



For the Attention of Rachel Dominey  
Department for Transport  
Zone 1/14-18  
Great Minster House  
33 Horseferry Road  
London  
SW1P 4DR

27<sup>th</sup> April 2022

Dear Rachel

**APPLICATION BY NATIONAL HIGHWAYS FOR AN ORDER GRANTING  
DEVELOPMENT CONSENT FOR THE A47 BLOFIELD TO NORTH BURLINGHAM  
SCHEME (TR010040)**

To assist the Secretary of State, we enclose:

1. Revised land plans.
2. revised draft validated Order (in Word);
3. PDF of validated Order
4. track change version of Order to show changes from previous versions;
5. validation report
6. Revised draft Explanatory Memorandum; and
7. track change version of Explanatory Memorandum.

**A. Responses to Secretary of State's letter of 13 April 2022**

The Applicant sets out in this section its responses to the three points raised by the Secretary of State in the letter of 13 April 2022.

**1. NCC protective provisions**

The Applicant suggests that the proposal for protective provisions by Norfolk County Council (**NCC**) should been made during examination, or indeed during the extensive discussions which have taken place with NCC over the past two or more years. Discussions have been ongoing regarding de-trunking and the Applicant submits that it is appropriate that these issues are dealt with by agreement, properly negotiated between two Highway Authorities without the terms for the detrunking being forced on one party by the other by protective provisions.

On that basis the Applicant does not believe that protective provisions should be included in the draft Order and resists their inclusion.

This is for a number of reasons:

1. *Onerous provisions* – there are several elements of the protective provisions which are onerous and extend beyond providing protection for the Local Highway Authority. They provide NCC with an unacceptable level of control over the delivery of the Blofield Project. In particular paragraphs 3, 4 and 5 impose pre-commencement conditions on the Applicant to be discharged before works commence. The Applicant does not believe it is appropriate that commencing any part of the works is dependent on such approvals being received from NCC. The drafting could seriously prejudice the delivery of the scheme in accordance with the current timetable.

In addition paragraph 27 allows NCC to require the removal, alteration or demolition of any structures forming part of the scheme. The Applicant does not understand why this is necessary and what mischief it is seeking to address that is not already controlled by the provisions of both the articles and requirements in the draft Development Consent Order. NCC has made no submission to justify the provision.

2. *Commuted sum* – the proposal for a commuted sum to be paid is not agreed. The Applicant believes it is not required to address any direct impact that the scheme goes beyond what is necessary to make the scheme acceptable in planning and highways terms.

The standard mechanism for provision of funding to a Local Highway Authority should be adopted and a commuted sum should not be necessary. For highways that are to be handed over to NCC, there could be double-counting as those highways will be included in the budget calculations so that adequate funding is provided from the Department of Transport to cover NCC's costs of maintaining those highways it is responsible for. NCC has not submitted any evidence to demonstrate that there will be any direct financial impact on NCC as a result of the scheme or the proposed handover of assets. As no evidence has been submitted the Applicant is unable to consider the proposed calculation for the commuted sum included in the protective provisions. In any event, the open ended nature of such a mechanism and the absolute discretion afforded to NCC is unacceptable and may render the scheme unviable

3. *Maintenance period* – the Applicant does not agree to the proposed 52 week maintenance period which would mean that a commuted sum would not serve any purpose as the responsibility for initial maintenance is already placed on the Applicant - again an element of double-counting arises. However the Applicant will ensure the assets handed to NCC are in a safe and serviceable condition. All necessary remedial works and renewals will be delivered to bring the assets up to that standard, prior to handover. The Applicant will continue to work with NCC to agree the what works are required to bring the assets up to that condition for handover. The Applicant will also provide NCC with details as to the expected period of time during which each asset is likely to remain in a safe and serviceable condition following handover, and therefore not require major intervention by the Council.

Section 120 of the Planning Act 2008 sets out what items may be included in a Development Consent Order including (at section 120(2)(a)) "*requirements corresponding to conditions which could have been imposed on the grant of any permission, consent or authorisation, [...] which [...] would have been required for the development*". If matters are not required for the development then they should not be included in the Order. As demonstrated above, there is no evidence before the examination or the Secretary of State to demonstrate or justify the need for a commuted sum or indeed for protective provisions. There is no evidence to demonstrate a commuted sum is required to mitigate any impacts arising from the scheme nor is it required for the protection of existing infrastructure.

The Applicant requests that the Secretary of State considers the above points of principle and concludes that protective provisions should not be included in the Order as requested by Norfolk County Council. For the avoidance of any doubt, the Applicant fully intends to continue to negotiate suitable agreements with Norfolk County Council in relation to the Blofield and the other two A47 schemes currently with the Secretary of State.

