



Sheringham Shoal and Dudgeon Offshore Wind Farm Extension Projects

The Applicant's comments on National Highways
Deadline 5 Submission

Revision A

Deadline 6

June 2023

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1 The Applicant's comments on National Highways Deadline 5 Submission

1. This document presents the Applicant's response to National Highway's Deadline 5 submissions [REP5-086] and [REP5-087]. The Applicant's comments on National Highway's responses to Third Written Questions are provided in **The Applicant's Comments on Responses to the Examining Authority's Third Written Questions** [document reference 20.2].

Table 1 Appendix 1 National Highways' responses to the Applicant's submissions at Deadline 4 (REP4-035)

ID	Applicant's Responses	NH Response	Applicant's Response
1. Introduction			
1.1	Noted. No response required.	-	
1.2	Noted. The Applicant would like to clarify that the cables will be installed using trenchless crossing techniques under the SRN. The Applicant would not be seeking to temporarily possess the carriageway but acknowledges that some ground monitoring equipment may need to be placed on apparatus within the carriageway which would be agreed with National Highways following established approval processes for the placing of such equipment.	Noted.	No response required.
1.3	Noted. No response required	-	
1.4	Noted. No response required	-	
1.5	The Applicant would like to clarify that the draft DCO (Revision G) [document reference 3.1] does not include a specific provision which gives it powers to impose traffic regulation orders.	Noted.	No response required.
1.6	As set out in The Applicant's Statutory Undertakers Position Statement (Rev B) [REP3-083], the Applicant did not initially include protective provisions for National Highways at submission in August 2022 of the Application because National Highways initial proposed draft protective provisions were received too close to the submission of the application to include them in the draft DCO at that time. The Applicant included within the draft DCO [document reference 3.1] at Deadline 3 a set of protective provisions for National Highways which are based	Noted. National Highways maintains its position that it requires the latest set of protective provisions it has submitted to be included within the DCO. NH will continue to work with the Applicant to agree the form of protective provisions to be included within the DCO.	Noted. Whilst the Protective Provisions are still not in an agreed form, the Applicant has updated the provisions included at Part 14 of Schedule 14 of the draft DCO (Revisions I) [document reference 3.1] to ensure that it is clear that the provisions cover not only the existing SRN but also the A47 Tuddenham Order Land. The Applicant is continuing to discuss the protective provisions with National Highways.

ID	Applicant's Responses	NH Response	Applicant's Response
	<p>on the protective provisions it had been actively negotiating with National Highways over five months up until February 2023.</p>		
2. Objection			
2.1	<p>Noted. No response required.</p>	-	
2.2	<p>With regards to (a) and the inclusion of protective provisions for National Highways, the Applicant notes that it has included a set of protective provisions for National Highways in its draft DCO at Deadline 3. These are included in Part 14 of Schedule 14 of the draft DCO (Revision G) [document reference 3.1]. It is acknowledged in The Applicant's Statutory Undertakers Position Statement (Revision B) [REP3-083], that these protective provisions are subject to negotiation. This is particularly so in light of the latest set of draft protective provisions that National Highways has submitted to the Examination as part of its further written representation [REP3-139].</p> <p>With regards to point (b), the Applicant confirms that it will enter into a co-operation agreement with National Highways and is engaging with National Highways to move negotiations on an appropriate co-operation agreement forwards urgently. The Applicant will provide a further update on the progress of those negotiations at Deadline 5 in line with its commitment to do so in response to Q2.8.1.2(d) in The Applicant's Response to the Examining Authorities Second Written Questions [REP3-101].</p>	<p>Noted. NH is working with the Applicant to seek to agree protective provisions and a co-operation agreement as soon as possible.</p>	<p>Noted.</p>
3. Protective provisions			

ID	Applicant's Responses	NH Response	Applicant's Response
3.1	As noted above, the draft DCO (Revision G) [document 3.1] includes protective provisions for the benefit of National Highways at Part 14 of Schedule 14. The Applicant will continue to negotiate the draft protective provisions with National Highways and will provide a more detailed update on progress at Deadline 5.	Noted.	No response required.
3.2	The Applicant does not agree that the protective provisions for National Highways in the form included at Appendix 1 of its further written representation [REP3-139] should be included in the Applicant's draft DCO [document reference 3.1]. The Applicant has noted that the original protective provisions provided to the Applicant in August 2022 were less onerous than either of the two more recent versions of protective provisions provided by National Highways. The Applicant is continuing to negotiate with National Highways in order to reach agreement on the form of protective provisions that should be included in the draft DCO [document reference 3.1] for the benefit of National Highways.	<p>Noted. The latest set of protective provisions submitted by National Highways is the minimum it considers necessary to protect its position.</p> <p>The protective provisions have been subject to a recent legal review in line with usual legal due diligence, hence the update. The latest set provides greater protection to National Highways from third party development that affects the strategic road network and land owned by National Highways on which it carries out of its functions as a strategic highway authority.</p>	Whilst the Protective Provisions are still not in an agreed form, the Applicant has updated the provisions included at Part 14 of Schedule 14 of the draft DCO (Revision I) [document reference 3.1]. These are based on the most recent drafting provided by National Highways and make clear that the provisions will cover not only the existing SRN but also the A47 Tuddenham Order Land.
3.3	National Highways comments are noted and the Applicant reiterates that it is continuing to engage with National Highways to agree appropriate protective provisions with them. Please also see the Applicant's response at ID4.2 below with regards to 'serious detriment'.	Noted. Please see response to ID 4.2 below concerning serious detriment.	No response required.
4. Compulsory acquisition			
4.1	Noted. No response required	-	
4.2	National Highways objection is noted. The Applicant has set out clearly in its Statement of	National Highways is a strategic highway company under the provisions of the	The Applicant acknowledges National Highways position as a highway authority, traffic authority

