

Author Details	
Name	Dr Andrew Boswell
Position	Scientist and Consultant
A66 Northern Trans-Pennine Project Link Roads Registration	20032002
Organisation	Climate Emergency Policy and Planning (CEPP)
Examination Principle Issues	Climate Change

POST EXAMINATION CONSULTATION – 22nd SEPT 2023

Contents

POST EXAMINATION CONSULTATION – 22 nd SEPT 2023	1
Contents	1
1 INTRODUCTION	2
1.1 Important notice of material being relevant to decision making	2
1.2 Availability of material to the Secretary of State personally	2
2 EXTREMELY SHORT CONSULTATION TIME FOR IPs.....	2
2.1 Aarhus Article 6.3.....	2
3 PRIME MINISTER’S SPEECH ON NET ZERO ON 20TH SEPTEMBER 2023	2
3.1 Impact on GHG emissions	3
3.2 Impact on BCR	3
3.3 Need for revised Risk Tables for the CBDP.....	3
4 NORTH PENNINE MOORS SPECIAL AREA OF CONSERVATION (“SAC”).....	4
4.1 Further matters relating to nitrogen deposition.....	4
4.2 Further matter relating to SAC and the applicant’s GHG assessment	4
4.3 Applicant’s false zero rating of degraded peatland GHGs	5
4.4 Uncorrected error in Environmental Statement – Operation Maintenance GHGs	6
4.5 Conclusions on SAC and GHG emission assessment	6
5 GHG ASSESSMENT	7
5.1 Notification of GHGs error – Variable Demand for HGVs fixed at zero	7
5.2 Material weight of the CCC Progress Report.....	8
5.3 Relevant contextualisation modes (IEMA)	8
5.4 Relevant benchmarks from the CBDP and CCC Progress Report.....	8
Table 1: Summary of relevant benchmarks.....	9
5.5 Relevance of data to SoS decision making process specifically on the A66 scheme	9
5.6 Data for contextualising a reasoned conclusion on GHG emissions.....	10
Table 2: Summary of relevant data.....	11
5.7 Full list of contextualisations required of emission type vs budget or target	11
5.8 Example of applying data: Construction : 4 th and 5 th carbon budgets.....	12
5.9 “Major Adverse” scheme.....	13
6 SIGNED	13

1 INTRODUCTION

- 1 I am responding to your letter of September 15th seeking comments from the Applicant and all Interested Parties.
- 2 I also provide an update on the legal and policy context since the examination closed.

1.1 *Important notice of material being relevant to decision making*

- 3 The information in this submission is provided to directly address and inform the SoS decision making process, and only that.

1.2 *Availability of material to the Secretary of State personally*

- 4 As this submission contains statements relating to how the SoS may reach a reasoned conclusion on the environmental impacts of the A66 project. **I respectfully request that this submission is placed in full before the Secretary of State, and/or a delegated decision minister, in person for her/himself to consider.**

2 EXTREMELY SHORT CONSULTATION TIME FOR IPs

- 5 7 days only was provided for responses to the letter from the SoS on September 15th. Further a major policy announcement, which affects the Environmental Statement, was made by the Prime Minister just 2 days before the deadline (see below).

2.1 *Aarhus Article 6.3*

- 6 I submit that the consultation period was too short, and that this is in breach of the three pillars of the Aarhus Convention, of which the UK is a signatory: access to information, public participation and access to justice. There has been significant new material to consider and Article 6.3 may have been breached “*public participation procedures [to] include reasonable time-frames...for the public to prepare and participate effectively during the environmental decision-making*”.

3 PRIME MINISTER’S SPEECH ON NET ZERO ON 20TH SEPTEMBER 2023

- 7 The Prime Minister’s speech¹ on Net Zero on 20th September 2023 allows the sale of petrol and diesel cars to continue until 2035, instead of 2030. This has impacts on both the carbon emissions and nitrogen deposition from the road transport system. Although the details need to be calculated, this new policy must be considered for the **increased** impacts of the scheme to both the North Pennine Moors Special Area of Conservation (‘SAC’) and on climate change, as discussed below.

