

Nathan Dyer
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Sent by email to:
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Dear Mr Dyer,

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

**Applicant's response to the Secretary of State's third Request for Information
dated 15 September 2023 (the RfI)**

I am writing in response to the RfI dated 15 September 2023 issued by the Secretary of State to National Highways (**the Applicant**) in relation to the Development Consent Order (**DCO**) Application for the A66 Northern Trans-Pennine Project.

The RfI requests the Applicant to provide a response in relation to the following matters:

- the points made by Natural England (**NE**) with regard to the proposed Blanket Bog Land Management Plan (**BMP**) and the impacts of the Project on the North Pennine Moors Special Area of Conservation (**SAC**) specifically the requests for information to address the gaps in information set out by NE, information to support the case for derogation and the provision of details of compensation measures that are agreed with NE, and draft provisions for the DCO in order to secure such agreed compensation measures;
- whether an update is required to Chapter 5 of the Applicant's Environmental Statement (**ES**), in the context of the 'Particulate Matter' at section 6 of Dr Boswell's response of 8 September 2023; and
- an update on the completion of side agreements with Dr Richard Leeming and Lady Elizabeth Mary Cecilia Leeming, North Yorkshire Council, Westmorland and Furness Council and Durham County Council.

In this letter the Applicant provides responses to these matters in turn. In addition, the Applicant has taken this opportunity to respond to any outstanding matters raised in the representations submitted by other Interested Parties in response to the Secretary of State's second Request for Information dated 30 August 2023. These include:

- the Public Trustees
- United Utilities
- Climate Emergency Policy and Planning
- Mr and Mrs Nicholson
- Anne Robinson, Louis Martin, Rebecca Ferson, Transport Action Network and William Ferson
- Councillor Richard Bell

NE – BMP and North Pennine Moors SAC

The Applicant notes the three specific queries in relation to the North Pennine Moors SAC directed to it by the Secretary of State in the RfI. The Applicant has continued to work constructively with NE to seek to resolve matters on this topic.

The Applicant remains confident in its conclusions that the Project would not give rise to an adverse effect on the integrity of the North Pennines Moors SAC, as articulated in various submissions to date including to the previous RfI. Whilst the Applicant has noted NE's recent submissions in respect of the perceived gaps in the information to date, the Applicant considers that these points have been addressed and commented on previously and that there is no additional information that the Applicant can provide that will conclude these issues to NE's satisfaction.

In this context, the Applicant openly acknowledges the Secretary of State's position that he is minded to agree with NE's position on this topic, and the requests for information in respect of a potential Habitats Regulations Assessment (**HRA**) derogation case that result from that.

As such the Applicant is, in response to this, in the process of compiling information, in consultation with NE, to support what the Applicant considers to be a clear and robust HRA derogation case (including details on proposed compensation measures and how these could be secured through additional drafting in the DCO), which it will be submitting to the Secretary of State, albeit on a without prejudice basis but which the Secretary of State could rely upon if required. However, whilst working pro-actively, the Applicant is regrettably not in a position to provide that information at this time.

In this light, the Applicant requests that the Secretary of State agrees to an extension of the deadline, by which information to support a HRA derogation case can be submitted to him, to Friday 27 October 2023.

'Particulate Matter'

As part of Chapter 5 of the ES [APP-048], the Air Quality assessment assessed the impact of a range of pollutants, including the fine particulate matter PM_{2.5}. The assessment modelled the impact of vehicle emissions on key receptors in and around the A66 and the affected road network, in line with best practice.

PM_{2.5} is defined as particulate matter with an average aerodynamic diameter of up to 2.5 µm. This is a subset of PM₁₀ (a particulate matter with an average aerodynamic diameter of up to 10 µm). PM_{2.5} has significant health impacts, as it is small enough to enter the human bloodstream and be transported widely around the body.

