

**A1 Birtley to Coal House**

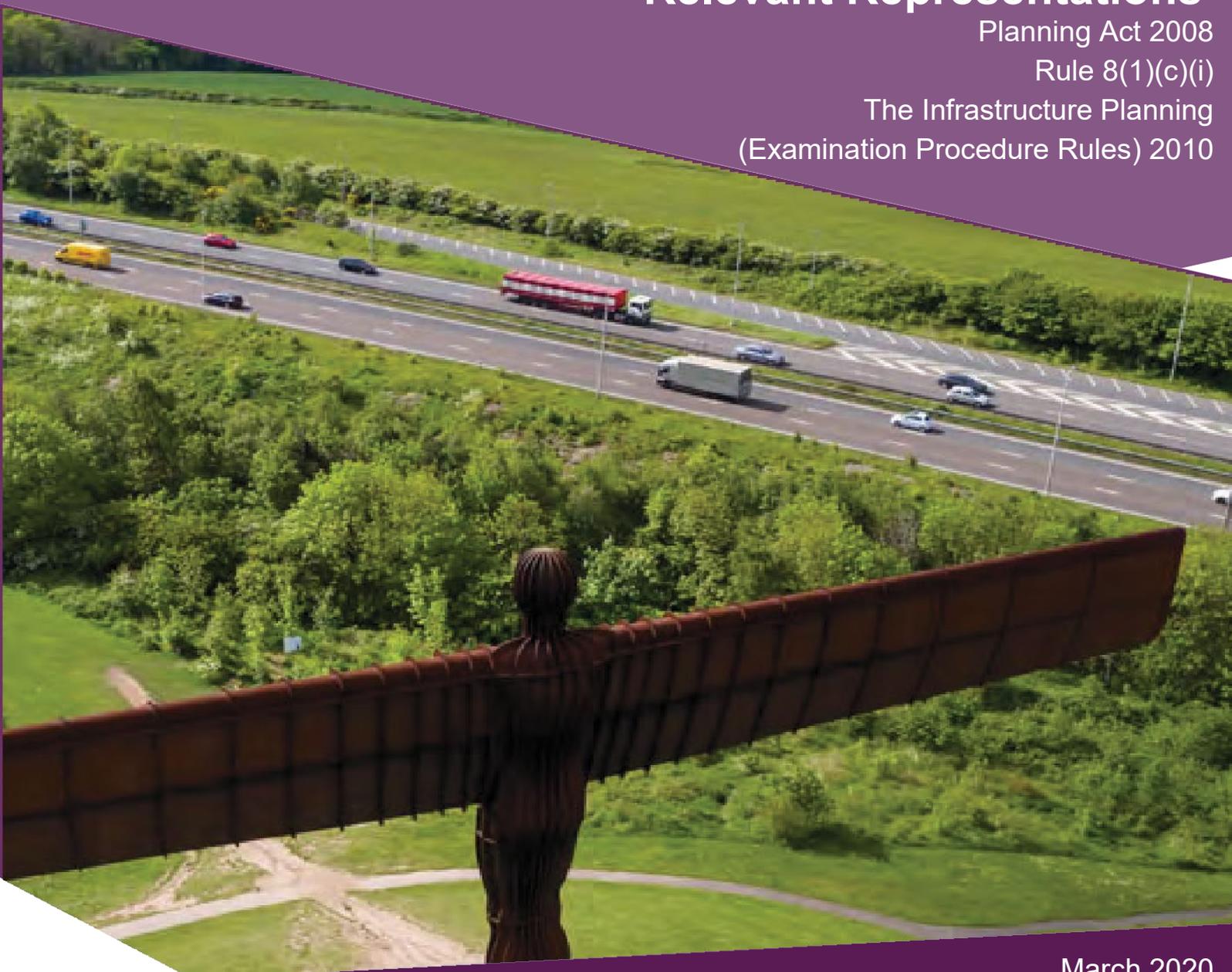
**Scheme Number: TR010031**

**EXA/D3/004 Applicant's Responses to Consultee Responses to Deadline 1 and 2 Submissions and Relevant Representations**

Planning Act 2008

Rule 8(1)(c)(i)

The Infrastructure Planning  
(Examination Procedure Rules) 2010



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**The A1 Birtley to Coal House  
Development Consent Order 20[xx]**

