

THE INFRASTRUCTURE PLANNING (EXAMINATIONS PROCEDURE) RULES 2010

FOSSE GREEN ENERGY DEVELOPMENT CONSENT ORDER

PINS REFERENCE EN010154

**NATIONAL HIGHWAYS' DEADLINE 7
SUBMISSION**

This is a written submission made on behalf of National Highways in response to submissions made by the Applicant at Deadline 6.

1. Applicant's Response to Deadline 5A Submissions

1.1 National Highways has extracted from the Applicant's response to deadline 5A submissions (REP6-030) 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 5A submissions</u>	<u>Applicant's Response to National Highways</u>	<u>National Highways response</u>
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). 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. 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. 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 SRN throughout construction and the management of abnormal load movements. 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. In each case, construction phases can give rise to comparable risks, including abnormal load movements, traffic management requirements,	In its response, NH has highlighted that, in the event there are two discharging bodies, there may well be disagreement between the bodies. Whilst the Applicant acknowledges NH's point that a refusal by one discharging body would require the resubmission of the CTMP, the concern remains that this would lead to delay. In revising the CTMP to address the points raised by one discharging body in its refusal, the CTMP may then be deemed unacceptable to the other discharging body leading to a further refusal. This could result in a "back and forth" of alternating refusals by the discharging bodies and would cause unnecessary delay. The Applicant considers that the amendments made to Schedule 15 of the draft DCO [REP5A-006] address NH's concerns surrounding deemed approval provisions. These amendments mean that, as a consultee, NH will receive the detailed CTMP directly from the undertaker at the same time as the relevant planning authority and will then have 15 working days within which to request further information or provide comments. The amended provisions allow NH as a consultee to directly provide comments to the undertaker or directly notify it of any further information required. Therefore, NH will be afforded the opportunity to comment on the detailed CTMP regardless of whether the relevant planning authority responds within the relevant timeframe. It is also considered unlikely that the relevant planning authority would not respond within the relevant timescale without first requesting an extension of time. With regards to "safety critical matters", the Framework CTMP [REF] adequately addresses all matters which relate to safety. Under Requirement 14 of Schedule 2 to the draft DCO [REP5A-006], the detailed CTMP must be substantially in accordance with the Framework CTMP [REF]. Therefore, matters addressed in the Framework CTMP will form the basis for the detailed CTMP and all matters considered critical for safety will be included accordingly. Notwithstanding this, the Applicant does not consider that there are any matters which could have safety critical implications specifically in relation to the SRN. As stated at paragraph 3.1.3 of the Framework CTMP [REF], it is expected that the A46 Newark Bypass will be completed in advance of the earliest anticipated start date for construction of the Proposed Development, being 2031. Therefore, it is unlikely that there will be any overlap. Measures regarding abnormal loads and temporary directional signage are set out in the Framework CTMP and, as above, will therefore be addressed in any detailed CTMP. During the construction phase there will be a single 46.6m length vehicle for the delivery of the transformer to the Principal Site, though this will be a single abnormal load movement as the vehicle would be disassembled prior to leaving the Site. There will also be several 24.6m length vehicles for the transport of cable drums to and from	The Applicant's concern regarding potential delay arising from the involvement of two discharging authorities is noted. However, it is not uncommon on Development Consent Order schemes for more than one body to be involved in the discharge of requirements where distinct statutory functions are engaged. In such cases, each authority considers matters within its own remit, and the existence of multiple discharging authorities does not, in itself, render the approval process unworkable. There is no inherent conflict between the respective roles of the authorities, particularly where their functions align. The suggestion that this arrangement could result in "alternating refusals" is speculative. In practice, discharging authorities, as public bodies, are required to act reasonably and proportionately, and to engage constructively with each other and with the undertaker. National Highways is subject to public law duties and would only refuse an application where necessary to safeguard the strategic road network (SRN). This provides a clear safeguard against unnecessary delay. The Applicant retains control over the preparation of the detailed Construction Traffic Management Plan (CTMP) and is able to engage proactively with relevant stakeholders prior to submission. This enables potential issues to be identified and addressed in advance, thereby mitigating the risk of delay. A mechanism to facilitate such engagement was included in Paragraph 24 of Part 2 of Schedule 2 to The Viking CCS Carbon Dioxide Pipeline Order 2025, which allows the undertaker to seek comments from multiple discharging authorities prior to submission in order to prepare a coordinated application.. For ease of reference the wording is copied below: "Where an application is required to be made to more than one discharging authority for any single consent, agreement or approval under a requirement, the undertaker may submit a request for comments in respect of its proposed application to each discharging authority and, where it does so, each discharging authority must provide its comments in writing on the proposed application within a period of 20 days beginning with the day immediately following that on which the request is received by the authority, or such longer period as may be agreed in writing by the undertaker and the relevant authority or authorities, so as to enable the undertaker to prepare a consolidated application to each discharging authority in respect