¹ <https://www.gov.uk/government/speeches/pm-speech-on-net-zero-20-september-2023>

3.1 Impact on GHG emissions

- 8 APP-050, 7.5.15 (“3.2 Environmental Statement Chapter 7 Climate”) states that emissions were calculated using the Emissions Factors Toolkit (EFT), version 11². This no longer provides a worst-case calculation for the operational emissions from the scheme in the 5th and 6th carbon budgets and beyond. Following the Prime Minister’s policy change, the emissions need recalculating with a revised version of the EFT toolkit.
- 9 The Prime Minister’s policy change will also result in higher levels of nitrogen deposition. This will have increased impact of the SAC, and therefore potential increased GHGs from degraded peatland, as discussed below.

3.2 Impact on BCR

10 The additional emissions from the Prime Minister’s policy change will have an impact on the BCR. The BCR for the A66 is already poor, and will become worse as a result of the policy changes when additional GHG costs are factored in.

11 It should be noted that the BCR must also be recalculated:

- A. for the additional GHGs from the SAC itself which have been omitted for the Environmental Statement, and;
- B. from the increment of further GHGs from the SAC as the result of the policy change: increased nitrogen deposition causing increased GHGs, as discussed below.

3.3 Need for revised Risk Tables for the CBDP

12 As of writing, a legal letter³ has been sent to the Net Zero Secretary, Claire Coutinho, suggesting that Good Law Project (“GLP”) is likely to challenge, in the High Court, the Government’s backsliding on Net Zero. Of relevance here is that GLP requests by September 28th disclosure of “the updated Risk Tables, and any overarching analysis of the risk to achieving the carbon budgets that reflects the new package of policies and proposals” [from the Prime Minister].

13 In my September 8th letter to the SoS on the A66, I already indicated that the existing CBDP Risk Tables (ie: before the Prime Minister’s announcement) were important to the decision-making process as “there has been an assumption in recent DCO decisions that the delivery of NZS is fully secured when quite plainly it is not”. The revised Risk Tables are even more

² Department for Environment, Food & Rural Affairs, 2021

³ <https://goodlaw.social/NZII-FL>

relevant to the decision making on the A66 given the proposed delay to eliminating fossil fuelled vehicles on UK roads.

4 NORTH PENNINE MOORS SPECIAL AREA OF CONSERVATION ('SAC')

14 I have seen the statement on this matter submitted by Transport Action Network (TAN). I provide my full support to that statement.

15 I support the submission from TAN that the SoS should suspend consideration of the application until the information has been provided and consulted on in accordance with Regulation 20(3) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

16 Suspending consideration of the application until the applicant has provided the necessary information, and for there to be a full consultation on a revised environmental statement, is necessary so that the Secretary of State can “*reach a reasoned conclusion on the significant effects of the proposed development on the environment, taking into account the examination referred to in sub-paragraph (a) and, where appropriate, any supplementary examination considered necessary;*” in accordance with Regulation 21(1)(b) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (“**2017 Regulations**”).

4.1 Further matters relating to nitrogen deposition

17 The Prime Minister’s speech on Net Zero on 20th September 2023 allows the sale of petrol and diesel cars until 2035, instead of 2030. This extends the proportion of fossil fuel vehicles in the national fleet for the period up to 2035, and also to 2050 and beyond from those vehicles bought close to the 2035 deadline. Natural England already have raised that the future predictions of impacts to the SAC from the applicant’s may be overly optimistic “*especially given the lack of current incentives for consumers to switch to electric vehicles*” – the policy change worsens the bias of the predictions which now need to include the new policy when recalculated.

4.2 Further matter relating to SAC and the applicant’s GHG assessment

18 The Natural England letter of 8th September 2023 highlights the issue that “*degraded peatlands in England release an estimated 10 million tonnes CO2 emissions into the atmosphere each year*”.

19 This issue of peatland becoming a GHG emitter is raised by Natural England because, as an ecosystem, peatland is sensitive to nitrogen-based air pollutants, and references are provided to “*ample evidence to describe the effect of nitrogen and ammonia on sensitive ecosystems, including bogs and peatlands*”.