ID	Applicant's Responses	NH Response	Applicant's Response
	<p>Reasons (Revision D) [REP3-019] why it considers that there is a compelling case in the public interest to compulsorily acquire land or create rights and impose restrictive covenants in, on, over or under land in all the plots included in the Book of Reference (Revision E) [REP3-015]. The Applicant notes for clarity that it is not seeking to acquire permanently under Article 19 any land forming part of the existing SRN or land that is proposed to become part of the SRN pursuant to The A47 North Tuddenham to Easton Development Consent Order 2022 (the 'A47 Tuddenham Order') (which is currently subject to judicial review). The Applicant does not consider that the inclusion of the plots where National Highways has an interest in the relevant land or where the land is included within the A47 Tuddenham Order presents a serious detriment to National Highways carrying out its statutory duties. Interactions with the existing A47 and A11 will be appropriately managed through the protective provisions for National Highways (including, as appropriate, compliance with established National Highways' certification and approval processes for the use of HDD under the SRN). In the event National Highways A47 Tuddenham scheme is constructed, the potential interactions between the A47 scheme can and will be appropriately managed through protective provisions and/or a co-operation agreement to be entered into by the parties.</p> <p>To succeed in an argument under section 127, National Highways must provide convincing argument and evidence of the detriment that it</p>	<p>Infrastructure Act 2015 and is the highway authority, traffic authority and street authority for the Strategic Road Network (SRN). As such we have responsibilities for managing the SRN in accordance of our Licence and statutory duties in the Highways Act 1980 with which we must comply. This duty also encompasses the reasonable requirements of road safety. National Highways is also subject to the network management duty under section 16 of the Traffic Management Act 2004, which the acquisition of land or rights in land may interfere with.</p> <p>Whilst the Applicant states that there is no proposal to permanently acquire land forming part of the SRN under Article 19 of the draft DCO it is clear that under Article 20 permanent rights in the SRN under the DCO are sought by the Applicant. National Highways is listed as the owner of a number of plots over which permanent acquisition of rights and temporary possession of land is sought. National Highways objects to the compulsory acquisition of rights as included in the Order and this objection is set out in more detail in its submission at Deadline 3 (REP3-139).</p> <p>It is National Highways' view that the proposed acquisition of land and rights as part of the authorised development would cause serious detriment to National Highways and prevent it from complying with their statutory duties under the Highways Act 1980 and also under its Licence.</p> <p>National Highways is required by its licence to hold and manage land and property in line with, and as a function of, its legal duties as highway</p>	<p>and street authority for the SRN. The Applicant also acknowledges National Highways statutory obligations. For this reason, protective provisions are included within Part 14, Schedule 14 of the draft DCO (Revision I) [document reference 3.1] for the benefit of National Highways. The purpose of the protective provisions is to prevent serious detriment arising by virtue of land acquisition and development of SEP and DEP to ensure that National Highways can comply with its statutory duties and its Licence obligations to manage the SRN without disruption.</p> <p>Paragraph 4 of the protective provisions provides for an approvals process for 'specified works' which are works undertaken on, in, under or over the strategic road network (SRN) or on, in, under or over the A47 Tuddenham Order land. This process also places restrictions on the undertaker exercising certain powers within the DCO in relation to the SRN and any land owned, controlled or temporarily acquired by National Highways pursuant to the A47 Tuddenham Order without National Highways' consent (not to be unreasonably withheld). This includes restrictions on powers of compulsory acquisition and temporary possession.</p> <p>The protective provisions also require the undertaker to construct the specified works in accordance with National Highways' specifications and requirements including for example road safety audits and the Design Manual for Roads and Bridges (DMRB) which includes DMRB CD622 Managing Geotechnical</p>

ID	Applicant's Responses	NH Response	Applicant's Response
	<p>asserts, which it has not done to date. It is clear from previous considerations of section 127 that serious detriment is a high bar. Just because there is any adverse impact or detriment will not mean that serious detriment exists. In particular, the Applicant would highlight the decision on the Lake Lothing DCO where the Secretary of State did not accept the argument from ABP (the port authority) that the detriment it would suffer met the 'serious' element of the test. A copy of the Lake Lothing DCO Recommendation Report and the Secretary of State's Decision Letter can be found at Appendix A below. See in particular paragraphs 5.8.148 - 5.8.156 of the DCO Recommendation Report and paragraphs 25 and 35 of the Secretary of State's Decision Letter.</p>	<p>authority. The compulsory acquisition of land and rights under the development consent order may put National Highways in breach of its land and property duty</p> <p>The proposed compulsory acquisition of rights in land together with the extinguishment of private rights over land (pursuant to Article 21 of the DCO) in itself may cause serious detriment to National Highways' SRN. As operator of the SRN, its numerous aims and objectives under the Licence include the requirement to manage the SRN, a critical national asset, in the public interest and ensure the effective operation of the SRN, whilst protecting and improving the safety of the SRN. The acquisition of rights and/or the extinguishment of rights held by National Highways, by a private developer, in and/or over the SRN, has the potential to disrupt the operation of the SRN such that National Highways is not able to adequately carry on its functions pursuant to the Licence.</p> <p>From the above proposed compulsory acquisition of rights and extinguishment of rights, the following consequential impacts may arise, which also have the potential to cause serious detriment to National Highways:</p>	<p>Risk which is relevant to the proposed HDD works under the SRN.</p> <p>The detailed approvals process, restrictions on exercising certain powers and need to comply with National Highways specifications and requirements when undertaking the specified works ensures National Highways retains control over the SRN and any works undertaken to it. The protective provisions also provide significant protections to National Highways in relation to the land included within its A47 Tuddenham Order.</p>

