

PLANNING ACT 2008

THE INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES 2010

**APPLICATION BY SUFFOLK COUNTY COUNCIL FOR AN ORDER GRANTING
DEVELOPMENT CONSENT FOR THE LAKE LOTHING THIRD CROSSING**

PLANNING INSPECTORATE REFERENCE NUMBER TR010023

CLOSING POSITION STATEMENT 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: 4 JUNE 2019

Introduction and background

- 1 This statement is made following a request by the Examining Authority for the submission of a closing submission statement at the hearings on 14 May 2019. This submission is made on behalf of each of the above clients (which for the purposes of this summary shall be referred to as the “**Nexen Group**”).
- 2 In these submissions 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**”.
- 3 The Nexen Group’s position on the Proposed Scheme (including matters relating to the draft DCO, compulsory acquisition and technical reports prepared by Mayer Brown) are set out in full in the various representations that have been made in connection with the examination of the Proposed Scheme.
- 4 As stated at the hearings on 14 May 2019, the Nexen Group is hopeful that the majority of concerns it continues to have will be the subject of resolution within a Land and Works Agreement (the “LWA”).
- 5 The LWA is in the course of negotiations with the Applicant. This is yet to be agreed and the comments in this statement are not changed by the existence of the draft LWA until that document is agreed and completed to the satisfaction of the Nexen Group.
- 6 The Nexen Group and its professional advisers consider the package of mitigation works it proposes is within the Applicant’s control to facilitate, which should enable the Nexen Group to continue to operate its business without disruption during the construction and operation of the Proposed Scheme.
- 7 The Nexen Group consider the provision of a southern access from the factory site over the Development Land and Motorlings proposed eastern access to Waveney Drive should remove the substantial risk of interruption to access from the west over the site of the new bridge crossing, and thus allay any such incident (such as the “Algerian” example explained by John Jones of Colliers at the hearings on 14 May 2019 and as set out in the Nexen Group’s written note of that hearing) and its adverse impact on business caused by matters outside its control.

Summary

- 8 In summary, the Nexen Group continue to have concerns about the following:
 - 8.1 Continuity of access and egress to the Land during the construction phase of the Proposed Scheme and any periods of maintenance or “emergencies” (either during or post-construction) where free and continuous access and egress may be interrupted;
 - 8.2 The ability to operate the existing businesses on the Land during the construction phase of the Proposed Scheme and any periods of maintenance or “emergencies” (either during or post-construction) where free and continuous movement within the Land may be interrupted;

- 8.3 The failure by the Applicant to facilitate an access to the Land which does not include the use of underpasses or passage over land in which utilities shall need to be relocated which could have provided a solution to the Nexen Group's concerns about access and egress to the Land as a result of the Proposed Scheme. In particular, the Nexen Group are disappointed that the Applicant have not been able to provide an access through the site to the south of the Land owned by PFK Ling Limited and to the east of the current Motorlings showroom;
- 8.4 The suitability of the proposed future access arrangements to and within the Land and the ability of these to adequately service the Development Land for any scheme which the Nexen Group may pursue on that site;
- 8.5 The ability for the Nexen Group to use (or enter into contractual arrangements for others to use) their quay heading on the Land in light of the proposed mooring for vessels awaiting the bascule bridge opening (Work No. 7 on Plots 3-52 and 3-53) and the ability for the proposed future access arrangements to and within the Land to cater for such use;
- 8.6 The operational requirement to relocate the existing weighbridge on the Land in order to ensure this can be used by vehicles which may enter the Land using the proposed "northern underpass" (which was added to the Proposed Scheme as a result of Non-Material Change 6 ("**NMC6**"));
- 8.7 The loss of the potential to use or develop the Development Land during any period of temporary possession of this site and the lack of guarantees about the extent of the Development Land which may be required for such temporary possession, precisely what this shall be used for and when and the state that this may be returned to the Nexen Group;
- 8.8 The loss of the existing separate private means of access to the Development Land using the current estate road to the south of the Development Land. The impact of this and the proposed area of rights which the Applicant seeks to acquire to the east of the proposed bridge on the land that is available for the development of the Development Land;
- 8.9 The security and integrity of the Land (and Development Land) during the construction and operational phases of the Proposed Scheme;
- 8.10 The impact of noise from the construction and operation of the Proposed Scheme on the carrying on of businesses and development on the Land.

