

## **APPLICATION FOR DEVELOPMENT CONSENT: MORPETH NORTHERN BYPASS**

### **Examining Authority's Further Written Questions**

Issued 16 April 2014

Responses to be received by the Examining Authority by noon on Friday 9 May 2014.

Please note that the following questions and requests for information are directed principally to the applicant and specifically named bodies. However, any other interested parties (within the meaning of s102(1) of the Planning Act 2008) are entitled to submit comments or answers to the questions if they so wish, within the timetable.

The particular attention of specifically named bodies is drawn to the following questions:

The Environment Agency: questions 11.2, 13.3, 16.3, 16.4, 16.5.

Natural England: questions 10.2, 11.1, 11.2, 11.4, 16.7.

The Highways Agency: questions 3.3, 6.1, 7.4.

English Heritage: question 16.12.

References in these questions are to the application documents as accepted by the Planning Inspectorate on 7 August 2013, unless stated otherwise. Other documents received by the Planning Inspectorate from the Applicant are yet to be accepted for Examination.

Questions previously put by the Examining Authority are sometimes included in this document to provide context to questions put now. They are marked "Question previously put" and set in italic text. Corresponding questions that are put now are in plain text and are marked "Questions put now".

### **Matters raised in the Examining Authority's First Written Questions**

#### **1 General matters arising from the application**

1.1 Question previously put: *1.1c: The applicant is therefore asked to provide a [complete] list [of the drawings which define the ES scheme] in Requirement 1.*

Question put now: Please include in future versions of the DCO the title and "revision letter" of each identified drawing as appropriate

from the application or as subsequently accepted by the Secretary of State.

- 1.2 Question previously put: *1.2: For mitigation to be ensured it is important that necessary control, delivery and monitoring provisions are put in place within any consenting regime. The Applicant is asked to provide a table setting out all the elements of mitigation relied on in the ES and supporting documentation and, for each element of mitigation, an appropriate reference to the ES and a note of how the mitigation measure would be secured within the terms of the DCO or otherwise.*

Questions put now: Document MNB-1Q Tab 1 has been received. It does not confirm how each mitigation measure would be secured.

Question 1.2(a): Please update document MNB-1Q Tab 1 to show how each mitigation measure and its delivery would be secured within the terms of the DCO or otherwise? Where the DCO is relied upon, please indicate the specific requirement, article or other provision of the DCO.

Question 1.2(b): If any mitigation measure is proposed to be secured other than through the DCO, please explain how, and provide completed copies of all agreements contracts and the like necessary to secure the mitigation.

- 1.3 Question previously put: *1.3: The DCO boundary shown on the Works Plan encloses land that is indicated by the land plans to be acquired/used for the scheme or for mitigation, land to be used temporarily, land in which new rights would be acquired, and various parcels of other land that are not referenced on the land plan or in the Book of Reference. (Some of those are perhaps public highway.) For each such parcel of other land, please (i) explain why it is correct to not include that parcel in any of the classifications used in the land plans and (ii) provide documentary evidence of why there can be confidence that, were the DCO to be made, the parcel in question would be available for the scheme. Please provide a reference map (on mapping of the same scale character and quality as that used for the land plans) to identify each such plot and its limits.*

Questions put now:

- 1.3(i) Land Parcel B – the A1 Trunk Road: Please provide validation of the claimed “existing trunk road highway boundary”.
- 1.3 (ii) Please provide documentary evidence of why there can be confidence that, were the DCO to be made, the parcels in question would be available for the scheme.

- 1.4 Question previously put: 1.6: *Item 3.7 of the September 2011 "Best and Final Funding Bid" (in MNB Part 4.2) sets out expected completion dates for various project milestones. Work was expected to start on site during February 2014 and the scheme was expected to open during October 2015. That opening date is reflected in the transport assessment (TA) and in the ES (for example in paragraph 5.1). ES Table 2.17 shows various construction activities finishing during 2016. Different dates are shown in table 1 of the draft CEMP. ES paragraph 2.80 says the new road is expected to be open to traffic in May 2016.*
- (i) *Allowing for constraints such as mitigation item 44 in the draft CEMP, and all other matters, on what dates (month and year) are (a) works currently expected to start on site, and (b) the scheme currently expected to be first fully open?*
  - (ii) *If the scheme is currently expected to be first open later than October 2015, please provide evidence of the effect that would have on*
    - (a) *The TA and its findings;*
    - (b) *The ES and its findings;*
    - (c) *The funding statement; and,*
    - (d) *Other material submitted in support of the application.*

Questions put now:

- 1.4(i) The response to question 1.6(i) given in document MNB-1Q REP 2 shows a start date of March 2015 and completion in November 2016. The revised construction programme (document MNB-1Q TAB2) shows the first activity on site to take place during February 2015, and completion to be estimated for July 2016. The DCO if made might not be made until January 2015, and Schedule 2 requires various actions to be complete and approved prior to development commencing. It will also be necessary to take possession of the site. On what dates (month and year):
- (a) are works currently expected to start on site, and
  - (b) is the scheme currently expected to be first fully open?
- 1.4(ii) If the currently expected start date and "first fully open" dates are not the same as those given in Table 2.17 of the ES, please provide explicit confirmation of any changed effects (relative to those reported in the ES) of the scheme on noise, air quality, ecology and any other matter, due to the different time scale.
- 1.5 Question previously put: 1.7: *Please provide, as one separate document, an explanation of the need for each Requirement proposed through Schedule 2 of the DCO.*

Now: The applicant has submitted document MNB Part 3.3, but that document is incomplete in its range and, in most cases, does not explain the need for the Requirements it mentions.

Question put now: 1.5: Please provide the information previously requested in question 1.7 of the Examining Authority's first written questions, in the form of clear and precise reasons for each requirement in accordance with Planning Practice Guidance On The Use Of Planning Conditions.

- 1.6 Question previously put: *1.8: What is the current position in respect of the authorisations (etc) listed in ES Table 2.19? Please provide documentary evidence of the position reached in respect of each.*

Question put now: 1.6: Please provide evidence that if the DCO was made there would be no impediment to the scheme.

