

THE INFRASTRUCTURE PLANNING (EXAMINATIONS PROCEDURE) RULES 2010

FOSSE GREEN ENERGY DEVELOPMENT CONSENT ORDER

PINS REFERENCE EN010154

**NATIONAL HIGHWAYS' DEADLINE 5A
SUBMISSION**

This is a written submission made on behalf of National Highways in response to the ExA's proposed changes to the dDCO (PD-022), the Examining Authority's Written Questions 3 (PD-021) and the submissions made a deadline 5.

1. ExA's proposed schedule of changes to the dDCO

1.1 National Highways have extracted from the ExA's proposed changes to the dDCO (PD-022) those articles or requirements that are relevant to National Highways and added its comments in the fourth column of the table below

<u>Article/ Schedule</u>	<u>ExA's proposed Changes</u>	<u>ExA's reasoning and comments</u>	<u>National Highways comments</u>
<p>Requirement 14 (Construction Traffic Management Plan (CTMP))</p>	<p>Amend Requirement 14 to read:</p> <p>“(1) No part of the authorised development is to be commenced until a construction traffic management plan for that part has been submitted to and approved.</p> <p>(a) Where the part of the authorised development would involve construction works affecting the local highway network, by the any construction traffic management plan shall be submitted to and approved by the relevant planning authority in consultation with National Highways.</p> <p>(b) Where the part of the authorised development would involve construction works affecting the strategic highway network, any construction traffic management plan shall be submitted to and approved by National Highways in consultation with the relevant planning authority.</p> <p>(2) The construction traffic management plan to be submitted under sub-paragraph (1) must be substantially in accordance with the framework construction traffic management plan. (3) The construction of any part of the authorised development must be carried out implemented in accordance with the approved construction traffic management plan for that part.”</p> <p>Additionally, definitions for local highway network strategic road network will need to be added to paragraph 1 of Schedule 2 and National Highways will need to be added to Schedule 15 as necessary.</p>	<p>While the ExA notes the applicant's view that National Highways should not be an approving authority for the CTMP, it considers there would be a potential for the deeming provisions to be triggered should Lincolnshire County Council fail to discharge any request for the approval under Requirement 14 within 10 weeks. A deemed approval could result in circumstances that would be prejudicial to National Highway's operation of the strategic highway network affected by the proposed development. In this regard the ExA is mindful that National Highways has been included as a discharging authority for the purposes of discharging part of Requirement 6 (CTMP) under the terms of the made DCO for the Viking CCS Carbon Dioxide Pipeline Order 2025.</p>	<p>National Highways notes and supports the Examining Authority's proposed amendments to Requirement 14.</p> <p>However, as currently drafted, the wording appears to suggest that two Construction Traffic Management Plans (CTMPs) would be prepared. National Highways' understanding is that a single CTMP will be produced.</p> <p>That CTMP should be subject to approval by both the Local Planning Authority and National Highways, with National Highways' approval limited to matters relating to impacts on the strategic road network (SRN). National Highways does not seek to be consulted on, or to approve, matters relating solely to the local highway network. Responsibility for assessing and commenting on such impacts should rest with the relevant local highway authority.</p> <p>National Highways therefore proposes the following amendments to clarify this position:</p> <p>“(1) No part of the authorised development is to be commenced until a construction traffic management plan for that part has been submitted to and approved by the local planning authority in consultation with the local highway authority.</p> <p>(a) Where the part of the authorised development would involve construction works affecting the local highway network, by the any construction traffic management plan shall be submitted to and approved by the relevant planning authority in consultation with National Highways.</p>

			<p>(b) Where the part of the authorised development would involve construction works affecting the strategic highway network, any construction traffic management plan shall also be submitted to and approved by National Highways in relation to effects on the strategic highway network only in consultation with the relevant planning authority.</p> <p>In terms of the definition of the strategic road network, National Highways proposes the same definition as within its protective provisions for consistency, as follows:</p> <p>“strategic road network” means any part of the road network including trunk roads, special roads or streets for which National Highways is the highway authority including drainage infrastructure, street furniture, verges and vegetation and all other land, apparatus and rights located in, on, over or under the highway;</p>
Part 5 (Protection of National Highways)	<p>1) Delete either:</p> <ul style="list-style-type: none"> • paragraph 37(3) “References to any standards, manuals, contracts, Regulations and Directives including to specific standards forming part of the DMRB are, for the purposes of this Part of this Schedule, to be construed as a reference to the same as amended, substituted or replaced, and with such modifications as are required in those circumstances.”; or • paragraph 40 “References to any standards, manuals, contracts, regulations and directives including to specific standards forming part of the DMRB are, for the purposes of this Part of this Schedule, to be construed as a reference to the same as amended, substituted or replaced, and with such modifications as are required in those circumstances.” 	<p>1) Paragraphs 37(3) and 40 unnecessarily duplicate each other and the duplicated text only needs to be quoted once. Deleting paragraph 37(3) rather than paragraph 40 would avoid the need to renumber all of the subsequent paragraphs within Schedule 14.</p>	<p>1) Duplication is noted. National Highways agree deletion of paragraph 37(3) preferable to avoid re-numbering</p>