ID	Applicant's Responses	NH Response	Applicant's Response
		<ul style="list-style-type: none"> • General impacts on the A47 and the SRN – not taking into account the made A47 North Tuddenham to Easton Development Consent Order 2022 (A47 TUD DCO), the proposed authorised development would have impacts on the operation of the SRN. These impacts are described in more detail in NH's submission at Deadline 3 (REP3-139). In particular: 	
		<ul style="list-style-type: none"> ○ NH notes from Figure 1 included with the Outline Construction Traffic Management Plan (OCTMP) (REP3-062) that a number of highways forming part of the SRN, including the A47, A11, and the A1270 will be required for construction traffic movements for the construction of the proposed authorised development. Whilst the Applicant will be required to mitigate its effects on the SRN, ultimately National Highways will be responsible for the day-to-day operation of the SRN to the public and the Department for Transport. National Highways requires that it is fully consulted in relation to the discharge of any requirements under the DCO that relate to construction traffic management. The Applicant welcomes the addition of its inclusion as a consultee in relation to Requirement 15 of the DCO (REP4-003) but notwithstanding this, there will still be an impact on the SRN by virtue of the proposed authorised development and this could cause serious detriment to NH's undertaking. 	<p>The Applicant notes that a final CTMP (in accordance with Requirement 15 of the draft DCO (Revision I) [document reference 3.1]) will be prepared and submitted prior to the commencement of the relevant part of the construction works for approval by the relevant planning authorities in consultation with Norfolk County Council and National Highways, thereby securing post determination consultation.</p> <p>The Strategic Road Network (SRN) within the Traffic and Transport Study Area was included within the assessment contained within the ES Chapter 24 Traffic and Transport [APP-110] and Transport Assessment [APP-268]. The assessment concluded that with the application of mitigation (as required) there would be no significant residual impacts. It is the Applicant's position therefore the development of SEP and DEP would not give rise to serious detriment to the SRN as the appropriate mitigation measures will be in place.</p>

ID	Applicant's Responses	NH Response	Applicant's Response
		<ul style="list-style-type: none"> In addition to the above, the Applicant notes that existing access directly off the A47 are proposed to be used for construction access and early works accesses. This is as set out in the Access to Works Plans (AS-051). The use of access from the SRN is likely to have a direct impact on the SRN and impact on National Highways' ability to carry out its undertaking pursuant to its Licence. 	<p>The Applicant refers to the Statement of Common Ground with National Highway (Revision B) [REP3-080] (ID23) which concludes (after extensive consultation) that:</p> <p><i>National Highways agree that the outline design for an access off the A47 (ACC47) is appropriate subject to Stage 1 Road Safety Audit being carried out post consent. Please note that this access is only usable until the A47 Tuddenham scheme starts construction, or if the A47 Scheme does not go ahead.</i></p> <p>In addition, the Applicant notes that under Requirement 16 of the draft DCO (Revision I) [document 3.1], the undertaker must obtain approval of an access plan for any accesses before commencing works, such approvals must be obtained from the relevant planning authority in consultation with National Highways in respect of the SRN.</p> <p>It should be noted that section 4.4 of the OCTMP (Revision D) [REP5-027] includes a commitment to the production of a Stage 1 and 2 Road Safety Audit as part of the technical approvals for the access designs.</p> <p>Furthermore, the access works would be 'specified works' and require compliance with the approvals processes under the protective provisions which requires the carrying out of the Stage 1 and 2 Road Safety Audits for example.</p>

ID	Applicant's Responses	NH Response	Applicant's Response
		<ul style="list-style-type: none"> ○ NH notes that the Applicant proposes to install its onshore cables beneath the SRN which will likely have direct impacts of the operation of the SRN. The Applicant requires the inclusion of its preferred form of protective provisions within the DCO to adequately protect the SRN, which is a critical national asset. The form of protective provisions is not yet agreed between the Applicant and NH, and until this has been resolved, NH's position is that its assets are not adequately protected. NH will continue to work with the Applicant in order to agree a suitable form of protection but until agreement is reached, the works are likely to cause serious detriment to the carrying on of the undertaking. 	<p>The Applicant acknowledges that the protective provisions remain under discussion and it is continuing to engage with National Highways to reach agreement. The Applicant has however updated the protective provisions for National Highways within the draft DCO (Revision I) [document reference 3.1] and these are based on National Highways most recent iteration of its protective provisions which now form the basis of the provisions being discussed between the Applicant and National Highways. As set out above, the protective provisions include a detailed approvals process for the 'specified works' which includes any works to install cables beneath the SRN including ensuring that these will be undertaken in accordance with DMRB CD622 Managing Geotechnical Risk.</p>
		<ul style="list-style-type: none"> ● Interactions with The A47 North Tuddenham to Easton Development Consent Order 2022 (A47 TUD DCO). National Highways has previously made a number of detailed submissions in respect of the interaction between the A47 TUD DCO and the proposed authorised development. Notwithstanding ongoing judicial review proceedings, the A47 TUD DCO for which NH is the undertaker remains a made Order for the nationally significant infrastructure project, to which substantial weight should be attributed to in the consideration of whether there is any serious detriment to National Highways. In particular: 	<p>Noted. The Applicant is working with National Highways to ensure cooperation in relation to these interactions. In addition, the Applicant notes, as explained above, that the protective provisions included in Part 14, Schedule 14 of the draft DCO (Revision I) [document reference 3.1] include significant protections for National Highways in relation to the A47 Tuddenham scheme.</p>

