

**Post hearing submissions of National Highways Limited  
in respect of ISH2, ISH3 and CAH1**

**Application by National Grid Electricity Transmission for an Order granting Development Consent for the Yorkshire Green  
Energy Enablement (Green) Project**

**Planning Inspectorate Reference Number: EN020024**

## **1 Introduction**

- 1.1 National Highways Limited (National Highways) attended Issue Specific Hearing 2, Issue Specific Hearing 3 and Compulsory Acquisition Hearing 1. This document sets out National Highways' post hearing submissions.
- 1.2 The Authorised Development will have an impact on the Strategic Road Network (SRN) and as such it is critical to the operation of the SRN, the safety of the travelling public and to ensure the proper and efficient use of public resources that the Authorised Development proceeds in consultation and agreement with National Highways and with appropriate protections in place.
- 1.3 National Highways does not object to the principle of the development subject to the inclusion of adequate protections to manage any potential interface between the Authorised Development and the highway.

## **2 Issue Specific Hearing 2**

- 2.1 In its Written Representation National Highways had requested the imposition of further requirements to address its concerns over any traffic impacts effecting the SRN that may result from the Authorised Development.
- 2.2 Following conversations with the Applicant prior to ISH2, National Highways' concerns were addressed, and National Highways was able to confirm that it is now satisfied on this point and withdraws its request for the additional requirements requested in its Written Representation.

## **3 Issue Specific Hearing 3**

- 3.1 National Highways identified a number of concerns regarding the draft DCO as presented by the Applicant.
- 3.2 There is a general theme of concern that National Highways has, and this all relates to safety issues. There are a number of articles in the draft DCO that give power to the applicant to enter, carry out works or otherwise interfere with the Strategic Road Network.
- 3.3 There are different levels of 'protection' afforded to National Highways under each article. This ranges from consent being required in some instances (albeit qualified), to only notification being provided in others.

- 3.4 Where National Highways' consent is required under an article, a deemed consent provision is imposed if a decision is not made within 28 days. Given the associated safety concerns, National Highways does not consider this to be a reasonable imposition. It is noted that the applicant, when responding to DCO applications that effect its undertaking, does not agree to deemed consent being imposed on itself due to its own safety concerns.
- 3.5 National Highways requests that any interference with the SRN should be subject to its explicit consent with the ability to attach any necessary conditions. National Highways does appreciate the applicant will not want undue delay in the delivery of a nationally significant infrastructure project but it is National Highways' position that this shouldn't override National Highways safety concerns, particularly when those concerns relate to the safety of the travelling public (and so 1,000s of people potentially being put at risk). National Highways has approval processes in place for instances where third parties are looking to work on, or in the vicinity, of the SRN and do not consider it reasonable that this application should be able to bypass those approvals which have been put in place for very strong safety reasons.
- 3.6 It should be noted that National Highways has statutory responsibilities to support economic growth<sup>1</sup> (i.e. to support developments such as this one) and as a public body must act reasonably. It should not therefore be necessary for National Highways to be made subject to deemed consent provisions to ensure its engagement and a public body should not be forced into a position where public safety is potentially compromised. This could place National Highways in breach of its own statutory duties and Licence obligations.
- 3.7 Given its concerns are safety related, it is imperative that due process is followed and time is taken to ensure that anything being signed off is adequately assessed. National Highways would find it very difficult to fully consider, determine and respond to such applications within 28 days. A number of National Highways' functions are outsourced to consultants who operate under service level agreements, some of which require turnarounds in excess of 28 days. In addition, and noting the Applicant's view that National Highways should prioritise this application given its national significance, the team within National Highways' Yorkshire & North East region are currently dealing with a number of live DCO applications with a significant further number coming through the pipeline. It will be impossible for National Highways to give each one the priority they will all expect, particularly if they are all asking for decisions within 28 days. There is therefore a significant risk that the 28 day period will not be met and a refusal issued for no other reason than it has not been possible to adequately

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<sup>1</sup> Paragraphs 4.2h, 4.3 and 5.25a National Highways: Licence April 2015

assess the application in time. This is unlikely to give the applicant the certainty or speed of decision making that it is seeking.