	<p>2) Paragraph 42(1)(c)(v) "...Designing for walking, cycling and horse riding; and"</p> <p>3) In paragraph 42(1)(f) "CV" needs to be defined (in paragraph 37 (Interpretation) or the long form quoted as this abbreviation is used only once.</p> <p>4) In paragraph 42(2) reverse the order for the cross referencing to articles 12 and 13.</p> <p>5) At the end of paragraph 42(2) separate item (r) from the remainder of the explanatory text to read: "... (r) over any part of the strategic road network or land in which National Highways has an interest without the consent of National Highways, and National Highways may in connection with any such exercise require the undertaker to provide details of any proposed road space bookings and/or submit a scheme of traffic management for National Highways' approval."</p> <p>6) Amend paragraph 43(6) to read: "If any part of the specified works is constructed— (a) other than in accordance with the requirements of this Part of this Schedule; or (b) in a way that causes damage to the highway, highway structure or asset or any other land of National Highways (e) National Highways may by notice in writing require the undertaker, at the undertaker's own expense, to comply promptly with the requirements of this Part of this Schedule or remedy any damage notified to the undertaker under this Part of this Schedule, to the reasonable satisfaction of National Highways."</p> <p>7) Amend paragraph 45(4) to read:</p>	<p>2) Unnecessary text that can be deleted.</p> <p>3) In the interests of precision.</p> <p>4) In the interests of precision.</p> <p>5) In the interests of precision, to make it clear which articles could not be exercised without National Highways' prior consent.</p> <p>6) The item header "(c)" to be deleted in the interest of precision, making clear what circumstances would need to arise prior to National Highways being able to issue a compliance notice.</p> <p>7) The item header "(e)" to be deleted in the interests of precision, making it clear what circumstances would need to arise prior to</p>	<p>2) Deletion of "and" agreed</p> <p>3) NH are agreeable to deletion of "CV" with replacement of "Curriculum Vitae"</p> <p>4) No comments</p> <p>5) "r" numbering should be deleted and the clause should be laid out as follows <p>(p) article 30 (<i>temporary use of land for maintaining the authorised development</i>); or (q) article 39 (<i>felling or lopping of trees and removal of hedgerows</i>) of this Order, over any part of the strategic road network or land in which National Highways has an interest in without the consent of National Highways (, and National Highways may in connection with any such exercise require the undertaker to provide details of any proposed road space bookings and/or submit a scheme of traffic management for National Highways' approval.</p> </p> <p>6) National Highways agree "c" numbering should be deleted and the provision should be laid out as follows: <p>(6) If any part of the specified works is constructed- (a) other than in accordance with the requirements of this Part of this Schedule; or (b) in a way that causes damage to the highway, highway structure or asset or any other land of National Highways, National Highways may by notice in writing require the undertaker, at the undertaker's own expense, to comply promptly with the requirements of this Part of this Schedule or remedy any damage notified to the undertaker under this Part of this Schedule, to the reasonable satisfaction of National Highways.</p> </p> <p>7) National Highways agree "e" should be deleted and the provision should be laid out as follows:</p>
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	<p>“When – (c) ...; and (d) the undertaker has paid the commuted sum to National Highways,</p> <p>(e) National Highways must issue the provisional certificate.”</p> <p>8) Amend paragraph 49(4) to read:</p> <p>“When National Highways is satisfied that: ... (b) the NH National Highways costs have been paid to National Highways in full</p> <p>(e) National Highways must issue the final certificate after which the bond sum ... with the specified works.”</p> <p>9) Amend paragraph 54(3) to read:</p> <p>“The undertaker must comply with any requirements that National Highways may notify to the undertaker, such requirements to be notified to the undertaker not less than 7 days’ in advance of the planned commencement date of the maintenance works of the specified works.”</p> <p>10) Amend paragraph 55(3) to read:</p> <p>“ ... (c) seek to impose or extinguish any restrictive covenants over;</p> <p>(d) any of the strategic road network, or extinguish any existing rights ...”</p>	<p>National Highways issuing of a provisional certificate.</p> <p>8) The item header (c) to be deleted in the interests of precision, making it clear what circumstances would need to arise prior to National Highways issuing of a final certificate.</p> <p>9) In the interests of precision.</p> <p>10) The item header (d) deleted in the interests of precision, making it clear that land rights powers relating to the strategic road network could not be exercised until National Highways has given its written consent.</p>	<p>(4) When—</p> <p>(a) a stage 3 road safety audit for the specified works has been carried out and all recommendations raised including remedial works have (subject to any exceptions agreed) been approved by National Highways;</p> <p>(b) the specified works incorporating the approved remedial works under sub-paragraph (4)(a) and any further works notified to the undertaker pursuant to sub-paragraph 10(3)(b) have been completed to the reasonable satisfaction of National Highways;</p> <p>(c) the as built information has been provided to National Highways; and</p> <p>(d) the undertaker has paid the commuted sum to National Highways,</p> <p>National Highways must issue the provisional certificate.</p> <p>8) “NH Costs” has been defined in paragraph 44(1). It is National Highways view drafting at paragraph 49(4)(b) should remain as drafted.</p> <p>National Highways agrees to the deletion of item header “c”</p> <p>9) We have discussed this amendment with the Applicant and agreed paragraph 54(3) should read as follows:</p> <p><i>“The undertaker must comply with any requirements that National Highways may notify to the undertaker, such requirements to be notified to the undertaker not less than 7 days’ in advance of the planned commencement date of any the maintenance works to be carried out pursuant to sub-paragraph (1)”</i></p> <p>10) National Highways agree “d” numbering should be deleted and the provision should be laid out as follows:</p> <p>(3) The undertaker must not under the powers of this Order:</p> <p>(a) acquire or use land forming part of;</p> <p>(b) acquire new or existing rights over; or</p> <p>(c) seek to impose or extinguish any restrictive covenants over;</p> <p>any of the strategic road network, or extinguish any existing rights of National Highways in respect of any third party property, except with the consent of National Highways by written request to legalserviceteam@nationalhighways.co.uk.</p>
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2. Response to DCO 3.10 in ExQ3 (PD-021)

