

**Summary of Representations made at ISH4 submitted by National
Highways Limited and Responses to Action Points**

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), Rebecca Marshall (Senior Project Manager), Teri Preston (Project Manager) and Heather Clarke (Transport Engineer, WSP) appeared on behalf of National Highways.

2. Purpose of the Hearing

- 2.1 National Highways confirms its support that any future CAH or ISH required as part of the examination can be conducted remotely via electronic meeting platform.
- 2.2 N/A

3. Traffic and Transport

- 3.1 National Highways submitted an out of deadline letter, accepted at the discretion of the Examining Authority, on 4 October 2024. Following further engagement and sharing of information between National Highways and the Applicant, National Highways concerns with the traffic modelling for the scheme have been resolved and National Highways objections based on the modelling are withdrawn. In respect of section 5 of the current SoCG, National Highways' view is that 30 of the 36 outstanding transport related matters are now resolved and can be moved to matters agreed. The six remaining matters are related to engineering and do not relate to modelling. Similarly, four out of five principle areas of disagreement in the PADSS are now considered closed. National Highways will work with the Applicant to update the SoCG and the PADSS accordingly.
- 3.2 National Highways confirmed that in its opinion the sensitivity testing undertaken does not give rise to changes which would impact the noise and air quality assessments undertaken as part of the EIA as far as the SRN is concerned.
- 3.3 N/A
- 3.4 National Highways received the slip road modelling report a few days before the hearing and are still considering it. One area of possible concern would be queuing back onto the main line of the motorway. The Applicant acknowledged that the motorway junctions themselves

had not been modelled. National Highways will engage with the Applicant if concerns do arise.

- 3.5 The concern expressed by National Highways at Deadline 5 stemmed from the fact that National Highways were unsighted on the evidence base to support the determination of the need and form of the junction itself. 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. The iterative process to develop an appropriate solution seeks to adhere to the principles of minimizing adverse impacts whilst meeting project objectives.

In a similar manner to a National Highways scheme, the form of the all-movement junction that is proposed is dictated by the need to understand the constraints, traffic and safety considerations. 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 as part of the application, 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 has been submitted 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)

National Highways have been engaging with the Applicant to understand the evolution of the project in its early stages in the context of the above. Whilst the Applicant is best placed to provide a detailed narrative NH understand that alternative highway interventions were considered that looked at both the form of the junction and its location. These included:

- complimentary solutions to existing infrastructure (i.e. adding the two missing slips);
- A 'dumb-bell' arrangement;
- Gyrotory solutions

A process of assessment was undertaken to appraise the different solutions considering:

- Environment
- Engineering
- Traffic
- Cost
- Safety

Complimentary solutions and offline alternatives were discounted based on the assessments described above leading to a solution at J10 being promoted. Following further appraisal of the dumbbell compared to the gyrotory it was determined that the gyrotory was the preferred solution to be adopted. Evolution of the gyrotory solution following updated modelling lead to the introduction of traffic signals due to capacity concerns on the circulatory carriageway.

National Highways would invite the Applicant to expand on this further. National Highways had taken part in discussions with the Applicant where this process was explained in more detail but has not been provided with the underlying documents and reports.

3.6 N/A

4. Funding

4.1 National Highways, in response to submissions made by the Applicant as to construction timetable, raised the question of how a 30 month build

programme (as set out in the ES) had been reduced to a 28 month programme.

4.2 N/A

4.3 N/A

4.4 Dialogue between respective finance teams in National Highways and the Applicant are taking place with a view to resolve the difference in cost estimates for the scheme. Progress has been made with resolving differences in VAT treatment and inflationary percentages to be applied.

4.5 N/A

S106 Funds

N/A

5. DCO

5.1 National Highways are content with the requirements in the current version of the draft DCO.

5.2 National Highways was somewhat surprised by the latest version of the draft DCO in respect of protective provisions. It now contains most of National Highways standard provisions along with some bespoke drafting that had been discussed between the parties but which was not anticipated to be included on the face of the order.

