



Department for
Energy Security
& Net Zero

By email only: russell.spencer@nationalgas.com

Russel Spencer MRTPI
National Grid House
Warwick Technology Park
Gallows Hill, Warwick
CV34 6DA

Department for Energy Security
and Net Zero
Energy Infrastructure Planning
Level 3, Orchard 2
1 Victoria Street
London SW1A 0ET
T: +44 (0) 207 215 5902
E: john.mckenna@beis.gov.uk
www.gov.uk/desnz

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Dear Mr Spencer,

REQUEST FOR ENVIRONMENTAL DETERMINATION BY THE SECRETARY OF STATE UNDER THE PROVISIONS OF REGULATIONS 3, 4 AND 6 OF THE PUBLIC GAS TRANSPORTER PIPELINE WORKS (ENVIRONMENTAL IMPACT ASSESSMENT) REGULATIONS 1999 (AS AMENDED).

NATIONAL GAS TRANSMISSION PROPOSED WORKS TO DIVERT TWO EXISTING HIGH PRESSURE GAS TRANSMISSION PIPELINES FOR THE A66 NORTHERN TRANS-PENNINE PROJECT HIGHWAY WORKS NEAR PENRITH, CUMBRIA.

Thank you for your letter of 31 May 2023, in which you requested an environmental determination by the Secretary of State in accordance with Regulation 6 of the Public Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999 (as amended) (“the 1999 Regulations”), on behalf of National Gas Transmission (“the Applicant”). This letter was supplemented with plans sufficient to identify the proposed works and documents containing information which details the works to be undertaken, the predicted effects on the environment and mitigation to be put in place, and consultation undertaken by the Applicant to date (“the Application”).

Project background:

Department for Energy Security and Net Zero officials acting on behalf of the Secretary of State, met with the Applicant online on 04 October 2022. The purpose of the meeting was to provide the Applicant with the opportunity to introduce the works to be undertaken prior to submitting a formal request for an environmental determination.

The request for a determination is made by the Applicant under Regulation 6 of the 1999 Regulations for the diversion of approximately 250m each of two 900mm diameter high pressure gas (85 bar) pipelines (“the Development”).

The Development is required to accommodate works proposed by National Highways to improve the A66 by providing a dual two-lane carriageway between M6 Junction 40 at Penrith and the A1(M) Junction 53 at Scotch Corner. National Highways submitted a Development Consent Order (“DCO”) application to the Planning Inspectorate in June 2022 for the A66 Northern Trans-Pennine Project. The Applicant received a request from NH to divert two sections of pipeline (Pipeline Feeders 11 and 15). The diversions of F11 and F15 are required due to the potential change in status of the new dual carriageway to a ‘high traffic road’. This means a new heavy walled pipe needs to be installed offline to ensure durability as the pipelines are currently nearing the end of their design lifetime. The Gas pipeline diversions are anticipated to be completed prior to DCO approval.

The Development is located on land either side of the A66, to the south-east of Penrith, Cumbria. Pipeline F11 would be diverted approximately 30m to the east and pipeline F15 approximately 30m to the west of their original locations. The estimated working width during installation of the pipelines would be 6m. The likely size of excavation required would be roughly 5.2m deep and between 8m and 16m in length but would be kept to a minimum by the Contractor. There will be two works areas and the works are anticipated to take 6 months and take place between March and October 2024.

Local Planning Authority consultation:

The Development affects one Local Planning Authority (“LPA”), Westmorland and Furness Council. The Applicant engaged with the LPA prior to submitting a request for an environmental determination. The LPA stated (letter dated 22 May 2023) that: *“Having taken into account the work proposed and the approach taken to delivering the project, the Council is of the view that should we be formally consulted by DESNZ as to whether an ES needs to be submitted to support a consent application for the proposed works, the Council would, based on the information submitted, respond to confirm that significant impacts on the environment would not be anticipated and therefore an ES would not be necessary.”*

The LPA was formally consulted by officials on behalf of the Secretary of State as per Regulation 6(2)(b) of the 1999 Regulations on 15 June 2023. The LPA responded on 28 July 2023 stating that it: *“... remains of the view that significant impacts on the environment which cannot be managed and minimised through the implementation of well-established standard mitigation measures are not anticipated and therefore an ES would not be necessary.”*

Secretary of State considerations and decision:

The Secretary of State has considered the information submitted, including the views of the LPA and all consultees.

The Development does not meet the criteria in Part 1 of Schedule 3 to the 1999 Regulations. However, it is for a pipeline for which the design operating pressure will be over 7 bar gauge under Part 2 of Schedule 3 to the 1999 Regulations. Consequently, an environmental determination is required from the Secretary of State as to whether an Environmental Statement is required under the 1999 Regulations.

