

THE INFRASTRUCTURE PLANNING (EXAMINATIONS PROCEDURE) RULES 2010

FOSSE GREEN ENERGY DEVELOPMENT CONSENT ORDER

PINS REFERENCE EN010154

**NATIONAL HIGHWAYS' DEADLINE 6
SUBMISSION**

This is a written submission made on behalf of National Highways in response to submissions made by the Applicant at Deadline 5A.

1. Applicant's Response to Examining Authority's Proposed Schedule of Changes to the Draft Development Consent Order

1.1 National Highways have extracted from the Applicant's Response to Examining Authority's Proposed Schedule of Changes to the Draft Development Consent Order (REP5A-036) responses 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>Applicant's response</u>	<u>National Highways comments</u>
Requirement 14 (Construction Traffic Management Plan (CTMP))	<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>The Applicant has not made any amendments to the draft DCO. With regards to points (2) and (3) of the ExA's comments, the Applicant does not consider these amendments necessary. The current wording in paragraph (2) aligns with wording in the other requirements. As noted above, the wording in paragraph (3) is correct because, where physical works are referred to in the requirements, the wording “carried out” is used – the word “implemented” is used in relation to measures within a management plan.</p> <p>With regards to point (1), the Applicant maintains its position that National Highways should not be an approving body for the CTMP, for the reasons set out in the Applicant's Response to Deadline 4 Submissions [REP5-025]. The Applicant cannot envisage a mechanism which would provide for two approving bodies for a single management plan and could be implemented in practice. It is not possible to distinguish between impacts on the strategic highway network and the local highway network as the two are intrinsically linked. It is for this reason that the Applicant considers the wording proposed by the ExA is not appropriate. The extent of the strategic highway network within the Order Limits is limited and as such, the consultee role is appropriate for National Highways.</p> <p>The Applicant has also amended the drafting of Schedule 15 such that NH, as a consultee, will receive the plan directly from the undertaker, at the same time as the relevant planning authority and will have 15 days within which to request further information or provide comments. NH will also be able directly provide comments to the undertaker or notify it directly of any further information required.</p> <p>Whilst the Applicant acknowledges the ExA's point that NH has been included as a discharging authority in The Viking CCS Carbon Dioxide Pipeline Order 2025, each application needs to be</p>	<p>National Highways maintains its position that it should have an approval role in relation to the Construction Traffic Management Plan (CTMP). The position set out in its Deadline 5A response (REP5A-055) is unchanged. In that response, National Highways has already addressed the Applicant's comments regarding the need to consider each application on its own merits. In light of this, those points are not repeated here; instead, National Highways continues to rely on and adopts the reasoning set out in REP5A-055.</p> <p>In terms of distinguishment between impacts on the strategic road network and local road network, National Highways did propose some alternative wording in its Deadline 5A response (REP5A-055) to address this concern. It is not only the extent of the strategic road network within the Order limits that National Highways must consider when assessing construction traffic impacts, but also the wider strategic road network for which it is the highway authority, including routes beyond the Order limits where impacts may arise. In this case, there is also a need to consider the interface with the delivery of the A46 Newark Bypass Development Consent Order scheme, which adds a further layer of complexity to the assessment.</p> <p>National Highways notes the Applicant's comments and the proposed amendments to paragraphs 2(5) and 3(7) of Schedule 15 of the draft DCO (REP5A-006). However, National Highways has concerns with the amended drafting.</p> <p>Whilst the amendments introduce an obligation on the Applicant to provide National Highways with a copy of the discharge application, this does not address National Highways' concerns regarding the operation of the deemed consent provisions. Where the Local Planning Authority fails to determine the application within the prescribed ten-week period, the requirement may be deemed discharged by default. In such circumstances,</p>

