

A46 Newark Bypass

TR010065

Applicant's Summary of the Issue Specific Hearing 5 (ISH5)

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Infrastructure Planning (Examination Procedure)
Rules 2010

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**The Infrastructure Planning
(Examination Procedure) Rules 2010**

A46 Newark Bypass

Development Consent Order 202[]

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A46 NEWARK BYPASS DCO

Issue Specific Hearing 5: Other Environmental Statement Topics – 5 December 2024

Applicant's responses to Representations made at Issue Specific Hearing 5 (ISH5) held on Thursday 5 December 2024 at 14:00

1.1 INTRODUCTION

The ISH5 for the A46 Newark Bypass Scheme (DCO) application was held at The Great Hall, The Renaissance at Kelham Hall, Main Street, Newark NG23 5QX on Thursday 5 2024, commencing at 14:00. Participation was possible virtually on Microsoft Teams as well as by attendance in person.

This document summarises the responses made at ISH5 by the Applicant and addresses the representations made by Affected Parties, Interested Parties and other parties attending.

The Applicant has responded to the topics raised by each of the attending parties in the sequence that the Examining Authority (ExA) invited them to speak. It provides cross references to the relevant application or examination documents in the text below.

The ExA did not set any actions for ISH5.

1.2 POST-HEARING SUBMISSIONS IN RESPONSES TO MATTERS RAISED AT ISH5

Item	Comment/Representation by:	Questions/Issues Raised at the ISH5	Applicant's summary written Response at ISH5
Agenda # 1 Welcome, introductions and arrangements for the Hearing			
1	Applicant:	Introductions	The Applicant was represented by the following individuals: Emma Harling-Phillips – Partner at Womble Bond Dickinson (UK) and legal advisor to the Applicant Lorrae Hendry – Partner at Womble Bond Dickinson (UK) and legal advisor to the Applicant

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			Michael Fry Consultant at Womble Bond Dickinson (UK) and legal advisor to the Applicant Ben Skinner – Principal Carbon Management Consultant at Mott MacDonald, Carbon advisor for Applicant Dr Emily Marr – Chartered Soil Scientist at Mott MacDonald
2	Other appearances		
3	<u>Local Authorities</u> <ul style="list-style-type: none"> • Newark & Sherwood District Council (NSDC) - Lindsay Preston and Debbie Broad representing NSDC • Nottingham County Council (NCC) – Kevin Sharman, [Deejay] Howell and Joel Marshall representing NCC 		
Agenda #2 Purpose of the ISH5 and ExA Opening remarks			
4	The purpose of this ISH5 is for questions to be posed to the Applicant. Usually, DCO examinations are undertaken through a written process. However, hearings are helpful in examining the matters in depth. The subject matter of hearings have a controlled agenda and the matters for discussion are those identified. It is not appropriate to discuss documents that have not been referred to in submission to the examination. If a new document is referred to, this would need to be submitted with the written summaries. The ExA has requested comments on Deadline 3 documents to be submitted by Deadline 4.		
Agenda # 3 Carbon / Climate			
(3a) In-combination assessment (climate change and air quality)			
5	ExA	Th ExA referred to paragraph 13.20 of NCC's Local Impact Report (LIR) [REP1-038], on page 122. The ExA noted that paragraph 13.20 of the LIR [REP1-038] says that the combination assessment does not	The Applicant welcomes that confirmation.

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		include an analysis of the impact of climate change on air quality. The ExA asked NCC whether this was an observation or something that should be followed up on?	
6	NCC	NCC confirmed that they have no further concerns regarding the issue raised at section 13.20 of their LIR [REP1-038].	The Applicant welcomes that confirmation.
(3b) Update from Applicant on review of ES as noted in response to ExQ1 Q4.0.11			
7	ExA	The ExA indicated that according to the Applicant's Responses to the Examining Authority's First Written Questions [REP 2-037], the Applicant is currently undertaking review of the Environmental Statement in light of the Supreme Court's judgment in the <i>Finch</i> case. The ExA asked what progress is being made on this review?	The Applicant has undertaken a review of the Environment Statement to ensure that all likely significant indirect effects from the Scheme have been assessed. The review concluded that there are no additional likely indirect effects which are considered to be significant that have not already been captured by the existing EIA for the Scheme. The results of that review will be submitted to the Examining Authority at Deadline 4.

