

**Written Representation submitted by National Highways Limited**  
**Application by Chrysador Production (UK) Limited for an Order granting**  
**Development Consent for the Viking CCS Pipeline Project**  
**Planning Inspectorate Reference Number: EN 070008**



## 1 Introduction

- 1.1 This written representation is National Highways Limited's ("NH") formal written response to the application by Chrysador Production (UK) Limited ("Applicant") for an order granting development consent for the Viking CCS Pipeline Project ("DCO"). The Applicant seeks development consent for proposed authorised development described in Schedule 1 of the draft DCO ("Authorised Development"). NH submitted a section 56 representation on 15 January 2024.
- 1.2 Whilst NH has no in principle objection to the DCO and the Authorised Development, it does object to the application in its current form. NH set out its principal concerns in its section 56 representation. Since then, it has had time to consider the application further. Its remaining concerns in respect of the application as submitted are detailed below.

## 2. National Highways

- 2.1 NH (formerly Highways England and being the statutory successor to the Highways Agency) is an arms-length government owned company responsible for the ownership, management and improvement of England's motorways and major A-roads, collectively referred to as the strategic road network ("SRN"). The SRN comprises over 4,500 miles of road sitting at the core of the national transport system, connecting all major economic and resource centres with key markets and conurbations. The SRN is the most heavily used part of the national road network, carrying a third of all traffic and two-thirds of all freight totalling approximately 4 million journeys a day. It provides businesses with the means to get products and services to their customers, gives access to labour markets and suppliers, and encourages trade and new investment. It is also a complex network of highway structures, drainage and attenuation apparatus and telemetry and electronic communication assets. In short, the SRN is a critical piece of economic infrastructure, vital to the nation's connectivity and the means for generating economic growth.
- 2.2 NH is appointed pursuant to section 1 of the Infrastructure Act 2015 to act as the highway authority, traffic authority and street authority for the SRN. The effect of this appointment is to make NH the statutory custodian of this national asset, conferring on it the status and legislative functions of a strategic highways company.
- 2.3 As a strategic highways company, NH must comply with a number of general and specific statutory duties<sup>1</sup>, including to:
- (a) *co-operate in so far as reasonably practicable with other persons exercising functions which relate to highways or planning;*

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<sup>1</sup> Infrastructure Act 2015, s.5

- (b) *have regard to the effect of the exercise of its functions on the environment;*
- (c) *have regard to the effect of the exercise of its functions on the safety of users of highways.*

2.4 The Secretary of State for Transport may from time to time give a strategic highways company directions or guidance as to the manner in which it is to exercise its statutory duties and functions. For the purposes of directing the functions as regards the SRN, these directions are contained within the 2015 Licence.<sup>2</sup> The directions contained in the 2015 Licence are mandatory<sup>3</sup> and are regulated by the Office of Road and Rail. They include:

- (a) *Paragraph 4.1 - The network for which the Licence holder is responsible is a critical national asset, which the Licence holder must operate and manage in the public interest, in respect of both current activities and needs and in providing effective stewardship of its long-term operation and integrity;*
- (b) *Paragraph 4.2 – Without prejudice to the general duties on the Licence holder under section 5 of the Infrastructure Act 2015, the Licence holder must, in exercising its functions and complying with its legal duties and other obligations, act in a manner which it considers best calculated to:*
  - i. ensure the effective operation of the network;*
  - ii. ensure the maintenance, resilience, renewal and replacement of the network;*
  - iii. ensure the improvement, enhancement and long-term development of the network;*
  - iv. ensure efficiency and value for money;*
  - v. protect and improve the safety of the network;*
  - vi. co-operate with other persons or organisations for the purposes of co-ordinating day-to-day operations and long-term planning;*
  - vii. minimise the environmental impacts of operating, maintaining and improving its network and seek to protect and enhance the quality of the surrounding environment;*
  - viii. conform to the principles of sustainable development.*
- (c) *Paragraph 5.37 – The Licence holder must hold and manage land and property in line with, and as a function of, the Licence holder’s legal duties as a highway authority, and solely for the purposes of operating,*