		<p>treated on its own merits. The Applicant notes that 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. 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. Given the aforementioned precedent and The Dogger Bank Teesside A and B Offshore Wind Farm Order 2015 also cited by NH relate to different types of DCO, namely pipelines and offshore wind, it is vital that the precedent is not applied without careful consideration. 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 has no control over the Local Planning Authority's determination timeframe, yet remains reliant on that process in order to provide its comments. This creates a material risk that matters affecting the safety and operation of the strategic road network could be approved without National Highways having had an effective opportunity to consider and respond to the application.</p> <p>Further, paragraph 3(7)(b) introduces deemed acceptance where National Highways does not notify the Applicant within 15 working days that it has sufficient information to consider the application. National Highways considers that 15 working days is insufficient for this purpose. By comparison, paragraph 3(2) affords the Local Planning Authority 20 working days to request further information. National Highways therefore requests that an equivalent 20 working day period is applied to National Highways in paragraphs 3(7)(a) and (b).</p> <p>Paragraphs 3(7)(d) and (e) also provide that National Highways must then submit its comments to the Local Planning Authority within 15 working days of receipt of the application or further information (if requested), failing which it is deemed to have no comments. As above, National Highways considers that 15 working days is insufficient. There are clear safety implications if National Highways is not afforded adequate time to review and approve the CTMP and to assess the potential impacts on users of the Strategic Road Network. This is particularly important in the context of the construction programme for the A46 Newark Bypass scheme, which has yet to be finalised. Ensuring that appropriate oversight is exercised in respect of construction-related traffic impacts is a fundamental matter of public safety.</p> <p>Accordingly, National Highways requires a longer period within which to consider discharge applications. Where National Highways is given an approval role to the CTMP, it requests that the 10-week deemed consent period applicable to the Local Planning Authority is mirrored. Alternatively, if the Examining Authority is minded to retain National Highways in a consultee role only, National Highways requests that a period of no less than 8 weeks is provided to the CTMP and in the context of its consultee role on all other requirements.</p>
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2. Applicant's Response to Deadline 5 Submissions

2.1 National Highways has extracted from the Applicant's response to deadline 5 submissions (REP5A-038) those responses which are addressed to National Highways that remain outstanding and added its response to those submissions to the third column in the table below.

<u>Comments from National Highways deadline 5 submissions</u>	<u>Applicant's Response to National Highways</u>	<u>National Highways response</u>
<p>As set out in National Highways deadline 4 submission (REP4- 025), 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.</p>	<p>As set out in the Applicant's Response to Deadline 4 Submissions [REP5-025] (ref. p44), 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 LEMP mitigation/management works concerning these hedgerows. The Applicant considers this to be the only LEMP-related works which could have the potential to affect National Highways interests (i.e. the A46 which is part of the Strategic Road Network) and therefore considered this an appropriate 'consultation zone' for LEMP works within which National Highways would be consulted. However, in preparing the figure requested by National Highways illustrating this (ref. [REP4-025]), and further interrogating the proposed 15m consultation zone, the Applicant identified a number of pinch points due to the alignment of the A46 highway edge where some existing hedgerow extends beyond the 15m buffer zone. As such, an alternative approach has been proposed, whereby a plan has been prepared (which forms Appendix B, Figure 7.15-2: National Highways Consultation Zone of the Framework LEMP [REP5017]) 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 National Highways would be consulted on the relevant LEMP mitigation/management works being those which have the potential to affect NH interests. The wording of Requirement 8 of Schedule 2 to the Draft DCO, submitted at Deadline 5A, has been updated accordingly.</p> <p>It should be noted that the Applicant has shared the proposed consultation zone with National Highways, and National Highways have confirmed that they will respond at Deadline 5A</p>	<p>As set out in National Highways deadline 5A submission (REP5A-055), National Highways seeks, additional annotations and mark-up to 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) to clarify its relationship to the position of the highway boundary to assist in any future review of the requirement for the LEMP. Further explanation is therefore required to set out the methodology and rationale used to establish this distance. In addition, clarification was 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> <p>Since National Highways deadline 5A submission (REP5A-055), the Applicant has provided National Highways with an updated Figure 7.15-2: National Highways Consultation Zone which National Highways understand, the Applicant proposes to submit as part of their deadline 6 response. National Highways has reviewed the updated LEMP Consultation Zone Rev 3 drawing (Figure 7.15-2: National Highways Consultation Zone), together with the Applicant's response submitted at Deadline 5A.</p> <p>The Applicant is still proposing to only consult National Highways on landscaping works extending 5 metres beyond the rear of the existing hedgerow that adjoins the A46 trunk road. National Highways continues to require clarification as to why a 5-metre consultation area has been proposed, the design standards or guidance from which this distance has been derived, and why it is considered that only this 5-metre area would affect SRN interests.</p> <p>As stated throughout the Examination, the existing hedgerow cannot be relied upon as effective</p>

