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All Interested Parties and Statutory Parties

Your Ref:

Our Ref: TR010062

Date: 18 April 2023

Dear Sir/ Madam

**Planning Act 2008 (as amended) Section 89
The Infrastructure Planning (Examination Procedure) Rules 2010 (as amended) –
Rules 9 and 17**

**The Infrastructure Planning (Compulsory Acquisition) Regulations 2010 –
Regulations 4 to 19**

**Application by National Highways for an Order granting Development Consent for
the A66 Northern Trans Pennine Project - Request to Make Changes to the Original
Application**

We are writing to inform you of the Procedural Decision made by the Examining Authority (ExA) following the Applicant's request for the ExA to accept amendments, known as a Change Request, to the above-mentioned Development Consent Order (DCO) application.

The Change Request was submitted to the ExA on Friday 24th March 2023. It comprises 24 separate changes; these are summarised in Table 1 of the document entitled "*Change Application – Application Report*" (Examination Library reference [[CR1-002](#)]). The ExA notes that changes referenced DC-02, DC-07, DC-10, DC-12, DC-16, DC-18 and DC-29 do not form part of the Change Request.

Upon receipt of a request to make a change to an application, the ExA must initially consider whether the development now being proposed is in substance the same as the development which was originally applied for. If the ExA considers that the effect of the change would not be so substantial as to constitute a materially different project, the change may be accommodated as part of the Planning Act 2008 (PA2008) examination process provided that the ExA considers there is sufficient time remaining. While the ExA notes Natural England's concerns in respect to changes DC-04, DC-5 and DC-06, the planning merits of each change do not have any bearing on our decision; that will form part of the decision-making process at the appropriate time.

The ExA has assessed the Applicant's request in line with paragraphs 109 to 115 of the former Department for Communities and Local Government, Guidance "*Planning Act 2008: examination of applications for development consent*" and the Planning Inspectorate's Advice Note 16 National Infrastructure Planning. We have also noted the Applicant's supporting evidence [[CR1-001](#) and [CR1-003](#) to [CR1-018](#)] including whether the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (the CA Regs) are triggered by the Change Request. We have concluded the following.

Accepted Changes

List 1

Scheme	Applicant's Ref No.	Applicant's Description
01/02	DC-01	Change in speed limit west of M6 Junction 40
03	DC-04	Separation of, and greater flexibility for, shared public rights of way and private access track provision
03	DC-05	Removal of junction for Sewage Treatment Works (and private residence) from A66, and provision of an alternative access from B6262
03	DC-06	Increase in vertical Limits of Deviation local to Shell Pipeline
03	DC-08	Inversion of the mainline alignment at the junction at Center Parcs
03	DC-09	Flexibility to reuse the existing A66 carriageway
04/05	DC-11	Earlier tie-in of Cross Street to the existing road
04/05	DC-13	Realignment of Main Street
04/05	DC-14	Realignment of Sleastonhow Lane
04/05	DC-15	Realignment of Crackenthorpe underpass
06	DC-17	Cafe Sixty-Six - Revised land plan
06	DC-19	Realignment of cycleway local to Cringle and Moor Beck
06	DC-20	Update to Limits of Deviation on eastbound connection to local road
06	DC-21	Amendments to DCO Order limits within Ministry of Defence land
06	DC-24	Re-use of existing A66 (north of Flitholme)
06	DC-27	Construction of noise barrier south of Brough
07	DC-28	Realignment of local access road to be closer to new dual carriageway east of Bowes
09	DC-30	Realignment of maintenance/footpath adjacent to Waitlands Lane
09	DC-31	Realignment of Warrener Lane

The ExA considers the above changes in List 1, both individually and cumulatively, amount to minor changes to the Application which in each case, do not substantially change the conclusions of the Environmental Statement (ES).

In respect to DC-27, DC-19 and DC-21, the ExA recognises that for the purposes of the CA Regs, additional land is required. These are discussed separately below.

In accepting these changes, the ExA wishes to raise two questions regarding Change Requests DC-11 and DC-14 and, under Rule 17 Infrastructure Planning (Examination Procedure) Rules 2010 (as amended) (EPR), the ExA requests additional information from the Applicant. These questions are set out in Annex A to this letter.



The ExA is therefore, satisfied that the above Change Requests can be accepted into the Examination.

