



Nathan Dyer
Transport Infrastructure Planning Unit

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Sent by email to:
A66Dualling@planninginspectorate.gov.uk

Copied to transportinfrastructure@df.gov.uk

Dear Mr Dyer,

**A66 Northern Trans-Pennine Project TR010062 (“the Project”)
DCO Application (“the Application”)**

Applicant’s response to the Secretary of State’s Request for Information dated 11 August 2023 (“the Rfi”)

I am writing in response to the Rfi dated 11 August 2023 issued by the Secretary of State to National Highways and others in relation to the Application for the A66 Northern Trans-Pennine Project.

The Rfi requests information relating to three aspects of the Project, specifically; for the Applicant to address Habitats Regulations Assessment (“HRA”) matters, and for the Applicant and other named parties to provide updates relating to identified Compulsory Acquisition and Side Agreements.

In this response the Applicant addresses those requests in turn, as well as providing a progress update on other Compulsory Acquisition and Side Agreement matters.

Attached to this response are documents, as set out below, that also form part of the Applicant’s submission. Those documents are:

- **Annex 1:** Position Statement from the Applicant regarding the Habitats Regulations Assessment and North Pennine Moors SAC and the associated Appendix A entitled ‘Habitats Regulations Assessment Second Supplementary Note – North Pennine Moors SAC/SPA’
- **Annex 2:** Updated Book of Reference Volume One: Scheme 0102 (tracked)
- **Annex 3:** Updated Book of Reference Volume One: Scheme 0102 (clean)

Item 1 – HRA matters

The Applicant has, following the close of Examination, continued to engage in active discussions with Natural England in respect of HRA matters. Specifically, as noted in the RfI, the focus of these discussions has been on the potential impacts of the Project on the Blanket Bog and surrounding mosaic habitat feature of the North Pennine Moors Special Area of Conservation (“**SAC**”). The Applicant has also considered Natural England’s letter to the Planning Inspectorate dated 14 July 2023.

The Applicant wishes to re-state its confidence in its position, based on the detailed assessment undertaken throughout the Examination and set out in the HRA technical and supplementary notes¹, submitted and examined, that the Project would not have an adverse effect on integrity of the site (“**AEoI**”) or hinder Natural England’s ability to achieve the conservation objectives at the North Pennine Moors SAC in respect of air quality impacts.

Based on the available evidence, the Applicant concludes no adverse impacts beyond reasonable scientific doubt. This position is reiterated and supported by the information presented in Appendix A (Habitats Regulations Assessment Second Supplementary Note – North Pennine Moors SAC/SPA) of the Applicant’s Position Statement at Annex 1 to this letter. These documents also suggest a scope, not as mitigation or compensation but as an assurance of there being no AEoI, for certain site enhancement measures which could be carried out to increase the resilience of the part of the SAC concerned in accordance with the Natural England, Site Improvement Plan (UK0030033 North Pennine Moors SAC).

The enhancement measures, in the form of a comprehensive Blanket Bog and Land Management Plan, could be imposed by the Secretary of State should he consider them necessary to give him sufficient assurance, in his capacity as competent authority for the purposes of the Conservation of Habitats and Species Regulations 2017, of there being no AEoI. The Position Statement contains wording that could be added to the DCO in that eventuality.

In relation to the Secretary of State’s three requests, National Highways responds individually on each one below:

¹ ,HRA Documents:

- 3.5 Habitat Regulations Assessment Stage 1 Likely Significant Effects Report, document APP-234
- 3.6 Habitat Regulations Assessment Stage 2 Statement to Inform Appropriate Assessment, document APP-235
- 7.52 Habitats Regulations Assessment Supplementary Note – North Pennine Moors SAC/SPA, document REP9-036
- 8.5 Change Application – Habitats Regulations Assessment (HRA) Technical Note, document CR1-018
- 8.4 Habitat Regulations Assessment Technical Note (Rev 2) (Clean), document REP7-172

- *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:*
 - We refer to the HRA technical and supplementary notes set out above and in the appended documents;
- *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;*
 - Derogation is not considered necessary by the Applicant, given the conclusion of there being no AEoI; 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.*
 - The Applicant and Natural England both agree that the removal of Scheme 06 is not considered necessary or appropriate as the designated Blanket Bog, which forms part of the SAC, is outside the Order limits and located between Schemes 06 and 07 and these HRA issues are project-wide rather than directly related or restricted to a particular scheme.

