



Response to

**Secretary of State's
consultation letter dated 2
February 2024 for the A66
Northern Trans-Pennine
Development Consent Order
(consultation 9)**

Introduction

Transport Action Network (TAN) would like to respond to the Secretary of State's ninth post-examination consultation letter, dated 2 February 2024. This letter asks Interested Parties to respond to the submissions published on 2 February 2024.

The Levelling Up and Regeneration Act 2023

TAN supports the submissions made by Council for National Parks (CNP) and the legal advice from Landmark Chambers.

We note that Natural England, in its 19 January 2024 response¹, recommended that "The relevant protected landscape team/body should be consulted", which is North Pennines National Landscapes (NPNL), on their interpretation of the Applicant's new statutory duties under the Levelling Up and Regeneration Act 2023 'to seek to further' the statutory purposes of the North Pennines AONB and the Lake District National Park. However, we note that NPNL did not register as an Interested Party (IP) for the A66 examination which is extremely odd. We would like to know what steps the Secretary of State and the Applicant have taken to seek the views of the relevant bodies about the new LURA duty.

Lack of arboricultural assessment

TAN supports the submission made by the Woodland Trust, raising their concerns about the lack of an Arboricultural Impact Assessment (AIA), and the harmful precedent this would set. It is simply unacceptable for an enormous scheme of this scale not to have a detailed AIA as part of the DCO application that can be scrutinised and challenged during the examination.

North Pennine Moors Special Area of Conservation (SAC)

We note that the Applicant has still not (in their 16 January 2024 response nor in the 31 January submission) responded to TAN's submission of 29 November 2023² in response to the Secretary of State's sixth consultation letter dated 8 November 2023.

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<https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010062/TR010062-002418-Natural%20England.pdf>

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<https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010062/TR010062-002364-Transport%20Action%20Network.pdf>

In our 29 November submission we sought legal advice on the Applicant's Annex 6 - HRA - Information submitted without prejudice to support a Derogation case³. We set out detailed reasons why we believe the Applicant has failed to make the case for derogation.

In its next submission dated 20 December 2023 the Applicant did not address our detailed legal submissions on the SAC and the Annex 6. In its 16 January 2024 response⁴, the Applicant once again failed to address the detailed legal submissions made in our 29 November 2023 response. Instead the Applicant only referred to a passing mention we made in our 20 December 2024 submission of the SAC and the Annex 6, rather than addressing the detailed arguments in our 29 November submission. In the 16 January submission, the Applicant refers to the Annex 6 claiming that the case for derogation is "robustly made out", yet fails to mention, address or rebut the legal submissions we made on 29 November 2023. The Applicant once again did not respond to our legal arguments in our 29 November 2023 submission in their latest letter of 31 January 2024.

This is an important omission. Why is the Applicant avoiding responding to the legal arguments set out by TAN on 29 November 2023? The Secretary of State should require the Applicant to respond to the legal arguments set out by TAN in its 29 November submission about the Applicant's failure to make the case for derogation.

Failure to update the costings and scheme appraisal

In its 31 January 2024 response, the Applicant fails to engage with TAN's repeated requests to update the scheme costs and appraisal. Instead the Applicant refers back to "page 9 of the Third Rfl Response and pages 3-5 of the Second Rfl Response".

Those two responses do not address the points that TAN (and others) have repeatedly made that the scheme represents Poor value for money (in the HM Treasury's value for money framework), and that the scheme appraisal has not been updated.

The Applicant has failed to make a "compelling case in the public interest" (Section 122(3) of the Planning Act 2008), and the Secretary of State will not be able to reach an up to date and

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<https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010062/TR010062-002294-Annex%206%20-%20HRA%20-%20Information%20submitted%20without%20prejudice%20to%20support%20a%20Derogation%20case.pdf>

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<https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010062/TR010062-002411-National%20Highways.pdf>

reasoned conclusion if the scheme would “result in adverse impacts of the development outweighing its benefits” (Section 104(7) of the Planning Act 2008). National planning policy also requires the Applicant to demonstrate exceptional circumstances for proposed development in respect of nationally designated areas, including Areas of Outstanding Natural Beauty. The Applicant has failed to demonstrate the scheme meets the exceptional circumstances test.

Office for Rail and Road investigation into National Highways

Today, 14 February 2024, the Office for Rail and Road (ORR) has announced it has initiated a formal investigation into National Highways which includes delivery of capital projects in its RIS2 portfolio. The A66 Northern Trans Pennine is one of the largest of the capital projects in RIS2, being one of the seven schemes in the Government Major Projects Portfolio (GMPP). It is one of the costliest of the schemes at £1.49 billion, and has the weakest business case of the projects.

We urge the Secretary of State not to make a hasty DCO decision on the poorly performing A66, and to wait for the ORR investigation to conclude and report.

14 February 2024

Rebecca Lush

Transport Action Network

Transport Action Network provides free support to people and groups pressing for more sustainable transport in their area and opposing cuts to bus and rail services, damaging road schemes and large unsustainable developments

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