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14th February 2024

Friends of the Lake District Response to the Secretary of State's Deadline 9 letter dated 2nd February 2024

TR010062: A66 Northern Trans-Pennine Project
Registration identification number - 20032016

Levelling Up and Regeneration Act 2023 (LURA 2023) duty to seek to further the purposes of protected landscapes.

We request that the Secretary of State asks National Highways to respond to the letter from the Campaign for National Parks (CNP) dated 31st January. This letter and the legal opinion contained within sets out an interpretation of the LURA duty to seek to further the purposes of protected landscapes which is significantly stronger than National Highways interpretation in their previous two responses (31st January and 20th December 2023).

The legal opinion from Alex Shattock of Landmark Chambers on behalf of CNP interprets the relevant clauses in the LURA 2023. As the clauses strengthened the duty on the statutory purposes, they impose a more onerous requirement than existed previously. The duty is now proactive, not an afterthought, and comparable in nature to the public sector equality duty in s.149 of the Equality Act 2010. It is not enough to not conflict with those purposes; the decision maker must seek to further the statutory purposes through an outcome-based approach.

We suggest that the Secretary of State should seek further guidance on interpreting the new duty as we do not consider that the interpretation that has been provided by National Highways to date and the subsequent proposals to meet the duty get anywhere near satisfying the updated duty as set out in LURA 2023.

Natural England also provided statutory advice to National Highways on 19th January stating that

"The new duty underlines the importance of avoiding harm to the statutory purposes of protected landscapes but also to seek to further the conservation and enhancement of a protected landscape. That goes beyond mitigation and like for like measures and replacement. A relevant authority must be able to demonstrate with reasoned evidence what measures can be taken to further the statutory purpose."

*'The proposed measures to further the statutory purposes of a protected landscape, should explore what is possible in addition to avoiding and mitigating the effects of the development, and should be appropriate, proportionate to the type and scale of the development and its implications for the area and effectively secured. **Natural England's view is that the proposed measures should align with and help to deliver the aims and objectives of the designated landscape's statutory management plan.***

National Highways is seeking to pitch its current proposed mitigation measures as adequate to meet the LURA duty despite the fact they were devised under the previous S62 NERC Act duty "to have regard to" instead of the new and significantly stronger duty to "seek to further the purposes" of protected landscapes. The proactive nature of this duty is confirmed by both Natural England's advice and by the legal opinion provided by the Campaign for National Parks.

We consider that more evidence is required to show how the new duty will be met by National Highways in a proactive rather than retrospective way on the basis that the new duty means that action now must be taken in order to further the purposes of both the Lake District National Park and the North Pennines AONB.

Consultation with the North Pennines AONB/National Landscape Partnership

In their letter dated 19th January 2024, Natural England state that “*Natural England’s view is that the proposed measures should align with and help to deliver the aims and objectives of the designated landscape’s statutory management plan. **The relevant protected landscape team/body should be consulted***” with regard to the new LURA 2023 duty. We have seen no evidence of engagement by the North Pennines AONB Partnership during the DCO process as they did not register as an interested party. We would like to know if the Secretary of State has undertaken any consultation with the protected landscape team on this matter. If not, will the North Pennines AONB team be consulted with regard to Natural England’s questions?

Lake District National Park, increasing private vehicle transport and the LURA 2023 duty

In National Highway’s letter dated 31st Jan 2024 it states “*The Environmental Statement (ES) Chapter 13 [APP-056] at paragraph 13.10.67 identifies a permanent moderate beneficial residual effect in terms of access to and from the Lake District National Park*” [emphasis added].

As Friends of the Lake District and the Lake District National Park Authority have stated a number of times in our responses during this process, **increasing private vehicular access to the Lake District National Park is not considered to be beneficial to the special qualities or the statutory purposes of the National Park**. We reiterate here what the Lake District National Park stated in their Relevant Representation and their Written Representation and what was set out in several Friends of the Lake District’s responses during this DCO process.

Increasing car traffic into the Lake District is contrary to the Lake District National Park Authority’s Management Plan which is actively trying to reduce people accessing the National Park by car. The A66 Upgrade actively works against the new Levelling Up and Regeneration Act 2023 duty to seek to further the purposes of the Lake District National Park and instead is undermining the Lake District Management Plan as published by the Lake District National Park Authority. The responses by the Lake District National Park Authority which were linked in our [November 8th response to the Secretary of State](#) set this out plainly.

It is not possible for National Highways to claim that “*there is a permanent moderate residual benefit in terms of access to and from the Lake District National Park*” but also simultaneously claim as it does in Technical Note Appendix 1 that the “degree of change represented by the presence of the A66 project is negligible”. Which is it? A beneficial effect in terms of (increasing) access, or a negligible impact? They cannot simultaneously claim both.

National Highways also claim, ‘*With respect to the first purpose ES Chapter 10 [APP-053] does not identify any adverse impacts of the Project in landscape or visual terms upon the natural beauty, wildlife and cultural heritage of any National Park*’. This is not the case: more car journeys into the Lake District lead to increased adverse traffic impacts on landscape, visual amenity and tranquillity.

