



**TRANSPORT
SCOTLAND**
CÒMHDHAIL ALBA

EIA Record of Decision

A9/A96 Inshes to Smithton

Contents

1. EIA Record of Decision under Paragraph 7 of Schedule 1 of the Roads (Scotland) Act 1984.....	3
2. Environmental Impact Assessment Process.....	4
a. Environmental Impact Assessment Report (EIAR)	4
b. Habitats Regulations Appraisal.....	6
c. Consultation.....	6
i. Scotland Gas Network (SGN)	6
ii. Network Rail.....	7
iii. Vodafone Limited	7
iv. Living Streets Scotland	7
v. Highlands and Islands Enterprise (HIE)	7
d. Participation in decision making.....	7
3. Summary of the Environmental Information Including Consultations	9
4. Other Information.....	12
5. Conditions to which the Decision is Subject.....	12
6. Features of the Project and Measures to Avoid, Prevent or reduce and, if possible, offset Likely Significant Adverse Effects on the Environment.....	13
7. Monitoring Measures	14
8. Reasons and considerations for decision	14
9. Decision	15
10. Right of Challenge.....	15

I. EIA Record of Decision under Paragraph 7 of Schedule 1 of the Roads (Scotland) Act 1984

The Scottish Ministers have considered whether to carry out works to improve the A96 Craibstone – Inverness Trunk Road (“A96”) and the M9/A9 Edinburgh – Stirling – Thurso Trunk Road (“A9”) by constructing the new Inshes to Smithton Road between Inshes in the vicinity of Culloden and the Smithton Roundabout (“the project”). They gave notice on 28th February 2022 that they had decided to proceed with the project and make the following Orders :

1. A9 and A96 Trunk Roads (Inshes to Smithton) Compulsory Purchase Order 2024
2. A9 and A96 Trunk Roads (Inshes to Smithton) (Side Roads) Order 2024

An Environmental Impact Assessment (EIA) has been made for this project. The Scottish Ministers are required, under Paragraph 7 of Schedule 1 of the Roads (Scotland) Act 1984 to publish their decision together with a statement confirming they have provided all information required by the Act in relation to EIA and notify the consultation bodies by sending to them copies of relevant documentation and making this available to the public. This EIA Record of Decision outlines the decision made and the information required under the Act.

In making this decision the Scottish Ministers have taken into consideration –

(a) the Environmental Impact Assessment Report (EIAR) for this project published on 13 September 2019

(b) the opinion on the EIAR or the project expressed by –

- Historic Environment Scotland (HES)
- Scottish Environment Protection Agency (SEPA)
- NatureScot
- The Highland Council
- Inverness Access Panel
- Mobile and Access Committee Scotland
- Scottish Badgers
- Scottish Raptor Study Group – Highland Branch
- Scottish Water
- ScotWays

- Smithton and Culloden Community Council
- Stagecoach
- Sustrans Scotland
- Botanical Society of Britain & Ireland (BSBI)
- and other persons

(c) representations, including objections, on the EIAR and project by other persons made during the six week statutory consultation period following the publication of the EIAR commencing on 13 September 2019 and closing on 25 October 2019.

The project did not appear to the Scottish Ministers to be likely to have a significant effect on an EEA State and no EEA State indicated a wish to participate in the EIA procedure.

2. Environmental Impact Assessment Process

a. Environmental Impact Assessment Report (EIAR)

Description of project

The project comprises approximately 3.2km of new single carriageway (mainline and side roads) and 0.7km of extended lane gain on the line of the existing A9, to improve the road network between the existing A9 and A96. The project would also incorporate:

- a lane gain/lane drop arrangement on the A9 southbound carriageway, forming a third lane between Raigmore Interchange and the Inshes junction;
- two at-grade roundabouts;
- local road diversions, the provision of new means of access and access for maintenance purposes;
- two principal structures comprising one crossing of the A9 and one of the Highland Main Line Railway;
- 12 culverts, including ten culvert crossings and two flood relief culverts;
- the provision of approximately 7.3km of new paths for pedestrians and cyclists (referred to as Non-Motorised Users or NMUs) and which have been developed collaboratively with The Highland Council to complement the Inverness East Development Brief; and
- utility works.