During the Examination, a new UK target for PM_{2.5} was announced, in a Ministerial Statement in December 2022 and the Environmental Improvement Plan, published in January 2023. This arose from the Environment Act 2021, which required the Secretary of State to set a long-term target (15 years minimum) for air quality, and a target (with no mandate on length) for the annual average concentrations of PM_{2.5} in the air.

The legal targets and interim targets have been set for PM_{2.5}. These are summarised in the table below:

Target Description	Target/Guideline	Date to be achieved	Date set (& source)
Previous legal target	20 µg/m ³	1/1/2020	2008 (EU Directive 2008/50/EU & UK regulations)
New legal target	10 µg/m ³	31/12/2040	The Environmental Targets (Fine Particulate Matter) (England) Regulations 2023
Interim target	12 µg/m ³	31/1/2028	2023 (UK Government Environmental Improvement Plan)

The UK Government is required to ensure that these air quality targets are met, with compliance being monitored by the Office for Environmental Protection. As part of this, air quality must be taken into account in national government action and can be a material consideration in planning decisions.

Unlike other pollutants, such as nitrogen dioxide and PM₁₀, there has historically been no legal duty for local authorities to work towards compliance for PM_{2.5}. This was because a

large proportion of PM_{2.5} concentrations is regional¹ (including secondary particulate pollution) and cannot be controlled by local action. Local authorities have been encouraged to use their powers to reduce PM_{2.5}, under the Local Air Quality Management Framework published in 2016. The new “Air Quality Strategy: framework for local authority delivery”, published in April 2023 by the Department for Environment, Food & Rural Affairs, reinforces that expectation, and has warned of the possibility of legal requirements for local authorities to take action to reduce PM_{2.5} emissions if insufficient action is taken.

Predicted pollutant concentrations of PM_{2.5} for the Project were set out in the Air Quality Assessment in Chapter 5 of the ES [APP-048], presented as part of the DCO Application. In the baseline year of 2019, together with the construction assessment year of 2024 and the operational year of 2029, both with and without the Project in place, PM_{2.5} pollutant concentrations were predicted to be below the PM_{2.5} legal target of 10µg/m³ (to be achieved by 2040) at all modelled receptors.

There is no statutory guidance on assessing the significance of air quality impacts, however since the pollutant concentrations for the Project are below the PM_{2.5} legal target (and therefore already below the interim target of 12µg/m³ to be achieved in 2028) at all modelled receptors, it is considered that no likely significant effects are anticipated as a result of the Project. Based on the information above, the Applicant is therefore not proposing to update Chapter 5 of the ES [APP-048].

Side Agreements

Dr Richard Leeming and Lady Elizabeth Mary Cecilia Leeming

The Applicant can confirm that negotiations in relation to a side agreement with Dr and Lady Leeming have progressed to an advanced stage in relation to their objections to the compulsory acquisition of plot 0102-01-34.

The Applicant understands that the principles of the agreement are agreed and a draft side agreement recording those principles has been circulated, reviewed, discussed, revised and re-issued for consideration. The Applicant is working towards completing the agreement on or before 29 September 2023.

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

The Applicant can confirm that agreement has been reached on all matters which are the subject of two de-trunking side agreements which the Applicant has been negotiating with Durham County Council and North Yorkshire Council respectively. Now that agreement has been reached on all matters, it is the parties' intention to progress as quickly as possible towards the execution and completion of these two side agreements. The parties

¹ Regional particulate matter includes sea salt, calcium and iron rich dusts, as well as secondary particles which is produced in the atmosphere by related chemical reactions.

anticipate that they will be able to complete the side agreements prior to the end of the Secretary of State's determination period.

The Applicant and Westmorland and Furness Council have reached agreement on all matters which are the subject of their legal side agreement (dealing with de-trunking and other matters), except in relation to land access and operational matters at Skirsgill Depot, where discussions remain ongoing. However, the parties are committed to resolving these outstanding issues collaboratively and to agreeing the terms of the legal side agreement by Friday 29 September 2023.

