to vest land into the Southern Junction scheme at nil cost, the balance of funding in order to contribute towards the costs of delivering this scheme will be sought through a potential loan being secured from the HCA Infrastructure Fund. Critically the Growth Deal Funding of £1.9 million is also required to be vested from Maltgrade as part of the 40% contribution.

It is identified at this stage however that the full funding package for the delivery of the Southern Junction works has yet to be secured and given the early stage of feasibility and design of the Southern Junction scheme, costs of delivering the works as proposed could significantly vary from the estimates made by HE at this time.

In addition, we are informed from discussions with NLC that the proposals for SUFC new stadium and associated development land are contrary to the Approved Action Plan (AAP). This is because the stadium could not be delivered without relocating one of the lakes (lake 5) within the scheme along with major impacts on flood modelling works which have been completed and proved by the Environment Agency (EA) in accordance with the AAD currently being implemented along 3.8 km of the River Trent bank utilising £13.3m funding from the Humber LEP.

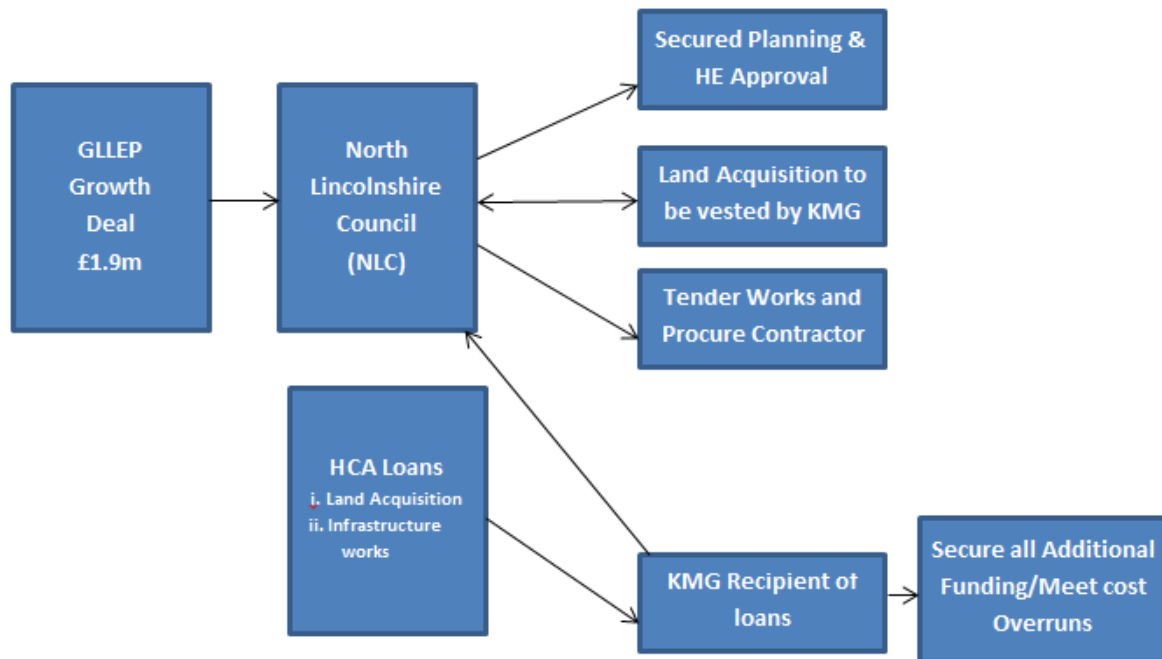
Clearly there are implications in terms of programme and timescales for deliverability of the Southern Junction as the feasibility and design stage is yet to be undertaken, which is likely to extend over at least a 9-12 month period.

There are therefore, major issues which are required to be overcome through the feasibility, design and planning process which may not be capable of early resolution and could therefore impact significantly on current scheme design and thus implementation of the scheme. Even on the basis the aforementioned issues were capable of resolution, the procurement of a contractor and construction process is likely to extend at least over a two year period, meaning that realistically the scheme could not be practicably completed until at least three years' time.

3.0 Funding and Delivery Options

3.1 In order to best summarise the funding and delivery position of each scheme, a flow chart is provided below;

j. Northern Junction – Applicant North Lincolnshire Council

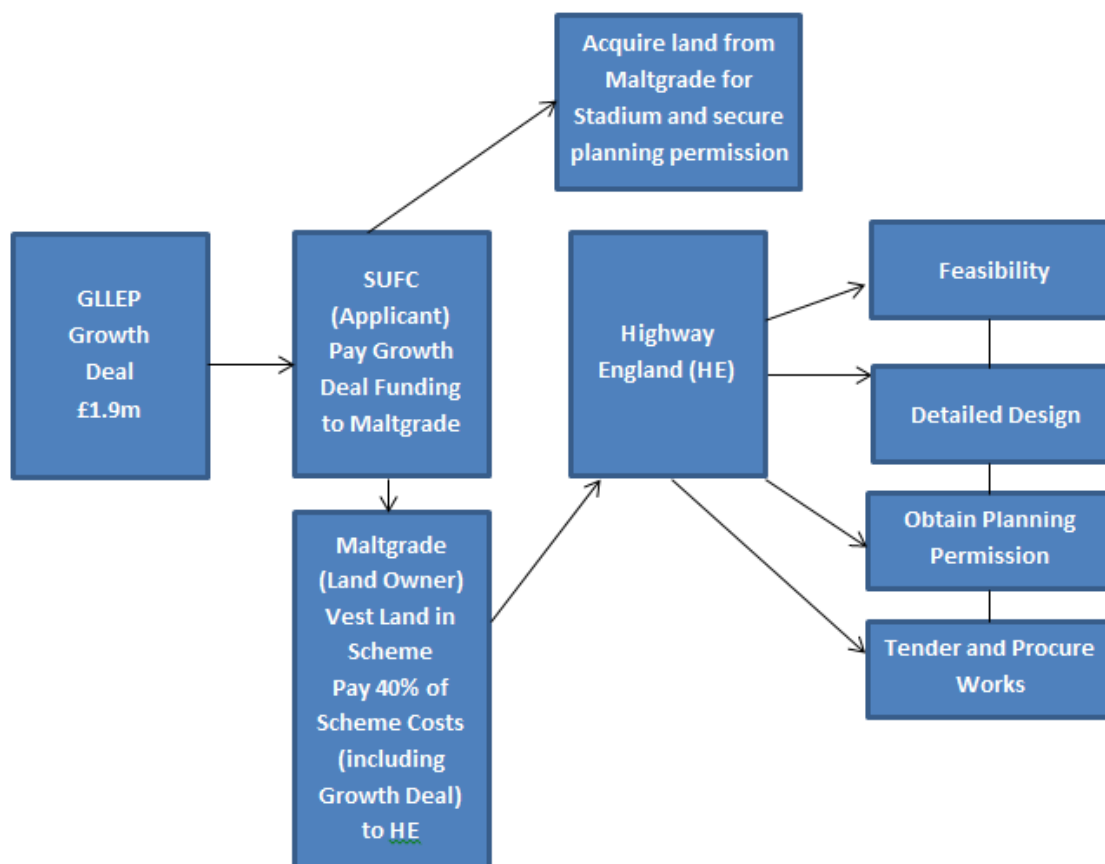


3.2 The above chart shows that NLC are the lead organisation responsible for the delivery of the scheme, through the planning procurement and delivery process.

3.3 KMG are landowner and will be required to vest the required land for the comprehensive delivery of the scheme, along with loan funding from the HCA. It is noted that KMG are also responsible for meeting any cost overruns on the works.

3.4 It is recommended that in order to demonstrate delivery of the scheme, that written evidence is provided to confirm that KMG are either legally obligated or will enter into a legal agreement to vest all of the land required for the delivery of the scheme along with written confirmation that they will also be responsible for any cost overruns in the event that these arise. This confirmation should include responsibility for development of the adjacent commercial site within an agreed timeframe in order to ensure expected outputs for the scheme.

ii. Southern Junction – Applicant SUFC



- 3.5 The above chart shows that SUFC will remain as applicant for the Growth Deal Funding; however would be required to pay this to Maltgrade who would then be seeking to pay this to contribute as part of their 40% required payment to the HE of total scheme costs. We understand from the HE that the 40% contribution from Maltgrade is required to be a private sector contribution as match to HE public funding. On this basis the Growth Deal Funding would not satisfy this requirement as it remains public funding.
- 3.6 SUFC would also acquire the land to accommodate their stadium development from Maltgrade for a nominal sum and then would be required to secure planning permission for the stadium development.
- 3.7 HE would be responsible for undertaking all feasibility, detailed design securing planning permission, tendering and procuring the Southern Junction works, part of which would be undertaken on land in the ownership of Maltgrade and vested into the scheme.
- 3.8 It is evident therefore that proposals for investing Growth Deal Funding in accordance with proposals detailed above are convoluted in terms of on-going

transfer arrangements and potentially presenting risk in terms of GL LEP being able to recover funds in the event that there were issues relating to scheme delivery or that SUFC or Maltgrade entered into any form of financial difficulty. This would require mitigation measures to be put in place in terms of securing some sort of securitisation for the Growth Deal Funding for GL LEP to be able to recover this in any event of breach of funding agreement provisions.