The Nexen Group's closing position statement

9 Access during construction phase of the Proposed Scheme

- 9.1 The most basic and obvious concern that our clients have remains that the Proposed Scheme has been designed to be constructed in a manner which physically cuts off the Land from the local highway network.
- 9.2 The proposed new accesses to the Land during construction and the operational phase of the Proposed Scheme is over land in which our clients

will have no access rights or comfort that these shall be provided during the construction or on the completion of the Proposed Scheme.

- 9.3 The Applicant's Interim Code of Construction Practice indicates that the Proposed Scheme will take approximately two years to complete. This is a lengthy period of time for our clients to have serious doubts about suitable access arrangements to and within the Land.
- 9.4 The Nexen Group welcome the warm words in the Interim Code of Construction Practice regarding continuity of access and egress to the Land but remain concerned about how this can be achieved in practice and the possibility for "emergencies" to interfere with this.
- 9.5 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.
- 9.6 It is not only access to and from the Land which our clients have concerns about but also movements of vehicles and equipment within the Land and the security and integrity of the Land during the construction works.
- 9.7 In light of the above, our clients have no comfort that any Code of Construction Practice approved under the draft DCO would be acceptable to them given that this is required to be in accordance with the current Interim Code of Construction Practice.
- 9.8 Our clients' business operations depend heavily on meeting delivery deadlines for orders received and continued operation relies on customers having confidence in the ability of our clients to achieve these. A significant percentage of our clients' businesses involve critical delivery times and it is essential that our clients, their suppliers and their customers have unfettered and unrestricted access to the Land at all times.
- 9.9 We understand that the Applicant takes a contrary view regarding 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). 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.
- 9.10 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. As explained at the hearings on 14 May 2019 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.
- 9.11 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 structure (i.e. through the land owned by PFK Ling Limited

and linking 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.

- 9.12 The Nexen Group also have regular visits from foreign customers who expect a completely professional operation when attending our clients. Our clients fear that their ability to secure new work from these investors will be severely affected if they have any problems in accessing the Land or have any concerns about our clients' ability to carry operations on the Land. These contracts are in excess of six figures and are critical to the business operations on the Land.
- 9.13 Any interruption to continuous access to the Land or free movement within the Land to operate the businesses on the Land in the manner required threatens not only existing contracts but also future work. Interruption to continuous access has the potential to have severe consequences for our clients' businesses.
- 9.14 The ability of the Nexen Group to reconfigure the buildings on the Land or erect temporary structures to mitigate the impact of the Proposed Scheme on free movement within the Land has been hindered by the proposed temporary possession of the Development Land which could have facilitated such action in the construction period and ahead of the development of that site.

10 Consideration of alternatives

- 10.1 As set out in further detail in the technical reports submitted as appendices to the Nexen Group's Deadline 3 representations our clients have previously suggested an alternative of moving the alignment of the Proposed Scheme approximately 8m further west.
- 10.2 It is our clients' position that this would not compromise the adherence of the Proposed Scheme to required highway design standards and would help to alleviate our clients' concerns about the effects on vehicle movements within the Land.
- 10.3 It is acknowledged that this alternative would still need to provide a suitable underpasses (in addition to an alternative access not involving access "through" the Proposed Scheme, as explained elsewhere) to allow suitable access to and from the Land.
- 10.4 Our clients' position is that this proposed alternative demonstrates that the compulsory acquisition of Plots 3-29 and 3-30 are not required for the Proposed Scheme to which the DCO relates, or is required to facilitate, or is incidental to, the development and given the concerns expressed about the current arrangements there is no compelling case in the public interest for this compulsory acquisition.
- 10.5 The Nexen Group also consider that the Applicant has not fully considered an underpass passing from Canning Road through to the existing estate road (at a height of around 3m) which could have facilitated continued and separate vehicular (non-HGV) and pedestrian access to the Development Land.