The need for the project was highlighted in the Strategic Transport Projects Review published in 2009 (STPR). The STPR proposals included the provision of a new road connecting the A96 and A9 south of Inverness which would provide relief at Raigmore Interchange.

The Inner Moray Firth Local Development Plan makes specific reference to the project, connecting the A9 to the A96, as being a major infrastructure requirement for the development of the Inverness to Nairn Growth Area.

The Inverness and Highland City-Region Deal specifically supports the project to 'improve the operation of the network for longer distances and local journeys, providing relief to the A96 east of Inverness and the Raigmore junction.'

The A9/A96 Inshes to Smithton project is interdependent with other projects and plans being progressed by The Highland Council, however, is dependent on the proposed A96 Dualling Inverness to Nairn (including Nairn Bypass) project.

The project will improve the strategic road network in the area, improving its operation for longer distance and local journeys. It will support the increased capacity of the A96 when the proposed dualling is complete and improve the efficiency of journey times on the local road network.

The design and assessment of the A9/A96 Inshes to Smithton project (hereafter referred to as the project) progressed through the Design Manual Roads and Bridges (DMRB) Stage 2 route option selection (Jacobs, 2017) and a preferred option was announced in October 2017. Since 2017, the preferred option has been further developed and assessed through the DMRB Stage 3 process.

The published objectives for the project are:

- to encourage more effective use of the road network hierarchy and thereby improve the operation of the network for longer distance and local journeys;
- to contribute to The Highland Council's Development Plan aims for development east of the A9, and to complement the benefits arising from the dualling of the A96;
- to improve safety for NMUs where the trunk road and local road network interact; and
- to maximise opportunities for active travel and public transport connections arising from the road infrastructure improvements.

The Scottish Ministers determined that the project is relevant within the context and definition of section 55A of the Roads (Scotland) Act 1984 and falls within Annex II of Council Directive 2011/92/EU of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment

and amended by Directive 2014/52/EU of the European Parliament and of the Council. The project has been subject to screening using the criteria in Annex III to determine an EIA is required under the Roads (Scotland) Act 1984. Screening using the criteria identified the need for an Environmental Impact Assessment (EIA) because the works had the potential to have a significant effect on the environment by virtue of factors such as:

- the works exceed 1ha in area;
- there was the potential for impacts to the Inner Moray Firth SPA and Longman and Castle Bays SSSI due to works in the vicinity watercourses which feed into those designated areas; and
- there was the potential for impacts on nationally important archaeological remains, namely the Scheduled Monument 'Ashton Farm Cottages, ring ditch 415m SW and pit circles 460m WSW of'.

A Notice of Determination (NoD) was published on 13 September 2019.

An EIAR was published on 13 September 2019.

b. Habitats Regulations Appraisal

The Habitats Regulations Appraisal (HRA) concluded that the project, either alone or in-combination with other plans and projects, would have no likely significant effects on the Inner Moray Firth Special Protection Area (SPA), Inner Moray Firth Ramsar and Moray Firth proposed SPA and therefore there is no requirement to progress to the Stage Two Appropriate Assessment. Scottish Natural Heritage (SNH) have agreed with this conclusion.

c. Consultation

A summary of consultation responses received following publication of the EIAR, and how these have been considered, is provided below.

i. Scotland Gas Networks (SGN)

SGN sent a letter on 4 October 2019 in regards to necessary measures being taken to safeguard SGN apparatus. The Scottish Ministers reviewed the points raised and responded on 27 February 2020. There are no outstanding issues of objection with this consultee.

ii. Network Rail

Network Rail sent a letter on 10 October 2019 in relation to necessary measures being taken to safeguard Network Rail apparatus and operations. The Scottish Ministers reviewed the points and responded on 27 February 2020. There are no outstanding issues of objection with this consultee.

iii. Vodafone Limited

Vodafone Limited sent a letter on 23 October 2019 about concerns over necessary measures being taken to safeguard Vodafone apparatus. The Scottish Ministers reviewed the points and responded on 27 February 2020. There are no outstanding issues of objection with this consultee.