This is harmful to the first statutory purpose of National Parks and does not seek to further the purpose in the Lake District National Park. The Lake District National Park and UNESCO World Heritage Site need to see a reduction in private vehicle numbers both in order to meet their designation criteria and the 2037 Zero Carbon Cumbria climate emissions targets. This is what the Lake District National Park Authority and ICOMOS are working towards via the Lake District National Park Management Plan.

The Secretary of State needs to determine which of these scenarios takes precedence: the low carbon, sustainable transport Lake District model as set out in the National Park Management Plan which meets the new LURA duty to seek to further the purposes of the protected landscape, or National Highways assumptions of ever-increasing traffic in spite of the clearly stated aims of the National Park Partnership Management Plan for traffic reduction and net zero carbon by 2037. National Highways proposals clearly don't meet the LURA duty to seek to further the purposes of the Lake District National Park and in fact actively work against them.

North Pennines AONB/National Landscape and the LURA duty

National Highways restricts the extent of the area to which the LURA duty applies by only including the Order Limits of the scheme. Nevertheless, the scheme will exacerbate the already substantial adverse effects on the AONB purposes outside of the order limits, as there will be a 30% increase in traffic flows along the A66 within the AONB and its setting. This would compound the negative impacts of the road on landscape and visual amenity, tranquillity, and dark skies. National Highways refers to the experience of the North Pennines being 'diluted by the significant presence of traffic', but they omit consideration of measures that could alleviate this impact. On this basis, they have not even tried to seek to further the AONB purposes.

National Highways claim that their assessment '*has paid careful regard to the special qualities of the North Pennines AONB....and identified no impact upon those qualities.*' ES Chapter 10 Table 10.10 identifies 'no change' in any of these qualities therefore maintaining current conditions. There is no evidence that the applicant has looked for outcomes within its remit to enhance these special qualities; specifically scenic beauty, tranquillity and species rich grassland; and so they are demonstrably not furthering the North Pennines National Landscape's purpose and are not meeting the new LURA duty.

Taking a landscape scale approach which seeks to minimise or avoid adverse effects on the AONB and where possible identify opportunities for enhancement does not fulfil the new LURA duty. The benefits are limited to the establishment of a woodland belt and rationalisation of Ministry of Defence "paraphernalia" at Warcop. These outcomes for the AONB purposes are negated by the huge increase in traffic. They are also minimal compared with those that could be achieved by demand management, traffic speed reduction and modal shift of people and freight, instead of dualling.

The development and publication of these Project Design Principles are postponed and will only be addressed through 'detailed design' after a permission has been granted and therefore they are not available to inform the SoS when making a decision. If the Secretary of State is to meet the LURA duty of actively seeking to further the purposes of the AONB these claimed benefits must be demonstrated now, before a decision is made.

In summary, the applicant was not working towards meeting the new LURA duty when it was developing the A66 scheme and has dismissed the need to do anything differently as a result of it. National Highways proposals to meet new duty appear to be an afterthought to retrospectively address it. But the new duty mandates a fundamentally distinct approach that must (a) be integrated from the outset in developing a scheme impacting a nationally designated landscape and its

surroundings and (b) be based on outcomes seeking to further the statutory purposes of that designated landscape. Contrary to the applicant's assertions, the new duty does have an impact on the decision-making process for this Development Consent Order. The Secretary of State cannot rely on what the applicant has submitted as it will not meet the LURA duty.

New LURA duty conclusion

Fulfilment of the LURA duty to seek to further the purposes of protected landscapes must be demonstrated through outcomes which are embedded in the development process of a scheme. It cannot just take the applicant's proposals which were drawn up prior to the LURA duty being enacted and reapply them. In this case the Secretary of State, if they are to demonstrate that they have sought to further the purposes of the North Pennines AONB and the Lake District National Park, must fully explore measures that would enhance both landscape designations before a decision is made.

This consideration should include alternatives to dualling, such as reducing traffic on the A66 through demand management measures, investing in modal shift for people and freight, and realignment of junctions, new road layouts and reducing speed limits to improve road safety. These are measures that Friends of the Lake District has been asking to be properly considered right from the start of the pre-application consultation process and which have never been adequately explored during the DCO the process (see our relevant and [written representations](#)).

The North Pennines National Landscape Partnership must also be consulted to show how both the dualling and the proposed measures align with and help to deliver the aims and objectives of the North Pennines AONB statutory management plan. The comparative merits of these measures and their value for money should then inform the decision on the A66 dualling.

Missing Arboricultural Impact Assessment

Friends of the Lake District shares the serious concerns raised by the Woodland Trust in their letter here <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010062/TR010062-002424-Woodland%20Trust.pdf> that it is unreasonable for National Highways not to provide an Arboricultural Impact Assessment to support the proposed development. Without an AIA it will not be possible to evaluate biodiversity loss and landscape impact of the proposed development and therefore the decision will be taken without all the facts in place.

A full Arboricultural Impact Assessment therefore needs to be provided prior to any decision on the DCO being taken by the Secretary of State.

Yours sincerely,

Dr Kate Willshaw
Policy Officer

Friends of the Lake District

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