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**Applicant's Responses to Consultee  
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<b>Rule Number:</b>	Rule 8(1)(c)(i)
<b>Planning Inspectorate Scheme Reference</b>	TR010031
<b>Application Document Reference</b>	EXA/D3/004
<b>Author:</b>	A1 Birtley to Coal House Project Team, Highways England

<b>Version</b>	<b>Date</b>	<b>Status of Version</b>
Rev 0	10 March 2020	Final

**Table 1.1 – NGN Response to Deadline 1 Submission**

Ref No:	NGN Response	Applicant's comments on the Response
1	We are providing this letter in response to Highway's England's ("HE") Covering Letter, submitted at Deadline One.	Noted.
2	HE's covering letter provides an update on the Applicant's request for proposed changes to the Application. While we understand that acceptance of such proposed changes will be made by way of a Procedural Decision made by the Examining Authority, NGN would like to take this opportunity to reserve the right to make comments on the proposed additional documents submitted at Deadline 4.	The Applicant acknowledges NGN's reservation and welcomes further engagement on the proposals.
3	In addition, NGN note that there is a proposed consultation period between 16 March 2020 and 13 April 2020. NGN are aware that the additional land which will be subject to consultation is likely to have a material impact on NGN's objections to the compulsory acquisition of land at Plot 3/6c and will impact on negotiations with HE moving forward. Therefore, NGN reserve the right to make comment during this consultation process	The Applicant acknowledges NGN's reservation and welcomes further engagement on the proposals.
4	NGN would also like to take this opportunity to ensure that in making the procedural decision on whether to allow the proposed changes, the Examining Authority should ensure that sufficient time is given following the submission of any revised documentation for review and comments to be made.	The Applicant would defer to the ExA's previous comments on making a procedural decision.

**Table 1.2 – NGN Response to Comments on Relevant Representations**

Ref No:	Response from NGN	Applicant's comments on the Response
1	We are providing this letter in response to HE's comments submitted at Deadline One on NGN's Relevant Representation.	Noted
2	NGN is grateful for the detailed response HE have given to the NGN's Relevant Representation [RR-013]. However, NGN is concerned that the response given in relation to the retention of land at Plot 3/6c does not accurately reflect the current situation.	This is not accepted.
3	HE have suggested at response 13.2 that negotiations have not advanced due NGN only recently instructing external solicitors.	Negotiations in respect of protective provisions, agreeing a statement of common ground and consideration of the relevant transfer of land and rights have only advanced recently in detail. The Applicant does not believe that anything turns on the reason why negotiations are only recently progressing in detail for now, but the most important factor to record is that this is now taking place. The Applicant is confident that the parties both intend to reach agreement.
3.1	NGN do not consider this to be an accurate reflection of the status of current negotiations. Both pre and post instruction of external solicitors, NGN has been forthcoming in responding to HE and providing additional information where necessary. However, NGN have had difficulty obtaining additional information from HE regarding the quantity and location of land required which would aid negotiations moving forwards. NGN anticipate elaborating on this matter within the Statement of Common Ground therefore will not go further at this time	<p>NGN has been forthcoming, and the Applicant welcomes this. The Applicant does not consider that the intent of NGN to cooperate or participate in negotiations is anything less than positive.</p> <p>The extent and location of land required under the DCO has been known since NGN were first engaged in relation to the Scheme on the 15th September 2016. NGN were advised the contractor would be likely to require NGN's land to site the cranes to construct the new bridge. Further details were provided by the Applicant on 24th January 2017 when NGN stated that all buried pipes had been removed from the storage facility and it would be the ideal location for their site compound. The Applicant had already identified this area as a site compound; therefore, this could be handed over once NGN had concluded their works.</p> <p>At this stage in a project of this nature it is not normal to provide the disposition of uses in the level of detail sought by NGN. Rather, this is left to the final design provided by a contractor unless there are sensitive land uses nearby, which is not the case here. The Applicant is expertly advised that the land sought is that which is required for the Scheme. It is for NGN to provide alternative expert evidence suggesting that a project of the nature of the Scheme could and should be constructed without the land in question and it would be reasonable and in the public interest to do so.</p> <p>The proposals to amend the extent of land take has only been subject to change recently and this is subject to procedural direction from the ExA. It is not appropriate to comment on this further until the ExA has made a decision on whether the additional land take is acceptable.</p>
4	At Response 13.3, HE states that NGN's proposal for a CNG filling station at Plot 3/6c has not been submitted for consideration by the local planning authority (LPA) or HE itself.	This is addressed below.