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(3c) Implications of updated PAS2080 (as referred to in NCC's LIR) for ES Chapter 14			
8	ExA	NCC's LIR [REP1-038] noted at section 13.13, that as per the recommended best practice, Chapter: 14 (Climate) [APP-058] conducted the assessment in line with PAS2080. However, Chapter: 14 (Climate) [APP-058] references the 2016 revision of the guidance, which was superseded last year with the launch of PAS 2080 (2023). NCC have requested that the assessment should be updated and reference the current version of PAS2080.	The Applicant confirmed that it would update the Environmental Statement – Chapter 14 (Climate) [APP-058] to refer to PAS2080 (2023). However, it noted that the updates would amount to minor terminology changes.
9	ExA	The ExA raised a point with NCC in reference to paragraph 13.12 of NCC's LIR [REP1-038] which stated that an assessment should be updated to reflect the	No comment provided by Applicant.

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		2024 NPSNN. The ExA asked NCC whether this is an oversight given the 2024 NPSNN transitional provisions make it clear that it is the 2015 NPSNN that applies to the Scheme.	
10	NCC	NCC confirmed this was an oversight. NCC understood that the ExA would not want the assessment to be framed in context of 2024 NPS.	
(3d) Should a Carbon Management Plan be submitted?			
11	ExA	The ExA asked NCC whether a Carbon Management Plan (CMP) should be submitted, given that the 2024 NPSNN is potentially important and relevant but not the basis of the assessment? The ExA asked what additional details would be achieved at this stage?	No comment required from the Applicant.

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12	NCC	<p>Whilst NCC confirmed that that they were comfortable that the CMP would be addressed as part of the delivery of the Second Iteration Environmental Management Plan. NSDC requested that a draft framework be provided so that NSDC were aware of the matters that would be detailed at a later stage.</p>	<p>The Applicant confirmed that the production of the CMP is an important document that requires consultation between contractor, designer, client and the wider supply chain to deliver the most effective product. It is therefore considered this would be a more effective product if adequate time for consultation and the consideration by these parties was available. However, the Applicant confirmed that an outline CMP can be prepared and submitted to the Examining Authority.</p>
Agenda #4 Geology and Soils			
(4a) Policy and Guidance – NSDC’s Contaminated Land Strategy			
15	ExA	<p>The ExA sought clarification from NSDC on whether chapter 15.1.8, the previous version of the Contaminated Land Strategy (CLS) has been reviewed. The ExA asked if there is a significant change</p>	<p>No comment required from Applicant.</p>

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		between this and the emerging version?	
16	NSDC	<p>NSDC confirmed that it understands that emerging version is going to committee next week.</p> <p>NSDC confirmed that the CLS has been updated to reflect changes in the guidance from 2012. NSDC confirmed that, in principle, there is not a significant change.</p>	No comment required from the Applicant.
17	ExA	<p>In response, the ExA requested that if the emerging version of the CLS is adopted by NSDC, then NSDC will need to provide a brief update at that stage. The ExA clarified that this is not an urgent point but a housekeeping point to keep up to date.</p>	No comment provided by the Applicant.

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(4b) Mitigation – including updated guidance referred to in NCC’s response to ExQ11.0.14			
18	ExA	<p>The ExA sought clarification from the Applicant on the updated guidance referred to in NCC's Responses to ExQ1 [REP2-052] Q11.0.14 which discussed the Outline Soil Management Plan (OSMP).</p> <p>The guidance referred to in this OSMP has been superseded by The Institute of Quarrying's, Good Practice Guide for Handling Soils in Mineral Workings (2021).</p>	<p>The Applicant confirmed that the OSMP refers to the Ministry of Agriculture, Fisheries and Food (MAFF) (2000), Good Practice Guide for Handling Soils, as the source for Figure 4.1: Topsoil stripping with bulldozer, 3600 excavator and articulated dump-truck. This has been superseded by guidance set out in The Institute of Quarrying's, Good Practice Guide for Handling Soils in Mineral Workings (2021).</p> <p>The Applicant confirmed that the next action would be to update the OSMP with this new guidance by Deadline 4.</p>
(4c) Adequacy of Applicant's Contaminated Land Risk Assessment;			
19	ExA	The ExA asked NSDC about the point raised by NSDC in their Local Impact Report [REP1-035] and Contaminated	No comment required from the Applicant.