iv. Living Streets Scotland

Living Streets Scotland sent a letter on 24 October 2019 in regards to the level of NMU provision, roundabouts, forward priority for NMU at side road accesses, environmental impact of induced traffic, benefit of project to NMU and public transport users and the climate emergency. The Scottish Ministers reviewed the points and responded on 27 February 2020. This consultee maintained an objection to the scheme. The Scottish Ministers considered that the issues raised in the objection have been fully addressed by the Promoter in its response and undertakings and that there are no other major engineering design or environmental issues in the objection that would require the Scottish Ministers to modify or republish the draft Orders or EIAR for the Proposed Scheme.

v. Highlands and Islands Enterprise (HIE)

Highlands and Islands Enterprise (HIE) sent an email on 25 October 2019 in relation to land acquisition, servitudes, soft landscaping, hard landscaping, traffic calming and signage, Sustainable Drainage Systems (SuDS), timing, Inshes roundabout, cycle paths, access and pedestrian crossings. The Scottish Ministers reviewed the points and responded on 27 February 2020. There are no outstanding issues of objection with this consultee.

d. Participation in decision making

To ensure the public had the opportunity to participate in the decision-making procedures regular public exhibitions for local communities and other stakeholders held by the Scottish Ministers starting in February 2012. During the public exhibition held in February 2012, Ministers presented proposals for a dual carriageway trunk

road between Inshes and Smithton. Following the development and assessment of a number of options against refined transport planning objectives and Scottish Transport Appraisal Guidance (STAG) criteria, the results were presented at a public exhibition held in May and June 2014. Following these public exhibitions, two options were further refined and formed the basis of the DMRB Stage 2 assessment and were presented in the August 2016 public exhibition. The preferred option was announced at two public exhibitions in October 2017 and November 2017. Two public drop-in sessions were held in May 2018, allowing members of the public to provide comment and feedback regarding the variants and the project.

Discussions with potentially affected landowners were also undertaken throughout the DMRB Stage 3 design development process, and where possible, requirements were incorporated into the design. This included consideration of aspects such as the alignment of the project and land-take, and revised access arrangements to land and properties. Further details of landowner consultation are provided in the EIAR in Chapter 15 (People and Communities – Community and Private Assets).

Notice of the EIAR was published on 13 September 2019.

Following the end of the statutory objection period (13 September 2019 to 25 October 2019), five statutory and eleven non-statutory objections were received. All five statutory objections were withdrawn, leaving eleven non-statutory objections remaining.

Since these non-statutory objections remained outstanding and unresolved, the Scottish Ministers undertook a detailed review of all the correspondence to decide whether a Public Local Inquiry (PLI) was necessary.

Under the Roads (Scotland) Act 1984, the Scottish Ministers are required to consider any objections to draft Orders and, excepting where objections are received from certain categories of objector, may deal with the objections without holding a PLI if satisfied in the circumstances of the case it is not necessary. None of the outstanding objections were from a class of objector or body that would make the holding of a PLI mandatory.

The Scottish Ministers considered the written submissions made by the outstanding non statutory objectors and the correspondence in response and reached the conclusion that they had sufficient information to reach a balanced and informed decision that a PLI was not necessary in the circumstances of the case.

The Scottish Ministers decision letter, published on 28 February 2022 included the decision that a PLI was not necessary and dispensed with an inquiry.

3. Summary of the Environmental Information Including Consultations

As noted above, an EIAR for this project was published on 13 September 2019.

The EIAR Chapter 21 (Summary of Significant Residual Effects) outlines any significant residual effects that have been identified due to the construction and operation of the project, after implementation of the mitigation as set out in Chapter 20 (Schedule of Environmental Commitments). Residual effects comprise those which remain significant after incorporating the mitigation measures.

In the EIAR, all residual effects identified are generally defined as significant when they are assessed to be of moderate or greater in significance. Within the EIAR, significant and non-significant residual effects are identified according to the methodology provided for each environmental topic within Chapters 7 to 19. The assessment of environmental parameters reported in the EIAR found there are no significant adverse residual effects to the following topics as a result of the project:

- Air Quality (Chapter 7);
- Geology, Soils, Contaminated Land and Groundwater (Chapter 12); and
- Materials (Chapter 17).

