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for Transport

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To: The Applicant, Natural
England, the
Environment Agency,
Westmorland and
Furness Council, North
Yorkshire Council,
Durham County
Council, Historic
England, Friends of
the Lake District and
All Interested Parties

Date: 08 November 2023

Dear Sir/Madam

PLANNING ACT 2008 AND THE INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES 2010

APPLICATION BY NATIONAL HIGHWAYS (“THE APPLICANT”) FOR AN ORDER GRANTING DEVELOPMENT CONSENT FOR THE PROPOSED A66 NORTHERN TRANS-PENNINE PROJECT.

CONSULTATION SEEKING COMMENTS FROM THE APPLICANT AND ALL INTERESTED PARTIES

Following the completion of the Examination on 29 May 2023, the Examining Authority (“ExA”) submitted to the Secretary of State on 7 August 2023 a report and recommendation in respect of its findings and conclusions on the above application.

The statutory deadline by which the Secretary of State must make his decision on the application has been extended from 7 November 2023 to 7 March 2024 by way of a [Written Ministerial Statement](#).

REQUEST FOR INFORMATION

North Pennine Moors Special Area of Conservation

1. At paragraph 3 of his consultation letter dated [15 September 2023](#), the Secretary of State asked the Applicant to provide information to support the case for derogation in relation to the North Pennine Moors SAC. In its response dated [22 September 2023](#) the Applicant requested an extension to the deadline for providing this information, and subsequently provided this in [Annex 5](#) and [Annex 6](#) of its consultation response dated [27 October 2023](#).

2. The Secretary of State now invites **all Interested Parties** to provide comments on this information. In particular, he invites **Natural England** as the Government's Statutory Nature Conservation Advisor to submit comments on the information the Derogation, Consideration of Alternative Solutions, the Imperative Reasons of Overriding Public Interest test and that the compensatory measures will ensure that the overall coherence of the National Site Network is protected as set out in regulations 64 and 68 of the Conservation of Habitats and Species Regulations 2017. Public Trustee Land

3. On [27 October 2023](#), the Secretary of State received confirmation from the Applicant that it had acquired the Public Trustee Land (plot 07-02-45). In light of this, the Secretary of State requests **the Applicant** to amend the Draft Order so that references to the Public Trustee land are removed to reflect that compulsory purchase powers are no longer required in respect of this land. The Secretary of State also requests **the Applicant** to submit an updated Book of Reference and Land Plans.

Side Agreements

4. The Secretary of State notes that the side agreements with North Yorkshire Council and Durham County Council have yet to be finalised, but that the Applicant expects this to be completed imminently. When the side agreements have been finalised and concluded, the Secretary of State requests **the Applicant** submits an update confirming this. If it becomes apparent that side agreements cannot be concluded, please could **the Applicant** confirm if any amendments are required to the Draft Order and provide these as necessary.

Amendments to the Draft Order

6. The Secretary of State invites **the Applicant, the Environment Agency, Natural England, Westmorland and Furness Council, North Yorkshire Council, Durham County Council, Historic England and any other Interested Party** to provide any views on the proposed drafting for article 53 and article 54 of the Draft DCO as set out in the Annex to this letter. Article 53 has been drafted to allow the Secretary of State to directly consult relevant parties and statutory bodies on any changes to the second iteration of the Environmental Management Plan submitted for his approval. It also requires the submission of the Arboricultural Impact Assessment as part of the second iteration of the Environmental Management Plan. The proposed drafting of article 54 would require the relevant planning authority, Westmorland and Furness Council, to provide approval of the detailed design for Trout Beck, Cringle Beck and Moor Beck viaducts as the Secretary of State considers that they are the most appropriate body to consider such matters.

The Secretary of State's Previous Consultations

7. The Secretary of State understands that due to an administrative error, not all Interested Parties may have been aware of his consultations dated [11 August 2023](#), [30 August 2023](#), [15 September 2023](#), [28 September 2023](#) and [18 October 2023](#). The Secretary of State therefore invites comments from **any Interested Party** on the matters raised in these consultation letters.

