

**Gatwick Northern Runway
TR020005
National Highways Closing Statement**

August 2024

Our ref: 20044834

Your ref: TR020005

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21 August 2024

Dear Mr Gleeson,

GATWICK NORTHERN RUNWAY PROJECT – NATIONAL HIGHWAYS CLOSING STATEMENT

This is National Highways' Closing Statement, outlining a summary of our position at Deadline 9 provided in order to aid the Examining Authority in understanding the status of negotiations between both parties. This statement outlines the status and conclusions of negotiations in relation to the Framework Agreement, the Statement of Common Ground and the key outstanding issues where agreements between both parties have not been reached. In summary, the matters that remain outstanding are:

1. Indemnity against claims arising from the construction or operation of the Applicant's scheme
2. Justification for the use of the South Terminal Roundabout for site compound access
3. Compulsory Acquisition Powers

[Updated Status of Negotiations Between Both Parties](#)

Signed Framework Agreement

National Highways and the Applicant have completed a Framework Agreement. The contents of the Framework Agreement, along with the amendments to the Surface Access Commitments and the outline Construction Traffic Management Plan have enabled a number of matters to have been shown as agreed. More detail on this can be seen in the agreed Statement of Common Ground submitted by the Applicant at Deadline 9. However as there remain unresolved issues National Highways objection remains.

While National Highways remains hopeful that 2 of the 3 items may be resolved prior to the conclusion of the Examination, the lack of agreement on indemnity cannot be resolved and therefore National Highways objection cannot be withdrawn at the end of the Examination.

The constructive discussion with the Applicant has allowed National Highways to confirm it has no outstanding fundamental concerns in relation to the strategic modelling that has been presented by the Applicant, and whilst the detailed design and construction methodology are matters for the next stage of the development (if consent is granted), the Protective Provisions provide adequate controls for the management and mitigation of impacts which may arise.

Key Outstanding issues

1. Indemnity in the Protective Provisions

The primary reason National Highways cannot fully withdraw its objection under Section 127 of the Planning Act 2008 is the Applicant's refusal to provide an adequate indemnity provision in the Protective Provisions. The Applicant's position is to provide a capped indemnity (either 30% or £100m, whichever is higher) concerning damages, losses and costs arising from its own actions. National Highways considers private sector developers passing the burden (which arises from its own works) onto the public purse wholly inappropriate. For this reason, the value of indemnity should be uncapped, and National Highways objects in the strongest possible terms to the Applicant's proposal.

National Highways requests the ExA recommends, and the Secretary of State confirms (if development consent is granted), the following wording is introduced to replace the current drafting of paragraph 18 in the Protective Provisions for the benefit of National Highways:

"Indemnity

18. The undertaker fully indemnifies National Highways from and against all costs, claims, expenses, damages, losses and liabilities suffered by National Highways arising from the construction, maintenance or use of the specified works or exercise of or failure to exercise any power under this Order within 14 days of demand save for any loss arising out of or in consequence of any negligent act or default of National Highways.

National Highways further notes that its preferred indemnity (shown above) has been consistently endorsed by the Secretary of State in various decisions in the last 12 months:

- The Sheringham Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024 (see paragraph 18 of Part 13 of Schedule 14)
- The HyNet Carbon Dioxide Pipeline Order 2024 (see paragraph 232 of Schedule 10)

- The National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024 (see paragraph 77 of Part 6 of Schedule 15)
- The Medworth Energy from Waste Combined Heat and Power Facility Order 2024 (see paragraph 65 of Part 5 of Schedule 11)
- The Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 2024 (see paragraph 52 of Part 4 of Schedule 12)

The Applicant is therefore asking for these precedents to be ignored in favour of its approach, with the aim of shielding itself from the full financial liability associated with its own actions. There is nothing materially different in these precedents and the Applicant's proposals to justify the Applicant adopting a different position with regard to indemnity. Indeed, the level of interference on the Strategic Road Network is significantly greater in the case of this project. It is therefore appropriate that losses, damages and costs arising from the development are borne by the Applicant, and not the public purse.

The Applicant has suggested that the indemnity can be diluted because a bond is provided for in the Protective Provisions. This is misconceived; the provision of a bond is ordinarily (as the precedents make clear) backed up by an indemnity, and the indemnity itself applies more broadly to ensure that damages, losses and costs arising from the Applicant's own actions are correctly accounted for by the Applicant themselves. It is not acceptable for the Applicant to propose nationally significant infrastructure works on the Strategic Road Network as part of its own project, and then seek to avoid full liability for costs that arise.

In the absence of National Highways' preferred indemnity being included, and to that extent, National Highways maintains its objection under section 127 of the Planning Act 2008.

2. Justification for the use of the South Terminal Roundabout for site compound access

As part of its ongoing liaison with the Applicant, and in accordance with the DfT Circular 01/2022 Strategic road network and the delivery of sustainable developmentⁱ, National Highways has previously, and as part of its ongoing liaison with the Applicant, requested clear justification for the proposed introduction of a new temporary direct access from the South Terminal Roundabout as the primary access point to the proposed South Terminal Construction Compound to support the construction of the surface access works. The Applicant has recently provided some information to National Highways on this point which adds to the information presented in the DCO application. National Highways welcomes the additional information provided by the Applicant and has asked for additional information in order to fully resolve its concerns and to be able to consider withdrawing its objections in this context. The Applicant has committed to provide the necessary additional information before Deadline 10. National Highways remains hopeful of resolving this prior to the conclusion of the Examination but will review this information and confirm its position in its Deadline 10 submission.

ⁱ <https://www.gov.uk/government/publications/strategic-road-network-and-the-delivery-of-sustainable-development>

3. Compulsory Acquisition Powers

At Deadline 7, the Applicant introduced updated Land Plan information [REP7-017] whereby the Applicant has sought to address National Highways' concerns in respect to the proposed compulsory acquisition of land that will remain part of the Strategic Road Network.

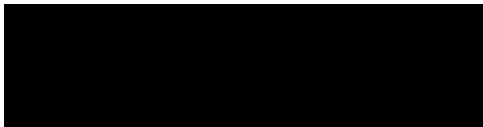
National Highways has continued to liaise with the Applicant to ensure that National Highways' land interests are appropriately defined. Through these negotiations, the Applicant has confirmed that the following amendments will be made as part of its Deadline 9 submission:

- Land parcels 4/474B and 4/474C will be converted to land subject to permanent rights (presumed highway)
- Land parcels 1/138A and 1/256 will be converted to Land subject to permanent acquisition

Assuming these changes are actioned by the Applicant, National Highways considers the protections provided in the Protective Provisions means it has no outstanding concerns in relation to compulsory acquisition.

The limited number of outstanding matters presented in this closing statement is a testament to the positive engagement and commitment of both parties. Prior to the end of the examination period, National Highways and the Applicant will continue to work closely to resolve any remaining issues. This ongoing collaboration aims to address any further concerns and ensure that as many matters as possible are agreed. National Highways remains committed to working with the Applicant, subject to the outcome of the Development Consent Order Application, to finalise any outstanding details

Yours Sincerely,



Peter Fisher

Head of 3rd Party Infrastructure