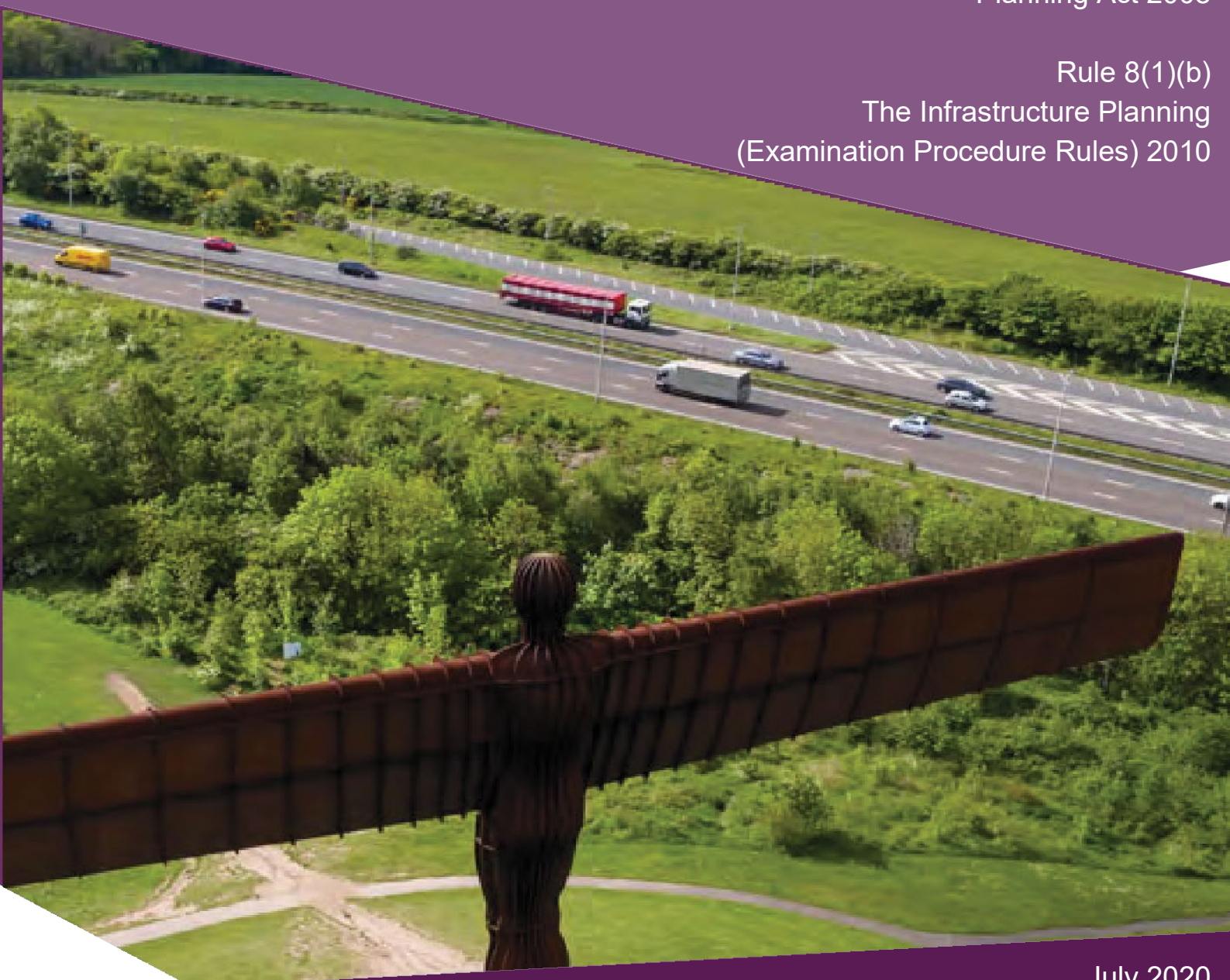


A1 Birtley to Coal House
Scheme Number: TR010031

Applicant's Written Summary of Oral Submissions at
Hearings

Planning Act 2008

Rule 8(1)(b)
The Infrastructure Planning
(Examination Procedure Rules) 2010



Infrastructure Planning

Planning Act 2008

**The Infrastructure Planning
(Examination Procedure Rules) 2010**

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

**Applicant's Written Summary of
Oral Submissions at Hearings**

Rule Number:	Rule 8(1)(b)
Planning Inspectorate Scheme Reference	TR010031
Application Document Reference	Applicant's Written Summary of Oral Submissions at Hearings
Author:	A1 Birtley to Coal House Project Team, Highways England

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1 Introduction

- 1.1.1 This document summarises the submissions made by Highways England ('the Applicant') at the hearings held in the week commencing 22 June 2020 in relation to the Applicant's application for a Development Consent Order (DCO) for the A1 Birtley to Coal House ('the Scheme').
- 1.1.2 Where the Examining Authority (ExA) requested further information from the Applicant on particular matters, or the Applicant undertook to provide further information following the hearing, the Applicant's response is set out in this document. This document does not purport to summarise the submissions of any parties other than the Applicant, and summaries of submissions made by other parties are only included where necessary in order to give context to the Applicant's submissions in responses, or where the Applicant agreed with the submissions of another party and so made no further submissions itself (this document notes where this was the case).
- 1.1.3 The structure of this document follows the order of the items in the published agenda for each hearing and numbered agenda items are referred to where references are made. The Applicant's substantive oral submissions commenced after item 1 of the agenda which were procedural and administrative in nature, therefore this document does not cover those items.

2 Open Floor Hearing

Table 1 - Open Floor Hearing

Agenda Item:	Interested Party:	Highways England Response:
2	Gateshead Green Party	<ul style="list-style-type: none"> • The Applicant noted the Green Party's statement was substantially a repetition of their written submission to Deadline 8 [REP8-031]. • The Scheme provides for the majority of planting to be retained or replaced. The removal of planting was requested by Gateshead Council and Antony Gormley Studios. It is the Applicant's position that such measures should only be undertaken where additional planting is agreed and can be secured elsewhere. The Scheme on its own does not have a material impact on biodiversity or landscape planting. • There will be no permanent land take at Longacre Wood due to changes in slopes of embankments contained within the Scheme from 1:3 to 1:2. The only impacts will be on the ditch and access track, which will be mitigated. • There will be no impacts on Lamesley Pastures as a result of the Scheme. • An updated landscaping scheme is currently being prepared to address the comments of Gateshead Council, although the representation above in relation to the need to agree alternative planting remain valid. • The Applicant does not recognise a conflict as the strategic road network is able to accommodate all types of vehicles, including electric vehicles. The Applicant is taking steps to encourage the use of electric vehicles. For example, 97.4% of the network is 20 miles from a charging point, to reduce range anxiety which is above the Applicant's own target of 95%.