The Public Trustee

Following receipt of the sealed Order from the Court, the Applicant and the Public Trustee have proceeded to execute transfer documents to enable the Applicant's acquisition of the land owned by the Public Trustee (plot 07-02-45 on Scheme 07). The executed transfer documents are expected to be completed imminently.

United Utilities Water Limited

Further to the Applicant's response to the Secretary of State's second Request for Information dated 30 August 2023, the Applicant has now responded to United Utilities Water Limited (**UU**) on the final outstanding point on the proposed side agreement.

The Applicant awaits confirmation from UU that the side agreement is now agreed, but in any event the Applicant continues to anticipate being able to complete this side agreement before the end of the determination period.

Climate Emergency Policy and Planning (CEPP)

The Applicant notes that it has responded to CEPP's previous submissions as follows: Responses to Written Representations made by other Interested Parties (particularly pages 81-84) **[REP2-017]**, Responses to Deadline 3 and Deadline 4 Submissions (particularly pages 10-13) **[REP5-030]**, Deadline 8 Submission on Climate Matters **[REP8-076]**, Closing Submissions **[REP8-074]** and the Deadline 9 Submission on Climate Matters **[REP9-033]**. These submissions are in addition to other climate and traffic modelling submissions provided by the Applicant in response to the Examining Authority's question CE.1.5 **[REP4-011]**, against agenda item 4.0 and within Appendix E to the Issue Specific Hearing Post Hearing Submissions **[REP5-024]**, as well as the Applicant's letter to the Transport Infrastructure Planning Unit dated 7 September 2023 (p. 3).

The Applicant considers that its response below in relation to the submission by Mr and Mrs Nicholson addresses many of the points made in the latest submission from CEPP dated 8 September 2023, including in relation to the Climate Change Committee's

(CCC's) June 2023 Report, the TSC's July 2023 Report and the Carbon Budget Delivery Plan (CBDP).

Responding to specific additional elements of CEPP's latest submission dated 8 September 2023, the Applicant notes that section 3.10 states that the construction of the A66 Project will come under the 'Industry' sector of the CBDP. The Applicant notes that it has provided a contextualisation of the Project's Greenhouse Gas (GHG) emissions against the CBDP for information only and that, as the CBDP (paragraph 19) states, its projections are not to be interpreted as hard sectoral policy targets. Accordingly, the Applicant's contextualisation is provided as further information to be taken into account. It is not to be taken as an assessment of significance since such an assessment is to be undertaken against a trajectory to net zero (see guidance from the Institute of Environmental Management and Assessment (IEMA)). The only adopted trajectory to net zero is that comprised in the Carbon Budgets. We refer to the Applicant's detailed submission on the CBDP in its Deadline 8 Submission on Climate Matters [REP8-076]. The Applicant notes that no guidance has been provided regarding contextualisation against the CBDP. For the reasons provided in detail in its Deadline 8 Submission on Climate Matters [REP8-076], the Applicant considers that its contextualisation, including the consideration of the CBDP, is robust.

The Applicant also notes that CEPP's submission includes, at section 3.11, a Table 1 entitled "Summary of relevant benchmarks". The source of this table is not provided. The Applicant and its advisers have also not been able to identify the figures in the table. Accordingly, the Applicant knows of no rational basis that has been presented for these figures. Since the only adopted trajectory to net zero is that set out in the Carbon Budgets, these benchmarks cannot rationally be used as the basis for an assessment of the significance of the impact of the Project on a basis which is consistent with IEMA guidance. The Applicant notes its other comments made above regarding its CBDP contextualisation presented in its Deadline 8 Submission on Climate Matters [REP8-076].

