

Planning Inspectorate
National Infrastructure Planning
Temple Quay House (2 The Square)
Temple Quay
Bristol
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BS1 6PN

Our ref: NO/2022/114689/06-L01

Your ref: TR010062

PINS Registration no: 20032193

Date: 9 May 2023

Dear Sir/Madam

**APPLICATION BY NATIONAL HIGHWAYS FOR AN ORDER GRANTING
DEVELOPMENT CONSENT FOR THE A66 TRANS-PENNINE DUALLING PROJECT**

**DEADLINE 7 – FINAL ENVIRONMENT AGENCY PRINCIPAL AREA OF
DISAGREEMENT SUMMARY STATEMENT**

A66 BETWEEN M6 J40 AND A1 SCOTCH CORNER

The Examining Authority has requested that the final version of the Environment Agency Principal Areas of Disagreements Summary Statement (PADSS) be submitted by Deadline 7.

The updated Environment Agency PADSS is included at Annex 1 (page 4). Resolved issues from previous version of the PADSS are identified in Annex 2 (page 5).

Several issues currently remain unresolved, details of which are outlined below. We have also considered whether these issues could still be resolved prior to the close of the Examination.

Flood Risk

Despite our ongoing engagement, we have not yet been able to agree with National Highways (NH) that the hydraulic modelling for Scheme 6 (Appleby to Brough) demonstrates that fluvial flood risk associated with the proposed development can be satisfactorily managed within the Development Consent Order (DCO) boundary. We are continuing to work with NH, but should we be unable to reach agreement prior to the close of the Examination, the inclusion of a pre-commencement Requirement in the DCO to secure a satisfactory scheme for compensatory storage prior to the commencement of development of Scheme 6 would be sufficient to resolve our outstanding concerns. We have included suggested wording for a pre-commencement Requirement at Annex 3.

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To avoid the use of a pre-commencement Requirement, NH have suggested provisions that address our concerns could be secured within the Environmental Management Plan (EMP). This approach would require that we accept the baseline hydraulic modelling for Scheme 6 before the close of the Examination. Acceptance of the baseline hydraulic modelling would then allow for the inclusion of an EMP Action requiring that the Scheme 6 proposals do not increase flood risk above the accepted baseline conditions.

We have discussed this approach with NH, and we do not consider that it offers the same degree of control and clarity as a free-standing pre-commencement Requirement. Our experience has been that problems have arisen on other DCOs where there have been different interpretations of Requirements and we consider that in this case, a free-standing Requirement would be clearer than inclusion within the EMP. In addition to uncertainty over enforcement, the EMP Actions are based on the provision of sufficient information and evidence during the DCO Examination to demonstrate that what is required can be delivered within the DCO boundary. If a scheme could not provide necessary compensatory storage within the DCO boundary to satisfy an EMP Action, we cannot see how this could then be resolved through the EMP.

We cannot agree to the proposed use of the EMP to resolve our outstanding concerns, but we understand that it will be for the Examining Authority (ExA) to determine whether our concerns can be addressed using an Action within the EMP as opposed to a pre-commencement Requirement.

Given the above, there are three potential Scenarios at this point of the Examination that could apply:-

1. The baseline hydraulic modelling, hydraulic modelling of the proposed development and compensatory flood storage proposals for Scheme 6 are agreed with us before the close of the Examination. We could then confirm to the ExA that we consider that sufficient evidence has been submitted to demonstrate that any fluvial flood risk associated with Scheme 6 can be satisfactorily managed as part of the proposed development within the DCO boundary.
2. The baseline hydraulic modelling is agreed with us before the close of the Examination, but the modelling of the proposed development and compensatory flood storage proposals are not. Our acceptance of the baseline hydraulic modelling establishes a fixed point against which flood risk associated with the proposed scheme can be assessed and compensatory storage proposals developed. An additional Action within the Environmental Management Plan (suggested wording at Annex 4) would secure the provision of a satisfactory compensatory storage scheme for Scheme 6, to be agreed with the Environment Agency and which makes flooding no worse than identified through the accepted baseline modelling.
3. The baseline hydraulic modelling, hydraulic modelling of the proposed development and compensatory flood storage proposals for Scheme 6 are not agreed with us before the close of the Examination. We cannot advise the Examining Authority that we are satisfied with the scheme submitted to manage fluvial flood risk at Warcop by the time the Examination closes. We have no evidence to indicate that flood risk could not be managed, but it has not been demonstrated that the solution presented during Examination would be acceptable. We also understand that the solution as presented will change

through the detailed design process, so even if we accept it, we will still need to undertake further work with the applicant to understand the impacts of the detailed proposals on flood risk. In this scenario, to resolve our concerns and ensure flood risk can be satisfactorily managed within the DCO boundary, a pre-commencement Requirement on the DCO (suggested wording at Annex 3) would ensure that a compensatory flood storage scheme for Warcop acceptable to us is agreed before development commences. If NH could not demonstrate that an acceptable scheme could be delivered within the site boundary, it would be for NH to apply to the Secretary of State to vary the proposals through a revision to the DCO. No unacceptable development could take place.