The outstanding issues to be resolved between National Highways and the Applicant relate to deemed consent provisions and funding security in the event that works to the SRN are commenced and then an act of default occurs.

National Highways position with regards to deeming provisions are that they should not be included. Ordinarily National Highways asks for inclusion of deemed refusal provisions to protect the safety and operational integrity of the SRN. However, National Highways recognizes

on a scheme of this scale, with a tight construction programme and funding milestones, that deemed refusal is not ideal for the Applicant. To assist in finding a resolution, National Highways is willing to remove deemed provisions altogether (both deemed consent and refusal), leaving a position for the Applicant whereby any application for National Highways' consent is not automatically shut down after a period of time and the Applicant can continue to engage with National Highways to secure a consent.

National Highways cannot accept deemed consent provisions because they have the potential to undermine safety on the network and cause conflict with National Highways licence obligations, to facilitate all requests for access. It would be impossible to ensure safety on the network if third parties could enter the network simply because a period of time had passed.

In terms of the need for funding security if works commence on the SRN, National Highways position is always that a bond or deposit must be in place to ensure that in the event of default, National Highways can step in and complete the works without recourse to its own resources. This has been National Highways position throughout examination. National Highways and the Applicant are in discussion about alternative structures for funding security that may work for this scheme because of its multiple component design (eg, SRN works, Link Road and existing highway improvements on the LRN). National Highways cannot step into the shoes of the Applicant in the event of default and access the Homes England funding, the s.106 contributions or any drawdown against a loan from the Infrastructure Bank. This is why a bond or deposit is so important. If the Applicant wants to explore the possibility of National Highways being given step in rights to the funding streams, National Highways is open to those discussions.

6. Noise

N/A

7. Flooding and the Water Environment

N/A

Action Points for National Highways

5. Policy Context/Support for asking for the "optimum solution" for junction design.

6. Consideration of additional documents to be shared/put into examination.

The policy basis is found in paragraphs 4.26 and 4.27 of the National Policy Statement for National Networks.

National Highways have reviewed a series of documents provided by the Applicant that detail the evolution of the project through feasibility and options stage (equivalent to PCF Stage, 0 1 and 2).

National Highways are satisfied that the submitted Environmental Statement (ES) Chapter 3 – Assessment of Alternatives [APP-062] reflects and summarises the outcomes of the feasibility and optioneering process. As a result National Highways are content that Regulation 14 of the EIA Regulations 2017 has been satisfied in so much as the Applicant has prepared an Environmental Statement that includes a description of the reasonable alternatives with an indication of the main reasons for the option chosen, including a comparison of the effects of the development on the environment (Schedule 4 of the EIA Regulations 2017). Further, it is the opinion of National Highways that the Applicant, via the provision of the additional documents following ISH4, has fully documented the optioneering exercises and decision-making on alternatives from the inception of the project (as summarised in the ES).

As a result of post hearing discussions, National Highways are satisfied that the requirements of paragraphs 4.26 and 4.27 of the 2014 National Policy Statement for National Networks have been satisfied.

16. Scheme cost estimate.

National Highways have been working with the Applicant to share information and discuss both parties cost estimates for the M5 Junction 10 scheme. Work has been positive and there are now multiple areas of the cost estimate which the parties agree on (within a tolerance of circa 10%). However, there are two outstanding areas which we have not yet reached agreement. These two areas are 'indirect works' where we have a difference of £16m and inflation where there is a difference of £32m. It's important to note that the difference in inflationary values has decreased

since conversations began and National Highways believe with further sharing of information, which has already been requested of the Applicant, that we can come to a final agreed position on the cost estimate for the scheme. We hope to be able to provide a final position at Deadline 9.

28. Update on Protective Provisions and draft DCO

29. Requirement for a Bond

A further draft of a proposed agreement between the parties has been returned to the Applicant and discussions are progressing positively with a view to resolving the outstanding concerns discussed at ISH4 – namely funding security and deeming provisions. It is anticipated that matters will be resolved by Deadline 9.