

A66 Northern Trans-Pennine Project Planning Examination 2022-2023	Post Examination Consultation (DfT letter: 28th September 2023), Oct 5th 2023 UPDATE ADDENDUM Oct 19th 2023
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Examination Principle Issues	Climate Change

POST EXAMINATION CONSULTATION – 19th OCTOBER 2023 UPDATE

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1 INTRODUCTION

- 1 I previously responded to the Secretary of State's letter of September 28th seeking comments from the Applicant and all Interested Parties. My response was published on the PINS website on 13th October 2023. I also made a previous submission on September 22nd.
- 2 On October 12th, the Climate Change Committee published "CCC assessment of recent announcements and developments on Net Zero" on their website¹. This updated the data from the CCC's progress report to Parliament in June 2023 which I had used in my previous submissions. Please consider this "update" from me which updates the relevant tables in the previous submissions, accordingly with the new CCC data. No changes to my conclusions result from this data update. The implications for the Secretary of State's decision-making process also remain the same as in my previous submissions. This is covered in section 2 below.
- 3 There remain unanswered issues from my letter of September 22nd. This is covered in section 3 below.
- 4 The legal case *R (Boswell) v Secretary of State for Transport [2023] EWHC 1710* was granted permission to proceed to the Appeal Court on October 18th. The implications of this for the A66 scheme are briefly submitted under section 4.

2 CLIMATE POLICY RISK ASSESSMENT DATA FROM THE CCC 2023 PROGRESS REPORT AND SUBSEQUENT UPDATE

- 5 I previously responded to the applicant's statement of September 22nd page 6:

"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."

- 6 In response, I explained that these figures were derived from the CCC 2023 Progress Report by a canonical process (for each sector and each carbon budget period) which I laid out in my submission published by PINS on October 13th.
- 7 The underlying data has now been updated by CCC for the surface transport and industry sectors, for the 5th carbon budget period (2028-2032). The CCC webpage with the update contains two diagrams with the underlying data provided as a spreadsheet. The second

diagram “By sector: changes in the level of risk in Government plans”, and its spreadsheet², is relevant here, and this is the data which I have used in this submission.

8 I now reproduce a revised version of the “Table 1: Summary of relevant benchmarks” for the CCC updated data. The new data is presented in red font, and only applies to the fifth carbon budget.

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 22,000,000	28,700,000
B_4	Surface Transport (To Be Secured - CCC) - Annual average	3,955,384	24,520,000 19,200,000	45,730,000
B_5	Surface Transport (Credible plans - CCC) - 5 years	45,823,269	83,000,000 110,000,000	143,500,000
B_6	Surface Transport (To Be Secured - CCC) - 5 years	19,776,919	122,600,000 96,000,000	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 (underlying data changes, see below)	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 (underlying data changes, see below)	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 [updated Oct 19th 2023]

9 Some risk has been taken out of the surface transport sector for the 5CB, and this is due to the Zero Emission Vehicle (ZEV) mandate having now been implemented in legislation. **However, there is still very considerable risks as identified the Table above as “To Be Secured” emissions - 96 million tonnes of CO2 over the 5-year 5CB period – which impose a very serious risk to meeting both the UK National Determined Contribution (NDC) under the Paris Agreement for 2030 and the fifth carbon budget (5CB).**

² blob:<https://www.theccc.org.uk/a5ff67ee-1530-4994-8819-189d0d23cc9a> – please note, it may be best to download this spreadsheet directly from the figures in CCC webpage at the above link.

- 10 Given the ZEV mandate is one of the key policy instruments for decarbonisation of the surface transport sector and is now secured in principle, the risks associated with the remaining policies for emissions reductions still remain very considerable. These are quantified by CCC, **for each year in the 5CB**, as: “some risk” 3.8MtCO_{2e}; “significant risk” 9.7MtCO_{2e}; and “insufficient plans” ie no existing policy 5.7MtCO_{2e}.
- 11 In this situation, a decision to introduce additional operation emissions from a new A66 road scheme from 2029 increases the risks of not achieving the sector trajectory for surface transport. Whilst this trajectory is not a “hard target”, the risks associated with its delivery is relevant information for contextualisation to inform significance assessment and decision making for the scheme. The fact that large amounts of required emissions reductions remain unsecured, at the time of the SoS decision, is highly material, and must be considered in the decision-making process.
- 12 The Industry sector appears unchanged at the level of the data in the above table. However, within the “To Be Secured” part there are underlying changes in the data as highlighted by the comment in red. This is due to the recent deal with Tata Steel for industrial electrification in Port Talbot (the related emission savings have shifted from “insufficient plans” to “some risks” in the underlying data behind the “To Be Secured” figure). **However, it is still the case that 23 million tonnes of CO₂ reductions still require securing for each year in the 5CB (115 million tonnes of CO₂ over the 5-year period).**
- 13 The same applies for the Industry sector construction emissions for the A66 - the fact that large amounts of required emissions reductions remain unsecured, at the time of the SoS decision, is highly material, and must be considered in the decision-making process.

2.1 Changes to data relevant for contextualisation and decision making

14 The Table 2 of my September 22nd submission also requires updating, as below. At the time of writing that submission, some items were marked “UNKNOWN” (following the Prime Minister’s statement of September 20th) which are now known as a result of the CCC update.