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<sup>2</sup> [Highways England: licence \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

<sup>3</sup> Infrastructure Act 2015, s.6(3)

*managing and improving the highway, unless otherwise approved by the Secretary of State for Transport.*

- 2.5 More particularly sections 41 and 130 of the Highways Act 1980 contain respectively a statutory duty for NH to ensure it maintains the SRN to the appropriate/sufficient standard, free from any hazards so it is safe to use, and a statutory duty to assert and protect the rights of the public in use and enjoyment of the SRN. Section 16 of the Traffic Management Act 2004 contains a statutory Network Management Duty for NH to manage the SRN with a view to achieving, so far as may be reasonably practicable having regard to NH's other obligations, policies and objectives, securing the expeditious movement of traffic on the SRN and facilitating the same on roads where another authority is the traffic authority. In order to achieve this, the action NH may take in performing that duty includes that which NH considers will contribute to securing the more efficient use of the SRN or avoidance, elimination or reduction of disruption to the above relevant roads and may involve the exercise of any power to regulate or co-ordinate the uses made of any road (or part of a road) in the road network (whether or not the power was conferred on them in their capacity as a traffic authority). Section 17 of the Traffic Management Act 2004 requires that NH shall make such arrangements as they consider appropriate for planning and carrying out the action to be taken in performing its Network Management Duty and has to establish processes to, as far as reasonably practicable, identify things (including future occurrences) which are causing, or have potential to cause SRN congestion or other disruption to the movement of traffic on it and consider any possible action that could be taken in response to (or anticipation of) anything so identified, e.g. in the event NH considers this particular statutory duty may not be met.
- 2.6 Supplementary to this, Paragraph 4.2 of NH's statutory licence requires NH to act in a manner which it considers best calculated to ensure the effective operation of the SRN. To comply with this, Paragraph 5.1 states that NH should seek to minimise disruption to road users that might reasonably be expected to occur as a result of planned or unplanned disruption to the network, as well as proactively and reactively provide relevant, accurate and timely information about traffic and conditions on the SRN to road users, including when there is disruption.
- 2.7 This range of duties demonstrates that NH must always protect road users/the SRN and ensure the SRN retains its integrity, is free from hazards, is safe to use and is available for continual uncongested use all year round subject to precise terms of its Network Management Duty which means NH is duty bound to consider carefully any activity that has the potential to impact on any of NH's statutory duties.
- 2.8 Safety is at the heart of NH's function as a statutory undertaker – the safety of the travelling public, the safety of NH staff and the safety of third-party contractors on the network. The SRN can be a dangerous network to operate on, over and under given the very limited control that NH has on road users operating at high speeds. The potential for catastrophic damage or injury is

prevalent, which is precisely why NH has strict procedures for contractors operating on, over or under the SRN, particularly those which it does not itself control.

### **3. NH's objections**

- 3.1 NH has concerns with regard to the approach undertaken to derive the traffic impact resulting from the Authorised Development. NH has concerns about *potential* impacts on the SRN because sufficient information has not been provided to enable National Highways to form a sound opinion on the impacts of the Authorised Development. There is a substantial rise in local area development, which is expected to lead to an accumulative surge in both operational and construction-related traffic. This increase in traffic should be taken into consideration in the Transport Assessment which National Highways feel is currently deficient in this regard.
- 3.2 As an important statutory consultee in the DCO process NH should be able to inform the ExA whether the Authorised Development will or will not have adverse impacts on the SRN. It is currently not able to do this. It is critical that this information is made available to National Highways to enable National Highways to play a meaningful part in this examination and to ensure that adequate protections are in place, should they be necessary, to protect this vital national asset.
- 3.3 It is the view of NH that the application, particularly the Transport Assessment, has a number of deficiencies that will need to be addressed. These are:
  - a) transport impacts, particularly peak hour impacts, should be considered relative to national planning policies relevant to the SRN, including Circular 01/2022 and The Strategic Road Network: Planning for The Future;
  - b) the Personal Injury Collision analysis should include an assessment of clusters and causations;
  - c) the Applicant should investigate the discrepancy between the Automatic Traffic Counter derived values and the DfT WebTRIS reported Average Annual Daily Traffic;
  - d) clarification should be provided on whether separate TEMPro growth factors have been applied for the SRN and Local Highway Network;
  - e) the operational phase impact should be defined;
  - f) the assumptions for the daily construction workforce profile should be justified;

