



Your ref: TR010039

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Dear Mr Jackson,

PROPOSED CHANGES TO APPLICATION BY NATIONAL HIGHWAYS FOR AN ORDER GRANTING DEVELOPMENT CONSENT FOR THE A47 WANSFORD TO SUTTON SCHEME (TR010039)

1 Introduction

- 1.1 The application for a Development Consent Order ('DCO') for the proposed A47 Wansford to Sutton Scheme ('the Scheme') was submitted by National Highways ('the Applicant') on 5 July 2021. The application was accepted for Examination on 2 August 2021 and the Examination began on 12 January 2022.
- 1.2 As a result of matters which have arisen over the course of the Examination and a review of the Scheme, particularly the interface between the Scheme and the Anglian Water drainage and water reticulation assets, the Applicant is proposing to incorporate two non-material design improvements which are outlined in section 2 below, as well as a non-material improvement to a cycle route.
- 1.3 The Applicant is aware that the DCO process is designed to be front-loaded and the acceptance of post submission changes are at the discretion of the Examining Authority ('ExA'). Guidance on the procedure for making changes during the post-acceptance phase is set out in Advice Note 16 ("AN16"), Guidance on Changes to Development Consent Orders, DCLG, December 2015 ('Guidance') and where necessary the Infrastructure Planning (Compulsory Acquisitions) Regulations 2010 ('the Regulations').
- 1.4 Where applicants consider changes are necessary, AN16 highlights the importance of bringing changes forward as early as possible in the Examination process to allow sufficient time for participants in the Examination to fully engage and comment upon the changes made. The Applicant has considered the contents of AN16 and the Guidance and is accordingly minded to seek permission to make the proposed non-material changes to the Scheme.

- 1.5 The Applicant is therefore providing notification to the ExA that it intends to formally request these changes. The Applicant requests the ExA's advice on the procedural implications of the proposed changes and the need, scale and nature of consultation to be carried out. Section 5 of this letter summarises the Applicant's proposed approach to consultation to inform this advice.
- 1.6. In addition to the proposed design changes and also as a result of the ExA's questions at the issue specific hearings regarding the construction period to complete the Scheme (see REP4-018 and REP4-018) the Applicant proposes to provide other environmental information regarding an extension to the proposed construction period from 18 months to take account of the potential for delay identified by the ExA. The Applicant proposed to assess a potential worse-case scenario in those circumstances of 28 months, which, the ExA will note, will require further air quality environmental information. The Applicant's proposals are set out in section 7 below. The Applicant also requests the ExA's advice on the procedural implications of the Applicant's proposals to address a potential construction period extension.

2 Proposed Change

- 2.1 The Applicant is proposing a total of three discrete works changes resulting in one change to the Land Plans (REP5-002):
- (a) **Change One:** Alignment of the new link road from the A47 Wansford eastern roundabout to the new A47 westbound off slip from the dualled A47 (work no. 15) to be shifted to the north by a distance of approximately 14 metres (see attached drawing HE551494-GTY-HGN-000-DR-CH-31003). This is effectively 11 metres beyond the allowable limit of deviation provided for in the DCO. The reason for the change is to reduce construction phasing requirements associated with utility diversions. The change therefore represents a more efficient interface between the Scheme and Anglian Water, Western Power Distribution, Gigaclear, Openreach, Vodaphone and GTT assets.
- (a) **Change Two:** Modification to the means of access alignment to Sacrewell Farm to avoid interface with Anglian Water assets shown on drawing HE551494-GTY-HKF-000-DR-CH-31003. This layout improves the visibility at the access to Sacrewell Farm and addresses the ExA's query at Hearing Action Point 38 and the Applicant's initial response regarding use of a convex mirror to improve visibility.
- (c) **Change Three:** Shortening of cycle route at the eastern extent of scheme by deleting the section of cycle track proposed on the northern frontage of Peterborough Road (SU15 to SU16). The proposed cycle track will then start/finish at SU14 at Nene Way, which is a designated quiet route deemed suitable for use by pedestrians, cyclists and equestrians allowing cyclists to join and leave Peterborough Road at the Nene Way junction. This change will avoid the need for cyclists to cross Peterborough Road and join the eastbound carriageway in the vicinity of the existing bus layby. To facilitate pedestrian access between Nene Way and the existing bus stop, new sections of footway will be provided on both the northern and southern frontages of Peterborough Road. These changes will improve safety for cyclists and are shown in drawing HE551494-GTY-HKF-000-DR-CH-31007
- 2.2 As a result of Changes One and Two, plot 3/3c land for permanent acquisition is slightly increased in area with a concomitant reduction in the area of plot 3/2e and 3/2i for temporary possession (see drawing 'Land Plan Amendment – Proposed Change' attached to this letter).

