

Ref: TR010063

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Sent by email to:

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1 October 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 5 (1 October 2024)

National Highways noted that nine questions, from the Examining Authority's (ExA) written questions and requests for information (ExQ2) submission of 10 September 2024, were directed at National Highways either in full or part thereof.

For the avoidance of doubt, National Highways' responses to the ExQ2 are in respect of the Strategic Road Network (SRN) only. Gloucestershire County Council, as local highways authority, will need to respond in relation to the Local Road Network (LRN).

National Highways have also provided comment on documents submitted to the ExA as part of Deadline 4.

Whilst not required at this deadline National Highways have submitted an updated Principal Areas of Disagreement Summary Statement (PADSS) document to close out a number of matters since the Deadline 3 submission on 30 July 2024. National Highways will work with the Applicant to continue to resolve matters whilst also ensuring the Statement of Common Ground (SoCG) is reflective of those matters now resolved.

ExQ2 Written Questions

Q1.0.1 – Project Control Framework and Governance

Response: As stated at Deadline 4 National Highways advised that under the Project Control Framework (PCF), it is the responsibility of the Project Manager to ensure that products are produced. For this scheme, that role is fulfilled by the Applicant. National Highways has worked closely with the Applicant to confirm which products are appropriate for each PCF stage; this is recorded in the Stage Management Plan. Where National Highways are identified as a consultee (rather than for information), we have undertaken a review to confirm that the product meets governance requirements.

Topic 9.1 of the SoCG [REP3-037] stemmed from the interpretation by the Applicant to some of National Highways' responses. National Highways acknowledge that, in some instances, some of the responses that have been provided to date extend beyond governance responses. This is as a result of some internal National Highways consultees inadvertently treating the scheme as a National Highways owned project rather one being promoted by a third party. We consider that these responses have contributed to and supported the Applicant's scheme but do understand how they could have been construed as giving acceptance, rather than appropriateness and governance. The final sign-off of all PCF products rests with the Applicant in all instances.

National Highways are satisfied that the Scheme has met the governance requirements of the PCF process to date. Whilst a number of comments made by National Highways consultees have not been implemented or resolved, National Highways do not see this as an impediment to the Scheme progressing through the PCF lifecycle.

Looking forward, National Highways are currently engaging with the Applicant in respect to the remainder of PCF Stage 4 and future PCF Stage 5, taking lessons from earlier stages, to provide clarity as to the process and the expectations of each party in respect to their role and contributions. This guidance will be captured in the stage specific Stage Management Plan and agreed by both parties. The Stage Management Plan will also look beyond PCF to understand the practical requirements of delivery to a greater extent. This discussion is ongoing with the Applicant.

National Highways are therefore confident that moving forward the role of PCF in the delivery of the project will be defined and agreed without the need for Secretary of State intervention.

Q1.0.3 – Statement of Common Ground with National Highways

Response: The following acronyms are used in the Statement of Common Ground and the glossary will be updated to include them in the version for submission.

Section 2.1 matters agreed: ECI – Early Contractor Involvement. This is a term defined in the New Engineering Contract (NEC) suite of contracts. ECI is a type of construction contract where the Principal Contractor is engaged at an early state in a project to offer input into the design phase. It is on contrast to the design-bid-build model where the contractor is only brought onboard at the end of the design phase. The model allows the contractor to have input into the design and suggest value engineering changes which can result in time and cost savings.

Section 3.2 matters agreed: HEMP – Handover Environmental Management Plan, also known as the 3rd iteration Environmental Management Plan (EMP) which related to the post-construction stage of the scheme.

Section 3.5 matters agreed: ADMM – Asset Data Management Manual. This provides the requirements for creating, managing or using data on behalf of National Highways. It captures the requirements of asset data management; a data dictionary outlining the structure and rules for individual assets and attributes and contains the asset reference catalogue which is a tool used to help identify and record specific assets.

Section 7.6 matters agreed: CI32 – Principal Contractor Clause 32 submission. This term refers to the revised programme of works which the Principal Contractor submits for Client acceptance, typically on a monthly basis, as per the NEC contract requirements of Clause 32. Clause 32 submissions are based on the original Clause 31 programme submission as per NEC requirements. It is industry practice to reference individual clauses numbers in the NEC contracts, rather than the clause title. For example, "*Clause 32 Revising the Programme*" is known as Clause 32 or CI32.

CPI - Cost Performance Index and SPI - Schedule Performance Index, are earned value metrics and BEI - Baseline Execution Index and LEI - Lookahead Execution Index are performance calculations. CPI refers to the ratio of earned value and the actual cost data. The CPI is a useful performance indicator depicting the 'value-for-money' that is being achieved. For example, if $CPI=0.66$ then only 66p worth of value is being achieved for every £1 spent. This would suggest that the project is over budget as the value being achieved is less than the amount being spent.

SPI indicates how far behind or ahead of schedule the project is (in terms of the value of work accomplished) or schedule efficiency. For example, a task which is behind schedule (in terms of work accomplished), the SPI will be less than 1. These two metrics can then be considered together to identify based on current performance if the project will finish on time and on budget.

