

ON KNIGHTSBRIDGE ASSOCIATION LETTERHEAD

URGENT: DEFRA CONSULTATIONS START CLOSING ON 7 NOVEMBER 2006

My reference: Trencom/Defra/02

Rt. Hon. David Miliband MP Secretary of State
Department for Environment, Food and Rural Affairs
Nobel House
17 Smith Square
London SW1P 3JR

Email: david.miliband@defra.gsi.gov.uk

Addressed and sent by post and email also to:

For First Consultation: AQEG Secretariat sarah.honour@defra.gsi.gov.uk (closes on Tuesday 7 November)

For Second Consultation: karl.nsiyah@defra.gsi.gov.uk (closes on 10 November)

For Third Consultation: victor.cletus@defra.gsi.gov.uk (closes on 24 November)

29 October 2006

Dear Secretary of State

Air Quality in England, Scotland, Wales and Northern Ireland

First Consultation: “Consultation on draft AQEG report: Trends in Primary Nitrogen Dioxide in the UK”

Second Consultation: “Consultation on the UK’s plans and programmes to meet limit values set in the First Air Quality Daughter Directive (1999/30/EC) of the European Parliament and Council (2006 reporting year)”

Third Consultation: “Consultation on draft proposals to: (a) transpose Directive 2004/107/EC of the European Parliament and of the Council relating to arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons in ambient air; and (b) streamline air quality legislation by consolidating existing air quality legislation with proposed legislation”

1. Introduction: Response to three Defra consultations on air quality

I am writing on behalf of The Knightsbridge Association, which represents People and businesses in the area between Hyde Park Corner and Queen’s Gate in Central London, to seek again your commitment on behalf of HM Government to protect urgently local residents, local businesses and visitors (of which there are many) in and around the Brompton Road, Knightsbridge and Sloane Street area from high levels of air pollution from nitrogen dioxide (NO₂) and particulate matter (PM₁₀ and PM_{2.5}). We wrote to you on 25 June seeking twelve (12) specific commitments

and have still not received a reply from you to that letter. **We request respectfully again that you reply personally please to that letter and to this one in your capacity as Secretary of State.**

Air pollution in Brompton Road is worse already in 2006 than in the whole of 2005. As at today's date, annual mean levels of NO₂ for 2006 are 95 µg/m³ compared to 90 µg/m³ in 2005 and there have been 310 exceedances of the hourly limit of 200 µg/m³ in just under 10 months compared to 288 exceedances for 12 months in 2005 (compared to World Health Organisation (WHO) recommended levels of air quality for NO₂ of 40 µg/m³ and 18 exceedances respectively). These readings are taken nearly 400 metres (where the road is narrowed to one lane in each direction by the road configuration) from the site of the worst local air pollution, where 12 lanes of traffic merge at the top of Sloane Street, and, although PM₁₀ is not measured at the Brompton Road monitoring site, the broad correlation between the two air pollutants indicates very high levels of PM₁₀ (and probably ozone) here too.

I am also now writing on behalf of The Knightsbridge Association in this letter to respond to three technical consultation documents issued by the Department of Environment, Food and Rural Affairs (Defra) in August and September 2006 on various aspects of air quality and in particular issues relating to NO₂. Given the interconnectedness of the subjects, this letter represents our formal reply to each of the three current consultations with detailed responses shown separately below. This letter should be read in conjunction with our letter submitted to Defra on 25 June 2006.

2. **Response to "Consultation on draft AQEG report: Trends in Primary Nitrogen Dioxide in the UK"**

We have the following points on this technical consultation:

- i. Defra's News Release on 15 August 2006 was headed "Air quality experts seek views on nitrogen dioxide report". Its opening sentence said "A draft report investigating unexpected trends in roadside nitrogen dioxide (NO₂) concentrations and possible links with changes in vehicle technologies has been published today by the Air Quality Expert Group (AQEG)." The press release went on to highlight findings including that "the increased proportion of primary NO₂ from road transport is related to the fitting of diesel particulate filters to heavy duty vehicles, particularly London buses." In the Regenerative particulate traps that are retrofitted to diesel powered vehicles dramatically increase direct emissions of NO₂, as indicated by studies carried out in the USA, there will be further breaches of the air quality objective and limit value." This section seems to have been removed from the final version of the 2003 AQEG report. **We find it unacceptable that the impression should be being created now by Defra that it is surprised that NO₂ air pollution has got worse in London as a result of the retro-fitting of particulate traps to London buses when this outcome was clearly anticipated by Defra's experts by 19 May 2003. There are no excuses for London failing to meeting European Union (EU) legal limits for NO₂ by 1 January 2010 given that these limits were accepted formally by the Government as far back as 1999;** and
- ii. the press release goes on to say that "The best current evidence suggests that health effects from exposure to particulate matter are much more significant than those from NO₂. Long

