



Our ref: 20044834

Your ref: TR020005

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**SUMMARY OF REPRESENTATIONS MADE AT ISH6, ISH7 AND CAH1
SUBMITTED BY NATIONAL HIGHWAYS LIMITED**

**APPLICATION BY GATWICK AIRPORT LIMITED (THE APPLICANT) FOR AN
ORDER GRANTING DEVELOPMENT CONSENT FOR THE GATWICK AIRPORT
NORTHERN RUNWAY PROJECT (THE PROJECT)**

1 Introduction

- 1.1 This document sets out National Highways' summary of its representations made at Issue Specific Hearing 7 on Other Environmental Matters held on 1 May 2024 (ISH7) and Compulsory Acquisition Hearing 1 held on 2 May 2024 (CAH1).
- 1.2 National Highways is a statutory consultee in the planning process and is responsible for infrastructure that is directly impacted by the Applicant's proposals.

2 Summary of representations made at Issue Specific Hearing 6

- 2.1 National Highways did not attend ISH6 but notes action point 2 which was assigned in its absence. National Highways has addressed this action as part of its responses to Deadline 4 via its Cover Letter.

3 Summary of representations made at Issue Specific Hearing 7

- 3.1 National Highways attended ISH7 and broadly commented on agenda items 4, 5 and 6.

Agenda Item 4: Flood modelling

- 3.2 National Highways' key concern on this agenda item related to the Applicant's compliance with the relevant (standards for highways) guidance. In National Highways' view, it is not clear from the Application that flood risk assessments have been carried out in accordance with the requirements of CD356 (DMRB standard).
- 3.3 Since the submission of National Highways SoCG at D1 [TR020005/REP1/036], further work has been carried out behind the scenes and updates will be provided in the D5 SoCG. As the Examining Authority will note from the D1 SoCG, National Highways requires clarity on whether the approach towards flood modelling has been approved by the Environment Agency.
- 3.4 National Highways has separately requested further evidence from the Applicant in relation to its flood risk modelling, but this information is yet to be provided.

Agenda Item 4: Wastewater

- 3.5 National Highways did not raise any comments relating to wastewater during ISH7. However, the Examining Authority should note the comments provided on the Applicant's revision to the proposed water treatment works (as set out in its Change Application Report) at Deadline 3 [REP3-139]. In its response, National Highways requested further evidence from the Applicant for National Highways to better understand any potential downstream water quality issues. The response included a request for further details of the Applicant's contingency plans if pollutant concentrations became too high.
- 3.6 Following the Applicant's second notification to submit a request for a proposed change to the application for development consent [AS-146] of 7 May 2024, National Highways is reviewing the proposal to evaluate any impacts to the Strategic Road Network.

Agenda Item 5: Air Quality

- 3.7 National Highways raised its concerns around the Applicant's compliance with the relevant (standards for highways) guidance for air quality.
- 3.8 As set out by National Highways in the SoCG [TR020005/REP1/036] in sections 2.2.2.2 and 2.2.2.3, National Highways notes that DMRB LA 105 has

not been complied with. The Applicant has said in the SoCG that this guidance is not applicable to the Scheme, but National Highways disagrees. It is important that the Examining Authority notes this disagreement due to the impacts of failing to comply with the guidance. National Highways has provided further commentary in relation to the Applicant's responses to the Examining Authorities Written Questions as part of its Deadline 4 submissions. National Highways representations made during the hearing are as set out below.

- 3.9 **Gap Analysis:** LA 105 requires gap analysis of predicted annual mean NO₂ concentrations. This is to ensure that modelled roadside NO₂ concentrations are not too optimistic. It is the view of National Highways that a precautionary approach should have been followed with regards to future vehicle emission rates (and background concentrations), particularly when assessment years are so far into the future, where there is most uncertainty in policy and vehicle fleet composition.
- 3.10 **Speed banding:** LA 105 requires vehicle speeds to be banded into defined categories for motorways and non-motorway roads. The use of speed bands in the assessment methodology is intended to remove the subtleties of small changes in vehicle speed, which dispersion models can be sensitive to, but are often due to nothing more than traffic model noise. The speed band methodology also ensures that congestion on the approach to and from junctions is consistently dealt with across a modelled domain.
- 3.11 **Time period traffic data:** For assessments that are not in the early stages of appraisal, LA 105 requires 24-hour traffic data to be split between the AM period, inter peak period, PM period and overnight period. This is to better reflect vehicle emissions, which is not accounted for when 24-hour daily average data is used;
- 3.12 **Dispersion site surface roughness:** National Highways believes that the dispersion site surface roughness value of 0.2m used in the dispersion model only represents non-wooded rural sections of the modelled domain and not the wooded, suburban or urban areas. These other areas should be assigned a higher surface roughness value to represent the greater level of turbulence they create, which makes the dispersion of emissions less efficient. National Highways has provided further detail on this matter in response to submissions provided by the Applicant to the Examining Authorities Written Questions as part of its Deadline 4 submissions.
- 3.13 Without use of the DMRB LA 105 Standard, the assessment of local air quality impacts submitted by the applicant is not as precautionary as National Highways would expect an application of this scale.