20 In their comments on the applicant’s HRA (section 3 of the September 8th letter) Natural England state that they are unable to agree with the applicant’s conclusions on nitrogen

sourced air pollution from the A66 scheme. The implication of this is that Natural England do not agree that the nitrogen deposition from operating the scheme is “negligible” as claimed by the applicant. This also implies that the peatland affected by the A66 project may become degraded and is quite likely to become a net emitter of GHG emissions during the operation of the scheme.

21 This is in direct contradiction to the applicant’s assumptions in its environment statement on the GHG emissions from the scheme, as described below.

4.3 Applicant’s false zero rating of degraded peatland GHGs

22 At the request of the examining authority, the Applicant provided a break down of GHG emissions in document “7.3 Issue Specific Hearing 2 (ISH2) Post Hearing Submissions (including written submissions of oral case) - Appendix 9 – Climate effects – Note containing explanation of costs in the Combined Modelling and Appraisal Report” [REP1-009].

23 REP1-009 shows at Table 4 that the applicant considered that under Land Use and Forestry (PAS 2080 module D) , a 146,666 tCO₂e sequestration of emissions would occur over the 60-year project lifecycle “from future ability to sequester carbon from habitats gained”. It is not clear where or what the “gained habitats” are, but this cannot be equated to the habitats potentially degraded by pollution from the scheme’s operation.

24 In terms of habitats related impacts, APP-050, 7.11.7 (“3.2 Environmental Statement Chapter 7 Climate”) makes it clear that the applicant only considered Land Use Change emissions during construction of the A66 scheme:

“The approach taken to estimating GHG emissions associated with Land Use Change has been to model the loss of all carbon in soils and vegetation within the Order Limits during construction where land is changing from one habitat to another.”

25 Paragraph 7.11.7 continues vaguely:

“In many cases habitats are changing as part of ecological improvements and will provide a greater biodiversity value, and greater potential for GHG sequestration as a result.”

26 This statement implies that habitat will be improved, but this appears to (1) be unevidenced, and (2) in direct contradiction to Natural England position in their September 8th letter which suggests that peatlands are more likely to be degraded by the operation of the scheme.

27 Paragraph 7.11.7 then states:

“For the purposes of the evaluation of significance for GHG emissions a pessimistic approach has been adopted which assumes construction impacts (i.e. loss of stored carbon) across the full Order Limits, and no benefits accruing from new habitat

creation during the operational phase (although, in practice, new habitats will provide a benefit). By omitting the operational benefits from the evaluation of significance it is considered that a highly precautionary approach has been adopted.

28 The quote above is clearly false when there are more likely to be operational **disbenefits**, and these have not been properly assessed as the precursor step of assessing their root cause - nitrogen pollutants – has not been carried out. This is a cumulative effect of one environmental effect (Air Quality) or another (Climate Impacts) that has not been properly considered, nor carried out, under the 2017 Regulations.

29 The effect of the applicant omitting the operational “benefits” is that Land Use emissions which may well actually be disbenefits have been zero rated (ie rated at 0 tCO₂e per year). This in turn impacts the GHG assessment.

4.4 Uncorrected error in Environmental Statement – Operation Maintenance GHGs

30 With respect to the operation emissions, the applicant made errors which they still have not admitted, nor acknowledged. This is explained in this section under the SAC, as the treatment of Land-Use GHG emissions for the operation period is also relevant.

31 The applicant did zero-rate the 2,444 tCO₂e per year which they claim are the “benefits” of “new habitat creation” and corresponds to the applicant’s claimed 60-year 146,666 tCO₂e sequestration of emissions from Land Use Change (see above). However in the same calculation, the applicant erroneously did not include the very similar quantum of maintenance emission of the scheme which it estimated elsewhere as 2,207 tCO₂e per year.

32 This was notified in my Written Representation [REP1-013] in section 4 “*A to B: how the climate impacts assessment table is generated*”. The applicant concocted a truly bizarre explanation to being notified of their error in its response at [REP2-017]. At [REP3-068] section 4.3, I explained why the applicant’s response was bizarre, and concluded “*the Applicant’s explanation is simply not a credible way to estimate and assess the project’s operational emissions in the sixth carbon budget. It is clearly wrong.*”

33 I am not aware that the Applicant has ever corrected the relevant Tables in Chapter 7 of the Environmental Statement. The error remains extant in the Environmental Statement and should be corrected.