- 3.9 It is therefore deemed to be a preferred option for any Growth Deal Funding to be vested directly to HE in the event that the Growth Deal Funding were to be reallocated to the Southern Junction scheme.
- 3.10 As noted within Section 2 of this report however there are clear concerns and issues in relation to deliverability of the Southern Junction scheme particularly in terms of cost, planning and programming issues.

4.0 State Aid Issues

- 4.1 An analysis of the state aid position of each scheme has been undertaken and is detailed below;

i. **Aid for Local Infrastructure**

Funding for both junctions could be provided under this Block Exemption on the basis that both schemes provide public infrastructure, which will form part of the adopted highway network and benefit a wide number of beneficiaries.

The infrastructure must also be open and freely usable by everyone as opposed to providing access benefiting a small number of landowners accordingly.

Where any landowners are deemed to be directly benefiting from the works to be undertaken, wherever possible and if appropriate, contributions towards the cost of providing the infrastructure should be secured. The usual means for this is by way of seeking Section 106 contributions; however if a public highway is to be constructed adjoining a private landowners site, there is no reason why they should be prevented from connecting into this infrastructure.

In relation to both of the above applications, we understand from discussions with both applicants in the previous appraisal of the northern junction, that all of the infrastructure will be public infrastructure and form part of the adopted highway. In addition, there will be a significant number of beneficiaries of the works including the developer of the Lincolnshire Lakes development, occupiers and end users of the development, SUFC and any other business' locating to the site and the general public, both as visitors and those benefiting from reduced congestion and enhanced road safety attributable to each scheme.

Therefore it would seem that both schemes meet the criteria to constitute local infrastructure under the block exemption.

- 4.2 In terms of the Southern Junction, whilst we understand that this will also constitute public infrastructure in terms of providing a terminating junction and principal means of access in to the Lincolnshire Lakes development at this time, we are not aware of

any contribution by SUFC specifically in relation to the works as this is anticipated to come directly and initially from Maltgrade.

- 4.3 Furthermore as costs of undertaking the Southern Junction are not yet known, the extent of contribution and the ability for this to be secured cannot be clarified and further assessment in this regard cannot be undertaken.

ii. **Recipient of Growth Deal Funding**

For the Northern Junction this will be NLC, who will be responsible for procuring and delivering the scheme. NLC will work with KMG as landowner, who have agreed to vest their land to enable delivery of the scheme.

KMG will also be the recipient of a loan from the HCA which will also be utilised to pay the cost of some of the work associated with the Northern Junction development.

In terms of the Southern Junction, the recipient of the Growth Deal Funding would be SUFC. It has been confirmed in previous discussions that the Growth Deal Funding would then be paid over to Maltgrade as part of their 40% contribution towards the cost of constructing the works and paid to HE.

This payment structure maybe State Aid compliant in terms of public funds being vested in the direct delivery of public infrastructure, however is noted to be unwieldy and not without risk given transfer between private sector entities.

It would therefore be a more practical option for Growth Deal monies to be paid directly to HE, if the allocation were to be switched to the Southern Junction.

iii. **Beneficiaries of Growth Deal Funding**

As referred earlier, we understand that there will be a high number of beneficiaries for both the Northern and Southern Junction works and on this basis the infrastructure should be deemed as public infrastructure, wholly open to use by all. We are not therefore aware of any State Aid issue in this regard.

5.0 Conclusions

- 5.1 An assessment of both the Northern and Southern Junction projects has been undertaken and the conclusions of our assessment for each are summarised;

i) **Northern Junction**

The Northern Junction is not intended to be the terminating junction for the M181 as previously understood for the Lincolnshire Lakes development. This position changed around 2012 when proposals for the Southern Junction were first proposed given proximity to the motorway.

The scheme is being led by NLC who working alongside KMG will be responsible for delivery of the works either currently comprising highway land or in the ownership of KMG with no other land requiring to be assembled in order to accommodate the works as proposed.

Planning permission has been secured for the scheme and funding is in place from KMG through infrastructure loans secured from the HCA. The funding of £1.9 million from Growth Deal is fundamental to meet the balance of costs which total around £4 million in order to enable the scheme to immediately proceed through the procurement process.

On this basis the Growth Deal Funding would remain allocated to the Northern Junction scheme; however NLC would be the recipient of the funding in this regard given that SUFC are currently seeking to relocate to land adjacent to the proposed Southern Junction.

The mechanism for investment and nature of the works to have deemed to be in accordance with aid for local infrastructure and on a State Aid compliant basis.

ii) **Southern Junction**

This project is at a much earlier stage of feasibility and although all land has been assembled by Maltgrade is yet to complete the detailed design process.

Whilst the Southern Junction is intended to be delivered at some stage and will be the terminating junction, the proposals for the new Stadium and associated Business Park have been confirmed by NLC to be contrary to the AAP for the site and would involve displacement of Lake 5 with major implications for the flood modelling and associated works currently approved by the EA and being implemented by the Humber LEP.

On this basis any application for a stadium in this location would be subject to calling by the Secretary of State and is not supported by NLC.

In addition, costs for constructing the Southern Junction are estimated to be in the region of £13.6 - £23 million for which funding has not been secured and cannot be sought until cost certainty and deliverable scheme proposals are established.

In this regard it is likely that the programme for delivery of the scheme could extend in excess of three years until the works were completed on site, however at this stage none of the outputs realised by the scheme would have been delivered and are likely to fall outside of the Growth Deal programme government deadlines of 2020/21.

There is also concern over the proposed financial structure for delivery of the scheme, given this is convoluted and would require transfer of Growth Deal between three organisations prior to it being vested in physical works on site. Clearly there are inherent risks with transfer of public funds between private sector organisations before they are passed on to HE as intended recipient and the financial structure in this regard is therefore not deemed appropriate for investing Growth Deal funding in the proposed infrastructure works.

In summary the Southern Junction is not in a position where it is ready to proceed and ultimately may not be deliverable due to constraints to be overcome in relation to match funding, planning and flood modelling issues.

We have therefore concluded that the scheme which should be the recipient of the £1.9 million Growth Deal Funding is the Northern Junction, subject to the recommendations detailed below.

6.0 Recommendations

6.1 It is hereby recommended that the £1.9 million Growth Deal Fund remain allocated to the Northern Junction scheme; however the recipient to be North Lincolnshire Council. This is subject to the following conditions being satisfied by NLC prior to drawdown of funding;

- Confirmation that the scheme can be delivered in accordance with the £4 million budget previously identified.
- Written confirmation that terms have been agreed with KMG so that they are or will shortly be legally obligated to vest the land into the scheme and will meet any cost overruns in the event that these arise.
- Written confirmation from NLC that the outputs relating to the commercial land owned by KMG will be delivered by 2020/21.
- Written confirmation that the Northern Junction scheme is deliverable as a non-terminating junction and is able to immediately proceed on this basis, notwithstanding that the Northern Junction may be required to operate temporarily as a terminating junction and that additional works to facilitate this are required to be agreed with HE. Categorically, NLC to confirm that implementation of the Northern Junction as proposed will not be delayed whilst the additional works are agreed with HE to enable temporary operation as a terminating junction.
- A program for delivery of the Northern Junction to be provided along with key milestones and a quarterly profile of drawdown for Growth Deal Funding.



27th September 2017

Date:

.....
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**Paper 5.0****Northern Junction Roundabout****Investment Board, 29 September 2017****Commercial in Confidence****Recommendation: A Paper for decision**

This paper provides Board Directors with a summary of proposed significant changes to the Northern Junction Roundabout Scheme and seeks approval for the revised scheme approach recommended by Officers.

Background Information

At the January 2016 Investment Board members were asked to endorse 'in principle' the proposal to reallocate £2.9m of growth deal funding from Berkeley Circle to Normanby Enterprise Park 7 and Northern Roundabout infrastructure enhancements adjacent to what was at the time the new football ground location and north of Lincolnshire Lakes. This paper applies to the second of these projects and relates to £1.9m of growth deal grant.

Why is a Revised Decision Required

There have been changes to the delivery partners involved in the northern junction project and Scunthorpe United Football Club (SUFC) (the applicants for the original scheme) have decided not to proceed with their stadium development at the northern junction roundabout location (mixed use area junction marked on the map in Appendix 4) and instead have come forward with proposals for a new development at the southern junction (proposed terminating junction shown on the map as the roundabout adjacent to lake 5).

