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The Applicant  
The Environment Agency  
Natural England  
Historic England

Your Ref:

Our Ref: TR010062

Date: 19 May 2023

Dear Sir/ Madam

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

**Application by National Highways for an Order granting Development Consent for  
the A66 Northern Trans Pennine Project**

At Deadline 7, both the Environment Agency (EA) [REP7-176] and Natural England (NE) [REP7-180] in their respective Final Principal Areas of Disagreement Summary Statements (PADSS) requested additional Requirements be inserted into the draft Development Consent Order (draft DCO) [REP7-092] owing to ongoing specific concerns with the application. The parties will be aware that the Examining Authority (ExA) has repeatedly questioned the progress towards agreement on such matters during the Examination. The EA has provided suggested wording it wished to see in an annex to its PADSS, NE did not. The ExA notes that the EA does not consider it appropriate for this matter to be controlled within the Environmental Management Plan (EMP), as proposed by the Applicant at Deadline 8 (EL reference not known at time of writing) reference D-RDWE-15.

Notwithstanding the responses from the Applicant at Deadline 8, the ExA is minded to accept the suggestions of the EA and NE. The ExA considers the additional requests can be controlled within Article 53 of the draft Development Consent Order [REP7-092]. In Annex A to this letter, we propose how the suggested amendments could be accommodated.

In view of the EA's request for a pre-commencement requirement in relation to flood risk and flood compensation on Scheme 06 at Deadline 7 [REP7-176, Annex 3], the Applicant is requested to provide under Rule 17 of the EPR, acceptance of suggested wording in Annex A of this letter, or suitable wording of the level of pre-commencement requirement that is sought by the EA. The ExA requests an agreed position between the parties at the point of submission. This could then be added to any schedule of recommended



amendments to the Applicant's draft DCO in the ExA's Recommendation Report if the ExA decided to recommend this course of action to the Secretary of State. The ExA requests response(s) **by Deadline 9 Friday 26 May 2023** alongside any relevant updated documents.

In view of NE's request for a pre-commencement requirement in relation to provide satisfactory assurance that air quality impacts from nitrogen and ammonia to the North Pennine Moors SAC can be mitigated, the Applicant is requested to provide under Rule 17 of the EPR, acceptance of suggested wording in Annex A of this letter, or suitable wording to either to Article 53 of the draft DCO of the level of pre-commencement requirement that is sought by the NE, or within the EMP if it is capable of being controlled there. The ExA requests an agreed position between the parties at the point of submission. This could then be added to any schedule of recommended amendments to the Applicant's draft DCO in the ExA's Recommendation Report if the ExA decided to recommend this course of action to the Secretary of State. The ExA requests this response(s) **by Deadline 9, Friday 26 May 2023** alongside any relevant updated documents.

At Deadline 8 (EL reference unknown at the time of writing), Historic England stated, in relation to matters of limited oversight and pre-commencement works on archaeology, that *"it has not been possible to resolve these issues in the examination"* and *"amendments to the EMP to require external approval of the internal arrangements to put in place by the Applicant to handle post-consent determinations"* are required. The ExA requests under Rule 17 of the EPR, **also by Deadline 9, Friday 26 May 2023**, a brief joint position statement on the position of the parties and, should the Secretary of State agree with Historic England, how this issue might be addressed within the draft DCO (as the Secretary of State will not be able to amend the EMP).

Following a check of the protective provisions in D7 draft DCO [REP7-092], the ExA has made some minor changes to three of the protective provisions set out in Schedule 9. These seek to correct the term *"temporary stopping up"* which has been used in four places. The Applicant is requested to consult on these changes with the relevant undertaker(s) and provide any comments on the changes **by Deadline 9, Friday 26 May 2023**.

Yours faithfully,

*Richard Allen*

Lead Member of the Examining Authority

## Annex A – Suggested Additions to the draft DCO [REP7-092]

Article	Wording in D7 draft DCO [REP7-092]	ExA Recommended Change
<p>Part 5, Article 53 (12)</p> <p>EMP</p>	<p>None</p>	<p><b>INSERT NEW PARAGRAPH (12)</b></p> <p>(12)</p> <p>(1) <i>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.</i></p> <p>(2) <i>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.</i></p> <p>(3) <i>The floodplain compensation scheme approved under paragraph (1) must be implemented and maintained for the lifetime of the development.</i></p>
<p>Part 5, Article 53 (13)</p> <p>EMP</p>	<p>None</p>	<p><b>INSERT NEW PARAGRAPH (13)</b></p> <p>(13) <i>No part of the authorised development is to commence until an air quality mitigation scheme has been submitted to and approved in writing by the Secretary of State, following consultation with the Natural England. This should be</i></p>

Article	Wording in D7 draft DCO [REP7-092]	ExA Recommended Change
		<p><i>informed by an assessment of impacts from ammonia as well as nitrogen deposition. The approved scheme must be implemented and maintained for the lifetime of the development.</i></p> <p>[N.B this paragraph may not be needed if similar wording is capable of being inserted into the EMP.]</p>
Part 5, Article 53 (14)	<i>(12) In this article-</i>	<del>(12)</del> (14) <i>In this article-</i>
Schedule 9 Part 1 Paragraph 4 (1)	<p><b>Apparatus in stopped up streets</b></p> <p><i>4.—(1) Regardless of the temporary stopping up, alteration or diversion of streets under the powers conferred by article 11 (temporary prohibition, restriction or regulation of use or alteration or diversion of streets), a utility undertaker is at liberty at all times to take all necessary access across any such street and to carry out and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the temporary stopping up, alteration or diversion was in that street.</i></p>	<p><b>Apparatus in stopped-up closed streets</b></p> <p><i>4.—(1) Regardless of the temporary <del>stopping up</del> closure, alteration or diversion of streets under the powers conferred by article 11 (temporary prohibition, restriction or regulation of use or alteration or diversion of streets), a utility undertaker is at liberty at all times to take all necessary access across any such street and to carry out and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the temporary <del>stopping up</del> closure, alteration or diversion was in that street.</i></p>
Schedule 9 Part 3 Paragraph 22 (2)	<p><b>Apparatus of National Grid in stopped up streets</b></p> <p><i>(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 11 (temporary prohibition, restriction or regulation of use or alteration or diversion of streets), National Grid is at liberty at all times to take all necessary access across any such stopped up highway and</i></p>	<p><b>Apparatus of National Grid in stopped-up closed streets</b></p> <p><i>(2) Notwithstanding the temporary <del>stopping up</del> closure or diversion of any highway under the powers of article 11 (temporary prohibition, restriction or regulation of use or alteration or diversion of streets), National Grid is at liberty at all times to take all necessary access across any such <del>stopped up</del> closed</i></p>

Article	Wording in D7 draft DCO [REP7-092]	ExA Recommended Change
	<p><i>to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.</i></p>	<p><i>highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the <del>stopping up</del> closure or diversion was in that highway.</i></p>
<p>Schedule 9 Part 4 Paragraph 38 (2)</p>	<p><b>Apparatus of National Grid in stopped up streets</b></p> <p><i>(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 11 (temporary prohibition, restriction or regulation of use or alteration or diversion of streets), National Grid is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.</i></p>	<p><b>Apparatus of National Grid in stopped up streets</b></p> <p><i>(2) Notwithstanding the temporary <del>stopping up</del> closure or diversion of any highway under the powers of article 11 (temporary prohibition, restriction or regulation of use or alteration or diversion of streets), National Grid is at liberty at all times to take all necessary access across any such <del>stopped up</del> closed highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the <del>stopping up</del> closure or diversion was in that highway.</i></p>