Should the Secretary of State decide that protective provisions in principle should be included in the draft Order, the Applicant requests that the provisions should be the subject of further discussions between the parties and in any event the Secretary of State should afford the Applicant a further opportunity to comment on the draft protective provisions before they are included in the Order to be made.

## **2. Land Plans**

As requested the Applicant has provided an amended version of the Land Plans.

Plot 4/7c has now been removed from Inset G on Sheet 4 of the Land Plans.

Land Plans (Rev 2) [previously REP4-002] forms enclosure 1 to this letter.

## **3. Badger Survey Report**

The Applicant believes that each of the points covered in the Badger Survey Report are already addressed in the Applicant's Register of the Environmental Actions and Commitments (REAC) or in the required process to obtain the appropriate licences for the proposed construction of the Blofield scheme.

Firstly, it is important to note that the summary of the Badger Report conclusions are:

1. It is likely badgers are absent from the survey area.
2. Nearby setts will not be affected by the proposed scheme.
3. Precautionary measures should be taken during construction including the covering of trenches or provision of ramps for animals to climb out, whilst night lighting and working should be kept to a minimum where possible to avoid disturbance.
4. An updated Badger Survey should be undertaken.

Entry B1 of the existing REAC provides for toolbox talks to be given by the Ecological Clerk of Works and for excavations to either be covered at night or a ramp left in for animals to climb out. This deals with the first element of point 3 above.

In relation to the second and third elements of point 3 above, night time working and lighting, the REAC at entry G2 states that lighting will be at the minimum luminosity necessary and use low energy consumption fittings, complying with the Institute of Lighting Professionals Guidance Notes for the Reduction of Obtrusive Light GN016 and the provisions of BS5489 Code of Practice, where applicable. It continues that lighting will be directional, positioned sympathetically and minimise light spill.

Further, entry G1 of the REAC indicates construction works will principally take place within standard working hours except for night time works where they fall within one of the categories listed in paragraphs (A)-(J) of entry G1 of the REAC. Entry G1 states only works outside of the standard working hours will be minimised as far as practicable, mirroring the wording in the Badger Report.

Finally, whilst it is recommended that a pre-commencement Badger Survey takes place 18 months prior to the start of works on site, it is submitted by the Applicant that a pre-commencement survey (item 4 above) is required in any event and the recommendation in the report of an 18 month lead in period should not be given the status of a requirement. The Applicant can confirm that a pre-commencement survey will be carried out, to ensure that the relevant licences under the Wildlife and Countryside Act 1981 and/or Protection of Badgers Act 1992 are obtained prior to commencement of works. Given that the Applicant will need to carry out such a survey in any event to confirm that points 1 and 2 remain the case and, if not, to provide the evidence to support the applications for licences required by statute, it is submitted that the REAC and/or the draft Development Consent Order need not be changed to reflect this.

## **B. Other matters**

### **The Applicant's proposed changes to Article 33 and Schedule 7**

The Applicant has seen the recent letter (19 April 2022) from the Secretary of State regarding the Portishead Branch Line (MetroWest Phase 1) scheme, and notes the Secretary of State's concerns in that letter regarding similar drafting in that Order. The Secretary of State is concerned about the interrelationship between temporary and permanent powers of acquisition.

As a result the Applicant has redrafted the provisions of Article 33 of the Blofield Order to reflect the Secretary of State's preferred drafting as set out in the draft Portishead Order. This then leads to consequent changes to Schedule 7 which has also been revised to reflect the changed drafting of Article 33.

The Explanatory Memorandum has been amended accordingly and is also provided.

### **Plot 3/2d**

The Applicant has also spotted that the Book of Reference Land Plans and Order are inconsistent for plot 3/2d. The Land Plans and Book of Reference show the plot as being a new rights plot, relating to Work No. 20 – the diversion underground of an

existing electricity cable. The plot appears in Schedule 7 (Temporary Powers) rather than Schedule 5 (Permanent New Rights) in the previous draft Order.

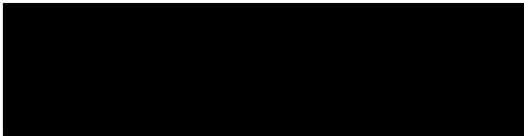
The Applicant believes this needs to be corrected and the appropriate place for plot 3/2d is Schedule 5 (Schedule of New Rights). The plot relates to an existing overhead electricity cable. The proposal is to underground that cable on its existing route to meet the existing pole in plot 3/2d and associated cables that will then continue south east (outside of Order Limits) on the existing overhead lines.

The Applicant believes that there should not be any question but that it is simply a clear inconsistency between the Order and Land Plans/Book of Reference, and the Order should be corrected accordingly.

We trust that these changes are acceptable to the Secretary of State.

If you require further information from us, please do let us know.

Yours sincerely,



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