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Dear Mr Allen,

A66 Northern Trans-Pennine Project: Application for Development Consent ("DCO application")

Applicant's intention to submit a request for proposed changes to the DCO application

Proposed changes application

1. As foreshadowed in paragraph 6 of the letter dated 16 November 2022 from National Highways ("**the Applicant**") to the Examining Authority ("**ExA**") [PDL-001], the Applicant has identified a need to make some changes to the DCO application ("**proposed changes**") and to seek the ExA's consent to the inclusion of those proposed changes in the application currently being examined. Accordingly, and further to discussion in the Preliminary Meeting held on 29 November 2022, the purpose of this letter is to notify the ExA in writing of the Applicant's intention to request those proposed changes.

Procedure and timescales

2. The Applicant has had regard to the Inspectorate's *Advice Note 16: How to request a change which may be material* (Version 2, issued March 2018) ("**AN16**") and seeks to present its request for proposed changes in the context of the procedural advice in AN16.
3. This letter therefore constitutes 'Step 1' (*applicant informs the ExA in writing of its intention to request changes to the accepted application*) in Figure 1 on page 4 of AN16.
4. It is the Applicant's intention (as acknowledged by the ExA in its Rule 8 letter issued on 8 December 2022 [PD-007]) ("**the Rule 8 letter**") to submit a written change request, pursuant to 'Step 4' in AN16, at Deadline 3 of the Examination (i.e. on 24 January 2023) ("**Proposed Changes Application**").

5. The Applicant understands that once the Proposed Changes Application has been submitted, the ExA will need to decide whether or not to accept the proposed changes into the Examination.
6. However, the Applicant is conscious of the time pressures associated with the DCO Examination process and of the related need for a Proposed Changes Application to be made early enough to ensure opportunities for Interested Parties to provide comments on the proposed changes. Therefore, whilst the Applicant notes and accepts the ExA's position that until such time as a decision is made on the acceptability of the proposed changes, the Examination will proceed in accordance with the Examination Timetable presented in Annex A to the Rule 8 letter, the Applicant seeks clarification from the ExA on the question of the timing of consultation on the Proposed Changes Application.
7. As explained in more detail below, the Applicant's intention is to commence a period of consultation once the Proposed Changes Application has been submitted. The Applicant would therefore welcome early confirmation from the ExA that this approach is acceptable. Equally, if the ExA has comments on the proposed approach to consultation set out below (in paragraphs 20 to 24) the Applicant would be pleased to receive them. The Applicant will also seek to undertake a programme of pre-consultation engagement with statutory environmental bodies, local authorities and relevant Affected Parties informing them of its proposed approach to changes in advance of the submission of the Proposed Changes Application.
8. The basis on which the Proposed Changes Application is intended to be submitted is explained below (please see the sections of this letter entitled '*Scope of Proposed Changes Application to be submitted at Deadline 3*' and '*Suggested timescales for accommodating a request for proposed changes within the existing examination timetable*').

Need for the proposed changes

9. As noted at the Preliminary Meeting, the need for the proposed changes has arisen from a variety of factors which include requests from Affected Parties (e.g. including where issues have been raised in Relevant Representations); stakeholder feedback (e.g. where, through engagement, the Applicant has sought to resolve issues); the identification of opportunities to further reduce the environmental impacts of the Project and opportunities to reduce the amount of land required for the Project; and the identification of further safety benefits, building on the assessment work done to date.
10. Additionally, due to the Project Speed initiative, the detailed design work for the Project is being progressed at an earlier stage than it would be ordinarily. Following submission of the DCO Application, the Applicant has procured the services of the Delivery Integration Partners who are responsible for the detailed design and construction stages of the Project. This presents opportunities to address buildability issues which would not normally come to light until after development consent had been granted for a project. It also enables us to consider further the feedback received during statutory and supplementary consultations held prior to the submission of the DCO application, in that through the detailed design process we now have an opportunity to investigate practical ways in which the concerns of

Affected Parties and stakeholders can be better accommodated and addressed, both in terms of how each scheme (comprised in the Project) is integrated into the existing highway network and its surrounding landscape, and in terms of how its impacts may be reduced or minimised.