ID	Applicant's Responses	NH Response	Applicant's Response
		<ul style="list-style-type: none"> ○ NH has compulsory acquisition rights over a number of parcels of land that fall within the Order Limits for the proposed authorised development. The relevant land is subject to compulsory acquisition powers because in the consideration of the application for the A47 TUD DCO the Secretary of State agreed that such land was necessary for the purposes of the carrying out of the development under the A47 TUD DCO, and that it was in the public interest to do so. In determining the A47 TUD DCO the Secretary of State will have had regard to any alternatives that NH as applicant had considered and in making their decision, agreed that the relevant land was required because there were no other alternatives. As such there is no alternative means of replacing the land that NH requires for its Order, and to enable it to carry on its undertaking. 	<p>As set out above, the protective provisions included within Part 14, Schedule 14 of the draft DCO (Revision I) [document reference 3.1] include significant protections for National Highways in relation to the A47 Tuddenham scheme including restrictions on exercising compulsory acquisition powers in relation to land owned, controlled or temporarily acquired by National Highways pursuant to the A47 Tuddenham Order without National Highways' consent (not to be unreasonably withheld). In addition, the Applicant is negotiating a co-operation agreement to appropriately manage the interactions between SEP and DEP and the A47 Tuddenham scheme.</p>

		<ul style="list-style-type: none"> ○ The overlapping nature of the A47 TUD DCO and the proposed authorised development should also be highlighted in the context of the serious detriment to NH. In particular, the construction access corridor proposed by the Applicant from Taverham Road (see submissions at page 7 of REP3-138) which also overlaps with land required by Orsted Hornsea Project Three (UK) Limited in relation to the Hornsea Three Offshore Wind Farm Order 2020 (Hornsea 3). Whilst NH notes that the land in question is required on a temporary basis only, the temporary possession powers sought by the Applicant pursuant to Article 26 are wide-ranging and in particular under Article 26(1)(b) can remove any vegetation from the land. NH under the A47 TUD DCO is under an obligation to include environmental mitigation within this area, including landscape planting, as part the requirements of the A47 TUD DCO. The works to be carried out under the A47 TUD DCO are set out in the REAC, contained within the Second Iteration Environmental Management Plan (Second Iteration EMP). The Second Iteration EMP is to be submitted in accordance with the approved First Iteration EMP which is listed as a certified document under the A47 TUD DCO. The Second Iteration EMP is in an agreed form ready to be submitted to the Secretary of State for approval. This document has been through consultation with the required bodies and it is not capable of being amended in order to fit around the Applicant's proposed development for the above mentioned reasons. Therefore NH's view is that the access proposed in this location cannot be 	<p>As set out above, the protective provisions included within Part 14, Schedule 14 of the draft DCO (Revision I) [document reference 3.1] include significant protections for National Highways in relation to the A47 Tuddenham scheme including restrictions on exercising compulsory temporary possession powers in relation to land owned, controlled or temporarily acquired by National Highways pursuant to the A47 Tuddenham Order without National Highways' consent (not to be unreasonably withheld). In addition, the Applicant is also negotiating a co-operation agreement to supplement the protective provisions to appropriately manage the interactions between SEP and DEP and the A47 Tuddenham scheme including any environmental mitigation measures.</p>
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ID	Applicant's Responses	NH Response	Applicant's Response
		<p>approved as NH cannot be in a position whereby it is in put in breach of the A47 TUD DCO by virtue of the Applicant carrying out its own authorised development. The Applicant has agreed to enter into a co-operation agreement in relation to the interactions between the two schemes, which will have to have regard to the mutual obligations as between NH and Orsted in relation to the Hornsea Three DCO. As such any co-operation agreement will need to be subordinate to existing obligations or Orsted is included as a party However until this agreement has been finalised, NH must reserve its position in relation to this point, because of the serious detriment it would cause NH in granting the compulsory acquisition powers applied for.</p>	

ID	Applicant's Responses	NH Response	Applicant's Response
		<ul style="list-style-type: none"> o In addition to the above, and the Applicant's proposals to mitigate the effects on the SRN by virtue of the traffic management proposals, including in paragraph 122 of the OCTMP (Rev C) the parties "committing to a programme of works that ensure peak traffic movements do not overlap". The Applicant would like to make clear that the traffic management plan required by the A47 TUD DCO has been approved by the Secretary of State as part of the discharge of the requirements of the A47 TUD DCO. As such, NH will be under an obligation to carry out its development pursuant to the approved traffic management plan, and is under no obligation to amend this. Any deviation from this approved plan could put NH in breach of its own Order which it is not willing to risk. NH would be happy to share the approved plan with the Applicant in order for the Applicant to update its own OCTMP and subsequent traffic management plans. The Applicant has agreed to enter into a co-operation agreement in relation to the interactions between the two schemes. However until this agreement has been finalised, NH must reserve its position in relation to this point, because of the serious detriment it would cause NH in granting the compulsory acquisition powers applied for. 	<p>CTMPs are not intended to be rigid documents and there is flexibility in the planning system for plans to evolve to meet changing project baseline and/or environment conditions.</p> <p>The Applicant considers that the Outline Construction Traffic Management Plan (Revision D) (CTMP) [REP5-027] contains adequate provisions for the management of cumulative impacts between the respective projects to enable more detailed proposals to be developed post DCO determination in consultation with stakeholders.</p> <p>The Applicant also highlights that the protective provisions restrict the exercise of compulsory acquisition powers and require National Highways approval in respect of works to be undertaken in, on, under or over the A47 Order Land.</p> <p>The combination of the mitigation secured through the CTMP and the provisions within the protective provisions mean the development of SEP and DEP will not give rise to any serious detriment.</p> <p>In addition, the Applicant fully supports the need for engagement on transport matters and is therefore in discussions with National Highways to enter into a suitable co-operation agreement to ensure that there is continued and ongoing engagement with National Highways.</p>

