

**PLANNING ACT 2008**

**THE INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES 2010**

**WRITTEN SUMMARY OF ORAL SUBMISSIONS MADE AT HEARINGS ON 14 MAY 2019  
REGARDING THE APPLICATION BY SUFFOLK COUNTY COUNCIL FOR AN ORDER  
GRANTING DEVELOPMENT CONSENT FOR THE LAKE LOTHING THIRD CROSSING**

**PLANNING INSPECTORATE REFERENCE NUMBER TR010023**

**WRITTEN SUMMARY OF ORAL SUBMISSIONS MADE AT HEARINGS ON 14 MAY 2019  
ON BEHALF OF:**

**20013284 - OVERSEAS INTERESTS INC  
20013285 - WAVENEY FORK TRUCKS LIMITED  
20013286 - LIFT TRUCK RENTALS LIMITED,  
20013287 - NEXEN LIFT TRUCKS LIMITED,  
20013288 - OAKES RECRUITMENT LIMITED,  
20013289 - TEAM OAKES LIMITED  
20013290 - HITECH GRAND PRIX LIMITED**

**DATED: 24 MAY 2019**

## **Introduction and background**

- 1 This written summary is made in accordance with Item 12 of Annex A to your Rule 8(3) and Rule 13 letter dated 4 February 2019 in relation to oral submissions made at the hearings on 14 May 2019 on behalf of each of the above clients (which for the purposes of this summary shall be referred to as the “**Nexen Group**”).
- 2 Jamie Childs of Howes Percival and John Jones of Colliers were in attendance at the 14 May 2019 hearings on behalf of the Nexen Group.
- 3 The Nexen Group’s position on the proposed project and matters relating to the draft DCO and compulsory acquisition is set out in full in the written representations that have been made to date.
- 4 In this written summary we refer to the land that our clients’ own/occupy (as appropriate) under title number SK264748 as “**the Land**” and the project proposed by Suffolk County Council (“**Applicant**”) as the “**Proposed Scheme**”. The area in which our clients intend to develop which is shown as Plot 3-56 on the Land Plans is referred to below as “**the Development Land**”.

## **Issue Specific Hearing 3: Draft Development Consent Order**

- 5 It was confirmed that the Nexen Group’s position on the draft DCO is set out in full in the written representations that have been made on their behalf to date.
- 6 The recent additions to the traffic mitigation measures in paragraph 12(4) of Schedule 2 to the draft DCO were noted. The following points were raised with the Applicant:
  - 6.1 The identity of the “county planning authority” as a determining authority as opposed to the highway authority (already a defined term in the draft DCO).
  - 6.2 Lack of timeframes for a determination by the determining body in this sub-paragraph.
  - 6.3 No clarification of the information that should be contained in any review of the performance of junctions 6, 18 and 22 or any subsequent report prepared.
  - 6.4 Absence of any confirmation of the basis for the “review” e.g. is this a review against the “Do Nothing”, “Do Something” and “Mean Maximum Queue” expectations?
  - 6.5 What would be the position if any remedial measures “required” could not be carried out within highway land (and therefore requiring third party private land to deliver) or if the measures were not practical from an economic perspective? We questioned whether this was a deliverable obligation as a result.
  - 6.6 There is no mention of any consultation with third parties as to the form of the report, report or detail of the remedial measures.
- 7 We noted that Article 5 of the draft DCO had been updated to deal with limits of deviation associated with depths of dredging to be undertaken and the Applicant’s discussions with the MMO.

- 8 It was explained that since the first written representations on 8 January 2019 the Nexen Group have been seeking clarity in Article 5 of the draft DCO for the minimum underpass clearances to be set out in the draft DCO and for the current allowances for a 1.1m downward vertical limit of deviation for Work No. 1E to be removed. We expressed disappointment that this still had not been done.
- 9 At the hearing on 14 May 2019, the Applicant indicated that such a change was not necessary as the works were set out in engineering drawings. However, the “engineering section drawings and plans” are the plans to which the limits of deviation in Article 5 of the draft DCO relate. As a result, reference to such drawings does not provide the Nexen Group with any comfort.
- 10 At the time of the hearings on 14 May 2019 the supporting material relating to the recent scheme changes was not publically available. As a result, at the hearing we set out that we expected a new private rights of way plan showing the changes to the proposed access arrangements for the Land as a result of the Proposed Scheme would be submitted. We also made the point that it would be helpful to refer to the two proposed underpasses in the description of Work No. 1E in the draft DCO.
- 11 The information supporting the recent scheme changes has now been submitted and is being reviewed by Nexen’s consultant team.
- 12 However, notwithstanding any comments that will arise from this review, the description of Work No. 1E and/or Work No. 6 in the draft DCO does need to be updated to reflect that it is proposed for a new public highway to form a new, more northerly (and additional) access into the Land as a result of NMC6. At present Work No. 6 in the draft DCO indicates that new highway would only provide a new access road and parking facilities for the new control tower building and electrical substation and plant room, not the Land. In addition, given the position of the proposed bridge above the more southerly underpass access into the Land, we query whether the latest Rights of Way & Access Plans (Sheet 2 of 2) is clear enough to show that this will be provided as public highway up to the boundary of the Land that shall remain in the ownership of the Nexen Group.

