

**A66 Northern Trans-Pennine Project  
TR010062**

**5.4 Consents and Agreements  
Position Statement**

**APFP Regulations 5(2)(q)**

**Planning Act 2008**

**Infrastructure Planning (Applications: Prescribed Forms and  
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**5.4 CONSENTS AND AGREEMENTS POSITION  
STATEMENT**

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## 1 Introduction

### 1.1 Purpose of this document

- 1.1.1 This Consents and Agreements Position Statement (“this Statement”) sets out National Highways’ intended strategy for obtaining the consents and associated agreements needed to implement the proposed A66 Northern-Transpenine Project (“the Project”). A detailed description of the Scheme can be found in Chapter 2, The Scheme of the Environmental Statement (ES) (Document Reference: 6.1)
- 1.1.2 The purpose and objective of this Statement is to identify what consents and agreements are expected to be needed for the Project, along with the Applicant's intended strategy for and how these will be obtained.
- 1.1.3 This Statement has been prepared and submitted in compliance with Regulation 5(2)(q) of the Infrastructure Planning (Prescribed Forms and Procedure) Regulations 2009 (the “2009 Regulations”), which states that the application must be accompanied by

“...(q) any other documents considered necessary to support the application”

### 1.2 The Project

- 1.2.1 The Project comprises 8 schemes to improve the A66 between M6 J40 at Penrith and A1(M) J53 at Scotch Corner. The Project would involve improving the junctions on the M6 and A1(M) as well as improving six separate single carriageway lengths of road to dual carriageway standard and making improvements to the junctions within each of those lengths. The nature of the planned improvements includes online widening (adjacent to the existing road) of the carriageway as well as offline construction (new lengths of road following different routes but reconnecting into existing lengths of the A66 that are already dualled).
- 1.2.2 The 8 schemes are identified as follows:
- Scheme 0102 - M6 Junction 40 to Kemplay Bank
  - Scheme 03 - Penrith to Temple Sowerby
  - Scheme 0405 - Temple Sowerby to Appleby
  - Scheme 06 - Appleby to Brough
  - Scheme 07 - Bowes Bypass
  - Scheme 08 - Cross Lanes to Rokeby
  - Scheme 09 - Stephen Bank to Carkin Moor
  - Scheme 11 - A1(M) Junction 53 Scotch Corner
- Note: there is no Scheme 10.
- 1.2.3 Further detail on each scheme is provided below and is shown in Application Document 2.5 General Arrangement Drawings.
- 1.2.4 The development of the Project was informed by knowledge of environmental, engineering and traffic constraints, as well as the environmental appraisal of emerging design proposals combined with and incorporating feedback from consultation and engagement with landowners and stakeholders. The accompanying Environmental Statement

(Application Document 3.2) and the assessments within it are based on the works proposed in the DCO (described principally in Schedule 1 and shown on the works plans (Application Document 5.16), and the engineering section drawings: plan and profiles; cross-sections (Application Documents 5.17 and 5.18)).

- 1.2.5 All schemes (with the exception of Scheme 11) include lengths of de-trunked A66 as a result of the Project. The detail of any proposed changes to the de-trunked lengths will be agreed with the relevant Local Authority.
- 1.2.6 Detailed design will consider all aspects of the preliminary design in greater detail. Signage, pavements, signal design and accommodation works are specific aspects that will be defined during detailed design.

## 2 Strategy

### 2.1 National Highways' Consents strategy

2.1.1 The basis of National Highways' consents strategy is that:

- A DCO must be sought as the principal consent for the works (under the "2008 Act") and to provide the necessary land acquisition and temporary possession powers;
- The intent of the 2008 Act and Government policy is to enable development and construction-related consents to be included within the DCO; therefore, where possible and practicable, other necessary consents have been included within the DCO;
- The Project benefits from the intent of the 2008 Act and Government policy as most of the consents required for the construction of the Scheme will be in place at the point of the making of the DCO; this minimises the need for any further approvals before the works covered by the DCO can commence; and
- The Project has and will be developed on the basis of strong collaboration between key stakeholders, and agreements are expected to be secured at key stages of the Scheme development as necessary. The progress on these items will be reported to the Examining Authority, with a summary of the current situation reported in **Section 3** and **Appendix A** of this Statement.

### 2.2 Planning Act 2008

2.2.1 Section 33 of the PA 2008 makes it clear that there is no requirement for certain principal conventional consents to be obtained where a DCO is required to authorise a project (as is the case for the Project).

2.2.2 In addition, Part 7 of the PA 2008 sets out what can be included within a DCO. Effectively, the scope of this is broad and includes compulsory acquisition powers.

2.2.3 In particular, section 120 of the PA 2008 makes it clear that the following can be included within a DCO:

- ancillary matters (including those listed in Part 1 of Schedule 5 to the PA 2008);
- the application, modification or exclusion of statutory provisions for which the provision may be made in the DCO;
- amendment, repeal or revocation of any local legislation, where thought necessary or expedient by the Secretary of State in consequence of or in connection with the DCO; and
- Incidental, consequential, supplementary, transitional or transitory provisions and savings.

