National Infrastructure Planning
Temple Quay House
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Bristol
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22 March 2022

Dear Mr Shrigley

APPLICATION BY HIGHWAYS ENGLAND FOR AN ORDER GRANTING DEVELOPMENT CONSENT FOR A47 THICKTHORN JUNCTION (TR010037)

EXAMINATION - RESPONSE TO DEADLINE 10 SUBMISSIONS

Deadline 10 Submission Documents

The Applicant is disappointed that three parties waited until Deadline 10 to publish detailed submissions. Moreover, this approach offends the clear procedure set out by the Examining Authority ("ExA"): Deadline 10 was provided for the Final Guide to the Application, comments on additional information and submissions received at Deadline 9, and any further information request by the ExA under Rule 17. The Applicant does not consider that these extensive submissions fall within any of the categories identified. Nevertheless, the Applicant is of the view that these submissions warrant responses and has therefore set out its brief response to each below.

Applicant's response to NCC D10 Submissions

The Applicant is surprised at the submission of protective provisions at the final deadline of the examination without any previous reference to their inclusion in the dDCO. Norfolk County Council ("NCC") has had ample opportunity to raise this matter in writing at any of the Deadlines, at ISH1, ISH2 or in the Statement of Common Ground. At the very least the protective provisions should have been submitted at Deadline 9 to allow the Applicant an opportunity to provide substantive comments. Similar provisions were submitted during the Tuddenham examination in February 2022, so there is no reasonable justification for these provisions being submitted over a month later at the final deadline of this examination. NCC provides no explanation as to why it has chosen to adopt this unorthodox approach.

The Applicant's view is that the unheralded request for protective provisions at the final deadline of the examination is prejudicial to the Applicant and others who may wish to comment on their inclusion. The Applicant has been denied the opportunity by NCC to review and negotiate the form of protective provisions and so on that basis it is only able to comment on points of principle arising in the proposed protective provisions.

Onerous Provisions

There are several elements of the protective provisions, which the Applicant considers onerous. The inclusion of these provisions extends beyond providing protection for the local highway authority and provides NCC with an unacceptable level of control over the delivery of the NSIP. In particular paragraphs 4 and 5 impose pre-commencement conditions on the Applicant, which must be discharged before any works can commence. The Applicant does

not object to providing information to NCC in advance of works commencing, but it is not appropriate that commencing any part of the Works is dependent on approvals being received from NCC. The inclusion of this drafting seriously jeopardises the delivery of the Scheme. In addition, paragraph 27 allows NCC to require the removal, alteration or demolition of any structures forming part of the Scheme. It is not clear why this wording is required by NCC or what issue this is seeking to address that is not already controlled by the articles and requirements in the dDCO and NCC have made no submissions to justify its inclusion, but it provides NCC with an unacceptable level of control over the delivery of a NSIP. For these reasons, the Applicant objects to the inclusion of paragraphs 4, 5 and 27 as currently drafted.

Commuted Sum

The inclusion of a request for a commuted sum is not agreed. It is not required to address a direct impact of the Scheme and goes above and beyond that which is necessary to make the Scheme acceptable in planning terms. There is already a mechanism in place that provides for a local highway authority to receive funding for the highways that it is responsible for. The highways that are to be handed over to NCC will be included in budget calculations so that adequate funding is provided from Central Government to cover NCC's costs of maintaining the highways it is responsible for. On this basis the inclusion of a commuted sum in addition to the funding that NCC will receive from Central Government would in fact amount to double recovery.

The Applicant agrees in principle to a period of maintenance during which the Applicant remains responsible for maintaining the highways which are to be handed over to NCC (the length of time will be Scheme specific and is still to be agreed). The protective provisions submitted by NCC also require a 52 week maintenance period. On that basis there is no need for the payment of a commuted sum for maintenance as well. It does not serve any purpose as the responsibility for initial maintenance is already placed on the Applicant, so there is no impact to be mitigated, nor does it serve to protect any existing infrastructure (as is usually the case with protective provisions). NCC has not submitted any evidence to demonstrate that there will be any direct impact financially on NCC as a result of the Scheme and proposed handover of assets. As no evidence has been submitted, the Applicant is unable to consider the proposed calculation for the commuted sum included in the protective provisions. Nevertheless, the open-ended nature of such mechanism and absolute discretion afforded to the local highway authority is entirely unacceptable and could render the delivery of the Nationally Significant Infrastructure Project (NSIP) unviable. It is therefore inappropriate in principle.

