

## **Deadline 4 Submission of National Highways Limited**

### **Written summaries of oral submissions made at ISH2 and ISH3 (including any response to action points)**

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 document sets out the latest submissions of National Highways Limited (National Highways) provided at Deadline 4 of the examination.
- 1.2 The proposed development would 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 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 proposed development and the SRN.

## **2 ISH 2 – Post-hearing submissions, including written summaries of oral submissions to the hearing.**

- 2.1 National Highways confirms that substantial progress has been made with the Applicant to address many of National Highways original concerns with the draft DCO. There remain a few matters between the parties not yet agreed and discussions are ongoing in the hope that agreement can be reached on all matters to enable National Highways to withdraw its objection at the earliest opportunity.

### **2.2 Articles of the dDCO**

- 2.2.1 Protective provisions for the benefit of National Highways are being negotiated which will address the majority of concerns National Highways would otherwise have with regards to the articles of the draft DCO ensuring that National Highways protections apply to any relevant works.
- 2.2.2 Two relevant articles have however been excluded by the Applicant from the protection afforded by protective provisions and this causes National Highways concern. The articles are *(13) Access to works* and *(16) Traffic regulation*.

#### Article (13) Access to works

- 2.2.3 National Highways has two concerns with this article as drafted. Firstly, article 13 permits the undertaker to form and lay out means of accesses as reasonably required for the purposes of the proposed development. The consent of National Highways would not be required in respect of any accesses provided pursuant to Schedule 1 or Schedule 4. National Highways' concern relates to Schedule 1.



2.2.6 Article 13 would also give the undertaker the power to construct an access off the A180. Again, no consent of National Highways as the relevant highway authority would be required.

*Work No.08* – Construction of a buried 24-inch (610 millimetre) external diameter Carbon Dioxide (CO<sub>2</sub>) pipeline section of approximately 1.8km length between Work No. 6 and Work No. 9 including:

- (a) construction and installation of the pipeline by trenched and trenchless methods, including trenchless installation technique pit works, the creation of reception pits, and launch pits;
- (b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;
- (c) installation of underground fibre optic cables for transfer of electronic communications;
- (d) construction of a haul road, temporary construction accesses and working areas and laydown area;**
- (e) reinstatement, ecological and environmental works; and
- (f) drainage works including creation of connections to existing drainage system.

as shown on Sheet 5 of the Works Plan.



2.2.7 Article 13 establishes the principle of accesses being acceptable, yet it has not been established whether or not an access can be safely accommodated from the SRN in any of the locations that would be permitted by article 13. The only control that National Highways would have is pursuant to Requirement 7. However, this control is limited to agreeing an access plan. There does not appear to be a possibility for National Highways to object to or prevent an access being provided off the SRN on safety grounds if it is felt that an access cannot be safely accommodated in such a location.

- 2.2.8 It is for these reasons that National Highways has asked the Applicant to include article 13 within the protective provisions for National Highways' benefit. Whilst National Highways would not object to an access if one can be safely accommodated, it does have grave concerns over a third party being granted a power to include an access off the SRN even if National Highways, as the relevant highway authority, considered it to be unsafe.
- 2.2.9 If the Applicant is unwilling to include article 13 within the protective provisions then National Highways respectfully requests that article 13 is amended to ensure that it does not apply to accesses taken from the SRN.

### Deemed consent

- 2.2.10 The second concern that National Highways has with article 13 is that it grants a wide power for accesses to be constructed *anywhere* within the order limits. Whilst National Highways' consent is required for any accesses from the SRN falling outside of Schedules 1 and 4, this would be subject to deemed consent provisions. Applying deemed consent would mean that National Highways' explicit consent could be bypassed which is not considered appropriate given the safety issues at play.
- 2.2.11 National Highways appreciates that the Applicant's rationale for seeking deemed consent provisions is to ensure appropriate engagement from statutory bodies, such as National Highways. It ought to be recognised however 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.
- 2.2.12 Furthermore, whilst the need for the proposed development is recognised, Section 5(2) of the Infrastructure Act 2015 places a statutory duty on National Highways to always have regard to the safety of users of the SRN when exercising its functions. Its licence also requires it to support economic growth (and therefore appropriate development) whilst balancing its statutory duty to protect the safety of road users and the SRN generally. Deemed consent risks placing National Highways in breach of its own statutory duties and Licence obligations.
- 2.2.13 National Highways has no intention of slowing down this development however it has strict procedures in place to ensure that safety is not compromised. Given the safety implications of not following due process National Highways cannot risk its approvals being bypassed as a result of deemed consent provisions and so it is

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

likely that refusals would have to be issued, even in cases where an extra day or two would result in an approval. National Highways would have to put automated systems in place to ensure that this happens and deemed consent cannot apply by default. National Highways does not believe this is in anyone's interest and the benefit that the applicant is seeking here would not be achieved.