VISSIM Modelling / Construction Traffic

- 3.14 National Highways provided an update on construction traffic modelling. This outstanding matter indirectly related to air quality as the outputs of the modelling impact the Applicant's air quality assessments.
- 3.15 National Highways set out in its Deadline 3 cover letter [REP3-137] that it had agreed the required VISSIM modelling with the Applicant. This included modelling scenarios for construction works and traffic management in various dates in 2029 and 2030.
- 3.16 National Highways welcomes the commitment from the Applicant to model these scenarios, but remains concerned over the timescales needed to complete such work. The findings may impact National Highways' conclusions on the Applicant's air quality assessments which use traffic modelling as an input. National Highways strongly recommends that this information is shared as soon as possible so it can be resolved before the close of the examination.

Agenda Item 6 – Draft Section 106 Agreement

- 3.17 National Highways provided a brief update on the status of its agreement with the Applicant. As the Examining Authority will be aware, the Applicant is proposing to secure matters directly relevant to National Highways in the s106 agreement, which National Highways is not a party to.
- 3.18 National Highways is currently negotiating a draft framework agreement with the Applicant which aims to secure the right for NH to enforce relevant s106 commitments. The scope of the draft Framework agreement requested by National Highways includes:
 - 3.18.1 Membership of the working groups
 - 3.18.2 Wider highway network monitoring and mitigation
 - 3.18.3 Enforcement of surface access commitments; and
 - 3.18.4 Protective Provisions
- 3.19 The agreement provides more certainty to National Highways that the obligations in the s106 will be enforceable. A response to the draft was received from the Applicant's solicitors on 29 April and is under review.
- 3.20 While National Highways understands the principle of enforcing the s106 via the framework agreement is agreed, should an agreement not be reached, or it become apparent that an agreement is unlikely to be reached, National



Highways proposes to submit draft DCO provisions securing amongst other things, the enforceability of the s106 agreement for the Examining Authority's consideration and inclusion in the DCO sent to the Secretary of State.

4 Summary of representations made at Compulsory Acquisition Hearing 1

4.1 National Highways attended CAH1 and commented on agenda items 3, 5, and 6.

Agenda Item 3 - The Applicant's case for Compulsory Acquisition and Temporary Possession

4.2 National Highways explained that it has the benefit of Protective Provisions in the draft DCO (Schedule 9, Part 3) which control the exercise of compulsory acquisition powers over the Strategic Road Network ('SRN'), and in principle the parties have agreed to extend that control to all National Highways land.

4.3 However, the existence of these controls does not mean that the Applicant can avoid having to comply with the relevant compulsory acquisition guidance (Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land). National Highways still has concerns about these powers and expects the guidance to be complied with.

4.4 National Highways set out its view, shared by the Joint Local Authorities, that the Applicant does not require permanent acquisition powers of the highway in order to be able to implement the Proposed Development. Indeed, the Scheme could be fully implemented without the Applicant owning the highways land subject to permanent powers in the dDCO.

4.5 It is accepted that where a highway is altered or diverted, the new land which forms part of the highway should be subject to compulsory acquisition. However, National Highways does not consider it reasonable or proportionate for the Applicant to seek permanent acquisition powers over the SRN.

4.6 The Applicant put forward during the Hearing that they need full acquisition of permanent rights to deal with any unknown rights, but National Highways disagrees with this view:

4.6.1 As the Examining Authority will be aware from the Book of Reference [REP1-009] the Applicant has not identified unknown interests in every National Highways plot. It is therefore unclear what basis the Applicant is relying upon to prove the existence of these "unknown" interests.

4.6.2 The Examining Authority will also be aware that even if there were unknown third party rights of way across the SRN, such rights would be suspended during the temporary possession of the land under article 32(3). The Applicant should therefore be able to carry out its works without permanent powers.

