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National Highways  
Interested Parties

Your Ref:

Our Ref: TR010039

Date: 28 June 2022

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Dear Sir/ Madam

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

**Planning Act 2008 (as amended) – Section 123 and the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 – Regulation 4**

**Application by National Highways for an Order Granting Development Consent for the A47 Wansford to Sutton Dualling Project**

**Notification of decision to accept, as part of the application, the proposed provision for the compulsory acquisition of additional land and the proposed design changes**

I, as the Examining Authority (ExA), am writing to inform you of my procedural decision regarding the Applicant's proposed changes to the Development Consent (DCO) application, along with requests under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010.

The Applicant submitted a letter dated 6 May 2022 where it indicated that it would be submitting a formal change request to the application [AS-044] together with associated plans [AS-045], [AS-046] and [AS-047]. In response, I wrote on 10 May 2022 [PD-011] making various comments, particularly emphasising the need to ensure that any changes could be incorporated into the Examination. Any changes would also need to be appropriately considered before the end of the Examination on 11 July 2022 in the event that Regulations 5 to 19 of the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (as amended) (the CA Regulations) were engaged.

The Applicant responded to this Rule 17 letter on 20 May 2022 [REP7-018] dealing with the query relating to a covenant in favour of a person unknown, and I responded with another Rule 17 letter on 24 May 2022 [PD-013].

On 14 June 2022 the Applicant submitted a formal change request [REP8-029] together with a number of associated documents which are referred to in that letter.

On 21 June 2022 I wrote to the Applicant rejecting the Proposed Changes on the basis that one of the three Proposed Changes, Change Two, involved “additional land” as defined in the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (as amended) (the CA Regulations), and not all persons with an interest in the land had written to confirm that they had no objection to the compulsory acquisition.

This meant that Regulations 5 to 19 of the CA Regulations were engaged, and as the necessary procedures could not be completed before the end of the Examination this meant that the change request had to be rejected. Because Changes One and Three were also set out in a single, comprehensive submission this meant that all three proposed changes had to be rejected.

On 24 June 2022 [AS-49] the Applicant wrote resubmitting the Change Request, but with additional information to address the reasons why the proposed changes had been previously rejected.

### **Proposed Changes**

The changes can be summarised as follows:

Change One – the realignment of the new link road from the A47 Wansford eastern roundabout to the new A47 off-bound slip to the north by approximately 14 metres. The Applicant indicates that this is to reduce construction phasing requirements associated with utility diversions. The change, according to the Applicant, represents a more efficient interface between the Proposed Development and the assets of various statutory undertakers.

Change Two – the modification of the access alignment to Sacrewell Farm. The Applicant indicates that this is to avoid Anglian Water assets and would improve visibility at the access to the Sacrewell Farm.

Change Three – the shortening of the cycle route at the eastern end of the Proposed Development by deleting a section of cycle track on the northern frontage of Peterborough Road. This would, according to the Applicant, avoid the need for cyclists to leave Peterborough Road at the Nene Way junction. However, sections of footway would be provided on both the northern and southern frontages of Peterborough Road.

The Applicant takes the view that all three changes should be considered to be non-material changes to the Application and has submitted an Environmental Statement Addendum One [REP8-030] which indicates that the proposed changes would not result in any new or different likely significant effects compared to those found in the Environmental Statement.

The Applicant acknowledges that in respect of Change Two that the proposals would involve “additional land” for the purposes of the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (as amended) (the CA Regulations). Therefore, it has provided signed letters (see Annex C of [AS-53]) on behalf of those with an interest, as set out in Part 1 of the Book of Reference [AS-50], agreeing to the land being compulsorily acquired to seek to show that all persons with an interest in the additional land have consented to the inclusion of that land.

The Applicant has indicated that it has now identified the interest previously found in Part 3 of the Book of Reference submitted with the original Change Request [REP8-012] for the relevant plots as shown in the Land Plans [REP8-002] as “Unknown (in respect of

Restrictive Covenants contained within a Deed of Grant dated 9 January 1976)". These were previously found in the column entitled "Names of All Those Entitled to Enjoy Easements Or Other Private Rights Over Land (Including Private Rights Of Navigation Over Water) Which It is Proposed Shall Be Extinguished, Suspended Or Interfered With" in the Book of Reference submitted with that request [RE8-012].

The Applicant has provided a copy of the Deed of Grant (in Annex B of [AS-53]) which identifies the current beneficiary as Anglian Water Services Limited. It has also gone on to seek to show that the Proposed Development would not breach, nor have any prospect of breaching the restrictive covenant. It therefore takes the view that it is no longer necessary to list the restrictive covenant in the Book of Reference, and has submitted a revised Book of Reference to that effect [AS-50].

The Applicant has gone on to set out potential changes to the Examination Timetable to deal with any submissions contingent on this.