The assessment of environmental parameters reported in the EIAR found that there are significant adverse residual effects to the following topics as a result of the project:

The Noise and Vibration assessment in Chapter 8 reported some properties in the vicinity of the project would experience an increase in noise levels. A significant impact is predicted at Culloden House Care Home and 11 residential properties. Specific mitigation measures have not been proposed for these properties, as the increase is a result of increased traffic on the nearby local roads, and not as a direct result from road traffic on the project. It is anticipated that any potentially significant adverse impacts associated with the construction stage are unlikely to arise and any that do would be short-term in nature.

The Landscape assessment in Chapter 9 reported there would be a significant residual impact on the Inverness Campus due to the introduction of the road, earthworks, structures, and lighting on the edges of the Campus. Proposed mixed woodland, hedgerow and individual tree, mitigation planting will help integrate the project into the landscape. As planting establishes, residual impacts would decrease

over time. There would also be a significant residual impact on the farmed landscape as a result of the project into a relatively undeveloped landscape. As planting establishes and the project becomes more integrated into the landscape it is predicted that the impacts on agricultural landscape would reduce.

The Visual assessment in Chapter 10 reported that built receptors would be significantly affected by the project. Proposed mitigation includes the retention of existing trees and vegetation where possible, new planting of woodland, tree avenues and individual trees, with hedgerow planting and seeding adjacent to the project. They have been proposed to replace trees lost during construction, provide screening where appropriate, to enhance biodiversity and to reflect and enhance local landscape character. Once planting is established, the landscape mitigation would reduce the significant impacts on views from individual built receptors.

The Ecology and Nature Conservation assessment in Chapter 11 reported that, with proposed mitigation, there is an overall residual significant impact during operation (though temporary and short-term) due to loss and fragmentation of foraging and commuting habitat for bats, and suitable habitat for breeding birds. Once landscape and ecological planting has established no significant residual impacts are predicted.

The Road Drainage and Water Environment assessment in Chapter 13 reported that during construction, with proposed mitigation, impacts on all fluvial geomorphology, flood risk and water quality would be reduced to insignificant. During the operational phase, and following the implementation of mitigation, there is no increase in flood risk predicted to land areas outside the project boundary. The majority of potential impacts arising from the operation of the project would have a neutral or slight significance. However residual impacts with a large to very large significance for flood risk were identified for the operational phase of the project attributed to Scretan Burn (SWF04), Cairnlaw Burn (SWF08) and Beechwood Burn (SWF03). No significant residual impacts are predicted on fluvial geomorphology or water quality during operation.

The Cultural Heritage assessment in Chapter 14 has found potential impacts on Scheduled Monument Ashton Farm Cottages, ring ditch and pit circles (Asset 14; high value; SM11535) and cultural heritage asset Stratton Possible Hut Circles 1 (Asset 45; high value) as a result of the construction and operation of the project, with the residual magnitude of impact assessed to be moderate and the residual significance of impact moderate. During construction and operation, the project would spatially sever eight archaeological remains from other prehistoric archaeological remains in the study area, including the Scheduled Monument. This would result in a residual magnitude of impact and residual significance of impact on the cultural heritage assets during construction and operation of moderate. Residual impacts of slight and neutral significance have been assessed for 39 archaeological

remains during construction, and of slight significance on one asset (Ashton Farm Possible Barrow; Asset 19) during operation.

The People and Communities – Community and Private Assets assessment in Chapter 15 reported that with mitigation measures in place to reduce residual construction and operational impacts, no significant impacts are expected as a result of the project on residential, commercial and industrial property. The community severance assessment determined that an increase in journey distance on National Cycle Network/Local Path NCN 1/LP11, that provides access to Cradlehall and Inverness College UHI (University of the Highlands and Islands), would result in a significant residual impact as a result of the project. Users of a core path (IN08.10) linking local communities of Smithton and Cradlehall to Inverness Retail and Business Park are also expected to experience significant residual impacts. However, the project is also expected to provide a significant beneficial impact, by way of relief from existing severance along Tower Road for vehicles and pedestrians accessing community facilities and services within the local community. Significant residual impacts have been identified at one agricultural and sporting interest as a result of permanent land-take and severance of fields. Mitigation ensures will ensure that access to farm buildings, farm infrastructure and fields is maintained.