## **2 Highway matters in the draft DCO**

- 2.1 Question previously put: *2.4: Requirement 28 refers to the proposed diversion of Public Footpath 13 ("PF13") as joining Pinewood Drive and the need for agreement of details with the planning authority. Part 1 of Schedule 5 defines the diversion of PF13, and that is reflected on Street Plan 1 and the Land Plan; are those not accurate? The proposed variation to PF13 does not meet Pinewood Drive; rather, it would meet PF13 at the rear of properties in Pinewood Drive. Although the limit of lateral deviation is 1.0 metres, the land plan shows that the diverted path would follow a field boundary and that suggests there to be very limited scope for deviation. To what extra information, not apparent from the drawings and other documents, does the applicant believe the planning authority to have access that would allow a more accurate interpretation of the DCO and drawings in this respect?*

Now: At the single issue hearing on The Provision That Would Be Made For Non-Motorised Users (8 April 2014) it was explained for the applicant that the purpose of this requirement was to regulate the form of the stile that would be provided at the south-eastern end of the diverted footpath.

Question put now: 2.1: (i) Please provide a draft Requirement that precisely describes the essential characteristics of the stile at this location. (ii) Please explain why such a requirement would be necessary. (iii) Does the nature of the proposed stile give rise to a need to change the ES? Please explain your answer. (iv) Please explain whether and why (or why not) the introduction of this new design element should be considered to make the proposal different

in substance from that applied for, in the sense identified in the "Wheatcroft" judgement<sup>1</sup>.

- 2.2 Question previously put: 2.6: *Where in the draft Order are new highways C (street plan 3), E (street plan 4), F and G (street plan 5) referenced?*

Now: response in respect of C and E noted.

Question put now: 2.2: References F and G are claimed to be in Schedule 8 part 1, but the ExA cannot locate them there. Please assist.

- 2.3 Question previously put: 2.7: *New private means of access 19 is shown on street plan 6 to be in a location outside the DCO boundary. By what authority would this private access be formed?*

Question put now: 2.3: The Examining Authority notes the applicant's response to first-round question 2.7. Will the applicant confirm that private means of access 19 would be formed under the 1980 Highways Act and, if so, which section of that Act?

### 3 **Matters relating to construction**

- 3.1 Question previously put: 3.2: *Why is it right for the matter of temporary traffic warning signs and the like to be subject to control through the DCO rather than through the County Council's usual arrangements for the control of highway construction contracts (and perhaps those of the Highways Agency)?*

Now: The Examining Authority understands that the applicant has no objection to removing the requirement.

Question put now: 3.1: If it is not argued to be necessary, does the applicant agree that draft requirement 19 from version 4 of the draft DCO should be deleted?

- 3.2 Question previously put: 3.5: *ES paragraph 17.7 introduces the Construction Environmental Management Plan ("CEMP"), and says that a draft CEMP is included in ES Appendix 18. Paragraph 1.2 of ES Appendix 18 explains that the CEMP is intended to be regularly updated and revised as the scheme proceeds. Paragraph 1.4 says that the CEMP "defines commitments based on mitigation and enhancement measures identified during the Environmental Impact Assessment." Paragraph 1.8 of ES Appendix 18 says that the*

---

<sup>1</sup> Bernard Wheatcroft Ltd v SSE (1982) 43 P&CR 233

*Project Manager and appointed Contractor will develop the CEMP to ensure that all requirements of the DCO are discharged before construction starts or as otherwise required; and refers to Chapter 4 where the DCO requirements, approvals and consents are said to be discussed. Chapter 4 is headed "Statutory Requirements" and refers to environmental legislation and to "relevant authorisations, licences, permits and consents required". Appendix 1 of ES Appendix 18 is headed "Draft Framework Environmental Management Plan".*

(ii) *Given that the draft CEMP would be the subject of regular updates and revisions, what assurance is established by the DCO that the provisions set out in the FEMP would remain and be implemented at least until construction is complete, or as described in the ES?*

Question put now: How would the DCO ensure that the mitigation provisions in the CEMP that was the subject of consultation through the ES would be still in place when the Order works were undertaken?

3.3 Principally for the **Highways Agency** and for the Applicant:

Questions previously put:

3.6(iii) *Does the Highways Agency envisage that the works in the trunk road would conform with the CEMP? If so, how is that secured? If not, what (if any) equivalent controls would apply to the trunk road works, and how would they be established?*

Question put now to the **Highways Agency** and the Applicant:

3.3 How does the DCO secure conformity with the CEMP in the trunk road works?

3.4 Question previously put: 3.10: Requirement 23 – *to what type(s) of lighting is this requirement intended to apply? In what senses is it precise and enforceable?*

Question put now: 3.4: What is the purpose of new requirement 24? What characteristics should the lighting installation have in order to gain approval?

3.5 Question previously put: 3.12: Requirement 44 – *Why is mitigation item 124 on page 48 of the draft CEMP not sufficient to deal with this?*

Question put now: 3.5: The Examining Authority notes that former requirement 44 reflects a standard planning condition, but nevertheless it would assist him to have an answer to the question as previously put.

- 3.6 Question previously put: *3.16: Rose Cottage would be demolished as Work 2. Please provide a brief description of the demolition works. There are references to this work in the draft site waste management plan (ES Appendix 17, at 4.1, 4.2, 4.4, table 1) and in the draft Framework Environment Management Plan (ES Appendix 18, on pages 35, 38, 41, 46, 57, 58). How would those measures be secured through the DCO?*

Question put now: 3.6: New requirement 30 does not require conformity with the site waste management plan or the CEMP. The CEMP is the subject of other questions. How would the provision of a site waste management plan ("SWMP") be secured through the DCO? If the SWMP would not be secured through the DCO, why not?

- 3.7 Question previously put: *3.19: The ES describes construction access and routes (paragraphs 2.102 to 2.109). Please indicate how they are to be reflected in the DCO.*

Now: Reference to new requirement 17 noted.

Question put now: 3.7: Please review draft requirement 17 so as to tie the DCO and the ES together and give confidence that the mitigation measures relied on in the assessment will be secured in the DCO.

#### **4 Statement of Reasons ("SoR")**

No further questions.