Ref No:	Response from NGN	Applicant's comments on the Response
4.1	<p>While it is correct that the LPA have not yet been notified of the proposal, NGN and ENGIE's focus has been on ensuring the viability of the project and ensuring that a strong business case can be put forward. It is unlikely that the CNG filling station would face any major issues at the Planning Stage, however this is not something which is material to the Examination at this time.</p>	<p>It is not accepted or arguable at this stage that the CNG filling station is unlikely to face any major planning issues when the extent of the proposed works have not been made public. The CNG filling station is almost certainly going to have significant impact to Lamesley Road and the junction with Kingsway Viaduct, which at present, has not been demonstrated to be capable of supporting the volume of intended traffic to be generated from the CNG filling station either in the current form, during construction of the Scheme or following the Scheme opening to traffic. It is not correct that the planning prospects for the CNG filling station is not material to the Examination; on the contrary it is relevant to the extent that it has the potential to interface with or prejudice the delivery of the works compound which would have a direct impact on delivery of the scheme.</p>
4.2	<p>NGN does not agree with the statements made in terms of the viability of the project itself and the status of discussions to date with HE. HE have been aware of the proposal for an extended period of time and have not raised any substantive objections, other than the issue of land take. It is our understanding that HE are fundamentally in agreement with NGN's proposal for a CNG filling station and we are aware that the HE would in fact be happy to accommodate the station should additional land become available for use as a construction compound, indicating that the proposal could operate in tandem with the Scheme.</p>	<p>NGN's understanding of the Applicant's position in respect of the CNG filling station is not correct. Whilst the Applicant has no objection to the principle of development insofar as it is demonstrated to be capable of delivery in tandem with and without prejudicing the scheme (which has not yet been demonstrated), the Applicant reserves its right to consider the detail on the CNG filling station as and when an application for the same is promoted. The Applicant would reiterate that NGN have not carried out (or provided) an assessment to evidence that the CNG filling station is supportable on a policy basis or acceptable in environment terms. No assessment has been carried out which demonstrates that the proposal could operate in tandem with the scheme and the Applicant would once again state that the traffic modelling that has been provided suggests a substantial increase which might not be possible without significant works to Lamesley Road and in particular, the junction at Kingsway Viaduct. Until such assessments are carried out and demonstrated, the Applicant reserves the right to further challenge the CNG filling station proposals insofar as they impact on and interface with the Scheme.</p>
4.3	<p>The status of discussions between HE and NGN regarding the CNG filling station will be covered in the Statement of Common Ground.</p>	<p>This is correct.</p>

