

Nathan Dyer
Transport Infrastructure Planning Unit

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27 October 2023

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

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 fifth Request for Information
dated 18 October 2023 (the Rfl)**

I am writing in response to the Rfl dated 18 October 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 Rfl requests the Applicant to provide a response in relation to the following matters:

- Technical information submitted to Historic England (**HE**) on 2 May 2023, along with any specific comments made by HE on that information;
- Updates on outstanding side agreements; and
- Clarification on references to the Parts of Schedule 8 in articles 41 and 42 of the draft DCO.

In this letter the Applicant provides responses to these matters in turn, using the numbered paragraphs in the Rfl for reference. In addition the Applicant provides, without prejudice to its position throughout the DCO Application, a response to paragraph 1 of the Secretary of State's previous Rfl of 28 September 2023, comprising information to support a Habitats Regulations Assessment (**HRA**) derogation case.

In relation to points relevant to the Applicant that have been raised by other Interested Parties (**IPs**) – namely Dr Mary Clare Martin, Transport Action Network and Dr Andrew Boswell on behalf of Climate Emergency Policy and Planning – in their submissions made

since the Applicant's response on 5 October 2023 to the Secretary of State's previous RfI of 28 September 2023, the Applicant notes that it has not been asked to respond to these points by the Secretary of State in this (or any other) RfI, and notes that it has responded to materially the same points in detail throughout the Examination of the DCO Application and in subsequent correspondence. Therefore, to avoid repetition and creating a paper chase, this response focuses on matters which the Applicant has been directly asked to respond to, as the Secretary of State's determination process draws to a close. The Applicant has therefore chosen not to repeat its previous submissions in this letter. The Applicant refers IPs and the Secretary of State to previous submissions and correspondence on these matters, and these points raised by the IPs are not to be taken as accepted by the Applicant.

Attached to this response are the following documents:

- Annex 1 – a copy of the supporting technical information which explains why a Heritage Impact Assessment (**HIA**) was not required in the context of the World Heritage Site of the Lake District, along with HE's comments on this information;
- Annex 2 – amendments required to article 3 of, and Part 7 of Schedule 9 to, the draft DCO, once certain side agreements are completed;
- Annex 3 – amendments required to articles 41 and 42 of, and Schedule 8 to, the draft DCO, to provide the clarity requested by the Secretary of State;
- Annex 4 – amendments required to the preamble to the draft DCO in relation to the compulsory acquisition of rights over special category land;
- Annex 5 – the Applicant's Position Statement on a HRA regarding the North Pennine Moors Special Area of Conservation (**SAC**); and
- Annex 6 – the Applicant's information, submitted without prejudice, to support a HRA derogation case.

Technical Information submitted to Historic England

As requested by the Secretary of State, the Applicant has provided at Annex 1 a copy of the supporting technical information which explains why a HIA was not required in the context of the World Heritage Site of the Lake District.

In relation to HE's comments on this information, these were provided during negotiations on the Statement of Common Ground (**SoCG**) between the Applicant and HE. All of these comments were incorporated in the final version of the SoCG [**REP8-024**]. There was no further correspondence on this technical information between the parties.

Updates on outstanding Side Agreements

The Applicant notes the Secretary of State's request for a final update on the outstanding side agreements with various parties and has provided this in turn below:

Dr Richard Leeming and Lady Elizabeth Mary Cecilia Leeming

The side agreement between the Applicant and Dr and Lady Leeming was completed on 18 October 2023.

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

The side agreement with Durham County Council (**DCC**) remains agreed and is ready to be completed. The Applicant understands that an officer of DCC has granted approval for the agreement to be executed and the Applicant is therefore confident that this agreement will be completed imminently.

The side agreement with North Yorkshire Council (**NYC**) remains agreed and is ready to be completed. The delay in completing this agreement is solely due to NYC requiring formal approval for execution of the agreement. The Applicant expects this approval to be granted at the meeting of the 'Environment Directorate – Corporate Director and Executive Member – Highways and Transportation' of NYC, to be held on 30 October 2023 at 16:00hrs. The Applicant is therefore confident that this agreement will be completed imminently.

