

Ref: TR010063

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9 July 2024

Dear Mr Maund

**Application by Gloucestershire County Council (the Applicant) for an Order Granting Development Consent for the M5 Junction 10 Highways Improvements Scheme**

**Submission from National Highways for Examination Deadline 2 (9<sup>th</sup> July)**

Having reviewed all the documents submitted by the Applicant and other interested parties at Deadline 1 National Highways provides comments on the following submissions:

1. draft Development Consent Order [REP1-006]
2. Land Rights Tracker [REP1-044]
3. draft NPS tracker [REP1-029]
4. Statement of Common Ground (SoCG) with National Highways [REP1-029]
5. Written submission of Oral Case for ISH1 [REP-046]
6. Written submission of Oral Case for ISH2 [REP-047]
7. Joint Councils Local Impact Report [REP1-069]
8. Applicants draft itinerary for the ASI [REP1-042]

National Highways acknowledges that updates have been provided to a number of other examination documents but at this stage is of the view that the matters raised in both Relevant Representations [RR-026] and Written Representations [REP1-062] remain unresolved and a number of documents that National Highways expected to be amended have, as yet, not been updated.

In respect to the Principal Areas of Disagreement Summary Statement (PADSS) submitted by National Highways at Deadline 1, National Highways continues to seek to resolve issues raised in the PADSS with the Applicant. National Highways will

continue to engage with the Applicant to provide an update to the PADSS (and SoCG) at Deadline 3.

Whilst the Rule 8 letter requested comments on any further information requested by the Examining Authority (ExA) under Rule 17 of the Examination Rules, National Highways notes that no such requests have been made by the ExA.

#### **draft Development Consent Order (dDCO) [REP1-006]**

National Highways comments on the amended drafting of the dDCO are as follows:-

- Article 7 – National Highways welcomes the revised drafting and supports its inclusion.
- Schedule 7, plot 5/2q - “Exiting” should read “Existing”

In respect of anticipated amendments that National Highways expected to be made to the dDCO by the Applicant but which have not been made, please see our comments in response to the Applicant’s Written Summary of Oral Submissions, below.

#### **Land Rights Tracker [REP1-044]**

Clarification is sought from the Applicant as to why National Highways' interests have not been included in the Land Rights Tracker.

#### **draft NPS tracker [REP1-029]**

The Applicant has included a NPS NN 2024 tracker. National Highways has highlighted a number of paragraphs within the 2024 NPS as requiring weight to be given, notwithstanding that the application is to be examined against the NPS NN 2014.

- Paragraph 4.9 - National Highways remains concerned with the traffic modelling undertaken by the Applicant; that it is insufficient and not up to date.
- Paragraph 4.43 - National Highways still does not have sight of the information it needs to confirm whether the Scheme satisfies this requirement.
- Paragraph 5.283 - National Highways remains concerned that the traffic modelling undertaken by the Applicant does not confirm that the Scheme improves the operation of the network and resolves capacity issues.
- Paragraph 5.51- The application documents referred to in the tracker do not meet National Highways' standards for improving Biodiversity Net Gain (BNG).

### **Statement of Common Ground (SoCG) with National Highways [REP1-029]**

National Highways continues to work with the Applicant to progress outstanding matters included in the SoCG. National Highways would note that Topic 8.4 is not yet agreed and that it should be listed as a matter outstanding. National Highways will continue to engage with the Applicant to provide an update to the SoCG (and PADSS) at Deadline 3.

### **Written Summary of Oral Submissions for ISH1 [REP-046]**

National Highways has no specific comments to make in response to the Applicant's written summary of oral submissions made at ISH1.

### **Written Summary of Oral Submissions for ISH2 [REP-047]**

National Highways' comments on the revised drafting of the dDCO are set out above.