#### **5 The Policy Context**

- 5.1 Question previously put: *5.1: Please identify and provide copies of all development plan policies that are relevant to the scheme. Where "saved" policies are relied on, please provide a copy of the relevant Direction.*

Question put now: 5.1: ES paragraph 4.88 refers to significant adverse effects on the landscape and local visual amenity. There is reference to an Area of High Landscape Value. Please provide saved Policies C3 and MC2 from the Castle Morpeth District Local Plan.

- 5.2 Questions previously put:  
*5.3: Is there an emerging local plan and/or neighbourhood plan? If so, please describe the progress made towards adoption.*

5.4: *If there is an emerging local plan and/or neighbourhood plan, please identify and provide copies of all emerging policies that are relevant to the scheme.*

Questions put now:

- 5.2(i) Please provide the Green Belt element of the emerging Local Plan and any emerging Green Belt policies. It appears from figure 8.2 of the "Northumberland Core Strategy Preferred Options 2 – October 2013" that the scheme would cross land that is prospectively Green Belt. Is that correct?
- 5.2(ii) Is it your view<sup>2</sup> that the bypass would be inappropriate development if built in the Green Belt?
- 5.2(iii) Would the circumstances be very special<sup>3</sup> and, if so, how?
- 5.2(iv) How much weight should be attributed to Green Belt issues and the other considerations you have identified from the emerging Local Plan, and why?
- 5.2(v) Please comment on the extent to which the scheme would complement each of objectives (a) to (f) in emerging Policy 4 *Green Belt* of the "Northumberland Core Strategy Preferred Options 2 – October 2013" and any other relevant emerging policy.

## 6 Non-Motorised Users

6.1 Question previously put: 6.2: *The section plans (MNB part 2.5) show an equestrian path alongside the new road for most of its length.*

- (i) *The equestrian path would terminate at the roundabout to the east of St Leonard's underpass, which would also be served by slip roads to and from the A1, by the underpass (which would have no equestrian facility), and by the footpath to Lancaster Park. Having arrived at the eastern roundabout via the equestrian path alongside the proposed bypass, where could an equestrian safely go?*
- (ii) *Similarly, having arrived (from the west) at the western roundabout near St Leonard's underpass, where could an equestrian safely go?*
- (iii) *If safe equestrian routes are identified in response to (i) or (ii) above, please set out the considerations that lead to the conclusion that the routes would be safe.*

---

<sup>2</sup> With reference to paragraphs 87 to 90 of the National Planning Policy Framework

<sup>3</sup> With reference to paragraphs 87 to 90 of the National Planning Policy Framework

- (iv) *The equestrian route would cross the current A192 immediately south of Northgate roundabout, cross an access road immediately south of St George's roundabout, and would terminate at the southern arm of the Whorral Bank roundabout. Equestrians using the route to arrive at the Whorral Bank roundabout would either turn on to the roundabout, or cross Whorral Bank, or go south along the "wrong side" of Whorral Bank. The applicant may wish to refer to paragraphs 6.27 to 6.31 of TA91/05 Provision for non-motorised users (Design Manual for Roads and Bridges). Please provide drawings and a written explanation to show how the equestrian route could be safely used at these locations.*

**Questions put now to the applicant and the Highways Agency:**

6.1: Following representations made for the applicant at the Issue Specific Hearing on the provision that would be made for non-motorised users, held on 8 April 2014,

6.1(i) **The applicant** is invited to provide (by 9 May 2014) fuller responses than previously given to the questions previously put at 6.2; and,

6.1(ii) **The applicant** is asked to indicate (by 9 May 2014) whether the proposed equestrian provision is included in the ES (and if so in which paragraphs) and, if it is not, whether the newly presented proposals give rise to a need to amend the ES (and why/why not); and whether any proposed changes to the scheme design should be considered as making the proposal different in substance from that applied for, in the "Wheatcroft" sense (and why/why not).

6.1(iii) **The Highways Agency** is asked to comment (by 30 May 2014) on any new proposals made by the applicant arising from equestrian provision insofar as they would affect the trunk road including the St Leonard's grade separated junction.

- 6.2 Question previously put: 6.3: *Diverted footpath PF9 would cross the bypass at grade and the section plans show no central refuge to be proposed. Please provide the analysis that led to the conclusion that this arrangement would be safe.*

Question put now: 6.2: According to the DMRB, how much forward visibility should be available along the bypass on each approach to the crossing of PF9? And how much would be provided?

- 6.3 Question previously put: 6.5: *Private means of access 16/17 and 18 would face each other across the new road. What type of crossing facility would be provided? Please provide the analysis that led to the conclusion that this arrangement would be safe.*

Questions put now:

6.3(a): According to the DMRB, how much forward visibility should be available along the bypass on each approach to the crossing at accesses 16/17 and 18? And how much would be provided?

6.3(b): What type of crossing facility would be provided?

6.3(c): A layby is proposed to the east of the crossing. What assurance is there that the resulting arrangement would be safe for users of the bypass, the layby and the crossing?

## **7 Transport Assessment**

7.1 Question previously put: 7.4: *The Saturn model is reported to have a base year of 2007.*

(i) *When were the traffic surveys undertaken on which it is based?*

(ii) *What is the evidence that the model is fit for the current purpose?*

Question put now: 7.1: *What is the justification for the use of seven-year-old survey data as a basis for the traffic model?*

7.2 Question previously put: 7.10: *In Appendix B of the TA, which item(s) represent development at St George's other than Phase 1?*

Question put now: 7.2: *One of the applicant's stated reasons for promoting the scheme (see the applicant's response to question 4.4 of the First Questions, in MNB-1Q REP2) is to provide access to the St George's site. If only phase 1 of St George's has been modelled, what is the evidence that the scheme could satisfactorily provide access to St George's if that site was developed to the extent reportedly (in the applicant's response to question 7.12(v) of the First Questions) envisaged by paragraph 9.81 of the draft Northumberland County Council Core Strategy Local Plan?*

7.3 Question previously put: 7.12: *The Best and Final Funding Bid document (in MNB part 4.2) says that the scheme provides access opportunities for the St George's Site and the Northgate Development Sites.*

(i) *Where among the application documents is a plan that shows the location and extent of those sites and the accesses that would be provided? If there is none, then please provide one.*

(ii) *Does the St George's site have planning permission? If so, please provide a copy of the decision notice(s).*