		<p>mitigation at this stage, as its long-term condition and effectiveness will not yet be fully known. Should the existing hedgerow prove inadequate, additional planting and associated mitigation measures may be required. This could include earthworks, additional landscape planting and species which can affect the A46 trunk road.</p> <p>National Highways therefore seeks to be consulted on all landscaping mitigation located between the solar site and the A46 trunk road, rather than being limited to the proposed 5-metre area. This will enable National Highways to review the detailed LEMP proposals and determine whether the proposed mitigation is sufficient to safeguard the safety of SRN users and protect the condition of the A46 as a critical national infrastructure asset.</p>
<p>As set out in National Highways' Deadline 4 submission (REP4-025), National Highways maintains its position that it should be an approving body, rather than a consultee, in respect of the Construction Traffic Management Plan (CTMP). This is a limited and proportionate request, directed at ensuring that requirements which engage the safety of the Strategic Road Network (SRN) cannot be inadvertently discharged through administrative oversight. National Highways does not accept the Applicant's suggestion that granting National Highways approval rights would introduce undue complexity or risk delay. National Highways has well-established processes for responding to applications within statutory timescales and is subject to a regulatory duty to act as a facilitator and enabler of development. These processes have been successfully applied under previously made orders where National Highways has been granted an approval role, including The Viking CCS Carbon Dioxide Pipeline Order 2025 and The Dogger Bank Teesside A and B Offshore Wind Farm Order 2015. Further, as confirmed in its Deadline 4 submission (REP4-025), National Highways is not opposed to being included within the deemed consent provisions at paragraph 2 of Schedule 15 of the draft Development Consent Order (REP3A004), should this be considered necessary to address the Applicant's concerns regarding potential delay.</p> <p>In the Applicant's response, concern is raised that the involvement of more than one discharging authority in respect of the CTMP may cause delay. National Highways notes that multiple discharging authorities have been provided for previously, and that Schedule 2, Part 2 of The Viking CCS Carbon Dioxide Pipeline Order 2025 contains</p>	<p>Whilst the Applicant acknowledges that NH has been granted an approval role to the CTMP for two previous DCOs and notes the ExA's comments on this point in its Schedule of Changes to the draft Development Consent Order [PD-022], each application needs to be treated on its own merits. Caution should be taken in applying precedent where the rationale for inclusion of a requirement is not clearly explained in the decision making. No explanation has been provided as to why that decision can and should be applied in this case, or whether the position was simply accepted by the promoter. The need for caution is particularly pertinent given the two precedents cited by NH relate to different types of DCO, namely pipelines and offshore wind and the nature of these technologies means that these schemes have long linear elements and so would likely have more pronounced effects on the strategic road network than the Proposed Development.</p> <p>Therefore, the Applicant maintains its position as previously set out including in the Applicant's Response to the Examining Authority's Second Written Questions [REP3-045] (ref. DCO.2.21), the Applicant's Response to Deadline 3 and 3A Submissions [REP4-018] and the Applicant's Response to Deadline 4 Submissions [REP5-025].</p>	<p>National Highways maintain its position that it should have an approval role to the Construction traffic Management Plan (CTMP). National Highways has already addressed the Applicant's comments regarding the need to consider each application on its own merits and the need to provide for an approval role on this DCO within its deadline 5A submission. National Highways maintains its position set out in its Deadline 5A response (REP5A-055).</p>

drafting which expressly addressed scenarios where more than one discharging authority was involved. Similar drafting could be adopted here if considered necessary		
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