

## **Ecology Response to EIA Scoping Requests**

**Ribble Valley Borough Council Planning  
Applications 3/2019/0977 and 3/2019/0981**

**EIA Scoping request for the installation of tunnelled pipework at the  
Bowland Section of the Haweswater Aqueduct and associated works  
(3/2019/0977)**

**EIA scoping request for the installation of tunnelled pipework at the Marl  
Hill Section of the Haweswater Aqueduct and associated works  
(3/2019/0981)**

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**On Behalf of Forest of Bowland AONB**

**22<sup>nd</sup> November 2019**

On behalf of the Forest of Bowland Area of Outstanding Natural Beauty Joint Advisory Committee I have reviewed the following documents with particular reference to ecological matters:

- United Utilities ***Haweswater Aqueduct Resilience Programme Proposed Bowland Section - EIA Scoping Report, October 2019***
- United Utilities ***Haweswater Aqueduct Resilience Programme Proposed Marl Hill Section - EIA Scoping Report, October 2019***

This report details the findings of my review and as such responds to the request for comments from Ribble Valley Borough Council in relation to the scoping opinion as required under section 15 (4) of the Town and Country Planning (EIA) Regulations 2017.

In addition to the proposed measures stated within the above scoping reports, it needs to be ensured that all of the matters discussed below are fully addressed within the Environmental Statements (ES) for the proposed developments.

### **Legislation**

The Environmental Statements will need to demonstrate that each proposed development will fully comply with the requirements of all relevant legislation, including (but not limited to):

- The Town and Country Planning (Environmental Impact Assessment) Regulations 2017;

- The Conservation of Habitats and Species Regulations 2017 (as amended);
- The Wildlife and Countryside Act 1981 (as amended);
- The Natural Environment and Rural Communities Act 2006;
- The Countryside and Rights of Way Act 2000;
- The Protection of Badgers Act 1992.

Each ES should also demonstrate that the proposed development meets requirements stated within Government Circular: Biodiversity and Geological Conservation – Statutory Obligations and Their Impact Within The Planning System (DEFRA 01/2005, ODPM 06/2005).

### **Policy**

Each Environmental Statement will need to demonstrate that the proposed development will fully comply with the requirements of all relevant national and local planning policy, including (but not limited to):

- The National Planning Policy Framework, 2019 (NPPF);
- Lancaster City Council Local Plan policies (Bowland Section);
- Ribble Valley Borough Council policies.

One of the requirements of the NPPF is that *"if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused"*.

The National Planning Policy Framework states that the conservation and enhancement of wildlife is an important consideration in AONBs.

### **Guidelines**

Each Environmental Statement should demonstrate that the proposed development will comply with recognised guidelines, including (but not limited to):

- CIEEM Guidelines For Ecological Impact Assessment, 2018;
- CIEEM & ALGE Ecological Impact Assessment Checklist;
- BS42020 Biodiversity – Code of Practice for Planning and Development.
- Recognised survey and mitigation guidelines, including (but not limited to) current Natural England standing advice, guidelines and Technical Information Notes.

### **Consultees**

Each Environmental Statement should demonstrate that issues raised by consultees to the scoping report have been addressed. This includes (but is not limited to):

- Natural England
- The Environment Agency
- Forest of Bowland AONB and associated advisors
- Ecological advisors to the planning authority.

Natural England's duty to give advice in connection with development matters affecting an AONB is stated within the Countryside and Rights of Way Act 2000.

### **Data search**

Each ES should include the results of an ecological data search. It should be demonstrated that the data has informed the scope of field surveys, the design of the proposed development and mitigation/compensation measures. Suggested data sources include:

- Lancashire Environmental Records Network
- NBN Gateway
- Magic
- Ancient Woodland Inventory
- Centre for Ecology and Hydrology Environmental Information Data Centre.
- RSPB
- Local recorder groups for badgers, bats, amphibians, reptiles, birds etc

The data search should not be used as a substitute for field surveys. An absence of records should not be taken as absence of species or habitats. Records over 10 years old should not be discounted. The absence of more recent records may only indicate a lack of survey.

### **Surveys**

It is acknowledged within the scoping reports that there are gaps within the coverage of the habitat surveys. This will need to be addressed and all other surveys will need to be completed in accordance with recognised guidelines before the application is submitted.

It needs to be demonstrated within each ES that the location of working areas has been informed by ecological surveys in order to avoid or minimise ecological impacts. This is not clear from the scoping reports, which includes a very limited (50m) survey area around apparently pre-determined working areas.