- g) a detailed, evidence-based construction programme should be submitted for review;
- h) the Transport Assessment does not present any evidence or supplementary narrative on the influence of daily variation on baseline traffic to support conclusions on non-materiality;
- i) based on the outcomes of supplementary information required, merge/diverge assessments could be required for an appropriate opening year and future year, taking into account background traffic growth, and committed development;
- j) NH does not agree that there will be an even HGV distribution throughout the day for pipe delivery as assumed; this is based on the intention to use port access points with specified sailing times. The impact for the SRN should be detailed;
- k) the Applicant should provide certainty that a full Construction Traffic Management Plan and a Construction Workers' Travel Plan will be submitted *and agreed* with National Highways prior to the commencement of works;
- l) the Applicant should identify the relationship between the proposed development and the emerging carbon capture plants, and, considering all other development in the area, identify the cumulative impacts during the construction and operational phases; and
- m) no Travel Plan is included within the DCO Application for the Operational phase or the Construction phase. Pending information considering the Operational Phase of the proposed development, if appropriate, National Highways could recommend in future that an operational Travel Plan is produced for review.

3.4 The Authorised Development involves subterranean pipe crossings of the SRN however insufficient detail has been provided to identify the form of infrastructure required or the mechanism for delivery of such infrastructure. National Highways has significant concerns around safety in respect of such works and must fully understand the Applicant's proposals to be able to meaningfully contribute to this examination. It is noted that the description of Works in Schedule 1 to the draft DCO states "*construction and installation of the pipeline by trenched and trenchless methods...*" Both of these methods pose significant safety concerns. They are also very different. NH would welcome some clarity on the Applicant's proposals in this regard.

3.5 In addition to the named Works, the final entry in Part 1 of Schedule 1 includes provisions which provide wide powers that could result in works being

undertaken to the SRN. NH would like to better understand why such powers are required for works to the SRN and would ideally request that the power does not apply to the SRN, unless appropriate protections are in place.

#### **4. Protecting the SRN**

4.1 Unlike many other statutory consultees involved in the consenting of nationally significant infrastructure projects, NH is a very active promoter of development consent orders and understands keenly the pressures and requirements placed on applicants to balance the delivery of the scheme with the protections afforded to statutory consultees. NH has been at the vanguard of DCO-consented development since the Planning Act 2008 was introduced and has offered many commitments for the protection of electricity and gas apparatus, water and drainage infrastructure, railway undertakings and other infrastructure owned by statutory consultees as a consequence of its own development consent orders. The SRN deserves the same measure of protection, proportionate to the extent of interference caused by the Authorised Development.

4.2 NH understands the need for proportionality in the context of such protections and considers that a proportionate level of protection in all cases and as a minimum standard where there is the potential for impact to the SRN should be the following:

- (a) that NH be held harmless from the impact of third party development;
- (b) that NH procedures put in place for the protection of property and persons are adhered to in accordance with NH's strict requirements on network occupancy;
- (c) that any works carried out to the highway, on NH land, underneath the highway, above the highway and to apparatus forming part of the highway estate should be carried out in accordance with the relevant standards;
- (d) that financial provision should be put in place to ensure that in the event of the Applicant commencing works which may impact the SRN (including for example, underground works beneath the SRN or oversailing above it) and falling into financial difficulty or defaulting on completion of the works, NH has the resources needed to put the SRN and the highway estate into the position it was in before the Applicant commenced works;
- (e) that NH be indemnified for any loss or damage to the SRN or the highway estate as a result of the works;
- (f) that the Applicant requests approval from NH before exercising any powers under the DCO in relation to the SRN or the highway estate (such approval not to be unreasonably withheld) to enable proportionate rights and reservations to be secured for the protection of the SRN;