Section 4 of the CEPP submission makes comments in respect of IEMA guidance. The Applicant notes other portions of IEMA guidance (as previously discussed by the Applicant – see the Applicant's Responses to Written Representations made by other Interested Parties [REP2-017] and the Deadline 9 Submission on Climate Matters [REP9-033]), which states that: *The specific context for an individual project and the contribution it makes must be established through the professional judgment of an appropriately qualified practitioner drawing on the available guidance, policy and scientific evidence*"; and, *It is down to the practitioner's professional judgement how best to contextualise a projects GHG impact*".

Mr and Mrs Nicholson

The Applicant notes the comments made by Mr and Mrs Nicholson, and makes the following response drawing on key themes from Mr and Mrs Nicholson's submission:

In terms of the CCC's June 2023 Report and the Transport Select Committee (**TSC**)'s July 2023 Report, as well as the "Reverse Gear" report by Professor Marsden, the Applicant has previously responded to these documents in its letter to the Transport Infrastructure Planning Unit dated 7 September 2023 (p. 3). Particularly in terms of the Reverse Gear report, and the CBDP, the Applicant has also previously addressed these documents during Examination: in its Deadline 8 Submission on Climate Matters [**REP8-076**] for the CBDP and in its Deadline 9 Submission on Climate Matters [**REP9-033**] for both CBDP and Reverse Gear, the latter under the "Non-Governmental Documents – Transport Sector policy analysis" heading.

Mr and Mrs Nicholson's submission also makes comment on the approach to electric vehicles within the A66 GHG assessment. The Applicant has previously provided a detailed explanation of how electric vehicles are factored into its GHG assessment, see paragraphs 2.2.9 to 2.2.11 of the Deadline 9 Submission on Climate Matters [**REP9-033**]. That submission explains how the Applicant's approach is precautionary and is based on a recognised source, the Emissions Factor Toolkit v11.

In terms of the Applicant's assessment, the Applicant notes that this presents all GHG emissions arising from the Project, at construction and operations stage, including the Do Minimum (without the Project) and Do Something (with the Project) scenarios. Please see details in ES Chapter 7 [**APP-050**]. The Applicant's assessment contextualises the Project's GHG emissions against the UK statutory carbon budgets (the **Carbon Budgets**), out to 2037 (the Sixth Carbon Budget). The Carbon Budgets set the carbon budget for five-yearly periods out to the legally binding target of net zero by 2050. The Applicant's assessment concludes, further to the National Networks National Policy Statement (**NNPS**), that the Project will not have a significant effect on climate or a material impact on the ability of government to meet its carbon reduction plan targets and the Carbon Budgets (see paragraph 7.11.24 of ES Chapter 7 [**APP-050**]).

The Applicant also provided a contextualisation for information only against the CBDP in its Deadline 8 Submission on Climate Matters [**REP8-076**]. This contextualisation noted the assumptions and limitations associated with contextualising against the CBDP and does not alter the likely significant effects assessment as presented in ES Chapter 7 [**APP-050**]. The Applicant notes that the CBDP states:

3. This Carbon Budget Delivery Plan provides the detail, setting out the current package of proposals and policies prepared by the Secretary of State (as of March 2023) to enable the delivery of Carbon Budgets 4, 5 and 6. The proposals and policies reach far into the future, setting out our plans to the end of Carbon Budget 6 in 2037. This means that, whilst maintaining focus on delivering the proposals and policies, we must acknowledge that the package represents one of many routes to full decarbonisation of the UK economy by 2050. We expect the world to change between now and the end of Carbon Budget 6, so we expect that the package of proposals and policies will evolve to adapt to changing circumstances, new evidence, to utilise technological developments and address emerging challenges. This will enable us to maximise opportunities to drive growth, jobs and investment across the UK whilst reducing emissions.

