



Department
for Transport

Great Minster House
33 Horseferry Road
London, SW1P 4DR

Telephone: 07866 013025
Email: transportinfrastructure@dft.gov.uk
Web: www.gov.uk/dft

To: National Highways, The Public
Trustee, Ministry of Justice,
Penrith Properties Ltd., Dr.
Anthony Richard Leeming and
Lady Elizabeth Mary Cecilia
Leeming, United Utilities Water
Ltd., North Yorkshire Council,
Westmorland and Furness
Council, and Durham County
Council

Date: 11 August 2023

Dear Sir or Madam,

**PLANNING ACT 2008 AND THE INFRASTRUCTURE PLANNING (EXAMINATION
PROCEDURE) RULES 2010**

Application by National Highways (“the Applicant”) for an Order granting Development Consent for the proposed A66 Northern Trans-Pennine Project (“the Proposed development”).

CONSULTATION SEEKING COMMENTS FROM THE APPLICANT, THE PUBLIC TRUSTEE, MINISTRY OF JUSTICE, PENRITH PROPERTIES LTD., DR. ANTHONY RICHARD LEEMING AND LADY ELIZABETH MARY CECILIA LEEMING (AS TRUSTEE OF THE AR LEEMING VOLUNTARY ASSOCIATION), UNITED UTILITIES WATER LTD., NORTH YORKSHIRE COUNCIL, WESTMORLAND AND FURUNESS COUNCIL, AND DURHAM COUNTY COUNCIL

REQUEST FOR INFORMATION

Following the completion of the Examination on 29 May 2023, the Examining Authority (“ExA”) submitted to the Secretary of State on 7 August 2023 a Report and Recommendation in respect of its findings and conclusions on the above application. In accordance with section 107 of the Planning Act 2008, the Secretary of State has

three months from 7 August 2023 to determine the application. There are outstanding issues on which the Secretary of State would be grateful if the parties identified in bold could provide an update or further clarification. The issues are grouped by topic heading.

HABITATS REGULATIONS ASSESSMENT

1. The Secretary of State has received from the Planning Inspectorate the attached letter dated 14 July 2023 from Natural England to the ExA on the [Habitats Regulations Assessment Supplementary Note](#) prepared by the Applicant and submitted during the examination of the application.
2. The Secretary of State notes that, in this letter, Natural England confirmed that it remains in disagreement with the Applicant's conclusion of no Adverse Effect on Integrity on the North Pennine Moors Special Area of Conservation ("SAC") from air quality impacts that may occur as a result of the Proposed Development and, consequently, the Applicant's conclusion that no mitigation measures are required. The Secretary of State would draw the Applicant's attention in particular to Natural England's comments seeking clarification on how a permanent road can cause only a short or temporary impact on the North Pennine Moors SAC, and whether any mitigation measures have been explored. In light of Natural England's comments, The Secretary of State requests:
 - the **Applicant** provides comments on the letter from Natural England and provides an update to their Habitats Regulation Assessment to reflect any agreed mitigation measures to avoid or reduce any adverse effects that may occur as a result of the Proposed Development;
 - in the event of Natural England and the Applicant concluding that appropriate mitigation measures cannot be secured, further information from the **Applicant** setting out their case for derogation; and
 - If the above is not possible, comments from the **Applicant** on the removal of Scheme 06 from the Development Consent Order to address this issue and any impacts this would have on the benefits expected from the Proposed Development and conclusions in the Environmental Statement submitted in support of the Application.

COMPULSORY ACQUISITION

Land owned by The Public Trustee

3. The Secretary of State notes that land owned by the Public Trustee is comprised in plot 07-02-45 which is shown on Sheet 2 (of 3) of the [Applicant's Land Plans for Scheme 07](#) and on Sheet 1 (of 1) of the [Crown Land Plans for Scheme 07](#). It is also identified in Part 4 (Crown Interests) of the [Book of Reference for Scheme 07](#). The Secretary of State is aware that during the examination, the Applicant submitted [a representation](#) to advise that the Public Trustee did not consider Plot 07-02-45 to be Crown land. The Secretary of State is also aware that The Public

Trustee is an associated office of the Ministry of Justice. In light of this, the Secretary of State requests:

- an update from the **Public Trustee** and the **Applicant** on the position of this matter; and
- the **Ministry of Justice** to confirm whether the Public Trustee land within the order limits of the Application is Crown land.

Penrith Properties Limited

4. The Secretary of State notes that Penrith Properties Limited owns land within Scheme 0102 and made representations during the examination in relation to plot 0102-01-20. The Secretary of State is aware that prior to the examination, this affected party did not receive a consultation invitation under section 42 or a notice under section 56 of the Planning Act 2008. The Secretary of State notes that [Penrith Properties Limited maintains that the final Book of Reference entry for plot 0102-01-20 is incorrect](#). The Secretary of State requests:

- the **Applicant** and **Penrith Properties Limited** to confirm whether the address and contact details in the entry for plot 0102-01-20 contained in the final Book of Reference is correct; and
- if the entry is not correct, the Secretary of State requests the **Applicant** to submit a revised Book of Reference highlighting any changes.