2.2.4 Further, section 150 of the Act states that a requirement to obtain certain prescribed consents, or authorisations, under the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015 can be removed by the DCO with the consenting body's agreement.

- 2.2.5 From the above, it is clear that the intention of the Act is to encourage as many consents to be 'wrapped up' in a DCO as possible creating a 'one-stop-shop' approach for construction-related consents.
- 2.2.6 The Applicant believes that the approach to including all consents within a DCO should apply for both those that do, and those that do not, require the agreement of the relevant body under section 150 in order for them to be included in the DCO. The Applicant envisages this approach being as follows:
- The DCO contains an express provision disapplying the requirement for the consent in question.
  - In exchange, the DCO includes 'protective provisions' for the benefit of the body concerned, typically providing for the body to approve detailed plans of relevant aspects of the project in question before they may be constructed and, in some cases, operated. Conditions and protections relating to ongoing operation may also be included.
  - Those provisions are specifically stated to have effect unless otherwise agreed between the Applicant (as the beneficiary of the DCO) and the body concerned.
  - Compliance with the provisions is a matter between the parties and can be enforced accordingly.
  - Either way, the protective provisions provide a means for the body concerned to monitor, enforce compliance and to review the effectiveness of the approval regime enshrined in the protective provisions.
  - The mechanism of approval being given under the protective provisions allows the body concerned to approach a project in two stages (i) the DCO application stage, when the principle of the project is accepted by the body concerned and the detail of the protective provision is negotiated; and (ii) the subsequent plan approval stages under the protective provisions when the approval of plans cannot be unreasonably refused but when detailed matters going to construction can be properly considered.
- 2.2.7 This is a tried and tested approach adopted in numerous local and public (hybrid) Acts, Harbours Act Orders, Transport and Works Act Orders and Scottish Provisional Orders for many decades and has been adopted in the case of DCOs.

### **2.3 National Highways' Approach**

- 2.3.1 It is clear that the intent of the PA 2008 and Government policy is to include as many construction related consents as practicable within DCOs. The Applicant's approach to consents for the Project is therefore to fit within that legislative and policy intent and to include as many consents as practicable within the DCO. This means that the Project will benefit from the principal advantage that the intent of the PA 2008 and Government policy are designed to deliver, namely the certainty that the majority of consents required for the construction of the Project are in place at the point of the making of the DCO, minimising the need for any further approvals before the works covered by the DCO can commence.

2.3.2 Ongoing design work and engagement with statutory consultation bodies informed the approach during the pre-application stage. Where appropriate, Statements of Common Ground (“SoCGs”) will be progress to detail the agreed positions of the statutory consultation bodies and key stakeholders, listed in Section 3.2.



## 3 Consents and Agreements

### 3.1 Consents

- 3.1.1 The principal consent for the proposed Project will be a DCO. The DCO provides development consent for the works and enables land acquisition and temporary possession, along with many consents and powers to be dealt with at the same time.
- 3.1.2 However, the DCO application may need to be supplemented by other applications because:
- a specific consent cannot be contained in the DCO;
  - a consenting authority declines to allow a consent to be contained within the DCO in circumstances where that consent is prescribed by the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015; or
  - it is not desirable, or it is inappropriate, to include a consent within a DCO due to the stage of design development meaning the detail required is unavailable.
- 3.1.3 At this point (the submission of the DCO application) most of the consents and all the powers required have been included, or addressed, within the draft DCO as permitted by various provisions of the PA 2008. These fall into the following categories:
- Authorisation of all permanent and temporary works;
  - Common land consent;
  - Scheduled monument consent; Consent to carry out works in a SSSI;
  - Compulsory acquisition of land and rights over land such as easements and restrictive covenants and the authorisation to possess land temporarily;
  - Powers to compulsorily acquire open space and replacement land;
  - Consent to carry out street works and to stop up or divert highways permanently or temporarily;
  - Highways matters (such as designating highway as trunk road and de-trunking sections of the existing A66);
  - Traffic regulation matters (such as speed limits, clearways, and prohibitions on use);
  - Licence to fell trees under the Forestry Act 1967;
  - Consent to carry out demolitions under the Building Act 1984;
  - Consent to erect structures in, over or under a main river;
  - Consent to erect structures in, over or under an ordinary watercourse;
  - Consents required under byelaws made under the Water Resources Act 1991 and the Land Drainage Act 1991;]
  - Realignment of award drains (ensuring that the 'Enclosure Acts' still have effect in respect of maintenance of these award drains);
  - Consent to remove hedgerows including any 'important hedgerows' (consent for which is not required under the Hedgerow Regulations 1997 as National Highways benefits from the permission in regulation 6(1)(h) of those regulations);
  - Consent to remove buried human remains;