Once working areas of least ecological impact have been identified, it will then need to be ensured that there is sufficient ecological survey coverage around all working areas. A 50m survey area around proposed working areas (as per the scoping reports) is unlikely to be sufficient to detect populations of protected and priority species that could be adversely affected by the proposed works, hydrologically sensitive habitats that could be adversely affected, or to inform an assessment of impacts relating to habitat fragmentation. I therefore suggest that the habitat surveys should cover proposed works locations and surrounding land within 250m. This should include all above ground works, open cut sections (which have not yet been identified) as well as any tunnel sections which may have impacts on hydrologically sensitive habitats. Any land that may be used within the mitigation/compensation proposals should also be included within the habitat survey.

The Extended Phase 1 habitat surveys should include an assessment of the potential of habitats to support protected species, species of principal importance and other species of nature conservation significance (for example, red list species) and should inform the need for further surveys/assessments.

As well as species surveys, the extended phase 1 surveys should inform the need for a phase 2 habitat surveys of semi-natural habitats. This should be carried out at an appropriate time of year, and should include mapped plant communities a full species lists showing relative abundance. Any species or habitats of nature conservation significance should be clearly mapped.

Great crested newt eDNA surveys have been undertaken within 250m of the proposed development sites. Standing advice for planning authorities states that you should survey for great crested newts if there is a pond within 500 metres:

<https://www.gov.uk/guidance/great-crested-newts-surveys-and-mitigation-for-development-projects#survey-effort-required>

The results of all surveys should inform the boundaries of working areas in order to avoid or minimise ecological impacts.

### **Area of Outstanding Natural Beauty**

The Bowland and Marl Hill Sections of the Haweswater Aqueduct and associated works would be situated within the Forest of Bowland Area of Outstanding Natural Beauty (AONB).

The planning authority's duty to have regard to the purpose of conserving and enhancing the natural beauty of the AONB is stated within the Countryside and Rights of Way Act 2000. The natural beauty criterion includes natural heritage features, such as species and habitat:

<https://www.gov.uk/guidance/areas-of-outstanding-natural-beauty-aonbs-designation-and-management>

The Environmental Statements should demonstrate to the planning authority that each proposed development is compatible with the purpose of conserving and enhancing the natural beauty of the AONB (including species and habitat). In this respect, it would be appropriate for the environmental statements to discuss any implications of the proposed developments for the outcomes and objectives of the Forest of Bowland AONB Management Plan.

It would also be appropriate for the Environmental Statements to assess the importance of habitats and species and the significance of impacts in the context of the AONB with reference to the AONB management Plan and relevant National Character Area Profiles.

### **Designated sites**

Each ES should address the possibility of impacts on statutory designated sites, taking account of impact risk zones. Natural England should be consulted on this matter.

The Environmental statements should include sufficient information to enable the planning authority to establish whether or not there would be a likely significant effect on any European Protected Site. If there would be a likely significant effect, then the ES should include sufficient information to enable the planning authority to undertake an appropriate assessment in accordance with the requirements of the Habitats Regulations and related case law.

Each ES should address likely direct or indirect impacts on Biological Heritage Sites or other non-statutory designated sites. Figure 9.3 of both scoping reports illustrates construction areas impinging on Biological Heritage Sites. Impingement onto Biological Heritage Sites should be avoided and it should be demonstrated how impacts on Biological Heritage Sites will be avoided during and after the proposed development. To minimise the likelihood of impacts on a Biological Heritage Site, during development work, or in the long-term, the ES should include proposals for retaining a substantial buffer zone of native habitats between the BHS boundary and the development area.

If it can be demonstrated that impacts on designated sites are unavoidable, then the ES should demonstrate that there will be adequate mitigation/compensation measures to ensure that there will be no net loss of ecological value. Mitigation/compensation proposals should be informed by a comprehensive ecological survey of the areas affected, with reference to the qualifying features of each site.

### **Protected Species**

DEFRA Circular 01/2005 states that *“It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted”* and that *“the survey should be completed and any necessary measures to protect the species should be in place, through conditions and/or planning obligations, before the permission is granted”*.

Each ES therefore needs to include habitat assessments and survey data for all protected species that could potentially be affected by the proposals. The survey methods used should be detailed in the ES. These should comply with recognised guidelines.

Each ES should demonstrate that relevant species protection legislation will be adhered to and should include mitigation/compensation proposals for unavoidable impacts on such species and their habitats.

The Conservation of Habitats and Species Regulations state that Local Authorities in the exercise of their functions are obliged to have regard to the requirements of the Habitats Directive. If any European protected species (such as bats, great crested newts or otters) are present, then the ES should include measures to avoid any breach of The Habitats Regulations.

If such a breach would be unavoidable, then a Natural England Licence would be required before development work could commence. In these circumstances, the planning authority will not be able to approve the application if there is reason to believe that a Natural England licence would not be issued. The planning authority will therefore need to have regard to the requirements of the Habitats Directive in reaching the planning decision and will need to consider the licensing tests given in the Habitats Regulations. In summary, these are that:

1. The development is required for the purpose of
  - preserving public health or public safety,
  - for other imperative reasons of over-riding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment.
  - for preventing serious damage to property.
2. There is no satisfactory alternative.
3. The proposal will not be detrimental to the maintenance of the population of the species at a favourable conservation status.