3 Issue Specific Hearing 2

Table 2 - Landscape and Visual Matters

ISH 2 - Landscape and Visual Matters			
Agenda item	Question to:	Question:	Response:
Gantry Signs			
3(a)	The Applicant	a) Impact of the proposed gantry signs	<p>The proposed gantries would have no significant impacts on views of and from the Angel of the North and the Scheme and the Application are therefore acceptable as submitted. This was confirmed by the Applicant's expert Landscape Architect in the ISH. As there is no significant impact, little weight should be given to any impact of gantries, such as it may be.</p> <p>The impacts of the gantries are assessed in [REP2-019]. There would be impacts from the gantries experienced by travellers moving along the A1, but infrequently and for a short duration due to the transitory nature of the views experienced by travellers in vehicles. They do not obscure views of the Angel of the North, which from some locations on the A1 are substantially obscured by a combination of landform and existing vegetation (which would be retained as part of the Scheme) in any event, partially or wholly obscuring the sculpture. The assessment confirms there would be a deterioration in views, but this is not considered to be significant.</p> <p>Sir Antony Gormley submitted that the Scheme will change the view of the entire landscape irrespective of the Angel of the North. While Sir Anthony's clear desire to protect his vision for the Angel of the North is understood, his submission on widespread landscape impacts is at odds with the professional opinion of the Applicant's and Gateshead Council's professional landscape architects.</p> <p>It is noted that the Council accepted at the hearing that that there will be no significant effects from the Scheme on landscape character and visual amenity within the wider landscape. The Council's concerns are limited to the impacts of the gantries on the setting of the Angel of the North. Even then, the Council is not saying that the impacts would be significant. They are suggesting that the assessment material supplied is not sufficient to assess the impacts and referred to potential flicker, massing and tunnel effects from the gantries. The Council's witness suggest that a fly-through be prepared to show the impacts.</p> <p>The Applicant disputes that there would be flicker effects. The gantries would simply be too far apart.</p> <p>In relation to assessment, in accordance with Design Manual for Roads and Bridges and Guidelines for Landscape and Visual Impact Assessment (GLVIA) 3rd Edition, photomontages and assessment of views provide ample evidence to prove the Applicant's case. It is inaccurate to say there is a massing effect when the interruption in views is transitory and fleeting and of low significance. This should be viewed as the correct interpretation.</p> <p>In terms of the additional visuals, to produce a rendered flythrough is expensive and unnecessary. This would be disproportionate, particularly as the assessment has demonstrated that the Scheme is of low significance, as agreed and confirmed by Gateshead Council' landscape architect. The proposal that the imagery should take account of a landscape design that has not been agreed is incorrect, and in the current landscape, the effects on views that may be experienced are scant and not significant.</p> <p>The locations for the photomontages were agreed with Gateshead Council and included an additional montage from North Dene Footbridge to demonstrate the effects on views northwards towards the Angel of the North. The montages were prepared in accordance with best practice guidance from the Landscape Institute. This was done using fixed focal lens and georeferenced locations, including the Angel of the North. The North Dene Footbridge was added to consider the impacts of gantries on views from the north at a safe location. The photomontages were</p>

ISH 2 - Landscape and Visual Matters			
Agenda item	Question to:	Question:	Response:
			<p>prepared in accordance with best practice guidelines and presented in a baseline view for the winter year of opening and design year to show the effects of planting and growth of trees.</p> <p>At the hearing, the Council confirmed that they did not dispute the Applicant's methodology at all. The Applicant considers that this supports its view that the preparation of a rendered Fly-through would be disproportionate.</p> <p>If the scheme is to proceed, then it is important to acknowledge that gantries are required for wayfinding and traveller safety. There is provision in Requirement 3 of the DCO for a signage strategy to deal with the final location and form of the gantries.</p> <p>The Scheme should be assessed against the baseline and not against a hypothetical future baseline in terms of the Council's aspirations for opening up views to and from the Angel of the North. There are no significant impacts and there is ample evidence, conducted on a professional basis, to demonstrate this.</p> <p>In terms of the potential future baseline, care be taken in affording weight to the Southern Green Report. It is not adopted policy, and has not been subject to Strategic Environmental Assessment, nor has it been subject to public consultation. As such, only very limited weight should be afforded to the Southern Green Report [REP4-086].</p>
3(b)	The Applicant	b) Justification for the number, location and size of the proposed gantries	<p>Gantries are expensive but essential and valuable components of the highway network. It is in the interests of both the Applicant and the environment to consider the number of gantries to be constructed and only to use them where necessary. However, in delivering the Scheme the paramount consideration is the safety of drivers and operatives maintaining the highway. Siting zones are shown on the Works Plans [REP4-006] to provide flexibility and respond to the environment.</p> <p>It is noted that, at the hearing, the Council accepted that the gantries are an essential part of the scheme and acknowledged that the Applicant is taking account of the features of the site in considering gantry locations and design.</p> <p>There was a degree of confusion amongst some participants to the hearing as to the nature of the proposed gantries. However, the Applicant can confirm that variable message signs are used on Smart Motorway are not proposed for this Scheme.</p> <p>Although there is a degree of flexibility on gantry location and design, this is governed by standards which exist to ensure that necessary guidance is in place for wayfinding purpose and that the location of gantries is safe. The guidance sets out a hierarchy of placement locations. This, together with the flexibility which is available, is set out in the Gantry Details Report [REP8-022]. This demonstrates how gantries would be carefully placed in line with guidance.</p>
3(c)	The Applicant	c) Potential use of alternative sign designs	<p>The approach to signage in the Scheme was based on the DMRB guidance in place at the time that the Scheme was designed. This guidance has since been withdrawn and there is currently no indication of when replacement guidance will be in place.</p>

ISH 2 - Landscape and Visual Matters			
Agenda item	Question to:	Question:	Response:
			<p>If the Scheme were being designed today the most likely document to which regard would be had is to motorway guidance (CD146). This would potentially allow for confirmatory gantry signs to be replaced with verge-mounted signs, potentially having a lower visual impact from some locations. However, there would need to be an independent safety review of the Scheme, including the gantries before. It is therefore not yet known whether it would be appropriate for verge signs to be included in the final design of the Scheme.</p> <p>In landscape and visual terms, the Scheme is acceptable with portal type gantries as at Application. However, if the standards and safety assessments were to allow for less impactful signs then Highways England would implement that change. Any change would have to be subject to a detailed safety review and the environmental consequences would need to be within the Rochdale Envelope.</p>
3(d)	The Applicant	d) The Applicant's proposal for a 'Final Sign Strategy' to be submitted for subsequent approval via a Requirement	<p>Requirement 3 of the draft DCO has been revised to include a requirement for a signage strategy to be approved by the Secretary of State. The ExA requested the Applicant to consider additional wording to clarify the scope of the signage strategy including reference to aesthetic design and height as well as reference to addressing impacts on the Angel of the North.</p> <p>It is noted that the parties to the hearing were supportive of this Requirement.</p>
Impacts from and Design of the Replacement North Dene Footbridge			
4(a)	The Applicant	a) Including consideration of design flexibility and the proposal for future approval of details	<p>Requirement 12 contains a mechanism for approval of the replacement North Dene Footbridge. Two options for the design have been considered consisting of a Bow Truss and Tied Arch. There have been ample opportunities for parties to raise alternative designs, but no one has proposed any other alternative. Design and cost certainty are required, so optionality has not been left open at this stage of the examination process. It is noted that Gateshead Council has no comments on this matter other than the design and colour need to be carefully examined. The Applicant can confirm that it is not wedded to the colour and a more recessive colour could be used for the bridge. The provisions of Requirement 12 would already allow for colour to be considered as part of the design and no further amendments are required.</p>
Landscaping Proposals in the Vicinity of the Angel of the North			
5(a)	The Applicant	a) Consideration of the Southern Green Report – Options Appraisal for Managing and Enhancing the Angel, including weight to be given to this document	<p>Both Gateshead Council and Sir Anthony Gormley submitted that great weight should be attached to the Southern Green Report and, in particular, to Option 3 – which is asserted to be the preferred option. In doing so, however, they confused their views on the merits of the conclusions of the document with the question of what weight should be attached to it as a policy document in the current application.</p> <p>The views of the Council and Sir Anthony on the merits of the document are understood. However, that does not mean that the Southern Green Report is entitled to be given significant weight in the examination.</p> <p>The Council acknowledged that it is merely a technical document, not a policy document. The Southern Green Report</p>