Scenario 1 remains the preferred outcome for all parties, and we will continue to work with National Highways to try and achieve this prior to the close of the Examination.

Should agreement prior to the close of the Examination not be achieved, as outlined in Scenario 3, we would advise the ExA that the inclusion of a pre-commencement Requirement in the DCO to secure a satisfactory scheme for compensatory storage prior to the commencement of development of Scheme 6 would be sufficient to resolve our outstanding concerns.

We do not agree that this issue could be resolved through a new Action within the EMP (Scenario 2).

We will continue to work with NH to formally agree wording of a proposed pre-commencement Requirement and a new EMP Action for inclusion with the Statement of Common Ground at Deadline 8.

Protective Provisions

We have shared the standard wording of our Protective Provisions with NH and with the ExA at Deadline 6. However, we understand that the latest version of the DCO to be submitted by NH at Deadline 7 has not been updated to include our standard Protective Provisions, so this issue remains unresolved at this time.

NH have identified a small number of issues that they wish to discuss with us before our Protective Provisions are included in the final version of the DCO to be submitted at Deadline 8. Based on the changes NH are seeking to our standard wording, we do not anticipate that they raise any concerns that cannot be resolved for Deadline 8.

Yours faithfully

Philip Carter
Planning Officer - Sustainable Places

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Annex 1: Environment Agency Updated PADSS – Outstanding Issues

The principal issue in question	The brief concern held by Environment Agency which will be reported on in full in WR / LIR	What needs to; <ul style="list-style-type: none"> • change, or • be included, or • amended so as to overcome the disagreement	Likelihood of the concern being addressed during Examination
<p>We have not yet agreed that the baseline hydraulic modelling used to inform the Flood Risk Assessment (FRA) is fit for purpose.</p>	<p>We have undertaken an initial review of the hydraulic models used to inform the FRA for each scheme. Our reviews have identified various issues that need to be addressed before we can agree that the baseline models are fit for purpose and that the conclusions of the FRA are based on an appropriate evidence base.</p>	<p>There is insufficient time left in the Examination to allow us to validate all the hydraulic models used to support each Scheme within the DCO application. However, in so far as it relates to our remit and apart from Scheme 6 (Warcop), we are satisfied that the applicant has demonstrated that any fluvial flood risk associated with the proposed development can be satisfactorily managed. The validation of modelling approaches used for Schemes other than Scheme 6 could be completed in accordance with the Environmental Management Plan and Project Design Principles during the detailed design stage.</p> <p>The validation of the modelling approach used for Scheme 6 (Warcop) and the assessment of the suitability of the proposed flood risk mitigation measures is a priority for us and for National Highways. We will continue to work with National Highways to try and resolve the outstanding concerns with the proposals at Warcop in advance of Deadline 8 as a matter of urgency.</p> <p>Update @ 09/05/2023</p> <p>If the hydraulic modelling</p>	<p>High likelihood (if Scheme 6 modelling is agreed in full prior to the close of the Examination or a pre-commencement Requirement is applied to the DCO)</p>

		cannot be agreed before the end of the Examination and NH has not demonstrated that flood risk to Warcop can be managed within the DCO boundary based on the scheme as submitted, we recommend that the ExA secure the approval of a compensatory flood storage scheme using a pre-commencement Requirement as suggested at Annex 3.	
Our review of the Environmental Statement (ES) and supporting information has identified several queries	There are several omissions or errors that require attention and some of the conclusions made within the associated appendices require further explanation to assist our understanding of what has been presented.	<p>National Highways have provided further information to address most of our comments; a small number of queries remain outstanding in relation to the Flood Risk Assessment, and we are continuing to work through these with the applicant for resolution in advance of Deadline 8.</p> <p>Update @ 09/05/2023</p> <p>If the hydraulic modelling cannot be agreed before the end of the Examination and NH has not demonstrated that flood risk to Warcop can be managed within the DCO boundary based on the scheme as submitted, we recommend that the ExA secure the approval of a compensatory flood storage scheme using a pre-commencement Requirement as suggested at Annex 3.</p>	High likelihood (if Scheme 6 modelling is agreed in full prior to the close of the Examination or a pre-commencement Requirement is applied to the DCO)
The Environment Agency is currently not able to agree to disapplication of the Environmental Permitting Regulations 2016 in relation to flood risk activity permits. S150 Planning Act provides that the Environment Agency must consent to the inclusion of any provision within the	We need to have sufficient control over works that fall within the flood risk permitting regime via agreed protective provisions if we are to agree to disapplication.	<p>We continue to work with National Highways to agree an acceptable suite of Protective Provisions to allow us to agree to disapplication.</p> <p>Update @ 09/05/2023</p> <p>NH are seeking to agree a small number of changes to the standard wording of the Environment Agency Protective Provisions and</p>	High likelihood