Conflicting information has been received by the LEP in relation to the two junction proposals, hence to ensure that a technically focused impartial decision can be made in relation to the £1.9m of Growth Deal funding support, an external consultant was appointed to review information provided and subsequently make recommendations to the Investment Board.

Previous Project Proposal

The Northern Junction works, along with those to be undertaken by NLC/Highways England originally included;

- A terminating junction to be created in the vicinity of Brumby Common Lane over-bridge, with new infrastructure to some villages 1 to 5 to be delivered by Lucent over land forming part of their comprehensive land ownership.
- The creation of a new east-west link running from the terminating junction to Scotter Road, being the cornerstone of the masterplan for the wider Lincolnshire Lakes scheme.
- Construction of the new roundabout
- De-trunked M181
- Works to retained section of M181 to reduce speed limit

The works to be undertaken would have also served as the primary route of access to SUFC's proposed stadium expansion and new development, providing a 12,000 seated capacity stadium, new sports pitches, hotel, gym, coach and car parking areas.

Findings of the Impartial External Review

Initial discussions with the planning authority have taken place for the SUFC led southern junction proposal, however

there is no planning approval for this project at this point in time, and the project would necessitate a redesign of the southern junction and a redrawing of the entire flood risk strategy for Lincolnshire Lakes being implemented with Humber LEP support of £13.3m.

Highways England requires consent of the landowners to build the southern junction and also requires a 40% (£9.2million) private sector contribution for what has now escalated in cost from a £13.65 million to a £23 million project. Neither are as yet secured, and Highways England will not know for certain if they are able to justify delivery of the southern junction as a terminating junction until mid-November. The 40% funding contribution was expected to be met by the multiple Lincolnshire Lakes landowners / developers that would directly benefit from the development of the new terminating junction. However, plans for 2 of the Lincolnshire Lakes villages have yet to be brought forward, and in the absence of these developments or other sources of funding then the sole developers are expected to meet this contribution in full. This creates a viability issue for the landowners given that they are also required to deliver the largest yachting marina lake without any funding support; however the funding gap for the southern junction cannot be met with public funding over and above the 60% hopefully being provided by Highways England.

In addition, Highways England has confirmed that in their opinion even if the required funding can be secured, the southern junction would take 9- 12 months to complete and approve designs and construction would take at least another 18 months. These timescales would make the delivery of subsequent outputs relating to the stadium and supporting land unachievable within the prescribed Growth Deal programme period of 2020/21.

North Lincolnshire Council (NLC) as highways authority and the Housing and Communities Agency are keen to continue to support the development of the northern roundabout junction as a priority, requesting that the Greater Lincolnshire LEP accepts a revised application from them as applicant, and reallocates the £1.9m of growth deal grant accordingly. The match funding for the cost of the northern roundabout is being provided by HCA as a loan to the landowner concerned, and the outputs, should the preferred option of the football stadium not go ahead on the adjacent land, would be realised via a commercial development funded by existing landowner within an agreed timeframe.

Both delivery options have now been subject to an impartial external appraisal on behalf of the LEP, and initial planning advice and have had strategic input from both Highways England (HE) and the Homes and Communities Agency (HCA).

The external appraisal focussed on the following:

- a) A review of the existing northern junction scheme at Scunthorpe
- b) Assessment of a proposed alternative scheme at the southern junction of the Lincolnshire Lakes site.
- c) Clarification of land ownership, planning position, state aid implications and timescales for each proposal.

Recommendation

Taking into account the full external appraisal report (attached for reference) and views from HE and HCA, alongside state aid, planning, environmental and timescale implications, LEP Officers would like to recommend that the Board approves the following approach with regard to its Growth Deal funding support:

The £1.9 million Growth Deal Fund remains allocated to the Northern Junction scheme; however the recipient becomes North Lincolnshire Council.

- NLC confirm that the scheme can be delivered in accordance with the £4 million budget previously identified.
- GLLEP receives written confirmation that terms have been agreed with the landowner so that they are or will shortly be legally obligated to vest the land into the scheme and will meet any cost overruns in the event that these arise.
- GLLEP receives written confirmation from NLC that the outputs relating to the commercial land will be delivered by 2020/21.
- GLLEP receives written confirmation that the Northern Junction scheme is deliverable as a non-terminating junction and is able to immediately proceed on this basis, notwithstanding that the Northern Junction may be required to operate temporarily as a terminating junction and that additional works to facilitate this are required to be agreed with HE. Categorically, NLC are to confirm that implementation of the Northern Junction as proposed will not be delayed whilst the additional works are agreed with HE to enable temporary operation as a terminating junction.
- A program for delivery of the Northern Junction to be provided by NLC along with key milestones and a quarterly profile of drawdown for Growth Deal Funding.
- SUFC to be informed of the decision with regard to the Growth Deal funding.



Greater Lincolnshire Local Enterprise Partnership

**Due Diligence Assessment
In Respect of**

Single Local Growth Fund

For

**Northern Junction, Lincolnshire Lakes
Scunthorpe
Lincolnshire**

**April 25th 2018
Paper 6.1**

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APPENDICES

I	BUSINESS CASE AND KEY SUPPORTING DOCUMENTATION
II	WYG COST APPRAISAL

1.0 PROJECT SUMMARY AND PLANNING STATUS

- 1.1 The application for the Northern Junction was submitted originally by Scunthorpe United Football Club (SUFC), working in partnership with NLC and was to deliver a terminating junction and major new gateway into the Lincolnshire Lakes project. The junction was to serve as one of the primary roundabouts providing access to the new villages 1, 2, 5 and 6 along with providing access to the new £35 million stadium redevelopment of SUFC.
- 1.2 The appraisal of this project was undertaken in July 2016 and included an analysis of proposed works and associated costings by WYG working in conjunction with Rachel Lister at Thomas Lister. GL LEP approved Single Local Growth Fund (SLGF) of £1.9 million to be awarded to SUFC as a contribution towards the total costs of constructing the Northern Junction at £4 million subject to contracting.
- 1.3 Since the original approval was issued by the GL LEP Board, the relationship between SUFC and the landowner for the expanded stadium site have irrecoverably broken down and the Northern Junction scheme is no longer being progressed by SUFC.
- 1.4 Approval has also been obtained from the GL LEP Board to re-allocate the SLGF of £1.9 million to North Lincolnshire Council (NLC), on the basis that the Council will deliver the Northern Junction and that key conditions identified are progressed accordingly. The Board approval was subject to a due diligence assessment being undertaken at the appropriate time to verify costs of constructing the Northern Junction and to demonstrate that the scheme is still deliverable if the £1.9 million SLGF is awarded to NLC.
- 1.5 The purpose of this due diligence assessment is to assess and verify the works costs for the Northern Junction scheme given the passage of time since the original approval was issued in July 2017.
- 1.6 The Northern Junction works will essentially provide the following;
 - i) A non-terminating junction to be created in the vicinity of Brumby Common Lane over-bridge, with new infrastructure to some villages 1 to 5 to be delivered by Lincolnshire Lakes Land Ltd (LLLL) over land forming part of their comprehensive land ownership.
 - ii) The creation of a new East-West link running from the terminating junction to Scotter Road, being the cornerstone of the masterplan for the wider Lincolnshire Lakes scheme.
 - iii) Construction of the new roundabout.
 - iv) De-trunked M181.
 - v) Works to retained section of M181 to reduce speed limit.
- 1.7 The primary objective of the proposed works in addition to servicing the Lincolnshire Lakes wider development is noted as follows:
 - i) Encourage safe and efficient dispersal of vehicle movements into the local highway network, with natural resilience in the local route network with a choice of routes available for key destinations.