(iii) *Do any of the Northgate sites have planning permission? If so, please provide a copy of the decision notice(s).*

- (iv) *To what use(s) is the St George's site allocated in the development plan? Please provide copies of relevant text and allocation plan.*
- (v) *To what use(s) is the St George's site allocated in any emerging plan? Please provide copies of relevant text and allocation plan. What is the status of the emerging plan?*
- (vi) *To what use(s) are the Northgate sites allocated in the development plan? Please provide copies of relevant text and allocation plan.*
- (vii) *To what use(s) are the Northgate sites allocated in any emerging plan? Please provide copies of relevant text and allocation plan. What is the status of the emerging plan?*
- (viii) *For the St George's site and for the Northgate sites, please explain how the traffic generation associated with the expected development at each site has been estimated, how it has been assigned to the network, and how it has been incorporated in the TA.*

Questions put now:

7.3(a) Drawing HE092631/0/A197/01/137 appears to be the response to question 7.12(i). Is that correct? If not, where is the response?

What is the evidence that the highway connection from the St George's roundabout to the St George's development:

7.3(b) could be part of a development proposal that would be acceptable in land use planning terms?

7.3(c) would be affordable for the St George's phase 1 development (which the applicant has confirmed is shown as "proposed brownfield site" on Appendix A of the TA)?

7.3(d) would be necessary for phase 1 of St George's?

7.3(e) would give access to phase 1 of St George's?

7.3(f) would be built if phase 1 of the St George's development came forward?

7.3(g) would be built if all of the St George's development came forward?

7.3(h) The applicant is asked to provide a copy of the decision notice for the approved Northgate development.

7.3(i) In the table in the applicant's response, what is a du?

- 7.4 Question previously put: *7.13: Can it be confirmed that there would be sufficient weaving space (in the terms of the DMRB) in each direction on the A1 between the scheme and the A697 junction? Please provide the assessment.*

Question put now, **principally to the Highways Agency:**

7.4: What is the HA's view of the adequacy of the weaving lengths on the A1 in each direction between the scheme and the A697 junction?

7.5 Question previously put: 7.14: *Attention is drawn to paragraphs 2.21 and 2.22 of HD19/03 (DMRB). Has a Stage 1 road safety audit of the scheme been undertaken? If so, please provide the Audit Report and any other relevant documents. If there has been no road safety audit, please explain why not, and why the scheme design can be considered safe.*

Question put now: 7.5: The audit report and designer's response provided by the applicant is dated April 2009.

- (i) What changes (relevant to a road safety audit) have been made to the scheme since April 2009?
- (ii) Please explain the basis on which the current scheme can be considered safe.

## **8 St Leonard's Lane and Spital Hill**

No further questions at this time.

## **9 Landscape and visual effects**

No further questions at this time.

## **10 Air Quality**

10.1 Question previously put: 10.2: *Please explain the omission from the ES of assessments of emissions arising from construction traffic and machinery, and of operational dust emissions.*

Question put now: 10.1: Please provide paragraph reference(s) in the ES that illustrate the third paragraph of the applicant's answer to question 10.2 of the first written questions.

10.2 Question previously put: 10.5: *Principally to Natural England: ES paragraph 5.63 explains why designated ecological sites were scoped out of the ES air quality assessment. Is Natural England content that there would be no likely significant air quality effects on protected species?*

Question put now: 10.2: **Principally to Natural England:** In response to the Examining Authority's previous question 10.5, the applicant has provided an e-mail dated 11 February 2014 from Colin Godfrey of Natural England ("NE"). The e-mail confirms that NE is satisfied that impacts on Nationally or Internationally

designated sites can be scoped out of further consideration. Is NE also content that there would be no likely significant air quality effects on protected species?

## 11 Ecology and Nature Conservation

- 11.1 Question previously put: *11.2: Please provide evidence that agreement has been reached with Natural England that sufficient information has been provided to scope the assessment of reptiles out of the ES.*

Questions put now, **principally to the Applicant and Natural England**: 11.1: Subsequent to the applicant's decision to scope the assessment of reptiles out of the ES, NE has advised that checking surveys should be undertaken to check whether significant changes to the extent/quality of suitable habitat have occurred. It is noted that the applicant intends to conduct this survey in spring 2014 as part of an extended Phase 1 Habitat Survey and water vole survey. It is not clear whether the spring 2014 surveys are intended to inform the Examination (by forming part of the environmental information considered by the decision-maker before making a decision as required under Regulation 3 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended), or whether they form part of the pre-construction surveys, as required by draft Requirement 26.

11.1(i) **The applicant is asked** whether the results of these surveys are intended to be submitted during the course of the examination, to allow any mitigation measures to be incorporated into the DCO if required; and if not, why not.

11.1(ii) **Natural England is asked** when the information in question should be provided.

- 11.2 Question previously put: *11.4: ES paragraphs 7.204 and 7.229 present contrasting views regarding invasive plant species. Please explain.*

Now: **Question principally to the Environment Agency and Natural England**: 11.2: In response to the Examining Authority's previous question 11.4, the applicant has stated that "the movement of non-construction vehicles is not listed as a method of spreading Japanese Knotweed" in the EA's "The Knotweed Code of Practice: Managing Japanese Knotweed on Development Sites" (July 2013) ("the Code of Practice"). On this basis the applicant states that paragraph 7.204 of the Environmental Statement can be removed from the ES. Paragraph 7.204 says that the movement of vehicles along the How Burn Wood SSCI/Ancient Woodland corridor once the new bypass came into use could cause the invasion of

non-native invasive plant species, such as Japanese knotweed, from the surrounding areas. But the Code of Practice is aimed at developers and control of Japanese knotweed during site clearance and construction, whereas the applicant relies on the Code of Practice in the way indicated above.

11.2: Are the **Environment Agency** and **Natural England** satisfied that the applicant's approach is appropriate in this respect, and that the draft DCO contains sufficient measures to protect against the spread of Japanese Knotweed?

- 11.3 Question previously put: *11.5: The ES identifies that trees would be removed for the scheme. Paragraph 7.202 refers to Ancient Replanted Woodland. The ExA has been unable to locate an arboricultural survey carried out to assess the potential impacts of the tree loss. Please clarify the extent of the assessment in relation to tree loss.*

Question put now: 11.3: Noted that an arboricultural survey would be undertaken as described in the applicant's response. How would that be secured through the DCO?