#### Article (16) Traffic regulation

- 2.2.14 Article 16 provides the undertaker with a very wide power to make traffic regulation orders. This power would permit the undertaker to amend existing traffic regulation orders that National Highways has made, as well as make new ones.
- 2.2.15 As the strategic highway company appointed by the Secretary of State for Transport National Highways should be the only body permitted to have traffic regulation powers in respect of the SRN. Article 16 as drafted provides a private company with very wide regulatory powers in respect of a vitally important national asset.
- 2.2.16 Whilst the undertaker is required to obtain the consent of the traffic authority, this is qualified with reference to "*such consent not to be unreasonably withheld*" and reference to 'reasonable' conditions. Paragraph (7) of article 16 also makes National Highways subject to a deemed consent provision (if no response is given within 42 days).
- 2.2.17 National Highways' concerns around deemed consent are the same as stated at paragraphs 2.2.10 – 2.2.13.
- 2.2.18 National Highways strongly believes that any interference with the SRN should be subject to its explicit consent with the ability to attach *any* necessary conditions (without limitation or qualification). 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 concerns, particularly when those concerns relate to the safety of the travelling public that could be put at risk if proper processes are not followed.
- 2.2.19 As the highway authority responsible for the SRN National Highways makes numerous traffic regulation orders each year. It has well established practices in place for such and has major concerns that a private company, with no prior experience as a traffic or highway authority, could be granted these powers and bypass standard procedures.
- 2.2.20 It is noted that article 16, as drafted, would enable a traffic regulation order to be brought into force without the usual level of public consultation that is ordinarily necessary – for example the undertaker is only obliged to consult the chief officer of the police

and traffic authority, whereas traffic authorities before making such orders must consult a substantial list of stakeholders depending on the circumstances and effects of the order. There is also no requirement within article 16 to publish notification of such orders. National Highways when making its own orders has a statutory obligation to publish notices, including details of diversion routes to inform the public. As part of its order making processes National Highways would also consider whether any existing restrictions that may be indirectly impacted by the order would need suspending to ensure the safe and efficient flow of traffic. All of these usual requirements will be bypassed under article 16 and National Highways is concerned that this may impact the safe operation of the SRN.

- 2.2.21 Should due process not be followed then there is a risk that traffic regulation orders are made that create unsafe driving conditions; this would particularly be the case if restrictions are not adequately spaced and/or indirectly effect each other.

## 2.3 Requirements

- 2.3.1 National Highways is in ongoing discussions with the Applicant regarding its traffic and transport concerns. As currently drafted National Highways only has a limited role as a consultee in terms of discharging requirements relating to certain management plans. National Highways' concerns can be alleviated if it had an approval role where those management plans relate to traffic and transport impacts on the SRN. National Highways had similar concerns and has recently agreed an approval role with the applicant for the *Immingham Eastern Ro Ro Development Consent Order*. The following amendment has been agreed with the applicant for Immingham Eastern Ro Ro:

8.—(1) No part of the authorised development shall be commenced until an onshore construction environmental management plan has been submitted to and approved by the Council and National Highways (on matters related to its functions), following consultation with the MMO, Natural England, the Environment Agency, Network Rail, ~~National Highways~~, Royal Mail and the Board on matters related to their respective functions.

### Operational freight management plan

13.—(1) The operation of the authorised development must not be commenced until a final version of the operational freight management plan has been submitted to and approved in writing by the Council and National Highways (on matters related to its functions).

- 2.3.2 Whilst there has not been consistency from order to order, there are other DCOs that have granted National Highways an approval role in similar circumstances. National Highways acknowledges that this may not be appropriate in every instance but where there is expected to be an impact on the SRN, which National Highways believes raises issues around public safety, then it is best placed to grant any such approval in accordance with its statutory and Licence obligations.

- 2.3.3 Examples of DCOS that have given National Highways an approval role include:

*The National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024*

**Construction management plans**

5.—(1) All construction works for the authorised development must be carried out in accordance with the construction management plans referred to in paragraph (2), unless otherwise agreed with the relevant planning authority or the highway authority, as may be appropriate to the relevant plan, scheme or strategy concerned.

*The Dogger Bank Teesside A and B Offshore Wind Farm Order 2015*

**Construction traffic routing and management plans**

32.—(1) No stage of the onshore works may commence until written details of a construction traffic management plan ("CTMP") and a construction travel plan ("CTP"), to be used for the management of construction traffic, has been submitted to and approved by the relevant planning authority and Highways England.