2.1 National Highways have extracted question number DCO 3.10 from the Examining Authority's Written Questions 3 (ExQ3) below and added its response in bold.

Part 5 of Schedule 14 (Protective provisions in favour of National Highways)

With respect to:

a) Paragraph 37(1) (Interpretation), is there a need to:

i. include the abbreviations "AMOR" and "NOMS" because they are not repeated within any other paragraph in Part 5?

National Highways' response: These abbreviations are widely recognised industry terms and are used not merely as abbreviations, but as alternative references to the relevant documents and systems. However, if the Examining Authority considers it appropriate to remove such references, National Highways would not object to their deletion.

ii include a definition for "road space" within paragraph 37 in the interests of precision, given a definition for "road space booking" has been included and that term has been used on multiple occasions within Part 5 whilst the extent for the affected road space has not been defined?

National Highways response: National Highways proposed the inclusion of the following definition for road space. "road space" refers to space on the strategic road network made available to the undertaker to undertake activities on, in, under, or over the strategic road network. Activities may include, but are not limited to, excavations, installation of utility apparatus, construction or maintenance works, and the implementation of temporary traffic management measures

b) Paragraph 42(f) (Prior approvals and security) "CV" needs to be defined or replaced with its long form if only used once within Part 5.

National Highways' response: National Highways are agreeable to replacing the reference at paragraph 42(f) to "CV" with "Curriculum Vitae"

c) Paragraph 46 (Opening) in Part 5 of Schedule 14, clarify the purpose of this paragraph, given that while the proposed development might cause some interference with the operation of the existing strategic road network, it would not involve the opening of new sections of the strategic road network. If it is considered that paragraph 46 would be necessary, a clearer explanation of what is meant by the opening of the strategic road network should be provided within paragraphs 37 or 47.

National Highways' response: This provision will be relevant where the Strategic road Network is closed to traffic to facilitate works. Following such a closure, National Highways requires 56 days notice before it is open to traffic again. Whilst we do not consider additional wording is required, if the ExA consider it helpful, we proposed the wording in red below is added to paragraph 46 to make the drafting clearer:

If the closure of the strategic road network is required to deliver the specified works, the undertaker must notify National Highways not less than 56 days in advance of the intended date of opening to the public of the strategic road network and the undertaker must notify National Highways of the actual date the strategic road network will be opened to the public within 14 days of that date.

d) Paragraph 50(b) (Security), clarify whether meeting obligations to make payments should be "... under paragraph 41 ..." or under a different paragraph within Part 5 because paragraph 41 (Works outside the Order limits) does not appear to relate to meeting payment obligations.

