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The Applicant and  
All Interested Parties

Your Ref:

Our Ref: TR010032

Date: 22 September 2023

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Dear Sir/Madam,

## **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 Decision<sup>1</sup> 38 addressing an amendment relating to subsoil beneath the River Thames**

We refer to an email from the Applicant dated 15 September 2023, and the accompanying Report setting out and providing reasoning for a “Tunnel Subsoil Drafting Amendment” (the “SDA Report”) to the draft Development Consent Order (dDCO) forming part of the application for the Lower Thames Crossing (the Project). The SDA Report has been published on the Project page of the National Infrastructure Planning website and can be found in the Examination Library [[AS-100](#)].

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 SDA Report informs the ExA of the following relevant points:

- In order to address concerns arising from the Port of London Authority (PLA), the Applicant considers that it is desirable to refer to the acquisition of subsoil and to the levels at which authorised works would take place beneath the River Thames with reference to a fixed level: Newlyn datum. Amendments to the dDCO (proposed amendment EA06) are sought to that end.
- Article 33(7) of the dDCO is proposed to be amended to add new clause (c) which would define the level of the surface of the land comprised in the River Thames (Book of Reference (BoR) plots 15-10, 15-11, 15-12, 16-42, and 16-43) as a fixed value - the ‘level of Ordnance Datum Newlyn’. This proposed amendment is within land already

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

identified in the Land Plans and the BoR and its effect is confined to the identified plots.

- Consequential changes are proposed to Schedule 10, column 2 of the dDCO, re-stating the depths at which rights over subsoil beneath the level of the surface of the land in the River Thames are sought, with reference to the new fixed datum. These changes clarify the proposed vertical location for tunnelling works relative to the depth of the river.

The applicant seeks the views of the ExA in relation to the procedural pathway for the proposed amendment.

### **38 *Subsoil Beneath the River Thames - Procedural Pathway for the Proposed Amendment EA06 (the 'SDA Report')***

The ExA has considered the SDA Report and agrees with the Applicant that amendment EA06 would not constitute a “change” to the Project that would require a formal Change Application in the terms described in AN16. The ExA’s reasoning for this decision is as follows:

- a. There is no change to the geographical extent of rights over land sought. The depth of the rights required for the proposed tunnelling works is clarified by the proposed inclusion of a fixed datum, an amendment which in principle assists a small defined class of Affected Persons (APs) to understand the proposed effects of the dDCO on their land and rights and to clarify that works could proceed without undue adverse effects on the use of and/or and navigation in the River Thames.
- b. There is no change to the environmental effects of the proposed development as a consequence of the proposed amendment.
- c. The APs prospectively affected by the proposed amendment are identified in the SDA Report in Table 3.2. The Applicant has engaged with them. One has indicated that it consents to the proposed amendment. One has indicated that it no longer operates an asset in the affected land. One (PLA) wishes to consider the effects of the proposed amendment further but has indicated its in-principle willingness to consent.

The ExA has also considered whether the proposed amendment is a change that invokes the Infrastructure Planning (Compulsory Acquisition) Regulations 2010. We have concluded that it is not. The ExA’s reasoning for this decision is as follows:

- d. The proposed amendment does not affect any additional land in terms of its geographical extent.
- e. Whilst it clarifies the vertical extent of the rights proposed to be taken, it does not take any additional rights.
- f. In any case, the proposed amendment enjoys the in-principle consent of all engaged APs.

The ExA is content that there is time and that there are existing available procedures within the Examination that will enable it to examine the proposed amendment and to hear from the prospectively affected APs and that these are persons who are engaged with the Examination. It follows that there is no need for any additional statutory or non-statutory consultation of any person who is not already engaged in the Examination at this time.

Any person who is already engaged in the Examination and who wishes to comment on the effects of the amendment outlined in the SDA Report is asked to do so in writing by

**Deadline 5** (Tuesday 3 October 2023). Observations from the PLA are specifically requested.

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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