- 2.3 The Applicant views the changes as design evolution or refinement taking into account ongoing discussions with Anglian Water and the importance and complexity of their water reticulation assets as well as discussions with other utilities. The changes do not fundamentally change the purpose or design objectives of the original Scheme.
- 2.4 The changes result in a more efficient design that brings forward changes that would deliver construction efficiencies and improve visibility for the access to Sacrewell Farm.
- 2.5 The changes could result in minor changes to the operational environmental effects reported in the Environmental Statement (ES). Work to assess the changes is ongoing, with information on the likely effects of the changes and further work being undertaken to provide greater certainty on effects as outlined in section 4 below.
- 2.6 Although the proposed changes will not result in the need to compulsorily acquire any additional land or secure additional rights over land, there will be a slight increase in land to be acquired permanently with a concomitant reduction in the land to be used temporarily. The Applicant is in discussion with the relevant landowners regarding these changes and is in the process of securing the landowner's agreement to the changes. It is therefore considered that the Regulations are not engaged although the Applicant considers this in more detail in section 5 below.

3 Materiality Of Changes

- 3.1 There is no definition of a material change in the Planning Act 2008 or the Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011. However, there is some guidance on this topic in AN16 and in the Guidance.
- 3.2 AN16 provides advice primarily on making changes to a DCO during the pre-Examination and Examination phases, where those changes are considered to be 'material', either individually or cumulatively.
- 3.3 Paragraph 2.1 of AN16 outlines that whilst there is no legal definition of 'material' the appropriate considerations are 'whether the change is substantial or whether the development now being proposed is not in substance that which was originally applied for.' The Applicant is of the view that none of the proposed changes are substantial. Nor do the proposed changes alter the development such that it is no longer in substance that which was originally applied for.
- 3.4 AN16 makes clear that whether a change is 'material' or not is a 'question of planning judgment' which may be based on criteria including:
 - (a) *whether the change would generate new or different likely significant environmental effect(s); and*
 - (b) *whether (and if so the extent to which) a change request involves an extension to the order land, particularly where this would require additional compulsory acquisition powers e.g. for new plots of land and/or interests.*
- 3.5 The Applicant has also considered advice in the Guidance. Whilst the Guidance focuses on providing advice on the processes to change DCOs after consent, rather than during the Examination period, it also provides helpful advice on when changes may be material. The Applicant therefore has had regard to it.

3.6 The Guidance does not attempt to prescribe whether particular types of change would be material or non-material. However, it does suggest that changes are more likely to be treated as material if they (paragraphs 12-16):

(a) Require an updated Environmental Statement to take account of new, or materially different, likely significant effects on the environment. The guidance suggests that this includes significant effects that are entirely positive.

(b) Require a Habitats Regulations Assessment.

(c) Require a new or additional licence for European Protected Species.

(d) Authorise the compulsory acquisition of any land, or an interest in or rights over land, that was not authorised previously.

(e) Would have an impact on local people and businesses sufficient to indicate that the change should be considered as material. The guidance states that ‘...examples might include those relating to visual amenity from changes to the size or height of buildings; impacts on the natural or historic environment; and impacts arising from additional traffic.’

3.7 The proposed changes would not require an extension to the DCO land or additional compulsory acquisition powers, save for the minor changes to permanent and temporary land take which is in the process of being agreed with the relevant landowner.