ID	Applicant's Responses	NH Response	Applicant's Response
4.3	<p>The Applicant notes National Highways comments regarding the use of the NRSWA as an alternative. However, the works proposed as part of SEP and DEP which include using HDD to install cabling under the SRN are an integral part of delivering two Nationally Significant Infrastructure Projects and it is entirely appropriate that those works are included within the development consent order, as associated development, in the way intended by Parliament under the Planning Act 2008. Indeed, the Applicant notes that when promoting its own DCOs National Highways routinely includes the same or substantially similar provisions as the Applicant in its own DCOs relating to streets and the application of NRSWA. The Applicant refers to, amongst many recent examples, the A47 North Tuddenham to Easton Development Consent Order 2022 article 14, the A47 Wansford to Sutton Development Consent Order 2023, article 11, A417 Missing Link Development Consent Order 2022 article 12, and A428 Black Cat to Caxton Gibbet Development Consent Order 2022 article 11. National Highways also often seek compulsory powers to acquire subsoil interests despite the surface of affected land having highway status and street works being applicable including for example in the A47 North Tuddenham to Easton Development Consent Order 2022. The Applicant does not accept NH's position on this point which is inconsistent with its own actions. For reference, the Applicant has appended a copy of the A47 North Tuddenham to Easton Development Consent Order 2022 at Appendix B.</p>	<p>Noted. National Highways is unable to respond to this at this stage but reserves its position and will submit a written response before Deadline 7.</p>	<p>Noted.</p>

ID	Applicant's Responses	NH Response	Applicant's Response
	<p>In addition, the Applicant notes that the NRSWA is only applicable where works are undertaken 'in' a street and there is a wealth of established case law (including being considered most recently in Southwark LBC v TfL [2018] UKSC 63) which confirms that the depth of a street (as a public highway) has a limit in law (including being considered most recently in Southwark LBC v TfL [2018] UKSC 63). Street status does not allow the street authority to interfere with the rights of the owner of the subsoil just because works are under a street, even where the owner of the subsoil is the same as the street authority. The precise depth of the installation of the SEP and DEP cables under the SRN will be determined post consent and it may be the case that the cables will be installed at a depth that falls within the remit of the subsoil owner and not within the street itself, in which case the NRSWA would not be applicable and it is therefore entirely necessary and appropriate for the relevant compulsory acquisition powers to be sought within the draft DCO.</p> <p>With regards to concerns raised about indemnities, the Applicant notes that National Highways protective provisions include an appropriate indemnity for the benefit of National Highways within paragraph (9) of Part 14 of Schedule 14.</p>		
4.5	<p>The Applicant welcomes the opportunity to continue to negotiate with National Highways. National Highways legal department was contacted (in the same way as all other statutory undertakers potentially affected by SEP and DEP)</p>	<p>Noted. National Highways is not aware of any other attempts by the Applicant to negotiate land acquisition by agreement but welcomes the opportunity to discuss this with the Applicant.</p>	<p>The Applicant will continue to engage with National Highways and enter into voluntary land agreements as appropriate, which it is compelled to do as a result of the restrictions the protective provisions place on the exercise of compulsory</p>

ID	Applicant's Responses	NH Response	Applicant's Response
	<p>early in 2022 to commence formal discussion regarding the protections it would require as a consequence of land in which it has an interest being identified within the book of reference. Through this contact the Applicant considers that it has sought to engage with National Highways in order to put in place mechanisms to avoid having to rely on compulsory acquisition of any of National Highways' interests. The Applicant remains committed to pursuing the ongoing discussions and negotiations with National Highways for the benefit of both parties.</p>		<p>acquisition and other powers included within the Order over National Highways land interests.</p>
5. A47 Tuddenham Scheme			
5.1	<p>The Applicant has provided its response within The Applicant's Comments on Responses to the Examining Authority's Second Written Questions [document reference 18.2] submitted at Deadline 4.</p>	<p>The Applicant has responded to these comments in Appendix 2 of its Deadline 5 submissions.</p>	<p>Please see the Applicant's response to National Highways' Appendix 2 in Table 2 below.</p>
5.2	<p>The Applicant notes that National Highways has now included a further revised set of protective provisions within Appendix 1 of its further written representation [REP3- 139]. As noted above, the Applicant is committed to continuing negotiations of the protective provisions and will enter into a co-operation agreement with National Highways in order to co-ordinate, as appropriate, the construction of SEP and DEP and National Highways' A47 Tuddenham Scheme.</p>	<p>NH welcomes the Applicant's willingness to enter into a co-operation agreement and will continue to progress discussions with a view to finalising agreement as soon as possible.</p>	<p>The Applicant notes that it has updated the protective provisions for National Highways within the draft DCO (Revision I) [document reference 3.1] and these are based on National Highways most recent iteration of its protective provisions which now form the basis of the provisions being discussed between the Applicant and National Highways. The Applicant also remains committed to entering into a co-operation agreement to ensure interactions with the A47 Tuddenham Scheme are appropriately managed, which will enable both schemes to be successfully developed.</p>


Table 2 Appendix 2 National Highways responses to the Applicant's Document 18.2 (REP4-028)