ISH 2 - Landscape and Visual Matters			
Agenda item	Question to:	Question:	Response:
			<p>has not been consulted on and has not been adopted as Gateshead Council policy. It should therefore not be considered as a planning policy document. In order to be given weight as a policy document, the Southern Green Report would have to be subject to Strategic Environmental Assessment and this has not been undertaken. The Council referred to consistency with other policy. However, policy also supports the delivery of the Scheme and the impacts of the Scheme in its existing environment are acceptable. As such, to the extent that the Southern Green report affects delivery of the Scheme, this conflicts with policy.</p> <p>In their submissions to the hearing, the Council suggested that stakeholders consulted in relation to the Southern Green have signed up to it, including support for the preference for Option 3. This is incorrect. The Applicant is one of the stakeholders to the Southern Green Report and the Applicant prefers Option 1 or 2 within the report.</p> <p>Furthermore, it should be noted that Option 3 requires land within the highway and under the control of the Applicant. It cannot therefore be delivered without the cooperation of the Applicant. This means that it would not occur unless the Applicant implemented it absent the Scheme. This emphasises the limited weight that should be given to the Report and its conclusions.</p> <p>Option 3 involves the opening up of views to and from the Angel of the North. Sir Antony Gormley referred to the site of the Angel of the North as a 'fell'. In the Applicant's submission, the Angel of the North is not in a fell-type environment and the vegetation is not fell-like. There is no fell-type environment nearby and the Angel of the North was not originally in a fell-type environment. Option 3 would introduce a different land form from that which has naturally evolved or been implemented in the vicinity of the sculpture.</p> <p>There is also a clear tension between the Council's desire for the thinning of vegetation and growth and the views expressed by the Green Party's representative at the open floor hearing.</p> <p>In conclusion, the Southern Green Report [REP4-086] has not been subject to public consultation and is not an adopted policy document. Very little weight should be afforded to it in the Examination.</p>
5(b)	The Applicant	b) Has agreement been reached on the proposed landscaping scheme in the context of its impact upon views and the setting of the Angel of the North? If not, what further amendments and/or mitigation are sought? (Reference will be made to the revised landscape mitigation plan [REP5-005])	<p>Discussions are still ongoing in relation to the landscaping scheme in order to seek to take on board the ambitions of Gateshead Council. However, Gateshead Council's preferred option (Option 3) requires work to be undertaken on the Applicant's land and Gateshead Council is requesting that the Applicant carries out biodiversity improvements on Gateshead Council's land. It is considered that all of this must be capable of being neutral in terms of cost to the Applicant, but requires agreement between the parties in relation to the provision of the land within Gateshead Council's control for the provision of additional tree planting as compensation for that which would be foregone within the Order limits, provision for which is not yet in place or funded.</p> <p>At present, the Applicant would be able to undertake the landscaping scheme submitted in the Application or the Options 1 or 2 of the Southern Green Report [REP4-086]. However, Option 3 would require further agreement between the parties to ensure that sufficient land is provided to accommodate additional tree planting and that</p>

ISH 2 - Landscape and Visual Matters			
Agenda item	Question to:	Question:	Response:
			financial support for planting and maintenance was in place. Requirement 5 has been further revised to provide a mechanism by which any of these landscape options can be accommodated within the Scheme.
(c)	The Applicant	c) The effects of proposed tree removal	<p>From a landscape and visual perspective, removal of trees around the Angel of the North would lead to greater awareness of the Angel of the North, including the inter-visibility of the A1. However, if included in the Scheme landscape proposals that include the removal of further vegetation, should not affect the outcome of the landscape assessment [APP-028].</p> <p>Reference was made by the ExA to impacts on 300 residential properties. The Applicant considers that the reference is to the impact of the scheme as a whole as a result of the requirement to clear vegetation for construction. This vegetation would be replaced as part of the mitigation strategy set out in the Landscape Mitigation Design.</p>
5(d)	The Applicant	d) Any requirements for replacement planting in other locations to offset the loss of trees and vegetation	As explained above, the delivery of Option 3 in the Southern Green report would require additional land for tree planting that is not already included within the Order limits. Requirement 5 has been amended to ensure that, should Option 3 be pursued, then sufficient land for this planting is required to be put in place.
Other Landscape and Visual Matters			
6(a)	The Applicant	a) Replacement Allerdene Bridge	Please refer to Appendix A.
6(b)	The Applicant	b) Any outstanding matters regarding Longacre Wood	Please refer to Appendix A.
6(c)	The Applicant	c) Habitat Calculation Update (referred to in Table 3.4 of the Deadline 8 Statement of Common Ground with Gateshead Council)	Please refer to Appendix A.
6(d)	The Applicant	d) Any other matters	Please refer to Appendix A.

4 Issue Specific Hearing 3

Table 3 - Water Environment and Drainage

ISH 3 – Water Environment and Drainage			
Agenda Item:	Question to:	Question:	Response:
Allerdene Burn			
2.	All Parties	Brief update and summary of positions since Deadline 8 (including any recent discussions)	<p>The Applicant can confirm that almost all water environment and drainage issues are resolved. The key points on this topic are:</p> <ul style="list-style-type: none"> • Environment Agency gauging station – protective; provisions are included in the draft Development Consent Order (DCO) [REP8-003 and 004] a revised version of which was submitted at Deadline 9. As explained below, this has been agreed with all parties. • Flood plain protection at Junction 67 – this is addressed through a top soil scrape which has been agreed with all parties. • A revised proposal for naturalisation of Allerdene Burn channel was submitted at Deadline 8 [REP8-036] with which all parties to the hearing have agreed. • Balancing ponds – the position has been agreed with all parties. • Vortex separators – the position has been agreed with all parties [REP8-027]. • The Applicant had thought that there may be a question regarding mammal ledges within culverts but no issue in this regard was raised by any party to the hearing. • Drainage within the scheduled monument was still being discussed with Historic England. <p>It is noted that Gateshead Council confirmed they were in agreement with the Allerdene Burn design and vortex separators and had no issues to raise at the hearing.</p> <p>It is also noted that the Environment Agency confirmed that they were in agreement with the Applicant on water and environment matters including on flood risk, Allerdene Burn design and sediment vortex separators.</p>
3.	The Applicant	Has agreement been reached on the naturalisation of the Allerdene Burn? If not, what further changes are sought? (Reference will be made to EXAD8004 Allerdene Burn – Channel design concept [REP8-026])	<p>The updated design of the Allerdene Burn was lodged at Deadline 8 [REP8-026]. Gateshead Council and the Environment Agency confirmed that they were both in agreement on naturalisation of Allerdene Burn in terms of the Deadline 8 proposals. These measures are secured through the outline Construction Environmental Management Plan (CEMP) [REP-007 and 008] action W10.</p>
Silt Control Vortex Separators			
4	The Applicant	Has agreement been reached on protecting all affected watercourses with silt control vortex separators? If not, what further changes are sought? (Reference will	<p>The Applicant submitted a Vortex Separators Assessment at Deadline 8 [REP8-027], setting out the measures for protecting affected watercourses with silt control vortex separators. Both Gateshead Council and the Environment Agency confirmed that they are in agreement with the Deadline 8 proposals. These will be secured by outline CEMP [REP8-007 and 008] action W5.</p>

ISH 3 – Water Environment and Drainage			
Agenda Item:	Question to:	Question:	Response:
		be made to EXAD8005 Vortex Separators Assessment [REP8-027])	
Any Other Matters Related to Water Environment and Drainage			
5	The Applicant		<p>There are four other water and drainage matters which the Applicant raised at the hearing:</p> <p><u>1) Environment Agency gauging station located at J67</u></p> <p>During the works, Environment Agency requires to be able to access its gauging station related to River Team. Protective provisions have been included in Part 4 of Schedule 11 to the draft DCO [REP8-003 and 004] to secure continuing access. The Environment Agency confirmed at the hearing that these are agreed.</p> <p><u>2) Flood plain provision at J67 which spans the River Team</u></p> <p>The junction supports for J67 will be in the functional flood plain. This will be addressed by a top soil scrape at J67 to ensure that there is no loss of flood capacity. The Environment Agency confirmed at the hearing that this is agreed.</p> <p><u>3) Surface Water Attenuation Pond</u></p> <p>There is a surface water attenuation pond included as part of Scheme. This is to the north of the Allerdene bridge. It had been suggested that this should be naturalised but the pond which be fenced with no public access. It has therefore been agreed with the Gateshead Council and the Environment Agency that this pond should be left as per the original design. This was confirmed at the hearing.</p> <p><u>4) Bowes Incline scheduled monument</u></p> <p>There is an existing drainage issue at the scheduled monument. A drainage solution has been agreed with Gateshead Council but is still under discussion with Historic England.</p>

