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National Highways
For information – to all Interested Parties

Your Ref:
Our Ref: TR010032
Date: 29 August 2023

Dear Sir/Madam,

Application by National Highways for an Order Granting Development Consent for the Lower Thames Crossing

Planning Act 2008 – Section 89(3) and The Infrastructure Planning (Examination Procedure) Rules 2010 (as amended) – Rules 9 and 17

The Infrastructure Planning (Compulsory Acquisition) regulations 2010 – Regulations 4 to 19

Procedural Decisions¹ 33, 34 and 35 addressing proposed changes to the Application

We are writing to inform you of a procedural decision made by the Examining Authority (ExA) following the Applicant's request for the ExA to accept proposed changes (Change Request 1) to the Development Consent Order (DCO) Application.

The Applicant originally notified the ExA of its intention to seek a request to make changes to the Application on 16 March 2023 [[AS-083](#)] and the ExA responded to confirm its agreement to the Applicant's non statutory consultation process and to confirm it would publish the notification [[PD-011](#)].

The formal Change Request was subsequently submitted on 02 August 2023 [[AS-092](#)] and the changes are summarised as follows:

- MRC01: Reduction of the Order Limits required for nitrogen deposition compensation requirements, specifically the removal of farmland from the Order limits (Work No. E2 (land at Burham) and part of Work No. E1 (land at Bluebell Hill)).

¹ All Procedural Decisions made by the ExA for the Lower Thames Crossing examination can be found in the Procedural Decisions Log [[PD-007](#)].

- MRC02: Increase in the North Portal headwall limits of deviation from 125m to 275m (associated with Works No. 4A) to provide construction flexibility.
- MRC03: Reduction of the Order Limits, relocation of utilities and Utility Logistics Hubs (ULHs) in East Tilbury, with consequential acquisition of permanent rights over land previously only affected by temporary possession of rights.

The ExA has assessed the Applicant's request in line with paragraphs 109 to 115 of DCLG Guidance '[Planning Act 2008: examination of applications for development consent](#)' and the Planning Inspectorate's [Advice Note 16 National Infrastructure Planning](#). The ExA provides its procedural decisions on the Change Requests and reasons for its decision below.

33. *Change Request MRC01*

The Applicant considers that Change Request MRC01 is not a material change to the Application because although it would reduce the amount of land available for nitrogen deposition compensation, there still remains more compensation land available (205ha) than the area of significantly affected habitat (176.4ha). The ExA notes that in response to the Change Request consultation material, several Interested Parties (IPs) objected to the loss of the Burham compensation land and the loss of part of the Bluebell Hill compensation land, stating that there is insufficient evidence to demonstrate how the removal of 39ha of compensatory habitat provision at Burham and Bluebell Hill would ensure that the project's air quality compensation and landscape enhancement objectives would continue to be met.

The ExA makes no judgement at this stage (pending further examination) as to whether the Application without the aforementioned land would provide sufficient nitrogen deposition compensation. However, the ExA accepts that the effect of the exclusion of this land from the Order land would not be so substantial as to constitute a materially different project. The ExA also considers that there is sufficient time remaining in the Examination for the change to be accommodated as part of the Planning Act 2008 Examination process. Indeed, Issue Specific Hearing 6 on Friday 08 September 2023 aims to hear evidence and views on mitigation, compensation and land requirements, with a specific agenda item for nitrogen deposition compensation. As a result, this change has been accepted into the Examination.

The Applicant is, however, required to ensure that the Examination documents including the draft Development Consent Order, Land Plans, Works Plans, General Arrangements Plans and other documents are updated and consolidated accordingly at **Deadline 4, Tuesday 19 September 2023**.

Following the ExA's decision to accept Change Request MRC01 into the Examination, we invite comments in relation to MRC01 by **Deadline 5, Tuesday 3 October 2023** and the Applicant's response to any comments submitted by Deadline 6, **Tuesday 31 October 2023**.

34. *Change Request MRC02*

The Applicant considers that Change Request MRC02 is not a material change to the Application because the change is localised in nature, it does not alter the external appearance of the North Portal or affect any above ground elements of the Project, and it

does not alter or take any new land interests. The Applicant concludes that the change in potential impacts is considered negligible and consistent with the impacts already assessed in the Environmental Statement.

The ExA accepts that building in flexibility for the detailed design stage is not an unreasonable request; the ExA also notes that the identified amendment to North Portal headwall is set within the original Order Limits for the scheme and would not result in a materially different project. The ExA has therefore accepted the change into the Examination.

As with Change Request MRC01, the Applicant is required to ensure that the Examination documents including the draft Development Consent Order, Land Plans, Works Plans, General Arrangements Plans and other documents are updated and consolidated accordingly at **Deadline 4, Tuesday 19 September 2023**.