11 Access during the operational phase of the Proposed Scheme

- 11.1 The concerns set out above in relation to access and egress and movement within the Land during the construction period for the Proposed Scheme remain for the operation period of the Proposed Scheme in connection with any periods of maintenance that may be required or during any "emergencies" which may be deemed by the Applicant to justify interruption to access, egress or movement within the Land.
- 11.2 For the reasons set out in Mayer Brown's technical reports submitted on behalf of the Nexen Group during the examination and in response to the consultation on the non-material changes to the Proposed Scheme as originally submitted (dated 4 March 2019) it is considered that the two proposed underpasses fail to provide an adequate solution for access and egress to the Land.
- 11.3 There is no evidence that our clients' businesses will not be severely and irreparably affected by the construction and on-going operation of the Proposed Scheme (to the point of extinguishment of the businesses or the need for complete and permanent relocation) or that the Applicant has now suitably investigated alternative access solutions.

12 Comments on provisions in draft DCO

- 12.1 Given the importance of the height of the proposed underpass to our clients' businesses during the operational phase of the project, the limits of deviation allowed for in Part 2 Article 5 of the draft DCO for Work No. 1E should ensure that no vertical deviation below the minimum clearance height of 6.5m will be permitted. At present we note that a downward vertical limit of deviation of 1.1m is provided for.
- 12.2 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.
- 12.3 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.
- 12.4 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.
- 12.5 It is the view of the Nexen Group that the description of Work No. 1E and/or Work No. 6 in the draft DCO needs 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.
- 12.6 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.

- 12.7 In addition, the proposed area (Plot 3-29) on which rights are proposed to be acquired permanently represents a substantial part of the operational area of the Land which for the reasons set out above is crucial for the continued operation of our clients' businesses.
- 12.8 Table 15-4 of the Environmental Statement submitted by the Applicant envisages a 1,562 sqm easements strip which would restrict the forms of development which could be undertaken within it.
- 12.9 The provision in Article 25 of the draft DCO regarding the acquisition of rights is broad and given the importance of this area of Land to the operation of our clients' businesses our clients are particularly concerned about this.
- 12.10 It is not considered that adequate information has been received to justify that the land in question is required for the development to which the DCO relates, or is required to facilitate, or is incidental to, the Proposed Scheme (or is replacement land given in exchange) and there is a compelling case in the public interest for this compulsory acquisition.
- 12.11 The draft DCO does not provide details on how any permanent rights for our clients to access the Land shall be secured in perpetuity (as opposed to physically providing a new form of access, which our clients have concerns about in any event as set out above) and how these rights may be affected or interfered with during the construction phase or subsequently for maintenance or for access to the structures erected as part of the Proposed Scheme.
- 12.12 It is noted that the proposed way in which the Nexen Group will access the public highway following the construction of the Proposed Scheme is along a new road to be constructed to the north and west of the offices of East Suffolk Council. Any such rights should be granted along this new road until that is adopted as public highway.
- 12.13 We acknowledge that Article 8 of the draft DCO envisages any "highway" that is to be constructed under the Order to be maintained by the highway authority from completion. It is not considered that there is clarity on whether any of the proposed access arrangements to the Land would be both dedicated and adopted by the highway authority as public rights of way.
- 12.14 Whilst our clients have concerns regarding the proposed access arrangements for the Land, even if these concerns can be overcome our clients need to be assured that the provisions of the draft DCO require new access rights to be given over such access arrangements both during the construction and operational phases of the Proposed Scheme. This does not only relate to the land that is proposed to be compulsorily acquired but also any other land that is required to enable our clients' to utilise access arrangements, provided that suitable arrangements can be provided.

