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All Interested Parties, Statutory Parties
and Other Persons

Your Ref:

Our Ref: TR010056

Date: 17 February 2022

Dear Sir/ Madam

The Planning Act 2008 – sections 89 and 123; The Infrastructure Planning (Compulsory Acquisition) Regulations 2010 – Regulation 6; and The Infrastructure Planning (Examination Procedure) Rules 2010 – Rule 9

Application by National Highways (formerly Highways England) for an Order granting Development Consent for the A417 Missing Link Project

Notification of Procedural Decisions

I am writing to advise you of Procedural Decisions taken by the Examining Authority (ExA) following the Applicant's confirmation of a formal change request dated 14 February 2022 and formally received by the ExA on Monday 14 February 2022 [[REP4-002](#)]. The background to, and the ExA's reasoning for, the Procedural Decisions is set out below.

Background

By way of letter at Deadline 3 [[REP3-017](#)], the Applicant gave notice to the ExA of an intention to submit a change request at Deadline 4. The change was specifically in relation to changes to Compulsory Acquisition and Temporary Possession powers pertaining to the premises of Flyup 417 Bike Park and the immediate vicinity.

The Applicant's letters [[REP3-017](#)] and [[REP4-002](#)] provide a written statement describing the proposed changes the Applicant's reasons for them, list the required consequential revisions to Examination documents, and explain the Applicant's position in relation to materiality and consultation requirements. An updated Book of Reference in clean [[REP4-022](#)] and tracked change [[REP4-023](#)] versions and an updated Statement of Reasons in clean [[REP4-020](#)] and tracked change [[REP4-021](#)] versions have also been received.

The Applicant considers the change to be non-material and that the proposed changes do not give rise to any new or additional significant environmental effects. However,

the Applicant acknowledges that the change will involve the introduction of additional land (as defined in Regulation 5 of the Infrastructure Planning (Compulsory Acquisition) Regulations 2010). In acknowledging this, the Applicant has set out an indicative timetable for examining the change request alongside the Examination of planning issues.

The ExA's reasoning and decision

We 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: How to request a change which may be material*.

The ExA recognises that in considering whether or not to accept the proposed changes for examination it needs to act reasonably and in accordance with the principles of natural justice. The ExA must be satisfied that anybody affected by the proposed changes would have a fair opportunity to make their views on them known and to have their views properly taken into account.

We disagree with the Applicant that the proposed changes are non-material, on the basis that the proposal varies the extent of Compulsory Acquisition rights sought over a number of plots and introduces new plots via subdivision. We are however content that the environmental impact assessment's conclusions around significance of effects would remain the same. We have also considered the Applicant's Habitats Regulations Assessment report and conclude that the proposed changes would make no difference to the outcome of a Habitats Regulations Assessment. We do agree that the development now being proposed remains in substance that which was originally applied for. We are therefore satisfied that the proposed changes would not amount to a different project being proposed.

Overall, we are content that the supporting information provided with the notification of the proposed changes is of a satisfactory standard for examination. We have very carefully considered the remaining time in the Examination, and whether the proposed changes could be properly and fairly examined, including the opportunity for any Affected Parties to provide written submissions and oral representations to Hearings, and to comply with the procedural requirements of the CA Regulations. We believe this to be marginal, and accelerated action will be required by both the Applicant and the ExA within the wider statutory timescales required for the process if it is to be satisfactorily concluded before the close of the Examination.

The ExA has nevertheless decided to accept these proposed changes to the application for examination on the basis they represent a material change, and we have written separately to the Applicant to advise this, and to provide a reminder of the Applicant's consequential duties under Regulations 7, 8 and 9 of the CA Regulations.

Acceptance is made on the basis that all the process can be completed in the required time prior to the close of the Examination and in accordance with the revised Examination Timetable that we will publish in due course. If this is not achieved, then we will not be in a position to take the change request into account in our recommendation report to the Secretary of State as it will not have complied with the relevant statutory procedures.

Next steps

It is now the Applicant's responsibility to publicise the proposed changes that incorporate additional land in accordance with the CA Regulations. We would stress that it is critical for this to start as soon as possible to allow the Examination to be completed within the statutory six-month time frame.

The Applicant must consider any additional provisions that may be necessary in dealing with the necessary publicity for any parties who may be affected by the current Government public health restrictions associated with the COVID-19 pandemic.

The Applicant must advise the Case Team of its proposed schedule as soon as possible, so that an appropriate form for making Relevant Representations can be made available on the [project webpage of the Planning Inspectorate's National Infrastructure Planning website](#)¹. Upon completion of the Relevant Representation period, we will issue a revised Examination Timetable, which will include the deadline for Written Representations to be submitted on the proposed change and any necessary Hearings.

Timetable and Hearings

When the revised timetable is issued, it will give a date as to when an Open Floor Hearing and Compulsory Acquisition Hearing (directly related to matters in the change request only) will be held. The ExA may also, at its discretion, hear evidence into other matters the ExA wishes to test orally regarding Compulsory Acquisition matters.

In light of the above and with reference to our letter date 31 January 2022, the ExA hereby gives advanced notice that the Compulsory Acquisition Hearing and the Issue Specific Hearing into the Development Consent Order, both indicatively scheduled for Wednesday 2 March 2022, will no longer be held.

The Issue Specific Hearing into Environmental Matters, scheduled for Thursday 3 March (with a reserve day of Friday 4 March, if required), will go ahead virtually as planned, and the [agenda for the Hearing has been published on the project webpage](#).

Please contact the Case Team if you have any questions about this letter.

Yours faithfully

Ken Stone

Lead Member of the Panel of Examining Inspectors

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¹ <https://infrastructure.planninginspectorate.gov.uk/projects/south-west/a417-missing-link/>