



Mr Gareth Davies
Comptroller & Auditor General
National Audit Office
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Sent by email to: gareth.davies@nao.org.uk

21 December 2023

Dear Mr Davies,

Accountability concerns regarding National Highways' major schemes

Responses by the Department for Transport (DfT) and National Highways (NH) to recent requests for information have raised serious concerns about governance and transparency of decision making for National Highways' major schemes. We believe this goes beyond the concerns raised about delivery in your Road enhancements: progress with the second road investment strategy (2020 to 2025) report, in November 2022¹. We would like to request that the National Audit Office investigates our concerns and considers taking action along the lines of our recommendations.

Summary of our concerns

- 1) DfT is not scrutinising or approving the Full Business Cases (FBCs) for NH's major road schemes which are not in the Government Major Projects Portfolio (GMPP). This means that National Highways is left to approve its own FBCs, with no departmental oversight, and there is no guarantee that schemes up to the value of £500 million are being progressed to procurement and construction on a sound economic basis

¹ [Road enhancements: progress with the second road investment strategy \(2020 to 2025\)](#), NAO, 25 November 2022

- 2) NH has refused to publish the FBCs for its major road schemes
- 3) Planning consent is granted **before** a FBC is developed, i.e. before the full and final economic case for the scheme has been scrutinised and approved. Examinations and the Secretary of State instead rely on an Outline Business Case (OBC) which will often be several years out of date when deciding whether to grant consent. This could mean the Secretary of State is making important legal decisions on planning consent based on inaccurate information, and a misinformed view of the benefits and costs of the scheme.
- 4) DfT has refused to publish the minutes of its Investment, Portfolio and Delivery Committee (IPDC) which scrutinises Tier 1 schemes (>£500 million).
- 5) The Infrastructure Projects Authority is refusing to publish the independent assurance reviews for NH Tier 1 schemes in the GMPP
- 6) Accounting Officer Assessments (AOAs) for NH schemes in the GMPP often contain inaccurate and out of date information based on the OBC (as raised in our letter to David Fairbrother, Treasury Officer of Accounts, of 18 January 2022, which we copied to you). This is misleading ministers and undermining the rigour of the AOA process.

Background

Transport Action Network (TAN) has submitted several Environmental Information Requests (EIR) to the DfT and NH requesting information that should be in the public domain about road projects funded with billions of pounds of public money. All of the EIR requests have been refused, resulting in a complete lack of transparency and accountability around the decision making processes.

1. DfT do not scrutinise the FBCs for NH's Tier 2 schemes (<£500m)

We first asked the DfT to publish the FBCs for NH road schemes consented since January 2020 on 27 July 2023². On 7 November 2023 DfT finally responded to a request for an internal review, claiming they did not have any of the FBCs requested as *"FBCs are only provided to the department when the value is over £500m. This is because National Highways have delegated authority for projects up to £500m and are not required to provide a copy of any FBC to DfT up to that value"*.

We are deeply concerned to discover that there is no Departmental oversight of the final FBCs for NH road schemes which are valued under £500 million. NH are, in effect, left to 'mark their own homework', signing off billions of pounds of public funds, potentially on schemes with weak business cases, where costs have escalated, and where value for money has likely declined. We do not think this is acceptable, and believe DfT has lost control of the

² https://www.whatdotheyknow.com/request/full_business_cases_for_national

oversight of significant amounts of NH spending. We recommend that this oversight and approval power for Tier 2 schemes should be brought back to the Secretary of State and not delegated to National Highways.

2. NH refuse to publish FBCs

We then asked NH to publish the FBCs for road schemes consented after January 2020 on 20 November 2023³. NH responded on 18 December 2023 refusing the request on the grounds that it was “*manifestly unreasonable... due to the excessive cost of providing the information*”. Despite there being just 18 FBCs produced since January 2020, they claimed that in determining their response “*in excess of 150 emails have been exchanged involving c120 recipients about this request*”. In the public interest test NH claims that the FBCs are not held centrally, which we believe to be highly unlikely.

Even if they aren't, we do not believe it is unreasonable, or even difficult, for NH to publish 18 stand alone documents, especially ones that are of such importance given the amount of public funds involved. We struggle to understand why our request would have generated so many internal emails.

3. FBC produced *after* the granting of a Development Consent Order

An example of the issues caused by consenting schemes before a FBC has been produced is illustrated by the Lower Thames Crossing (LTC). The Outline Business Case for the LTC was produced in 2020. The scheme has just finished its Development Consent Order (DCO) examination, with a decision by the Secretary of State due by 20 June 2024. Despite four years having elapsed since the OBC, the Secretary of State's decision on the granting of legal powers to build the scheme and compulsorily acquire land will be partially informed by an OBC which will be four years old. A FBC will not be produced and approved until *after* the DCO has been granted. The FBC may reveal that the scheme no longer represents value for money, and therefore that it should not be built. The last Accounting Officer Assessment (AOA) for the LTC was produced in December 2022 but was also based on the outdated OBC from 2020.

The LTC is the largest road scheme in the GMPP with the Funding Statement (part of the DCO application) valuing the scheme at up to £9 billion⁴. Therefore, it is imperative the Secretary of State makes his decision on granting planning consent using the most up to date information available. If a FBC cannot be produced, then at least the Secretary of State should be provided with an updated economic assessment, to ensure that the best decision is taken. This should be made public to allow scrutiny of any new figures.

