



*Response to*

**Secretary of State's  
consultation letter dated 26  
April 2024 for the A1 Morpeth  
to Ellingham Development  
Consent Order**

Unique Reference: 20026920

Transport Action Network (TAN) submitted a Relevant Representation (RR) on the DCO application for the A1 Morpeth to Ellingham and registered as an Interested Party (IP). We would like to request that the Secretary of State accept this late submission at his discretion.

Before the Secretary of State makes a decision whether to grant the Development Consent Order (DCO) for this project, we would like him to consider the following.

## **1. Extremely poor business / economic case, undermining the case and need for the scheme**

Unusually there was no Combined Modelling and Appraisal (ComMA) report included within the DCO application, which is a common feature of other National Highways DCO applications. However the economic case for the scheme is described in limited detail in Part Five of the Case for the Scheme [APP-344]. The economic case for the scheme is extraordinarily weak. The journey time savings are miniscule ( a minute or two) and will be barely perceptible for the motorist. The adjusted Benefit Cost Ratio (BCR) for the scheme which monetises all the costs and benefits, including the cost of building the scheme, the journey time savings, the safety benefits, environmental costs, Journey Time Reliability (JTR) and Wider Economic Benefits (WEB) is just 0.8! This means that for every £1 spent on the scheme, the public will only see an 80p return in economic benefits. The A1 Morpeth to Ellingham scheme has the lowest BCR of all the schemes in RIS2. It is also in the lowest Value for Money bracket of the DfT's value for money framework, ranked as "Poor".

We would argue strongly that the need and case for the scheme has not been made, as the economic case is so weak.

Paragraph 4.5 of the National Network National Policy Statement (NNNPS) provides that:

*"Applications for road and rail projects (with the exception of those for SRFIs, for which the position is covered in paragraph 4.8 below) will normally be supported by a business case prepared in accordance with Treasury Green Book principles. This business case provides the basis for investment decisions on road and rail projects. The business case will normally be developed based on the Department's Transport Business Case guidance and WebTAG guidance. **The economic case prepared for a transport business case will assess the economic, environmental and social impacts of a development.** The information provided will be proportionate to the development. **This information will be important for the Examining Authority and the Secretary of State's consideration of the adverse impacts and benefits of a proposed development.**"*

It is a mandatory material consideration to consider the economic case for the scheme, as per s104(3) and s104(4) of the Planning Act 2008 (PA2008) and 4.5 of the NNNPS.

## 2. Impact on ancient woodland and veteran trees

Paragraph 5.63 of the new 2024 undesignated version of the NNNPS states that:

*“The Secretary of State should not grant development consent for any development that would result in the loss or deterioration of irreplaceable habitats including ancient woodland and ancient and veteran trees **unless there are wholly exceptional reasons (for example, where the public benefit would clearly outweigh the loss or deterioration of habitat) and a suitable compensation strategy exists.**”*

Given the wholly **unexceptional** case for the scheme outlined above, and that the public benefit demonstrably does not outweigh the loss of ancient woodland and veteran trees, the scheme runs counter to paragraph 5.63 of the undesignated NNNPS 2024.

## 3. Important Update since the Examination and Recommendations Report

### 3.1 Friends of the Earth Ltd v Secretary of State for Energy Security and Net Zero [2024] EWHC 995 (Admin)

On 3 May 2024, Mr Justice Sheldon handed down a judgement (“**Net Zero II**”) in the case of **Friends of the Earth Ltd v Secretary of State for Energy Security and Net Zero** [2024] EWHC 995 (Admin). The **Net Zero II** judgement followed a previously successful legal challenge in **R (Friends of the Earth) v SSBEIS** [2022] EWHC 1841 (Admin) (“**Net Zero I**”).

In the **Net Zero I** judgement, the Court ordered the publication of a lawful section 14 report, under the Climate Change Act 2008 (“**CCA 2008**”). The Secretary of State for ESNZ purported to comply with that order by publishing the Carbon Budget Delivery Plan (“**CBDP**”) in March 2023.

The **Net Zero II** judgement held that the **CBDP** was unlawful, and the Government has been ordered to produce a revised and legally compliant plan within 12 months (ie May 2025).

### 3.2 Implications of Net Zero I and Net Zero II judgments for the A1 Morpeth to Ellingham DCO decision

Taken together the **Net Zero I** and **Net Zero II** judgments mean that:

- The relevant section 13 and section 14 exercises under the Climate Change Act 2008 (“**CCA 2008**”) leading to the CBDP were never lawful, and remain unlawful, until a revised and legally compliant plan has been made by the Government. In short, the CBDP is unlawful, and breaches sections 13 and 14 of the **CCA 2008**.
- The UK Government has never had in place a lawful plan to meet Carbon Budget Six.
- No set of measures exist for the UK to meet in full its relevant international climate obligations (as imposed by Article 4(2) of the Paris Agreement) including the 2030 Nationally Determined Contribution (“**NDC**”). The **CBDP** only contained quantified measures to meet 92% of the 2030 NDC with insufficient unquantified measures to close the gap. So, even if lawful, the **CBDP** would not assist in fully delivering the 2030 **NDC**. As the **CBDP** has been found unlawful, there is no lawful plan to deliver the **NDC**. It is therefore the case that the UK currently has no set of domestic mitigation measures that are lawfully geared to meeting the **NDC** target which is a breach of international law.

### **3.3 Significance of the carbon emissions from the A1 Morpeth to Ellingham scheme**

TAN argues that the significance of the carbon emissions from the scheme have therefore been incorrectly assessed and can no longer be relied upon. With the Government unable to rely on the policies in the unlawful **CBDP**, the increase in emissions from the A1 Morpeth to Ellingham scheme would materially affect the UK’s ability to meet its carbon budgets, contrary to 5.18 of the National Networks National Policy Statement (**NNNPS**).

Any increase in carbon emissions takes us in the wrong direction and are therefore “significant” and will make a material difference, when we need to be doing much more to rapidly reduce emissions, especially after the **Net Zero II** judgement.

## **4. Conclusion**

It is TAN’s position that the Secretary of State is unable to proceed in making a decision on whether or not to grant the DCO for the A1 Morpeth to Ellingham scheme. He must consult with the Applicant, and require that the Applicant provides a full and new set of evidence on how it considers that the DCO may lawfully be decided, with its increases in carbon emissions, both from construction and operation, when the Secretary of State can make no current reliance upon:

- A lawful CBDP or plan to deliver the UK climate targets and budgets.
- A lawful plan to deliver Carbon Budget Six.
- A set of domestic GHG mitigation measures that are lawfully geared to meeting the NDC target.

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Transport Action Network provides free support to people and groups pressing for more sustainable transport in their area and opposing cuts to bus and rail services, damaging road schemes and large unsustainable developments

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