5 Issue Specific Hearing 4

Table 4 - Transport and Traffic

ISH 4 – Transport and Traffic			
Agenda item:	Question to:	Question:	Response:
Construction			
3.	The Applicant	Update and summary of positions on outstanding issues raised in ExA written questions 3.9.2- 3.9.4	<p>The Applicant understands that all matters raised in questions 3.9.2 to 3.9.2 are now resolved with Gateshead Council. In relation to question 3.9.2, Requirement 10(3) now provides a mechanism for the accesses into the construction compounds to be approved by the Secretary of State in consultation with the local highway authority.</p> <p>In relation to 3.9.3, the access via Woodford Road is now secured as part of the Outline Construction Traffic Management Plan (CTMP) (Appendix B of the Construction Environmental Management Plan (CEMP) [REP8-007 and 008]) paragraph 2.5.2. It is noted that, although Gateshead Council had initial concerns about the Woodford access, they accept the reasons for it and they have confirmed that their concerns have been addressed through the measures secured in the CTMP.</p> <p>The position of Royal Mail in terms of question 3.9.4 is addressed under point 7. below.</p>
Non-Motorised Road Users			
4.	The Applicant	Update and summary of positions with particular regard to footpath diversion routes in the vicinity of Eighton Lodge roundabout	<p>The Eighton Lodge roundabout would be the diversionary route when there is a closure of walking, cycling and horse riding (WCH) routes that would otherwise use North Dene Footbridge or Bowes Incline. North Dene Footbridge and Bowes Incline would not be shut at the same time.</p> <p>Bowes Incline would be shut for around four months. Cyclists and pedestrians would have an alternative route via North Dene Footbridge during the closure, but this would not be suitable for horses for whom Eighton Lodge would be the diversionary route.</p> <p>For walkers and cyclists, the modelling shows that Eighton Lodge can be easily and safely negotiated. Horse riders may be inconvenienced as Eighton Lodge is not ideal for horses. However, surveys show that equestrians are a very small class of use. Only two weekend riders were identified in the survey and no weekday use. Provided that there is sufficient notice of the closure of Bowes Incline then those few affected equestrians would be able to make other arrangements.</p> <p>The Applicant is exploring the potential for mitigation measures for horse riders at Eighton Lodge. Gateshead Council have suggested that the Applicant discuss this issue with the British Horse Society which is being progressed. However, it is necessary to have in mind that horse riders require to dismount at Bowes Incline in any event, the interference would be temporary and the number of horse-riders that would be affected is very small. This is a matter which can be addressed through the CTMP. A commitment to discuss measures to ensure diversion routes are suitable for use by walkers, cyclists, and horse riders has added to the scope of the Working Group set out in the Outline CTMP (Appendix B of the CEMP [REP8-007 and 008]) paragraph 3.3.3.</p>

ISH 4 – Transport and Traffic			
Agenda item:	Question to:	Question:	Response:
			Mr Nigel Harrison raised the issue of the quality of the surfaces of diversion routes. The CTMP is the mechanism by which Gateshead Council can satisfy itself as to the quality of these routes (see paragraph 3.3.3 of the CTMP).
Sustainable Transport			
5.	The Applicant	Update on financial contribution for sustainable transport measures requested by Gateshead Council	<p>The Applicant is the strategic highway authority which is funded for that purpose. It is not a source of or destination for traffic in its own right and does not give rise to the need for the measures for which a contribution is sought. All traffic using the A1 Trunk Road will have originated somewhere on the local highway networks managed by local highway authorities like Gateshead Council. It is not appropriate to ask the strategic roads authority to contribute to the costs of sustainable transport measures on the local road network. That is the responsibility of the local highway authority for which they are funded. There are other potential sources of funding these sorts of measures but is not an appropriate use of funds for the Scheme.</p> <p>It is noted that, when asked by the ExA, Gateshead Council was not able to point to a national or local policy which justified the seeking of contributions to sustainable transport measures from strategic road schemes. There are no such policies because there is no planning justification for the seeking of these contributions. No other roads project is being asked to fund the responsibilities of local government in this way. It is not appropriate to set a precedent in relation to this Scheme.</p>
Bowes Cycleway and North Dene Footbridge			
6.	The Applicant	Update on discussions with Gateshead Council	Although there had been issues raised by Gateshead Council in relation to cyclist and pedestrian access and the ramp for North Dene Footbridge, Gateshead Council confirmed at the hearing that all matters have been resolved. The issues of drainage at Bowes Incline are understood to also be agreed with Gateshead Council but is still under discussion with Historic England.
Royal Mail			
7.	The Applicant	Update on outstanding issues raised in Royal Mail's Deadline 8 submission	<p>No evidence has been presented by Royal Mail as to how they or their undertaking will be harmed by the Scheme. The works are being undertaken to an important trunk road on which works already have to take place from time to time. Where works take place on the existing network, the Applicant already gives notices of closures of the road to Royal Mail and other key users of the road.</p> <p>The Applicant is content to provide the CTMP (Appendix B of the Outline CEMP [REP8-007 and 008]) to Royal Mail at the appropriate time so that it may make representations in that regard. This is already provided for in the Outline CTMP. As this measure is secured by the CTMP, there is no need for a separate requirement.</p> <p>It is not appropriate to require consultation with local businesses on the construction programme. Some disruption is inevitable in works of this nature. The Applicant would, however, provide the same form of notice of works to Royal Mail as they do in respect of other major works on their network.</p>

ISH 4 – Transport and Traffic			
Agenda item:	Question to:	Question:	Response:
Construction Compounds			
8.	Gateshead Council	Gateshead Council will be asked to update whether they are happy in principle that safe access can be gained from the proposed sites for construction compounds?	<p>Gateshead Council confirmed that they are content that the CTMP (Appendix B of the Outline CEMP [REP8-007 and 008]) will be able to provide a satisfactory solution to compound access. The J67 compound access is, in any event, being designed by the Council,</p> <p>The ExA asked if there was an issue about the implications of the J67 compound access for residents as this did not seem to be on a drawing. However, the accesses concerned are to the north of Lamesley Road close to the roundabout and away from the residential properties on the road. This is illustrated on Figure 1/AL Site Compound Plan – Detailed View, Junction 67 (Additional Land) in Appendix A to the Outline CEMP [REP8-007 and 008].</p>
Any Other Transport and Traffic Matters			
9.			<p>Mr Nigel Harrison raised concerns about the information which Highways England posts on their project websites about peripheral works such as cycle tracks. He asked for updates on project websites to include updates of information relevant to walkers, cyclists and horse riders.</p> <p>A commitment that publicity and signage will be provided in advance of any diversions being brought into use, including on the Scheme Project page on Highways England website and any associated newsletters has been added to the Outline CTMP (Appendix B of the CEMP [REP8-007 and 008]) paragraph 2.7.2.</p>

6 Issue Specific Hearing 5

Table 5 - Applicant Response to ExA Questions During ISH5

Applicant Response to ExA Questions During ISH5			
Agenda Item	Question to:	Question:	Response:
Articles			
4 (a)	The Applicant	Article 2 interpretation - The Applicant is asked to justify the definition 'commence' used	<p>The ExA's proposed change to the definition of "commence" has been included in the draft DCO. However, the inclusion of "site clearance" within the definition of development requires that additional provisions are required to deal with required advance works.</p> <p>It will be necessary to carry out early vegetation clearance in order to avoid vegetation clearance during the bird nesting season. This would require vegetation clearance works to begin as soon as possible after the grant of a DCO, and prior to the formal approval of the final CEMP.</p> <p>Given the timescales associated with the discharge of requirements (and, in particular, the approval of the final CEMP) delaying site clearance until all requirements are discharged would mean a considerable delay to the start date of the Scheme, potentially as much as a year.</p> <p>In order to address this issue, a bespoke requirement 16 has been provided for site clearance works. This will allow the necessary approvals in respect of proposals for site clearance operations to take place in advance of the other requirements being discharged but will still ensure that appropriate measures are in place to provide mitigation of impacts from these vegetation clearance works.</p>
4(b)	The Applicant	Article 32 interpretation - The Applicant is asked to justify the definition of 'maintain'	<p>The ExA has raised particular concerns at the inclusion of the words "alter", "improve" and "landscape" within the definition of "maintain" in Article 2. In order to understand why these terms need to be included in the definition of maintain, it is necessary to understand the wider regulatory context.</p> <p>When constructed, the main part of the scheme will form part of the A1 trunk road. In terms of the Appointment of a Strategic Highways Company Order 2015, the Applicant is the highway authority for trunk roads.</p> <p>In terms of section 41 of the Highways Act 1980, a highway authority is under a statutory duty to maintain highways for which they are responsible. The Applicant will therefore have a duty to maintain the highway comprised in the new road constructed under the Scheme.</p> <p>Section 62 of the 1980 Act includes a general power on highway authorities to carry out improvements to any highway which is maintainable by them. This includes, for example, the division of carriageways, the planting of trees and vegetation, the provision of drainage and the provision of barriers.</p> <p>Part 9 Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 ("GPDO") grants permitted development rights for the carrying out by the Secretary of State or a strategic highways company of works under the Highways Act 1980 or works in connection with, or incidental to, the exercise of those functions.</p> <p>However, the rights granted in Part 9 are subject to the provision in Article 3(4) of the GPDO that that nothing in the Order permits development contrary to any condition imposed by any planning permission or deemed planning permission. The requirements imposed under Article 2 of the draft Order are equivalent to conditions</p>