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		Land Risk Assessment (CLRA) Adequacy.	
20	NSDC	NSDC directed the ExA to paragraph 15.22 of the NSDC's Local Impact Report [REP1-035] which states that the baseline data has been obtained in 2018 and that this should be updated. In previous hearings, it was discussed that the safeguards for pre-commencement and for the construction phase.	The Applicant has confirmed that it has been to the site on a number of occasions and have kept up to date.
21	ExA	The ExA asked NSDC whether the updates are necessary in the context of the safeguards given that the Applicant has been monitoring the site.	No comment required from the Applicant.
22	NSDC	NSDC confirmed that they do not envisage massive changes as long as the monitoring by the Applicant is continuing. NSDC	The Applicant stated that it has no comment but the Applicant is grateful to NSDC.

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		<p>confirmed that they are happy with the way it has been controlled through the DCO and that the unexpected contamination will be dealt with through the agreed process.</p>	
23	ExA	<p>The ExA asked the Applicant about the reference in the draft DCO about unexpected contamination. The ExA would like to know what was the outcome of the verification question.</p>	<p>The Applicant noted the discussion in ISH1, which is recorded in the Applicant's Written Summary of the ISH1. The Applicant confirmed that the verification has been provided for in REAC commitment GS6 and therefore the Applicant does not seek to replicate this in the DCO.</p> <p>The Applicant confirmed that the REAC commitments cover the relevant phase and unknown contamination during construction.</p> <p>The Applicant explained that there are measures which include the provision of a verification report relating to unknown contamination.</p>
24	ExA	<p>The ExA asked whether this is a pre-commencement obligation?</p>	<p>The Applicant confirmed that this is being checked as part of the signposting exercise that the ExA has asked the Applicant to carry out.</p>
25	NSDC	<p>NSDC added that this would be acceptable as</p>	<p>No comment provided by the Applicant.</p>

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		<p>long as there is sight of final verification reports to show that the site is acceptable in terms of known contamination as contained in NSDC's Local Impact Report [REP1-035]. NSDC sought clarification for the verification to demonstrate that the in situ contamination is still in situ.</p>	
<p>(4d) Outstanding matters raised by Natural England</p>			
26	ExA	<p>The ExA asked the Applicant for an update on their discussions with Natural England?</p>	<p>The Applicant confirmed that it has addressed Natural England's comments and have a meeting with them next week (week commencing 9 December 2024) to make sure they are satisfied. The Applicant confirmed that The Institute of Quarrying's, Good Practice Guide for Handling Soils in Mineral Workings (2021) will be mentioned.</p>
<p>Agenda #5 Material Assets and Waste</p>			
27	ExA	<p>The ExA directed NCC to paragraph 4.35 in NCC's Local Impact Report [REP1-038] on page 57.</p>	<p>No comment required from the Applicant.</p>
28	ExA	<p>The ExA asked whether NCC are generally content they were seeking a standalone</p>	<p>No comment required from the Applicant.</p>

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		<p>Mineral Safeguarding assessment for the scheme.</p> <p>The ExA reiterated that the Applicant's position is that a separate report is not needed as it does not change the conclusions reached.</p> <p>The ExA asked NCC if there is a need for the Applicant to provide this separate report.</p>	
29	NCC	<p>NCC confirmed that it had taken note of the Applicant's Response to the ExA's First Round of Written Questions [REP2-037]. NCC confirmed that they have agreed with the Applicant's response and that they were generally satisfied that the case had been made and that the level of sterilisation is not</p>	<p>The Applicant is grateful to NCC for clarifying position which has been agreed.</p>

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		<p>significant. NCC confirmed that it not likely to work commercially and believe generally that the case has been made and that the relevant planning policies have been complied with and are not requesting a standalone assessment.</p> <p>The ExA questioned NCC on the meaning of NCC being "generally satisfied" that the case had been made and whether this masked any reservations NCC may have or if this were just an overarching term being used.</p> <p>NCC stated that minerals are a finite resource and that this is reflected in national policy. NCC confirmed that there is a presumption in avoiding</p>	

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		<p>sterilisation and ideally there should be opportunities for prior extraction. However, NCC understands that there is a technical reason why prior extraction is not always possible. NCC confirmed that here the case has been made that sterilisation is at the level anticipated and can therefore be justified.</p> <p>NCC stated that Borrow Pits, if undertaken correctly, means that the sand and gravel arising can be used within the scheme and this would avoid the sterilisation in these locations.</p> <p>NCC confirmed that the project is along the line of the existing road. In practice, NCC stated that the mineral would</p>	