Section 120 of the Planning Act 2008 sets out what items may be included in a DCO, including (at s120(2)(a)) "*requirements corresponding to conditions which could have been imposed on the grant of any permission, consent or authorisation, [...] which [...] would have been required for the development*". Conversely if matters are not required for the development, then they may not be included in the DCO. As set out above, there is no evidence before the examination to demonstrate or justify the need for a commuted sum. Therefore, a commuted sum is not required to mitigate any impacts arising from the Thickthorn Scheme, nor is it required for the protection of existing infrastructure. On that basis, the inclusion of a commuted sum does not meet the test in section 120 of the 2008 Act and cannot be included in the A47 Thickthorn Junction DCO.

The Applicant has not been afforded an opportunity by NCC to provide detailed comments on the form of the protective provisions. For that reason, they are entirely one-sided, and the Applicant objects to the inclusion of protective provisions for the benefit of the local highway authority.

Notwithstanding this, the Applicant does request that the above points of principle are considered by the Examining Authority. The Applicant will continue to honour the approach

originally agreed with NCC in the Statement of Common Ground and will work with NCC in order to agree an overarching handover agreement for the three A47 DCO schemes.

Applicant's response to Mr Hawker's D10 Submissions

The Applicant has clearly demonstrated its case for the Scheme and policy compliance in APP-125 and APP-126. The environmental impacts are addressed in the Environmental Statement and adequate mitigation is secured by the requirements in the dDCO (REP9-003). There was no challenge to the Environmental Statement or mitigation proposals over the course of the ISHs. It remains the case that Mr Hawker has not submitted any evidence that challenges the need for the Scheme or disturbs the case for the Scheme as presented by the Applicant.

Applicant's response to Dr Boswell's D10 Submissions

It is inappropriate and unreasonable that such detailed final submissions have been made at Deadline 10, particularly as it was indicated that any further response would be provided at Deadline 9.

The approach adopted by Dr Boswell is prejudicial to the Applicant and others who may wish to comment on these submissions. The matters raised by Dr Boswell ought to have been raised in the relevant ISH, but they were not. As a result, neither the ExA, nor the Applicant, has had the opportunity to test the various assertions made by Dr Boswell. Moreover, it appears to the Applicant that Dr Boswell's points are either repetitious of points made earlier in the examination, or points which should have been made earlier in the process. Given the limited time available before the close of the examination, the Applicant has prepared a brief response to these submissions which is appended to this letter.

If you have any queries on any of these matters please do not hesitate to contact me.

Yours sincerely

[redacted]

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Response to Deadline 10 Submission from CEPP [REP10-011]

The matters raised by Dr Boswell (CEPP) in his representation received just two days before the closure of the Examination raise no new issues that could cause the ExA or Secretary of State to disapply the advice set out in the NNNPS on the approach to assessing the significance of greenhouse gas emissions arising from the Proposed Development. This is because (for ease of reference, using the lettering of CEPP's summary points):

A. As the Applicant has made clear [Annex A of REP3-019 and, most recently, REP8-013] the methodology for the assessment is the context in which the reference to inherently cumulative is made by the Applicant. This is not to be confused with determining a likely significant effect for the purposes of the EIA Regulations. The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (EIA Regulations) do not define what a likely significant effect is. In the case of National Networks NSIPs, Parliament has determined in the NNNPS how a likely significant carbon effect should be determined [REP8-013 – Sections 5 and 7].