- ii) Divert traffic away from the Doncaster Road/Berkeley Circle junction providing sustained and much needed congestion relief.
 - iii) Provide a deliverable solution, as the junction is located on land that is in a single land owners responsibility, who is supportive of the Council aspirations for the Lincolnshire Lakes Area and is prepared to provide the land for free to implement the junction.
- 1.8 We are aware from discussions with NLC and Highways England that a terminating junction is required to be provided to the site in order to accommodate the scale of development proposed. We further understand that it is intended that the Southern Junction will be delivered at some point in time and will operate as the terminating junction from the M181.
- 1.9 Notwithstanding the above, and at this time, it has been confirmed by NLC and Highways England (HE) that the Northern Junction works can be implemented and will open up a primary means of access into the Lincolnshire Lakes development including the housing land and Lake 1 which is due to commence on site imminently.
- 1.10 It has further been confirmed that in the intervening period prior to the Southern Junction being constructed, that variations to the design of the proposed East West Link Road and Burringham Road could be upgraded along with the internal estate roads in order to provide capacity on a temporary basis to enable the Northern Junction to operate as a terminating junction.
- 1.11 Planning permission for the Northern Junction works was secured in 2014 and we are advised by NLC that there are no other issues to address in terms of planning requirements to enable this scheme to be brought forward for delivery; the scheme remains unchanged, however the detail of outputs will depend on whether LLLL or SUFC develop the commercial land opposite the Lincolnshire Lakes site.
- 1.12 It is also noted that Homes England has approved two loans to LLLL as part of the Northern Junction scheme. Following discussions with Neil McMilligan at Homes England, the two loans that were awarded to LLLL are briefly summarised as follows;
- i) A loan to enable acquisition of all of the land necessary to enable the Lincolnshire Lakes scheme and Northern Junction works to proceed.
 - ii) A loan to contribute towards infrastructure costs being;
 - Section 278 works at Scotter Road
 - Construction of the East West Link Road
 - £2m towards the construction of the Northern Roundabout providing sufficient match funding can be found for its delivery, either via KMG/NLC or SUFC should decisions regarding the adjacent site alter.
- 1.13 Neil Milligan at Homes England has also confirmed that LLLL will not have the ability to drawdown any of the loan funding towards the infrastructure costs if the £1.9 million Growth Deal Funding is not allocated to this project. Homes England have advised that the formal documentation is due to be put in place to enable drawdown of funding once the SLGF from GL LEP is approved.

2.0 FUNDING SOUGHT AND STATUS OF MATCH FUNDING

- 2.1 The SLGF sought from GL LEP is £1.9 million with the balance of funding to be provided by NLC at £2.1 million. The land required for the scheme has been agreed will be vested by LLLL at no cost to the project. A Memorandum of Understanding (MOU) is in place between NLC and LLLL for the transfer of the land once all funding for the project has been secured.
- 2.2 The Homes England funding referred to earlier is required to fund the costs of the East West Link Road which is a separate element of work to the works that are intended to be funded by the SLGF.

3.0 KEY ISSUES

- 3.1 The key issues relating to this project are that the scheme remains deliverable for £4 million given the passage of time since the SLGF were initially approved for the scheme and that the land is secured for the works given the change in ownership.
- 3.2 The original cost estimates prepared in 2016 included contingency and optimism bias sums along with some provisional sums which have now been crystallised with the detailed design of the scheme and Homes England funding being secured. The works costs have therefore been reviewed and updated by NLC and subject to technical assessment by WYG as part of this due diligence. The outcome of this assessment is detailed within Section 6 of this report.
- 3.3 With regard to the land required for the construction of the infrastructure, this is subject to the MoU of which a copy has been provided and enables transfer provisions once all funding and remaining approvals have been secured.
- 3.4 There are no other issues identified as being necessary to resolve at this time.

4.0 STRATEGIC FIT

- 4.1 The Lincolnshire Lakes project has been identified to support the delivery of North Lincolnshire future housing and employment requirements up to 2028. North Lincolnshire's population is currently growing and will potentially grow further at a dramatic rate once the Able Marine Energy and Logistics Park at the South Humber Gateway starts to commence construction.
- 4.2 Alongside the above, Lincolnshire Lakes has a regeneration role and it was originally envisaged as part of the Scunthorpe Urban Renaissance project (funded by Yorkshire Forward). Community engagement exercises identified support for a renaissance project that delivered housing growth around waterside settings.
- 4.3 The Lincolnshire Lakes project has ten years of research and intelligence which have assessed, tested and articulated the need for this scheme. By 2026 North Lincolnshire requires over 9,000 new homes to cope with its growth and investment plans. The Lincolnshire Lakes is a key determinant in delivering against this strategic growth need.
- 4.4 A significant evidence base has been prepared for both the Adopted Core Strategy and Lincolnshire Lakes Area Action Plan. This evidence has been assessed by an

independent planning inspector and has been viewed as robust in demonstrating the need, demand and impact of the proposal.

- 4.5 For the Lincolnshire Lakes, an Examination in Public was held 13-20 October 2015 chaired by Planning Inspector Mrs Sarah Housden. This process critically analysed the need for the project. The Examination was successful and the plan was approved as sound in April 2016.
- 4.6 The project also fits with GL LEPs Strategic Economic Plan (SEP) as having the ability to meet the areas housing needs, with the Lincolnshire Lakes scheme specifically referred to within the SEP.
- 4.7 The project is therefore identified to have a strong strategic fit.

5.0 MARKET ASSESSMENT

- 5.1 The Council's Strategic Housing Market Assessment has provided evidence that there is clear need and demand for the Lincolnshire Lakes scheme in order to meet existing and future demand for housing. The scheme will also support sustainable delivery of major employment projects within North Lincolnshire and beyond through providing a local workforce.

6.0 DEVELOPMENT APPRAISAL

- 6.1 A development appraisal has not been prepared for this project on the basis that it is a public infrastructure project required to support the delivery of the Lincolnshire Lakes and improve the wider surrounding highway network.
- 6.2 The review that has been undertaken of the financial aspects of this project, therefore relates to the appraisal of construction costs to deliver the infrastructure as proposed.
- 6.3 As noted WYG have undertaken technical assessment in this regard and report that following clarifications being raised directly with NLC, they are satisfied that all necessary information was provided to enable costs for delivering the proposed works to be comprehensively completed.
- 6.4 The outcome of WYG's assessment is that the actual physical works costs on site are all deemed to primarily be reasonable, realistic and in accordance with market rates, with the exception of the following;
 - i) Provision for preliminary project preliminaries has been made at circa 15% and is considered to be low. Following discussion with WYG however it is acknowledged that the scheme is at a detailed stage of design and highways England are both supportive of the scheme and are investing significant funds in the wider strategic network and therefore NLC's budget cost at 15% is reasonable.
 - ii) The road restraint systems – It is noted that this cost may be light; however will be assessed further during the final detailed design of the scheme and tender process.

- iii) Curb and Footways – Costs of curbing may be light; however if this excludes surfacing over the islands may actually be reasonable.
 - iv) Optimism bias – No provision has been included by NLC given the stage of design and that the project is now ready to tender. WYG have recommended that at this stage this should be included.
 - v) Contingency provision – NLC have included this 5%, which given the current use of the site being agricultural and detailed stage of design is deemed to be reasonable. WYG suggested that consideration may be given to increasing this given that utility costs are currently not known.
 - vi) Overall, therefore the main areas of discrepancy are with the project preliminaries, optimism bias and contingency. It is noted that these are not actual construction costs and therefore are capable of being managed as the project design is finalised and the scheme is competitively tendered.
- 6.5 It is also noted that NLC will be responsible for meeting any project cost over runs and therefore the £1.9 million from GL LEP is considered to be reasonable and sufficient to enable delivery of the project.

7.0 DELIVERABILITY AND PROGRAMME

- 7.1 The works are currently undergoing the competitive tender process, which is due complete by the beginning of June 2018. The contract for the works is due to commence in July with the scheme completed 31st March 2019.
- 7.2 WYG have confirmed that the programme for the scheme is reasonable and realistic, although the actual programme of works and profile for drawdown of SLGF are to be provided once the contractor has been formally appointed and timescales for delivery crystallised.

8.0 MECHANISM FOR INVESTMENT, STATE AID AND LEGAL COMPLIANCE

- 8.1 The mechanism for investment of SLGF by GLLEP to be by way of grant under Section 13, Aid for Infrastructures, Article 56 Investment Aid for Local Infrastructure.
- 8.2 The investment from GLLEP would constitute funding for the Northern Junction as described earlier within this report. It is confirmed that SLGF will not fund any works directly associated with the Lincolnshire Lakes residential or commercial uses.
- 8.3 The works to be funded by SLGF will be to deliver enhanced and new public highway and a roundabout, which will form part of adopted highway infrastructure. Use of the infrastructure will therefore be available on an open basis and free to use by the general public. Generally this falls within the definition of Local Infrastructure under the GBER.
- 8.4 Article 56 does however; make reference to circumstances where any landowners who benefit from public works through uplift in asset values, should wherever

possible be required to contribute towards the cost of works before being permitted to connect into and make use of infrastructure provided with public resource.

- 8.5 As the highway improvements are in part to existing infrastructure, there is no uplift in land value to any particular private owner. The works will also benefit a range of owners and occupiers within the general area and there is no ability to recover investment from the existing communities and wouldn't be appropriate to do so.
- 8.6 In terms of the owners of the Lincolnshire Lakes development land, the costs of undertaking and/or contributing to the works are not possible beyond the usual section 106 provisions on the grounds of viability; this is a process which has been completed by NLC in partnership with the developer.
- 8.7 LLLL have also secured loans from Homes England to provide part of the infrastructure that will more directly benefit their development land and this funding will be wholly repayable by receipts generated from the development of the site.
- 8.8 It is therefore considered that there are no state aid issues relating to the award of funding to NLC for the construction of public infrastructure.
- 8.9 It is noted however that Thomas Lister is not a state aid specialist and NLC have subsequently provided verification of the state aid position from their appointed state aid advisor. Thomas Lister have no queries in regard of the state aid report provided, although this is subject to approval by GL LEP's legal advisor.