4.5 Conclusions on SAC and GHG emission assessment

34 The applicant should correct, in a revised Environmental Statement, the error of omitting 2,207 tCO₂ of maintenance emissions from the operational emissions assessment.

35 As part of the new information, and consultation process, highlighted by TAN as being required under the 2017 Regulations, the applicant must revisit the assumption on degraded peatland GHGs, as described above. A completely refreshed GHG assessment is required

correct errors highlighted and providing an assessment of the emissions from the degradation of the peatland associated with the operation of the scheme, along with the other operational emissions.

36 Suspending consideration of the application until the applicant has provided the necessary information, and for there to be a full consultation on a revised environmental statement, is necessary of these GHG issues (as it also is on the wider SAC issues) so that the Secretary of State can “*reach a reasoned conclusion on the significant effects of the proposed development on the environment, taking into account the examination referred to in sub-paragraph (a) and, where appropriate, any supplementary examination considered necessary;*” in accordance with Regulation 21(1)(b) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (“**2017 Regulations**”)

5 GHG ASSESSMENT

5.1 Notification of GHGs error – Variable Demand for HGVs fixed at zero

37 I have already pointed out the error on Operation Maintenance GHGs above.

38 A further modelling assumption has recently come to light which impacts the GHG assessment. This results from heavy good vehicles (“**HGVs**”) as being treated in the Variable Demand Model as not being subject to any variable demand. APP-237 “3.8 Combined Modelling and Appraisal Report” under section 5 “Traffic Forecasts” states at “*A higher proportion of light vehicles in the DS compared to the DM due to assignment re-routing and HGV demand being fixed.*” In other words, their origins, destinations, numbers and total mileage of HGV are modelled as exactly the same with and without the A66 throughout the appraisal period. The applicant actually points out, itself, in the quote above that this skews the proportion of light vehicles upwards and heavy vehicles downwards over time, so that the VDM modelling does not reflect forecast reality. The effect is that DS is smaller than it should be.

39 Fixing HGV demand at zero in the VDM model can be seen to not be consistent with the Highway Reference Forecast Demand tables at Tables 5-2 to 5-4 in APP-236 “3.7 Transport Assessment” where HGV demand is reported as growing at greater than⁴ 5.6% [AM Peak (pcu/hr)], 5.6% [Inter Peak Peak (pcu/hr)], and 5.65% [PM Peak (pcu/hr)] between 2029 and 2051. These increases reflect the forecast reality on the ground for HGV demand increasing over time which the VDM model ignores.

40 The consequences of this are that actual growth of HGV demand:

- A. is not reflected correctly in the tables, based on the VDM model, estimating GHGs in Chapter 7 of the Environmental Statement. Emissions from HGVs,

⁴ The figures are growth 2019 to 2051, but HGVs are modelled as reducing slightly between 2019 and 2029.

heavy emitting vehicles of both carbon and nitrogen (linking back to the SAC issue) are under-estimated in the DS figures; and

B. has not been properly assessed for its traffic impacts.

5.2 Material weight of the CCC Progress Report

41 It should be noted that Holgate, J stated in the first Net Zero Strategy judgment:

[188] “... It is apparent that the CCC as an expert body scrutinises the work of the Secretary of State and his Department with great care and in depth. The CCA 2008 proceeds on the basis that the reports of the CCC will provide much assistance to Parliament.”

[215] “The role of the CCC is to give advice as an expert body rather than to opine on questions of law. But nonetheless the court should give considerable weight to their advice in December 2020 on the setting of CB6 that the Government’s net zero plans should include a “quantified set of policy proposals” and their criticism in October 2021 of the NZS for failing to quantify the effect of each policy and proposal on emissions reductions ([65]-[67] and [152] above).”