- 11.4 Question previously put: *11.6: ES paragraph 7.51 refers to pre-construction ecological survey work.*
- (i) *How would this be secured in the DCO? Please provide a method statement for the survey.*
  - (ii) *Construction was expected to start in the autumn of 2014. Has the water vole survey, mentioned in ES paragraph 7.364, been undertaken? Has the consultation with Natural England and the Environment Agency taken place? What are the conclusions?*
  - (iii) *Different approaches are suggested in respect of pre-construction surveys of water voles, great crested newts (for which no survey is proposed), and reptiles (proposed at ES paragraph 7.376 to be surveyed, although scoped out at ES paragraph 7.159). Please clarify the whole extent of the pre-construction survey work required, and justify the inclusion and exclusion of all survey work.*

Questions put now:

11.4(i): **Principally to Natural England:** The applicant has provided method statements for the pre-construction checking surveys for protected species (MNB-1Q ES1). Does Natural England consider the proposed methods suitable?

11.4(ii): **Principally to the applicant:** How does the DCO tie in the submitted method statements?

- 11.5 Questions previously put: *11.7: ES paragraph 7.424 says that enhancement measures have been considered: the introduction of*

*white-clawed crayfish into How Burn, using a pill box as a bat hibernaculum, and providing an otter holt.*

- (i) *Are these to be considered as part of the scheme?*
- (ii) *If so, please provide:*
  - (a) *details of what is proposed;*
  - (b) *explanation of the effects of each proposal;*
  - (c) *any comments received from Natural England and (where appropriate; if the pill box is a scheduled monument) English Heritage; and,*
  - (d) *an indication of how the measures would be secured through the DCO. Figure 6.1 shows items 1 and 5 (the pillboxes listed in table 6.7) to be outside the DCO limits.*
- (iii) *If the identified measures are not part of the scheme, why are they mentioned in the ES?*

Questions put now:

11.5(i) Please confirm that the applicant's response to first-round question 1.2 should be understood to mean that the items identified in first-round question 11.7 should not be considered as part of the scheme.

11.5(ii) If the measures are part of the scheme, please provide any comments received from Natural England, or confirm that none have been received.

11.5(iii) If the measures are part of the scheme, how would they be secured through the DCO?

11.6 Questions previously put: 11.8: *Please provide an update on progress that has been made since the ES was completed, with regard to:*

- (i) *Agreeing with Natural England an exhaustive list of protected species licences necessary for the scheme;*
- (ii) *Progress made toward achieving those licences; and,*
- (iii) *Agreements in principle or "letters of no impediment" issued by Natural England; please provide copies.*

Questions put now:

11.6(i): Please provide a copy of the exhaustive list of protected species licences necessary for the scheme, as agreed with Natural England.

11.6(ii): Please provide copies of protected species licences, agreements in principle and "letters of no impediment" issued by Natural England; or confirm that none has been received.

## **12 Noise and Vibration**

12.1 Question previously put: 12.5(ii): What mitigation is proposed for each site listed in Table 10.45 (where noise levels would rise above

55dB) and where is that to be found in the scheme proposals and secured in the DCO?

Question now put: 12.1: How would the DCO tie in the approach described in the applicant's answer to previous question 12.5(ii)?

- 12.2 Question previously put: *12.7: ES para 10.148 says that operational noise mitigation would rely on the "existing proposed earthworks". What are those proposed earthworks, where are they described and illustrated in the application documents, and what size(s) would they need to be to achieve the noise levels predicted in figures 10.5 to 10.23 and in table A10.4.2?*

Question put now: 12.2: The noise mitigation provided by earthworks will depend in part on the height of the earthworks. Drawing HE092631/0/A197/01/56RevD is a plan and does not show the heights of the earthworks. The section drawings include longitudinal and cross sections but those are limited in extent. Where in the application documents is to be found the vertical design information relied on in preparing figures 10.5 to 10.23 and table A10.4.2? How is conformity with that design information secured through the DCO?

### **13 Road Drainage and the Water Environment**

- 13.1 Question put previously: *13.1: What is the geographical extent of the study area used to inform this assessment? Please provide a map showing the extent of the study area.*

Question put now: 13.1: Supplementary figure 13.3 does not identify the extent of the study area. Please provide a map that identifies the extent of the study area.

- 13.2 Question previously put: *13.5: ES Appendix 13.5 presents a flood zone map for most of the scheme. Please provide such a map for the whole scheme.*

Question put now: 13.2: Please provide an extract from the EA Flood Zone Map in the style of ES Appendix 13.5 but large enough to include and show the whole of the application scheme. The key for figure 13.3 is not expressed in the same terms as the flood zones in Appendix 13.5.

- 13.3 Question previously put: *13.6: Principally for the Environment Agency: Does the EA concur with ES paragraph 13.170 that the predicted risk to the water environment from cumulative effects would be negligible since all construction work will need to comply with the same regulations imposed by the Environment Agency?*

Question put now: 13.3: **Principally for the Environment**

**Agency:** The response of the Environment Agency is invited to the question previously put.

#### **14 Economic Impact**

Please refer to questions 16.13 to 16.16.

#### **15 Assessment of combined environmental effects**

15.1 Question previously put: *15.4: Is there any instance in which the application scheme would rely on mitigation that would be provided by other development?*

Question put now: 15.1: The applicant's response is noted. Please confirm whether there is any instance in which the application scheme would rely on mitigation that would be provided by other development and, if so, how the timely provision of that mitigation by others can be relied upon for as long as it would be needed for the scheme.

#### **16 Additional Questions Introduced At "Round 2"**

Questions are directed principally to the applicant and to specifically named bodies.

16.1 A draft statement of common ground between the applicant and the Highways Agency was submitted on 26 February 2014.

(i) The final, completed version of the statement of common ground should be issued to the Examination no later than 30 May 2014.

(ii) A memorandum of understanding and various other documents are proposed in the draft statement of common ground to be agreed by the applicant and the HA by 30 May 2014. Those documents should be issued to the Examination no later than 30 May 2014.