9.0 PROCUREMENT

- 9.1 NLC adheres to public procurement regulations and has in place standard contract procedure rules. It is intended that the main construction contract will be procured from a construction framework that has full state aid approval.
- 9.2 The process will therefore be in accordance with procurement regulations and be a transparent procurement process, likely to utilise the on-line tender portal YorTender.
- 9.3 At this time the scheme has not yet completed the tender process. It is hereby recommended that a copy of the lowest tender and report on tenders is provided for final sign off by GL LEP as soon as available. This information is required to demonstrate that the project is deliverable with the funding approved.

10.0 OUTPUTS AND VALUE FOR MONEY

- 10.1 The outputs potentially deliverable by this project as provided by NLC have been subject to ongoing discussion as outputs attributable to the scheme seem very low. NLC have confirmed that, as there are other elements of infrastructure being publicly funded as part of the wider Lincolnshire Lakes development, outputs have primarily been allocated and apportioned between their other publicly funded schemes.
- 10.2 A quarterly profile for output delivery has been provided by NLC and is appended to this report. Any changes to the profile for delivery of outputs once contracted will be

picked up by Lincolnshire County Council (LCC) as Accountable Body during ongoing project monitoring.

- 10.3 The outputs which are therefore attributable to GLLEP funding are summarised in the table below;

Core Strategic Output	2018/19	2019/20	2020/21	2021/22	Later Years	Total
Jobs Created			100	394	-	494
Local Strategic Outputs	2018/19	2019/20	2020/21	2021/22	Later Years	Total
New Roundabout Junction	1					1
Commercial Floorspace Built Sq.M			3,190	15,370	-	18,560
Indirect New Homes Built					4000	4000
Construction Jobs	30	30				60
GVA Uplift			£2 million	£10 million	£10 million	£22 million

- 10.4 It is noted that jobs, construction jobs and GVA Uplift are required to be subject to adjustment in order to establish net outputs for the scheme. The following adjustments have been applied to in accordance with the table below.

Deadweight	27%
Employment leakage	5%
Displacement	17%
Multipliers for the East Midlands region in accordance with Green Book Guidance	1.25%

10.5 The adjusted outputs are therefore shown in the table below;

Core Strategic Output	2018/19	2019/20	2020/21	2021/22	Later Years	Total
Jobs Created			76	302	-	378
Local Strategic Outputs	2018/19	2019/20	2020/21	2021/22	Later Years	Total
New Roundabout Junction	1					1
Commercial Floorspace Built Sq.M			3,190	15,370	-	18,560
Indirect New Homes Built					4000	4000
Construction Jobs	23	22				45
GVA Uplift			£1.53 million	£7.65 million	£7.65 million	£16.8 million

10.6 In terms of value for money, we would comment as follows;

- 378 jobs created at a cost per job of £5,026 per job, is well below the standard benchmark and excellent value for money.
- 1 new roundabout and associated infrastructure at a cost of £1.9 million to GL LEP is at market rates and thus value for money.
- 18,560 sq.m commercial floorspace at £102 sq.m. This is within the standard benchmark and is good value for money.
- 4,000 indirect homes at £475 per home is good value for money, although is an indirect output.
- Construction Jobs - Equates to a cost of £42,222 per job, is slightly higher than the standard Homes England benchmarks for cost per job of around £40,000 and is therefore reasonable value for money.
- GVA Uplift – In accordance with the uplift associated with employment development, the leverage is circa 1:8.84 and is excellent value for money.

- 10.7 Therefore, the outputs which are identified as attributable to this project by NLC, are considered to be good in terms of a total package of outputs and thus overall, generally good value for money, despite the fact that the housing outputs have already been claimed by other public investors to the wider scheme.
- 10.8 The SLGF in this project will deliver one of the primary access routes for Lincolnshire Lakes and investment in the project is also justifiable on this basis.

11.0 CONDITIONS AND TERMS FOR THE FUNDING AGREEMENT

- 11.1 The conditions to be attached to any offer of funding and to be incorporated into the Funding Agreement are recommended as follows:
- i) The overall costs for delivering the project to be confirmed based upon provision of the report on tenders and lowest tender received. This information is required to demonstrate that the scheme is deliverable in accordance with the funding that has been secured to date.
 - ii) A programme for the delivery of the project and quarterly forecast for the drawdown of SLGF to be provided.
 - iii) In the event that costs are higher than the current budget, NLC to confirm that they will be responsible for meeting any cost increases and cost over runs incurred on the project.

12.0 CONCLUSIONS

- 12.1 The Lincolnshire Lakes project is a high profile and strategically important scheme for North Lincolnshire and indeed the wider sub regional area.
- 12.2 The project is extremely challenging and various components of the scheme have already secured significant funding from the Humber LEP, Homes England, Highways England and Environment Agency in terms of addressing a number of major site constraints which will provide a site and environment suitable for major residential development of circa 4,000 dwellings.
- 12.3 The element of infrastructure that is to be funded from GL LEP has a convoluted and long standing history, given that this was originally to be delivered by SUFC, working in partnership with the council.
- 12.4 Following original delivery arrangements for the Northern Junction having to be abandoned, NLC are now the organisation responsible for delivering a section of de-trunked road from the M181 and construction of a new roundabout in order to create one of the principal gateway accesses to the Lincolnshire Lakes scheme.
- 12.5 The scheme has planning permission and all of the sources of funding required for delivering the project with the exception of that required from GL LEP's SLGF has now been secured.

- 12.6 Costs have been subject to a review and verification exercise by WYG, who are in agreement with the actual works cost for the construction of the road and roundabout; however have suggested that some of the preliminaries; contingency and optimism bias may need to be increased initially to provide for risk. It is noted however that these fee provisions do not relate to physical works and ordinarily would be reduced through the competitive tender process which is due to start imminently.
- 12.7 Therefore given the number of public sector partners involved in delivery of the scheme and the relatively advanced stage of design has been agreed with WYG there is limited benefit in increasing contingency, optimism bias and preliminary costs at this time, providing that NLC are responsible for meeting any increasing costs and cost over runs incurred in the delivery of the project.

13.0 RECOMMENDATIONS

- 13.1 It is hereby recommended that £1.9 million of SLGF is awarded for this project, subject to the conditions noted within Section 11 of this report.



.....

Date: ...25th April 2018.....

Rachel Lister BSc (Hons) MRICS
Thomas Lister Limited
11 The Courtyard
Buntsford Gate
Bromsgrove
B60 3DJ



**In the High Court of Justice
Queen's Bench Division
Administrative Court**

CO Ref:

CO/237/2018

In the matter of an application for Judicial Review

**The Queen on the application of SCUNTHORPE UNITED FOOTBALL
CLUB LIMITED** **Claimant**

versus

GREATER LINCOLNSHIRE LEP LIMITED **Defendant**

And

**(1) NORTH LINCOLNSHIRE LIMITED
(2) KMG CAPITAL MARKETS LIMITED
(3) MALTGRADE LIMITED**

Interested Parties**NOTIFICATION of the Judge's decision**

Following consideration of the documents lodged by the Claimant and the Acknowledgement of service filed by the Defendant and First Interested Party and Reply of the Claimant.

Order by HIS HONOUR JUDGE MARK RAESIDE QC sitting as a Judge of the High Court

Permission is hereby granted**Observations:**

1. Though the Decision dated 3 October 2017 is short, the effect is serious and substantially affects the Claimant's ability to receive a quite large sum of money.
2. All five grounds are arguable despite the Defendants' assertions that some are hopeless or as the First Interested Party assert totally without merit and both say the claim is academic and there has been delay or it would not have been substantially different all of which is disputed by the Claimant. This is not a case where some grounds should be selected for refusal.
3. A detailed consideration of the facts (whether accurate or inaccurate) is required and should be fairly aired at a hearing in open court.

Case management directions

- The Second and Third Interested Parties served with the claim form who wishes to contest the claim or support it on additional grounds must file and serve detailed grounds for contesting the claim or supporting it on additional grounds and any written evidence, within 14 days of service of this order.
- Any reply to the above by the claimant must be lodged within 7 days of the service of the additional detailed grounds for contesting the claim.
- The claimant must file and serve a trial bundle not less than 4 weeks before the date of the hearing of the judicial review.

- The claimant must file and serve a skeleton argument not less than 21 days before the date of the hearing of the judicial review.
- The defendant and any interested party must file and serve a skeleton argument not less than 14 days before the date of the hearing of the judicial review.
- The claimant must file an agreed bundle of authorities, not less than 7 days before the date of the hearing of the judicial review.