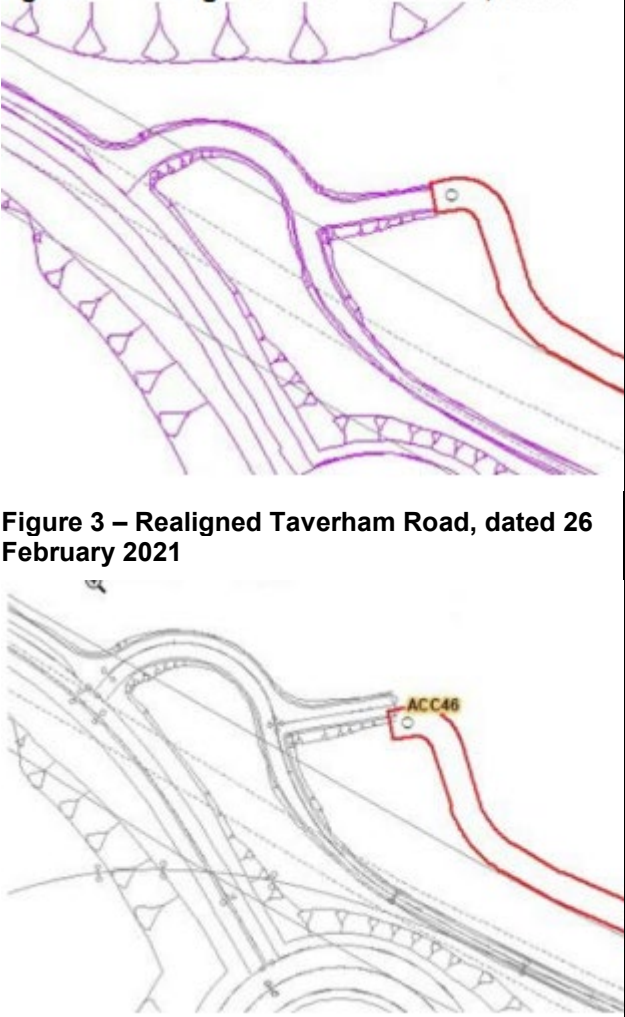
ID	Applicant Response	NH Response	Applicant's Response
3	<p>The Applicant thanks National Highways for its representation and takes the opportunity to confirm that it has taken into consideration the A47 Tuddenham Scheme in developing its proposals. The Applicant notes that a misalignment has arisen between SEP and DEP access ACC46 and the A47 Tuddenham Scheme at the realigned Taverham Road, as approved by the Secretary of State, and acknowledges that there is an overlap between the ACC46 access track, and an area of landscaping secured in the A47 Tuddenham Scheme DCO. The Applicant will work with National Highways to address these issues. A response to the specific queries raised is set out below (IDs 4 - 27). The Applicant would like to clarify that the distinction between the representation of the Norwich Western Link and the A47 Tuddenham Scheme on the Access to Works Plan (Revision D) [AS-051] and the Streets (to be temporarily stopped up) Plan (Revision C) [AS-052] has been made for presentational reasons. The Norwich Western Link is a new road that can be readily represented on the plans, whereas showing both the current A47 layout and the A47 Tuddenham Scheme on the same plan presents presentational challenges. The CAD files for the A47 Tuddenham Scheme were first made available to the Applicant by National Highways on 29 July 2020 and this scheme has been given due consideration throughout the development process since that time. Accesses ACC46 and ACC47 have been designed in order to provide options for access both from the existing A47 and from the realigned Taverham Road should the A47</p>	<p>National Highways does not recognise the engagement put forward in this response by the Applicant. However, the Applicant is satisfied that the engagement that has taken place since April 2023 has been productive, with the Applicant taking onboard the concerns of National Highways, and in particular the concerns of the A47 Tuddenham Project Team. National Highways looks forward to working with the Applicant going forward to reach a resolution on the outstanding issues.</p>	<p>The Applicant welcomes the opportunity to continue engaging with National Highways to reach a resolution on outstanding issues and is pleased that recent engagement has been productive.</p> <p>The Applicant is however disappointed that National Highways does not appear to recognise the extensive engagement that has been undertaken to date. Copies of minutes can be provided if required.</p>

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	<p>Tuddenham Scheme be constructed before the SEP and DEP onshore export cables are laid at this location.</p> <p>With regards to engagement with National Highways, the Applicant would like to clarify that regular meetings have been held with National Highways since initial contact in relation to the Projects was made in 2020. The Applicant considers any implication that there has been a lack of engagement or that the A47 Tuddenham Scheme is a recent consideration to be inaccurate. The Applicant refers to the Evidence Plan Agreement Log [APP-030], the Statement of Common Ground with National Highways (Revision B) (SoCG) [REP3-080] and The Applicant's Statutory Undertakers Position Statement (Revision B) [REP3-083], which highlight extensive consultation with National Highways representatives over a period of three years. Additional postapplication meetings, further to those listed in Revision B of the SoCG, have been held on 26 April 2023 and 28 April 2023. Meetings specifically with the A47 Tuddenham Scheme team have been held during the pre-application stage, including on the 15 April 2021 and 21 March 2022, and post-application on 20 April 2023, as noted in National Highways' representation. In addition, the Applicant would like to highlight and clarify (as set out in The Applicant's Statutory Undertakers Position Statement (Revision B) [REP3- 083]) that it contacted National Highways in February 2022 in order to seek clarification on what protections/agreements National Highways required in relation to the draft DCO for SEP and DEP. The Applicant first received proposed draft</p>		