3.8 Notwithstanding National Highways fundamental objection to deemed consent provisions, should the Examining Authority and /or the Secretary of State disagree with National Highways’ position and impose deemed consent provisions on it then it is requested that all such provisions be consistent. A particular concern of National Highways in this regard relates to some deemed consent provisions applying “*within 28 days beginning with the date of which the application was made*” (e.g. Article 11) with others applying “*within 28 days of receiving the application*” (e.g. Article 21). This has the potential to cause confusion and potentially result in deadlines being missed by accident. Without prejudice to National Highways’ overall position on the point, it is suggested that any time period should only begin to run from the date of receipt.

3.9 The following table sets out all Articles within the draft DCO which National Highways objects to in its current form:

Article	Provision of concern	Reasons
11	Article 11(1), 11(2) and 11(3).	<p>Article 11(1) would permit the Applicant to carry out significant works to the SRN without the oversight and approval of National Highways as the relevant highway authority. No consent is required nor the ability to impose conditions on how such works take place. This is not acceptable to National Highways due to significant safety concerns.</p> <p>Further, Article 11(2) permits such works being carried out to <i>any street</i> within the order limits therefore bringing further parts of the SRN within the remit of this power.</p> <p>Whilst Article 11(3) provides that in those cases where the power under 11(2) is being exercised the applicant would need to seek National Highways consent, this is qualified and subject to a 28 day deemed consent provision. For the reasons already stated, this is not acceptable to National Highways.</p>
12	Article 12(3)	This Article is seeking a power such that the DCO would trump a usual provision of the 1991 Act. The 1991 Act was set up for very clear reasons to address historical problems in this area, setting out a clear code for street works and an

		<p>appropriate statutory process to protect both highway authorities and statutory undertakers. As such its provisions should not be so easily overruled. It is National Highways' view that any exclusions of the 1991 Act need to be very clearly justified.</p>
13	<p>Article 13(1), Article 13(2), Article 13(4), Article 13(5)</p>	<p>Article 13(1) would permit the Applicant to carry out significant works to the SRN without the oversight and approval of National Highways as the relevant highway authority. Further, Article 13(2) permits such works being carried out to <i>any</i> street within, or adjacent to, the order limits therefore bringing further parts of the SRN within the remit of this power.</p> <p>Such works may include, for example, increasing carriageway widths, decreasing carriageway widths and altering levels. Any such works to the SRN would be considered significant and would, under normal circumstances, require an applicant to enter into a section 278 agreement pursuant to the Highways Act 1980. National Highways has significant concerns over any third party having such wide powers to carry out works to the SRN without the appropriate approvals processes and safeguards being in place.</p> <p>Whilst Article 13(4) provides that in those cases where the power under Article 13(2) is being exercised the applicant would need to seek National Highways consent, Article 13(5) makes this subject to a 28 day deemed consent provision. For the reasons already stated, this is not acceptable to National Highways.</p> <p>It should be noted that Article 13 is a very wide power which could result in permanent alterations being made to the SRN. It is not acceptable to National Highways that such a power could be permitted which could bypass the explicit consent of National Highways as the highway authority who would thereafter be responsible for such works.</p>

14	Article 14(1), Article 14(2), Article 14(4), Article 14(5), Article 14(8).	<p>This article would allow any street within the order limits (including the SRN) to be temporarily stopped up, altered or diverted. Article 14(2) gives a power for parts of the SRN to be used as a temporary working site for an unknown period of time.</p> <p>Whilst article 14(5) provides that National Highways consent would be required before the power could be exercised, again this is qualified. Conditions cannot be attached to consents requested pursuant to article 14(5)(a). Requests pursuant to article 14(5)(b) are subject to a 28 day deemed consent provision. For the reasons already stated, it is National Highways view that its consent should not be qualified in this way and deemed consent poses significant safety concerns.</p> <p>As presented this article would not be acceptable to National Highways given it could interfere with National Highways carrying out its own statutory or Licence obligations and pose significant safety issues.</p>
16	Article 16(1), Article 16(2)	<p>Article 16(1) permits the creation of new accesses either at those locations specified in Schedule 9 or at any location within the order limits. Any new access off the SRN poses safety concerns and under the Highways Act 1980 (s175B) National Highways approval is required to ensure that only safe and appropriate accesses are introduced. Whilst s175B does not apply if development consent is required under the Planning Act 2008 this is not, in National Highways' view, because highway authority consent is <i>not</i> required but rather that is expected to be appropriately covered under the DCO and the DCO would provide for such consent to be given, if appropriate.</p> <p>National Highways' concerns with regards to this article are twofold:</p> <ul style="list-style-type: none"> <li>(i) no consent whatsoever is required for those accesses listed in Schedule 9; and</li> </ul>