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			<p>on a grant of planning permission and mean that the Applicant would not be able to rely on permitted development rights to carry out work which would be contrary to the requirements.</p> <p>Under Article 3(10) of the GPDO, a person is precluded from relying upon permitted development rights if to do so would result in EIA development.</p> <p>The Applicant requires to be able to manage the strategic road network in accordance with the duties imposed under section 41 of the 1980 Act. The purpose of including the terms “alter”, “improve” and “landscape” within the definition of “maintain” is to ensure that the new trunk road to be constructed by the order can be managed by the Applicant as part of the network including the powers available to the under section 62 of the 1980 Act.</p> <p>In the absence of these provisions, the Applicant would not be able to undertake improvement to the road such as changes to carriageway configuration, landscaping the works without promoting an amendment to the Order. An example of this would be the installation of a new surfacing treatment with better acoustic performance.</p> <p>Notwithstanding the inclusion of the proposed wording in the definition of “maintain”, the Applicant would still be constrained if proceeding under the Order by the need for the Scheme to be constructed and operated within the assessed parameters of the Environmental Statement. Hence, the definition of “maintain” would allow the Applicant to undertake their maintenance responsibilities in terms of the 1980 Act but any alterations to the Scheme could not have a material impact beyond the impacts assessed in the ES. This is no different to any other planning application and is a matter of planning judgement which planning authorities are used to exercising. It is noted that Gateshead Council stated that they did not want to get in the way of minor changes being made to the road and had no concerns about the proposed wording.</p> <p>Thus, these important operations comprised in the Order as maintenance would not be able to be undertaken if either:</p> <ul style="list-style-type: none"> • They resulted in the breach of the terms of the Order; • They exceeded the assessed parameters of the Scheme; or • They would independently result in EIA development.
d4(c)	The Applicant	Article 7 – Limits of deviation	<p>The Examining Authority expressed concern at the 1 metre vertical limit of deviation being applied throughout the Scheme. However, the whole scheme has been designed and assessed in terms of the ES within this tolerance. Detailed design is also now being carried out in accordance with this tolerance. If the vertical limit of deviation were to be reduced, then it may not be possible for the Scheme to be constructed and it may require to be redesigned.</p> <p>Whilst there is a need to tie into the existing carriageway, there needs to be flexibility in intervening locations to take into account differences in terrain. In particular, it is known that the required height of slip roads at some locations will require to be close to the 1 metre vertical limit. There is also a critical need to ensure the necessary clearance over the railway for the replacement Allerdene bridge. All of this necessitates, for this particular scheme, a common vertical 1 metre vertical limit of deviation throughout the scheme to ensure that the various elements can be designed and constructed.</p> <p>It is understood that there is a particular concern about how the limits of deviation would apply to gantries. However, requirement 5 has been revised to include a design scheme for the gantries and further</p>

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			amendments have been made to ensure that this includes consideration of height.
4(d)	The Applicant	Article 32 – Temporary use of land for carrying out the authorised development	<p>The Examining Authority questioned the meaning of Article 32(9) and whether this could authorise the acquisition of additional permanent rights on which no consultation had taken place.</p> <p>Article 32(9) does not give a power to create new rights. It prohibits the compulsory acquisition of land other than the acquiring of new rights under article 26 or the acquiring of subsoil under article 30. It is understood that the principal concern here relates to the acquisition of rights under article 26.</p> <p>To understand the provisions in Article 32(9), it is necessary to understand the basis of the powers in Article 26. Article 23 gives a power to acquire land compulsorily for the authorised development or for facilitating it or if it is incidental to the authorised development. Article 26(1) then gives a power to acquire rights over the Order land or impose restrictive covenants over the Order land for such purposes as may be required for any purpose for which that land may be acquired under article 23. The reason for this power is that a right is to be capable of being acquired, not just an estate. This is an important provision as it means that the applicant does not have to acquire an estate if a right would suffice. This means that where a lower interference with the right of a landowner can latterly be determined to be effective, causing less interference with property rights, then this can be pursued instead.</p> <p>Importantly, the temporary possession of land is not as a matter of law the acquisition of land or an interest in the land. Hence, the power to acquire rights only extends to that land which is expressed to be the subject of compulsory acquisition powers and not to that land which is subject only to temporary acquisition powers.</p> <p>Article 26(1) is subject to Article 26(2). This qualifies the limitations in Article 26(1) such that land in Schedule 6 (land in which only new rights may be acquired) are limited to those specified.</p> <p>Article 33(9) is then a prohibition on the exercise of powers to acquire land compulsorily if it is temporary land. That prohibition is qualified by Article 33(9)(a) and (b). This means that as a matter of drafting, Article 33(9)(a) is not a free-standing power. It only has effect as a result of Article 26, which is the power to acquire rights. However, for the reasons set out above, that power is limited only to areas which are subject to powers of compulsory acquisition and the areas expressly identified in Schedule 6 as being subject to the acquisition of rights only or in common with a temporary acquisition.</p> <p>It is noted that the issue of the interpretation of similarly worded provisions was discussed in the examinations of the A585 Windy Harbour to Skippool Improvement Scheme and the A30 Chiverton to Carland Cross Scheme. In those schemes, it appears to have been accepted that the effect of the provision equivalent to Article 32(9) would allow the creation of additional rights on land which where there had not been consultation on such rights.</p> <p>It is considered that the position taken at these 2 previous examinations is based on a misinterpretation of these provisions which have been regularly and properly included in previous Orders. As explained above, Article 32(9) does not provide a power to create additional rights. It is effectively a saving provision for the acquisition of land or rights over the same land over which the temporary possession of land is required. This provision is necessary in order to ensure that that the compulsory acquisition rights granted in terms of Article 23 and 26(1) can still be exercised and are not prohibited by the first part of Article 33(9).</p>

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4(e)	The Applicant	Any submissions from Interested Parties on the draft Articles	No further submission was made on the draft Articles.
Schedule 1 – Authorised Development			
5(a)	The Applicant	Work 5a – should the wording of paragraph (ii) be revised to refer to 3 or 5 spans?	It is accepted that this work should be re-worded. This has been included in the revised draft DCO and the four options have been re-ordered.
Schedule 2 - Requirements			
Part 1 (Requirements)			
6(a)	The Applicant	Requirement 3 (Detailed design)	<p>Requirement 3 was substantially revised at Deadline 8 to include additional provisions on the works required to replace the NGN gas transfer station and to include a new requirement for a signage strategy for the gantries. As requested by the ExA, sub-headings have been added to the draft DCO to break up the text.</p> <p>At the time of the hearing, there were 2 sets of key provisions in Requirement 3 as follows: -</p> <p><u>Gas transfer stations</u></p> <p>In relation to the transfer station, consent is already in place for the replacement transfer station in terms of prior approval for permitted development rights granted to NGN. The intention is that the replacement works will be undertaken by NGN in terms of this consent and Requirement 3(6) is a provision which protects the position of NGN to ensure that they are able to use that consent outwith the DCO.</p> <p>In the unlikely event that the applicant requires to construct the transfer buildings then requirement 3(3) provides for 2 options. In the event that the buildings are to be constructed in terms of the approved details already in place for NGN then no further design details need to be approved and the Applicant is given authority to construct the buildings under the existing approved details. In the event that different design requires to be implemented then this needs to be approved by the Secretary of State in consultation with the relevant planning authority. In either case, no part of Work No.12 can be commenced until a scheme for the demolition of the existing buildings has been submitted to and approved by the Secretary of State. These provisions allow for the details associated with the gas transfer station to be considered by the Secretary of State where required but also allow NGN to undertake the works outwith the DCO as statutory undertaker.</p> <p><u>Gantry design</u></p> <p>Requirements 3(3) to (9) contain new provisions requiring a design strategy for the provision of signage within the areas identified as “proposed new gantry areas.” This will allow the Secretary of State to consider the details of the gantries.</p> <p>The relevant guidance on directional signage was previously set out in Design Manual for Roads and Bridges Interim Advice Note 144/16 Directional Signs on Motorway and All-Purpose Trunk Roads: Grade Separated Junctions. This has been withdrawn and has yet to be replaced with new guidance. Although there may be potential for single span gantries or cantilever gantries to replace the proposed superspan gantries this is dependent on the finalised terms of the replacement guidance and site-specific safety assessment. The need for appropriate road signage is critical from a road safety and wayfinding perspective.</p> <p>The ExA queried whether Requirement 3(7) should include reference to one of the reasons for the signage strategy being to address the impact of gantry height on the Angel of the North. This is accepted and has been included in the latest draft DCO. Reference has also been included to the need for the strategy to</p>