**Table 1.3 – Historic England Response to Deadline 1 Submission**

Ref	Response from Historic England	Applicant's Comments on the Response
<b>1</b>	<b>Introduction</b>	
1.1	Historic England is more formally known as the "Historic Buildings and Monuments Commission for England". We are the government's statutory adviser on all matters relating to the historic environment, including world heritage. It is our duty under the provisions of the National Heritage Act 1983 (as amended) to secure the preservation and enhancement of the historic environment.	Noted
1.2	<p>We have provided our responses to the Examining Authority's Written Questions in a separate document for ease of reference. We therefore set out below our comments on other matters that have arisen from documents submitted for Deadline 1 to this DCO examination. We have sought to focus our attention on those documents which we consider it would be of assistance to the Examining Authority to have our commentary. These relate particularly to:</p> <ul style="list-style-type: none"> <li>• Comments on Gateshead Borough Council Written Representations (REP1-005).</li> <li>• Draft Statement of Common Ground.</li> <li>• Comments on Applicant's first revised draft DCO (AS-012).</li> <li>• Comments on draft itinerary for Accompanied Site Inspection and suggested locations for site inspections by Highways England (REP1-004).</li> <li>• Comments on Written Submission of Oral Case for ISH1 (draft DCO) by Highways England (REP1-003).</li> <li>• Comments on the Hearing Action points issued by the Examining Authority (EV-006).</li> </ul>	Noted
<b>2</b>	<b>Gateshead Borough Council Written Representations (REP1-005)</b>	
2.1	Gateshead Borough Council in their Written Representations cover various matters, including the Bowes Railway Scheduled Monument.	Noted
2.2	We would make two comments in relation to this particular matter. Firstly, we note the reference to further consideration should be given to lighting the tunnel, with the Council's preference being for lights operated on a sensory basis. We consider that the introduction of lighting within the tunnel on a sensory basis would be of assistance for those wishing to use the tunnel as access to the monument.	<p>Historic England's position is noted. Lighting will be provided at Longbank Bridleway Underpass. In order to protect bats using Longbank Bridleway, underpass lighting during operation will:</p> <ul style="list-style-type: none"> <li>• Use movement triggers so that lighting only turns on when people (large objects) move through the area.</li> <li>• Avoid light spill using directional and or baffled lighting.</li> <li>• Avoid blue-white short wavelength lights and lights with high UV content.</li> </ul> <p>These commitments are included in Table 3-1 of the <b>Outline CEMP at G6</b> [APP-174].</p>
2.3	Secondly, we note the reference to "scour protection" in relation to any design incorporating features that offer scour protection at the headwall and within the underpass which is mentioned in connection to the bridleway which crosses the monument. It is unclear the	The current design for Longbank Underpass considers the extension of the eastern end of the structure (including demolition of the existing stone retaining walls) up to a maximum

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	<p>extent to which this point has been considered by Highways England, nor is it clear the approach and methodology that would be used to provide scour protection features as part of the design and the implications this would have on the scheduled monument.</p>	<p>length of 17m. The next iteration of the draft DCO will include the restriction to this effect in Schedule 10 as requested by Historic England.</p> <p>There are no proposals to resurface the footpath in the Underpass. This is to prevent major disturbance of the existing scheduled monument (track bed) located below the bridleway. It is not proposed to provide any drainage provision to the Longbank Bridleway as the assessment [APP-034] have confirmed that the Scheme itself will not exacerbate the issues raised regarding previous flooding history. As there are no existing connections and in compliance with the highway standards, it is not intended to provide any drainage provision from external areas outside the highway boundary.</p> <p>Gateshead Council have raised historic issues relating to this flood damage and erosion issues. The potential cause of the flooding could be due to the change in direction of the ploughing of the fields. The Council agreed to investigate this claim. It is not clear if any progress has been made, however it is recommended that the Council investigate the matter with the respective landowners and propose other drainage solutions within 3<sup>rd</sup> party land which will protect this location from erosion damage.</p> <p>Scour is the effect of water on foundation material (effectively washing it away) which thus could compromise the integrity of the structure. Although Gateshead Council referred to scour protection in their written representations, there are no proposals to include such features as part of the underpass design.</p> <p>Piled foundations are proposed within the design of the underpass extension as shallow ground bearing structures are more sensitive to the effects of scour. Where piling works are required for the extension of Longbank Bridleway Underpass, these will be completed using a rotary bored (i.e. non-impulsive) method as stated in reference N8 of Table 3-1 of the CEMP [REP2-050 and 051]. Monitoring will also be carried out to identify if the retaining wall associated with Bowes Railway SM (1003723) is damaged during construction.</p>
2.4	<p>Whilst the path within the current tunnel is not part of the monument, any scour protection works within the monument boundary either side of the existing tunnel will necessitate details being provided so that the works can be carried out without harm being caused to the scheduled monument. We would welcome discussion of the matter with Highways England so that agreement can be reached with the necessary provisions made in the relevant documents to this DCO.</p>	<p>Please refer to response 2.3 as above.</p>
3	<p><b>Draft Statement of Common Ground</b></p>	
3.1	<p>As noted in Section 7 of our Written Representations (REP1 – 012), we anticipated having discussions with the Applicant to progress a draft SoCG by Deadline 2.</p>	<p>The draft Statement of Common Ground [REP2-055] has been issued to Historic England, without prejudice, and discussions are ongoing.</p>
3.2	<p>We are disappointed to note that since our meeting with the Applicant and their Agents on 30th January 2020 we have not heard anything further from Highways England and their comments on our Relevant Representations appear to indicate that they do not consider that further requirements are needed to safeguard CH5 and CH6. We would hope however that</p>	<p>Further to the comments on the Relevant Representations, the changes that Historic England requested in their Written Representations, including those to CH5 and CH6 of the <b>Outline CEMP</b> [APP-174], were included in a revised version of the <b>Outline CEMP</b> submitted at Deadline 2 [APP-050].</p>