13 The Development Land

- 13.1 Save for limited, high level, information the Nexen Group have no certainty as to the precise nature, extent or timeframe for the proposed temporary possession of its Development Land.
- 13.2 For example, there is no information about any works that may be required to the Development Land to facilitate a proposed temporary use and the state that this Development Land shall be returned to the Nexen Group. We are also unaware of whether Motorlings are content with this proposed arrangement.
- 13.3 A right of access (with or without vehicles) to the Land (including the Development Land) along an already constructed access road (shown as part of Plots 3-57 and 3-32 on the Land Plan Sheet 3 of 5 (1069948-WSP-LSI-LL-DR-GI-0004)) which immediately adjoins the south of the Land (within the freehold ownership of PFK Ling Limited) was reserved in the transfer of the Motorlings site to PFK Ling Limited dated 18 September 2003.
- 13.4 The ability for our clients to utilise this right of access will be extinguished by the construction and operation of the Proposed Scheme (and the operation of Article 27 of the draft DCO). Indeed, submitted plan 1069948-WSP-HAC-LL-DR-CH-0003 identifies this private means of access to Riverside Road as being stopped up as part of the Proposed Scheme which would frustrate a separate access to the Development Land using this route.
- 13.5 The Nexen Group are concerned that the points above and the physical construction of the Proposed Scheme in the location envisaged shall impact on the ability to adequately service a development on the Development Land.
- 13.6 Our clients have long held development aspirations for the Development Land. Planning permission was secured (ref: DC/06/1331/OUT) on 1 March 2007 for the redevelopment of the Development Land for the *“construction of 3 office blocks to provide 32 units and associated parking”* (**“2007 Permission”**). Given the market conditions at the time the 2007 Permission was not implemented
- 13.7 The Nexen Group’s firm intention to redevelop the Development Land remains and they reserve their right to submit a new planning application or an application for a certificate of appropriate alternative development in due course.
- 13.8 Our clients have received several approaches from companies looking for commercial space, ranging from those involved in the motor trade to more recent discussions in 2018 with a Korean company with a requirement for research and development and European marketing offices. This entity proposed entering into a joint venture to manufacture products and funding to expand the existing factory on the Land which would have resulted in the employment of 35 – 50 additional employees. Our clients were at the point of instructing architects to draw up a scheme for submission but negotiations have not progressed due to uncertainty caused by the Proposed Scheme.
- 13.9 Our clients’ advisor John Jones of Colliers International discussed the development of the Development Land with Sam Hubbard, Planning Officer – Policy at Waveney District Council on 4 January 2019. We understand that

the officer said that he saw no reason why a planning permission for the Development Land would not be granted as it fits within planning policy for the area i.e. employment related uses such as B1, B2 and B8 and benefits from an independent access from the access road on the Motorlings site referred to above.

- 13.10 The Development Land lies within the Great Yarmouth and Lowestoft Enterprise Zone. An Enterprise Zone of 2012 covered Riverside Road and a later extension in 2015 comprises the Development Land and the site on the opposite side of Riverside Road surrounding the Registry Office.
- 13.11 We also note that Policy SSP3 of the Lowestoft Lake Lothing & Outer Harbour Area Action Plan supports the development of the Land (and other areas) for employment/mixed use development.
- 13.12 Our clients have real concerns that the proposed temporary acquisition of the Development Land shall stifle these development aspirations and the construction of the Proposed Scheme shall impact on these proposals in the future.
- 13.13 As indicated above, the proposed temporary possession of the Development Land will prevent the Nexen Group using this land to reconfigure or erect temporary structures to mitigate the impact on the Proposed Scheme on the ability to operate businesses within the Land.

14 Access and use of the Development Land during the operational phase of the Proposed Scheme

- 14.1 The Development Land lies within an Enterprise Zone. Indeed, the Applicant's Case for the Scheme states that the Proposed Scheme has been "developed in order to support the Enterprise Zone in fulfilling its potential for economic growth and job creation" (paragraph 4.7.22) and one of the "scheme objectives" set out at paragraph 4.8 of the Case for the Scheme is to open up opportunities for regeneration and development in Lowestoft.
- 14.2 The removal of a separate, unrestricted and established connection of both access and services from the public highway of Riverside Road to the Development Land is in direct conflict with these stated aims of the Proposed Scheme.
- 14.3 Our clients have a real concern that the Development Land shall be effectively severed due to the gating and access requirements of our clients' existing businesses – notwithstanding the concerns (summarised above) as to whether these may be suitably accommodated in light of the Proposed Scheme.
- 14.4 Indeed, the Nexen Group have concerns that any joint access arrangements between our clients' existing business operations and the Development Land using the proposed "southern" underpass set out in the submitted scheme would be potentially unsound from a highway safety perspective and practically unworkable. These technical concerns have been explored in the Mayer Brown reports submitted on behalf of the Nexen Group during the examination.