4. *In light of this, and consistent with the duties imposed by the Climate Change Act 2008, we will continue to keep the proposals and policies under review and update and amend the package as appropriate. It is an extremely difficult process to precisely forecast those proposals and policies that will be in effect so far in the future, for example those intended to take effect in Carbon Budget 6, and there is considerable fluidity in the final delivery. We expect to provide periodic updates over time.*

In addition, the Applicant notes that there is no sectoral carbon emissions target for the road transport sector; the projections set out in the CBDP are not targets, rather, they are (CBDP paragraph 19):

“only projections and should not be interpreted as hard sectoral policy targets. Within our overall carbon budgets it is vital to retain a degree of flexibility to adjust our plans as circumstances change given the complexity of the net zero system and the inherent uncertainty in any projections. Modelling cannot always take into account systemic feedback effects, which are hard to quantify. Other factors such as consumer behaviour, technological innovation and the speed and structure of future economic growth further contribute to intrinsic uncertainties of long-term sectoral emissions projections.” (emphasis added)

Thornton J concluded in *R (Andrew Boswell) v Secretary of State for Transport [2023] EWHC 1710* (at paragraph 71):

“Some government policies may result in GHG emissions but they are nonetheless promoted in order to achieve other policy goals. It is the government's role to determine how best to balance emissions reductions across the entire economy. Any net emissions increase from a particular policy or project is therefore managed within the government's overall strategy for meeting carbon budgets and the net zero target for 2050, as part of an economy-wide transition” (*R (Transport Action Network) v Secretary of State for Transport [2021] EWHC Admin 2091* at paragraphs 46 and 54). The term used in *R (Packham) v Secretary of State for Transport [2021] Env LR 10* at paragraph 87 was 'an economy wide transition'. EIA for any proposed project must therefore give proportionate consideration to whether and how that project will contribute to or jeopardise the achievement of these targets.”

Thus, the CBDP does not set any fixed policy approach to the attainment of the Carbon Budgets; rather, it represents a current view of the likely effect of existing policy in delivering those budgets. There is considerable fluidity in how those budgets will eventually be delivered and it is vital to retain flexibility of approach. The CBDP does not set any targets for the domestic transport sector or any other sector. The Government is not relying upon domestic transport or indeed any sector as making any particular contribution.

Accordingly, the Applicant's assessment of GHG emissions has been undertaken in a diligent and robust manner, applying the highly experienced professional judgment of

competent and capable practitioners. The Applicant's assessment of GHG emissions complies with all applicable law, policy including the NNNPS (please see more details provided below) and guidance. The Applicant has provided adequate information to allow for assessment of GHG emissions and determination of the Project fully in accordance with the Planning Act 2008 and the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

It is for the decision-maker to judge, in the light of that assessment, whether granting the application for the DCO is likely to result in an increase in carbon emissions which is "so significant that it would have a material impact on the ability of Government to meet its carbon reduction targets". Those targets are those set out in the Carbon Budgets, not the projections set out in the CBDP. The Carbon Budgets have been developed to ensure attainment of the UK's Nationally Determined Contribution pursuant to the Paris Agreement (see Net Zero Strategy: Build Back Greener, page 50, paragraph 27).

The Applicant has explained previously that the Project would not have a material impact on the ability of government to meet the Carbon Budgets; rather, the implications of the Project are so small that they can be managed as part of the economy-wide transition required to enable the Government to meet its carbon reduction targets, particularly given the wide array of powers the Government has available even beyond the sphere of planning decision-making. There is no evidence that a grant of the DCO Application will be the difference between the Government meeting its carbon reduction targets and not.

Accordingly, to grant the DCO Application will not result in a breach of international obligations relating to climate change, will not result in any breach of duty under the Climate Change Act 2008 and will not be such that its benefits are outweighed by its impacts. As a result, the decision-maker is required to determine the application in accordance with the NNNPS (see s104(3) of the Planning Act 2008).