If there would be unavoidable impacts on European protected species or their habitat, the ES should demonstrate how the above 3 tests will be addressed. This should include mitigation proposals to address the third test. The mitigation proposals should be informed by adequate survey data on population size and distribution, collected in accordance with recognised guidelines.

### **Other priority species and habitats**

Each ES should include the results of surveys for other species, habitats and features of nature conservation value, an assessment of likely impacts on these and mitigation/compensation for unavoidable impacts. This should include Species and Habitats of Principal Importance (NERC Act 2006), red list species and any nationally or locally rare or scarce species.

### **Invasive/Injurious Weeds**

Surveys for invasive or injurious weeds should be carried out. If such species are present the ES should demonstrate how the spread of these species will be avoided during the proposed development works and how the species will be eradicated from the site. I recommend that Environment Agency guidelines be followed on this matter.

### **Evaluation**

In addition to the evaluation criteria/geographical frames of reference stated within the scoping reports, sites, habitats, species populations and other ecological features should be assessed in the context of the AONB. Irreplaceable habitats should also be identified within the evaluation.

### **Avoidance of ecological impacts**

It needs to be demonstrated that measures have been taken to avoid detrimental impacts on sites, habitats, species and features of ecological value, including (but not limited to):

- Statutory designated sites

- Non-statutory designated sites
- Habitats of Principal Importance
- Irreplaceable habitats
- Protected species and their habitats
- Species of principal importance and their habitats
- Other notable species and their habitats (for example, red list species)

Detrimental impacts on habitat connectivity also need to be avoided.

Each ES needs to demonstrate that the proposed development is designed to avoid ecological impacts. Any unavoidable impacts should be mitigated, compensation should be provided as well as enhancement measures to achieve overall gains in ecological value.

Locations of working areas appear to have already been identified. Each environmental statement should include details of the options assessment that has been undertaken to determine the locations of the proposed works. It needs to be demonstrated that working areas have been informed by an ecological assessment in order to identify locations of least ecological impact (see above). It must be ensured that the options appraisal for works locations is sufficient to address statutory requirements such as Habitats Regulations tests.

Irreplaceable habitats should be identified and it should be demonstrated that detrimental impacts on such habitats will be avoided. The NPPF states that development resulting in the loss or deterioration of irreplaceable habitats should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists. Irreplaceable habitats include habitats which would be technically very difficult (or take a very significant time) to restore, recreate or replace once destroyed, for example ancient woodland, veteran trees and blanket bog.

### **Impact Assessment**

Likely impacts on sites, habitats, species and features of ecological value will need to be assessed in accordance with guidelines listed above. All temporary and permanent impacts should be stated and assessed, including (but not limited to) habitat loss and disturbance, habitat fragmentation, potential killing, injury and disturbance of protected and priority species, destruction or disturbance of habitats used by protected and priority species, impacts arising from lighting, noise and vibration etc. Impacts of all construction works should be included in the assessment, for example, enabling works, access routes, dewatering operations, compounds, lay down areas, excavation, tunnelling, open cut, construction etc.

The ecological impact assessment, with reference to hydrological assessments should identify any hydrologically sensitive habitats that may be affected by the proposed works. It should be demonstrated that tunnel routes, open cut sections, compounds and all other elements of the proposed development will avoid such impacts.

The significance of impacts should be assessed in the context of the AONB in addition to the other geographic frameworks stated within the scoping report.

The area of each habitat type that would be lost, damaged, re-established, enhanced or brought into favourable management should be quantified in order to illustrate that the impacts of the development will be fully off-set and that beneficial biodiversity will be delivered.

### **Mitigation/Restoration/Compensation/Enhancement**

The results of surveys and impact assessments undertaken should inform the design of the proposed development and associated mitigation, restoration, compensation and enhancement measures. It should be demonstrated that mitigation and compensation proposals meet the requirements of legislation, policy and guidance listed above.

It should be demonstrated that impacts will be mitigated, that compensation will be provided for all unavoidable impacts and that enhancement measures will provide an overall net gain in ecological value. Each ES should include proposals for maintaining and enhancing habitat connectivity within the application area and the wider landscape. Habitat creation should not be at the expense of existing habitats or features of ecological importance.

Compensation and enhancement proposals should contribute to outcomes, objectives and environmental opportunities stated within the AONB management plan.

Habitat creation proposals should comprise native plant communities appropriate to the location, soils and site conditions. Establishment maintenance and long-term management proposals for restored and re-established habitats should be stated.

Monitoring measures should be included within the ES to measure the success of mitigation and compensation measures, to inform the need for remedial measures and to inform establishment maintenance and long-term management.