



# Department for Transport

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To: National Highways

8 March 2024

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Dear Sir/Madam

## **Planning Act 2008 and the Infrastructure Planning (Examination Procedure) Rules 2010**

### **Application by National Highways Limited (“the Applicant”) Seeking Development Consent for the Proposed M3 Junction 9 Improvement Scheme**

Following the completion of the examination on 16 November 2023, the Examining Authority (“the ExA”) submitted a Report and Recommendation in respect of its findings and conclusions on the above application to the Secretary of State for Transport on 16 February 2024. In accordance with Section 107 of the Planning Act 2008, the Secretary of State has until 16 May 2024 to determine the application. There are outstanding issues on which the Secretary of State would be grateful if parties identified in bold could provide an update or further clarification. The issues are grouped by the subject of the request for information.

#### **Request for information from the Applicant**

##### Proposed side agreement with Hampshire County Council

1. The Secretary of State notes that at the close of the Examination, the proposed side agreement between the Applicant and Hampshire County Council in respect of the local highway network was not in place. On 15 February 2024, the Applicant confirmed that agreement had been reached on the terms of the side agreement.

**The Applicant** is asked to confirm whether or not the side agreement has been sealed. If the agreement has been sealed, **the Applicant** is asked to provide a copy and to state what it considers to be the implications of the agreement for the drafting of the proposed Order.

##### Outstanding agreement with Natural England on the assessment of air quality effects on biodiversity

2. **The Applicant** is asked to confirm whether or not final agreement on the above matter has been received from Natural England. If no agreement has been reached, **the Applicant** is asked to provide an update on the current position. If agreement has been reached, **the Applicant** is asked to provide evidence of such agreement to the Secretary of State. If a revised Appendix 8.3 (Assessment of Operational Air Quality Impacts on Biodiversity) has been agreed with Natural England, **the Applicant** is asked to provide a copy and indicate its revision number.

#### The Levelling-Up and Regeneration Act (2023)

3. The Secretary of State notes that since the end of the examination, section 11A of the National Parks and Access to the Countryside Act 1949 has been amended by section 245 of the Levelling-Up and Regeneration Act 2023 which came into force on 26 December 2023. The Secretary of State invites **the Applicant** to provide comments on the implications of this amendment, and in particular whether and if so why it considers the Secretary of State could be satisfied that the amended duty on him under section 11A would be complied with if development consent were to be given to the proposed development seeks to further the purposes set out in section 5 of the 1949 Act in the first instance.

#### Disapplication of Sections 28E and 28H of the Wildlife and Countryside Act 1981

4. Article 3(1)(d) of the proposed Order provides for sections 28E and 28H of the Wildlife and Countryside Act 1981 to be disapplied. The Secretary of State requests **the Applicant** to confirm that Natural England has consented to that disapplication.

#### Requirement 6

5. The Secretary of State requests **the Applicant** comments on a possible amendment to requirement 6 in the proposed Order by way of an additional sub-paragraph (4). Following receipt of the Applicant's response, other Interested Parties will be invited to comment on this proposed amendment. The amended requirement would read as follows:

6.— (1) All landscaping works must be carried out in accordance with the landscaping scheme approved under Requirement 5.

(2) All landscaping works must be carried out to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice.

(3) Any tree, shrub, chalk grassland or other element planted as part of the landscaping scheme that, within a period of 10 years after planting, is removed, dies or becomes, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted.

(4) The reference to any tree or shrub being "removed" in sub-paragraph (3) above shall not apply to those trees or shrubs removed in accordance with the approved landscape maintenance works and timetable.

It will be noted that the text above also includes other possible amendments to the requirement, in sub-paragraph (3). These are the inclusion of the words "or other element" and an establishment period of 10 years, rather than 5 years. As these potential changes

were discussed during the examination, the Applicant is not expected to comment further on them, except in the context of the additional sub-paragraph (4).

### Protective Provisions

6. The Secretary of State notes that at the close of the Examination, the protective provisions in respect of Southern Gas Networks and Southern Water Services Ltd had not been agreed. It was confirmed on behalf of Southern Gas Networks on 6 and 7 December 2023 and Southern Water Services Ltd on 29 January 2024 that agreement had been reached. **The Applicant** is asked to confirm whether agreements on these protective provisions have been reached and, if they differ from those included in the draft order submitted at Deadline 8, to provide copies of them.

### Deadline for Response

The deadline for response is 15 March 2024.

Submissions sent by post may be subject to delay therefore your response on the information requested above should be submitted to the Case Team, if possible, by email to [m3junction9@planninginspectorate.gov.uk](mailto:m3junction9@planninginspectorate.gov.uk)

If you will have difficulty in submitting a response by the consultation deadline, or difficulty in submitting a response by email, please inform the Case Team.

Responses will be published as soon as possible after the deadline on the M3 Junction 9 Improvement project page of the National Infrastructure Planning website at: <https://infrastructure.planninginspectorate.gov.uk/projects/south-east/m3-junction-9-improvement/>

This letter is without prejudice to the Secretary of State's decision on the M3 Junction 9 Improvement Application, and nothing in this letter is to be taken to imply what that decision might be.

Yours faithfully,

Transport Infrastructure Planning Unit