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.	the Cable Corridor. The management of these vehicle movements is adequately addressed within the Framework CTMP [REP5A-024]. In developing the signage strategy as part of the detailed CTMP, as set out at paragraph 6.2.2 of the Framework CTMP [REP5A-024], engagement will be undertaken with NH to determine sign locations and sign face details for approval. This is adequately addressed in the Framework CTMP and will therefore be addressed in the detailed CTMP. The Applicant notes NH's view that the nature of the technology for the Proposed Development does not provide a basis for distinguishing from precedent, however NH has equally not provided a specific reason as to why those precedents should be applied in this case. This is particularly relevant given that there is limited precedent for NH having an approval role in relation to the CTMP. NH has not provided any examples of "safety critical matters", and the Applicant considers that, if matters have safety critical implications, they will have been adequately addressed in the Framework CTMP [REP5A-024].	of the consent, agreement or approval required by the requirement." In relation to the amendments proposed to Schedule 15 of the Order, National Highways has previously set out its concerns in its Deadline 6 submission (REP6-040). In summary, the amendments do not address the risks associated with the deemed consent provisions applicable where the local planning authority fails to determine a discharge application within the prescribed period. While National Highways may provide comments on the CTMP directly to the Applicant, there is no obligation on the Applicant to incorporate those comments in an amended CTMP so this offers no safeguard to National Highways. Under the current drafting, effective control rests with the local planning authority through its determination of the discharge application. Accordingly, a formal response to the application is necessary to ensure that National Highways' comments are properly considered and, where appropriate, secured. Further, paragraph 3(7) of Schedule 15 introduces deemed consent provisions in respect of National Highways' consultation responses, not only in relation to the CTMP but across all requirements for which it is a consultee. The time periods afforded are insufficient to allow for proper technical and operational consideration. As set out in deadline 6 submission (REP6-040), National Highways has proposed alternative timeframes where deemed consent applies which are considered more appropriate. It is noted that the detailed CTMP is required to be substantially in accordance with the Framework CTMP. Although the detailed CTMP is required to be substantially in accordance with the Framework CTMP, this does not remove the need for detailed scrutiny at the discharge stage. The assessment must take account of the circumstances prevailing at the time of submission, which may differ from those applicable when the Framework CTMP was prepared. This is particularly relevant given the current uncertainty surrounding the delivery programme for the A46 Newark Bypass. In response to the Applicant's position that the A46 Newark Bypass will be completed before the anticipated construction start date of the Proposed Development in 2031, at the time of writing the programme for the A46 scheme remains uncertain. Construction could commence at any point during Road Period 3 (2026–2031), creating a realistic prospect of overlap with the Proposed Development. This gives rise to potential conflicts in network occupancy and construction traffic routing. Effective coordination between the schemes will therefore be essential to minimise disruption and support the successful delivery of both nationally significant infrastructure projects. Contrary to the Applicant's assertion, the Proposed Development has the potential to give rise to safety-critical implications for the SRN. Construction traffic, particularly where it interacts with other
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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. 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. 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.	The National Highways Consultation Zone is defined by Figure 7.15-2 of the Framework Landscape and Ecological Management Plan, however, the Applicant has set out the rationale for the extent of the National Highways Consultation Zone below. Where the Order Limits are adjacent to or include the A46, the National Highways Consultation Zone extends from either the Order Limits or the edge of the A46 carriageway to 5m beyond the rear of any hedgerow and tree belt habitat that adjoins the A46. This Consultation Zone therefore encompasses the full extent of the habitat (front and rear) adjoining the SRN in order to ensure National Highways is consulted on the landscaping and ecological mitigation works which have the potential to affect NH interests. It is not considered that any landscaping and ecological mitigation works beyond the extent of this zone have the potential to affect NH's interests. In line with NH's comments regarding the extent of the National Highways Consultation Zone adjacent to Fields 23 and 15, the Applicant has updated Figure 7.15-2: National Highways Consultation Zone to reflect an area of extant hedgerow east of the Cathedral View Caravan Park that was not included in the previous revision. The updated Figure 7.15-2: National Highways Consultation Zone was shared with National Highways in advance of Deadline 6 for further comment and has been submitted to the Examination at Deadline 6. The Applicant will continue to discuss the figure with National Highways and if required/appropriate, will update the figure for Deadline 7.	Following further discussions with the Applicant and revisions to Figure 7.15-2: National Highways Consultation Zone (Revision 4), National Highways confirms that it is now content with the proposal and considers the revised consultation zone to be acceptable. We understand the Applicant will submit the updated Consultation zone at deadline 7. The revised consultation zone now encompasses all landscaping between the A46 and the solar generating areas. In addition, the buffer from the rear of any hedgerow, tree belt, or woodland habitat adjacent to the A46 has been increased from 5 m to 15 m. This aligns with the minimum woodland buffer recommended in standing advice issued by Natural England and the Forestry Commission.