11. Further information about the proposed changes is provided below, from paragraph 28 onwards.

Non-materiality or materiality of the proposed changes

12. The Applicant understands that the question of whether the proposed changes are material or non-material is a matter of planning judgement for the ExA.
13. In the absence of any definition in relevant legislation of the terms 'material' and 'non-material', the Applicant has had regard to the characteristics that indicate that a change may be more likely to be regarded as a material change, examples of which are considered in government guidance issued in December 2015 by the Department for Communities and Local Government (as was) – *Planning Act 2008: Guidance on Changes to Development Consent Orders* ("the Government Guidance") to provide a starting point for assessing the materiality of a change.
14. Having considered the proposed changes both individually and collectively in the light of the characteristics outlined in the Guidance, the Applicant is of the view that the majority of the changes it wishes to propose are **not** material. Conversely, a small number of the potential proposed changes **may** be material. On balance, however, the Applicant is of the view that collectively the proposed changes, if accepted, would not materially change the substance of the relevant scheme (within the A66 Northern Trans-Pennine Project ("**the Project**")) to which they relate, and which has previously been consulted on; and nor would they materially change the nature of the Project as a whole.
15. Further detail about which of the proposed changes are considered by the Applicant to be material or non-material is set out below and additional information will be provided in the Proposed Changes Application at Deadline 3.

Environmental Appraisal

16. The Applicant will review and appraise the proposed changes in the context of the Environmental Impact Assessment carried out in respect of the Project, to ascertain whether any of the proposed changes, either individually or cumulatively, would have the potential to give rise to any new or materially different likely significant effects, beyond those reported in the Environmental Statement [APP-044 – APP-233].
17. The Applicant plans to publicise (in accordance with the requirements of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 ("**EIA Regulations**")), any further environmental information arising in connection with the proposed changes *in parallel with* carrying out consultation on its Proposed Changes Application. The Applicant would then include any representations received in response to that publicity in its Proposed Changes Consultation Statement / Report (as required by reference to paragraphs (f) and (g) in Figure 3 in AN16).

Additional land

18. A small number of proposed changes are expected to require ‘additional land’ as defined in the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (“CA Regulations”), and being—
- a. land which currently lies outside the Order limits; or
 - b. land over which a ‘greater’ power is now sought, i.e.:
 - i. where land which was originally proposed to be subject only to powers of temporary possession is now required to be subject to powers of compulsory acquisition, either in respect of rights over land or for the purpose of acquiring the land outright (i.e. where land shaded green on the DCO Land Plans needs to be changed to blue or to pink); and similarly,
 - ii. where land originally proposed to be subject only to the power to create and acquire new rights over land is now required to be subject to outright acquisition (i.e. where land shaded blue on the land plans needs to be changed to pink).
19. In relation to proposed changes which engage the CA Regulations, the Applicant will provide the material required by Regulation 5 of the CA Regulations (in the event that the written consent of all persons with an interest in land cannot be secured within the necessary timescales).

Consultation and Engagement

20. On the basis that the proposed changes are anticipated to comprise a mix of material and non-material changes, the Applicant expects that its Proposed Changes Application would need to be subject to the ‘*material change request process*’ outlined in the left-hand limb of the ‘*Change request process*’ flowchart in Figure 2 on page 4 of AN16 – noting that this includes a requirement for consultation on proposed changes.
21. The Applicant also notes the Inspectorate’s advice, in paragraph 2.5 of AN16, that an Examining Authority will want to ensure, in the interests of fairness, that no persons who might wish to comment on the proposed changes would be deprived of the opportunity to make any representations on the changed application (in accordance with the principle set out in *R (on the application of Holborn Studios Ltd) -v- Hackney LBC* [2017] QBD, and *R (on the application of Moseley) -v- Haringey LBC* [2014] UKSC). Accordingly, given the levels of public interest in the Project and the application to date, the Applicant is of the view that consultation on all the proposed changes will be necessary, and that this consultation will be open to all to respond to.
22. As noted above, consultation on the Proposed Changes Application, which would commence shortly after submission of the Application, would include information about the appraisal of environmental effects arising in connection with the proposed changes, with reference to the effects reported in the Environmental Statement [APP-044 – APP-233]. The consultation and related publicity will accord with the

