

**A66 Northern Trans-Pennine Project
TR010062**

**7.36 Summary Statement on Land
Acquisition Requirements and
Process**

Planning Act 2008

Infrastructure Planning (Examination Procedure) Rules 2010

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A66 Northern Trans-Pennine Project
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**7.36 SUMMARY STATEMENT ON LAND ACQUISITION
REQUIREMENTS AND PROCESS**

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1 Introduction

- 1.1.1 This document has been prepared in response to the submissions of Affected Persons and their representatives at Deadline 5 in relation to the process by which the Applicant has sought to negotiate the acquisition of the land and interests over land that it requires to deliver the Project.
- 1.1.2 This Summary Statement is intended to set out the Applicant's general position in response to submissions made by Affected Persons and their agents which allege that the Applicant has not sought to negotiate meaningfully the acquisition of the land and interests in land it requires for the Project and to explain the relationship between the development of the detailed design of the Project and the Applicant's approach to the acquisition of the land it requires to deliver the wider public benefits that the Project would bring.

1.2 National Highways' Design Process

- 1.2.1 In common with other major highway projects the Applicant has prepared a design of sufficient detail to enable it to set the parameters of the development consent, to carry out an Environmental Impact Assessment and to identify the land required to deliver the Project with a high degree of confidence. This level of design is commonly referred to as a "reference" design.
- 1.2.2 Under a typical process for a major highway project, the detailed design would then be developed *after the grant of development consent* within the parameters of that development consent. It is at this stage, once the detailed design is complete that it will be known, for example, whether it is necessary to exercise the limits of deviation, and the extent of the Order land that is required for the Project, or to facilitate it, or is incidental to it (in the terms of article 19 of the draft DCO) and in relation to which it is necessary to acquire the land. In some circumstances it may be appropriate, for example, once details of environmental mitigation and its maintenance regime have been finalised in accordance with the provisions of the Environmental Management Plan (Document 2.7) for such land to be subject to the acquisition of rights or other lesser powers.
- 1.2.3 In this regard, the design process for this Project is no different to any other major highway project proceeding under the Planning Act 2008, or indeed other transport infrastructure projects progressing under similar regimes such as the Transport and Works Act 1992.
- 1.2.4 Where this Project is different, which is driven by the Project Speed initiative, is by the early procurement of the Delivery Partners to enable the detailed design process to be progressed during the examination and the six-month reporting and decision period. However, despite bringing forward the detailed design, that work will not be completed by the close of the examination and indeed is likely to remain ongoing even after the grant of development, if development consent is granted.

1.3 Context to the Land Acquisition Process - Guidance

- 1.3.1 The Applicant is conscious that compulsory acquisition powers are a ‘tool of last resort’ that should only be exercised where efforts to acquire land by agreement are unsuccessful.
- 1.3.2 The Applicant has taken this obligation seriously as is evident in its efforts to acquire land by agreement which was kick-started by the issuing of ‘Letters to Negotiate’ in March 2022, and by the application of its ‘Acquisition Completion Premium’ Policy (“the ACP Policy”) which offers a 20% uplift on the market value of land made available for early acquisition.
- 1.3.3 This approach accords with the principle set out in the Department for Communities and Local Government’s 2013 *Planning Act 2008 Guidance related to procedures for the compulsory acquisition of land* (the ‘**Guidance**’). Paragraph 25 of the Guidance advises that—
- “Applicants should seek to acquire land by negotiation wherever practicable. As a general rule, authority to acquire land compulsorily should only be sought as part of an order granting development consent if attempts to acquire by agreement fail.”*
- 1.3.4 However, it is of relevance to the Applicant’s approach to compulsory acquisition that this advice is set in context by the second half of paragraph 25 of the Guidance, which states that—
- “Where proposals would entail the compulsory acquisition of many separate plots of land (such as for long, linear schemes) it may not always be practicable to acquire by agreement each plot of land. Where this is the case, it is reasonable to include provision authorising compulsory acquisition covering all the land required at the outset.”*
- 1.3.5 It is in this context that the Applicant seeks compulsory acquisition powers in the draft DCO, whilst also, at the same time, seeking to encourage acquisition by agreement through its ACP policy.
- 1.3.6 The Applicant is conscious that there is concern amongst landowners that they are being asked to enter into arrangements for the sale of their land whilst work to progress the design of the Project is still ongoing. It is considered that this creates a degree of uncertainty about what land may be required for the Project.
- 1.3.7 The Applicant has therefore sought to address this by incorporating flexibility into its ACP policy, so that landowners can adopt a ‘mix and match’ approach to agreeing to the sale of land outright where the extent of the land required can be readily foreseen (e.g. land required for the road) and entering into option agreements for other areas of land which may change as the detailed design of the Project is developed (e.g. land proposed to be used for environmental mitigation).
- 1.3.8 The Applicant’s general approach to the proposed acquisition of land for environmental mitigation has been set out in detail in its response to WQ CA 1.2 [REP4-011] and has been explored in detail in Issue Specific Hearing 3 ([REP5-024] and [REP5-027]). In summary:

- All of the land identified for environmental mitigation is required to mitigate the adverse environmental effects of the Project – none is required solely for biodiversity net gain.
 - As required by paragraph 5.33 of the National Networks National Policy Statement which requires the Secretary of State to consider ‘*whether the Applicant has maximised such opportunities in and around development*’ – the Applicant has sought such opportunities by, for example, linking habitats to increase connectivity to areas of semi-natural habitats within the wider area and therefore enhancing and tying into existing green infrastructure.
 - The approach taken was to locate the required mitigation as close as possible to the identified impact or where the affected habitat was expected to be lost. Where this was not possible an alternative location was chosen within the same Scheme (the overall Project being comprised of eight distinct Schemes).
 - The design of the environmental mitigation is an indicative design that will be refined alongside the Project’s detailed design if development consent is granted.
 - If, as a result of the detailed design of the ecological mitigation, National Highways does not require the land, or could achieve its purposes by exercising a lesser power, such as the acquisition of rights only, it would do so.
 - However, the Applicant seeks authorisation of compulsory acquisition as a ‘last resort’ and to ensure that the Project can deliver the mitigation that has been assessed as being required in the event it is unable to secure the interests in land it requires to deliver the Project and its essential mitigation.
- 1.3.9 As has been discussed during CAH 1 (see the CAH1 Post-Hearing Submissions [REP1-007]) and CAH2 (see the CAH2 Post-Hearing Submissions [REP5-023] in particular pages 25 to 27), the Project involves more than a single stage compulsory acquisition process, in that it is currently at a preliminary design stage, where contractors are appointed and detailed design is underway, which will not be concluded by the time a decision as to whether to grant consent for the DCO is made.
- 1.3.10 At this stage, the Applicant needs to demonstrate that the extent of land over which compulsory acquisition and temporary possession powers are proposed is necessary, justified and proportionate, and that there is a compelling case in the public interest, taking into account the stage that the Project has reached.
- 1.3.11 Crucially, the terms of the draft DCO [REP2-005] impose a second stage to the application of these tests, in that the power of CA under articles 19(1) and 22 only apply to so much of the Order land as is required for the authorised development or required to facilitate it.
- 1.3.12 Similarly, in relation to temporary possession powers, the power in article 29 of the draft DCO can only be used in relation to the construction of the authorised development.
- 1.3.13 The Applicant must therefore comply with the second stage of the ‘test’ before exercising any of the powers that the DCO would grant in respect of

land, if the DCO is granted. The Applicant must demonstrate that the land in question is required at the detailed design stage to realise the Project. As such, the Applicant is not proposing anything unusual in the context of a complex highway project. And, importantly, the door to dialogue with landowners about how the detailed design is progressed is not closed – it is very much open for discussion about what can be achieved within the parameters of the DCO application.

1.4 The Applicant's Acquisition Completion Premium Policy

- 1.4.1 Another way in which this Project is different to other major highway projects is the Applicant's Acquisition Completion Premium ('**ACP**') policy, which actively seeks to incentivise early acquisition by agreement.
- 1.4.2 The government has authorised National Highways to offer a financial premium for the purchase of the land required for the Project, where land is acquired before development consent is granted.
- 1.4.3 The purpose of this initiative is to understand whether offering a financial uplift in market value may accelerate the delivery of much-needed nationally significant infrastructure projects ('NSIPs') that are of benefit to the local economy and the UK as a whole.
- 1.4.4 The Applicant is therefore authorised to offer:
- to purchase outright all the land it requires for the construction and mitigation of the A66 NTP Project;
- or, if outright purchase cannot be agreed;*
- to enter into option agreements for the purchase of the land it requires for the construction and mitigation of A66 NTP.
- 1.4.5 The ACP offer will remain open to be accepted until 20 July 2023. Acceptance is deemed to be either exchange of contracts for outright sale of land or entering into an option agreement.
- 1.4.6 The ACP will be set at 20 per cent of the current unaffected market value of land.
- 1.4.7 Other heads of claim, for example: injurious affection/severance; disturbance; statutory loss payments; the vendor's professional fees; Stamp Duty Land Tax ('SDLT'); and VAT will not attract a premium.
- 1.4.8 In March 2022, the Applicant wrote to all freeholders notifying them of the ACP policy and inviting them to enter into negotiations by agreement. Negotiations are ongoing and the status of negotiations was most recently reported to the ExA at Deadline 5 in the Applicant's Compulsory Acquisition Status of Negotiations Schedule [REP5-018].
- 1.4.9 The Applicant appreciates that there is a tension between the incentivisation of the ACP policy and the need for the detailed design of the Project to inform, with certainty, the identification of land which needs to be acquired for the Project.
- 1.4.10 In this context, there is a risk that a landowner agreeing to sell land and be compensated under the ACP policy may part with land which, ultimately, due to the refinement of the design at the detailed design stage, may not be required for the Project. Where that is the case and land becomes

‘surplus’ it would be disposed of by National Highways in accordance with the Crichel Down rules. In summary, and subject to a number of exceptions, the Crichel Down Rules require surplus land to be offered for sale to its previous owner before it is offered for sale on the open market.

- 1.4.11 Landowners are invited, but not obliged, to sell their land pursuant to the ACP policy.
- 1.4.12 The figure below comprises a flow chart which shows the interface between the ACP offer and the detailed design process for the Project.

Timeline showing interface between National Highways' ACP offer and A66 detailed design