Listing Directions

The application is to be listed for two days; the parties to provide a written time estimate within 7 days of service of this order if they disagree with this direction.

Directions as to venue

The case shall be heard at the Administrative Court in Leeds on a date to be notified.

Signed

Mark Rucide

For completion by the Administrative Court Office

16.2.18.

Sent / ~~Handed~~ to the claimant, defendant and any interested party / the claimant's, defendants, and any interested party's solicitors on (date): *11.6.18*

Solicitors: *Legal Services*

Ref No. *mark uel*

Notes for the Claimant

To continue the proceedings a fee is payable.

For details of the current fee please refer to the Administrative Court fees table.

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Service of documents not accepted via e-mail or fax

Our Ref: MDK/ENV004.74
Your Ref: JS\SCU\0076

Date: 28 June 2018

Dear Sirs

Your client: Scunthorpe United Football Club

RE: Greater Lincolnshire Local Enterprise Partnership - Northern Junction Roundabout Scheme and the Southern Junction Proposal, M181, Scunthorpe

We write on behalf of the Greater Lincolnshire Local Enterprise Partnership ("**GL LEP**").

As you are aware, the GL LEP previously considered a Thomas Lister Report and the Officer's Report at its Investment Board meeting on 29 September 2017 and the Board considered whether to support the Southern Junction Scheme in line with your proposals or whether to support a revised proposal for the Northern Junction Scheme. At that time, the Board decided in principle, subject to certain conditions being met, and subject to contract, to proceed with the Northern Junction Scheme proposed by NLC.

The decision of 29 September 2017 is now the subject of an ongoing legal challenge you have brought by way of judicial review.

Following the conditional decision of 29 September 2017, NLC subsequently provided a full business case for the Northern Junction Scheme proposals to the GL LEP on 23rd April 2018. Following receipt of this case, the GL LEP has undertaken a more detailed appraisal of those proposals. As part of this process, the GL LEP

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instructed Thomas Lister to undertake a due diligence assessment of the submitted business case for the Northern Junction Scheme. A due diligence report was produced dated 25th April 2018. As you are aware, officers then reported on this due diligence work to the 25th May 2018 GL LEP Investment Board meeting.

At the 25th May 2018 meeting, the GL LEP Investment Board considered the Officer Report which recommended approving the funding. The Board was minded to accept that Officer recommendation and to approve the £1.9m of funding from the Single Local Growth Fund ("**SLGF**") towards the delivery of the Northern Junction Scheme, but that was subject to a decision by the court on whether permission would be granted in your ongoing legal challenge, which it was reported would likely be determined by the end of May 2018. The decision to grant permission for the claim to proceed to a substantive hearing was made by HHJ Raeside QC and issued by the court to the parties on 1 June 2018.

As the decision made on 25th May 2018 was subject to a decision by the Court on whether permission would be granted, the GL LEP is proposing that a final decision should be made by its board regarding North Lincolnshire Council's ("**NLC**") proposals for the Northern Junction Roundabout ("**the North Junction Scheme**") at its meeting on 20 July 2018.

SLGF monies are subject to important time-limited conditions. In particular, in order for a funded scheme to be eligible, SLGF funds must be drawn down and clear economic growth impact demonstrated by 2020/21. In addition, the LEP's role is to enable economic growth, and any further delay to proceeding with the Northern Junction could impact on economic growth in and around Scunthorpe. In these circumstances, the GL LEP considers it is necessary to take a final decision whether to proceed with its proposed funding of the Northern Junction scheme and to proceed with the contractual stage as soon as practicable and is proposing to consider this at its next meeting in July 2018.

In view of your ongoing legal challenge to the previous decision in September 2017 and the need for the GL LEP Board to consider whether or not to proceed, we would formally invite you to submit any further representations that you may have on the Northern Junction Scheme and your own proposals by no later than **4pm on 12 July 2018**.

You have previously identified what you consider to be flaws in the decision-making process in September 2017. We propose to report those contentions to the GL LEP Board so that they can take them into account in deciding what final decision to make. We invite you to update your own position regarding the delivery of the Northern Junction Scheme, your linked proposals in terms of achieving draw down and growth outputs by 2020/2021 and your intentions, given the various public announcements that you have made about not proceeding with those proposals in any event.

You are further advised that the GL LEP proposes to publish a draft Officer Report for any additional comment in advance of the meeting at which the Board will take its

final decision. We will share this with you once it is ready in order that you may comment if necessary.

Should you submit representations at either or both of these stages, the Board will of course take them into consideration before it makes any determination as to whether to proceed with the Northern Junction Scheme. We hope that you will take this opportunity to contribute to the GL LEP's decision-making process. If you have any questions, please contact the writer whose contact details are provided below.

Yours faithfully



Mark Keal

Principal Lawyer

Direct Dial: 01522 552335

Email: MarkD.Keal@lincolnshire.gov.uk

For Legal Services Lincolnshire



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Our Ref: JS\SCU\0076

Please ask for: John Spyrou/Amrinder Aulakh
Date: Thursday 12th July 2018

Initially via email:

MarkD.Keal@lincolnshire.gov.uk

Dear Sirs,

Re: R v (on the application of Scunthorpe United Football Club Ltd v Greater Lincolnshire LEP Ltd)

Claim No: CO/237/2018

Our Client: Scunthorpe United Football Club Ltd

We refer to your recent letter of 28 June 2018, received at our offices on 2 July 2018 (having not been sent by email in the first instance), which you write on behalf of GLLEP, the content of which we and our client find somewhat astonishing to say the least. Your letter appears to suggest that the decision of the GLLEP dated 29 September 2017 was a 'conditional decision' and that your client is now willing to consider further submissions on our client's Southern Junction proposal, such submissions to be received by 4pm today, just over one working week following receipt of your letter. Furthermore, yesterday we have also been provided with your client's and NLC's substantive grounds of defence to the judicial review claim which included substantial exhibits, which we, leading and junior counsel will shortly be considering, with our client with a view to filing and serving a Reply, as indicated in our letter of 10 July 2018, as sent to the Court, to which you were copied in. Although we are instructed by our client to provide this response to your letter of 28 June 2018, this is without prejudice to the contentions that will undoubtedly be raised in our client's Reply.

At all material times the decision of the GLLEP was never described as a 'conditional decision', hence the reason our client had to resort to judicial review proceedings to challenge the lawfulness of the decision and the process by which it was made. It is accurate to state, of course, that the decision to grant the award in favour of the Northern Junction proposal was made subject to certain conditions to be met by the recipient. But that is quite different to the suggestion which is now being made, that SUFC could still be in the running for the award. To now suggest, some 7 months after the onset of these proceedings, and as a result of the granting of permission, to our client that this was a 'conditional decision' by GLLEP is not only bemusing but is clearly self-serving as it would appear that GLLEP are seeking to now try and retrospectively apply some measure of procedural fairness to a decision already taken. Presumably this is to try and prevent a further challenge by our client. This, is in the context of, as our client understands it, work on the Lakes site having not commenced.

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Solicitor & Notary Public
Director of the Football
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Alex Clarke BSc (Hons) MSc (Hons)
Wilson Soares BA, LL.M

Finance Executive
Toni Rodacan
Senior Clerk
James Morgan

Notarial Executive
Dawn Baldwin

Your client made it clear to our client that the decision of its Investment Board in September 2017 was **final** and that there were no other opportunities to challenge this decision within the GLLEP procedures or rules. Furthermore, your client confirmed the September decision date was necessarily final in order to enable the grant recipient to progress its plans immediately following the decision and to enable every opportunity to deliver to the GLLEP and government timescales of 2020. This is in keeping with your client's protocols, which, as our client understands it, state that funding should not be awarded to either party if there is doubt as to the ability to deliver in the requisite timescales. Your client made it clear that this time period was 2020 and relied on the Thomas Lister report in making its final determination.

Your client positively asserts in its grounds of defence, that the claim brought by our client is academic as *inter alia* the timescales could not be met (*ib.* at paras 12 and 68). Even the note of the minutes of your client's Investment Board dated 29th September 2018 disclosed under cover of your letter dated 31 January 2018 refer to the decision as being final. The minutes specifically record that 'the Investment Board approved the investment of the £1.9m growth deal for the Northern Junction on the basis of recommendations and conditions provided within the due diligence [Thomas Lister] report.' Apart from a passing reference to 'in principle' at the start of the minutes there is not even the merest reference to this decision being conditional or not final.

In addition, your client's own Ms. Carver, in her witness statement of 13 February 2018, in support of the ground of defence, signed under a statement of truth, makes no reference to the decision being conditional and in fact goes as far as to say at paragraph 6 that '*...it follows that the GLLEP simply could not support that proposal as it would not achieve the GLLEP's requirements of progressing economic growth and ensuring growth spending is achieved within this period under the Growth deal*'. This is entirely contrary to the suggestion that the decision was 'conditional' and that is now possible that our client's proposal will be considered and possibly supported, if they provide additional submissions. How exactly is this consistent with Ms. Carver's witness statement, signed under a statement of truth, that your client '**simply could not support**' our client's proposal?

