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To all Interested and Statutory Parties,
with particular reference to:

Your Ref:

The Applicant
Staffordshire County Council
South Staffordshire Water Plc
Cadent Gas Limited
The National Trust for Places of Historic
Interest or Natural Beauty

Our Ref: TR010054

Date: 19 March 2021

Dear Sir/Madam

The Infrastructure Planning (Examination Procedure) Rules 2010 (as amended) – Rule 17

Application by Highways England for an Order Granting Development Consent for the M54 to M6 Link Road Project

Requests for further information

We write to request further information from the Applicant, Staffordshire County Council, South Staffordshire Water plc and Cadent Gas Ltd relating particularly to proposed Protective Provisions for the benefit of the other parties which may be included in any Development Consent Order.

The Examining Authority (the ExA) also considers it appropriate to write to the Applicant and the National Trust about the provisions relating to Whitgreaves Wood, and to the Applicant following receipt of correspondence from the Applicant relating to a route between Cannock Road and the proposed Featherstone West roundabout.

Matters relating to Staffordshire County Council (SCC)

In the draft Statement of Common Ground between the Applicant and SCC [REP-6-019] (page 65ff) there is a discussion as to whether protective provisions in favour of SCC are necessary, and if necessary, as to what form they should take.

At the Issue Specific Hearing relating to Traffic and Transport SCC indicated that they did not consider protective provisions in its favour were necessary, but this latest version of the draft Statement of Common Ground does not reflect this position. However, it is clear that the Applicant does not consider them to be necessary.

The ExA therefore requests SCC to confirm by **Deadline (D) 8, 7 April 2021** whether it considers that protective provisions in its favour are necessary. If it considers them necessary, could it please provide draft protective provisions by the same date with a full explanation of the drafting.

It would be beneficial if SCC could discuss any drafting with the Applicant on a 'without prejudice' basis, so that should the Applicant consider that any detailed drafting needed to be resolved, that this could be done as expeditiously as possible. A full explanation for any differences in position should be given by **D8, 7 April 2021**.

If either party considers that a similar issue has been previously addressed in a Report to the Secretary of State or in a decision of the Secretary of State, the parties are asked to bring this to the ExA's attention, setting out precisely by paragraph number, where this addressed.

Matters relating to South Staffordshire Water (SSW)

In its response to the Examining Authority's (ExA's) question ExQ3.5.8 at Deadline (D) 6, [REP6-046] SSW makes the point that it considers that no progress has been made in negotiations on the protective provisions.

The Applicant, in its Statement of Commonality for Statements of Common Ground [REP6-017/REP6-018] indicates that in light of correspondence between the Applicant and SSW that further consideration was being given by the Applicant to the points raised.

The ExA notes that in the latest version of the draft Development Consent Order (dCO) there are no specific protective provisions in favour of SSW although they would be covered by the generic provisions in Part 1. However, the draft Statement of Common Ground submitted at D4 [REP4-023] does indicate that specific protective provisions would be included.

The ExA therefore requests the Applicant and SSW submit draft protective provisions by **D8, 7 April 2021**. Where the parties cannot agree, the ExA requires that each party submit its preferred wording with a full explanation of any differences and why the party holds the view that their drafting is appropriate.

If either party considers that the issue has been previously addressed in a Report to the Secretary of State or in a decision of the Secretary of State, the parties are asked to bring this to the ExA's attention, setting out precisely by paragraph number, where this addressed.

Matters relating to Cadent Gas (Cadent)

In the Statement of Commonality for Statements of Common Ground [REP6--017/REP6--018] the Applicant indicates that there were only minor updates to the previously submitted draft Statement of Common Ground [REP1-050], and consequently this had not been submitted.

Previous submissions between the parties, in particular that from Cadent at D1 [REP1--079], indicated that there was not agreement at that time between the parties. Some of these matters appear not to be particularly contentious, see paragraph 2.8 of [REP1-079], and the ExA hopes that the parties will come to agreement on these matters.

However, it does also appear that there may be a more fundamental point relating to consequential loss. As paragraph 2.11 of [REP1-079] Cadent indicates that Cadent is in touch with Applicant directly to agree a position on this which is commercial between the parties.

No further information has been submitted on this point and the ExA considers that this matter should be clarified expeditiously.

Cadent has set out its preferred protective provisions in Appendix 2 of [REP1-079], and the Applicant at D6 [REP6-006/REP6-007]. To conclude on this issue, if matters have not materially progressed, the ExA requires that by **D8, 7 April 2021** either a revised, agreed text is submitted, or each party submit a full explanation of the differences and why the party holds the view that their drafting is appropriate.

It would aid the ExA if tracked change versions could be submitted. For the Applicant this should be compared to Cadent's preferred protective provisions and for Cadent from the Applicant's preferred protective provisions.

If either party considers that the issue has been previously addressed in a Report to the Secretary of State or in a decision of the Secretary of State, the parties are asked to bring this to the ExA's attention, setting out precisely by paragraph number, where this addressed.

Matters relating to the National Trust and Whitgreaves Wood

In the Applicant's response to ExQ3.3.1 at D6 [REP6-039] the Applicant sets out its position. The Applicant considers that due to the nature of the covenanting bodies, a section 106 Agreement would add little to the existing legal agreement between them. From the earlier response on the National Trust [REP1-014] it would appear that only one parcel (Plot 3/7b as shown on the Land Plans [REP6-004]) is held inalienably.

In general planning terms, who is an Applicant or owner of land is of little relevance to the consideration of a matter. In the Planning Act 2008 (as amended) there are specific provisions which relate to the National Trust, but these only relate to land which is held inalienably (Section 130(1)).

While the ExA notes that the National Trust intends to put the remaining land forward so that it would be held on an inalienable basis this is currently not the case. Therefore, there is a risk that that all the works to enhance the woodland would not be secured in perpetuity.

It is for an Applicant to decide in what form it puts forward an application and accompanying documents, but the ExA must advise that without a Planning Obligation pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) that the risk exists and that this would have to be reported to the Secretary of State.

The ExA would therefore suggest to avoid the risk identified in the previous paragraph, a Planning Obligation is completed to secure the works in perpetuity, or at least until the land is declared to be inalienable.

Should the Applicant and National Trust put forward a Planning Obligation then this should be submitted by **D8, 7 April 2021** to allow comments before the end of the Examination.

Right of Way between Cannock Road and Featherstone west roundabout

In its Schedule of Recommended Amendments to the Applicant's dDCO [PD-025] the ExA recommended the provision of a pedestrian and cycle route between Cannock Road and Featherstone west roundabout.

On 16 March 2021 the Applicant wrote to the ExA indicating practical difficulties in delivering the route recommended by the ExA, but also said that, following further work, that an alternative pedestrian only route could be provided slightly to the north, and asking the ExA for their views.

While this alternative route would not be suitable for cyclists, the ExA notes that such users are less sensitive to using slightly longer routes than pedestrians. Subject to the caveats set out in the Applicant's communication, the ExA considers that this alternative route would provide an appropriate route and asks that the Applicant include that within its submissions at **D7, 26 March 2021**.

This is, of course, without prejudice to the ExA's final recommendation and interested parties will be able to make comment on this alternative route in line with the existing provisions set out in the Examination timetable.

Yours faithfully

Robert Jackson

Robert Jackson, Lead Member of the Panel