DCO for the disapplication of any permits that it issues.		based on the changes requested, we do not anticipate there being any risk to reaching resolution of this issue by Deadline 8.	
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Annex 2: Environment Agency PADSS – Resolved Issues

The principal issue in question	The brief concern held by Environment Agency which will be reported on in full in WR / LIR	What needs to; <ul style="list-style-type: none"> • change, or • be included, or • amended so as to overcome the disagreement	Likelihood of the concern being addressed during Examination
National Highways seek to acquire various parcels of land in which the Environment Agency has an interest.	We are in the process of reviewing the details provided in the Book of Reference so at this stage, we are unable to confirm that there are no objections to the acquisition of any land in which we have an interest	This issue has been resolved.	High likelihood
Our review of the Environmental Management Plan (EMP) and supporting information has identified several queries.	We've identified a range of issues with aspects of the EMP and supporting documents (see relevant representations). Concerns include: a) process for consulting on material post DCO approval b) minimum requirements / standards proposed for some measures areas where we consider further information is necessary to satisfy EMP requirements	This issue has been resolved.	High likelihood
The Environmental Statement says that the assessment of flood risk has taken account of the latest climate change allowances	We know that the latest EA guidance on climate change peak rainfall levels has not informed the assessment of flood risk	This issue has been resolved.	High likelihood

<p>The Environmental Management Plan (EMP) proposes a new approach to agreeing a range of details and documents post-DCO approval.</p>	<p>The Statutory Environmental Bodies (Natural England, Environment Agency and Historic England) share general concerns over the National Highways self-approval process as there are many elements of the project still to be worked up.</p>	<p>This issue has been resolved based on the recommended amendments to the draft DCO as suggested by the ExA on 18 April 2023</p>	<p>High likelihood</p>
<p>Our review of the Project Design Principles (PDP) and has identified several queries.</p>	<p>We've identified a range of issues with aspects of the PDP in relation to the wording or content of the general and scheme specific design principles.</p>	<p>This issue has been resolved.</p>	<p>High likelihood</p>

Annex 3: Suggested pre-commencement Requirements for inclusion of DCO

(Environment Agency solution to resolve our concerns)

Flood risk and flood compensation at Warcop

(1) Subject to paragraph (2) below, no part of the authorised development is to commence until a detailed floodplain compensation scheme for that part has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority and the Environment Agency.

(2) No part of the authorised development between Appleby and Brough (Scheme 06 described in Schedule 7 Part 4) is to commence until a detailed floodplain compensation scheme for that part has been submitted to and approved in writing by the Secretary of State, following consultation with the Environment Agency.

(3) The scheme prepared under paragraph (1) must provide the equivalent flood storage volume for any flood waters that would be displaced by the Appleby to Brough scheme during construction and operation for events over an agreed range of conditions with an annual exceedance probability up to and including 1% plus climate change allowance.

(4) The floodplain compensation scheme approved under paragraph (1) must be implemented and maintained for the lifetime of the development.

Annex 4: Suggested REAC Action wording for inclusion in EMP

(National Highways solution to resolve our concerns)

Flood risk

Prior to the commencement of development, a scheme shall be submitted to and approved in writing by the Environment Agency which demonstrates that no part of the Appleby to Brough scheme (Scheme 06 described in Schedule 7 Part 4) will result in any increase in flood risk to people and properties when compared to the baseline scenario as reported in the baseline hydraulic modelling agreed with the Environment Agency [REF]. The development shall be constructed and completed in accordance with the details approved by the Environment Agency.

Flood compensation

(1) No part of the Appleby to Brough scheme shall commence works on-site until a detailed floodplain compensation scheme for that part has been (a) developed, (b) consulted on and agreed with the Environment Agency as described in EMP Section 1.4 and (c) approved by the Secretary of State as part of a second iteration EMP for that part.

(2) The scheme prepared under paragraph (1) must provide the equivalent flood storage volume for any flood waters that would be displaced by the Appleby to Brough scheme during construction and operation for events over an agreed range of conditions with an annual exceedance probability up to and including 1% plus climate change allowance.

(3) The floodplain compensation scheme approved under paragraph (1) must be implemented and maintained for the lifetime of the development.