Dr Anthony Richard Leeming and Lady Elizabeth Mary Cecilia Leeming

5. The Secretary of State notes that discussions between the Applicant and this affected party regarding Plot 0102-02-34 remained outstanding at the close of examination [[REP9-058](#)]. The Secretary of States asks the **Applicant** and the **affected party** to provide an update on the status of their discussions.

SIDE AGREEMENTS

United Utilities water limited (“Uuw”)

6. The Secretary of State is aware that during the examination, Uuw raised concerns regarding access to its wastewater plant at Penrith as a result of the Applicant’s change request DC-05 which would result in the removal of the existing junction from the A66 and provide alternative access from the B6262. The Secretary of State notes that [Uuw considered](#) that it might be possible to withdraw its objection with a Side Agreement in place, but that their discussions with the Applicant remained ongoing at the end of the Examination. The Secretary of State requests that:

- **Uuw** and the **Applicant** provide an update on their discussions; and
- if agreement has not yet been reached, for confirmation as to whether **Uuw** and the **Applicant** think it likely that a Side Agreement will be successfully completed and, if so, when an agreement might be concluded.

North Yorkshire Council, Westmorland and Furness Council and Durham County Council

7. The Secretary of State is aware that at the close of the examination confirmation that side agreements between the Applicant and North Yorkshire Council, Westmorland and Furness Council and Durham County Council had not been received. The Secretary of State requests:
- the **Applicant, North Yorkshire Council, Westmorland and Furness Council** and **Durham County Council** provide an update on their negotiations; and
 - if Side Agreements remain outstanding, that the **Applicant, North Yorkshire Council, Westmorland and Furness Council**, and **Durham County Council** confirm whether they consider agreement can be reached and, if so, when the agreements might be finalised.

DEADLINE FOR RESPONSES

8. Responses to the requested information should be submitted by email only to A66Dualling@planninginspectorate.gov.uk by 23.59 on 25 August 2023.
9. Responses will be published on the A66 Northern Trans-Pennine project page of the National Infrastructure Planning website as soon as possible after 25 August 2023:
- [A66 Northern Trans-Pennine Project | National Infrastructure Planning \(planninginspectorate.gov.uk\)](https://www.planninginspectorate.gov.uk/a66-northern-trans-pennine-project)
10. This letter is without prejudice to the Secretary of State's consideration of whether to grant or withhold development consent for the proposed A66 Northern Trans-Pennine Project. Nothing in this letter is to be taken to imply what the eventual decision might be or what final conclusions the Secretary of State may reach on any particular issue which is relevant to the determination of the application.

Yours faithfully,

Nathan Dyer
Transport Infrastructure Planning Unit

Date: 14 July 2023
Our ref: 15928
Your ref: TRo10062.



A66dualling@planninginspectorate.gov.uk

BY EMAIL ONLY

Hornbeam House
Crewe Business Park
Electra Way
Crewe
Cheshire
CW1 6GJ

T 0300 060 3900

Dear Mr. Allen,

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

Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

Natural England informed the Examining Authority that we would respond to the Habitats Regulations Assessment Supplementary Note that we received on the 23rd of May 2023.

Natural England note that National Highways have taken on board our advice and included the specific exceedances from the different pollutants to the North Pennine Moors SAC, noting that Nitrogen is 18%, Ammonia is 13.7% and Oxides of Nitrogen is 12.5% of the relevant critical level or load in-combination. However, Natural England remains in disagreement that the arguments produced justify that there is no need for mitigation and a conclusion of no Adverse Effect on Integrity.

Natural England understand that the in-combination assessment has been addressed in the HRA note and agree that as long as the in-combination assessment includes all committed developments impacting traffic flows and emissions from other sources beyond the current background data provided by APIS then the in-combination assessment methodology is acceptable.

Natural England welcome the inclusion of the potential threats from the three pollutants in the HRA note. However, the HRA still needs to acknowledge why these potential threats will not occur as a result of the predicted increase from this project to the North Pennine Moors SAC if the HRA is concluding that there is no Adverse Effect on Integrity.