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	<p>following the submission of our Written Representations that they will reflect further on the matter. We remain willing to discuss the issues we have previously raised with them and as set out in our Written Representations.</p>	<p>In addition, the requirements for the interpretation board (CH5) and the repair of a section of Bowes Railway (CH6) are to be included within the detailed Outline WSI that is currently being prepared and which will be sent to Historic England (and the Tyne and Wear Archaeological Officer) for consultation. The updated draft Statement of Common Ground has been issued to Historic England.</p>
<b>4</b>	<b>Comments on Applicant's First Revised Draft DCO (AS-012)</b>	
4.1	<p>We note that the Applicant has issued a first revised draft DCO; however, the points that we had highlighted in our Relevant Representations and then provided further detail in our Written Representation do not appear to have been taken into account yet.</p>	<p>The Applicant has sought to incorporate the issues raised by Historic England in relation to Requirement 9. However, as explained in the submissions lodged at Deadline 2, the difficulty with the drafting proposed by Historic England is that it does not have an equivalent to Requirement 9(6) which means that there would be no requirement to complete further investigation works before re-commencing the development. Hence, the Applicant has retained the existing drafting and sought to build in the points raised by Historic England.</p> <p>The revision sought by Historic England to Schedule 10, for a maximum length of 17m to be added is accepted and will be included in the next iteration of the draft DCO to be submitted at Deadline 4</p>
<b>5</b>	<b>Comments on Draft Itinerary for Accompanied Site Inspection and Suggestion Locations for Site Inspections (REP1-004)</b>	
5.1	<p>Historic England note that Highways England has submitted (REP1-004) a draft itinerary for the Accompanied Site Visit. We further note that Stop 3 relates to the Longbank Bridleway Underpass. We would like to suggest an amendment to Stop 3 on the Accompanied Site Inspection schedule due to its location in relation to the Bowes Railway Scheduled Monument.</p>	<p>Noted</p>
5.2	<p>We suggest that the opportunity therefore is taken at Stop 3 to view the Scheduled Monument and the proposed works on the North side of A1. Changes are proposed not only to the tunnel but also to the existing footpath arrangement as it comes down onto the monument (the bridleway) which the Examining Authority may wish to note and take into consideration.</p>	<p>Noted. The Applicant has already planned for Stop 3 of the Accompanied Site Visit to include the Bowes Railway Scheduled Monument and proposed works to the north side of the A1. Therefore, it is not considered necessary to make further changes to Stop 3 in the Draft Itinerary.</p>
<b>6</b>	<b>Comments on Written Submission of Oral Case for ISH1 (Draft DCO) by Highways England (REP1-003)</b>	
6.1	<p>Article 39 Scheduled Monuments: The Applicant was asked whether it was necessary to include this Article in the Order. In responding, Highways England stated "...the Article and Section 10 state exactly which interference is actually authorised, and as such are appropriate for inclusion so that the extent of the authorised works to the scheduled monument is properly interpreted." Historic England would agree that Article 39 is required as it is expressly tied to Schedule (not Section) 10 which authorises what works are permitted to the Scheduled Monument. However, Historic England do not agree with Highways England that they "state exactly which interference is actually authorised". This is a point that we raised in paragraphs 6.2 and 6.6 of our Written Representations (REP1 – 012).</p>	<p>It is acknowledged that Historic England sought a revision to Schedule 10 to restrict the length of works to the scheduled monument. This revision was not included in the revised DCO circulated at Deadline 2 as the Applicant required to give further consideration to the practical implications of the restriction sought. This consideration is now complete and the requested revision will be drafted in to the next iteration of the draft DCO to be submitted at Deadline 4.</p>
6.2	<p>Appendix A: Justification Of Ancillary Works Provided In Schedule 1 Of The Draft DCO [App-013]: Historic England is concerned that works to the scheduled monument may be included</p>	<p>The works to the scheduled monument would not be authorised by paragraph (c) of the list of types of ancillary development authorised at the end of Schedule 1. First, such work</p>