Item 2 – Compulsory Acquisition

Land Owned by The Public Trustee

The position regarding land required for Scheme 07 of the Project, and owned by the Public Trustee, remains largely as set out in the Applicant's examination submission REP9-037 (Document 7.53: Update on land owned by the Public Trustee), save that in relation to the court application referenced in paragraph 8.1.2 of that document, the suite of documentation comprising the court application has now been approved by the Public Trustee and was subsequently submitted to the court on 28 July 2023.

On 1 August 2023, the solicitors for the Public Trustee received correspondence confirming the court's receipt of the application documentation and noting that a copy thereof had been served by the court on the Applicant, with a deadline of 15 August 2023 for the submission of any response from the Applicant to the Public Trustee's application. The Applicant provided a brief response to the court confirming its agreement to the terms of the Order sought by the Public Trustee. On 17 August 2023 the Applicant received notification that the court hearing for this matter has been scheduled for 6 September 2023 at the County Court of Darlington.

Neither the Applicant nor the Public Trustee has any reason to assume that the Public Trustee's application to the court will not be successful in securing the Court Order, which

is necessary to authorise the Public Trustee to transfer the required land to the Applicant, in accordance with the agreed terms of the proposed sale thereof.

Penrith Properties Limited

The Applicant has contacted Penrith Properties Limited regarding their up to date contact details and address relating to Plot 0102-01-20 and has been provided with revised details.

The Applicant has updated the Book of Reference Volume One: Scheme 0102 accordingly providing tracked and clean versions each marked Revision P05 as Annex 2 and Annex 3 to this letter.

Dr Anthony Richard Leeming and Lady Elizabeth Mary Cecilia Leeming

The position regarding the need for Plot 0102-01-34 as ecological mitigation (woodland planting) for the Project remains as set out in the Applicant's examination submission REP5-027 (Document 7.31: Issue Specific Hearing 3 (ISH3) Post Hearing Submission – Response to Examining Authority's Request Under Agenda Item 3.2: Environmental Mitigation Area Sizes and Locations). The Applicant provided more detailed information on the possible extent of woodland loss within the vicinity of Plot 0102-01-34 to Dr Leeming and his land agent, Mr M Walton, and further explanation of the methods used to calculate mitigation land required, during a meeting on 22 May 2023. An explanation was provided that the actual woodland loss from the Project will eventually depend on detailed design, which would aim to retain woodland where practicable. The Applicant met Dr Leeming again on 21 August 2023 and reiterated this position. A commitment was made at the meeting to follow up with more detailed information on woodland loss including a plot-by-plot schedule. This is to be provided to Dr and Lady Leeming during week commencing 28 August 2023. Whilst an agreement has not yet been reached, a commitment to continue engagement remains to address Dr Leeming's request for evidence to justify the requirement for mitigation.

Scheme 0102 includes a significant extent of woodland loss which requires mitigation as set out in the Environmental Statement Biodiversity Chapter 6 (3.2 Environmental Statement Chapter 6 Biodiversity, document APP-049). Dr Leeming has proposed an alternative arrangement for mitigation planting within and adjacent to Plot 0102-01-34. An appropriate alternative has not been formally offered or secured. Meaningful engagement continues to resolve these matters through a side agreement. Both parties aim to secure such agreement by the end of September 2023.

As detailed in its Post Hearing Submissions for Compulsory Acquisition Hearing 1 [REP1-007], the Applicant submits that, having regard to s122(3) of the Planning Act 2008, there is a compelling case in the public interest for the land sought in the Order Limits to be acquired compulsorily and that the public benefit of this acquisition outweighs the private loss. As is explained in section 6.3 of the Statement of Reasons [REP9-026], the Applicant recognises that the Project will have an impact on privately held interests in land and understands that this is very difficult for those persons whose ownership and

occupation of land is affected by the Project. However, it would not be possible for the Project to be delivered without affecting land which is currently privately owned.

