



**Westmorland  
& Furness  
Council**

To:

A66 Northern Trans-Pennine Project Case Team  
National Infrastructure Planning

29<sup>th</sup> November 2023

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

Dear Sir/Madam,

**A66 NORTHERN TRANS PENNINE PROJECT – REQUEST FOR COMMENTS BY THE SECRETARY OF STATE**

Thank you for your letter and email on 8 November 2023 regarding the Secretary of State's letter requesting comments from the Council in relation to a number of topics.

***North Pennine Moors Special Area of Conservation*** – no comment

***Side Agreements*** – no comment

***Amendments to the Draft Order***

• **Article 53**

The Council welcomes and supports the proposed amendments to the drafting of Article 53 set out in the Annex to letter of 8 November 2023.

Throughout the Examination, the Council made representations on the need for full and meaningful consultation on the content of the second iteration of the Environmental Management Plan (**EMP**). The Council welcomes the direct consultation from the Secretary of State on the second iteration EMP initially submitted by the undertaker as well as any amendments made to that second iteration EMP.

The Council additionally supports the removal of the “self-approval provisions” previously included in Article 53 of the draft Order relating to amendments to the second iteration EMP. Approval by the Secretary of State is a more independent and transparent process.

The Council also supports the need for the third iteration EMP to be submitted to and approved by the Secretary of State rather than the undertaker as previously drafted.

County Offices, Busher Walk, Kendal, Cumbria, LA9 4RQ

**[westmorlandandfurness.gov.uk](http://westmorlandandfurness.gov.uk)**

The Council has made some suggestions/ comments on the drafting of revised Article 53 in the Appendix to this letter.

- **Article 54**

The Council has some concerns on the proposed amendments to the drafting of Article 54 set out in the Annex to the letter of 8 November 2023.

In your letter dated 8 November 2023, you suggest that the amendments to Article 54 relate to the approval by the relevant planning authority being Westmorland and Furness Council to the detailed design for Trout Beck, Cringle Beck and Moor Beck Viaducts.

However, the revised drafting goes further than this and purports under Article 54(2) to require the relevant planning authority rather than the Secretary of State to approve amendments to the documents referred to in Article 54(1)(a) to (c) provided that those amendments do not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement. The previous draft authorised the Secretary of State to approve such amendments with the relevant planning authority being consulted on such changes.

The Council considers that the revised drafting is disproportionate and would require the Council to deploy significant resources including engage external consultants to assess such amendments for the project as a whole.

The Council's position is to reject the revised drafting and for the Secretary of State to approve any amendments pursuant to Article 54(2). Please see the Appendix to this letter for suggested drafting.

### ***Floodplain Compensation Scheme***

The Council is satisfied with the additional drafting relating to the submission of a detailed flood compensation scheme for scheme 06 under Article 54(4) to 54(6).

### ***Viaducts – Design and Appearance***

The Council welcomes the inclusion of Article 54(7) into the dDCO. However, it considers that the Secretary of State should be the authority determining approval of the design and external appearance rather than the Council. The Council considers that it is proportionate for the Council to be expressly consulted on the design and external appearance for a period of no less than 30 working days to allow it to consider and comment on its position,

however, it is not appropriate for the Council to determine whether or not the submitted design and appearance of the viaducts are acceptable.

The Council is aware that the Applicant has previously sought comments from the Design Council in relation to the design principles document relating to this project. The Council would welcome meaningful engagement with the Design Council to assess the Applicant's proposed design and appearance of the viaducts.

### **Langrigg**

The Council is satisfied with the additional wording contained in Article 54(8) relating to the drainage ponds, access roads and ancillary works at Langrigg.

***The Secretary of State's previous consultations*** – no comment

***Government Response to the Climate Change Committee Progress Report*** – no comment

Should you require anything further, please let me know.

Your sincerely,

[REDACTED]

Guy Kenyon

Programme Lead, Infrastructure Planning

[REDACTED]

[REDACTED]@westmorlandandfurness.gov.uk

*Enc. Appendix*

South Lakeland House, Lowther Street, Kendal, Cumbria LA9 4UF

T. 015395 33173 • F. 015395 33179

[westmorlandandfurness.gov.uk](http://westmorlandandfurness.gov.uk)

Appendix to Westmorland and Furness Council's letter of 29 November 2023

Formatted: Centered

**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.

Commented [MS1]: There are no timescales here for approval

(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 no less than not exceeding 30 working days to respond unless otherwise agreed to in writing by the Secretary of State.

(3) The consultation relation 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).

Commented [MS2]: The inclusion of the word 'relation' appears to be an error.

(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 ~~to and approved in writing by the~~ ~~in accordance with the provisions of this article for the~~ Secretary of State's approval in writing.

Commented [MS3]: This reflects the drafting in Article 53(1)

(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.

**Commented [KG4]:** The functional separation part of the definition is no longer relevant if there is no self approval by the undertaker. Does the Sec of State also need to propose amendments to the first iteration EMP if the approval process is changing?

## 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)~~ (e) the matters approved by the Secretary of State under paragraph (7).

(2) The ~~relevant planning authority~~ Secretary of State may approve a detailed design that departs from paragraph (1), following consultation with the relevant planning authority, Environment Agency, Historic England and Natural England (on matters related to their statutory functions), provided that the ~~relevant planning authority~~ Secretary of State 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~~ Secretary of State 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-Scheme 6\_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 and 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).

**Commented [MS5]:** There are no timescales for approval under this article.

**Formatted:** Not Expanded by / Condensed by

**Commented [MS6]:** Please see covering letter for full comments