³ https://www.whatdotheyknow.com/request/full_business_cases_for_national_2

⁴ [Funding Statement](#), 2.1.1, National Highways, October 2022

4. DfT refuse to publish minutes of the IPDC

We submitted an EIR to DfT on 27 July 2023 requesting the publication of the minutes of their Investment, Portfolio and Delivery Committee (IPDC) which is a “*delegated authority to provide oversight, challenge and scrutiny of DfT’s Tier 1 programmes and projects*”⁵. Despite narrowing the request to a shorter time frame, the request was refused on 4 September 2023 on the grounds that publication would “*place an unreasonable burden on the Department in terms of the resources demanded to comply*”.

We believe it is vitally important to maintain public confidence in DfT decision making that there is transparency about the progress of major road schemes and any investment decisions taken. We do not believe it is an “unreasonable burden” to expect the DfT to publish these minutes. Rather, it is in the public interest for them to be made available to the public, the NAO and Parliamentarians.

5. Cabinet Office and IPA refuse to publish IPA independent assurance reviews or seek input beyond NH

Another layer of assurance is purportedly provided by the Infrastructure Projects Authority (IPA). We were first alerted that the IPA may be overly and solely reliant on NH and not receiving a complete picture, when we noticed that the AOA for the A66 Northern Trans Pennine⁶ included the observation that “[t]he [IPA] review team commented that the project is well run and an exemplar in a number of areas, including stakeholder management”. We have had serious concerns about the standard of consultation which we raised with NH, the Planning Inspectorate and local authorities (who also had concerns). We wrote to the CEO of the IPA, Nick Smallwood, on 21 July 2023 and on 17 August 2023 offering to input into the IPA’s independent assurance reviews particularly on risk to delivery of NH schemes, but have not received a response to our 17 August letter.

The Thames Crossing Action Group (TCAG) requested the IPA publish the independent assurance review for the LTC⁷ on 26 January 2023 as they had concerns about its accuracy, however the Cabinet Office refused the request, which is now being appealed to the Information Commissioner’s Office (ICO). We also requested the IPA’s independent assurance review⁸ for the A66 Northern Trans Pennine, but we were also refused⁸.

6. Accounting Officer Assessments (AOAs) contain out of date and inaccurate information

We wrote to David Fairbrother, Treasury Officer of Accounts, on 18 January 2022 about the accuracy of six recent AOAs for National Highways Tier 1 schemes. We were concerned about their potential to mislead ministers about the schemes’ value for money. We copied

⁵ https://www.whatdotheyknow.com/request/minutes_of_the_investment_portfo_2

⁶ [A66 Northern Trans-Pennine project accounting officer assessment](#), DfT, October 2022

⁷ https://www.whatdotheyknow.com/request/ipa_stage_gate_assessment_nov_20

⁸ https://www.whatdotheyknow.com/request/independent_assurance_review_for

this letter to you, but attach it here again. Although Mr Fairbrother replied on 27 February 2023, he merely explained the purpose of the AOA to us, downplaying its role. He did not address our concerns that the DfT's Permanent Secretary and National Highways CEO were signing AOAs that contained inaccurate and out of date information.

Conclusion

We are concerned that the accountability and assurance arrangements for NH road schemes are simply not working. There is a real risk that DfT and NH are progressing very large and expensive Tier 1 and 2 capital projects where the true costs are obscured and which may be poor value for money. We are concerned about the lack of scrutiny of these large schemes at Departmental level, and that NH is left to sign off its own FBCs for its own Tier 2 schemes with little or no oversight. The Secretary of State only appears to have involvement when deciding the DCO, often with out of date information and before the FBC has been produced.

We are also alarmed at the culture of secrecy that surrounds the cost and governance arrangements for NH schemes, from NH to DfT, through to the IPA and the Cabinet Office.

We believe that in the interests of good and open decision making, the FBC should come *before* legal powers are granted to construct a scheme, harm the environment, and compulsorily acquire land. This would enable the Secretary of State to include a FBC with the most up to date value for money and public interest considerations in his decision making when approving or rejecting a Development Consent Order.

There is also a wider issue, specific to individual schemes, where NH refuses to make public the background workings and assumptions behind its value for money calculations. This is a frequent obstacle to Interested Parties at DCO examinations. We are happy to elaborate on this if needed.

Recommendations

1. We recommend that oversight and approval for the FBCs for Tier 2 schemes should be brought back to the Secretary of State and his department and not delegated to National Highways.
2. NAO to require DfT and NH to publish forthcoming FBCs promptly, and to publish immediately any previously produced and unpublished FBCs.
3. A FBC should be produced and approved before the Secretary of State considers whether to grant planning consent or not.
4. NAO to require the DfT to publish the minutes of their Investment, Portfolio and Delivery Committee (IPDC).

5. NAO to require the IPA to publish the independent assurance reviews for NH Tier 1 schemes.
6. NAO to require AOAs to be up to date and accurate at all key decision making stages, and not reliant on an outdated OBC.

We look forward to hearing from you.

Yours sincerely,

Chris Todd
Director
Transport Action Network

CC
Jonny Mood, Director, NAO
Dame Meg Hillier, Chair, Public Accounts Committee