In considering the request and whether the Development is likely to have significant effects on the environment, the Secretary of State has had regard to the matters contained in Schedule 2

of the 1999 Regulations. The Secretary of State's conclusion is that the Development is **not EIA** development under the 1999 Regulations, due to the evidence that the Development would be unlikely to have significant effects on the environment. In coming to his decision, the Secretary of State particularly notes the following matters:

- An Environmental Determination Report (EDR, ref. HE615323-JAC-EAC 03A_AL_SCHEM-RP-LE-00001) is provided with the Application. Environmental surveys and assessments undertaken to inform the Environmental Statement¹ of the Northern Trans-Pennine Project DCO have been used to inform the Environmental Determination Report. This includes:
 - Appendix 6.3: Phase 1 Habitat Survey;
 - Appendix 6.9: Badgers;
 - Appendix 6.10: Red Squirrel;
 - Appendix 6.11: Bats;
 - Appendix 6.13: Breeding Birds;
 - Appendix 6.16: Otter;
 - Appendix 6.19: Fish; and
 - Appendix 6.20: Aquatic Macrophyte and River Corridor Survey.
- The environmental survey works also included an archaeological and historical background assessment, including a historic landscape baseline report, a geoarchaeological desk-based assessment, LiDAR and Ariel Photographs interpretation. Evaluation fieldwork was conducted over part of the project footprint, as part of the A66 Northern Trans-Pennine Project, which consisted of geophysical survey and trial trenching.
- The Secretary of State is satisfied that the EDR adequately considers the potential environmental effects of the Development and identifies avoidance and mitigation measures.
- Based on existing survey data, the proposed diversion works are not anticipated to impact on any badger setts given that no ground works or other works considered to generate high levels of disturbance are planned to take place within 30m of any existing setts. The Development would not result in the loss of any trees or suitable bird nesting habitat.
- The proposed F15 diversion footprint partly lies within 50m of woodland known to support red squirrel, which is considered to be the distance where disturbance effects are likely to occur during the red squirrel breeding season (February to September inclusive). Although no tree felling is proposed to facilitate the Development, construction activities within 50m of the woodland (Figure 1 of the EDR) risks disturbing red squirrels in breeding dreys (if present) given that most of the works would take place within the breeding season (April and October).
- The works within the 50m buffer zone, however, would predominantly include a temporary access route, spoil pile and temporary fencing which are considered to generate low levels of disturbance, with the most intrusive groundworks being undertaken beyond the 50m buffer. Furthermore, targeted red squirrel surveys undertaken in 2021 and 2022 did not identify the presence of any dreys within the adjacent woodland, with only feeding remains and sightings recorded. Based on existing survey data, therefore, the proposed diversion works are considered unlikely to impact any dreys.
- The Applicant commits to undertaking an ecological pre-construction check prior to the works to verify the findings of the previous surveys and inform any mitigation measures necessary to ensure legal compliance. This could include the provision of appropriate stand-off zones around any new setts or dreys as well as the provision of acoustic fencing (i.e. Heras acoustic barriers) to reduce disturbance effects.

¹ National Highways (2022) A66 Northern Trans-Pennine Project 3.4 Environmental Statement

- The Secretary of State notes that the Applicant **must** comply with its ongoing duties² with regards to protected species and obtaining licences from Natural England where relevant, including under the Wildlife and Countryside Act 1981.
- The Development is not located within any statutorily designated nature conservation sites.
- The Development is located within flood Zone 1, however the works to the south of the A66 associated with the proposed pipeline diversions are located within an area susceptible to clearwater flooding.
- The Light Water tributary (of the River Eamont, which forms part of the River Eden SAC) is situated approximately 70m to the north of the Development. There is potential for contamination through sediment laden run-off or accidental spillages / leakages to affect the surface water quality of the Light Water. Excavation has the potential to mobilise sediment and any contaminants that may be contained within. This may find its way to the local watercourses and affect water quality through increased sediment, which may lead to fine sediment deposition and smothering of the riverbed and increased sediment loading. Discolouration and alterations to the local water chemistry may also occur due to leaks or spillages and changes in sediment type or volume. Due to the close proximity of works to the watercourses, mitigation is required to ensure water quality is not adversely affected by construction.
- The Applicant commits to implementing mitigation to reduce any potential impacts associated with the Development. A CEMP will be developed and followed by the Contractor to ensure that accepted good practice methods are followed in accordance with National Grid's statutory amenity duties and by compliance with any conditions and obligations imposed by licences and consents granted under each dedicated consent regime. The CEMP would include, but not be limited to the following:
 - Surface water management plan, to summarise existing drainage and outline any new plans.
 - Sediment management plan, including the use of silt fences to avoid contamination.
 - Incident response plan, to prevent further contamination in the event of a spill or leak. Including appropriate training in the use, storage and clean-up of materials and chemicals hazardous to the environment.
 - Requirements for disposal of excavated sediment and dewatered groundwater.
 - Appropriate storage of materials and chemicals.
 - Compliance with best-practices and guidance³ for dewatering to minimise abstraction volumes and risk.
- Additional site surveys and investigation (including trial pits, trenches and bore-hole investigations of superficial deposits and bedrock) will be undertaken as required to confirm ground conditions. This should include groundwater levels, permeability and water quality testing to be undertaken at the detailed design phase to support design of temporary dewatering system required to undertake the works.
- A hydrogeological risk assessment would be undertaken pre-construction to assess the risks to the water environment (including groundwater abstractions) posed by the Development, including the micro tunnelling.
- Natural England was consulted by the Applicant. Natural England (email dated 17 November 2022) stated that due to the proximity to the River Eden SAC, it recommended that the Development undergo a Habitats Regulations Assessment ("HRA") and to ensure that the protective measures in the Construction Environment Management Plan ("CEMP") are included as mitigation. The Applicant responded that a HRA including Appropriate Assessment had been prepared by Highways England for the A66 DCO application. This HRA concludes that the works would not have an adverse effect on any