(iii) The draft statement of common ground countenances design changes in response to departures from standard. Please provide an explanation of the effect that such changes would have on the environmental assessment presented in the ES.

16.2 A draft statement of common ground between the applicant and the Environment Agency was submitted on 26 February 2014. When does the applicant intend that a final, completed version of the statement of common ground will be issued to the Examination?

- 16.3 **Principally for the Environment Agency:** In the draft statement of common ground (SoCG) with the EA (version 3), paragraph 24 identifies additional information required by the EA to be part of the flood risk assessment ("FRA"). The applicant has provided within the draft SoCG a response to this request. But the draft SoCG is not clear that the EA is satisfied with that response. The Examining Authority seeks clarification from the EA, either recorded in a completed SoCG with the applicant, or recorded in some other timely way, of any additional material needed to form part of the FRA – or that all necessary material for the FRA has been provided by the applicant. The EA is asked to provide that information by Friday 9 May.
- 16.4 **Principally for the Applicant and the Environment Agency:** Paragraphs 3 to 15 of the draft statement of common ground (SoCG) with the EA appear to contain matters of record only. Is it intended or expected that anything in those paragraphs should give rise to anything beyond the proposals that are assessed in the ES, or that any consequent change to the draft DCO would be necessary?
- 16.5 **Principally for the Environment Agency:** Is the EA satisfied that the wording in Requirement 12 in the latest version of the draft DCO (submitted on 26 February 2014) is sufficient to secure the mitigation identified in the draft SoCG?
- 16.6 Is the construction sediment management plan (on page 19 of the statement of common ground with the EA) intended to be the same thing as the construction silt management plan mentioned in Requirement 12(2)(b) of the draft DCO? Please explain the difference, or harmonise the text, as appropriate.
- 16.7 The written representation of Natural England refers (at 5.2.3, 5.2.4, 5.3.1 and 5.4.1) to a possible Ecological Management Plan ("EMP"). In its response, the applicant says that it submitted a draft EMP to Natural England on 3 March 2014, and also draws attention to requirement 26(4) of the "revision 4" draft DCO.

**Questions principally to Natural England:**

- 16.7(i) Is Natural England content with the 3 March 2014 draft EMP? If not, how should it be improved?
- 16.7(ii) Is Natural England content with "revision 4" draft requirement 26(4)? If not, how should it be improved?

**Questions principally to the applicant:**

- 16.7(iii) Please provide a copy of the draft EMP as issued to Natural England on 3 March 2014.
- 16.7(iv) How would the draft EMP be secured through the DCO?
- 16.8 The written representation of Natural England answers (at section 6) the Examining Authority's first-round question 11.1. "Depending on the final implementation timetable for the scheme, there may be a need for further update [ecological] surveys to inform the development of detailed mitigation proposals."

In addition, in its Licensing Consultation Decision on the favourable conservation status test for bats (attached to its written representation), NE asks that various additional information be provided, including among other things the results of recent activity surveys. Attention is drawn to the case of *R v Cornwall County Council, ex parte Hardy*. In the light of the implications of this case, the applicant is asked to confirm when the survey results will be submitted to the examination?

- 16.9 DCLG has recently published the Planning Practice Guidance, and has withdrawn a number of other documents. What effects do those changes have on the scheme's degree of fit with its policy context?
- 16.10 On 31 January 2014 the new WebTAG was launched as definitive Transport Analysis Guidance. What effects do those changes have on the assessment of the scheme in a way consistent with current Government guidance?
- 16.11 Document MNB-1Q SK1 shows the extent of the public highway at Fulbeck. It appears to the Examining Authority that the eastern boundary of plot 12 (as shown on HEO92631/0/A197/100/28, the original land plan) at Rose Cottage was not contiguous with the highway boundary, and the same is the case on the "revision B" version of the land plan. And the eastern limit of parcel 10i appears on the original land plan to be separate from the highway boundary, whereas on the "revision B" land plan the eastern limit of parcel 10i appears contiguous with the highway boundary.
- (i) What is the evidence that the eastern boundary of plot 12 abuts the highway throughout the length of plot 12? And, if it does not, how could the scheme proceed?
- (ii) Does the applicant agree that parcel 10i is shown on the "revision B" land plan to have been enlarged toward the east? If so, does this amount to "additional land" in the terms set out in The Infrastructure Planning (Compulsory Acquisition) Regulations 2010? If so, does the applicant consider the requirements of those regulations are engaged? If so, does the applicant intend to proceed on

the basis that it will secure all necessary consents to the inclusion of the new provision in the Order (and if so then how and when does the applicant intend to provide evidence of this?); or does the applicant intend to follow the procedure in Regulations 5 to 19 (and if so, how?)?

- (iii) If the applicant does not agree that parcel 10i is shown on the "revision B" land plan to have been enlarged toward the east, please explain why the point is not agreed.

16.12 Document MNB-1Q Rep 1 (Schedule of relevant representations and responses) records that the applicant has noted the relevant representation made by English Heritage. The Examining Authority would draw the applicant's attention to paragraph 128 of the National Planning Policy Framework ("the Framework") and to the definition of significance (for heritage policy) in Annex 2 of the Framework.

- 16.12(i): **The applicant** is asked to indicate where are to be found in the application material the descriptions and assessments of heritage assets, and of the potential impact of the proposal on their significance, all as referred to in Framework paragraph 128; and, if necessary, to provide such descriptions and assessments.

- 16.12(ii) The further comments of **English Heritage** on this matter are invited, by 30 May 2014, in the light of the applicant's response to question 16.12(i).

16.13 Section 6.2 of the Economic Impact Report dated 12 February 2014 ("the EIR") sets out forecasts of additional jobs in the regeneration area. Table 61 provides information for 13 employment sites which had vacant land in 2009.

- (i) The likely percentage take up of land at each of the 13 sites is estimated to be, variously, 40%, 60% or 80% with the scheme.
- (a) How were those three percentage figures established? Please provide a sample calculation for each, and explain the sources of all of the input data in each case.
- (b) What are the corresponding take-up rates of land at each of the 13 sites without the scheme? Please provide a sample calculation for each, and explain the sources of all of the input data in each case.
- (c) How long would each site take to achieve the estimated land take-ups that you have calculated?
- (d) How much vacant land did each of the 13 employment sites have available when most recently checked?