- 4.6.3 Once the road is re-opened and operational, various existing legislation (e.g. Highways Act 1980) would prevent unknown rights from obstructing the highway.
- 4.7 The Applicant also claimed that permanent powers were required as land requirements would be unknown until detailed design. However, as set out by National Highways during the Hearing, the Applicant would be able to implement its scheme entirely without needing to own any part of the existing highway. Detailed design will not influence the extent of highway the Applicant needs to own (as it does not require any such land).
- 4.8 In accordance with paragraph 8 of the relevant guidance, the Applicant should be looking at reasonable alternatives to compulsory acquisition, rather than taking such broad powers.
- 4.9 National Highways therefore strongly recommends that that Applicant remove its existing highway land from the scope of permanent powers.
- 4.10 In respect of land outside the SRN, National Highways explained that the Applicant should justify the need for permanent powers, so it is clear to National Highways why this land is needed. The Applicant should then enter into negotiations for this land, in accordance with the relevant guidance. As far as National Highways is aware, these non-SRN areas are being reviewed by the Applicant in line with the in-principle control in the protective provisions.
- 4.11 National Highways requested the following amendments to the Application:
- 4.11.1 The Applicant should update the dDCO, Book of Reference and Land Plans so that the National Highways SRN plots are subject to temporary possession rather than permanent acquisition;
- 4.11.2 The Applicant should justify why it needs permanent powers over any other National Highways plots, and then engage with National Highways for those interests.

Agenda Item 5 – Site specific representations by Affected Persons

- 4.12 National Highways explained that it had met with the Applicant's land referencing team to go over discrepancies in the Book of Reference. The majority of these errors relate to the highway authority status of the land. National Highways expects an updated Book of Reference to be submitted.
- 4.13 National Highways notes the response from the Applicant during the Hearing, that these errors were unknown to it at the time of submission. However, the Examining Authority should note that it is the Applicant's responsibility to submit an updated Book of Reference with its submission. National Highways would

have expected these discussions to have been held, and errors corrected in advance of DCO submission.

- 4.14 National Highways highlighted for the Examining Authority's attention that there had been no engagement to date between the parties on the need for a land agreement. This failure to comply with the relevant guidance is a point of concern for National Highways, and if land is required by the Applicant, National Highways strongly recommends that it seeks to engage with it for land and/or rights. As set out previously, the control in the draft Protective Provisions does not excuse the Applicant from having to comply with the relevant guidance.

Plot – 1/242A

- 4.15 National Highways raised concerns around the lack of detail on rights within the Application, specifically in respect of plot 1/242A. This is land owned by National Highways, described in the Book of Reference as "171 sqm of grassed area". This land is subject to rights and temporary possession.
- 4.16 Schedule 7 to the dDCO notes that plot 1/242A is subject to rights for the purposes of "Minor works, including protective works, access or utility diversions." National Highways considers this broad, undefined and unclear. In accordance with paragraph 9 of the relevant guidance, the Applicant needs to have "a clear idea of how [it intends] to use the land which [it proposes] to acquire". National Highways strongly suggests that the Examining Authority consider the broad scope of the rights sought by the Applicant.
- 4.17 National Highways welcomes the Applicant's response during the Hearing that this land is required for drainage rights. In light of this clarification, the Applicant should update its Schedule 7 to include a more prescriptive right for drainage. National Highways considers that there are much better precedents available that define rights, by way of example Schedule 5 of the draft Luton Airport DCO.
- 4.18 Separately, the Applicant has not approached National Highways with terms for an easement as is normal practice in DCOs. Regardless of the control in the Protective Provisions, National Highways would still expect the Applicant to comply with its obligations in the relevant compulsory acquisition guidance.

Gatwick Green

- 4.19 Following comments from the representative of Gatwick Green during the Hearing, National Highways has considered the issues raised, and continues to review internally whether it is able to accept the alternative access.
- 4.20 It is important for the Examining Authority to note that the alternative access proposed by the landowner and the Applicant is outside the Order limits. National Highways will consider the option from an operations perspective (i.e. whether it is usable), but it will be for the Applicant and the landowner to

demonstrate to National Highways that the relevant land rights can be provided before the close of the Examination. National Highways will continue to engage with the Applicant and landowner as appropriate and will provide a further update in due course.

- 4.21 Post Hearing Note – National Highways has set out its latest position in its covering letter for Deadline 4 submissions.

Agenda Item 6 – Sections 127 and 138 of the PA2008 – the acquisition of Statutory Undertakers’ land and the extinguishment of rights and removal of apparatus of Statutory Undertakers

- 4.22 National Highways confirmed that protective provisions are being negotiated between the parties but the material provisions are broadly agreed. This includes a control over the acquisition of any SRN land and an in-principle (agreed subject to a review of the detail) a control over non-SRN land.
- 4.23 The majority of updates to the most recent draft originated from National Highways, in line with its standard protective provisions.