National Highways responses to points raised in the summary are:-

- Article 2, “commence” - National Highways welcomes a discussion with the Applicant as to the precise works which are to be included in the definition of “pre-construction ecological mitigation works” and to how these are going to be controlled in the absence of an amendment to this Article.
- Article 10 – National Highways welcomes a discussion with the Applicant to agree appropriate contractual controls to resolve its concerns with this Article as currently drafted.
- Article 11 – National Highways remains concerned that the Article includes the ability to break open and otherwise interfere with the M5 motorway. The Applicant justifies this wide approach as analogous to powers that already exist for Highways Authorities under other legislation; in this case the Applicant would be the Highway Authority for the local road network impacted by the Scheme. However, the Applicant is not the Highway Authority for the strategic road network and is therefore seeking a power that it would not otherwise have. National Highways position remains that Article 11 should be limited in its application to exclude the SRN, or National Highways protective provisions must be included on the face of the DCO, to control its use in relation to the SRN.
- Article 14 – The Applicant's position is that it should be read in conjunction with Article 13, and therefore provides protection for the SRN. If that is the case, Article 14 should make direct reference to Article 13 (and the need to fulfil its requirements) before a certificate can be issued. In the absence of an amendment to Article 14 and with National Highways' protective provisions

not being included on the face of the latest dDCO, National Highways concerns remain extant.

- Article 17 – National Highways welcomes a discussion with the Applicant regarding accesses that are on, or impact, the SRN and agreeing an appropriate control on this power as currently drafted.
- Article 30 – National Highways welcomes a discussion with the Applicant regarding the use of airspace above and subsoil below the SRN and how this will be controlled.
- Requirement 3 (4) - The Applicant committed to amending the dDCO to include National Highways as a consultee of the 3<sup>rd</sup> iteration EMP. This change has not been made in the latest version of the dDCO and is still required.
- Requirement 4 – The Applicant committed to providing clarity in the next version of the dDCO, that consultee comments cannot be disregarded where they are based on matters of safety. No amendment has been made to the dDCO in this respect and is still required. As a strategic highways company, National Highways must comply with a number of general and specific statutory duties<sup>1</sup> including to have regard to the effect of the exercise of its functions on the safety of users of highways.
- Protective Provisions – National Highways confirms that discussions are ongoing with the Applicant in respect of protective provisions but restates its position that National Highways standard form of protective provisions should be included on the face of the dDCO. These have been provided to the Applicant.

### **Joint Councils Local Impact Report [REP1-069]**

National Highways has no specific comments to make in response to the Joint Councils Local Impact Report.

### **Applicants draft itinerary for the ASI [REP1-042]**

National Highways has no comment on the Applicant's draft itinerary for the ASI. Subject to the agreement of the ExA, it would be the intention that one member of National Highways' team will attend the ASI.

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<sup>1</sup> Infrastructure Act 2015, s.5

## **Action 12 from ISH1 - Set out any appropriate operational requirements regarding capacity that a SRN highway scheme should provide**

The outline principles in respect to operational requirements is guided by DfT Circular 1/22 where capacity enhancement is determined on a case by case basis, and aims to improve community connectivity and public transport accessibility. This enhancement is weighed against any negative impact to safety, traffic flow, environmental and active travel permeability. Alternative options to manage down traffic impact from proposed development (e.g. travel planning) or improvements to the local road network are identified as a first preference against capacity enhancements to the SRN.

Within the context of this scheme, it is still possible to apply these principles whilst noting the scheme itself won't inherently reduce the need to travel by car. Instead, this is going to be captured when development proposals as part of the local plan allocations come forward. The proposed improvements to Junction 10 seek to increase capacity to meet with future development pressures within the vicinity of the junction and also seek to improve active travel provision. A key safety element for the proposed scheme is that it does not lead to queuing on slip roads back on to the mainline of the M5 motorway which, in turn, leads to an increase in the risk of accidents. National Highways expect to see any capacity enhancements supported by appropriate Road Safety Audits to confirm that road safety concerns have been addressed in the design.


The operational impact of a scheme is assessed through traffic modelling (as captured in a Transport Assessment). Scenarios identifying the existing and future state of schemes are presented in a Transport Assessment, including consideration of committed and local plan developments.

### **National Highways position**

To confirm, National Highways continues to support the principle of a scheme of improvement works at Junction 10 of the M5 motorway. However, the DCO application still contains insufficient information for National Highways to support the current application scheme and therefore National Highways objects to the DCO and the Authorised Development in its submitted form on a protective basis.

If you have any queries, please do contact me at your earliest convenience.

Yours sincerely

  
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