- Powers to carry out utility diversions (subject to protective provisions);
  - Consent to discharge water to sewers; and
  - Consent to discharge water to other watercourses subject to the requirement, where applicable, to obtain an environmental permit for a “water discharge activity” under the Environmental Permitting (England and Wales) Regulations 2016.
- 3.1.4 Some of these consents are prescribed in the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015. As a result, under section 150 of the PA 2008 the relevant consenting body must agree to the inclusion of these consents within (i.e. disapplied by) the DCO. Discussions between the Applicant and these consenting bodies are ongoing and at varying stages of advancement, and the Applicant is confident that the necessary agreements will be obtained before or during the examination of its Application, in exchange for the Applicant including in the DCO appropriate protective provisions.
- 3.1.5 The permits, consents and agreements that may need to be sought separately from the DCO are identified in Appendix A of this Statement. The consents listed in Appendix A are largely dependent on finalisation of the detailed design, the detailed construction site set-up and working methodologies, and discussions with the consenting authorities in the light of the detailed design. These are not sufficiently developed at this stage to confirm the requirements and therefore it is not practicable to include them within the DCO.
- 3.1.6 Paragraph 4.56 of the National Networks National Policy Statement states that the Secretary of State should not refuse development consent on the basis of regulated impacts unless there is good reason to believe that any relevant necessary operational pollution control permits or licences or other consents will not subsequently be granted. National Highways is not aware of any such reason.

## 3.2 Agreements

- 3.2.1 Agreements with relevant stakeholders may be required in parallel to the DCO process and may take a variety of forms.
- 3.2.2 An important part of the DCO process is the preparation and agreement of SoCGs with a variety of relevant stakeholders to identify the matters on which parties agree and disagree, to narrow the focus for examining the application concerned and to make the examination process more efficient.
- 3.2.3 These have been progressed by the Applicant working with the following stakeholders and as follows:
- Defence Infrastructure Organisation (Ministry of Defence)
  - Cumbria County Council and Eden District Council
  - Durham County Council
  - North Yorkshire County Council and Richborough Borough Council
  - Representatives of the Travellers Community
  - Natural England
  - Environment Agency
  - Historic England

- AONB Partnership
- 3.2.4 The Statement of Commonality and Statements of Common Ground (Application Document 4.5) contains further information in relation to Statements of Common Ground.
- 3.2.5 Other forms of agreement are also likely to be required alongside SoCGs, for example, legal agreements regulating land and works powers, undertakings, memoranda of understanding, and letters of comfort. A number of these are being progressed by the Applicant.

## **APPENDICES**

### **APPENDIX A: Consents and Agreements Table**

## APPENDIX A – CONSENTS AND AGREEMENTS TABLE

Issue	Consent/Licence/Agreement & Legislation	Consenting Authority	Requirement	Status of negotiations	Timescale of application
Protected species licensing	European Protected Species Licence under the Conservation of Habitats and Species Regulations 2017 (the “ <b>Habitats Regulations</b> ”) or the Wildlife and Countryside Act 1981	Natural England	Disturbance/relocation of bat roosts	At this stage in the design process National Highways expects that it will be able to avoid the requirement for these operations and therefore avoid the requirement to obtain the corresponding protected species licences. Appropriate avoidance and mitigation measures are included in the Environmental Management Plan (document 2.7). The potential requirement for this consent is included in this Appendix on a precautionary basis as the requirement, or otherwise, for such a licence cannot be confirmed until the detailed design for the Project is completed.	Prior to commencing the operations, if required.
			Disturbance/relocation of badger setts		
			Disturbance/relocation of otter holts		
			Relocation of red squirrel dreys		
			Relocation of great crested newts	National Highways has agreed with Natural England a district level approach to Great Crested Newt licencing and has received from Natural England the corresponding Impact Assessment & Conservation Payment Certificate.	Prior to commencing the operations, if required.
Closure of barn owl nest	Baseline surveys have identified an occupied breeding site for barn owls which, subject to the detailed design, may require closure. The requirement, or otherwise, for closure of the nest will be confirmed once the detailed design is complete when the exact nature, extent and type of works required in close proximity to the breeding site has been confirmed. Appropriate mitigation measures are included in the Environmental Management Plan (document 2.7)	Prior to commencing the operations, if required.			

Issue	Consent/Licence/Agreement & Legislation	Consenting Authority	Requirement	Status of negotiations	Timescale of application
Water environment and resources	Discharge to controlled waters as a water discharge activity under the Environmental Permitting (England and Wales) Regulations 2016	Environment Agency	Discharge of water from excavation dewatering activities	<p>At this stage (submission of the application) insufficient information is available to progress an environmental permit application alongside the application for the development consent order.</p> <p>National Highways will continue to engage with the Environment Agency ahead of the commencement of the regulated activity, if that activity is required. On the basis of discussion with the Environment Agency, National Highways is not aware of any reason why an environmental permit would not be granted, should one be required.</p>	Prior to commencing water discharge activities, if required.
	Abstraction under section 24 of the Water Resources Act 1991	Environment Agency	Abstraction of water for construction purposes	<p>At this stage (submission of the application) the requirement, or otherwise, for water abstraction has not been determined and, in any event, insufficient information is available to progress an abstraction licence application alongside the application for the development consent order.</p> <p>National Highways will continue to engage with the Environment Agency ahead of the commencement of the regulated activity, if that activity is required. National Highways is not aware of any reason why an abstraction licence would not be granted, should one be required.</p>	Prior to carrying out an abstraction in excess of the exempt threshold, if required