List 2

Scheme	Applicant's Ref No.	Applicant's Description
01/02	DC-03	Reorientation of Kemplay Bank junction
06	DC-25	Removal of Langrigg westbound junction, revision to Langrigg Lane link, and shortening of Flitholme Road
06	DC-26	Revision to West View Farm accommodation bridge and removal of West View Farm underpass

The ExA concludes that the Change Requests in List 2 constitute moderate alterations to the Application. This is because each change would result in a notable and physical variation from the scheme as proposed at the outset of the application, and a number of chapters in the ES are subsequently affected. Of particular note is the proposals for Langrigg (DC-25), whereby the road layout would be considerably altered from that set out in the Application. However, the ExA is satisfied that all changes, both individually and cumulatively, are not so substantial so as to constitute a materially different project, and they do not change the conclusions of the ES.

In respect to DC-03, the ExA recognises that for the purposes of the CA Regs, additional land is required. This is discussed separately below.

The ExA is therefore also satisfied that the above Change Requests can be accepted into the Examination.

Not Accepted Changes

List 3

Scheme	Applicant's Ref No.	Applicant's Description
06	DC-22	Realignment of Warcop westbound junction
06	DC-23	Realignment of de-trunked A66 to be closer to new dual carriageway at Warcop

The change requests DC-22 and DC-23 do not include sufficient information in relation to flood risk and impacts to features of the River Eden Special Area of Conservation (SAC) to enable the ExA to accept the changes for Examination. The document entitled “*Consultation Responses Received by the Applicant*” [CR1-014] contains comments from the Environment Agency (EA) in which they say both changes “*potentially give rise to a risk of a new significant adverse effect because of changes to flood risk*”. Coupled with the loss of the originally proposed crossing infrastructure for otter at Eastfield Sike as a result of the change request DC-23, the ExA is concerned that the changes may introduce a new significant effect on the River Eden SAC and its features. Notwithstanding that the changes are put forward as alternatives, this is sufficient to require this matter to be an acceptance and not an Examination issue, but no Environmental Impact Assessments or Habitats Regulations Assessments (HRA) of these impacts have been included in the

Change Requests. Therefore, if these changes were accepted into the Examination, the conclusions of the assessments in the ES and HRA would be unknown.

These Change Requests also lie within Scheme 06 where the EA is currently of the view that the Applicant “*has not demonstrated that the proposed compensatory flood storage scheme at Warcop would avoid any increase in flood risk off-site*” [REP6-028]. This increases the importance of such an assessment at acceptance. The ExA also notes the complexity of the issues involved in these change requests in terms of flood risk and the time remaining in the Examination [PINS Advice Note 16, para 2.2]. Furthermore, in DC-22, the Change Request does not show a potential location for an alternative to the application attenuation pond which would appear to be lost. The potential location for the alternative pond is said to be subject to further modelling in this area of “*area of known flooding and sensitive environment*” [CR1-002]. This, plus changes DC-22 and DC-23 reducing the number of watercourse crossings and mitigation in this area, which could undermine the assessment and conclusions of the ES and HRA, leads to a need for further assessment before Examination.

The above matters add weight to the ExA’s view that Change Requests DC-22 and DC-23 cannot be accepted for Examination at this stage in the process. Because of the limited time left in the Examination and having regard to AN16 and the DCLG Guidance, the ExA is unable to invite further comments from the Applicant on this matter.

The CA Regulations

The Change Application document [CR1-002] indicates that changes DC-27; DC-19; DC-21 and DC-03 involve additional land and as such, potentially trigger the CA Regs. The Applicant’s view is that the CA Regs are not triggered because all affected persons where additional land is sought have consented to their inclusion. Appendix C of the Applicant’s Change Request submission [CR1-006] provides evidence of this consent through the submission of a Consent Confirmation Slip where required.