The Applicant acknowledges the value of the existing land use of plot 0102-01-34 but notes that the loss of these private interests can, and will, be fairly and appropriately compensated through the payment of statutory compensation under the Compensation Code. The wider public benefits of the Project can only be delivered if compulsory acquisition powers are authorised.

The Applicant considers that on balance, the wider public benefits outlined in the Case for the Project [APP-008] that would be realised, if the Project was delivered, would outweigh the losses suffered by private individuals, both on an individual basis, and cumulatively across the Project as a whole.

In addition, and as set out in its Post Hearing Submissions for Compulsory Acquisition Hearing 2 [REP5-023], the Applicant notes that where compulsory acquisition powers are sought, these are the minimum necessary to secure delivery of the Project, based on available knowledge and understanding of the Project requirements at the preliminary design stage (the stage reached for DCO application and examination). The minimum extent of land required for compulsory acquisition purposes currently represents however a worst-case scenario and, once more information becomes available, as the detailed design of each scheme is progressed, the Applicant will be certain of the land required and will only acquire what is needed to deliver the Project.

As set out in article 19(1) and 22 of the draft Development Consent Order [REP9-013], the Applicant's powers of compulsory acquisition only apply to so much of the Order land as is required to deliver or facilitate the authorised development. The Applicant must therefore demonstrate that the land in question is required at the detailed design stage to realise the Project for the purpose that the power of compulsory acquisition is given. The Applicant notes, as it did in its Post Hearing Submissions for Compulsory Acquisition Hearing 2 [REP5-023] at pages 28 and 29, that this same approach has been reflected in several Development Consent Orders that were successfully applied for by the Applicant.

Item 3 – Side Agreements

United Utilities Water Limited (“UU”)

The Applicant is in negotiations on its proposed side agreement with United Utilities Water Limited ('UU') and returned comments to UU's lawyers on 22 August 2023 in relation to a few outstanding points. The Applicant anticipates being able to complete this side agreement before the end of the determination period.

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

The Applicant can confirm agreements have not yet been reached with the local authorities (Westmorland and Furness Council, Durham County Council and North Yorkshire Council) regarding the side agreements. Discussions are ongoing, and we are confident that agreement can be reached. We are intending to finalise the agreements by

Friday 15 September 2023. This date has been agreed with all three local authorities. Any delays to this date will be communicated to the Secretary of State.

Other Statutory Undertakers

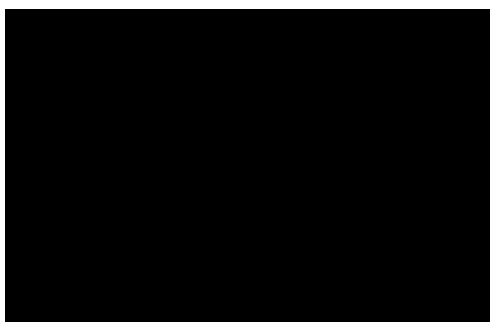
The Applicant notes that the following information has not been expressly requested in the RfI. Notwithstanding, the Applicant considers that it may be beneficial to the Secretary of State to receive an update on the following side agreements with statutory undertakers:

The Applicant has completed side agreements with National Gas Transmission Plc, Network Rail Infrastructure Limited, National Grid Electricity Transmission Plc, Northern Powergrid (Northeast) Plc and Northumbrian Water Limited since the end of the DCO Examination, all of whom have subsequently withdrawn their objections to the Project.

The Applicant has recently received confirmation from Shell Chemicals UK Limited ('Shell'), via Shell's lawyers, that a crossing agreement is required by Shell to be in place before the Applicant can commence the works authorised by the DCO, if made. The Applicant is currently awaiting a set of Heads of Terms from Shell, following which the parties can begin meaningful negotiations. In the meantime, the Applicant continues to issue information to Shell in relation to detailed design on an ongoing basis, to assist with the preparation of these Heads of Terms. The Applicant anticipates moving swiftly with the negotiations with Shell, once these commence, and continues to engage with Shell's asset management and legal teams.

If you have any further queries or comments, I can be contacted by email at A66NTP@nationalhighways.co.uk.

Yours sincerely



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A66 Northern Trans-Pennine Project