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		<p>not likely be worked in the future and a quarry operator would propose a greenfield quarry.</p> <p>NCC confirmed that the mineral is not likely to be needed. The Borrow Pits here are slightly different where the sand and gravel should not be sterilised.</p>	
30	ExA	<p>The ExA questioned the Applicant in reference to Chapter 10 of the Environmental Statement [APP-054]. The ExA stated that, there is more recent data from the 2023 version of the Aggregate and Reserves Report.</p> <p>The ExA would like everything updated in the Environmental Statement Chapters before Examination closes.</p>	The Applicant agreed.

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31	NCC	<p>NCC raised a point with the Applicant on restoration. Particularly, in relation to the Borrow Pits proposed at the project and towards the Brownhills roundabout. NCC have a policy DM15 relating to Borrow Pits and we accept that the Borrow Pits are required for the project and are time-limited.</p> <p>NCC's outstanding query is how this would be reclaimed without impacts and what does the restoration look like?</p> <p>NCC states that the plans are not that detailed in terms of final condition. Brownhills Borrow Pit is annotated on the General Arrangement Plans [AS-007] but there is uncertainty as to whether it is required. The solution would be a</p>	<p>The Applicant stated that this is a very broad question and a technical issue which requires further analysis. The Applicant confirmed that it has listened to what the NCC has had to say on this point and is proposing to deal with this issue through discussions with the NCC and in the Statement of Common Ground.</p> <p>The Applicant highlighted that Borrow Pits form part of the environmental mitigation as the two borrow pits at Farndon East and West form the permanent Flood Compensation Areas as well as being landscaped and planted.. The restoration of Borrow Pit locations is included in the Works Plans [REP3-002] and within Sheets 1, 2 and 5 of the Environmental Masterplan [AS-026]. Requirement 6(2) of the draft DCO states that the landscaping scheme must reflect the applicable mitigation measures set out in the First Iteration EMP and the landscaping principles set out in the environmental masterplan. The Applicant therefore does not believe that further requirements are needed.</p> <p>The material excavated to form the FCAs would consist of sands and gravels and would be re-used for the construction of the widened embankments.</p> <p>In relation to the Brownhills Borrow Pit, the Applicant stated that it was anticipated that there is class 2 material in that location for use in the construction of the Brownhills Junction embankment. As there is no need for FCA, the Applicant is proposing to reinstate the residual land to existing condition.</p>

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		<p>restoration strategy as a requirement and with the MPA to be consulted on.</p> <p>NCC understands that there is uncertainties with Borrow Pits generally and that there are change during the course of a major project. NCC understands that only during the construction will it become clear as to what can be achieved – e.g. amount of open water versus wetland areas.</p> <p>NCC suggests a mechanism could be employed to require a restoration and aftercare strategy, using the precedent of the A14 Cambridge to Huntingdon Improvement Scheme DCO and including similar wording.</p>	

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32	ExA	The ExA asked NCC what the trigger point could be for the provision of the strategy?	
33	NCC	NCC replied to the ExA stating that NCC is not familiar with the triggers but would need the strategy to come into play at some point during the works where clear understanding of what materials required.	
34	NCC	<p>NCC is conscious of Borrow Pits designed for flood alleviation which may need precedence over biodiversity led Borrow Pits.</p> <p>NCC asked the Applicant what materials will be available to backfill and what will the landform look like?</p> <p>NCC is concerned that open water will not provide the biodiversity needed. NCC noted that</p>	See point 31 above

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		The Minerals Local Plan favours biodiversity led restoration. For this reason, NCC is seeking biodiversity led restoration of the Borrow Pits and not open water restoration.	
35	ExA	The ExA asked the Applicant how these discussions relating to restoration would take place.	The Applicant confirmed that there is no specific requirement in the draft Development Consent Order [REP3-003] regarding borrow pit restoration, however this is covered by Requirement 6 as described in point 31 above, but any outcomes from the discussion may be incorporated in the EMP. The Applicant and NCC have agreed that this point could be taken away for further discussion.
Agenda #6 Population and Health			
(6a) Applicant's response to 13.0.7 WQ and clarification regarding the Applicant's position on Construction Communications Plan			
36	ExA	<p>The ExA stated that the Applicant has confirmed that communications for stakeholders during construction of the Scheme would be managed through a Construction Communication Management Plan.</p> <p>The ExA wanted to look at Requirement 3 of the draft Development Consent Order [REP3-</p>	<p>The Applicant confirmed that an Outline Construction Communications Plan was submitted at Deadline 3.</p> <p>The Applicant confirmed that there was a reference to a Construction Communications Management Plan.</p> <p>The Applicant confirmed that these are the same document and it would review the latest wording of the draft Development Consent Order [REP3-003] and any other document which refers to the Construction Communication Management Plan to avoid any confusion.</p>