42 Whilst this is a planning decision, significant material weight should be given to the CCC and their 2023 Progress Report by the SoS in reaching a reasoned conclusion on the A66 with respect to section 104 of the 2008 Planning Act. It would be wrong, and challengeable, for the SoS to dismiss the CCC’s advice in its report as less than significant material weight.

5.3 Relevant contextualisation modes (IEMA)

43 In my letter to the SoS of September 8th, I laid out information on “*IEMA Contextualisation: sectoral reduction strategies*”, and “*IEMA Contextualisation: Existing and emerging national and local policy or regulation*”. The SoS is referred to sections 4.1 and 4.2 of that letter.

5.4 Relevant benchmarks from the CBDP and CCC Progress Report

44 In my letter of Sept 8th, I provided a summary table of relevant benchmarks. I have extended the table below to include the emissions associated with the peatland which fall into the “Agriculture and LULUCF” sector in the CBDP, and under “Land Use” in the CCC Progress report.

Code	tCO2e	Fourth (2023 to 2027)	Fifth (2028 to 2032)	Sixth (2033 to 2037)
B_1	National Budget - 5 years	1,950,000,000	1,725,000,000	965,000,000
B_2	Domestic Transport Residual Emissions (DTRE, CBDP, Table 2) - 5 years	546,000,000	422,000,000	254,000,000
B_3	Surface Transport (Credible plans - CCC) - Annual average	9,164,654	16,600,000	28,700,000
B_4	Surface Transport (To Be Secured - CCC) - Annual average	3,955,384	24,520,000	45,730,000
B_5	Surface Transport (Credible plans - CCC) - 5 years	45,823,269	83,000,000	143,500,000
B_6	Surface Transport (To Be Secured - CCC) - 5 years	19,776,919	122,600,000	228,650,000
B_7	Industry Residual Emissions (IRE, CBDP, Table 2) - 5 years	340,000,000	207,000,000	111,000,000
B_8	Industry (Credible plans - CCC) - Annual average	1,243,741	1,100,000	1,100,000
B_9	Industry (To Be Secured - CCC) - Annual average	2,301,741	22,973,854	39,148,353
B_10	Industry (Credible plans - CCC) - 5 years	6,218,707	5,500,000	5,500,000
B_11	Industry (To Be Secured - CCC) - 5 years	11,508,707	114,869,270	195,741,764
B_12	Agriculture and LULUCF (AGRE, CBDP, Table 2) - 5 years	231,000,000	207,000,000	183,000,000
B_13	Land-Use (Credible plans - CCC) - Annual average	0	0	0
B_14	Land-Use (To Be Secured - CCC) - Annual average	3,339,975	8,223,839	13,559,524
B_15	Land-Use (Credible plans - CCC) - 5 years	0	0	0
B_16	Land-Use (To Be Secured - CCC) - 5 years	16,699,875	41,119,194	67,797,621

Table 1: Summary of relevant benchmarks

45 It should be noted that the CCC find no credible decarbonisation plans for the Land-Use sector at all. So adding new GHG emissions from increased degraded peatland from the scheme would most likely make the shortfall in decarbonisation for the Land-Use sector greater at every carbon budget.

5.5 Relevance of data to SoS decision making process specifically on the A66 scheme

46 As noted in my letter of September 8th, it would be an error to characterise this information as being general and not relevant to the SoS decision making process. **The information below is provided to directly address and inform the SoS decision making process.**

47 It would be a mischaracterisation is to consider that the information provided is outside of the scope of the Secretary of State’s decision making on the A66 scheme under the Planning Act 2008 (“the 2008 Planning Act”). Quite the contrary, the information is provided to directly address and inform the SoS decision making process. The purpose of providing the information on the CBDP and other documents was that it is vital information relating to whether there can be confidence that the A66 is consistent with the CBDP.

48 The wider context here is that a reasoned consideration of the GHGs from the A66 project and how they comply with the risk-assessed delivery of the CBDP (and the NDC and the sixth carbon budget) is very much a live issue for the SoS in her/his decision-making, under section 104 of the 2008 Planning Act. The SoS must reach conclusions as to whether approving the

scheme would lead to the UK being in breach of its international obligations (s104(4)); in breach of any statutory duty (s104(5)); or be unlawful (s104(6)). The latest evidence, and risk analysis of the CBDP, is required to be able to make a reasoned conclusion on these matters, and the material submitted in our letter was provided to assist the SoS in reaching those conclusions.

