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Sent: 11 August 2020 21:51

To: Natasha Kopala <Natasha.Kopala@dft.gov.uk>

Cc: Robbie Owen <Robbie.Owen@pinsentmasons.com>; Gordon McCreath <Gordon.McCreath@pinsentmasons.com>

Subject: Planning Act 2008 - A303 Stonehenge - DCO drafting relating to the compulsory acquisition of rights for the benefit of parties other than the undertaker [PM-AC.FID3180380]

Dear Tasha,

As you know, Pinsent Masons is instructed by Highways England in the matter of an application for development consent for the A303 Amesbury to Berwick Down scheme, also known as the Stonehenge Tunnel scheme.

Further to your recent telephone conversations with my colleague Robbie Owen, please find attached a letter regarding the draft A303 (Amesbury to Berwick Down) Development Consent Order ("A303 Stonehenge dDCO"), which currently awaits the Secretary of State's decision, due by 13 November 2020.

Our letter raises a DCO drafting issue, relating to the compulsory acquisition of rights for the benefit of parties other than Highways England, specifically where rights are required:

- for the benefit of statutory undertakers whose apparatus is to be diverted in consequence of the scheme; and
- for the benefit of persons with an interest in land, the private means of access to which are proposed to be stopped up and subsequently re-provided across other land, which is not proposed to be acquired outright by Highways England.

We have considered this 'third party rights drafting' in the A303 Stonehenge dDCO in the context of modifications made recently by the Secretary of State to the Lake Lothing (Lowestoft) Third Crossing Order 2020 ("the LLTC DCO") (as you will be aware, we also act for Suffolk County Council in the matter of the LLTC DCO).

The A303 Stonehenge dDCO includes third party rights provisions drafted in similar terms to the provisions which were modified by the Secretary of State in the LLTC DCO (in article 26 (compulsory acquisition of rights) and article 49 (transfer of benefit of Order, etc.)). Our attached letter explains why we would not wish the Secretary of State to make equivalent or similar modifications in the A303 Stonehenge dDCO; it also analyses and seeks to address the Secretary of State's concerns (as set out in his Decision Letter dated 30 April 2020) underlying his reasons for modifying the third party rights drafting in the LLTC DCO. Lastly, our letter sets out a justification for the terms in which third party rights drafting is currently included in the A303 Stonehenge dDCO, together with some proposed minor clarificatory drafting amendments which are set out in tracked changes in Annex B (compulsory acquisition of rights) and Annex C (transfer of benefit of Order, etc.) to the letter.

As indicated in our letter, we have also prepared an updated version of the draft Explanatory Memorandum (accompanying the A303 Stonehenge dDCO) – this is attached in the form of a clean version, together with a tracked change version identifying the text we have added to the explanations relating to article 22 (compulsory acquisition of rights) and article 50 (transfer of benefit of Order, etc). For the reasons explained in our letter, the attached updated draft Explanatory Memorandum includes more explanation about the need for the third party rights drafting in the A303 Stonehenge dDCO, and about how it would be given effect in practice – if the third party rights drafting (as currently proposed) is included in the A303 Stonehenge DCO in the event that it is made by the Secretary of State in due course.

We should be very grateful if the drafting considerations raised in our letter could be taken into account by the Department within the remaining time available prior to the deadline for the Secretary of State's decision (13 November 2020). Please note, however, that we do not wish to cause any delay to that decision and would ask that this matter be considered with that in mind.

Thank you for your kind assistance in this matter.

Regards

Heidi

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