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		003] which mentions an outline construction communication plan.	
6(b) Clarification regarding public rights of way			
37	ExA	The ExA stated that questions relating to Footpath 14 and Newark being closed are questions which were resolved in the Issue Specific Hearing on 4 December 2024 whereby NCC confirmed that they were happy with the diversions of the public rights of way overall.	
(6c) NCC response to 13.0.24.			
38	ExA	The ExA questioned NCC on NCC's response to Q13.0.4 in NCC's Response to the Examining Authority's First Written Questions [REP2-052] with regards to further work which could be achieved through wider network relief proposals.	
39	NCC	NCC confirmed that they appreciate what the Applicant has done within the constraints of the Scheme and there is nothing for the ExA to follow up on this.	
6d) Clarification regarding Inclusion Action Plan			
40	ExA	The ExA asked the Local Authorities to reply to the Examining Authority's First Written Questions [REP2-052] at Q13.0.8 which covered this topic.	

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41	NSDC NCC	NSDC and NCC stated that they would come back to the ExA on this question.	
(6e) Clarification regarding adequate compensation of agricultural landowners			
42	ExA		The ExA raised a point with NSDC in relation to its Local Impact Report [REP1-035] at paragraph 12.9 on page 56 understands that discussions on compensation have not yet been agreed but noted that local agricultural landowners and businesses are concerned about how their businesses will be impacted. The ExA asked NSDC whether this is a point of concern that NSDC would like to pursue or whether it would be classified as an observation as compensation is a separate process to what can be examined.
43	NSDC	NSDC noted that the observation is to make sure the agricultural landowners are adequately compensated. NSDC confirmed they are satisfied with this provided that appropriate channels are followed with regards to compensation.	
44	ExA		The ExA confirmed that as compensation is not a matter for the Examining Authority this matter cannot be taken any further at this stage, but assured NSDC that the appropriate channels will be followed.

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(6f) ES Methodology in relation to assessment of impact on agricultural holdings			
45	ExA	<p>The ExA noted that the Applicant had, at Deadline 3, submitted revised document showing a reduction in impact to agricultural land holdings as a result of the Scheme. The ExA asked whether NSDC could come back on this point to confirm whether they have any response to those issues in reference to an updated Environmental Statement Chapter 12 (Population and Human Health) [REP3-011] and updated Environmental Statement – Figure 12.6 Agricultural Land Impact Plan (Rev 2) [REP3-015].</p>	<p>The Applicant clarified that the relevant document would be Chapter 12 (Population and Human Health) of the Environmental Statement [REP3-011] which states that Design Manual for Roads and Bridges (DMRB) LA 112 Population and Human Health was used to inform the impact assessment for agricultural land holdings.</p> <p>The Applicant clarified that the updates to Chapter 12 (Population and Human Health) of the Environmental Statement [REP3-011] and associated documents do not reflect a new change to the Order Limits but merely bring that chapter in line with the Order Limits as they appear elsewhere in the application. As a result of this update, the Applicant confirmed that assessment figures have slightly changed and offered to talk NSDC through the relevant documents after the hearing to assist understanding.</p>
46	NSDC	<p>NSDC stated in response that they are concerned about the amount of agricultural</p>	

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		land used as part of the Scheme which is incidental to the land use adjacent to the A46.	
47	ExA	The ExA would like this to be completed in a submission to the ExA so they can be clear the magnitude of the concern as reflected.	
48	NSDC	NSDC confirmed it is on the lower end of quality (grades 3 and 4).	
49	NSDC	NSDC confirmed that it will review the documents and if it has any comments, will come back on this point at Deadline 4.	
Agenda #7 Any other matters			
50	ExA	The ExA reminded parties that any summaries should be submitted in writing by Deadline 4.	
51	ExA	The ExA confirmed that tomorrow would have the ASI with a safety briefing.	
ISH5 concluded at 15:18.			