National Highways' response: The reference at paragraph 50(6) should be to paragraph 44. National Highways requests the Applicant updates this in their next iteration of the dDCO

e) Paragraph 51(1) (Commuted sums) "FS" needs to be defined or replaced with its long form if only used once within Part 5.

National Highways' response: "FS" stands for Financial Services. National Highways are agreeable to replacing "FS" with the long form within Part 5

f) Paragraph 55(1), (2) and (4) (Land), would there be any land within the extent of the strategic road network boundary affected by the proposed development that is currently not owned by National Highways that would be capable of being transferred to National Highways from the undertaker under the provisions of paragraph 55? If not then paragraphs 55(1), 55(2) and 55(4) should be deleted.

National Highways' response: At this stage, National Highways is not aware of any land that is proposed or required to be transferred to it. However, Article 10(2) grants the Applicant the power to alter any street within the Order limits, which includes the National Highways network. If works are carried out on the strategic road network pursuant to these powers, it is possible that land may be required as a consequence of those works. For example, if the A46 were to be widened, National Highways would require the freehold of the land beneath the widened section of the carriageway.

In light of this, National Highways requests that these provisions are retained. The design of the authorised development remains at an early stage, and it is therefore it is not clear whether there will be a need for National Highways to rely on these provisions within its protective provisions to secure any required transfer of freehold land. This drafting has been agreed by the Applicant.

3. Comments on Submissions at deadline 5

3.1 National Highways has extracted from the Applicant's response to deadline 4 submissions (REP5-025) those responses which are addressed to National Highways that remain outstanding

<u>Comments from National Highways deadline 4 submissions</u>	<u>Applicant's Response to National Highways</u>	<u>National Highways response</u>
<p>National Highways maintains its position on requirement 14, in that it seeks an approval role to the Construction Traffic Management Plan (CTMP) as opposed to being a consultee. NH have been granted an approval role to the CTMP on both The Viking CCS Carbon Dioxide Pipeline Order 2025 and The Dogger Bank Teesside A and B Offshore Wind Farm Order 2015. Therefore, there are internal processes and procedures in place to deal with the discharge of such requirements. As set out within previous deadline responses, NH has concerns about deemed consent provisions applying to the LPA who may fail to respond. As a consultee NH have no control over when the LPA responds as discharge authority. There are a number of safety implications to road users of the SRN if NH are unable to comment on the on CTMP. National Highways has a statutory obligation to behave reasonably, which would apply when responding to a discharge application. In addition, National Highways is not opposed to the deemed consent provisions at paragraph 2 of schedule 15 of the dDCO (REP3A004) also applying to National Highways. This should address the Applicant's concern about any delay.</p>	<p>The Applicant notes National Highways' (NH) comments. However, as previously stated, the Applicant considers that having two approving bodies for one requirement is impractical. The Applicant cannot be in a position where NH approve the CTMP, and the LPA do not, or vice versa. The deemed consent provisions would not address a situation where disagreement arose between the two approving bodies.</p> <p>The Applicant acknowledges that NH has been granted an approval role to the CTMP for two previous DCOs and also notes the ExA's comments on this point in its Schedule of Changes to draft Development Consent Order [PD-022]. However, each application needs to be treated on its own merits, and caution should be taken in terms of applying precedent where the rationale for inclusion of a requirement is not clearly explained in the decision making. It has not been explained why that decision can and should be applied in this case, or whether it was simply accepted by the promoter and has yet to be tested in practice. This is particularly pertinent given the two precedents cited by NH relate to different types of DCO, namely pipelines and offshore wind. The nature of these technologies means that these schemes have long linear elements so may have more pronounced effects on the strategic road network than the Proposed Development.</p>	<p>National Highways maintain its position that it should have an approval role to the Construction traffic Management Plan (CTMP). It is entirely reasonable for different discharging bodies to reach different conclusions where they are considering distinct aspects of the CTMP from different perspectives. For example, measures which are acceptable at a local level may nevertheless be inadequate in respect of the Strategic Road Network (SRN).</p> <p>In such circumstances, a refusal by one discharging body is not unusual but reflects the normal operation of the discharge process. The applicant would then be required to address the reasons for refusal and resubmit the CTMP accordingly.</p> <p>We note the Applicant's submission that each application should be considered on its own merits and that the justification for including National Highways as a discharging authority must be clearly articulated. National Highways has set out its reasoning for requiring an approval role in respect of the CTMP in previous deadline submissions; however, it is summarised here for completeness. National Highways seeks an approval function in order to avoid the consequences of the deemed approval provisions, whereby an application to discharge the CTMP requirement may be treated as approved if the Local Planning Authority (LPA) fails to determine it within the prescribed ten-week period. As National Highways has no control over the LPA's determination timeframe, there is a material risk that safety-critical matters could be discharged by default if National Highways are not afforded the opportunity to be consulted and comment within the time frame.</p> <p>National Highways has a statutory responsibility to safeguard the SRN and must therefore be afforded the opportunity to consider matters of fundamental public safety that may arise in the CTMP. This is of particular relevance for these works having regard to the construction programme for the A46 Newark Bypass scheme being delivered in the area, which remains to be finalised, as well as the requirements for temporary directional signage on the</p>