Following the ExA's decision to accept Change Request MRC02 into the Examination, we invite comments in relation to MRC02 by **Deadline 5, Tuesday 3 October 2023** and the Applicant's response to any comments submitted by Deadline 6, **Tuesday 31 October 2023**.

35. *Change Request MRC03*

Change Request MRC03 is multi-faceted in that it seeks the relocation and amalgamation of two ULHs, and a separate reduction in the Order Limits by repositioning a utilities corridor (the Linford Bore Pipeline) westwards of East Tilbury. However, the repositioning of the Linford Bore Pipeline would also involve a change to the land designation of several land parcels from temporary possession to temporary possession of the land and permanent acquisition of rights in order for Statutory Undertakers to build, access, maintain and operate their infrastructure. The Applicant acknowledges that this change engages the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (CA Regs).

The Applicant considers that the proposed changes would reduce potential environmental impacts associated with construction works on residents of East Tilbury due to increased separation distances; however, it also notes that realignment of the Linford Bore Pipeline has the potential to change reported groundwater effects, but adds that a modification to the Register of Environmental Actions and Commitments No. RDWE054 (contained in ES Appendix 2.2 – Code of Construction Practice, First Iteration of Environmental Management Plan [[REP1-157](#)]) would be included to prevent any potential impacts on the irrigation reservoir at Low Street. Overall, the Applicant considers that there would be no change to the overall assessment of significant effects reported in the ES.

The ExA has no in principle concern with the reasons for the Change Request. However, the ExA considers that the request to acquire new permanent rights over land is a material change to the application, for while that acquisition is over a relatively small land area when regard is had to the extent of the Order Limits, it would have an enduring and significant effect for those with current interests in that land. Nonetheless, the ExA is of the opinion that Change Request MRC03 is not so substantial that it would extend beyond the original scope and assessment of the Project as to constitute a materially different project. As a result, and in accordance with Regulation 6 of the CA Regs, the Change Request can be accepted into the Examination.

Acceptance of the change into the Examination does not imply any agreement with the Applicant on the planning merits or environmental impacts, the effects of which will be examined with equal rigour to the proposals contained in the original Application. In reaching this acceptance decision, the ExA is satisfied that it complies with the Requirements of Regulation 5 of the CA Regs and has prepared and published a separate Regulation 5 'Proposed Provision' Checklist² in addition to this procedural decision.

The ExA is also satisfied that there is sufficient time within the Examination for the proposed changes to be properly and fairly examined including the opportunity for written submissions and any oral representations to be made at any hearings that are required, along with the procedural requirements of the CA Regs. Having accepted the proposed changes into the Examination, and on the basis that the consent of all those with an interest in the land affected by Change Request MRC03 has not been obtained, the Applicant will need to submit full copies of the documents required by Regulation 5 of the CA Regs and to notify the Affected Persons in accordance with the requirements of Regulations 7, 8 and 9. The Applicant must engage with the Case Manager without delay to ensure that notice and publicity for the proposed provisions (under Regulations 7 to 9) are carried out in a timely and compliant manner.

Subject to the Applicant's engagement with the Case Manager, the ExA proposes shortly thereafter to amend the timetable for the Examination to provide a deadline by which relevant representations in relation to the proposed provisions can be submitted and examination of proposed provisions (under Regulations 10 to 19 of the CA Regs) can be carried out. Persons wishing to make relevant representations on the proposed provisions should note that Regulation 10 provides that these must relate to the proposed provisions, ie, to the additional land or rights sought and to the effects of the proposed development on or to the taking of the proposed additional land or rights. Submissions that relate to the Application more broadly or to other subject matters will not be accepted or considered by the ExA. For the avoidance of doubt, and as already noted earlier in this procedural decision letter, anyone wishing to comment on Change Requests MRC01 or MRC02 can still do so but those comments should be submitted by **Deadline 5, Tuesday 3 October 2023**.

In line with the Infrastructure Planning (Examination Procedure) Rules 2010 (as amended) – Rule 17, the ExA requests that the Applicant is to update and consolidate all necessary documents into the Examination by **Deadline 4, Tuesday 19 September 2023** including but not limited to the Book of Reference, Statement of Reasons, draft Development Consent Order, Land Plans, Works Plans, General Arrangements Plans.

If you have any questions on this matter, please do not hesitate to contact the case team using the contact details at the head of this letter.

Yours faithfully,

Rynd Smith

Rynd Smith
Lead Panel Member for the Examining Authority

² 'Regulation 5 'Proposed Provision' Checklist' found at [\[PD-031\]](#)

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