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			<p>address road safety and directional requirements.</p> <p>Requirement 3(9) would allow the applicant to carry out maintenance and replacement of the gantries. As explained above, it is essential that the Applicant is able to comply with its maintenance and safety duties as strategic roads authority. However, it is accepted that limitations are required in order to ensure that the signage complies with the assessed impacts of the Scheme. Additional wording has therefore been added to this effect.</p> <p>An additional set of provisions has not been added at Requirement 3(10) to regulate elements of design at Allerdene Bridge. This now provides for the approval of design elements of the bridge deck (including the colour scheme for the bridge beams and the parapet systems) forming part of Work No. 5a by the Secretary of State in consultation with the relevant planning authority.</p> <p>This approval is required to be in place before Work No. 5a can be commenced, other than ground treatment, piling or the construction of abutments and supporting piers. This strikes the appropriate balance between ensuring quality of the bridge design of this structure without unnecessarily delaying the construction of the engineering structures. As the bridge requires to be constructed over the East Coast Main Line, it is critical to have certainty over the timing of construction.</p> <p>It should be noted that the embankments for the Allerdene Bridge will be included within the landscaping scheme required by requirement 5.</p>
6(b)	The Applicant	Requirement 4 (Construction and handover environmental management plan)	<p>The issue raised here relates to the current wording of Requirement 4(1) that the finalised CEMP must be “substantially in accordance” with the outline CEMP. The ExA queried whether this was sufficiently precise and proposed that the CEMP “must accord with” the outline CEMP.</p> <p>The “substantially in accordance” test is a common planning test and has been approved by the Secretary of State in numerous DCOs. It is the test that is used in the vast majority of highways DCOs, there is a tried and tested process for approval of detail pursuant to requirements <i>via</i> the Secretary of State and the Applicant is not aware of any difficulties in this regard, nor have there been any legal challenges to the approach.</p> <p>Requiring the Final CEMP to “accord with” the draft CEMP would not work in this context and with the particular draft form of document used in this case. This is because the draft CEMP is an iterative document which will require refinement as the detailed design develops. Such a test would effectively require the CEMP to be finalised now or to have the form in which it exists currently, which is not practical at this stage of design.</p> <p>The “substantially in accordance” test requires the exercise of planning judgement and is a test which planning authorities are well-placed to deal with. If a consultation body such as Historic England considers that a provision in the final CEMP does not sufficiently accord with the draft CEMP then they would be able to make a submission to the Secretary of State.</p> <p>It is agreed that there is required to be consistency through the requirements on the test for finalised documents. The draft DCO has been updated so that all relevant provisions refer to the “substantially in accordance” test.</p> <p>The ExA also requested that the phrase “environment agency” in requirement 4(1) be capitalised and this has</p>

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			been done.
8(c)	The Applicant	Requirement 5 (Landscaping)	<p>The issues raised by the ExA on requirement 5 relate to whether the finalised landscaping scheme should “be in accordance” with the measures set out in the REAC as opposed to a requirement that they “reflect” those measures. It is accepted that the test here should be consistent with the “substantially in accordance” test in Requirement 4(1) and the wording has been revised accordingly. As with Requirement 4(1), the need for the relevant scheme to evolve in line with the detailed design means that it is not appropriate to provide an absolute requirement for accordance. The “substantially in accordance” test is a well-recognised and appropriate test.</p> <p>The relevant planning authority will be consulted on the landscaping scheme and will have the opportunity to make submissions to the Secretary of State in the event that there are any concerns about the degree of accordance with the REAC.</p>
8(d)	The Applicant	Requirement 8 (Surface and foul water drainage)	<p>The issues raised by the ExA on requirement 5 relate to whether the details which require to be submitted for the surface and foul water drainage system should “be in accordance” with the measures set out in the REAC as opposed to a requirement “reflecting” those measures. It is accepted that the test here should be consistent with the “substantially in accordance” test in Requirement 4(1) and the wording has been revised accordingly. As with Requirement 4(1), the need for the relevant scheme to evolve in line with the detailed design means that it is not appropriate to provide an absolute requirement for accordance. The “substantially in accordance” test is a well-recognised and appropriate test.</p> <p>The relevant planning authority will be consulted on the details of the surface and foul water drainage system and will have the opportunity to make submissions to the Secretary of State in the event that there are any concerns about the degree of accordance with the REAC.</p>
8(e)	The Applicant	e) Requirement 9 (Archaeological remains)	<p>The issues raised by the ExA on requirement 5 relate to whether the finalised landscaping scheme should “be in accordance” with the measures set out in the REAC as opposed to a requirement that they should be in substantial accordance with those measures. As with Requirement 4(1), the need for the relevant scheme to evolve in line with the detailed design means that it is not appropriate to an absolute requirement for accordance. The “substantially in accordance” test is a well-recognised and appropriate test.</p> <p>The relevant planning authority will be consulted on the FWSI and will have the opportunity to make submissions to the Secretary of State in the event that there are any concerns about the degree of accordance with the draft WSI.</p>
8(f)	The Applicant	Requirement 10(3) (Traffic Management)	Requirement 10(3) was revised at Deadline 8 to include additional provision requiring the details access to working compounds to be approved by The Secretary of State. This will be applied to the Junction 67 and Eighton Lodge compounds. It is understood from the hearing that Gateshead Council have no issues in principle with safe access being achieved.
8(g)	The Applicant	Requirement 12 (Pedestrian, cyclist and horse riding facilities)	Requirement 12 was revised at Deadline 8 to include additional provisions on requiring the detailed design on the footbridge (including details of the design of the footbridge) to be approved by the Secretary of State. Provision has also been included for the submitted design details to show how the design addresses the guidance in paragraph 4.29 of the National Policy Statement for National Networks for the appearance of national network projects to demonstrate good aesthetics as far as possible. It is understood from the hearing that Gateshead Council are content with the drafting of this requirement.