		<p>SRN throughout construction and the management of abnormal load movements.</p> <p>It is National Highways view the nature of the technologies proposed does not provide a sound basis for distinguishing this application from the approach adopted in other Development Consent Orders. The relevant consideration in this context is the impact of construction traffic and associated activities on the SRN rather than the underlying technology of the project.</p> <p>In each case, construction phases can give rise to comparable risks, including abnormal load movements, traffic management requirements, and safety-critical interactions with the SRN. Those risks arise irrespective of whether the development relates to solar, wind, or pipeline infrastructure, and therefore justify a consistent approach to approval of the CTMP.</p>
<p>National Highways note the Applicant has updated the dDCO (REP3A-004) to include National Highways as a consultee to requirement 8 Landscape and ecological management plan (LEMP) limited to the mitigation works being within 15m of the A46. National Highways seek to understand from the Applicant how the distance of '15m' has been established as appropriate to NH interests. An explanation of the proposed '15m' is required from the Applicant to demonstrate there are no LEMP mitigation works beyond that distance with the potential to affect NH interests. A clear drawing illustrating how the '15 m' measurement from the A46 is taken would greatly assist our understanding. The diagram should indicate where the measurement begins and where it ends. Providing this will help ensure clarity and avoid any misunderstandings in the future when we are consulted on LEMP matters.</p>	<p>A distance of 15m from the edge of the A46 carriageway was initially proposed in order to cover the area of the existing hedgerow which adjoins the A46, therefore meaning that National Highways would be a consultee regarding any works concerning these hedgerows. However, in preparing the requested figure and further interrogating the proposed 15m consultation zone, the Applicant identified a number of pinch points due to the alignment of the highway edge where some existing hedgerow extends beyond the 15m buffer zone. As such, an alternative approach is proposed whereby a plan has been prepared (which forms Appendix B, Figure 7.15-2: National Highways Consultation Zone of the Framework LEMP, which has been submitted to the Examination at Deadline 5) which defines a specific consultation zone as opposed to committing to a set 15m distance. This revised consultation zone encompasses all the front and rear (with appropriate offsets) of the hedgerows adjoining the A46, and as such ensures that NH would be consulted on the relevant LEMP mitigation/management works which have the potential to affect NH interests (i.e. the SRN). The wording of Requirement 8 of Schedule 2 to the draft DCO [REP3A-004] will be updated accordingly and reflected in the revised iteration to be submitted at Deadline 5A.</p>	<p>National Highways has reviewed the consultation zone plan (Drawing No. EN010154/EXAM/7.15-2 Rev 1) at Appendix B: Figure 7.15-2 of the Framework Landscape and Ecological Management Plan (REP5-017). The consultation zone is now clearly presented on a plan that can be readily referenced. However, additional annotations and mark-up would be helpful to clarify its relationship to the position of the highway boundary and would assist in any future review of the requirement for the LEMP.</p> <p>The originally proposed 15m consultation zone has been revised. However, it remains unclear to National Highways how and why a 5m offset from the highway boundary has now been determined. Further explanation is therefore required to set out the methodology and rationale used to establish this distance.</p> <p>In addition, clarification is requested regarding the basis for the proposed consultation zone adjacent to Plots 23 and 15 (Drawing No. EN010154/EXAM/7.15-2 Rev 1). It is currently unclear why the consultation zone is set back so significantly from the solar sites and does not include the existing hedgerows.</p>