B. As the Applicant has pointed out [REP8-013 – Section 4], the appropriate geographical scale for the assessment of carbon emissions is national. In the absence of a relevant baseline and a receptor (e.g. a local, regional or sector target) in respect of which a likely significant effect could be determined, the aggregation of predicted emissions from the three A47 projects could not be used by a decision-maker as part of a cumulative assessment for the purposes of the EIA Regulations. Neither the Net Zero Strategy or the Transport Decarbonisation Plan change the approach to assessing likely significant effects that is set out in the NNNPS. The circumstances in Pearce v BEIS [2021] EWHC 326 (Admin) are not similar to those at Thickthorn. In the Pearce case the High Court (Holgate J) found that The Secretary of State had acted in breach of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 by failing to evaluate the information submitted to the examination on the cumulative impacts of two connected developments (Vanguard offshore windfarm and Boreas substation development), which had been assessed as likely to be significant adverse environmental effects. The High Court held that the Secretary of State does not have discretion to defer EIA consideration of likely significant effects until a subsequent application. These are not matters that are relevant in the determination of the application for the Proposed Scheme.

C. The Applicant's reference to PINS Advice Note 17 is a statement of fact [REP8-013 – Section 3]

D. The Applicant addressed both the Net Zero Strategy and the Transport Decarbonisation Plan in Annex A of the Applicant's Written Summary of Oral Submissions at ISH1 [REP3-019]

E. The Application has previously addressed the points raised by CEPP with regards to assessment methodology and compliance [REP3-019 (annex A), REP6-019 and REP8-013] and traffic models [APP-125 and REP1-004 (common response E)]. The Applicant has nothing further to add on these matters.

   With regards to CEPP's comments in Section 6 of REP8-013, the assessment undertaken for ES Chapter 14 [REP3-014] did not use earlier versions of the DEFRA Emission Factor Toolkit (EFT) due to the limitations in earlier versions (for example, lack of electric vehicles information and no data beyond 2030). For this reason, data was taken straight from the DFT WebTAG data tables for the end user assessment. The assessment for this Scheme had

already assessed beyond 2030 so there was no need to update for EFT v11. A sensitivity test aligned to DFT's Transport Decarbonisation plan is provided below.

Change in CO_2e Emissions *(With Scheme Scenario – Without Scheme Scenario)*

	CO_2e (tonnes)		
Carbon Budget Period	**4 (2023-2027)**	**5 (2028-2032)**	**6 (2033-2037)**
Carbon Budget	1,950 Mt	1,725 Mt	965 Mt
Previously Reported in the Environmental Statement			
Construction	0.0259		
Operation	0.0038	0.0080	0.0102
Total	**0.0297**	**0.0080**	**0.0102**
Sensitivity Test for Operational Emissions			
TDP (upper bound)	0.0036	0.0072	0.0089
TDP (lower bound)	0.0035	0.0070	0.0083
Notes: Mt – Millions of Tonnes			

As referenced in the Applicant's Responses to ExA's Request for Additional Information under Rule 17 [REP8-011], the assessment of end-user emissions used data from the DFT WebTAG data tables and stated that the expected uptake of zero emission cars would likely be higher than those provided within the Transport Appraisal Guidance data tables, meaning the end user emissions reported are likely to be the worst-case scenario. Comparing the operational (end-user) assessment to the estimates from the TDP sensitivity test in the table above would support the view that the Applicant's assessment is likely to be worst-case.

F. The quantification of carbon emissions from the scheme would not change in the environmental assessment given a monetary change in carbon value. With regards to the economic cost of carbon, as part of the Scheme's Economic Appraisal, a High Carbon Value sensitivity test was undertaken on top of the core scenario prior to the submission of the Scheme to Examination. The Applicant will review the Scheme's Economics (Benefit Cost Ratio) later this year (2022) in accordance with the Project Control Framework (PCF) governance process for Major Projects. This update for PCF Stage 4 will use the July 2021 Transport Analysis Guidance (TAG) including a further sensitivity test with the latest November 2021 TAG release. These updates are in accordance with best practice and the required PCF governance for the Stage Gate Assessment Review (SGAR) at the end of each PCF Stage. The analysis will be further updated if there is another TAG release during PCF Stage 5.