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National Infrastructure Planning  
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BS1 6PN

**Our ref:** NO/2022/114689/07-L01

**Your ref:** TR010062

**PINS Registration no:** 20032193

**Date:** 26 May 2023

Dear Sir/Madam

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

**DEADLINE 9 - RULE 17**

**A66 BETWEEN M6 J40 AND A1 SCOTCH CORNER**

The Rule 17 letter published on 19 May 2023 requires an agreed position between the Applicant and the Environment Agency in relation to the wording of any pre-commencement requirement in relation to flood risk and flood compensation on Scheme 06.

We have discussed wording with National Highways, and we have agreed to the Joint Position Statement dated 26 May 2023 as attached at Annex 1.

Yours faithfully

**Philip Carter**  
**Planning Officer - Sustainable Places**

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(encs)

# Annex 1: Copy of National Highways & Environment Agency Joint Position Statement

## A66 NORTHERN TRANS-PENNINE PROJECT

### JOINT POSITION STATEMENT BETWEEN THE APPLICANT AND THE ENVIRONMENT AGENCY

#### FLOOD RISK AND FLOOD COMPENSATION AT SCHEME 6 (APPLEBY TO BROUGH)

##### 1. INTRODUCTION

- 1.1 This document responds to a request for information from the Examining Authority (**ExA**) under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010 (as amended) dated 19 May 2023 (**the R17**).
- 1.2 In the R17, the ExA requested an agreed position between the Applicant and the Environment Agency in respect of flood risk and flood compensation at Scheme 6 (Appleby to Brough). This document is therefore intended to provide the ExA with a clear understanding of the position of both parties in respect of this matter.
- 1.3 This document has been agreed by both the Applicant and the Environment Agency and has been submitted into the Examination by both parties at Deadline 9.

##### 2. POSITION OF THE PARTIES

- 2.1 The Applicant and the Environment Agency have collaborated positively throughout the Examination. Both parties agree that in principle a secured control mechanism is required in relation to flood risk and flood compensation at Scheme 6.
- 2.2 However, **the parties disagree** as to which document that control mechanism should be contained in.
- 2.3 For the reasons set out in various submissions, including the Closing Submissions [REP8-074] and the overarching response to the R17 submitted at this Deadline 9, National Highways considers the control mechanism to most appropriately be located within the first iteration Environmental Management Plan.
- 2.4 For the reasons set out in, for example, in its PADSS submitted at Deadline 7 [REP7-175], the Environment Agency considers the control mechanism to most appropriately be located within the DCO.
- 2.5 **The parties agree** that the final decision on this point will need to be made by the Secretary of State in determining the DCO application.
- 2.6 However, notwithstanding this disagreement, the parties have worked collaboratively to agree acceptable wording for either scenario on a without prejudice basis.
- 2.7 **The parties agree** that should the Secretary of State determine that the control mechanism should be contained in the first iteration EMP, the wording included as the new commitment in table 3-2: 'Register of environmental actions and commitments', row reference D-RDWE-15, of the revised first iteration EMP submitted at Deadline 8 (REP8-005) is acceptable, namely:

*(1) No part of the Appleby to Brough scheme can start until a detailed floodplain compensation scheme for that part has been (a) developed, (b) consulted on with the Environment Agency and the relevant planning authority as described in Chapter 1 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 suitable flood storage such that flood risk during construction and operation of the Appleby to Brough scheme to any land or property situated downstream is not increased as a result of flood waters that would be displaced by the Appleby to Brough scheme when compared to the baseline scenario as reported in the baseline hydraulic modelling agreed with the Environment Agency (in document HE565627-JBAU-XX-06-RP-HM-S3-P05-0001-Scheme6\_Modelling\_Report accepted on 15th*

May 2023) and arise from events with a magnitude up to and including the 1% annual exceedance probability, plus allowance for climate change in line with Environment Agency guidance applicable at the date the DCO is made.

(3) The floodplain compensation scheme approved under paragraph (1) must be implemented and maintained for the lifetime of the Appleby to Brough scheme unless otherwise agreed with the Environment Agency.

(4) Paragraphs (1) to (3) do not apply where alternative provision is made in the DCO for a detailed floodplain compensation scheme to be approved by the Secretary of State in relation to the Appleby to Brough scheme.

2.8 **The parties agree** that should the Secretary of State determine that the control mechanism should be contained in the DCO, the following wording is acceptable and in that event would need to be included as part of article 54:

(4) No part of the authorised development comprised in S06 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.

(5) The scheme prepared under paragraph (4) must provide suitable flood storage such that flood risk during construction and operation of S06 to any land or property situated downstream is not increased as a result of flood waters that would be displaced by the Appleby to Brough scheme when compared to the baseline scenario as reported in the baseline hydraulic modelling agreed with the Environment Agency (in document HE565627-JBAU-XX-06-RP-HM-S3-P05-0001-Scheme6\_Modelling\_Report accepted on 15th May 2023) and arise from events with a magnitude up to and including the 1% annual exceedance probability, plus allowance for climate change in line with the Environment Agency guidance applicable on the date when this Order was made.

(6) The floodplain compensation scheme approved under paragraph (4) must be implemented and maintained for the lifetime of S06 unless otherwise agreed with the Environment Agency.

(7) In this article “commence” has the same meaning as in article 53(12).

2.9 It should be noted that should the Secretary of State determine the control mechanism should be contained in the DCO, the obligations under the first iteration EMP would fall away as a result of paragraph (4) of that wording: “Paragraphs (1) to (3) do not apply where alternative provision is made in the DCO for a detailed floodplain compensation scheme to be approved by the Secretary of State in relation to the Appleby to Brough scheme.”

2.10 The parties therefore respectfully disagree with the ExA’s proposed drafting contained in Annex A of the R17 in relation to flood risk and flood compensation at Scheme 6. It is considered that the wording agreed between the parties set out above more appropriately addresses issues of flood risk and flood compensation at Scheme 6 to the Environment Agency’s satisfaction.

26 May 2023