Government Response to the Climate Change Committee Progress Report

8. The Secretary of State draws the attention of **all Interested Parties** to the correspondence dated [10 October 2023](#) from Rebecca Lush on the Government's response to the Climate Change Committee Progress Report 2023. The Government's response was published on [26 October 2023](#) and the Secretary of State invites **Interested Parties** and **the Applicant**, to submit comments on any implications they consider this could potentially have for the Proposed Development.

Representation from the Friends of the Lake District

9. The Secretary of State notes the correspondence received from Kate Willshaw on behalf of the Friends of the Lake District dated [7 November 2023](#) requesting sight of a copy of the supporting technical information regarding why the Applicant considered a Heritage Impact Assessment was not required on the World Heritage Site of the Lake District. The Secretary of State considers that this information is provided at [Annex 1](#) of the Applicant's consultation response of [18 October 2023](#) and incorporated in the Statement of Common Ground [[REP8-024](#)] agreed between the Applicant and Historic England but invites the **Friends of the Lake District** to comment if they consider that this is not the case.

DEADLINE FOR RESPONSES

Responses to the requested information should be submitted by email only to A66Dualling@planninginspectorate.gov.uk by 23.59 on **29 November 2023**.

Responses will be published on the A66 Northern Trans-Pennine project page of the National Infrastructure Planning website as soon as possible after 29 November 2023:

[A66 Northern Trans-Pennine Project | National Infrastructure Planning \(planninginspectorate.gov.uk\)](#)

This letter is without prejudice to the Secretary of State's consideration of whether to grant or withhold development consent for the proposed A66 Northern Trans-Pennine Project. Nothing in this letter is to be taken to imply what the eventual decision might be or what final conclusions the Secretary of State may reach on any particular issue which is relevant to the determination of the application.

Yours faithfully,

Transport Infrastructure Planning Unit

Environmental Management Plans

53.—(1) The undertaker must not commence any part of the authorised development until a second iteration EMP for that part has been submitted to and approved in writing by the Secretary of State.

(2) The Secretary of State must consult the Environment Agency, Historic England and Natural England (on matters related to their statutory functions), local authorities and highway authorities on the submitted second iteration EMP, allowing each party a period not exceeding 30 days to respond unless otherwise agreed to in writing by the Secretary of State.

(3) The consultation requirement outlined in paragraph (2) applies in relation to the Secretary of State's consideration of any amendments made to the second iteration EMP in paragraph (7).

(4) Each part of the authorised development must be constructed in accordance with the relevant second iteration EMP applying to that part.

(5) Each part of the authorised development must be operated and maintained in accordance with the relevant third iteration EMP applying to that part.

(6) A second iteration EMP must—

- (a) be substantially in accordance with the first iteration EMP insofar as it relates to the relevant part of the authorised development, unless the Secretary of State is satisfied that any part of the second iteration EMP that is not substantially in accordance with the first iteration EMP would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement;
- (b) include the Arboricultural Impact Assessment; and
- (c) be prepared in accordance with the consultation and determination provisions.

(7) The Secretary of State's approval in writing is required for amendments to all or any part of a second iteration EMP and the undertaker must provide—

- (a) a copy of the submission; and
- (b) a copy of the summary report,

and paragraphs (3) and (6) applies to the approval of any such amendment.

(8) On completion of the construction of each part of the authorised development the third iteration EMP for that part, which must substantially accord with the measures relevant to the operation and maintenance of the authorised development contained in the relevant second iteration EMP approved (either initially, or as subsequently amended) for that part, must be submitted in accordance with the provisions of this article for the Secretary of State's approval in writing.

(9) If before the coming into force of this Order the undertaker or any other person has taken any steps that were intended to be steps towards compliance with the provisions of this article, those steps may be taken into account for the purposes of determining compliance with this article if they would have been valid steps for that purpose had they been taken after this Order came into force.