49 A failure to address whether the emissions from the A66 schemes fit reasonably within the relevant sectoral reduction strategies in the CBDP, and give reasons, would amount to a breach of statutory duty under section 104(5); alternatively a failure to give an adequately ‘reasoned conclusion’ under regulation 21 of the EIA Regulations, including in respect of the up-to-date position and/or a breach of the public law duty to give reasons.

5.6 Data for contextualising a reasoned conclusion on GHG emissions

50 Table 2 below provides a resume of the known relevant data and the context for the SoS decision.

51 As in my letter of September 8th, there are large additional emissions proposed for the A66 project. The A66 project has not been included in assumptions for the Carbon Budget Delivery Plan, and therefore the emissions from it are additional emissions that somehow must be contained within the CBDP.

52 The CBDP provided sectoral reduction strategies in terms of policies and proposed, and sectoral residual emissions. The CCC Progress Report identified current failures to provide 100% secured delivery policies on the sectoral reduction strategies.

53 The September 20th policy change from the Prime Minister increased the risks, already substantial, to providing 100% secured delivery policies.

54 The Government has its own CBDP Risk Tables, which would provide further contextual information.

55 Each of the above form vital contextualisation for the large carbon footprint from the A66 project and are summarised below.

	tCO2e	Fourth (2023 to 2027)	Fifth (2028 to 2032)	Sixth (2033 to 2037)
B_1	National Budget - 5 years	1,950,000,000	1,725,000,000	965,000,000
	Construction emissions	518,562	518,562	
B_7	Industry Residual Emissions (IRE, CDBP, Table 2) - 5 years	340,000,000	207,000,000	111,000,000
B_11	Industry (To Be Secured - CCC) - 5 years	11,508,707	114,869,270	195,741,764
	Additional "To Be Secured" after PM's statement	UNKNOWN ⁵	UNKNOWN	UNKNOWN
	Risk Table viable reductions	UNDISCLOSED ⁶	UNDISCLOSED	UNDISCLOSED
	Solus Operational emission (corrected for maintenance, excluding Land Use)		162,744 ⁷	195,255
B_2	Domestic Transport Residual Emissions (DTRE, CDBP, Table 2) - 5 years	546,000,000	422,000,000	254,000,000
B_6	Surface Transport (To Be Secured - CCC) - 5 years	19,776,919	122,600,000	228,650,000
	Additional "To Be Secured" after PM's statement	UNKNOWN	UNKNOWN	UNKNOWN
	Risk Table viable reductions	UNDISCLOSED	UNDISCLOSED	UNDISCLOSED
	Land-use emissions associated with peatland (during operation)		UNKNOWN	UNKNOWN
B_12	Agriculture and LULUCF (AGRE, CDBP, Table 2) - 5 years	231,000,000	207,000,000	183,000,000
B_16	Land-Use (To Be Secured - CCC) - 5 years	16,699,875	41,119,194	67,797,621
	Additional "To Be Secured" after PM's statement	UNKNOWN	UNKNOWN	UNKNOWN
	Risk Table viable reductions	UNDISCLOSED	UNDISCLOSED	UNDISCLOSED

Table 2: Summary of relevant data

5.7 Full list of contextualisations required of emission type vs budget or target

56 There are a number of combinations of contextualisations required for emissions type (eg: Construction) against budget (eg: 6CB) and target (eg: 2030 NDC) with which the data in the table assists with. These are contextualisation of the emissions of each emission type with the sectoral reduction strategy for that emission type as recommended by the IEMA guidance. As stated before, this is not applying data as hard targets, but using data for contextualisation to inform significance assessment and decision making.

⁵ The CCC has said that it is looking at the numbers after the Prime Minister statement. Currently the additional shortfalls in decarbonisation are "UNKNOWN".