- (e) When was the amount of vacant land available at each site most recently checked, and by whom?
- (f) Have any more sites come forward in the regeneration area since 2009 that should be included in the assessment?
- (ii) An employment density of 50 square metres of land per job has been derived by the applicant from TRICS data for industrial estates, business parks and light industrial units. Some of the 13 sites are said to have the potential to be logistics based sites.
  - (a) Is the term "logistics" used here to include "warehousing"? And what else does it embrace?
  - (b) What employment density is likely to be achieved here on land used for logistics, and how is that known?
  - (c) What are the likely upper and lower limits to the proportion of land at the employment sites that would be taken up for logistics use?
  - (d) What effect should your answers to (b) and (c) above have on Tables 61 and 62 of the EIR?

16.14 Section 2.2 of the EIR says that the scheme would look to enhance the accessibility of Morpeth, Blyth, Ashington and various surrounding settlements by enhancing their access to the A1. Tables 47 and 48 of the EIR provide journey times in various scenarios.

- (i) Journey times are provided for the AM peak and the PM peak. What are those peak periods, why are they relevant, and are corresponding data available for the interpeak period (and if so please provide it)?
- (ii) Journey times are provided in each direction between the A1/A192 junction and Ashington, Newbiggin-by-the-Sea, or Ellington. What are the corresponding journey times between the A1/A192 junction and each site listed in Table 61 of the EIR, and any other site that should be included in the assessment?
- (iii) Please provide details of the position of each site listed in Table 61 of the EIR and any other site that should be included in the assessment. Please provide location plans to a scale of 1:50,000 at A4 size and, if possible, a postcode for each.

- 16.15 (i) What proportion of trips to or from the sites listed in Table 61 of the EIR (or other sites that should be included in the assessment) would start or finish at the A1/A192 junction?
- (ii) What proportion of trips to or from the sites listed in Table 61 of the EIR (or other sites that should be included in the assessment) would pass through the A1/A192 junction?

- (iii) Considering trips to or from the sites listed in Table 61 of the EIR (or other sites that should be included in the assessment) that would pass through the A1/A192 junction, how long would that part of those trips that lies beyond the A1/A192 junction typically take?

16.16 In the EIR, tables 6, 7 and 8 include columns headed Economically Active (Unemployed), in which the data are presented as percentages. Are those data calculated as percentages of economically active, as percentages of all people of working age, or on some other basis (and, if so, what)?

### **17 Matters arising from responses to questions put in the Appendix to the Examining Authority's first written questions**

- 17.1 From the response to Q4: Although the suggested formulation is used in Schedule 1 to the MP Order, Schedule A to that Schedule explains that the description of "Authorised Development" in Part 1 of the Schedule "should not include any elements of the development which would be authorised by specific provisions in the Order". All development authorised by a DCO would thus be identified either in the Schedule or in a specific provision of the DCO. What specific provisions of this DCO are intended to authorise development not identified in Schedule 1?
- 17.2 From the response to Q15: Why is it appropriate for A6(1) (about implementation of the Order) to be subject to A23(5) (about compulsory acquisition of rights)?
- 17.3 From the response to Q16: Which are the works for which consent is granted by the Order for the express benefit of owners [etc], and where in the Order is that established?
- 17.4 From the response to Q30: How is the given answer consistent with section 122 of the Planning Act 2008?
- 17.5 From the response to Q31: How is the given answer consistent with section 122 of the Planning Act 2008?
- 17.6 From the response to Q44: Operational land owned by statutory undertakers carries with it certain permitted development rights. It is not clear why the fact that work would be carried out to an SU's apparatus should make the land operational land of that SU. It may be that the applicant would wish this provision to apply to itself as an SU, but if so the applicant should explain why.
- 17.7 From the response to Q49: Schedule 11 still does not refer to the imposition of covenants as necessary. For example, attention is

drawn to paragraphs 1, 3(1) and 3(2). Please ensure that the correction is comprehensively applied.

17.8 Generally elsewhere: please implement the changes to the draft Order that are suggested in the applicant's responses.

## **18 Matters arising from the applicant's responses to the procedural decision letter 20 March 2014**

18.1 Plot 10i: The applicant's response in document MNB-1Q REP3 refers to matters raised in question 3 of the Examining Authority's letter dated 20 March 2014, and to another matter which might be associated with question 16.11 in this document. The proposed changes to plot 10i described by the applicant in MNB-1Q REP3 both appear to relate to land proposed to be subject to compulsory acquisition and which was not identified in the book of reference (including the relevant plan) as land. In that case, additional land (with the meaning ascribed by The Infrastructure Planning (Compulsory Acquisition) Regulations 2010) ("the CA Regulations") would be required. The question put at 3(b) in the Examining Authority's letter dated 20 March should therefore be answered by the applicant, as no explanation of the applicant's position in respect of Regulation 4 of the CA Regulations has so far been given.

## **19 Matters arising from Schedule 2 of the Draft DCO Version 4**

The following questions are addressed principally to the applicant.

### 19 R1 Interpretation

- (i) Approved development plans:
  - please add revision letters and the drawing title to each drawing
  - please provide a separate note of the title of each drawing and its location in the Examination documents.
- (ii) Construction period – a circular definition. What events would signify the start and the end of the construction period?
- (iv) Environmental Statement – suggest delete "which may be made to them from time to time" and replace with "which have been accepted for examination by the Secretary of State as part of the application for development consent that preceded the making of this Order."

### 19 R2 Approvals of submitted schemes

- (i) (3) Suggest change "such an approval must not enlarge the Order land" to "and such approval must not be given in respect of any land outside the Order limits". Similarly at (4) and (5).
- (ii) (4) Line 2 – taken into account by whom? And to what extent? The mitigation measures should be incorporated in any approval.
- (iii)(5) As (4)

19 R3 CEMP

This requirement will be considered further following the applicant's response to question 1.2 in this document, which requires the applicant to identify how the mitigation relied on in the ES would be secured through the DCO.

19 R4 Detailed design

This requirement has a tailpiece "unless otherwise approved in writing by the relevant planning authority".