term exposure to PM₁₀ is linked to respiratory and cardiovascular diseases and symptoms amongst patients suffering from asthma. The observed changes in NO₂/NO_x are localised and have no climate change implications”. **We find it unacceptable that Defra or its advisers should imply that some WHO recommended limits for air quality are less important than others.** Furthermore, given that there is a broad correlation between high levels of NO₂ and high levels other pollutants (especially PM₁₀), the installation of a more effective pollution monitoring network (that measured PM₁₀ at more monitoring sites that currently measure only NO₂), would show quickly that air pollution problems need to be addressed urgently in the same locations. To ignore this point or imply otherwise is misleading.

Please ensure that the report is amended to take account of the above points.

3. **Response to “Consultation on the UK’s plans and programmes to meet limit values set in the First Air Quality Daughter Directive (1999/30/EC) of the European Parliament and Council (2006 reporting year)”**

We have the following points on this technical consultation:

- i. we consider it misleading that Defra should refer only to the “2006 reporting year” in the Defra press release when it is a report on the position in the UK for the “2004 calendar year”. Such a characterisation creates the impression, wrongly, that the information is current when it is not. Paragraph 1 of the Summary in the actual report then refers to the “2004 reporting year”. **We urge Defra to change its publication practice for all future press releases and consultation documents in relation to air quality so that the public can understand readily the actual timeliness (or tardiness) of the information being made available.** Please be transparent and consistent;
- ii. we do not consider that the information set out in the draft report accurately reflects the position in the UK for the 2004 calendar year. In particular, Table 1 (on page 1) states that “no modelling is available for this metric” when referring to exceedances reported of the NO₂ hourly mean limit value and margin of tolerance. **These so called “hotspots” must be modelled and clearly identified if a reasonable and representative picture is to be presented of air quality in the UK.** Furthermore, we consider it unsatisfactory to say, as Defra does, that “to improve clarity, similar exceedance situations have been merged (i.e. contained in the same form”. How can this approach be consistent with the requirements to make information available (and presumably comprehensible) to the public? **Please confirm that all areas of exceedances in the UK have been identified in this report (given that neither adequate monitoring nor modelling seems to have taken place for at least one important category);**
- iii. in paragraph 14 (on page 5), the draft report states “Meeting the limit values in London remains one of the biggest challenges for the UK”. The report then refers to the Mayor’s “Air Quality Strategy for London” as being considered as “an integrated plan and programme for the London agglomeration as a whole” (and this strategy was published in 2002). Defra has an obligation (under the Air Quality Framework Directive) “to produce plans or programmes for areas where the limit value has been exceeded and indicating how the limit values will be met in the required timescale”. **Please ensure that when the report for the 2004 calendar year is finalised that it incorporates the key conclusions of the latest UK Air Quality Strategy with the results of the consultation**