The People and Communities – All Travellers assessment in Chapter 16 reported that during construction, temporary significant impacts are anticipated on journey length and amenity value for one core path (IN08.10), four local paths (LP2, LP4, LP5 and LP8) and National Cycle Network/Local Path NCN 1/LP11, due to diversions and general construction activities. Mitigation measures will help to reduce impacts on NMUs. The View from the Road assessment did not identify any significant impacts following the establishment of mitigation planting. According to the descriptive scale within the DMRB, driver stress, as a function of traffic flows and speed, would be described as high due to the low traffic speeds and the two roundabouts introduced by the project. It is considered that other aspects of the design, including appropriate signage, may contribute to reducing driver stress during operation by achieving high levels of operational reliability and reducing driver frustration.

EIA Report Policies and Plans in Chapter 18 provides a review of national and local planning policy documents, and an assessment of the extent to which the project complies with policy and guidance. The principle of development of the project is supported in planning policy, with the Scottish Government's commitment to the project as part of wider improvements to the strategic network outlined in various national policy and guidance documents. The project also supports regional transport policy objectives as part of a wider strategy to assist in providing enhanced connectivity to deliver prosperity and connect communities across the region.

The Cumulative Impacts in Chapter 19 identified a number of potential significant adverse cumulative impacts in relation to the planned urban expansion at Inverness East as established in the Inner Moray Firth Proposed Local Development Plan and Inverness East Development Brief. The project is key to delivering the infrastructure required to support the development of the area. It is further acknowledged that, depending on the detailed design for the other developments in the area, additional cumulative impacts are possible. Conversely, it may be possible to mitigate construction impacts through coordination and refinement of the construction programmes, but these are unknown at this stage.

EIAR Chapter 6 (Consultation and Scoping) describes the consultation undertaken with consultees, relevant bodies and organisations, and members of the public in relation to the environmental aspects of the project prior to publication of the EIAR. This EIAR chapter is supported by EIAR Appendix A6.1 (Summary of Consultation Responses).

A summary of consultation responses received following publication of the EIAR, and how these have been considered is provided in Section 2 above.

4. Other Information

The project would affect the habitats of several protected species (including European Protected Species - EPS). SNH has confirmed that Transport Scotland would need to apply for the relevant licences with regards to the protected species affected by the project which will be informed by pre-construction ecological surveys.

Compliance with the Water Framework Directive (WFD) has been assessed under the Water Environment (Controlled Activities) (Scotland) Regulations 2013 (as amended) (CAR) (Scottish Government, 2013) and will be regulated through the CAR licencing process with SEPA.

No marine licensable activities are associated with the project.

No listed building consents are associated with the project.

5. Conditions to which the Decision is Subject

Transport Scotland has confirmed that the following conditions will be met with consultees following the publication of the EIAR:

The Highland Council: commitment of inclusion of a Non-Motorised Users (NMU) path/maintenance track around the perimeter of three wetlands and NMU perimeter path only on one wetland, and inclusion of fencing around the wetlands.

The whole EIAR, including the schedule of environmental commitments in EIAR Chapter 20 and all identified mitigation and agreed accommodation works, would form part of future contract documents. As such these would be binding on the contractor.

The Scottish Ministers decision letter, published on 28 February 2022 stated that the relevant and appropriate technical standards have been applied throughout the design development and assessment of the project. All active travel facilities had been developed in compliance with relevant and appropriate standards and the relevant local authority has been involved in extensive consultation throughout the development of the design.

The Scottish Ministers considered that the issues raised in the objections had been fully addressed in responses and undertakings and that there are no other major engineering design or environmental issues in the objections that would require the Scottish Ministers to modify or republish the draft Orders or EIAR for the project.

6. Features of the Project and Measures to Avoid, Prevent or reduce and, if possible, offset Likely Significant Adverse Effects on the Environment

The variety of assessments contained in the EIAR were carried out as part of an iterative design process. To some extent this has anticipated potential environmental effects and incorporated features within the design to limit or avoid these altogether. Examples include earthwork bunds to limit noise and visual impacts and SuDS to manage drainage, flood risk and water pollution. Other mitigation measures have been proposed to limit impacts or resolve them, such as landscape and ecological planting to blend the project into the landscape, to replace lost vegetation, maintain semi-improved grassland and prevent bat habitat loss. The project would also include a construction environmental management plan (CEMP) to limit disturbance and disruption during the construction phase.