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	<p>Protective Provisions from National Highways in August 2022. Unfortunately, these were received too close to the submission of the application to include them in the draft DCO [APP-024] at that time. However, the Applicant and National Highways were actively negotiating those protective provisions for a period of 5 months up to February 2023 including providing as requested further information in relation to the compulsory acquisition powers included in the draft DCO [document reference 3.1] and negotiating a side agreement. At that point, the Applicant expected to be in a position to include agreed protective provisions with National Highways early in the Examination. The Applicant was subsequently surprised to receive a new set of proposed Protective Provisions from National Highways in February 2023 as part of its written representation [REP1-132] submitted at Deadline 1, which have now been replaced by a further set of proposed Protective Provisions in National Highways' further written representation [REP3-139] at Deadline 3.</p> <p>The Applicant has always been open to securing an agreement with National Highways in addition to including protective provisions within the draft DCO. Following receipt of National Highways' written representation at Deadline 1 [REP1-050], the Applicant had a meeting with National Highways, which included legal representatives, on 17th March 2023. During that meeting, the parties discussed and agreed that interactions between the A47 Tuddenham Scheme and SEP and DEP should be dealt with in a co-operation agreement. The Applicant had understood that National Highways' legal representative would provide</p>		

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	<p>Equinor with draft Head of Terms for a co-operation agreement following the meeting on 17th March 2023. The Applicant further confirms that the material change request of 11 April 2023 was made in relation to the access arrangements and the siting of the cables within the Food Enterprise Park site, and not in relation to the A47 Tuddenham Scheme.</p> <p>The Applicant reiterates that it remains committed to working with National Highways to resolve any outstanding queries and to ensure delivery of the A47 Tuddenham Scheme, SEP and DEP and other projects within the vicinity of the A47, noting that a judicial review is ongoing in relation to the A47 Tuddenham Scheme. In recognition of the ongoing process to address National Highways concerns and advance a SoCG, this response is limited to new issues raised on 20 April 2023.</p>		
12	<p>The Applicant notes that there is a misalignment between the Order limits and the realigned Taverham Road as mapped in plans secured by the A47 Tuddenham Scheme DCO. Three versions of the A47 Tuddenham Scheme CAD files have been received by the Applicant from National Highways, dated 29 July 2020, 17 December 2020, and 26 February 2021 in the associated metadata (see Figure 1, Figure 2 and Figure 3 below). The Applicant's access at ACC46 from the realigned Taverham Road was designed based on the first version, dated 29 July 2020. The second version dated 17 December 2020 maintains the alignment as designed. However, the third version dated 26 February 2021 includes a small misalignment with the Order Limits at ACC46, due to an adjustment</p>	<p>Notwithstanding ongoing judicial review proceedings, The A47 North Tuddenham to Easton Development Consent Order 2022 (A47 TUD DCO) remains a made Order for a nationally significant infrastructure project. The A47 Project Team is progressing the discharge of requirements in readiness for commencing development and has already secured discharge of a number of requirements of the A47 TUD DCO, including approval by the Secretary of State for the traffic management plan. Other requirements are in the process of being discharged presently, including the Second Iteration Environmental Management Plan which includes provision for environmental mitigation in this location. National Highways' view is that it is for the Applicant to design its scheme</p>	<p>The Applicant continues to consider and explore options and opportunities to resolve the misalignment and will continue to progress this as quickly as it reasonably can. The Applicant reiterates its commitment to working with National Highways (and other parties as appropriate) in relation to this issue to ensure that its re-designed access is acceptable to both parties before it takes steps to secure consent and land rights for a re-designed access at this location. Commitments to working with National Highways in relation to this issue will be captured in the co-operation agreement.</p>

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	<p>made to the A47 Tuddenham Scheme design, as noted by National Highways at ID18 below.</p> <p>Figure 1 – Realigned Taverham Road, dated 29 July 2020</p>  <p>Figure 2 – Realigned Taverham Road, dated 17 December 2020</p>	<p>around the latest drawings available, which from the Applicant's response is clear were available in February 2021. National Highways' view is that this is a matter that does need to be addressed by the Applicant at the earliest opportunity given the potential knock-on impacts in this area for the interactions between the A47 TUD DCO and the Hornsea Project Three Offshore Wind Farm Order 2020.</p>	

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	 <p data-bbox="152 837 750 901">Figure 3 – Realigned Taverham Road, dated 26 February 2021</p>		

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	<p>Unfortunately, this misalignment was not identified by the Applicant at the time, nor was it picked up through the ongoing engagement with National Highways in relation to the SoCG and the Protective Provisions. The A47 Tuddenham Scheme CAD files received from National Highways during the pre-application stage did not include the fence line or landscaping included in the A47 Tuddenham Scheme Environmental Masterplan. Figure 4 below shows this CAD file alongside the onshore cable route, as included in the minutes of the meeting held between the Applicant and National Highways on 21 March 2022. The Applicant has therefore not had regard to the landscaping scheme in the design of ACC46. The Applicant will work with National Highways to resolve this issue. In addition, and for completeness, Figure 4 – A47 Tuddenham Scheme and onshore cable route, was presented in a meeting held on 21st March 2022.</p> <p>Figure 4 – A47 Tuddenham Scheme and onshore cable route</p>		

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	 <p data-bbox="147 943 752 1398">Given the current uncertainty surrounding developments within this area, as well as the comments raised by the Examining Authority at the Preliminary Meeting advising that Deadline 3 is the last opportunity to submit changes to the application, the Applicant considers it appropriate to progress any application that may be necessary to realign the access outside of the Examination and following the conclusion of the judicial review of the A47 Tuddenham Scheme. Whilst the misalignment at Taverham Road has been highlighted by National Highways, it is acknowledged that, subject to the outcome of the judicial review, any application could also consider the wider realignment of the access road to avoid</p>		