- exercise that closed in July 2006 (including an analysis of how the limits values will be met).** Otherwise, this draft report would appear to be being dismissed by Defra as a broad brush, high level exercise, without addressing the spirit of the EU requirements;
- iv. in paragraph 17 (on page 6), the draft report says “The lack of a new proposal for reducing emissions from road vehicles will have a detrimental effect on Member States (such as the UK’s) ability to reduce air pollution as quickly as would otherwise be possible”. **Please do not consider that such a delay by the EU would justify any time extension for the UK from meeting EU legal limits on air quality which are mainly due in 2010 and have been in legislation since 1999;**
 - v. paragraph 18 (on page 6) (first bullet point), implies that it might be adequate to meet requirements for one pollutant or several but not all of them. **We consider that an approach that suggested that some WHO recommended levels of air quality are less important than others is totally unacceptable.** The WHO sets absolute standards for each air pollutant in order to protect human health and it is vital that all of these are met urgently. Defra has no right to decide arbitrarily which WHO recommendations it feels like complying with;
 - vi. we are alarmed to read that Defra considers (page 6) that “There is an urgent need to address the wisdom of requiring Member States to reduce levels of pollutants in a relatively small number of highly localised “hot-spots”. It may be the case that actions to reach the limit values would be disproportionately expensive in a small number of these cases. Particularly where local conditions are such that sources of diffuse pollution do not give rise to significant health concerns. In such cases, devoting resources to other measures could lead to greater overall health benefits”. In your speech (i.e. David Miliband) to the Lunar Society on 26 October 2006, you highlighted four principles set out in the social justice commission [that] can be applied to the environmental context. They included “First, equal citizenship rights” and “Second, all citizens should be able to enjoy a social minimum of environmental resources: clean air, drinking water...”. The former must include those who live in, work in or visit “hot-spots” and the latter must surely be interpreted to mean the urgent attainment of WHO recommended levels of air quality. **Please amend the report to emphasise the above sentiment from the speech to the Lunar Society and commit to address equality and standards issues positively rather than seek escape clauses;**
 - vii. in Form 6 on page 50, Defra says that “The majority of exceedances of the limit values are as a result of emissions from road transport. Member States ability to reduce emissions from road transport are limited; therefore further action will be required at Community Level”. **We consider it totally inadequate to include such a comment (as the only comment) under the section on possible measures that have not been taken.** It implies that no other measures are possible or, worse still, that Defra considers that air pollution can only be solved by EU wide measures because the UK has not got the political will, imagination or ability to meet its obligations to address life threatening air pollution problems;
 - viii. the WHO publication “Health effects of transport-related air pollution”, published in 2005, says on page 106 that “PM_{2.5} concentrations in the London Underground have been shown to be up to 10 times higher than those for surface transport modes”. **Given the serious health risks associated with inhaling particulate matter and these extreme levels of air pollution, why has Defra not addressed this crucial exceedance of EU legal limits in its report?;** and
 - ix. **finally, we urge Defra to attach, as a separate annex (given that we recognise that the EU requires its own standard format also), a more accessible and**

comprehensible list of what air pollution objectives have been breached where and by how much in order that members of the public can readily understand the full extent of the air pollution problems that they face.

Please amend the report to take account of the above points.

4. **Response to “Consultation on draft proposals to: (a) transpose Directive 2004/107/EC of the European Parliament and of the Council relating to arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons in ambient air; and (b) streamline air quality legislation by consolidating existing air quality legislation with proposed legislation”**

In general, we welcome the Government’s proposals to consolidate the existing air quality legislative framework with the proposed new Air Quality Standards Regulations 2007 (AQSR 2007) with an aim to streamline air quality legislation. We have the following specific points on this technical consultation:

- i. we note that the measures proposed “do *not* aim to change the provisions of existing legislation” and that “the extent of the measures proposed is minimal and fall upon the Secretary of State”. Also that the EU’s fourth Daughter Directive requires member states to transpose the provisions of the Directive into national law by 15 February 2007. **We note that failure to fulfil the Government’s obligations under the Directive would allow the matter to be brought before the European Court of Justice and that this could lead to infraction proceedings against the UK.** We note also Defra’s reference to “the penalties for non-compliance would depend upon the seriousness and duration of the failure but could include a “lump sum” payment (minimum £8 million and up to perhaps £55 million) and, with continued failure to comply, “penalty payments” of around £3 million – £200 million per annum thereafter, following a second European Court of Justice judgment”. **We welcome the existence and imposition of severe penalties in respect of air quality matters;**
- ii. we note that the fourth Directive requires that target values for the total content within the PM₁₀ fraction of airborne arsenic, cadmium, nickel and in relation to polycyclic aromatic hydrocarbons (PAHs), benzo(a)pyrene should be attained *as far as possible* from 31 December 2012 and requires Member States to take necessary measures to attain target values but stipulates that these are limited to measures *not* entailing disproportionate costs. Also that the Directive further provides, regarding industrial installations, these would not involve measures beyond the application of best available techniques (BAT) (with a definition that includes economic and technical viability). **Given that these “target values” were agreed formally by 2004 and that differential treatment of citizens raises serious questions of environmental justice, we urge the Government to take the opportunity to enshrine in the AQSR 2007 regulations an obligation to meet these obligations, with no possibility of time extensions for them, by 2012;**
- iii. we note that the main duty on the Secretary of State under the 2007 Regulations would be to meet limit values by the due dates (paragraph 2.2.3 on page 8). Given that the obligations for NO₂ and PM₁₀ were agreed in Council Directive 1999/30/EC of 22 April 1999 (along with sulphur dioxide and lead for which there has been notable success in achieving improvements in air quality), **we urge the Government to take the opportunity to enshrine in the 2007 Regulations heavy penalties for relevant UK authorities for breaches of EU legal limits on PM₁₀ (which were to have been met by**