EIAR Chapter 20 (Schedule of Environmental Commitments) collates the mitigation measures identified in the EIAR. Mitigation and environmental commitments that have been identified as general requirements which shall help to avoid, reduce or offset potential impacts have been detailed in a number of the EIAR technical assessments.

7. Monitoring Measures

The monitoring measures for the environmental mitigation measures are summarised in EIAR Chapter 20 (Schedule of Environmental Commitments) which is available on the Transport Scotland website:

https://www.transport.gov.scot/media/45489/a9_a96-eiar-chapter-20-schedule-of-environmental-commitments.pdf

8. Reasons and considerations for decision

The conclusions are as follows:

- The project will improve the strategic road network in the area, improving its operation for longer distance and local journeys. It will complement the increased capacity of the A96 when the proposed dualling is complete and improve efficiency of journey times on the local road network.
- The project has been committed within the Inverness and Highland City-Region Deal package of investments to promote sustainable and inclusive growth.
- The environmental information has been thoroughly considered and the assessment has been undertaken robustly. The project would have a range of environmental effects, and considerable effort has gone into iterating/modifying designs to avoid and/or limit these potential effects or to subsequently mitigate them. However, significant residual effects would remain in some instances.
- Although some residual significant effects are inevitable with a project such as this, those that are predicted in this instance would not be so severe as to render the project unacceptable or to compromise the wider public interest.
- The Assessment completed under The Conservation (Natural Habitats, etc.) Regulations 1994, as amended concluded that, with mitigation, the project, either alone or in-combination with other plans and projects, would have no Likely Significant Effects on the Inner Moray Firth Special Protection Area, Inner Moray Firth Ramsar and Moray Firth proposed Special Protection Area and therefore the need to undertake further stages of the HRA process is not required.
- The mitigation and monitoring measures as set out in this decision will be fully implemented and incorporated into contracts, where appropriate.

The Scottish Ministers are satisfied that their reasoned conclusion on the significant effects of the project on the environment, taking into account the results of the examination of the information in the EIAR and other environmental information is still up to date having regard to current knowledge and methods of assessment..

9. Decision


The Statutory Consultation Period closed on 25 October 2019. The Scottish Ministers considered all the representations, including objections, received during the Statutory Consultation Period. The Scottish Ministers considered the remaining objections and published their Decision Letter which confirmed that a Public Local Inquiry was not necessary, and that Orders should be made as published.

It is considered that the decision not to hold a PLI is reasonable and lawful on the basis that a PLI would not be likely to elicit any further information that would assist Ministers in coming to a decision on this matter. It is further considered that the proposals for the project are robust, and the topics of objection have been fully addressed in the responses to the objectors.

Having previously determined that a PLI is not necessary, the Scottish Ministers carefully considered:

- the need, justification and environmental impact of the project, including the EIAR and representations made in that connection;
- the objections to the draft Orders which were made and not withdrawn; and
- the responses given to the outstanding objections.

The Scottish Ministers confirmed the decision that the Orders should be made as published.

Name	Morna Cannon
Job Title	Interim Director of Low Carbon Economy
Signature	
Date	13/05/24

10. Right of Challenge

Any person aggrieved by the A9 and A96 Trunk Roads (Inshes to Smithton) (Side Roads) Order 2024, or of any provision contained therein, on the grounds that it is not within the powers of the Roads (Scotland) Act 1984 or that any requirement of that Act or of any Regulations made under that Act has not been complied with in relation to the Order, may, within six weeks of 20 June 2024 make an application as regards that validity to the Court of Session.

Any person aggrieved by The A9 and A96 Trunk Roads (Inshes to Smithton) Compulsory Purchase Order 2024 who wants to question it's validity or any provision

of it on the ground that authorisation of the Order is not empowered to be granted under the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 or the Roads (Scotland) Act 1984, or on the ground any requirement of the 1947 Act or any regulation made under it, has not been complied with, may make an application to the Court of Session within six weeks of 20 June 2024.



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