BEI acts as a useful schedule completion early warning metric and compares the cumulative number of activities actually completed at a point in time, to the

cumulative number of baseline activities scheduled to be completed as at the same point in time. The baseline used for this metric is the Project Management Baseline.

LEI considers the number of activities which the project team has delivered in month versus those planned and is a measure of the short-range forecast accuracy. This links into the Critical Lookahead Execution Index which considers the number of critical activities which the project team has delivered in month versus those planned along with LEI. Critical activities refer to those tasks on the Critical Path which, if not delivered, would cause programme slippage, e.g., delay to the Open for Traffic date or other key milestones.

These performance metrics can help provide an understanding of how the project is performing in terms of activities completed against those planned to be completed; thus giving an indication on how the project is performing in terms of schedule.

Section 3.6 matters outstanding: EPS Licence – European Protected Species Licence.

Q5.0.3 – Funding

Response: National Highways position remains as stated during ISH3 and at Deadline 4 [REP4-049] until such time as evidence is provided by the Applicant showing full funding has been secured prior to start of construction for the full scheme.

The first step in National Highways gaining confidence in the level of funding secured for the scheme, is for National Highways and the Applicant to agree a cost estimate. National Highways are currently reviewing information provided by the Applicant in respect of their estimate. (please refer to the response to Q5.0.9 below)

National Highways would be prepared to consider confirmation of funding for certain elements of the scheme, rather than the full scheme, (namely the SRN and A4019 elements), if the construction programme and funding were aligned to be sequenced in such a way that the SRN elements are constructed first, followed by the A4019 improvements then the Link Road into West Cheltenham.

Q5.0.4 – Funding

Response: Protective Provisions alone would not provide the assurances sought by National Highways. Subject to an estimate being agreed, as detailed in Q5.0.3 and Q5.0.9, National Highways would want to see confirmation of funding, or elements of funding, as also detailed in response 5.0.3 before any construction activity was to begin.

Q5.0.9 – Funding

Response: National Highways continue to seek to understand the differences between the Applicant's cost estimates as referred to in the Funding Statement

[APP-036] and our high-level review discussed at ISH3 and within our Deadline 4 submission on 3 September 2024 [REP4-049].

In response to the proposed methodology outlined in the National Highways response to Deadline 3 [REP3-075] the Applicant has supplied National Highways with a pack of data to enable National Highways to commence a review of the Applicant's cost estimate without breaching commercial sensitivities. This was received on 25 September 2024 meaning that the National Highways team have had insufficient time in advance of Deadline 5 in order to form a view as to whether the differences between the estimates are resolvable.

It is anticipated that this exercise will take a period of weeks resulting in the National Highways team being unable to comment in any level of detail at the ISH4 hearings planned for 13/14 October 2024. We expect to be able to provide an update for the next written deadline on 30 October 2024 and will continue to engage with the Applicant during this period. Should a resolution be reached sooner, National Highways will provide an additional out of deadline submission to the ExA at the earliest opportunity.

In respect to the approach that National Highways have adopted, an Order of Magnitude assessment based on a high-level appraisal of the Scheme has been undertaken using the Development Consent Order submission documentation as provided by the Applicant. This estimate has been produced as if it was a National Highways scheme and, therefore, includes aspects that require clarification from the Applicant in terms of assumptions that National Highways have made since these assumptions may not be applicable to this Scheme.

With the information received, National Highways will now be in a position to refine and review the cost estimate in a more detailed manner with the Applicant to assess the assumptions/rationale. This will allow for the identification of the key differences between the Applicants and National Highways estimate. For example, how aspects such as inflation have been calculated. This exercise will take a period of time to complete, as outlined above, and as such are unable to endorse the Applicant's estimate and continue to hold objections regarding the project funding.

Therefore, National Highways are of the opinion that an itemised list setting out calculations offers limited value until these assumptions are understood and verified given the discrepancies between the approach to the estimates. Based on discussions with the Applicant, we are confident that both parties can progress this during the Examination period.

Q6.0.2 – Protective Provisions

Response: National Highways preferred Protective Provisions were provided to the Examination within our Relevant Representation [RR-026] together with justifications. These provisions have been drafted to ensure that the SRN is

sufficiently protected, and safety is preserved during the currency of any third party works on the network. The provisions are all required to ensure that National Highways maintains sufficient approval, control and oversight of works and that monies are secured in the event of default of a third party, to rectify any deficient works or to complete partially carried out works without impact on National Highways resources.

The protective provisions included by the Applicant on the face of the Order at Part 3 of Schedule 9 do not make any reference to financial security in the face of default or partial completion, do not provide for the control of DCO powers before entering onto the highway, nor taking land or creating rights which may impact the operation of the SRN, do not require the Applicant to follow established road space booking procedures nor do they cover all costs that National Highways will incur as a result of the specified works and the DCO (if granted).

National Highways understanding is that the Applicant agrees with the inclusion of the majority of our preferred protective provisions. The only outstanding issue relates to financial security before works can begin, in the form of a bond or otherwise, to demonstrate that National Highways is protected from exposure in the event that works are not completed or are completed to an insufficient standard. In such cases, National Highways is exposed to a potentially significant financial burden in removing the works from the highway estate.