### **Compulsory Acquisition Hearing 2**

- 13 It was explained that it is the proposed inclusion and potential use of the compulsory purchase powers in the draft DCO, together with the location and design of the proposed scheme, which would remove the ability of the Nexen Group to access the Land and navigate within this to facilitate business operation unless the Proposed Scheme itself delivers mitigation.
- 14 It was made clear that the submissions in this hearing would not cover all of the points which have been made in detail in written submissions to date. Whilst the Nexen Group have been issued with a draft Land and Works Agreement by the Applicant and are reviewing this it was not currently in a satisfactory form and until such time that it is the representations and objections made by the Nexen Group to the Proposed Scheme remain.
- 15 It was explained that in addition to the other impacts of the temporary possession of the Development Land on the Nexen Group that have been dealt with in detail in previous representations, this proposed possession has removed the ability for the Nexen Group to mitigate their losses relating to the impact of the Proposed Scheme by using that Development Land for temporary purposes during the construction of

the Proposed Scheme. Such purposes could have included provision of both temporary and additional production and warehouse facilities.

- 16 Whilst it was acknowledged that the Applicant takes a contrary view, it was stressed that the Nexen Group continue to be disappointed that the Proposed Scheme does not include the delivery of an access for the Land over the eastern edge of the land currently owned by PFK Ling Limited (to the east of the current showroom area and linking with the existing private estate road over which the Nexen Group have the benefit of a right of access). Indeed, whilst it is acknowledged is not a consideration for the Examining Authority, it is the view of the Nexen Group that this provision would serve to go towards the mitigation the risk of a substantial compensation claim in due course.
- 17 The consistent position of the Nexen Group is that whilst the wording of the Interim Code of Construction Practice is warm it does not guarantee free access and egress to the Land or free movement within the Land. The Nexen Group has not received any robust evidence confirming that the construction of the bridge in the location proposed and the relocation of the various utility services to the east of the proposed bridge is actually compatible with continuous access and egress to the Land or free movement within the Land.
- 18 It was explained that the Nexen Group's view is that the Applicant has still not fully understood the severe consequences of interruption to continuous access and egress to the Land or free movement within the Land. The companies operating on the Land export to over 40 countries worldwide and delays of just a few hours to imports of components needed at the Land (e.g. chassis, engines and transmissions) or exports of finished goods from the Land could result in missing loading times for containers and loss of contracts which would have very severe financial implications. Construction so close to the operations on the Land simply cannot guarantee that there are no such interruptions and only an access away from the proposed bridge (i.e. through the land owned by PFK Ling Limited to Waveney Drive) can provide this. With reference to the use of the quay heading at the Land below, this is the only way in which uninterrupted access and egress to the Land and movement within the Land to serve such a use could be guaranteed.
- 19 John Jones of Colliers provided a recent example of the impact a missed shipping delivery could have on the Nexen Group's business. Mr Jones explained that the business had secured a contract for the provision of 50 fork lift trucks to an Algerian company (with a value of £2.35m) but following an operational issue had missed the delivery time for this order which was to be exported from Felixstowe. The resulting four to five months of litigation and cost has now been concluded but this demonstrates the nature of the implications of a missed delivery. Whilst this example resulted from an operational issue the Nexen Group are concerned that the potential impact of the Proposed Scheme on access and egress from the Land and free movement within it has a real prospect of causing such issues in the future. The Nexen Group have real concerns of being held hostage to fortune and consider only an access away from the proposed bridge (i.e. through the land owned by PFK Ling Limited to Waveney Drive) can resolve this issue.
- 20 We also made comments in relation to the proposed compulsory acquisition of Plots 3-52 and 3-53 in relation to a new mooring for vessels awaiting the bascule bridge opening. This is in relation to "Work No. 7" in the draft DCO.
- 21 The Nexen Group's representations of 8 January 2019 made the point that the Nexen Group have previously leased moorings along the edge of the Land and

concerns were raised at that stage that this would not be practically possible during and following the construction of this proposed mooring.

- 22 Indeed, the point was made at that time that the Nexen Group have received a number of enquiries from large shipping companies in relation to the possibility of the use of the quayside on the Land to embark/disembark goods and equipment and at that time the Nexen Group were worried that their ability to take up such interest or offer such availability would be hindered by the proposed mooring.
- 23 As an update to that position (and as raised with the Applicant ahead of the hearing) the Nexen Group are in advanced contractual discussions with a large manufacturer and importer of fertiliser regarding the use of the quayside at the edge of the Land and are advancing its preparations for the dredging of the area.
- 24 It has been made clear to the Nexen Group by its maritime consultants in making these preparations that the beam of any ship that could feasibly be used for such imports would be completely incompatible with the currently proposed position of the mooring. In addition, more recent comments from the Nexen Group's consultant team indicate that the proposed mooring would be ineffective in any event as without dredging of the area (which the Nexen Group would carry out to facilitate the use of the quayside on the Land) the area in which the mooring is located would dry out at low tides and therefore there would be no safe refuge for leisure vessels at such times.

**Howes Percival LLP**

**24 May 2019**