requirements of the CA Regulations and EIA Regulations in relation to changes comprising additional land and environmental effects.

23. Therefore, the Applicant's proposed consultation on the Proposed Changes Application is intended to be proportionate to the nature and scale of the proposed changes and their materiality, whilst also in accordance with the requirements of the CA Regulations and the EIA Regulations, and reflecting the principles enshrined in the case law referenced above and in the Government Guidance.
24. The Applicant's proposed approach to consultation is summarised below; however, the Applicant would welcome any comments or direction from the ExA or any related discussion with the Inspectorate, as far in advance as possible of the proposed commencement of the consultation on 26 January 2023.
- **Consultation period:** this would run from Thursday 26 January 2023 to Friday 3 March 2023, allowing consultees a period (exceeding 30 days, to accommodate the requirements of the EIA Regulations) within which to consider the Applicant's Proposed Changes Application.
 - **Deadline for receipt of consultation responses:** responses would be required to be submitted to the Applicant by 11:59pm on Friday 3 March 2023.
 - **Publicity:** the Applicant would publish, affix and serve notices in accordance with Regulations 7 and 8 of the CA Regulations and the publicity requirements of the EIA Regs regarding the proposed changes as follows:
 - **notices published in local newspapers** – notices would be published in newspapers previously used by the Applicant for the publication of notices in connection with the Project, i.e. local newspapers, plus the Times and the London Gazette; notices would be published in the weeks commencing 16 and 23 January 2023.
 - **notices affixed on site** and posted in the Applicant's usual places for posting notices (with notices to be kept in place from 26 January 2023 until 3 March 2023); and
 - **notices served by post** – notices served on those who would or might be interested in one or more of the proposed changes, within the following categories (the scope of which is currently being carefully considered by the Applicant):
 - affected persons (section 42(1)(d) of the Planning Act 2008 ('PA 2008'))
 - interested parties (as defined in section 102 of PA 2008);
 - prescribed persons (section 42(1)(a)); and
 - local authorities (section 42(1)(b)).

- **Consultation Brochure and Feedback Form:** a consultation brochure and feedback form would be made available at consultation events and at document deposit points, with an accessible version also being made available online. The consultation brochure and feedback form would also be enclosed with notice of the Proposed Changes Application served directly on consultees. The brochure will contain details of all the proposed changes.
- **Documents placed on deposit and online:** hard copies of the Applicant's Proposed Changes Application would be placed on deposit at the deposit locations currently used by the Applicant in connection with the Project, e.g. Penrith library, for the duration of the consultation period; the Applicant's Proposed Changes Application would also be made available on the Applicant's website. These online and deposit point locations will also be referenced on social media.
- **Consultation Events:** a small number of events would be held in venues (including, where possible, venues used for previous consultations on the Project) for schemes where it may be considered that the changes proposed are material and/or of interest to the wider public. It is currently proposed that there would be four consultation events, with an event being held in the locality of each of the schemes where there are proposed changes which may be considered to be material changes, and proposed changes which may be of interest to the wider public. There will be an opportunity for all proposed changes to be discussed at all of the consultation events.
- **Engagement:** Meetings will be held with those persons served with notices by post and/or notified about the Proposed Changes Application where it is deemed appropriate and/or requested by them as part of ongoing engagement.
- **Consultation Statement/Report:** to be prepared by the Applicant and submitted to the ExA at a date to be confirmed (but no later than Deadline 6 on Tuesday 4 April 2023).