Our client was never notified that your client or indeed NLC had conditionally awarded the grant, nor was our client ever informed that they were on the reserve list for funding in the event that NLC could not make good on its own proposals. Your letter is silent on how, and indeed, if our client was informed of the alleged conditional nature of the grant. If this truly was the case then kindly provide documentary evidence on how this 'conditional' nature of the grant was communicated to our client. In fact there has been no direct communication between our client and either your client or NLC since September 2017.

The mainstay of judicial proceedings is that it is a way to challenge final decisions made by public bodies. To suggest that the GLLEP decision is not final, having gone through the judicial review process and this having been at no time alighted on in the grounds of resistance submitted on behalf of the Defendant/Interested Parties is clearly not appropriate.

Aside from referring to the judicial review decision, your letter makes no reference as to why your client is now considering this point and why your client is now reverting back to our client for further submissions. You are asked to explain this. Your client cannot, even under the spectre of the judicial review proceedings, seriously expect our client to essentially re-enter the bidding competition after having been told in no uncertain terms that the bid could not succeed. Our client was categorically informed that it would not be awarded the grant. Your client's decision resulted in our client ceasing the stadium development plans at the Maltgrade site as they were no longer viable without this grant funding. Our client ceased those plans based solely on your client's decision.

Your client cannot seriously blame the lack of any progress on the Northern roundabout, or on the wider Lakes development on our client's judicial challenge, especially given that NLC have taken the view that our client's challenge was 'misconceived' from the outset as repeated in the grounds of defence. Even if this were the case it is factually wrong as the first phase of the Lakes development was to start from Scotter Road, the scope of which was to build 500 houses. The roundabout development had no bearing on this and yet work has not commenced to date, almost 12 months on from the original grant awarding decision.

Our client cannot provide further submissions on the points you have raised, in the short period of time given. As explained above, we have serious concerns and queries as to the nature and purpose of your client's change of position. Even if it had been afforded time to respond, then without a full reasoned explanation and response to this letter, our client does not have the benefit of the full context of what exactly is happening in respect of the decision making of your client. Of course, our client will examine in detail any further information your client and NLC provide in this regard. Insofar as your client wishes to engage in a genuine process of settlement, then we would of course be prepared to listen to and consider any reasonable proposals.

Yours faithfully,



Pinder Reaux & Associates

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
Between:-

Claim No. CO/237/2018

**THE QUEEN on the application of
SCUNTHORPE UNITED FOOTBALL CLUB LIMITED**

Claimant

- and -

GREATER LINCOLNSHIRE LEP LIMITED

Defendant

**(1) NORTH LINCOLNSHIRE COUNCIL
(2) KMG CAPITAL MARKETS LIMITED
(a company registered in Cyprus)
(3) MALTGRADE LIMITED**

Interested Parties

**REPLY OF THE CLAIMANT
TO THE DEFENDANT'S AND
FIRST INTERESTED PARTY'S
GROUNDS OF DEFENCE**

A. INTRODUCTION

1. The Claimant respectfully seeks the Court's permission to submit this short reply to the Grounds of Defence filed by the Defendant ('the GLLEP') and the First Interested Party ('NLC').

B. THE GROUNDS OF DEFENCE

2. Stripped of hyperbole and comment, the GLLEP's response to this claim makes essentially six points:
 - a) The claim is based on a factual inaccuracy because the northern junction does not depend on the southern junction (GLLEP's Grounds at paras 3 and 63-65);

- b) There was always a fundamental obstacle to the Claimant's proposal because of the timing (*ib.*, see paras 11, 16, 22, 27, 39, 45, 47, 50, 58(c), 66 and 67) and the lack of planning permission for the new stadium (*ib.*, paras 36, 57 and 67);
 - c) The claim is academic (*ib.* at paras 12 and 68);
 - d) Delay (*ib.* at paras 13-14 and 69);
 - e) The claim is a disguised merits challenge (*ib.* at paras 16 and 52ff).
 - f) Permission should be refused under section 31(3C), (3D) of the Senior Courts Act 1981 (*ib.* at para 70).
3. The response of NLC is broadly similar.

C. THE CLAIMANT'S REPLY

4. It is respectfully submitted for the following reasons that none of these points hits home.

(a) Claim based on a factual inaccuracy?

5. It is not the Claimant's case that the northern junction cannot be built at all, in any form, until the southern junction is built. What the Claimant relies on is that it is an integral part of the Lakes development that there are to be two junctions: the main southern junction, where the motorway is to terminate, and the northern junction; and that the Highways Authority agreed to the northern junction proceeding on the premise that the southern junction would follow: see para 12 of the Claimant's Grounds.
6. The point (see Ground 2 at paras 59-62 of the Claimant's Grounds) is that it was irrational on the part of the GLLEP not to take this important consideration into account when considering whether to accede to the Claimant's bid for funds with which to develop the southern junction, rather than (as the GLLEP decided to do instead) spending the money on a northern junction which, as the GLLEP accepts, will have to be only a '*temporary solution*' (Grounds at para 64). There is no factual inaccuracy in this point.

(b) Always a fundamental obstacle to the Claimant's proposal because of the timing and lack of planning permission?

Timing

7. The GLLEP makes extensive reference to a deadline of 2020/21: see, e.g., paras 11, 16, 22, 27, 39, 45, 47, 50, 58(c), 65-67 of its Grounds. It is not, however, consistent in its case as to what must be done by then.
8. Various, 2020/21 is said to be the deadline:
 - a) to '*deliver the proposed southern junction scheme*' (para 11);
 - b) for NLC to deliver the northern junction improvement, but for the Claimant (in order to be eligible for the £1.9m) to deliver the stadium itself (para 16);
 - c) to '*deliver the scheme for which funding has been allocated*' (para 22);
 - d) for '*delivery of the relevant outputs*' (para 27) (it will be recalled that '*outputs*' are the wider public benefits that justify spending taxpayers' money on something whose immediate beneficiary is a private person);
 - e) for delivery of the stadium (para 39);
 - f) for delivery of the outputs from the stadium (para 45);
 - g) for delivery of the outputs relating to the commercial land owned by KMG (near the northern junction) (para 47);
 - h) to deliver '*the Claimant's proposal*' (para 50);
 - i) for delivery of the outputs relating to the commercial land (para 58(c));
 - j) to deliver the respective junction schemes (paras 65-67).
9. In her statement of 13 February 2018, the GLLEP's Ruth Carver says that a scheme for which funding is sought has to '*contribute to economic growth by 2020/21*' (statement at para 3). But later she says that what is required is '*progressing economic growth and*

ensuring growth spending is achieved by 2020/21 (para 6, emphasis added). This echoes what the GLLEP wrote in pre-action correspondence: *'The full project allocation is required to be spent by the end of the 2020/21 financial year'* (see GLLEP's letter of 18 December 2017 at para 8(i), emphasis).

10. Thus, the GLLEP variously suggests that:

- a) all that is needed to be done by 2020/21 is to spend the £1.9m;
- b) only the relevant junction scheme (the northern junction or the southern junction) needs to be delivered by then;
- c) it is not just the relevant junction scheme but also the business park or stadium (as the case may be) that must be completed;
- d) what must be delivered by 2020/21 are the *'outputs'* which the construction of these things would lead to, i.e. thousands of homes etc. in the case of the Claimant's proposal (see Grounds at para 29(c)); the Claimant does not know what it would be, in the case of NLC's proposal, because this has not been stated.

11. It is respectfully submitted that this is a most insecure foundation for a submission that the Claimant's southern junction proposal (in connection with a stadium) was always bound to be rejected in favour of NLC's northern junction proposal (in connection with a business park) because of a lack of ability to deliver something by 2020/21.

12. On the contrary, it raises serious questions, worthy of a full hearing, about whether the GLLEP could rationally reject the Claimant's proposal on the grounds of timing while allowing NLC's on the basis of a condition requiring *'[w]ritten confirmation from NLC that the outputs relating to the commercial land owned by KMG will be delivered by 2020/21'* (GLLEP's Grounds, para 47).

13. The Claimant's claim accordingly cannot so easily be brushed aside.

Planning permission

14. The GLLEP relies on the fact that NLC have stated that they do not support the Claimant's proposed location for the new stadium and relies (e.g. at para 36) on the letter dated 29 June 2017 from Head of Economy and Growth at NLC: *'The Council are fully supportive within*

the Lincolnshire Lakes scheme for a football stadium and adjacent mixed use Leisure/Business Park [...] but not in this location [...] (JR bundle, tab 5).