Regulation 4 of the CA Regs states the following:

Regulations 5 to 19 prescribe the procedure for the purposes of the condition in subsection (4) of section 123 (land to which authorisation of compulsory acquisition can relate) and apply where –

- (a) It is proposed to include in an order granting development consent a provision authorising the compulsory acquisition of land; and*
- (b) A person with an interest in the additional land does not consent to the inclusion of the provision.*

In respect to DC-27 and DC-19, the plots are very narrow and relatively small, and in the case for DC-19 would include a detrunked section of the A66 where previously it was excluded from the Order limits and the Order land. There is little evidence before the ExA to suggest that likely significant effects would occur from their respective inclusion into the Order limits and Order land, and the ExA is also satisfied that parties with an interest in the land have consented to the additional land sought. Thus, the ExA concludes that the CA Regs are not triggered in this instance and the change is not considered to be significant. The ExA also notes that in the case of DC-21, there are a number of plots being “swapped” with the Ministry of Defence. However, as the plots in question are required for environmental mitigation, the ExA is satisfied that there would be no material change to

the Application. DC-21 comprises Crown land and powers of CA in respect of the additional land are not sought. The ExA therefore concludes that the CA Regs are not triggered in this instance and the change is not considered to be significant.

In respect to DC-03, this would involve an increase in powers sought over two plots of land which are already included within the Order limits and Order land and thus has already been assessed within the ES. Because the ExA is satisfied that parties with an interest in the land have consented to the additional land sought, the ExA concludes that the CA Regs are not triggered in this instance and the change is not considered to be significant. The ExA is satisfied that Appendix C [CR1-006] demonstrates that Regulation 4(b) of the CA Regs is not triggered and accordingly, no further action is required.

Request for Information under Rule 17 of the EPR

The ExA has set out in this letter that additional information is required in respect to DC-11 and DC-14, and these questions are set out in Annex A. Two further questions in relation to Crown land and on the progress of Protective Provisions are also requested as part of the Rule 17 request.

In addition, the Report on the Implication for European Sites (RIES), which is published on the same date as this letter, also includes questions and further information needed from Interested Parties; this being marked in blue, italic, and underlined text in that document. The ExA requests all Rule 17 of the EPR responses by **Deadline 7, Tuesday 9 May 2023**.

Summary

The ExA has considered all Change Requests (except for changes DC-22 and DC-23), both individually and cumulatively, are not so substantial so as to constitute a materially different project, and they do not change the conclusions of the ES. Accordingly, they can be accepted into the Examination.

For the reasons set out above, changes DC-22 and DC-23 cannot be accepted into the Examination.

Under Rule 17 of the EPR, the ExA requests that the Applicant updates all necessary documents into the Examination, including responding to the additional questions sought by the ExA in Annex A to this letter and those contained within the RIES, by **Deadline 7, Tuesday 9 May 2023**.

Should any Interested Party wish to make any comments on the Change Requests including the ExA's response set out in this letter, they should similarly do so by **Deadline 7, Tuesday 9 May 2023**

Yours faithfully,

Richard Allen

Lead Member of the Examining Authority

Annex A – Additional Information Required by the ExA under Rule 17 of the EPR



CA	Compulsory Acquisition	
CA 3.1	<i>Crown land</i> The Applicant	The ExA notes that Change Request DC-21 does not seek to compulsorily acquire the grazing licence within the additional land required for DC-21. The ExA requests that the Applicant confirm how the rights contained within the grazing licence are excluded from the CA powers within the Change Request draft DCO.
CA 3.2	<i>Protected Provisions</i> The Applicant Statutory Undertakers	The ExA notes that little agreements are in place with Statutory Undertakers (SUs), particularly Network Rail and the Environment Agency, with regards the wording of the Protective Provisions as set out in Schedule 9 of the draft Development Consent Order [REP5-012]. Should such wording not be agreed by Deadline 8, Tuesday 16 May 2023 , the ExA requests the Applicant and SUs set out the specific wording disagreements, together with an explanation of each party's position, by Deadline 8 .

TA	Traffic and Access	
TA 3.1	<i>Scheme 0405 – Priest Lane</i> The Applicant	Change Request draft DCO, Schedule 7, Part 3, Paragraph 48 [CR1-005] designates a length of the existing and new Priest Lane as a Quiet Lane. This designation is supported by the works set out in Schedule 1 Part 3 (Work No. 0405-6). Schedule 8 Part 3 stipulates that the new Priest Lane will be subject to the national speed limit of 60mph. The ExA would like to understand the Applicant's view on whether the designation of both the existing and new Priest Lane as a Quiet Lane is compatible with the application of the national speed limit of 60mph especially given the existing highway geometry of the existing Priest Lane.
TA 3.2	<i>Scheme 0405 – Sleastonhow Road Bridge</i> The Applicant	Confirm that the right-side image used at the top of page 80 of the Change Application document [CR1-002] is incorrect and should illustrate road as aligned in the image on page 79.