Outside the Planning Act 2008, payment for any works which an authority are authorised to execute (i.e. not just works to the highway itself) may be secured under a section 278 agreement, with such a payment being secured through a bond or cash deposit. In the absence of any commitment by the Applicant to enter into a section 278 agreement containing provisions to put security in place for the benefit of NH, the NH protective provisions require security in a manner which is consistent with the measures applying to developments carried out under the Town and Country Planning Act 1990, applying the provisions of the Highways Act 1980. The National Highways protective provisions are an appropriate mechanism to assure security such as a bond and without this, National Highways would be faced with potentially significant financial liabilities for which it is not funded and has no budget.

Q6.0.4 – Discharge of Requirements

Response: National Highways agrees with the amendments made to the dDCO for Deadline 4 (and carried across into change request 1) in respect of the requirements. It is noted that the Secretary of State will now be the discharge body and National Highways is listed as a consultee for all appropriate requirements. For completeness, National Highways request other documentation, namely the Explanatory Memorandum, APP 10.9, is also updated to reflect this change.

Q6.0.6 – Article 10 Consent to transfer benefits

Response: Drafting is included in the draft side agreement which resolves National Highways concerns. It is believed that this particular drafting is agreed between the parties. However, the side agreement has not been completed and therefore a residual concern remains until such time as that agreement is completed. In the event it is never completed, National Highways would seek the removal of various works numbers from Article 10, as previously set out. If that situation arises, National Highways will set out for the Examining Authority again the precise amendments it requires to Article 10.

Q15.0.2 – Transport Modelling

Response: National Highways have previously raised concerns in respect of how the outputs from the transport modelling have been utilised in determining the most appropriate intervention. In REP3-075 in response to Q1.3.1 National Highways advised that they were unable to comment on partial improvements to M5 J10. Whilst on page 16 of REP4-049 National Highways highlighted "*the JC document does not prove that the only way to address those impacts is a major scheme intervention, and even if a major scheme intervention was required, the document does not evidence that the application scheme is the only, or correct, solution.*"

For a typical SRN scheme National Highways will develop the solution through an iterative process, gradually refining and developing the solution as a result of data received. That data typically includes information on safety matters, environmental constraints, stakeholder contributions, engineering requirements as well as forecasts based on transport modelling.

In all instances, the iterative process to develop an appropriate solution seeks to adhere to the principles of minimising adverse impacts whilst meeting the project objectives. For transport modelling, this will typically look to understand how traffic movements are catered for by the solution, challenging aspects such as capacity, demand, movements, and growth. For example, the design of the slip roads on or off the SRN is determined by factors such as the volume of traffic joining/leaving the mainline carriageway in combination with the expected flow on the mainline to ensure that the nature and scale of the design is safe and appropriate leading to a good design that provides a level of operational efficiency for the project.

In a similar manner, the form of the all-movement junction is dictated by the need to understand the constraints, traffic and safety considerations. National Highways concern is that we are unsighted on the evidence base to support the determination of the need and form of the junction itself. As detailed above, a process is followed whereby data is assessed to develop options that fulfil the requirements of the objectives; it may be that some options/solutions perform better than others in terms of the operational performance; but what is unclear and has not been presented are the mechanisms by which the full movement junction, as submitted to the DCO, was determined as being the optimum outcome.

Reference has been made to the JCS by the Applicant in support of the need for an all-movement junction, but those documents are silent on the process to confirm the means by which the design that is submitted to the DCO was determined. For a typical National Highways scheme that iterative process would be documented in the following documents at the appropriate PCF stage in line with DMRB TD37/93:

PCF Stage 0 - Feasibility Study

PCF Stage 1 - Technical Appraisal Report

PCF Stage 2 - Scheme Assessment Report

PCF Stage 3 - Route Development Report (or similar to support the Environmental Statement/Environmental Impact Assessment)

Response to documents submitted at Deadline 4

National Highways are currently undertaking a review of the Applicants Design Principles Report [APP-039]. Detailed comments will be provided at Deadline 6 following further discussion with the Applicant, particularly in respect to those principles that relate to the SRN.

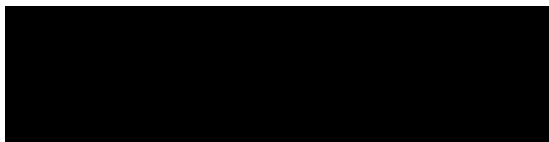
National Highways position

National Highways has been working with the Applicant on resolving concerns with the SATURN traffic modelling. Initial work, in the form of a sensitivity test on the base model, undertaken by the Applicant has been positive in providing some comfort to National Highways. National Highways are now content with the base model and have requested the sensitivity test is carried out on the scenario models (do-minimum and do-something) to ensure there is no material change to those or any consequential impacts on the PARAMICS modelling. Once this work has been carried out by the Applicant, National Highways anticipate making an additional out of deadline submission to the ExA setting out our position in relation to the traffic modelling work prior to ISH4 taking place.

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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