3.8 The Applicant recognises that ultimately it is the responsibility of the ExA to determine whether new information constitutes a material change and that the ExA will need to consider the ‘impact of a series of incremental non-material changes collectively’ (AN16 paragraphs 2.3 and 2.4). **The Applicant considers that the changes represent minor design changes, individually and cumulatively and should therefore be viewed as non-material.**

3.9 None of the proposed changes will require a Habitats Regulations Assessment or a new Protected Species licence. It is therefore considered by the Applicant that the changes will not affect the Report on the Implications for European Sites (RIES) to be provided at DL8.

4 Potential For Changes To Affect The Environmental Statement ('ES')

4.1 The proposed changes are unlikely to significantly affect the overall assessment and conclusions of likely significant effects presented within the ES. However, further work is required to confirm this with certainty. The results of this assessment work will be presented with information submitted when the Applicant makes a written change request following any required consultation.

4.2 An initial high-level review of the design amendments has been undertaken for Change One which is considered to be the most notable of the change proposals, albeit still minor and within the limits of the land to be permanently acquired. Preliminary findings from a consideration of construction and operation noise, vibration and air quality assessment due to the slight change in the centre line and distance from receptors indicates that there will be no likely significant effects compared to that reported in the ES. Assessments on cultural heritage, geology and soils, climate, population and human health, road drainage and the water environment assessments are all anticipated to be unchanged as a result of this design amendment, however each will be reviewed to confirm. A preliminary assessment of landscape and visual indicates that there will be no change and whilst biodiversity will be considered further, it is also not considered to have a likely significant effect compared to that reported in the ES.

- 4.3 Preliminary findings for Change Two indicates that there will be no likely significant effects albeit there may be some minor alteration to Masterplan. Change Three is considered to be a very minor change and would include an assessment of population and human health which is not considered to result in a likely significant effect.
- 4.4 Moreover, a cumulative assessment of all three changes will be undertaken and at this stage is not considered to result in likely significant effects to that reported in the ES.

5 Consultation

5.1 The Applicant recognises that it is for the ExA to conclude whether consultation is necessary and what constitutes adequate consultation. As such, the Applicant welcomes any comments from the ExA as to the need, scale and nature of consultation and, in particular, on the adequacy of the Applicant's proposed approach to consultation as outlined below.

5.2 Paragraph 2.5 of AN16 states that

'even if a requested change is not considered to be material there may still be a need, in the interests of fairness, to carry out consultation. An applicant will still need to consider (and ultimately the ExA to decide) whether, without re-consultation on the requested change(s), any of those entitled to be consulted or who were consulted on the original application (including persons who are not an Interested Party in the Examination) would be deprived of the opportunity to make any representations on the changed application'

5.3 AN16 also states that:

'it is advised that if a targeted approach to the identification of those affected by the request to materially change the application is adopted then detailed justification should be provided why it is deemed unnecessary to consult all of the prescribed persons. If applicable, applicants should identify any newly prescribed persons ie those who were consulted in relation to the proposed material change but NOT in regards to the original application.'

5.4 It is important to note however that the advice in AN16 applies to a request to materially change the application. The Applicant considers that the changes are non-material and has therefore developed a consultation strategy that is proportionate and does not prejudice third parties or those persons with an interest in land affected by the proposed changes.

5.5 Consultation Strategy

5.5.1 The Applicant proposes to begin early engagement with host local authorities (Peterborough City Council), Parish Councils (Wansford and Sutton) and other relevant interested parties participating in the Examination and affected landowners imminently to inform them of the Applicant's intention to submit a request for proposed Scheme changes and seek initial views on the proposed changes. It is considered likely that the local authorities and affected landowners will be the parties most interested in the changes.

5.5.2 Since the Applicant's view is that the changes amount to non-material changes, the Applicant does not propose to carry out a formal consultation with local authorities, prescribed consultees and persons with an interest in land affected by the proposed changes and provide a 28 day consultation period as recommended in AN 16.

5.5.3 The Applicant will however provide consultees with a letter outlining the proposed changes, a 14-day notification period and details of how to participate in the consultation. The letters will refer recipients to the Applicant's website, which will contain further information to include:

- (a) a consultation document providing further information on the changes and their likely environmental impact;
- (b) a feedback form asking questions specifically on the proposed changes;
- (c) a plan showing the location of the changes within the Scheme.