- 1 January 2005) and an obligation to meet NO₂ obligations by 1 January 2010 with no possibility of time extensions thereafter;**
- iv. we do not accept that “additional monitoring requirements should be met by utilising existing monitoring sites, in order to minimise costs” (on page 18). As highlighted in our letter to Defra of 25 June, **we urge you to increase the extent of air pollution monitoring in the UK in order to ensure that all exceedances of air pollution standards are adequately assessed;**
 - v. we do not accept that Defra would be meeting its obligations under Part 4 of the fourth Daughter Directive to provide up to date information on exceedances of the target values by simply making this information available on its website. **We believe the regulations should require Defra to publicise actively information annually about all exceedances in the UK media.** By way of example, how many UK citizens are aware of the widespread breaches of EU legal limits for PM₁₀ across the UK in respect of the 2005 calendar year? **Please treat this letter also as a Freedom of Information request to Defra to provide to The Knightsbridge Association copies of any information held by Defra about the possibility of it seeking time extensions from the meeting of the Secretary of State’s obligation to achieve EU legal limits for PM₁₀ by 1 January 2005;** and
 - vi. finally, we note that the Government will need to update further and consolidate UK air quality legislation when the new EU Directive on Air Pollution is agreed and comes into force (see below).

5. Other

Finally, we congratulate the Secretary of State for rejecting the European Parliament’s vote on the first reading of the new EU Directive on Air Pollution at the Council of Minister’s meeting last Monday. We note that this action will force a second reading in the European Parliament probably in the spring of 2007. We urge the Secretary of State to deliver a tough new legislative framework in Europe whilst recognising that, whatever that outcome, it will be unacceptable to UK citizens for the UK not to meet existing EU legal limits on air quality by 1 January 2010 (and earlier for PM₁₀) (given that these were agreed by the Government as far back as 1999).

We urge you to visit The Knightsbridge Association’s website on the BBC Action Network for its campaign for “Free access to clean air of acceptable quality in London”. The address is <http://www.bbc.co.uk/dna/actionnetwork/G1956>.

I have copied interested parties and look forward to hearing from you.

Yours sincerely,

Simon Birkett
Chair
Transport and Environment Committee

The Knightsbridge Association

Cc: Mr Stavros Dimas, The Commissioner for the Environment DG
Marianne Klingbeil, Head of Unit, Env. C. 3 – Clean Air & Transport Various London Amenity Societies and Business Groups
Mr Peter Ainsworth MP, Shadow Secretary of State, Defra
Rt. Hon. Douglas Alexander MP, Secretary of State, Department for Transport
Ben Bradshaw MP, Minister for Air Quality
Mr Alistair Carmichael MP, Shadow Secretary of State for Transport
Mr Chris Grayling MP, Shadow Secretary of State for Transport
Mr Chris Huhne MP, Shadow Environment Secretary
Ian Pearson MP, Defra, Climate change
Tim Yeo MP, Chairman Environmental Audit Committee
Mrs Gwyneth Dunwoody MP, Chairman of the Transport Committee
Mr Mark Field MP
Rt. Hon. Sir Malcolm Rifkind QC MP
Gerard Batten MEP, Independence
John Bowis MEP, Conservative Party
Chris Davies MEP, Liberal Democrat
Robert Evans MEP, Labour
Mary Honeyball MEP, Labour
Syed Kamall MEP, Conservative
Ms Jean Lambert MEP, Green Party
Baroness Ludford MEP, Liberal Democrat
Linda McAvan MEP, Labour
Claude Moraes MEP, Labour
Charles Tannock MEP, Conservative Party
Mr Ken Livingstone, The Mayor of London
Sarah Legge, GLA Principal Policy Adviser – Air Quality
Angie Bray LAM, Leader of the Conservatives
Jenny Jones LAM, Leader of the Green Group
Darren Johnson LAM, Chair of the Environment Committee, GLA
The Lord Tope LAM, Leader of the Liberal Democrat Group
Councillor Sir Simon Milton, The Leader of the Council, City of Westminster
Councillor Merrick Cockell, Leader of the Council, The Royal Borough of Kensington and Chelsea
Councillor Frances Blois
Councillor Alan Bradley
Councillor Tony Devenish
Councillor Philippa Roe
Councillor Dr Iain Hanham
Councillor Margot James
Councillor Mrs Shireen Ritchie
Mr Martin Low, Director of Transportation, City of Westminster
Mike Le Roy, City of Westminster
Mr Mike Stroud, Executive Director for Transport, Environment and Leisure Services
Mahmood Siddiqi, Chief Traffic Engineer, The Royal Borough of Kensington and Chelsea
London Low Emission Zone Consultation Team