- 14.5 As a scheme which is at least in part designed to promote the economic development of Lowestoft our clients are dismayed at the failure of the Proposed Scheme to actively facilitate the redevelopment of the Development Land.
- 14.6 As alluded to above, Land Plan 1069948-WSP-LSI-LL-DR-GI-0004 shows Plot 3-29 as an area on which the Applicant proposes to compulsorily acquire rights. Plot 3-29 represents a not insignificant area of the Development Land and it is our clients' position that this will undoubtedly reduce the extent and scope of the development that our clients' would be able to accommodate on the Development Land.
- 14.7 As highlighted above, if the alignment and route of the Proposed Scheme are not altered the Nexen Group consider that the only suitable access arrangement for the Development Land (which does not involve further land being taken up from the Development Land) is the creation of a new access road to the east of the current Motorlings building.
- 14.8 The Nexen Group also maintain their concerns about the state that Plot 3-57 is to be left in following the construction of the Proposed Scheme. This is a plot over which the Nexen Group have an existing right of access.
- 14.9 Article 32 of the draft DCO does not provide any ability for the Nexen Group's views to be considered as to the state that this plot shall be left in. The provisions of Article 32 do nothing to preserve the functionality of services and drainage in Plot 3-57 and the Nexen Group (or the local planning authority) would have no action against the Applicant, save for in a claim for compensation.
- 14.10 If Plot 3-57 was temporarily possessed for a longer period of time than the Development Land this would mean that the lack of any guarantee as to the functionality of any services and drainage would continue to impact on the development of the Development Land even when that site was returned to the Nexen Group.
- 14.11 The Nexen Group's existing property rights extend along the whole of the existing private road to the south of the Development Land and therefore the rights that the Nexen Group benefits from over Plot 3-32 will also be affected by the compulsory acquisition of rights in that Plot. It is understood that the current drafting of Article 27(2) means that only rights which are inconsistent with those restrictive covenants being imposed under the DCO are to be extinguished by the operation of the DCO.
- 14.12 However, Schedule 6 of the draft DCO draws the purposes for which rights over plots may be required (including Plot 3-32) so broadly it is impossible to establish whether the Nexen Group's existing rights (including of vehicular access) will be "inconsistent" with these covenants or not.
- 14.13 We note that the Applicant has remarked that they will provide a "replacement" vehicular access to the wider land interest which is in the freehold ownership of Overseas Interests Inc which means that the Development Land will not be "severed from the public highway".
- 14.14 Such provision of "replacement access" to the "wider land interest" is an access from under the proposed bridge to the Land. This "replacement

vehicular access” is not a bespoke and separate access to the Development Land.

- 14.15 This proposed “replacement” access does not link up with the private access road to the south of the Development Land and therefore any access routes into the Development Land shall be required to be incorporated into any development of the Development Land itself, rather than utilising the existing private access road to the south of the Development Land.
- 14.16 The current form of the draft DCO (see Article 10 and Schedule 4 Part 3) and the (as submitted) Rights of Way & Access Plan (1069948-WSP-HAC-LL-RD-CH-0003) do not require the provision of a replacement vehicular (or temporary) access to the Land before the private means of access is stopped up.
- 14.17 Schedule 4 of the draft DCO should be updated to require the provision of a replacement, separate, vehicular access (with services and utilities being available of sufficient capacity therein) to the Development Land before the current private means of access is stopped up. It is the Nexen Group’s position that the only way in which a suitable separate vehicular access to the Land may be provided without risk of interruption during the construction period or future maintenance of the Proposed Scheme is by way of an access to the eastern edge of the current Lings site.

15 Impact of the construction of a new mooring on Plot 3-52 and the compulsory acquisition of this plot

- 15.1 The land identified as Plot 3-52 on the Land Plan Sheet 3 of 5 (1069948-WSP-LSI-LL-DR-GI-0004) and Work No. 7 on the Works Plan Sheet 2 of 2 (1069948-WSP-LSI-LL-DR-CH-0003) is identified in the draft development consent order for the construction of a new mooring within Lowestoft Harbour.
- 15.2 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.
- 15.3 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.
- 15.4 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.
- 15.5 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 refuse for leisure vessels at such times.

Howes Percival LLP

4 June 2019