² <https://www.gov.uk/guidance/wildlife-licences>

³ CIRIA (2016). CIRIA C750 - Groundwater control - Design and practice (2nd edition, 2016)

qualifying feature of the River Eden SAC, North Pennine Moors SAC or North Pennine Moors SPA. Given that these conclusions relate to the much larger development with greater potential for environmental impact than the Development, the Applicant would expect to reach similar conclusions and not identify any additional likely significant effects. In its final response, Natural England (email dated 20 December 2022) advised that it had assessed the HRA for the entire A66 scheme, however given that the location of the gas works is known Natural England would expect that it is possible to have the mitigation plans in one place for these works. Natural England do not expect a full Environmental Statement to be produced for the Development, but want to ensure any potential impacts of this Development are appropriately mitigated and set out in a separate CEMP. Natural England requested to be consulted on the CEMP.

- The Secretary of State is satisfied that, subject to Natural England being consulted on the final CEMP which will include appropriate measures to avoid and minimise potential impacts on watercourses as summarised above, adverse effects on designated sites can be excluded.
- The Secretary of State notes that the Applicant **must** comply with its ongoing duties⁴ with regards to obtaining any necessary environmental permits. With the appropriate mitigation in place, the Secretary of State is satisfied that significant effects on the water environment are unlikely.
- The proposed pipeline diversion of F15 is located approximately 150m east of the Scheduled Monument known as 'Settlement 540m ENE of Broughton Castle' (Scheduled Monument Number 1007203). Although there is the chance of uncovering previously unknown archaeological remains, no significant impacts are predicted on the known archaeological and paleoenvironmental resource based on the studies undertaken as part of the A66 Northern Trans-Pennine Project.
- The Applicant states that, if archaeological remains are uncovered during construction they would be preserved in situ, where possible. If it is not feasible to preserve them in situ, then alternative mitigation would be considered; this may include excavation and preservation by record.
- Historic England has been consulted (email dated 02 November 2022). Historic England broadly agrees with the statements made in the Environmental Report. It has, in principle, no objection to the proposals for the re-alignment of the gas pipelines. However, given that it has not so far proved possible to carry out archaeological survey of the whole of the proposed route of the A66 Northern Trans-Pennine project, it would recommend that the work is carried out under archaeological supervision, so that if unexpected archaeology is encountered, it can be dealt with appropriately. The Applicant stated that it had consulted the Local Planning Authority who did not report any comments from the County Archaeologist. The Secretary of State is satisfied, subject to the establishment of an archaeological watching brief as suggested by Historic England, that significant impacts on archaeological receptors are unlikely.
- On completion of the works, the pipeline would be buried, with no above ground permanent infrastructure. The Applicant commits to restoring land to its previous condition, unless it is to form part of the highways scheme, subject to consent being granted for that project. Given the short-term temporary nature of landscape and visual impacts, there are no anticipated likely significant effects on the landscape.
- The EDR considers the potential impacts of both the highways project and the Development itself, thereby adequately considering potential intra and inter-project cumulative impacts. Construction of the A66 scheme is expected to begin in January 2024 following the granting of the associated DCO. No highways work would be undertaken on the northern side of the motorway within the vicinity of the diversions until the Development is complete. No significant in-combination effects during the construction phase of the works are therefore predicted.

⁴ <https://www.gov.uk/topic/environmental-management/environmental-permits>

Taking account of all matters including the above and having regard to schedule 2 of the 1999 Regulations, the Secretary of State concludes that the documents provided with your letter of 31 May 2023 and the evidence supplied by the relevant LPA are sufficient, and that he can conclude that the Development **is not EIA** development as it is unlikely to have significant effects on the environment due to its nature, size or location.

A copy of this letter is sent to the following for information:

Westmorland and Furness Council: Shawn Fleet.

Yours sincerely,

John McKenna

John McKenna
Head of Networks and Policy
Energy Infrastructure Planning
Energy Development Directorate