15. This was not, however, one of the reasons given for the refusal of the Claimant's application. The decision of 3 October 2017 merely recorded that '*there is currently no planning approval for this project at this point in time*' (JR bundle, page 6). The subsequent elevation of NLC's view, as expressed in the 29 June 2017 letter, into a fatal objection to the Claimant's scheme overlooks the fact that *neither* scheme under consideration before the GLLEP—neither the Claimant's southern junction stadium proposal nor NLC's northern junction business park proposal (as the Claimant now knows it to have been)—was yet a fully worked-up plan with planning permission already granted. Indeed, one still knows almost nothing about the northern junction business park: nor, one therefore assumes, did the GLLEP.
16. The GLLEP offers, moreover, no reason to think that NLC's provisional view about the stadium proposal, in its then proposed location, was the last word on the subject. Given NLC's expressed support for the *principle* of the new stadium, there is no reason to think that, had the GLLEP put this objection to the Claimant at the time (rather than saving it for its response when threatened with a claim), their concerns about its exact location (about which the Lincolnshire Lakes Action Plan is not specific) could not have been met. Indeed, the Claimant was in active correspondence with NLC about these points but the exchanges ran dry before the GLLEP's decision in October 2017. (NLC are of course in a somewhat compromised position in that they resist this claim, are the current recipient of the funding for which the Claimant applied, and are also the relevant planning authority whose views are said to show the Claimant's proposal to be untenable.)

(c) The claim is academic?

17. It is true that, as the GLLEP points out (*ib.* at para 68), the Claimant has announced an intention now to pursue the redevelopment of its existing stadium site at Glanford Park rather than building the new stadium in connection with which the £1.9m was applied for but refused. But it is respectfully submitted that this is not a reason to bar the claim. The GLLEP has put the Claimant, which is a commercial enterprise, into this position by that very refusal. On the hypothesis that this decision was arguably unlawful, the GLLEP can

hardly use the consequences of its own wrong-doing as a reason for shielding the decision from the Court's scrutiny. If the Claimant is right that the decision was unlawful, it ought to be quashed and ordered to be retaken even if (which may or may not be the case at the relevant time) the Claimant can no longer make the same bid as it made in May 2017. In the meantime the Claimant must, of course, proceed to consider other options. The media reports cited by Ms Carver state, correctly, that '*plans to develop Glanford Park are being looked into*'. That is correct. But not all plans have been finalised and the work has not commenced.

(d) Delay

18. The GLLEP asks the Court to refuse permission on the ground of delay (Grounds, para 69). It is respectfully submitted that this is not a good point. First, it comes ill from the GLLEP, which took from May to October 2017 to reject the Claimant's application (even though this decision is now said to have been so straightforwardly correct that no trial of the claim is called for). Secondly, no attempt is made to address the Claimant's detailed reasons for the time taken (see Claimant's Grounds at paras 38-39; some of the period, it will also be noted, fell over the Christmas holidays). Thirdly, no prejudice is identified as flowing from the Claimant's having taken the whole of the three-month period specified as the maximum under the rules.

(e) A disguised merits challenge?

19. This is not a disguised merits challenge. The Claimant naturally accepts that the Court is not concerned with the merits. It is, however, concerned with '*the duty cast by the common law upon a public authority to act fairly*' (as it was put by Lord Wilson JSC in *R (Moseley) v Haringey LBC* [2014] UKSC 56, [2014] 1 WLR 3947 at [23]). And it is concerned with the duty to act reasonably. These duties were infringed, it is submitted, not by the fact that the Claimant did not get the grant but, as explained in detail at paras 57-74 of the Claimant's Grounds, by the way in which the GLLEP took the decision to prefer NLC's application over the Claimant's. The Claimant's complaints are both as to the procedure the GLLEP

adopted and as to the matters it did and did not take into account. It is respectfully suggested that they are all properly arguable.

20. The GLLEP relies (at para 51) on *R (Khatun) v Newham LBC* [2005] QB 37 for the proposition that deciding what was material was a matter for the GLLEP, subject only to a duty not to act with *Wednesbury* unreasonableness. If that is correct, the Claimant submits that the GLLEP was guilty of such unreasonableness. No reasonable funding authority would disregard, as it is submitted that the GLLEP did disregard, the many powerful factors in favour of the Claimant's proposal (see in particular paras 63-66 of the Claimant's Grounds).
21. But the Claimant respectfully submits that the question of what was material was not at large before the GLLEP in this way. The GLLEP was not exercising an unfettered discretion. As it itself recognises, its role is '*to support and unlock economic sustainable growth within the Greater Lincolnshire area in accordance with our Strategic Economic Plan [...] [using] funding from Central Government under the Greater Lincolnshire Growth Deal to enable it to fulfil this objective*'; and the £21.1m fund from which the £1.9m falls to be drawn has been provided '*on the basis that "By 2021, this deal will create at least 2,000 jobs and allow 2,000 homes to be built"*' (statement of Ms Carver at para 2).
22. Just as, in the case of a discretionary power conferred by statute, '*what factors a decision-maker is bound to consider in making the decision is determined by the construction of the statute conferring the discretion*' (*R (National Association of Health Stores) v Secretary of State for Health* [2005] EWCA Civ 154 at [81] per Bennett J), so here the GLLEP, deciding how to spend someone else's money, was bound to consider the factors made material by the basis on which the money was provided. It is submitted that the factors referred to by the Claimant, but not dealt with by the GLLEP, were all material ones.

(f) Senior Courts Act, section 31(3A), (3D)

23. The GLLEP having raised the question of whether the '*outcome*' for the Claimant would have been substantially different if the conduct complained of had not occurred, the Court must consider this question and must refuse permission if it appears to be '*highly likely that*

the outcome for the [Claimant] would not have been substantially different': Senior Courts Act 1981, section 31(3C), (3D).

24. It is submitted, however, that this is not such a case. The GLLEP's contention is based essentially on the supposedly fatal flaws in the Claimant's bid for the £1.9m, discussed at paras 5-16 above. For the reasons given in answer to those points, it is submitted that they are not fatal. While it is of course *possible* that the GLLEP, acting lawfully, would still have preferred NLC's proposal to the Claimant's, it is not '*highly likely*'. (The Court in any event '*should be very slow to decide what a decision-maker would have done if she had not erred in law*' because '*[i]t is the proper constitutional role of a judge to supervise the exercise of administrative discretion, not to second-guess how a judge might have exercised it herself had she had been called upon to do so*': *R (Abid) v Secretary of State for the Home Department* [2017] EWHC 1962 (Admin) at [87].)
25. In any event, it is not obvious that the '*outcome*', to which section 31(3C) and (3D) refers, means the fact that the Claimant did not get the £1.9m. Proper weight must be given, in construing this provision, to the inherent value the common law places on fairness and rationality in the exercise of public powers. It is at least arguable that, in this context, the relevant '*outcome*' is the delivery of a rational decision in a fair way.

D. NLC'S GROUNDS

26. NLC's Grounds to a very large extent duplicate those of the GLLEP. It is not therefore proposed to address them here except in one respect, namely the costs position in the event that the Court were, contrary to the above, to refuse permission to proceed.
27. At para 55 of their Grounds, NLC properly remind the Court that only one set of costs is ordinarily payable by an unsuccessful claimant. But they then refer to the planning context, in which a developer may recover costs, in addition to the Secretary of State, if '*there was likely to be an issue on which he was entitled to be heard, that is to say an issue not covered by counsel for the Secretary of State, or unless he has an interest which requires separate representation*' (*Bolton MBV v Secretary of State* [1995] 1 W.L.R. 1176 at 1178 per Lord Lloyd). This is said to be an analogous case, and NLC seek their costs.

28. It is respectfully submitted that it is not an analogous case. Public authorities involved in judicial review cases are not in the same position as private persons. As Lord Donaldson put it in *R v Lancashire County Council, ex p Huddleston* [1986] 2 All E.R. 941 (speaking in the context of disclosure), public authorities and the courts are involved in a '*partnership based on a common aim, namely the maintenance of the highest standards of public administration*'. When sued for judicial review, they should '*explain fully what they have done and why they have done it, but are not partisan in their own defence*'.

29. In the present case, the only party against whom a complaint of wrongdoing has been made is the GLLEP. It has put in a full defence. It is not appropriate for NLC to have done the same, at any rate not at the Claimant's expense. They could have simply awaited the Court's determination of the Claimant's challenge, where necessary assisting the GLLEP, as a fellow public authority, by providing it with such information as was useful for the purpose of resolving the issue. It is submitted that the Claimant ought in no circumstances to have to bear the costs of two public authorities' performance of essentially the same task.

E. CONCLUSION

30. The Court is respectfully invited to grant permission to proceed.

THOMAS ROE Q.C.
ROWAN PENNINGTON-BENTON

5 April 2018