25. The Applicant would be happy to discuss with the Inspectorate the proposals outlined above and would welcome any comments from the ExA as soon as possible, in order to be able to incorporate (if necessary) those comments in its preparation for submission of the Proposed Changes Application at Deadline 3 (24 January 2023) and launch of the related consultation shortly thereafter (26 January 2023).

Scope of Proposed Changes Application to be submitted at Deadline 3

26. In its Proposed Changes Application, the Applicant will set out the material listed below (which mirrors that listed in Figure 3 of AN16) to assist the ExA in making a Procedural Decision on whether to accept the proposed changes for Examination, and also to provide clarity for participants in the process:

- clear descriptions of the proposed changes including 'before and after' excerpts of relevant plans/drawings and information about any new/altered

works and any new/altered ancillary matters; and explanations of whether and how the Applicant considers the proposed changes to be non-material or material;

- a statement setting out the rationale and pressing need for making the changes (with reference to the Examination Guidance and any other important and relevant matters);
- a full schedule of all application documents and plans listing consequential revisions to each document and plan, or a 'no change' annotation, together with an update on whether there may be any impediment to securing any consents/licences required (alongside the DCO) before the Examination is concluded;
- a tracked change version of the draft DCO showing each proposed change, and a tracked change version of the draft Explanatory Memorandum updated to reflect the proposed changes;
- confirmation of the land ownership position in respect of any additional land (as defined in the CA Regulations) required to deliver the proposed changes, and an explanation of the Applicant's position in relation to any changes with the potential to engage the provisions of the CA Regulations (including either written consent from relevant persons or the material prescribed by Regulation 5 of the CA Regulations);
- provision of available environmental information and confirmation that the effects of the proposed changes have been assessed and that the environmental information will be subject to publicity reflecting the requirements of EIA Regulations 2017, together with confirmation that any statutory bodies who might have an interest in the proposed changes have been engaged with; and
- an account of the statutory and non-statutory consultation to be carried out in relation to the Proposed Changes Application, having regard to the proposals outlined above (in paragraph 24), together with any comments or Procedural Decision received from the ExA in response to this letter.

Suggested timescales for accommodating the Proposed Changes Application within the Examination timetable

27. With the aim of assisting the Inspectorate, the Applicant has considered how its request for proposed changes could be accommodated within the six-month Examination timeframe. To that end, in Annex B to its Rule 6 Response [PDL-001], the Applicant set out a suggested timetable for a proposed changes application to be incorporated into the draft Examination timetable included in Annex E to the Rule 6 Letter, in conjunction with some suggested revisions thereto. The Applicant appreciates that, as explained in its Rule 8 letter, the ExA does not intend to reconsider the Examination timetable unless the proposed changes are accepted into the Examination. The Applicant will include, as part of its Proposed Changes Application, suggestions for how the Examination timetable might be adjusted to allow the changes to be examined, should that be the ExA's decision.

Introduction to the proposed changes

28. As noted in paragraphs 9 and 10 above, the need for the proposed changes has arisen from a variety of factors; furthermore, whilst the early commencement of detailed design work has facilitated the Applicant's consideration of changes proposed by Affected Persons, it has also – through an interrogation of the preliminary design on which the DCO application is based – raised new issues (e.g. buildability, and rationalisation of the Rochdale Envelope approach, and of proposed land take).
29. The categorisation of the proposed changes and the approximate number of proposed changes within each such category are set out below. The Applicant can confirm at this stage that the number of proposed changes will be approximately 40, subject to the outcome of engagement and appraisal prior to the submission of the Proposed Changes Application at Deadline 3.