- 2.3.4 In addition it is noted that, where relevant, Network Rail has been given an approval role showing that there is much precedent for other bodies to have an approval role (rather than mere consultee) in circumstances where it is appropriate:

*The Hornsea Four Offshore Wind Farm Order 2023*

**Construction traffic management plan**

19.—(1) No stage of the connection works or Work No. 5 may commence until written details of a construction traffic management plan (which accords with the outline construction traffic management plan) for that stage of the connection works or Work No. 5 has been submitted to and approved by the relevant planning authority in consultation with the relevant highway authorities (and approved by Network Rail in accordance with paragraph 5 of Part 4 of Schedule 9).

- 2.3.5 Further detail around National Highways' concerns in this regard was provided at ISH 3 and is set out in section 3 below.

## **2.4 Protective Provisions**

- 2.4.1 National Highways and the Applicant have made good progress in reaching common ground on the inclusion of protective provisions for National Highways' benefit. However, unfortunately the protective provisions are not yet in a position that would fully satisfy all of National Highways' concerns.

- 2.4.2 As already mentioned, National Highways requests the inclusion of *article (13)* and *article (16)* within the list included at paragraph 115(2). This would ensure that those articles are governed by the approval processes set out within the protective provisions. For the reasons stated, and not repeated further, National Highways considers this appropriate given the safety implications of works taking place on, or in the vicinity of, the SRN without following established practices.



- 2.4.3 The parties are yet to reach full agreement on the extent of National Highways oversight and approval requirements for works that may impact the SRN, as set out in the protective provisions. The Applicant is of the view that some of National Highways' requirements may be unnecessary or disproportionate to the works. In response National Highways' view is that all of its requirements are proportionate and as many of its standard protective provisions are phrased "*as far as is relevant*" then the Applicant can take comfort that National Highways is not requesting irrelevant information. This preferred drafting also ensures that National Highways has comfort that everything that is relevant will be provided. It is especially needed to ensure that National Highways can make a relevant request should something unforeseen happen – e.g. if damage to the SRN was caused by the drilling and National Highways needed to step in and arrange traffic management and emergency repair works.
- 2.4.4 National Highways and the Applicant are also discussing how best to protect each other's assets from unauthorised interference. National Highways has no intention of carrying out any works to the pipeline itself however given the pipeline is being located beneath the SRN National Highways cannot have provisions that prevent it touching the pipeline in the event that it needs to access the area to fulfil its statutory duties. To date the parties have been unable to reach agreement in this regard.
- 2.4.5 Finally, National Highways has concerns that to date the Applicant has not accepted its request for financial security. This is a standard requirement of National Highways in respect of third party works to ensure that the public purse is protected. The Department for Transport does not fund National Highways in respect of third party works. National Highways must therefore ensure that adequate security is in place that it can call upon should something go wrong and National Highways need to exercise step in rights.
- 2.4.6 Negotiations regarding all of these issues are ongoing. If agreement cannot be reached beforehand then National Highways will submit a track-changed copy of the draft protective provisions with appropriate commentary at Deadline 5.

### **3 ISH 3 – Post-hearing submissions, including written summaries of oral submissions to the hearing.**

- 3.1 National Highways' traffic and transport concerns are amplified due to it only having a limited role as a consultee in discharging requirements related to management plans that directly relate to the SRN. National Highways' concerns could be alleviated if it had an approval role for those management plans affecting traffic and transport impacts on the SRN, namely the Construction Traffic Management Plan (CTMP) and Decommissioning Environmental Management Plan (DEMP).

- 3.2 The Applicant has stated that they do not consider it appropriate for National Highways to be identified as an approving consultee for either the CTMP or the DEMP. The draft DCO lists National Highways as an interested party to be consulted by the relevant Local Planning Authority (LPA) who ultimately hold the approval role.
- 3.3 National Highways has requested to be considered as an approving body due to the volume of construction traffic (858 two-way trips per day) and its potential to result in a severe impact to the operation of the SRN, including the interrelationship between Habrough Roundabout, situated within the SRN, the site access to the proposed Northern Compound and Habrough Road.
- 3.4 It is important to note as a precis to this position, that no information has been provided to National Highways regarding the potential safety implications or impacts on the operation of Habrough Roundabout. Whilst National Highways has concerns that still need addressing in this regard, to avoid delaying the application process, National Highways has agreed to address these impacts at a later stage, in conjunction with the CTMP review. National Highways needs assurance that the proposed construction phase and cumulative impacts will not result in severe or unacceptable road safety issues and because it has agreed to push the assessment to a later date it is appropriate that it has more than just a consultee role at that time.
- 3.5 In principle, National Highways does not anticipate, at this stage, a severe road safety issue in relation to the use of the Northern Compound access, however, National Highways requires sufficient evidence is provided to ensure that the access is safe for the proposed use, with consideration of the concerns regarding the interrelationship between Habrough Roundabout, the site access and Habrough Road
- 3.6 National Highways understands the Applicant has proposed to ensure that construction worker shift changeovers are scheduled outside of peak network periods (07:00-10:00 and 16:00-18:00), ensuring that the 858 forecasted arrivals and departures do not coincide with peak network periods; however, National Highways would note that due to the increasing level of forecast development within the North and North East Lincolnshire area, it is anticipated that there will be a significant volume of construction traffic utilising the SRN outside the typical network peak periods.
- 3.7 The following are known developments that, depending on construction programmes, may compete with construction traffic from the proposed development on the same sections of the SRN (namely the A180 and A160):
- . NSIPs
    - Immingham Eastern Ro-Ro Terminal
    - Able Marine Energy Park
    - South Humber Bank Energy Centre
    - VPI Immingham OCGT
    - Immingham Green Energy Terminal
  - .