5.6 In the next section on Timetable the Applicant has set out its proposed timetable and impact on the Examination as a result of the proposed changes.

5.7 Compulsory Acquisition and Land Plan changes

5.7.1 The Applicant is mindful that the enlargement of plot 3/3c land for permanent acquisition and concomitant reduction in the area of plot 3/2e and 3/2i for temporary possession amounts to the inclusion of 'additional land' within the DCO and is subject to the Regulations. As mentioned above, National Highways intends to seek consent to the acquisition of the additional land from the landowners, the William Scott Abbott Trust and Riverford Organics. If that consent can be secured then Regulation 4 will apply and the procedure for the acquisition of additional land set out in Regulations 5 to 19 will not apply.

6 Timetable

6.1 As mentioned above, the Applicant will start engagement imminently and has already approached and sought agreement with the William Scott Abbott Trust and Riverford Organics. However, as a result of the need to put any changes forward in a comprehensive manner as early as possible, the Applicant proposes to adopt the following timetable:

(a) Letter to ExA: 6 May

(b) Update to the ES in the form of an addendum ES ('addendum ES 1') identifying the likely significant effects of the changes: 6 May – 23 May.

(c) Informal Consultation consisting of a consultation document providing further information on the changes and their likely environmental impact, a feedback form asking questions specifically on the proposed changes and a Plan showing the location of the changes within the Scheme as well an update on the Applicant's web site: 30 May – 13 June.

(d) Submit formal request to the changes at DL 8 on 14 June

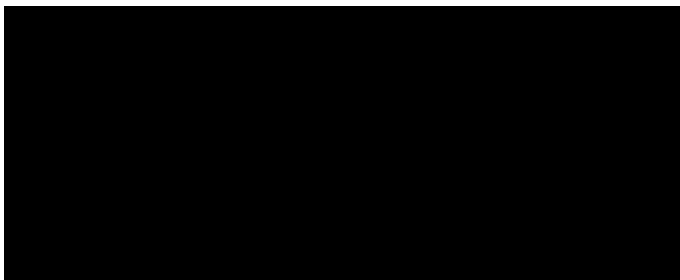
7 Construction Period Extension

7.1 As referred to in section 1 above, and as a result of the ExA's questions at hearings regarding the construction period to complete the Scheme (see paragraph 3.8 of and 25 of REP4-018 and REP4-018), the Applicant proposes to provide other environmental information regarding an extension to the proposed construction period from 18 months to a potential worse-case scenario of 28 months.

- 7.2 Whilst the Applicant considers that the construction of the Scheme will be completed within 24 months, it recognises that there is a potential risk that construction period could extend over that date, and proposes to consider the position up to 28 months, to provide a 10 month buffer. The Applicant considers that this is a reasonable and proportionate approach to take account of the issues identified by the ExA. Moreover, since air quality impacts resulting from construction activities were initially screened out on the basis that the predicted construction period would be less than 2 years, the Applicant is currently undertaking a full assessment of air quality were the construction period to extend to 28 months.
- 7.3 The Applicant is also reviewing its assessment as contained in the submitted ES based on an extended construction period and where appropriate will undertake any further assessment of individual topics, such as biodiversity and carbon. The assessment will also take account of the proposed changes referred to in section 2 above.
- 7.4 On completion of the Applicant's assessment, including consultation required under the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 and as above, the Applicant proposes to submit the addendum to the ES for the ExA to take into account in the determination of this application. The consultation will also be targeted to those communities who may be affected by the routing of construction vehicles and the programme of works to be undertaken. Moreover local authorities, Parish Councils and other relevant interested parties participating in the Examination and affected landowners will be consulted.
- 7.5 The Applicant proposes to submit the addendum ES as other environmental information (addendum ES2) at DL 8 on 14 June 2022.

The Applicant looks forward to a response from the Examining Authority on these matters.

Yours sincerely,



Craig Stirzaker
Project Manager
National Highways