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	in (c) which includes works to footpaths, bridleways, embankments... etc., but the details will only be provided at detailed design stage to "...enable the final details of works to be defined and provided by the main contractor..."	is only include as ancillary development where it is not expressly included in the description of a work. The works to the scheduled monument are authorised by work No.19 which expressly refers to the extension of the north side of the Longbank Bridleway underpass and associated embankments. These works in turn are subject to terms of the approved CEMP and the written scheme of archaeological investigation required by required 9 which secure the mitigation required for the scheduled monument. Additionally, the works to the scheduled monument are subject to compliance with the terms of Article 39 and schedule 10. As requested by Historic England, the next iteration of the draft DCO will be amended so that schedule 10 restricts the demolition of the stone retaining walls to sets a maximum of 17 metres.
<b>7</b>	<b>Hearing Action Points ISH1 (EV-006)</b>	
7.1	The Examining Authority has also issued a Hearing Action Points document following the Issue Specific Hearing 1.	Noted
7.2	Action Point (AP) 4: "Where there is disagreement with any part of the Applicant's draft DCO (including Requirements), provide suggested alternative wording."	Noted
7.3	With regards this Action point Historic England have set out our position in Section 6 of our Written Representations (REP1-012).	The Applicant has explained in their response to Historic England's written representations how the points raised by Historic England have been addressed in the revised draft of the DCO submitted at Deadline 2. Further to this the revisions requested by Historic England to Schedule 10 to ensure a maximum extent of works, will be drafted in to the next iteration of the draft DCO to be submitted at Deadline 4.
7.4	AP19: "Requirement 9 – Clarify relationship with the Archaeological Mitigation Strategy sought through Requirement 4."	Noted
7.5	We note that this Action Point is directed to the Applicant. However, we would like to note that this is an issue we raised in paragraphs 5.12 – 5.13 of our Written Representations.	The Applicant has drafted an Outline WSI, as requested in paragraphs 5.12-5.13 of the Written Representations. The contents will be agreed with Historic England and the Tyne and Wear Archaeological Officer prior to it being submitted at Deadline 4.
7.6	AP 20: "Requirement 9(1) – Update the Requirement to include Historic England as a consultation body in addition to the 'relevant planning authority'"	Noted
7.7	We note that this Action Point is also for the Applicant to respond; however, we welcome the Examining Authority's comment to include Historic England as a consultation body in relation to this requirement.	Requirement 9(1) of the draft DCO was updated to include Historic England as a consultation body.

**Table 1.5 – Addleshaw Goddard on behalf of Network Rail Infrastructure Limited's Response to Deadline 2 Submission**

Ref No:	Question:	Applicant's comments on the Response
1	<p>We act for Network Rail in relation to this matter.</p> <p>In its Rule 6 letter dated 10 December 2019, the Examining Authority requested that Network Rail and the Applicant submit a Statement of Common Ground to the Examining Authority at Deadline 2.</p> <p>However, we only received a first draft of the Statement of Common Ground from the Applicant on Saturday 22 February; consequently, our client only received it yesterday morning. Network Rail has therefore had insufficient time to review and comment on the draft. Any draft Statement submitted by the Applicant at this Deadline 2 has not therefore been approved by Network Rail.</p> <p>The draft Statement of Common Ground has been sent by our client to Network Rail's Asset Protection Team and the Scheme Project Manager and Network Rail will do its best to liaise with the Applicant and agree a Statement as soon as possible and by the next Examination deadline on 10 March (Deadline 3)</p>	<p>The Applicant would clarify that it has been attempting to liaise with Network Rail Infrastructure Limited for in excess of 10 months on agreeing suitable protective provisions and legal and commercial terms for the protection of its existing apparatus, without success.</p> <p>The Statement of Common Ground (SoCG) submitted to the Examining Authority on 25 February 2020 [REP2-058] was submitted as a draft version and without prejudice to the position of Network Rail. The Applicant acknowledges that the draft SoCG was supplied at a late stage and in fairness did not expect a full, substantive response from Network Rail in the time available. The Applicant will continue to liaise with Network Rail to produce an updated SoCG.</p>