Categorisation of Proposed Changes	Approximate number of potential material changes	Approximate number of potential non-material changes	Approximate number of proposed changes
Changes varying the preliminary design presented in the DCO application	9	11	20
Changes requiring additional land <i>[NOTE that a small number of the proposed changes varying the preliminary design (as referenced above) also require additional land, however those proposed changes have not been included here in order to avoid double-counting.]</i>	2	0	2
Changes to limits of deviation to accommodate realignment of 'side road tie ins' and/or to bring elements of the Project closer together to reduce land take requirements	0	10	10
Changes to limits of deviation to accommodate the separation of public rights of way ("PRoW") and private means of access ("PMA"), where, in the preliminary design, PRoW and PMA are proposed on the same alignment	0	2	2
Changes to be effected by means of a drafting amendment within the submitted DCO application documentation	0	5	5
Changes to speed limits proposed in the DCO application	0	1	1
TOTAL	11	29	40

30. The Applicant confirms its intention to submit all of the proposed changes in a single Proposed Changes Application (at Deadline 3), in order to ensure that the position on proposed changes is as clear as possible for the ExA and for those parties who are participating in the Examination or who are otherwise interested in the Project and the proposed changes to the DCO application.
31. Accordingly, whilst this letter does not include a detailed description of each individual proposed change, the proposed changes which the Applicant is aiming to bring forward have been grouped under the categories identified in the table above.
32. The Applicant will provide within the Proposed Changes Application a detailed description of each individual proposed change, alongside all of the information set out in Figure 3 of AN16 as identified in paragraph 26 above.

Potential Material Changes

33. Currently, 11 of the proposed 40 changes may be material as they are considered to have the characteristics that indicate that a change may be more likely to be regarded as a material change, as described in the Government Guidance, as there is either:
 - a change in the land required and to be acquired for the Project;
 - the potential for a new/different likely significant environmental effect; or
 - the potential for wider public / stakeholder interest beyond the small number of landowners that could be affected.
34. An example of such a change is the proposed **Removal of Langrigg Westbound Junction, revision to Langrigg Road link and earlier tie-in of Flitholme Road (Scheme 6)**. This proposed change, the need for which was raised and discussed at the Issue Specific Hearing 1 held on 30 November 2022, would involve the removal of the current westbound junction proposals at Langrigg, meaning that traffic would no longer be able to leave and join the new A66 mainline at this location. As a result of the removal of the westbound junction on the A66 mainline, the Langrigg Road link would be moved northwards, to lie principally adjacent to the westbound carriageway of the A66 mainline dual carriageway. The Langrigg Road link would extend westwards, staying in close proximity to the A66 mainline, to connect to Flitholme Road at the earliest opportunity in order to retain as much of the existing Flitholme Road as possible. The connection from the Langrigg Road Link to Langrigg Road would be through a simple T-junction. Associated infrastructure, such as the balancing ponds, could be reduced in size and could be moved northwards (in comparison to the original proposal in the preliminary design), away from the identified fen habitat and houses.
35. The Applicant considers that this proposed change may be a “material” change given the potential for public and stakeholder interest (beyond the land interests that are affected) as a result of the changes to local access arrangements in this location.