- (g) that emergency procedures be agreed for NH to access the SRN to carry out works, repair any damage or remove dangerous obstacles resulting from the Authorised Development which pose a risk to life.
- 4.3 NH has a standard form of protective provisions which includes measures to ensure the above points are addressed.
- 4.4 NH considers that without an appropriate form of protective provisions, there is a considerable risk of serious detriment to the SRN, as any damage or injury to the SRN or wider highway estate would require funding to rectify that is not within NH's budget. There is no recourse to public funding for emergency works of this nature and a reserve of funding is not available. Without prejudice to whether the Authorised Development would cause a serious detriment to the SRN, it remains the case that the public purse should not be left to meet or subsidise costs of impacts caused by third party development to the SRN.
- 4.5 Further, NH's estate comprises more than just the corpus of the highway (the 'top two spits'). Unlike local roads, where the local highway authority typically controls only the highway strata and sufficient vertical limits above and beneath the highway to maintain necessary apparatus and street furniture, in most cases NH controls the freehold of the land beneath the highway to the centre of the earth and to the heavens above. This estate is held inalienably for the benefit of the statutory undertaking, to ensure that the SRN is not compromised and that maintenance work at any required depth can take place free from risk of trespass or ransom. Where apparatus is co-located in the highway (which is commonplace), that apparatus has been authorised by NH or has been installed through industry standard processes (such as under the New Roads and Street Works Act 1991), where statutory protection is afforded to NH as the highway or street authority. Whilst NH is prepared to approve the acquisition of sub surface interest and grant rights to co-locate apparatus in the highway, where it is geotechnically possible and respecting other apparatus that is in, on, under or over the highway – the land take must be proportionate and necessary and cannot be to the detriment of NH, the SRN or other undertakers. It cannot be acceptable that apparatus is placed in, on, under or over the SRN through a DCO by disapplying statutory protections that NH has and not accepting to acquiesce to the terms which are required by NH to manage its network in accordance with regulatory requirements.
- 4.6 For the sake of clarity and transparency, NH has no desire to stymy development or to impose requirements on the Applicant which are disproportionate to the potential harm that could be caused to the SRN. NH is legally obliged to co-operate with third parties exercising planning or highway functions, which includes the Applicant in this statutory process. NH is prepared to engage fully and assist in whatever way is reasonable to ensure that the Authorised Development proceeds as quickly and efficiently as possible.



## **5. Protective Provisions**

- 5.1 NH is grateful to the Applicant for including protective provisions for the benefit of NH in the draft DCO. These protections go a long way to addressing some concerns that NH would otherwise have. For example, although land interests of NH are included in the Book of Reference, paragraph 121 of Part 9 requires the Applicant to obtain NH's approval before exercising any acquisition powers. This is the correct way to deal with acquisition of rights and interests belong to an important statutory undertaker. Similarly, although numerous Articles within the draft DCO would give the Applicant powers to undertake works on the SRN, or interfere with interests of NH, paragraph 115(2) of Part 9 is clear that these powers do not apply to in respect of the SRN<sup>4</sup> unless separate approval has been given by NH.
- 5.2 That being said, the protective provisions that the Applicant has included in the draft DCO for the benefit of NH are not completely in accordance with the standard position of NH. Whilst NH looks to take a proportionate and pragmatic view of each development on a case by case basis, there are some protections that it cannot compromise on. Negotiations in this regard will continue with the Applicant and it is hoped that agreement on the protective provisions for NH's benefit can be reached.

## **6. Summary**

- 6.1 For the reasons given above, NH objects to the DCO in its current form. NH will continue to work with the Applicant in respect of all of its concerns with the hope that NH's objection can be withdrawn before the close of the examination.
- 6.2 Should it assist the ExA, NH will respond to any written questions that the panel may have and is willing to attend an appropriate hearing to detail the impacts of the Authorised Development to NH.

**National Highways Limited**

**25 April 2024**

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<sup>4</sup> Defined in paragraph 113 of Part 9 as “*any part of the road network including trunk roads, special roads or streets for which National Highways is the highway authority including drainage infrastructure, street furniture, verges and vegetation and all other land, apparatus and rights located in, on, over or under the highway for which National Highways is the highway authority.*”