The side agreement with Westmorland and Furness Council (**W&FC**) is now agreed. The Applicant has sealed and signed the agreement and understands that W&FC is in the process of doing the same. The Applicant is therefore confident that this agreement will be completed imminently.

In relation to both the NYC and W&FC side agreements, included amongst their terms (which would take effect once completed) is the grant of consent under section 150 of the Planning Act 2008 to the disapplication of consenting requirements for prescribed consents in relation to which NYC and W&FC are the "relevant body" for their administrative areas. Once the side agreements are completed, some amendments to the draft DCO will be required to give effect to that consent. Annex 2 sets out the necessary amendments (in tracked changes). These relate to expanding the scope of the disapplications contained in article 3 of the draft DCO to reflect the grant of section 150 consent and amendments to the protective provisions contained in Part 7 of Schedule 9 to the draft DCO, to extend their protection over the administrative areas of NYC and W&FC. The Applicant will update the Secretary of State once the side agreements have been completed.

The Public Trustee

The Applicant's acquisition of the land in plot 07-02-45 (on Scheme 07) from the Public Trustee was completed on 27 October 2023. As the land in plot 07-02-45 is no longer owned by the Public Trustee, the question of whether or not it is Crown land falls away (as envisaged in the Applicant's Deadline 9 submission, *Update on land owned by the Public Trustee [REP9-037]*).

United Utilities Water Limited

The side agreement between the Applicant and United Utilities Water Limited was completed on 24 October 2023.

Clarification on references to Schedule 8 in articles 41 and 42 of the draft DCO

As requested by the Secretary of State, the Applicant has reviewed article 41 (clearways) and article 42 (traffic regulation measures) of, and Schedule 8 (traffic regulation measures etc.) to, the draft DCO. The intention is for each of the relevant measures in articles 41 and 42 to apply to the corresponding measures listed under the appropriately named table contained in each of the Parts of Schedule 8. The Applicant has included in Annex 3 extracts of articles 41 and 42 of, and Schedule 8 to, the draft DCO that show the amendments (in tracked changes) necessary to clarify the drafting intent.

Other corrections to the draft DCO

In addition, the Applicant has identified corrections to the preamble to the draft DCO required in relation to the compulsory acquisition of rights over special category land. These are set out in Annex 4 (in tracked changes).

Information to support a HRA derogation case

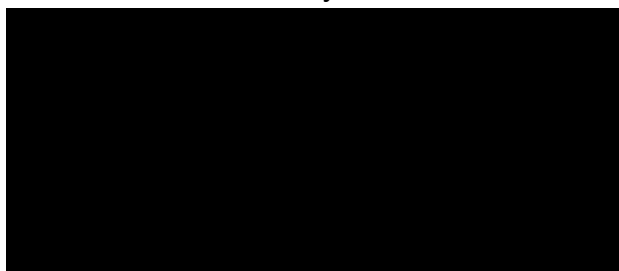
As referenced above, the Applicant is also using this letter to provide a response to paragraph 1 of the Secretary of State's previous RfI of 28 September 2023, in respect of information to support a HRA derogation case. This information is contained within Annexes 5 and 6 to this letter and is being submitted without prejudice to the Applicant's consistent position that a derogation is not required, because in its view the Secretary of State can, on the evidence before him, conclude an Appropriate Assessment that there are no adverse effects on the integrity of the Special Area of Conservation concerned.

Speed limits as mitigation

The Applicant also notes the Secretary of State's request in his previous RfI of 15 September 2023 for the Applicant's position on mitigation measures. As set out on pages 2-3 of the Applicant's response to the Secretary of State's previous RfI of 28 September 2023, the Applicant's position is that speed limits are not a suitable or appropriate form of mitigation. Further detail on this point is provided in the Position Statement in Annex 5 to this letter.

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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