

**Summary of Representations made at ISH2 submitted by National  
Highways Limited**

**IP ID - 20047703**

**Application by Gloucestershire County Council for Development  
Consent for the M5 Junction 10 Improvements Project**

**Planning Inspectorate Reference Number: TR010063**

## **1. Welcome, introductions, arrangements for the hearing**

- 1.1 Sophie Stewart (Solicitor, DLA Piper UK LLP), Andrew Alcorn (Programme Director), Rob Ranger (Senior DCO Manager) and Tansy Galvin (Senior In-house Counsel) appeared on behalf of National Highways.

## **2. The Draft DCO**

### **Part 1 Preliminary**

- 2.1 National Highways requires clarification from the Applicant of the scope of pre-construction ecological works. National Highways is concerned that early works could impact the strategic road network (SRN) but they would not be controlled by the protective provisions, because they would be classed as pre-commencement. Once clarification is received, if necessary, National Highways will consider whether it needs to amend the protective provisions to include these works or otherwise control them through an ancillary agreement with the Applicant.

- 2.2 N/A

### **Part 2 Principal Powers**

- 2.1 N/A

- 2.2 N/A

- 2.3 National Highways concerns are set out in its Relevant Representation (RR-026). National Highways concern is whether the impacts of exercising the full 2m limit of deviation over any assets on the SRN has been assessed. The Applicant has committed to sharing the underpinning assessments with National Highways but these are awaited. It should be possible to control any impacts arising from the final agreed limit of deviation through the protective provisions.

2.4 National Highways is concerned that works nos which impact the SRN can be transferred to another undertaker without the need for Secretary of State consent. The specific works nos are set out in National Highways Relevant Representation (RR-026). Although the safeguards in the protective provisions transfer with the benefit of the order, any additional safeguards agreed in ancillary agreements with the Applicant will not automatically transfer. If the transfer can occur without any third party involvement, National Highways will require mechanisms to be put in place in any ancillary agreements to ensure they are transferred at the same time as the Order powers.

### **Part 3 Streets**

2.1 National Highways position is that it should give consent before any works are undertaken on the SRN.

2.2 N/A

2.3 National Highways requires clarity on what will form part of the SRN post-completion. This is of particular relevance where the SRN meets the local road network. There is currently no certainty, for example with drainage assets, over who will be responsible for what and this cannot be properly resolved until detailed design stage. National Highways therefore needs to ensure it has approval rights over detailed design, secured in the protective provisions.

2.4 Notwithstanding the provisions of Article 13, that National Highways shall approve completed works, there is risk that the certificate required by Article 14 could be issued before such approval is given. In that event, National Highways becomes the highway authority for the new junction notwithstanding it may not be satisfied with the works. As a matter of law, National Highways would then be liable to remedy any defects itself to fulfil its statutory duties. National Highways considers that protective provisions can control this risk.

2.5 National Highways position remains per its Relevant Representation, that existing accesses for the M5, and any newly constructed accesses

which impact on the SRN, cannot be laid out, improved or used without National Highways prior consent. This can be controlled by protective provisions.

#### **Part 4 Supplemental Powers**

N/A

#### **Part 5 Powers of Acquisition**

- 2.1 National Highways is concerned that the Applicant could impose restrictive covenants over land adjacent to the SRN which impact on the operation of the SRN or existing rights of National Highways over third party land. Protective provisions can be included to mitigate this risk.
- 2.2 All works on, over or under the SRN should be subject to National Highways prior approval on safety and operational grounds. Discussions are ongoing with the Applicant to resolve all issues where the scheme interacts with the SRN.

#### **Schedule 1 Authorised Development**

N/A

#### **Schedule 2 Requirements**

National Highways position remains that the Secretary of State, via its Highways Casework Team, is the appropriate body to discharge the requirements. The concern stems from the consultation provisions, which allow the Applicant to disregard National Highway's consultee responses on grounds of engineering practicality but more importantly costs. The Casework unit is resourced to discharge requirements on National Highways own DCO schemes and National Highways can provide contact details to the Applicant to discuss this with them directly. National Highways, the joint councils and the Applicant are arranging a meeting to discuss the issue and agree a way forward. An update will be provided to the panel for Deadline 1.

#### **Environmental Management Plan (EMP)**

National Highways requires the EMP to be clear on the position relating to Sunday working so it can manage requests through the Road Space Booking system. National Highways also requires to be a consultee on the EMP 3<sup>rd</sup> iteration. This document will contain operational phase maintenance requirements which will fall to National Highways and therefore it should be consulted. National Highways is already a consultee for EMP2. If an independent body is substituted as the discharging authority for the requirements, National Highways role as a consultee is sufficient. If the discharging body remains as the Applicant, National Highways would want to approve the EMP iterations.

### **Consultation**

National Highways read this requirement to mean that consultee comments can be disregarded on costs grounds and objects to this approach. National Highways welcomes the Applicant's commitment to refine the drafting in the next draft DCO.

### **Landscaping**

N/A

### **Landscaping and Ecological Management Plan**

N/A

### **Land and groundwater contamination**

N/A

### **Archaeology**

N/A

### **Detailed Design**

N/A

### **Surface and Foul water drainage**

N/A

## **Flood Compensatory Storage**

N/A

## **Noise Mitigation**

N/A

## **Highway Lighting**

National Highways requires details of the construction period lighting details, to ensure that adjacent light spill does not impact the SRN. Lighting directly on the SRN will be controlled by the protective provisions.

## **Procedure for discharge of requirements**

Discussions are taking place between National Highways, the joint councils and the Applicant in respect of discharge of requirements. An update will be provided for Deadline 1.

## **3. Schedule 9 – Protective Provisions**

3.1 Discussions are ongoing between National Highways and the Applicant in respect of protective provisions. National Highways requires its standard protective provisions to be included on the face of the Order. These were provided with the Relevant Representation (RR-026). The principal areas of difference remaining between the parties relating to funding security and commuted sums.

## **4. Consents, licences and other agreements**

4.1 N/A

## **5. Statements of Common Ground**

National Highways will provide a PADSS for Deadline 1.

**6. Review of issues and actions arising**

N/A

**7. Any other matters**

N/A

**8. Closure of the hearing**

N/A