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National Highways
The Applicant

Your Ref:
Our Ref: TR010032
Date: 30 August 2023

Dear Dr Wright,

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

Planning Act 2008 – Sections 51 and 89(3) and The Infrastructure Planning (Examination Procedure) Rules 2010 - Rule 9

Procedural Decision¹ 36 addressing notification of further changes (Change Request 3) to the Application

Thank you for your letter dated 1 August 2023 (Change Notification Letter), and the accompanying Notification Report giving notice of National Highways' intention to submit a third request to make changes to the application for the Lower Thames Crossing (the Project). The Change Notification Letter and accompanying Report have been published on the Project page of the National Infrastructure Planning website and can be found in the Examination Library [[AS-090](#)].

In accordance with The Planning Inspectorate's '[Advice Note 16: Requests to change applications after they have been accepted for examination](#)' (March 2023)' (AN16), the Change Notification Letter and accompanying Report informs the ExA of the following relevant points:

- There are two proposed modifications at this time:
 - EC03 comprises an amendment to the Limits of Deviation in relation to a proposed Walking, Cycling and Horse Riding (WCH) bridge over the A127;
 - EC04 comprises the inclusion of temporary possession of Book of Reference Plot 16-41, which is in addition to the already identified requirement for permanent acquisition of subsoil and rights of the said Plot.

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

The applicant seeks the views of the ExA in relation to the consultation exercise proposed for the “formal changes”.

36 Change Notification 3 - Procedural Pathway for the Proposed Changes EC03 and EC04

The ExA has considered the Change Notification Report and agrees with the Applicant that these would constitute “changes” to the Project that would require a Change Application. The ExA does not have sufficient information at this stage to reach a view as to materiality and nor would it be appropriate to form such a view in advance of formal submission of change.

Proposed Change EC03

In relation to change EC03, the ExA notes the Applicant’s Change Notification material suggests that this is a minor change to the Limits of Deviation to respond to concerns about the location of the proposed A127 WCH bridge on the Brentwood Enterprise Park. The Applicant states that it does not intend to carry out any consultation on change EC03 because:

- a. there is no change to the rights over land (with the land required for the proposed increase to the Limits of Deviation already identified for permanent acquisition in the Land Plans – Vol C – Sheets 21 to 49) [\[REP1-011\]](#);
- b. there is no change to the environmental effects; and
- c. the detailed design of the WCH bridge must be developed in accordance with Requirement 3 of the draft Development Consent Order [\[REP1-042\]](#) (which for clarity since the submission of the Applicant’s Change Notification Letter and accompanying Report has been superseded by [\[REP2-004\]](#)).

The ExA notes the possible conflict between the location of the proposed Lower Thames Crossing WCH bridge over the A127 shown on Sheet 45 (Work No. 9Z) of the Works Plan document 2.6, Volume C [\[AS-026\]](#) and the proposed vehicular bridge forming part of a separate planning application under consideration by Brentwood Borough Council for the Brentwood Enterprise Park [Ref. [22/00402/FUL](#)]. Given that the change proposal seeks to respond to the landowners and land promoters of the Brentwood Enterprise Park, and indeed given it could influence Brentwood Borough Council’s decision on the planning application, the ExA considers the Applicant’s decision not to carry out any non-statutory consultation with interested parties is unusual.

Nonetheless, the ExA also considers that interested parties would have the chance to comment if the Change Request 3 Application were subsequently accepted into the Examination by the ExA. The ExA therefore accepts the Applicant’s position not to carry out any targeted consultation on Change EC03 at this time.

Proposed Change EC04

Proposed change EC04 seeks to acquire additional rights over private land (albeit temporary possession rights at the surface) to facilitate the construction of a new public right of way along existing footpath FP146 and the temporary establishment of the construction compound for the north portal and tunnel approach. While such temporary rights do not invoke the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (the CA Regulations), acquisition of temporary rights may still have an effect on those with

current interests in that land. Therefore, consultation with affected landowners should be undertaken.

It is noted that the Applicant intends to confine the consultation to persons with an interest in the land only. Given the relatively confined nature and area of the proposed changes, the ExA does not disagree with this targeted consultation process, but for the avoidance of doubt, the ExA advises that each person affected by change EC04 who is within one or more of the categories set out in section 44 of the Planning Act 2008 should be identified and consulted on the change application, for no less than 28 days. The ExA considers that is sufficient time within the Examination for this consultation to be undertaken and for a subsequent formal Change Request Application to be made.

The consultation material and responses to the consultation for EC04 should be submitted to the ExA as part of any formal Change Request application.

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 sincerely,

Rynd Smith

Rynd Smith
Lead Panel Member for the Examining Authority

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