- Planning Applications
      - Phillips 66 Ltd, Eastfield Road, South Killingholme (Ref PA/2023/422)
      - A180 Solar Farm (Ref DM/0108/24/FUL)
      - Land Off Turing Road Immingham North East Lincolnshire (Ref DM/0122/24/FUL)
      - NEL Energy Park, Mauxhall Farm, Stallingborough (Ref DM/1145/19/FUL)
      - Business Park, Stalinborough Interchange (Ref DM/0105/18/FUL)
      - North Beck Energy Centre (Ref DM/0026/18/FUL)
      - Great Coates Renewable Energy Centre (Ref DM/0329/18/FUL)
      - South Humber Bank Energy Centre (Ref DM/1070/18/FUL)
      - 525 residential development, Stallingborough Road, Immingham (Ref DM/0728/18/OUT)
      - VPI Immingham Energy Park "A" (Ref PA/2018/918) m. Rock revetment repair and reinforcement, Humber Estuary (Ref DM/1071/22/FUL)
      - Land south of the A160, South Killingholme (Ref PA/2024/584)
- 3.8 Consequently, the CTMP and DEMP should be submitted to National Highways for approval to ensure that there will not be an unacceptable impact on highway safety and that the residual cumulative impacts on the SRN would not be severe.
- 3.9 National Highways, therefore, would recommend the following amendments to Requirement 6 and Requirement 16:
6. (1) *No stage of the authorised development must commence until a CTMP for that stage, in accordance with the outline construction traffic management plan, has been submitted to and approved by the relevant planning authority ~~following consultation with the relevant highway authority~~ and National Highways (on matters related to its functions).*
16. (1) *The undertaker must, no later than six months prior to the planned permanent cessation of operation of the authorised development, submit to the relevant planning authorities and National Highways (on matters related to its functions) for approval a DEMP.*
- 3.10 It is noted that Part 2 of Schedule 2 does anticipate that some requirements will be submitted to multiple discharging authorities and so National Highways' request is consistent with the draft DCO in that regard.
- 3.11 National Highways also has unaddressed concerns with regards to the boundary treatment relating to the proposed Northern Compound.
- 3.12 The Northern Compound is located adjacent to the A160; its northern boundary adjoins the SRN boundary. Due its proximity to the SRN, evidence must be provided to demonstrate to National Highways that there are no

drainage, structural, boundary treatments or other constructions that would have an impact on the safe operation of the SRN. To date this information has not been forthcoming nor is National Highways aware of anything in the draft DCO that requires the Applicant to provide this information or that enables National Highways to raise concerns over any such proposals.

- 3.13 It should be noted, for example, that the structural stability of the SRN should not be undermined by third party development, and that surface water should not drain towards or into the highway. As stated within paragraph 57 of Department for Transport Circular 01/2022, for reasons of safety, liability and maintenance:

*"...structures should be sited sufficiently far from the highway boundary of the SRN so that they cannot topple on to the SRN or undermine its geotechnical integrity. Alternatively, an appropriate structural assessment that accords with the DMRB must be provided. A Road Restraints Risk Assessment must also be carried out where any furniture, structures or other features would be sited adjacent to the SRN."*

- 3.14 Furthermore, to ensure the integrity of the highway drainage systems, paragraph 59 states:

*"...no new connections into those systems from third party development and proposed drainage schemes will be accepted. Where there is already an existing informal or formal connection into the highway drainage system from a proposed development site, the right for a connection may be allowed to continue provided that the flow, rate and quality of the discharge into the highway drainage system remains unaltered or results in a betterment. The company may require a drainage management and maintenance agreement to be entered into to secure this requirement in perpetuity."*

- 3.15 National Highways does not have enough information at this stage to form a view on these matters. National Highways respectfully asks therefore that further information must be provided with regards to the proposed boundary treatment between the A160 and the Northern Compound. If this is not possible before the close of examination then National Highways requests an additional requirement is included at Schedule 2 that obliges the Applicant to provide this information for subsequent approval.

**National Highways Limited**  
**25 July 2024**