Potential Non-Material Changes

36. The categories of changes described below (under sub-headings referenced A to E) may not be material as they do not have the characteristics that indicate that a change may be more likely to be regarded as a material change, as described in the Government Guidance. In relation to these categories of changes, the Applicant currently considers there to be:
- no change to the land required (i.e. no additional land is required), or additional land is required but the extent or impact of the additional land take is not material;
 - no new/different likely significant environmental effects; and
 - limited public/stakeholder interest beyond the small number of landowners that could be affected.
- A. Changes varying the preliminary design presented in the DCO application
37. The changes in this category cannot be achieved solely by means of a drafting amendment or a change to limits of deviation. They represent ‘firm’ changes to the preliminary design presented in the DCO application and are based on early detailed design work.
- B. Changes to limits of deviation to accommodate realignment of ‘side road tie ins’ and/or to bring elements of the project closer together to reduce land requirements
38. The majority of these proposed changes are required to provide increased flexibility, through the introduction of relaxations and departures from standard, in relation to the horizontal (and in some cases corresponding vertical) alignment of ‘side roads’ which have a junction with the A66 mainline and the main carriageway. Such changes to limits of deviation are required where the Applicant’s detailed design work has identified an opportunity for
- a more ‘modest’ tie in, requiring less land take and less complex engineering works; however, such changes to the alignment of the side roads would only be possible where the standard 3m lateral limit of deviation provided for in article 7 is varied to allow realignment of the relevant side road (thereby changing – within those new limits of deviation – the alignment currently presented in the preliminary design and DCO application); and
 - removing areas of land that separate carriageways (central reserves) that had previously been included to facilitate construction, but which are no longer deemed necessary.
- C. Changes to limits of deviation provided for in article 7 of the draft DCO – to accommodate the separation of public rights of way (“PRoW”) (for non-motorised users (“NMU”)) and private means of access (“PMA”)
39. The need for these changes arises from commentary received from Interested Parties and Affected Persons. The preliminary design presented in the DCO application includes a number of instances where PRoW and PMA share the same alignment; however, concerns have been raised about the risk of a variety of potential conflicts between their respective users (as discussed in Relevant Representations and the Applicant’s Responses thereto [PDL-010 – PDL-013]).

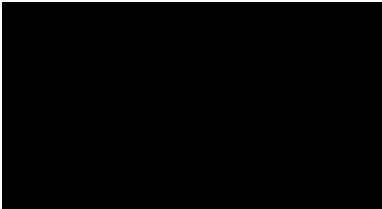
Landowners' concerns relate to property access and security, liability, biosecurity and collision risk.

40. Having had regard to these concerns, the Applicant is keen to try and resolve the issue, wherever possible, through the development of detailed design solutions. In order to be able to do this, however, greater flexibility is required in the limits of deviation applying to PRow (where PRow are provided outside a highway boundary and as such comprise separate highways in their own right – i.e. they are footpaths, cycle tracks or bridleways (as distinct from footways, cycleways and equestrian tracks which comprise NMU facilities within the boundaries of a highway)).
 41. In consequence, the Applicant proposes that in relation to shared PRow/PMA routes (outside the mainline highway or side road boundaries) where it may (if there is sufficient space within the Order limits) be possible to separate PRow and PMA provision onto separate alignments, the standard horizontal limits of deviation (3-metre variation from the centreline) are replaced with limits of deviation which would enable the PRow and PMA to be located within the area between the outer edge of the mainline (A66) highway boundary and the adjacent Order limits.
 42. Such a change to the relevant limits of deviation would also permit a degree of realignment of PRow (cycle track) which could be used to address concerns raised by cyclists about routes which meander around drainage ponds, for example, where a more direct route with fewer changes of direction would be preferred. Realignment of PRow might also present opportunities for reduced land take.
- D. Changes to be effected by means of a drafting amendment within the submitted DCO application documentation
43. Proposed changes in this category are varied, and range from minor drafting amendments required, for example, to better align a reference in the draft DCO [APP-285] with a corresponding feature on one of the DCO plans/drawings, to a minor amendment to an item in the Project Design Principles [APP-302], which is required to update a principle set out in the version of the document submitted as part of the DCO application, in order to better accommodate the emerging detailed design.
- E. Changes to speed limits proposed in the DCO application
44. The Applicant is considering a potential change to the proposed speed limit on the A66 eastbound approach to M6 Junction 40, in the vicinity of the access to the Livestock Market, in order to deliver safety benefits and, potentially, to reduce the impacts of construction work on the operational access to the Livestock Market during the construction of Scheme 0102.



I should be grateful if you would kindly acknowledge safe receipt of this letter and also if you would please contact me or my colleague Tom King directly, should you have any questions on any of the matters outlined above, or if the ExA or the Inspectorate believes there is anything else to which the Applicant should have regard whilst preparing to submit the above-mentioned request for scheme changes at Deadline 3.

Yours sincerely



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