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	<p>the National Highways landscaping scheme. Therefore, the Applicant considers that it would be beneficial to wait until there is further certainty regarding the final arrangements before making any application to amend the access from the A47.</p> <p>The options which the Applicant will explore to secure consent to alter the access in the event that the A47 Tuddenham Scheme is constructed will be consulted on with relevant stakeholders including the local planning authorities. For example, powers and consent for these works could be secured by way of an application to amend the SEP and DEP DCO (in the event it is made) post-consent or pursuant to planning permission under the Town and Country Planning Act 1990. In the event of the latter, the Applicant would progress land rights separately through discussions with the landowner at the time. Given the minor nature of the misalignment and the benefits generated through correcting the access alignment, the Applicant does not consider there to be any impediment to securing consent to realign the access.</p>		
19	<p>The Applicant considers the issues raised relate to the requirement to coordinate construction activities. Section 4.11.2 of the Outline Construction Traffic Management Plan (Revision C) [REP3-063] acknowledges the potential for cumulative impacts between the respective project's construction phases. These would be managed through development of the CTMP. The Applicant will seek to further mitigate risks to the programme associated with the construction of the A47 Tuddenham Scheme through the emerging cooperation agreement with National Highways.</p>	<p>National Highways agrees that the interactions in this area of land will be addressed in the co-operation agreement that is to be entered into by the parties. National Highways has suggested that updates are made to the OCTMP and understands that the Applicant is proposing to submit an updated OCTMP at Deadline 5. National Highways' suggestions for the for updates to the OCTMP are included in its responses to the Ex3WQs. National Highways wishes to reiterate that its own traffic management plan that is required as part of the A47 TUD DCO has been approved by the</p>	<p>CTMPs are not intended to be rigid documents and there is flexibility in the planning system for plans to evolve to meet changing project baselines and/or environment conditions.</p> <p>The Applicant considers that the Outline Construction Traffic Management Plan (Revision D) (CTMP) [REP5-027] contains adequate provisions for the management of cumulative impacts between the respective projects to enable more detailed proposals to be</p>

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		<p>Secretary of State as part of the discharge of requirements for that scheme. National Highways will provide assistance to the Applicant in relation to traffic management around the strategic road network but notes that this will need to be within the constraints of the approved traffic management plan for the A47 TUD DCO. National Highways is willing to share this plan with the Applicant to aid discussions.</p>	<p>developed post DCO determination in consultation with stakeholders.</p> <p>In addition, the Applicant reiterates that the emerging co-operation agreement will ensure that there is continued and ongoing engagement with National Highways.</p>
20	<p>The Applicant notes National Highways comments. The Applicant would clarify that the material change request includes amendments to the access strategy to remove the requirement to provide a new access (ACC48) from the north of Church Lane and instead utilise the existing Food Enterprise Park access. A new access would be provided to the south of Church Lane access ACC49. The latest access arrangements are detailed in the Access to Works Plan (Revision D) [REP2-005]. Notwithstanding, as part of the detailed design and construction of all accesses and crossings, all utilities will be identified, and an appropriate scheme of protection provided. This is secured by Requirement 16 of the draft DCO (Revision G) [document reference 3.1]. Furthermore, the Applicant also notes that Part 2 of Schedule 14 of the draft DCO (Revision G) [document reference 3.1] includes Protective Provisions for the operators of electronic communications code networks.</p>	<p>National Highways is reviewing the Applicants response and will provide a response by Deadline 7.</p>	<p>Noted.</p>
25	<p>The Applicant would clarify that Annex 19 of the Transport Assessment [APP269] identifies that link 149 provides a means of access to accesses ACC39, 40 and 41. This approach would allow</p>	<p>National Highways wishes to reiterate that its own traffic management plan that is required as part of the A47 TUD DCO has been approved by the Secretary of State as part of the discharge of</p>	<p>The Applicant welcomes clarification provided by National Highways in its response to written question Q3.23.5.5 that their concerns have been</p>

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	<p>HGV traffic to travel north on Honingham Lane before travelling west on Weston Road towards the accesses. The Applicant acknowledges however that depending upon the timing of the respective projects, National Highways may introduce a closure of Honingham Lane (south of Ringland) that would prevent access for SEP and DEP traffic via link 149. The Applicant however clarifies that it has also assessed an alternative of HGV traffic approaching accesses ACC30, 40 and 41 from the west via link 148 (thus avoiding the potential closure of Honingham Lane). Figure 1 of the Outline Construction Traffic Management Plan (OCTMP) (Revision C) [REP3-062] highlights that both link 148 and 149 as potential routes for HGVs and Annex A of the OCTMP outlines limits on vehicle movements along these links to ensure that the traffic numbers assessed within the ES are managed and not exceeded. The Applicant therefore asserts that in the event that link 149 is closed an alternative route via link 148 from the west would be available and the associated impacts of the use of this route have been assessed. The Applicant would further note that paragraph 35 of the latest revision of the OCTMP (Revision C) [REP3-062] also includes wording as agreed with Norfolk County Council (responsible for local road network) to agree alternative routes should links assessed within the ES become unavailable (e.g., due to road closures).</p>	<p>requirements for that scheme. National Highways will provide assistance to the Applicant in relation to traffic management around the strategic road network but notes that this will need to be within the constraints of the approved traffic management plan for the A47 TUD DCO. National Highways is willing to share this plan with the Applicant to aid discussions.</p>	<p>addressed by the clarifications provided by the Applicant.</p> <p>The agreement between the parties is reflected in the latest version of the Draft Statement of Common Ground with National Highways (Revision C) submitted at Deadline 5 [REP5-034].</p>