### **ExA Conclusion**

I have reviewed the information provided and 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<sup>1</sup> (AN16).

AN16 sets out that there is no legal definition of 'material' but the tests to apply are whether the change is substantial or whether the development now being proposed is not in substance that which was originally applied for but is a matter of planning judgement and gives examples as to what may represent a 'material' change. These include whether the change would generate a new or different likely significant environmental effects and, 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.

I have looked at the three amendments both individually and cumulatively and I note that all the proposed changes fall within the Application site of the Proposed Development and would not result in a materially different project. However, notwithstanding that consent has been given by the relevant landowners for the compulsory acquisition of the relevant plots Change Two would involve additional land and I have therefore concluded that that on its own would represent a material change. Had Changes One and Three been submitted separately they would have been non-material, but together all three would represent a material change.

In respect Change Two I have carefully considered the Applicant's case in respect of the Plots of land in question, particularly now that the party with an interest in the land through the Deed of Grant has been identified. While Anglian Water Services Limited has not given written consent, it seems to me that its interests would not be prejudiced.

Prejudice could come from two sources; firstly, from land the subject of the Deed being affected, and secondly, from the beneficiary of the Deed not having been able to participate in the Examination.

The Applicant has shown that the land the subject of the Deed would not be affected by the proposed Change Two, and Anglian Water Services Limited has been involved in the

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<sup>1</sup> Advice note sixteen: How to request a change which may be material

Examination and has thus had the opportunity to make representations should it have so wished.

In light of this, I am able to accept all three proposed Changes into the Examination.

I am also able to accept into the Examination the two Environmental Statements Addendums, [REP8-030] and [REP8-031], that previously had to be rejected since they were contingent on the previously rejected Proposed Changes.

For clarity I have accepted the following documents into the Examination:

Document Title	Revision	Examination Library Reference
Land Plans	4	[REP8-002]
Works Plans	3	[REP8-003]
Rights of Way Plans	3	[REP8-004]
General Arrangement Plans	2	[REP8-005]
Draft Development Consent Order	5	Clean: [REP8-006] Tracked: [REP8-007]
Explanatory Memorandum	2	Clean: [REP8-008] Tracked: [REP8-009]
Statement of Reasons	1	Clean: [REP8-010] Tracked: [REP8-011]
Book of Reference	3	Clean: [AS-50] Tracked: [AS-51]
Environmental Masterplan	3	[REP8-014]
Environmental Statement Addendum One	1	[REP8-030]
Environmental Statement Addendum Two	0	[REP8-031]

### Consequential Matters

The Applicant in its letter of 24 June 2022 noted that Deadline (D) 9 of 28 June 2022 includes requests for the submission of various documents. Some of these documents relate to the matters that may need to change follow my acceptance of the Changes into the Examination.

Rather than submit documents which may then need to be changed, the Applicant has therefore suggested amending the Examination Timetable to allow these documents to be submitted comprehensively on Friday 1 July 2022, in a new deadline.

In my view, since any subsequent changes to documents will be from the Applicant alone, I believe that this can be dealt with under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010 (as amended).

I have also added questions relating to two further matters in light of the recent publication of documents as set out below.

### Rule 17 Requests

I would therefore request:

1. The Applicant to provide any amendments that it considers necessary in light of my acceptance of the above documents and to take account of earlier requests or actions pending. In particular this should include a revised version of the Guide to the Application (in both 'clean' and 'tracked' versions).
2. The Applicant to confirm whether the latest version of the Crown Land Plans [REP5-004] remains extant and the latest information in this regard, and if written consent has now been granted, copies of those consents.
3. Should any Interested Party wish to make comment upon the Proposed Development in light of the acceptance of the Changes, they should also do so.
4. Since publishing my Further Written Questions on 24 May 2022 [PD-015], the Secretary of State has made his decision in relation to the A47 Blofield to North Burlingham project and in doing so made various changes in his final Development Consent Order to that previously submitted (see paragraph 147 of the Secretary of State's decision letter<sup>2</sup>). I would be grateful if the Applicant would consider these and make any changes it considers appropriate, setting out an explanation therefor.
5. Any comments that any Interested Party (including the Applicant) wishes to make following the publication by the Department for Environment Food & Rural Affairs of "Keepers of time: ancient and native woodland and trees policy in England" in May 2022.

Responses to these Rule 17 requests should be made by **D10, Tuesday 5 July 2022**. This will allow for any final comments in line with the existing timetable at D11, 11 July 2022 which will also mark the close of the Examination.

Yours faithfully

*Robert Jackson*

**Robert Jackson**  
**Examining Authority**

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<sup>2</sup> Project page: <https://infrastructure.planninginspectorate.gov.uk/projects/eastern/a47-blofield-to-north-burlingham/>