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			The heading for requirement 12 requires to be updated to better reflect the content of the requirement. This has been included within the latest version of the draft DCO.
8(h)	The Applicant	Requirement 13 (Fencing)	<p>Requirement 13 requires permanent and temporary fencing for the authorised development to be constructed and installed in accordance with Volume 1, Series 0300 of the Manual of Contract Documents for Highway Works except where any departures from that manual are agreed in writing by the Secretary of State in connection with the authorised development.</p> <p>The ExA queried whether revised drafting was required to avoid inconsistency with measures N2 or N3 of the REAC which requires the installation of acoustic barriers. The applicant can confirm that it would not be appropriate to require that acoustic barriers be installed in accordance with Volume 1, Series 0300 of the Manual of Contract Documents for Highway Works. Additional wording has therefore been included in the draft DCO.</p>
8(i)	The Applicant	Requirement 14 (Allerdene Bridge replacement)	<p>Two issues were raised at the hearing in relation to requirement 14. First, as with requirements 5, 8 and 9, the ExA questioned to wording in the requirement that the relevant work is carried out “generally in accordance” with specified sheets of the structures engineering drawings and sections.</p> <p>As with requirements 5, 8 and 9, an amended requirement which obliged the bridge to be carried out “in accordance with” those drawings would constrain the design solely to the parameters shown in those drawings. This would unduly constrain the detailed design. This additional level of constraint as Requirement 3(1) already requires that the authorised development is carried out in accordance with the preliminary design scheme unless the Secretary of State is satisfied that a departure from the preliminary design would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.</p> <p>However, it was acknowledged that use of the word “generally” is inconsistent with the wording of similar obligations. The draft DCO has therefore been revised to use the “substantially in accordance test” which is now being applied throughout the draft.</p> <p>Second, the ExA sought clarification on how details of the design such as parapets would be secured. This point is now addressed by a new provision in Requirement 3(10) which is discussed further above.</p>
8(j)	The Applicant	Any submissions from Interested Parties on any other requirements	There were no submissions made by Interested Parties in relation to additional requirements.
Part 2 (Procedure for Discharge of Requirements)			
(a)	The Applicant	Any submissions from Interested Parties	There were no submissions made by Interested Parties.
Matters related to the Construction Environmental Management Plan (CEMP) to be secured by Requirement 4			
7(a)	The Applicant	Action G12 of the REAC (should details of all construction compounds be approved?)	The Applicant agrees that the action G12 should be amended so that the details of both construction compounds should be approved. This is included in the latest version of the CEMP.
7(b)	The Applicant	Cultural Heritage measures including those relating to Bowes Railway Scheduled Monument	The Applicant understands that the wording of the CEMP in relation to the Bowes railway is agreed with Historic England with the exception of the wording which refers to the finalised CEMP being “substantially in

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			<p>accordance with" the draft CEMP. The Applicant has discussed this point further with Historic England but at present this remaining point is not agreed. As with the submission on Requirements 5, 8 and 9, the need for the relevant scheme to evolve in line with the detailed design means that it is not appropriate to an absolute requirement for accordance with the draft CEMP. The "substantially in accordance" test is a well-recognised and appropriate test, relying upon planning judgement, which is entirely normal in matters of this nature.</p> <p>Historic England will be consulted on the finalised CEMP and will have the opportunity to make submissions to the Secretary of State in the event that there are any concerns about the degree of accordance with the draft CEMP. As such, the interest of Historic England and the historic environment is entirely protected.</p>
7(c)	The Applicant	Are any additions to the REAC required further to Gateshead Council's response to ExQ 3.8.2 regarding Longacre Wood [REP8-030]	A new action G15 has been added to the REAC (G15) to manage the impacts of biodiversity in consultation with Gateshead Council to address the potential impacts on Longacre Wood.
7(d)	The Applicant	Construction Traffic Management Plan. Any further changes required? required?	The Applicant does not consider that any further revisals are required to the CTMP and noted that no further points were raised on this document at the hearing.
7(e)	The Applicant	Any other comments on the CEMP	No further comments were raised.
Schedule 10 – Scheduled Monument			
8(a)	The Applicant	Does Historic England agree with the proposed drafting of Schedule 10?	It is understood that the wording of Schedule 10 has now been agreed in full by Historic England. There is an outstanding point on drainage works. The Applicant has proposed a new action CH9 to the REAC to address this point.
8(b)	The Applicant	Are any further drawings required as part of the application for development consent?	Further drawings are no required at this stage in order for development consent to be granted. However, the measures secured in the REAC (including the new CH9) will require further drawings to be submitted as part of the final CEMP.
Schedule 11 – Protective Provisions			
9(a)	The Applicant	With Network Rail	<p>There are 2 outstanding items between the Applicant and Network Rail Infrastructure Limited ("NRIL") in relation to the protective provisions: -</p> <p><u>1) Consequential Loss</u></p> <p>NRIL seeks the deletion of paragraph 32(4) of Schedule 11, which provides that the undertaker is not liable for consequential loss. The deletion of paragraph 32(4) is not accepted. While NRIL state that their amendments represent the "standard indemnity which has been included in many statutory orders", it is noted that the deleted text was included in the National Grid (Hinkley Point C Connection Project) Order 2016. The examining authority's recommendation report in relation to that application stated that the protective provisions contained within the recommended order which included the text proposed by Highways England "would give adequate safeguards" (paragraph 9.2.137). The Secretary of State's decision letter points to the examining authority's finding that NRIL's proposed indemnity wording was "unduly onerous", and states that the Secretary of State was satisfied with the examining authority's finding on this issue, thereby confirming the point. This precedent is particularly relevant since it involved a finding by the Secretary of State (who is the shareholder of both NRIL and the Applicant) that the wording was required to ensure the indemnity was not unduly onerous. As such, it should be included within the draft DCO.</p> <p>It is also noted that a similar provision to be included in the M4 Motorway (Junctions 3 to 12) (Smart Motorway) Development Consent Order 2016 was rejected by Cadent. Consistently with this finding at</p>

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			<p>paragraph 5.15.8 – 5.15.9 of the examining authority's recommendation report it was found that Cadent's argument in respect of an indemnity covering indirect and consequential loss is at variance with the tests set out in s.127 of the Planning Act 2008 as whilst s.127 protects Cadent from "serious detriment" to its statutory functions, it does not offer protection from all of the associated costs. Additionally, the examining authority's recommendation report went on to say that Cadent, like other road users, will derive some benefit from the improvements in efficiency and capacity delivered by the scheme. This determination was adopted by the Secretary of State at paragraph 70. The position is analogous with that of Network Rail and confirms the point that Network Rail should not be afforded this type of protection. In the instance of Cadent, the decision noted that all undertakers will benefit from this type of work, and in the present case there will be a material benefit to Network Rail by the replacement of Allerdene Bridge. This will allow overhead line electrification to be free-standing (as opposed to suspended from the infrastructure of the third party), will result in the replacement of ageing infrastructure and enhance safety.</p> <p>The oversailing of a railway by a road is neither different in terms of its installation (it will be undertaken during possessions, just like the installation of overhead lines) and when in situ will be inert. As such, the impacts upon the operation of Network Rail's undertaking and need for it to recover consequential loss are essentially identical. This is because, if an interference were to occur, the loss suffered by Network Rail has not been demonstrated in any way to be different to the losses which would result from interference by an overhead power line.</p> <p>NRIL have also objected to the requirement in 32(4)(b) to provide advance details of agreements with rail operators, it claims that these agreements are commercially sensitive, and their release would create an unnecessary administrative burden. However, the Applicant should only be liable for losses of which it has knowledge and can control. Therefore, it is appropriate that where Network Rail can foresee consequential loss and disclose the potential liability to which it may be exposed. This is a concession in relation to the first part of paragraph (4), representing a compromise. If Network Rail is not able to subscribe to sub-paragraph (b) of paragraph 4, the exclusion of consequential liability should be absolute.</p> <p><u>2) DB Cargo</u></p> <p>NRIL seeks that where, under the protective provisions, NRIL is required to give its consent, agreement or approval in respect of any matter, that consent, agreement or approval is subject to the condition that NRIL complies with any relevant railway operational procedures and any obligations under its network licence or under statute and, if applicable, shall be subject to NRIL or the undertaker (as relevant) first obtaining the consent and/or surrender of the leaseholder DB Cargo (UK) Limited.</p> <p>NRIL has asserted that DB Cargo will need to consent to any proposals affecting its property interest but has provided no evidence as to why this treatment of a private third party is necessary or appropriate. DB Cargo has not objected to the application, its land is required, and it is open to it to seek compensation should it be adversely affected both under the Railways Act regime via NRIL and under the Compulsory Purchase Compensation Code.</p> <p>The DB Cargo leasehold interest is not part of Network Rail's railway undertaking (although the freehold reversion is) because it is part of the undertaking of DB Cargo who benefits from a lease. A lease is an exclusive estate (otherwise it is not a lease but a licence) and so the land cannot be part of Network Rail's railway undertaking. Accordingly, provided that Network Rail itself is protected it is neither necessary nor</p>