The HRA note has updated the area of blanket bog and mosaic habitat that is within 200m of the road, and which is impacted by the scheme to 8.25ha. Blanket Bog and its surrounding mosaic habitat is an irreplaceable habitat, and the main designated feature of the North Pennines Moors SAC, it cannot and should not be sacrificed because it is a less than 1% area of the entire SAC. It is the relative importance of the area affected in terms of the rarity, location, distribution, vulnerability to change and ecological structure which is most important. The contribution the affected area makes to the overall integrity of the site (and hence that site's contribution to the conservation status of that habitat type) should exert a stronger influence over decision makers than the spatial extent of the effect (see NECR205). This analysis hasn't been adequately covered in the HRA. It is important to assess the potential for the 8.25ha of affected designated habitat and surrounding habitats to return to favourable condition. The project should not hinder the sites' ability to reach its

conservation objectives, if it does then it is not possible to reach a conclusion of no adverse effect on integrity.

Natural England do not agree that concluding that 8.28ha of blanket bog and surrounding mosaic as a small part of the SAC is an appropriate argument to justify a conclusion of no adverse effect on integrity on its own. The appropriate assessment needs to explore the ecological function of this section of the site, including the level and function of species on this site and its ability to reach favourable condition.

The statement that the majority of threats and pressures are related to habitat management and that the existing road already produces harmful effects do not negate the need to mitigate for the further harmful emissions reported in this assessment. Again, the project must not undermine the ability to achieve the conservation objectives in the future.

Paragraph 5.1.5 states that the project has a short term impact on the SAC and that the long-term effects of the project on land adjacent to the ARN are not permanent. Natural England need further clarification on how these conclusions have been met, temporary impacts are normally defined as short term peaks in emissions such as construction or demolition activities. National Highways need to explain and justify how a permanent road can cause only a short or temporary impact.

As Natural England do not agree with the conclusions of no Adverse Effect on Integrity, we are interested to understand whether any mitigation options have been explored.

We would be happy to comment further should the need arise but if in the meantime you have any queries, please do not hesitate to contact us.

For any queries relating to specific advice in this letter only, please contact Niamh Keddy at [REDACTED]. For any new consultations, or to provide further information on this consultation please send your correspondences to consultations@naturalengland.org.uk.

Yours sincerely,
Niamh Keddy
Sustainable Development Senior Advisor

Annex 1 – Natural England’s Air Quality Advice May 2023

Natural England have reviewed the advice we have provided in both our relevant and written representations and included these comments below. We have also reviewed the technical note produced for ammonia, received in April 2023 and have provided a summary of our outstanding concerns below. Natural England have cross referenced comments provided in the SoCG and have highlighted where our concerns still stand in relation to the HRA.

The arguments made to justify no need for mitigation and a conclusion of NAEOI, irrespective of the current exceedance of the critical load and a calculated increase in N deposition (18%) to sensitive designated feature (blanket bog) at North Pennines SAC remain inadequate (as fed back in RR and WR).

The statement that the majority of threats and pressures are related to habitat management and the existing road already produces harmful effects do not negate the need to mitigate for the further harmful emissions reported in this assessment. The project must not undermine our ability to achieve the conservation objective in the future. Compounding this, the exceedances of 1% of the critical load identified within 60m of the SAC are the impact alone, not in-combination with other existing and committed sources of the same pollutants.

The argument that the area receiving an additional loading of nitrogen is “small” lacks adequate consideration. It is stated that the area of blanket bog only, not recorded as a mosaic with acid/marshy grassland, effected is 4.01ha. This suggests the area covered will be underestimated – blanket bog in a mosaic with other flora/habitat types still represents the designated, sensitive features we must protect and enhance.

NECR210 also clearly states that in the case of bog habitat, the observed relationship between species richness and nitrogen deposition is not curvi-linear. Bog specialists do not believe species richness is an appropriate metric to use in assessing change at bog sites because there are very few species present in this habitat type. This is not an appropriate evidence source to apply as part of this assessment.

We do not agree than an additional 18% exceedance (alone) of the critical load to a sensitive, designated feature where the current background is already almost 4x this critical load represents a nitrogen contribution which can be considered negligible.

The HRA AA only refers to nitrogen deposition as the relevant threat mechanism. This is incorrect as first fed back to the project team in June 2021. Both NO_x and ammonia are emitted from road traffic. Whilst these pollutants do contribute to total nitrogen deposition, they also have direct toxic effects to plants at aerial concentrations. These thresholds for harm are identified as critical levels – the assessment reports an exceedance of the NO_x threshold and a subsequent technical note (April 2023) reports exceedance (13.7%) of the ammonia lower critical level set for lichens and bryophytes. Neither of these exceedances are subsequently mitigated or a justification provided as to why the harmful levels identified are not of concern. The impact of ammonia to higher plant features have not been assessed.

Section 4, paragraph 4 of the ammonia technical note states that ‘nutrient nitrogen modelling reported in the ES and the HRA’ to clarify, ammonia represents a new additional exceedance, therefore ammonia and N deposition will need to be considered separately in the HRA and have mitigation applied – they are different pollutants with different mechanisms of impact.