Information relating to the costs that have been used to determine the Benefit Cost Ratio (**BCR**) can be found in the Applicant's Combined Modelling and Appraisal Report [**APP-237**], Chapter 6.4. The BCR is calculated utilising Present Value Costs (i.e. cost at 2010 prices and values), and therefore does not refer to outturn cost (i.e. costs in the price base of the year that they will be spent). The Applicant can confirm that the Present Value of Cost reported is based on an outturn cost of £1.49 billion.

In respect of road safety, paragraphs 2.4.2 to 2.4.7 of the Applicant's Combined Modelling and Appraisal Report [**APP-237**] show the accident and casualty numbers, which were presented as part of the Examination.

The analysis compares accident and casualty data for 7 years from 2013 to 2019, and the vehicle miles travelled, to develop accident and casualty rates for the A66 between Penrith and Scotch Corner. The analysis concludes that the casualty rate is 50% higher than that observed for the same period on the Strategic Road Network (SRN), i.e. 29 casualties on average per hundred million vehicle miles on route compared to 19

casualties on average across the SRN and 24 casualties on average across dual carriageway A roads.

The analysis identifies a strong correlation between accident cluster sites and the remaining sections of single carriageway, meaning the accident rate on the single carriageway sections of the A66 would be higher than that indicated in the figures above.

In respect of the EuroRAP report (2021), this considers accidents between 2017 and 2019 with how much traffic each road is carrying, therefore in essence it is comparing a similar accident rate to what the Applicant has reported, albeit with fewer years of data.

A key element to consider is the difference between presentation of data for all roads (including local authorities) compared to just the SRN. When presenting a combined position local roads, particularly single carriageway local roads, show higher accident rates when compared to the SRN as a single scale is being utilised. This may give the impression that the A66 has a lower accident rate, but that must be viewed in the context of the data being presented.

The International Road Assessment Programme (**iRAP**) published the following document on behalf of National Highways:

<https://nationalhighways.co.uk/media/3mya00pi/the-strategic-road-network-star-rating-report.pdf>

Whilst undertaken by the same 'Road Safety Foundation', the methodology of this 'star rating' is slightly different. The star rating protocol, set out by iRAP, is a way to measure how safe our roads are. Every five years, the road network is surveyed and independently assessed to calculate star ratings. The highest risk roads are 1-star rated, while those which pose the least risk for road users are 4-star or 5-star rated. The iRAP star rating is a tool that objectively assesses the safety standard of a road. The star ratings are based on independently gathered road inspection data and provide a simple and objective measure of the level of safety which is 'built-in' to the road. The higher the star rating, the safer the road. This visual inspection of road features generates a different result for the A66, particularly for the single carriageway sections set out below which rate as 1, 2 or 3 stars.



Anne Robinson, Louis Martin, Rebecca Ferson, Transport Action Network and William Ferson

The Applicant considers that its responses above in relation to submissions made by Dr Boswell, CEPP and Mr and Mrs Nicholson address the points raised in the submissions by Anne Robinson, Louis Martin, Rebecca Ferson, Transport Action Network and William Ferson.

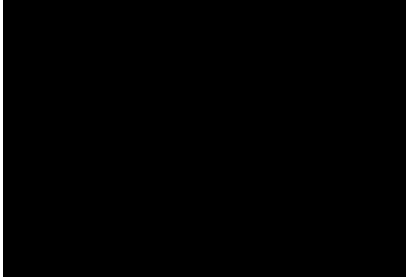
Specifically in response to the *Construction News* article appended to the Transport Action Network’s submission, the Applicant notes that it has agreed with Costain a change in contracting strategy, which has seen Costain’s involvement on the Project come to an organised and managed end. The Applicant has taken this decision to ensure the successful delivery of the Project and does not anticipate a change to the date when the Project is open for traffic, nor a change in Project affordability, as a result.

Cllr Richard Bell

The Applicant notes Cllr Bell’s submission and refers to section 4.2 of its Closing Submissions [REP8-074] for the reasons for selection of the “Black Option” over the “Blue Option” at Rokeby.

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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