(10) In this article—

“commence” means beginning to carry out any material operation (as defined in section 56(4) of the 1990 Act) forming part of the authorised development other than operations consisting of archaeological investigations and mitigation works (but only to the extent undertaken in accordance with the guidance documents specified in paragraph B3.3.4 of Annex B3 of the first iteration EMP), ecological surveys and mitigation works, investigations for the purpose of assessing and monitoring ground conditions and levels, remedial work in respect of any contamination or other adverse ground conditions, erection of any temporary means of enclosure, receipt and erection of construction plant and equipment and the temporary display of site notices or advertisements, and “commencement” is to be construed accordingly;

“the consultation and determination provisions” means the provisions contained in paragraphs 1.4.9 to 1.4.52 of the first iteration EMP that set out the matters on which consultation is required and the procedures that apply to the conduct of that consultation and which require the undertaker to maintain functional separation when making determinations under this article;

“the first iteration EMP” means the document certified by the Secretary of State under article 49 (certification of plans, etc.) as being the first iteration EMP (Environmental Management Plan) for the purposes of this Order;

“the second iteration EMP” means, in relation to any part of the authorised development, the development of the first iteration EMP in its application to that part of the authorised development and includes the Arboricultural Impact Assessment, following the grant of development consent and in advance of its construction, as approved or subsequently amended in accordance with this article;

“submission” has the meaning given to it in paragraph 1.4.17 of the first iteration EMP;

“summary report” has the meaning given to it in paragraph 1.4.17 of the first iteration EMP; and

“the third iteration EMP” means, in relation to any part of the authorised development, the development of the second iteration EMP in its application to that part of the authorised development, to support its future management and operation following completion of its construction, as approved or subsequently amended in accordance with this article.

Detailed design

54—(1) Subject to article 7 (limits of deviation) and the provisions of this article, the authorised development must be designed in detail and carried out so that it is substantially in accordance with—

- (a) the design principles;
- (b) the works plans;
- (c) the engineering section drawings: plan and profiles and the engineering section drawings: cross sections; and
- (d) the matters approved by the relevant planning authority under paragraphs (4), (7) and (8)

(2) The relevant planning authority may approve a detailed design that departs from paragraph (1), following consultation with the Environment Agency, Historic England and Natural England (on matters related to their statutory functions), provided that the relevant planning authority is satisfied that any amendments to the design principles, the works plans, the engineering section drawings: plan and profiles and the engineering section drawings: cross sections would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

(3) Where amended details are approved by the relevant planning authority under paragraph (2), those details are deemed to be substituted for the corresponding design principles, works plans, engineering section drawings: plan and profiles and engineering section drawings: cross sections as the case may be and the undertaker must make those amended details available in electronic form for inspection by members of the public.

(4) No part of the authorised development comprised in scheme 06 is to commence until a detailed floodplain compensation scheme for that part has been submitted to and approved in writing by the relevant planning authority, following consultation with the Environment Agency.

(5) The floodplain compensation scheme prepared under paragraph (4) must provide suitable flood storage such that flood risk during construction and operation of scheme 06 to any land or property situated downstream is not increased as a result of flood waters that would be displaced by the Appleby to Brough scheme when compared to the baseline scenario as reported in the baseline hydraulic modelling agreed with the Environment Agency (in document HE565627-JBAU-XX-06-RP-HM-S3-P05-0001-Scheme6_Modelling_Report accepted on 15 May 2023) and arise from events with a magnitude up to and including the 1% annual exceedance probability, plus allowance for the climate change in line with the Environment Agency guidance applicable on the date when this Order was made.

(6) The floodplain compensation scheme approved under paragraph (4) must be implemented and maintained for the lifetime of scheme 06 unless otherwise agreed with the Environment Agency.

(7) The undertaker must not commence construction of any of the viaducts comprised in Work Nos. 0405-1A(xii), 0405-2A(x), 06-1C(vi) and 06-1C(x) until details of the design and external appearance of the viaducts have been submitted to approved in writing by the relevant planning authority following consultation with the relevant planning authority.

(8) The undertaker must not commence the construction of Work No. 06-7 until detailed designs for these Works including the locations of any draining ponds and access roads and the associated ancillary works have been submitted to and approved in writing by the relevant planning authority following consultation with the relevant planning authority.

(9) In this article—

“commence” has the same meaning as in article 53(15).