In *Warley v Wealden DC* [2011] EWHC 2083 (Admin), Rabinder Singh QC considered an equivalent phrase in the context of a planning condition and at paragraph 89 said "...Paraphrasing what Ouseley J said in my own words, it seems to me that tailpieces of the kind in question in both cases offend against the rule of law. This is because the public, and not only the parties to the particular planning permission concerned, are entitled to know in public documents what planning permission relates to a given development, and what therefore is permitted and what is not." And at paragraph 90 "The tailpiece in question leaves wholly uncertain for example who is to grant the variation, according to what criteria which may be non-existent or at least unpublished and secret." In addition, there are specific regulations governing material and non-material changes to development consent orders.

The inclusion of a tailpiece such as this makes it uncertain what is being consented. Should the tailpiece therefore be omitted?

19 R5 Construction standards

How is this related to planning, and why is it necessary?

19 R6 St Leonard's Junction

Given that the Secretary of State for Transport would have approved the approved development plans if the Order is made, and in the light of R4, this Requirement appears unnecessary. Further, the approval if needed should be that of the relevant planning authority. The SoS through the Highways Agency would be able to secure the construction details (which are not a planning matter) through its works agreement with the applicant.

19 R7 Landscaping and biosecurity

- (i) (1) Second sentence: the approach here is to be welcomed. The applicant is aware that the nominated drawing has yet to be accepted by the Secretary of State.
- (ii) (5) Meaning of "development period"?

19 R8 Trees and hedgerows

- (i) (2) This appears to duplicate R7(1)(d). Should R8(2) not be combined with R7?
- (ii) (2) The passage "must be carried out in as required by and accordance with" appears to contain typographical errors.
- (iii)(3) Replace "Article" with "Requirement".

19 R9 Public rights of way

- (i) Question 2.1 also refers to Public Footpath 13.
- (ii) Diverted Public Footpath 13 does not meet Pinewood Drive.
- (iii) "Local highway authority" is not defined.

19 R10 Fencing and other means of enclosure

- (i) (2) Word apparently missing – "during the construction period".

19 R11 Drainage and water pollution post-construction

- (i) (4) Meaning of "paragraph"? Perhaps "requirement"? Similar elsewhere.

- (ii) (4) Is the definition of the area to be drained sufficient? I have in mind the footway/cycleway and equestrian paths, verges, cutting slopes all associated with the link road; and new elements of the trunk road. Is there an appropriate all-embracing term?

19 R12 Surface water drainage during construction

- (i) (2) Refer to relevant provisions of the ES.  
(ii) Final paragraph: number.

19 R13 Watercourse crossings

Add "The works shall be carried out as approved."

19 R14 Contamination

No comment

19 R15 Contamination

No comment

19 R16 Archaeology

- (i) (1) Are the evaluation excavations part of the programme in accordance with the brief? If so, is it sufficient to prevent commencement only until the programme has been approved, rather than until those excavations have been carried out?  
(ii) (2) The draft is unfinished.

19 R17 Construction traffic

- (i) (1) Should both highway authorities be consulted? – in which case replace "highway authority" with "highway authorities".  
(ii) (1) Is it intended that the traffic management plan should be consistent with the CEMP and other provisions of the ES (such as Chapter 17)?  
(iii) (4) Suggest delete "followed" and insert "complied with".

19 R18 Turning facilities

Nothing to add to previous comments.

19 R19 Traffic signage

- (i) The need for this requirement has yet to be identified by the applicant. If it is held to be necessary and relevant to planning then the requirement should identify any relevant design standard with which the signage scheme should conform, such as (perhaps) Chapter 8 of the Traffic Signs Manual.
- (ii) If the requirement is held to be necessary and relevant to planning then it should include a requirement that the approved signage scheme should be implemented before the link road is first opened to public traffic.

19 R20 Access to local services

- (i) The need for this requirement has yet to be identified by the applicant. If it is held to be necessary and relevant to planning then the requirement should identify any relevant design standard with which the signage scheme should conform, such as (perhaps) Chapter 8 of the Traffic Signs Manual.
- (ii) (1b) "...approved pursuant to". Pursuant to what?
- (iii) (2) Suggest delete "measures".
- (iv) (3) The draft is unfinished.

19 R21 Control of noise during the construction period

Is the noise management scheme intended to be consistent with the CEMP and with ES Appendix 10.2 (to which the CEMP refers)? Those seem precise and enforceable whereas the draft requirement is not.

19 R22 Construction hours

- (i) Why are different parameters set in this requirement and in paragraphs 3.10 to 3.13 of the CEMP which formed part of the published ES?
- (ii) (2) The terms "start-up period" and "shut-down period" are not explained or defined.

19 R23 Control of dust emissions

Is the dust management scheme intended to at least meet the standard set by mitigation items 8 to 33 of the CEMP that formed part of the ES?

19 R24 Control of artificial light emissions

Table 7.13 of the ES seeks to control the use of illuminated night working, but the draft requirement does not identify the intended purpose of the artificial light management scheme, and so it lacks precision.

19 R25 Control of deposits on highways

No comment.

19 R26 Protected species and nature conservation

The subject of this requirement has also been the subject of assessment that is reported in the ES. The ecological mitigation measures proposed in the ES are identified in document MNB-1Q TAB 1. The ES has been the subject of consultation, and the County Council's views are set out in the Local Impact Report. The views of Natural England and the Environment Agency (and others) on specific items of mitigation are being obtained. It currently appears that a requirement for the benefit of protected species and nature conservation should secure as necessary the provisions of the ES and any other measures that might be expected to be considered by the Secretary of State to be necessary to make acceptable the scheme's ecological effects.

19 R27 Order land maintenance

No comment

19 R28 Site compounds

(2), (3) References to requirement 28(1) seem awry. Typo in (2). Why is (2) necessary, given R2(2)?

19 R29 Site notice boards etc

How is this relevant to planning and necessary to make the scheme acceptable in planning terms?

19 R30 Demolition of Rose Cottage

A demolition method statement was submitted to the Examination on 26 February 2014 (document MNB-1Q DEM1). There has been no

adverse comment. See item 3.16 in the Examining Authority's further written questions.

Generally

19.1 Should "the Order land" become "land within the Order limits"?