⁶ The Government has not yet disclosed the Risk Tables either for the CDBP as published on March 30th 2023, or for the CDBP as amended by the Prime Minister's statement of September 20th 2023

⁷ Corrected data as from REP1-013, Table CEPP.WR.Tab-2

57 These are the combinations:

1. Construction : 4th and 5th carbon budgets (example below)
2. Construction, annual comparison for 2030 and impact on NDC
3. Operation “excluding Land Use” : 5th and 6th carbon budgets
4. Operation “excluding Land Use”, annual comparison for 2030 and impact on NDC
5. Operation “Land Use” : 5th and 6th carbon budgets
6. Operation “Land Use”, annual comparison for 2030 and impact on NDC

58 Combination 1 is explored below as an example (combinations 2 – 6 are not developed further for brevity and because this is the task of the applicant in any case).

5.8 Example of applying data: Construction : 4th and 5th carbon budgets

59 For the case of the Construction emissions, the 518,562 tCO₂e in each of the 4th and 5th carbon budgets must be considered in the context of 11,508,707 tCO₂e and 114,869,270 tCO₂e of required emissions savings to meet the residual emissions for the sector are currently unsecured in the 4th and 5th carbon budgets. Whilst this is not about meeting a hard sectoral target, the Secretary of State must reach a reasoned conclusion that that these carbon emissions may be found within the sectoral reduction strategy for Industry, and must provide his/her reasoning.

60 The IEMA guidance significance criteria for “Major Adverse” is:

“the project’s GHG impacts are not mitigated or are only compliant with do-minimum standards set through regulation, and do not provide further reductions required by existing local and national policy for projects of this type. A project with major adverse effects is locking in emissions and does not make a meaningful contribution to the UK’s trajectory towards net zero.”

61 If the SoS is unable to give adequate about how these A66 carbon emissions may be found within the sectoral reduction strategy for Industry for these carbon budgets, then his/her only conclusion must be that the A66 scheme is “Major Adverse”. Reasons why the scheme is “Major Adverse” include:

- A. With a shortfall of 114,869,270 tCO₂e of required emissions savings in the 5th carbon budget, adding further emissions is extremely likely to still leave a shortfall in meeting the residual emissions for the Industry sector, and so the scheme does not assist in making a meaningful contribution to the UK’s trajectory towards net zero.
- B. The project’s GHGs do not provide further emissions reductions required by existing local and national policy for projects of this type – the GHGs most likely contribute to an already large overshoot of the sectoral reduction strategy;

62 It should be noted that the decision-making process must depend upon the latest data recalculated for the Prime Minister policy change as shown by ‘Additional “To Be Secured” after PM’s statement’ in the above Table.

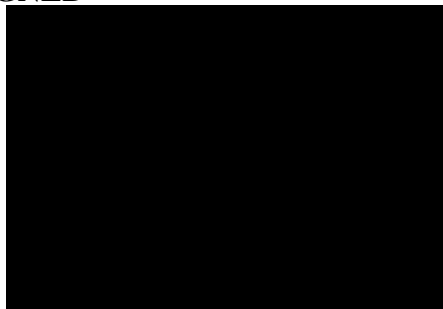
63 In each of the six combinations given above, a failure to address whether the relevant emission type from the A66 schemes fit reasonably within the relevant sectoral reduction strategy, and give reasons, would amount to a breach of UK international obligations under section 104(4) [for the NDC], or a breach of statutory duty under section 104(5) [for the carbon budgets]; alternatively a failure to give an adequately ‘reasoned conclusion’ under regulation 21 of the EIA Regulations, including in respect of the up to date position and/or a breach of the public law duty to give reasons.

5.9 “Major Adverse” scheme

64 As above the scheme, the scheme is “Major Adverse” on the IEMA guidance thresholds for GHG emissions. The SoS must provide reasoning, and explanation, as to how any other conclusion could possibly be reached for each of the six cases above on the basis of whether the relevant emissions can fit reasonably within the relevant sectoral reduction strategy.

65 Please note that I have submitted from the outset of the examination that the scheme was “Major Adverse” (eg: see my WR REP1-013).

6 SIGNED



Dr Andrew Boswell,
Climate Emergency Policy and Planning, September 22nd, 2023