		<p>(ii) for any other accesses the consent is to be provided by the LPA, who must consult with the highway authority but are not obliged to agree with them. There is also a deemed consent clause increasing the risk that National Highways may have no say, and no control, over the imposition of new SRN accesses which is considered to be totally unacceptable.</p>
19	<p>Article 19(1), Article 19(3), Article 19(4), Article 19(9)</p>	<p>Article 19(1) would permit the Applicant to discharge water into the highway drainage system of the SRN. Whilst Articles 19(3) and 19(4) provide for the applicant to obtain consent, such consent is qualified in that it must not be unreasonably withheld or delayed.</p> <p>National Highways would refuse any such request given the policy of the Secretary of State for Transport set out in <i>Strategic Road Network and the delivery of sustainable development</i> [Dec 2022] which states at paragraph 59:</p> <p><i>To ensure the integrity of the highway drainage systems, no new connections into those systems from third party development and proposed drainage schemes will be accepted.</i></p> <p>Article 19(9) is also a concern to National Highways as it imposes a 28 day deemed consent provision on any request for consent. For the reasons already stated, this is not acceptable to National Highways.</p>
21	<p>Article 21(1), Article 21(3), Article 21(5), Article 21(8).</p>	<p>This Article authorises entry onto any land within the Order limits which would include land owned by National Highways, including parts of the SRN.</p> <p>Pursuant to Article 21(3) no consent is required and only 14 days' notice needs to be given. This would not be acceptable to National Highways given it could interfere with National Highways carrying out its own statutory or Licence obligations and pose significant safety issues.</p>

		<p>Whilst the consent of National Highways is required for certain activities, this is limited to trial holes, boreholes, excavations or horizontal courses (Article 21(5)). National Highways consent should not be limited this way and should apply to any activity on National Highways' land. Further, any request for consent is subject to a 28 day deemed consent provision which, for reasons already stated, is not acceptable to National Highways.</p>
26	Article 26(1), Article 26(3)	<p>Interests of National Highways are subject to compulsory acquisition and the Applicant is also seeking the compulsory acquisition of rights over land belonging to National Highways, or which it holds an interest. Article 26(1) could therefore result in the extinguishment of National Highways interests. Given National Highways role as the strategic highways company responsible for the SRN in England it is not appropriate for its interests to be extinguished in such manner which could make it impossible for National Highways to fulfil its statutory and Licence obligations.</p> <p>Of further concern is Article 26(3) which renders all rights '<i>suspended and unenforceable</i>' in respect of any land which the applicant takes temporary possession of. This could apply to any land within the order limits and so could result in National Highways' interests being suspended and therefore for a potentially lengthy period National Highways could lose the ability to access its land. There is no need to obtain consent and no need to consider the implications of such other than to pay compensation however this would not be sufficient to address National Highways' concerns over such a wide power and the impact it could have on the SRN.</p>
35	Article 35(1)	<p>This article permits the applicant to enter on and use so much of the subsoil under and airspace over any street within the order limits without the consent of the highway authority. National Highways is concerned that such a wide power, without controls, creates significant safety concerns. Anyone seeking to carry out works above or below the SRN would ordinarily be expected to comply with various safety requirements so National Highways is concerned with the blanket</p>



		<p>power this article provides without the ability for National Highways to influence how any such works are carried out.</p> <p>It is clearly in the public interest to ensure that any works in the airspace above the SRN are appropriately authorised and National Highways must have a role to play in such.</p> <p>Similarly, any works beneath the SRN must be carried out with appropriate safeguards to ensure the integrity of the highway is not adversely affected.</p>
36	Article 36(1)	<p>This gives the applicant a very wide power to enter any land within the order limits to take temporary possession and so for a potentially lengthy period National Highways could lose the ability to access its land. This includes the SRN. It also gives a power to construct new accesses. No consent is required and only 14 days notice must be given. Such a wide power has the potential to cause National Highways significant concerns and could make it impossible for National Highways to fulfil its statutory and Licence obligations.</p>
37	Article 37(1)	<p>This gives NPG a very wide power to enter any land within the order limits to take temporary possession and so for a potentially lengthy period National Highways could lose the ability to access its land. This includes the SRN. It also gives a power to construct new accesses. No consent is required and only 14 days notice must be given. Such a wide power has the potential to cause National Highways significant concerns and could make it impossible for National Highways to fulfil its statutory and Licence obligations.</p>
38	Article 38(1)	<p>This gives NGN a very wide power to enter any land within the order limits to take temporary possession and so for a potentially lengthy period National Highways could lose the ability to access its land. This includes the SRN. It also gives a power to construct new accesses. No consent is required and only 14 days notice must be given. Such a wide power has the potential to cause</p>