	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 ³	UNKNOWN 114,869,270	UNKNOWN
	Risk Table viable reductions	UNDISCLOSED ⁴	UNDISCLOSED	UNDISCLOSED
	Solus Operational emission (corrected for maintenance, excluding Land Use)		162,744 ⁵	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 96,000,000	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 41,119,194	UNKNOWN
	Risk Table viable reductions	UNDISCLOSED	UNDISCLOSED	UNDISCLOSED

Table 2: Summary of relevant data [updated Oct 19th 2023]

15 I previously used (September 22nd submission) “Construction : 4th and 5th carbon budgets” as an example for contextualisation. Although, the underlying details above have changed, as above, my analysis remains:

- The Construction emissions for the A66 scheme are 518,562 tCO2e in each of the 4th and 5th carbon budgets. These must be considered in the context of

³ The CCC has said that it is looking at the numbers after the Prime Minister statement. Currently the additional shortfalls in decarbonisation are “UNKNOWN”.

⁴ 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.

⁵ Corrected data as from REP1-013, Table CEPP.WR.Tab-2

11,508,707 tCO₂e and 114,869,270 tCO₂e of required emissions savings to meet the residual emissions for the sector which are currently unsecured (ie “To Be Secured”) in the 4th and 5th carbon budgets.

- These additional Industry sector construction emissions in these carbon budgets meet the IEMA guidance significance criteria for “Major Adverse” (“*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.*”).
- Such an analysis is consistent with contextualisation as recommended by IEMA for significance assessment with the source of contextualisation being “*sectoral reduction strategies*” and “*existing and emerging national and local policy or regulation*”, as described in previous submissions from me.

16 As a result of my consultation submissions, this data is now before the SoS, and it cannot be ignored. The issue remains for the Secretary of State to reach a reasoned conclusion on this data (and the relevant data for the other five combinations discussed in my previous submissions). And as I submitted, in the September 22nd submission:

“In each of the six combinations given above, a failure to address whether the relevant emission type from the A66 schemes fit[s] 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.” {typos corrected}

3 UNANSWERED ISSUES

17 I note the applicant’s letter to the SoS of October 5th. This addresses information relating to the Prime Minister announcement of September 20th under “Paragraph 4 – updates to carbon assessment or any other assessment”.

18 However, the applicant’s October 5th letter does not respond to many other issues raised in my letter of September 22nd. In particular, two issues listed below remain unresolved by the applicant (with the section numbers of my September 22nd letter):

- “Uncorrected error in Environmental Statement – Operation Maintenance GHGs”, section 4.4; and
- “Notification of GHGs error – Variable Demand for HGVs fixed at zero”, section 5.1.

4 UPDATE ON R (*Boswell*) v Secretary of State for Transport [2023] EWHC 1710

19 The applicant has commented on the legal case *R (Boswell) v Secretary of State for Transport [2023] EWHC 1710*. For example in its letter of September 22nd and in responding to Mr and Mrs Nicholson, the applicant makes the broad-brush conclusion that its “assessment of GHG emissions has been undertaken in a diligent and robust manner”: a selected quote from the judgment from the High Court by Mrs Justice Thornton was used to support this assertion.

20 On October 18th 2023, Lord Justice Coulson granted permission for the case to proceed to the Court of Appeal, which could potentially overturn the Thornton J judgement, noting in his Order that the appeal court case ‘has a real prospect of success’.

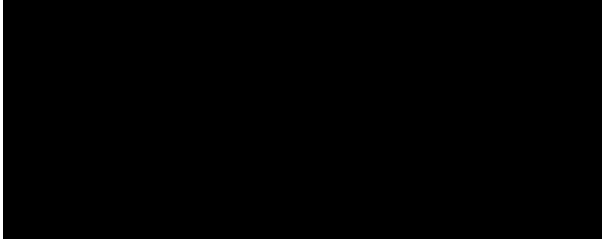
21 Further, I have raised the issue of the assessment of cumulative carbon emissions, at the heart of the *Boswell* case, from the outset of the DCO Examination. For example:

- my relevant representation of 24th August 2022 “Chapter 7 of the ES presents estimates of the greenhouse gas (GHG) emissions for assessment of significance of the scheme against the fourth, fifth and sixth carbon budgets. Only “scheme-only” estimates are given and assessed (eg the bottom line of Table 7-23, and the “net CO2” data in Table 7-24).”
- my Written Representation of December 18th 2022 “Just for clarity, I once again state that categorically in this summary that there is no assessment of the climate change impact of cumulative carbon emissions in the ES.”

22 It remains my position that categorically, there is no assessment of the climate change impact of cumulative carbon emissions in the ES. The arguments in terms of the presentation of data, and the assessment which is actually made (not a cumulative assessment) are identical in the A66 Environmental Statement as with the *Boswell* case.

23 With Lord Justice Coulson’s permission to appeal, the SoS must take note of the fact that this issue remains live and has yet to be resolved by the Courts. Further, the judgment of Thornton J cannot be relied upon to support any assertion whilst the matter is still being resolved by the Court of Appeal.

5 SIGNED



Dr Andrew Boswell,
Climate Emergency Policy and Planning, October 19th, 2023