		National Highways significant concerns and could make it impossible for National Highways to fulfil its statutory and Licence obligations.
39	Article 39(1)	This gives the applicant a very wide power to enter any land within the order limits to take temporary possession. This includes the SRN. It also gives a power to construct new accesses. No consent is required and only 28 days notice must be given. Such a wide power has the potential to cause National Highways significant concerns and could make it impossible for National Highways to fulfil its statutory and Licence obligations.
45	Article 45(1), Article 45(2), Article 45(8)	This article gives the undertaker very wide traffic regulation powers. Whilst articles 45(1) and 45(2) provide that the consent of the traffic authority is required, article 45(8) makes this subject to a 28 day deemed consent provision. For the reasons already stated, this is not acceptable to National Highways. National Highways, as the strategic highway company appointed by the Secretary of State for Transport, should be the only body permitted to have such powers in respect of the SRN.

3.10 Schedule 1 of the draft DCO gives the applicant extremely wide powers that would permit them carrying out, potentially significant, works to the SRN and the DCO in its current form would give National Highways no role in ensuring that any such works are carried out appropriately and safely. An example that is of concern to National Highways is:

(i) *works required for the strengthening, improvement, maintenance, or reconstruction of any streets;*

Whilst it may not be the current intention of the applicant to do so, this gives them a power to carry out improvement works (whatever they may be, but could be significant in scope) or reconstruct those parts of the SRN that are located within the order limits. It would be unacceptable to National Highways for any third party to be granted such powers without National Highways being afforded appropriate protections to ensure that the usual policies and approval processes are adhered to.

3.11 National Highways are in discussions with the Applicant over the inclusion of protective provisions into Schedule 15 but to date are some distance apart. The absence of adequate protective provisions is a significant concern for National

Highways. National Highways' Licence provides a duty on National Highways to "*have due regard to the need to protect and improve the safety of the network as a whole for all road users*". The DCO in its current form provides the Applicant with very wide powers that could be used to carry out works to the SRN. It is therefore of upmost importance to National Highways that adequate protections are secured to ensure that National Highways can comply with its statutory and Licence obligations. The draft DCO as currently before the Examination would not do that.

#### **4. Compulsory Acquisition Hearing 1**

- 4.1 National Highways has a number of interests listed in the Book of Reference as being subject to compulsory acquisition powers. National Highways has two 2 primary concerns with the compulsory acquisition proposals:
  - 4.1.1 The possibility of any of its interests being extinguished.
  - 4.1.2 Safety implications for the SRN.
- 4.2 National Highways objects to the extinguishment of any of its interests which has the potential to cause National Highways significant problems and could make it impossible for National Highways to fulfil its statutory and Licence obligations.
- 4.3 National Highways safety concerns are linked to the comments already made with regards to the DCO Articles. National Highway's concern is that that should uncontrolled rights be granted, this creates safety concerns for the SRN. For example, rights to oversail the highway must be subject to appropriate safety measures, as must access rights for installation or maintenance of apparatus over, under, in or adjacent to the SRN.
- 4.4 National Highways accept that such rights are needed for the authorised development and does not object in principle, but its concern relates to the possibility that the usual approvals processes may be bypassed resulting in concern that access and maintenance may be carried out in a manner that puts public safety at risk. With that in mind, National Highways' view is that rather than compulsory rights being granted in respect of such; either a private agreement is entered into, or potentially NRSWA powers are relied upon (wherever possible) which would mean that compulsory powers are unnecessary.
- 4.5 This objection extends to National Highways' land interests located within the local highway authority network. The local highway authority share National Highways concerns around uncontrolled powers being granted in, on, over or adjacent to the highway network. It is considered unnecessary for the applicant to permanently acquire the freehold of such land.

Discussions are ongoing with the applicant in this regard and it is hoped that agreement can be reached to control the manner in which the applicant can carry out its necessary works in these locations. Without an agreement in place, the proposals are of concern to both National Highways and the local highway authority and as such both parties object.

**National Highways Limited**

**6 June 2023**