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			<p>appropriate to include provisions relating to DB Cargo in the draft DCO.</p> <p>The Applicant does not believe that the additional wording in paragraph 20(1) is appropriate in protective provisions and is a private matter between NRIL and its leaseholder. Furthermore, NRIL have stated that they do not agree to the use of compulsory acquisition powers in respect of its leaseholder's land. However, for the reasons set out above, Network Rail have not demonstrated that this land falls within the legal definition of operational land, and therefore why it should benefit from the protected status of the statutory undertaking of Network Rail.</p> <p>The parties continue to discuss the approach to these two provisions in an attempt to seek a private agreement satisfactory to both the Applicant and NRIL.</p> <p>The additional point which was in dispute at the time of the hearing on whether Article 21 (discharge of water) should be included in the articles which are subject to the protective provisions has now been resolved, this is now included.</p>
9(b)	The Applicant	Northern Gas Networks	<p>The applicant and NGN are intending to negotiate a private agreement as opposed to amending the protective provisions in Schedule 11 of the Order.</p> <p>In the event that the additional land is included in the Order then this has the benefit that the CNG filling station which NGN propose to construct can be accommodated within plot 3/6(c). In these circumstances, the Applicant would not need to acquire the land on which the filling station would be built, and additional wording has been included within Article 32(12) of the the DCO to that effect.</p> <p>The ExA requested clarification of whether the other advantages which the Applicant has set out in relation to the additional land would still be achieved in the event that the CNG filling station is constructed. The Applicant can confirm that this is the case and the justification for this is set out in Appendix C.</p>
9(c)	The Applicant	With Northumbrian Water	<p>The Applicant and NWL are intending to negotiate a private agreement as opposed to amending the protective provisions in Schedule 11 of the Order.</p> <p>At the hearing, the Applicant confirmed that protective provisions were under discussion with Northumbrian Water pursuant to a private agreement between the parties. The remaining issues under discussion relate to notice periods and NWL's ability to issue instructions to the Applicant's contractor.</p> <p>A draft Statement of Common Ground will be submitted at Deadline 9.</p>
9(d)	The Applicant	d) With Environment Agency	<p>At the time of the hearing, the Environment Agency had raised 3 points on the draft protective provisions: -</p> <ol style="list-style-type: none"> 1) whether absence of a response from the Environment Agency for consent should result in deemed approval or deemed refusal; 2) access for landscaping works; and 3) the incorporation of protective provisions for fisheries.

Applicant Response to ExA Questions During ISH5			
Agenda Item	Question to:	Question:	Response:
			<p>It was therefore anticipated that there might be a requirement to include some additional protective provisions for the Environment Agency. However, in subsequent discussions, the Environment Agency have advised the Applicant that they consider that their position is adequately addressed by the provisions in the outline CEMP and environmental licensing regimes. The Environment Agency has requested that the protective provisions in Part 4 of Schedule 11 are deleted. This has been done in the latest draft DCO.</p> <p>It is understood that on this basis the Environment Agency will withdraw its representations in respect of the Application.</p>
9(e)	The Applicant	e) Other Protective Provisions	No other issues were raised in relation to protective provisions. Please refer to Appendix H in relation to the Applicant's position on the Network Rail protective provisions.
Any other matters			
10			No other issues were raised on the draft Order.

7 Compulsory Acquisition Hearing 1 and 2

Table 6 - Compulsory Acquisition Hearing 1 and 2

Agenda Item:	Question to:	Question	Highways England Response:
Session 1			
2	The Applicant	a) Whether the updated Book of Reference [REP6-07] is now accurate and complete?	The Applicant confirmed that the Book of Reference [REP6-06 and 07] submitted at Deadline 6 was up to date and complete at the time of submission and that the Applicant has been made aware of two new landowners who had purchased a property at 85 North Dene. The property lies within the Category 3 boundary, containing those persons who may be entitled to make a claim for compensation in respect of injurious affection. These persons will be included in the Book of Reference to be submitted at Deadline 10. These owners are deemed to be on notice of the project as a result of ongoing publicity of the Scheme.
3a	The Applicant	The Applicant to set out briefly whether the purpose for which Compulsory Acquisition powers are sought would comply with section 122(2) of the Planning Act 2008 (PA2008)?	<ul style="list-style-type: none"> Land subject to acquisition falls specifically within s122(2)(a) and s122(2)(b) of the Planning Act 2008. Replacement land is not required for the Scheme. The project is in the public interest and there is a compelling case for it. It represents high value for money with a Benefit to Cost Ratio (BCR) of 2.72 for the three span viaduct option, 2.27 for the six/seven span viaduct option and 2.45 for the embankment option. This demonstrates the benefit to the public and a compelling case in the public interest in which powers of compulsory acquisition should be authorised.
3b	The Applicant	<p>b) Whether consideration has been given to all reasonable alternatives to compulsory acquisition and temporary possession?</p> <p>c) Whether the land proposed to be acquired is no more than is reasonably necessary for the purposes of the Proposed Development.</p> <p>d) Whether, having regard to PA2008 s 122(3) there is a compelling case in the public interest for the land to be acquired compulsorily and that the public benefit would outweigh the private loss.</p>	<ul style="list-style-type: none"> Referred to the Applicant's response to the First Written Questions [REP2-060] which provides details on the alternatives considered. First, it was considered whether the project should proceed at all. The BCR shows good value for money and doing nothing is not an option as the Allerdene Bridge needs to be replaced in any event. As such, there would need to be a project in the nature of the Scheme in this location in any event. Secondly, alternative engineering solutions were considered including various alignments which are described in Chapter 3 Assessment of Alternatives [APP-025] of the Environmental Statement and the Statement of Reasons [REP4-016]. An online replacement of Allerdene Railway Bridge would be very difficult to achieve and more expensive in comparison to the Scheme. Thirdly, the Applicant's legal advisor confirmed that he had challenged the engineers, environmental experts and property team in respect of the extent of land required for the Scheme and was satisfied that the minimum amount of land has been included within the Order limits. Finally, the Applicant has explored whether the necessary interests in land could be acquired by private agreement rather than by compulsion. The District Valuer advising Highways England confirmed that they had sought to negotiate with the respective landowners and progress had been made with many transactions, but this has not resulted in many completed agreements. Therefore, powers of compulsion are necessary to ensure the delivery of the Scheme. It is necessary to ensure that powers of compulsion are granted to support the negotiations to ensure that delivery of the scheme is not compromised. The Applicant was asked by the ExA to comment on the Northern Gas Networks Ltd CNG station in particular and the Applicant expects that the parties would agree that no more land is included than is reasonably necessary. The Applicant maintains that the additional land is required and the manner of acquisition and method in which powers are to be exercised is a matter under discussion between the parties. Both the Applicant and NGN urge the ExA to accept the additional land to ensure that the CNG station can be accommodated. In order to ensure that no more land was included in the Order limits than was necessary, the Applicant would consider the inclusion of a drawing excluding the CNG filling station land from powers of compulsory acquisition if the Additional Land is included (this is included in the submissions at Deadline 9).
4	The Applicant	<p>a) Any further updates to the Funding Statement</p> <p>b) Whether adequate funding is likely to be available to enable the Compulsory</p>	There were no updates to the Funding Statement and adequate funding is available to enable the compulsory acquisition of land.

Agenda Item:	Question to:	Question	Highways England Response:
		Acquisition to proceed within the statutory period following (and in the event of) the dDCO being made.	
5a	The Applicant	What regard has been had to Articles 8 and 6 of the European Convention on Human Rights (ECHR) and Article 1 of the First Protocol?	Refer to the Applicant's response to First Written Questions on compulsory acquisition [REP2-060], section 1.3. There are no residential properties to be purchased for the Scheme.
5b	The Applicant	The degree of importance attributed to the existing uses of the land proposed to be acquired.	In terms of the degree of importance of human rights, there are two ways in which to consider the impact on human rights. The first is through the carrying out of surveys to determine the level of disruption and the second is through the consideration of existing land use, which is reported in the ES and addressed in the Applicant's Response to the First Written Questions [REP2-060].
5c	The Applicant	The weighing of any potential infringement of ECHR rights against the potential public benefits if the dDCO is made.	Refer to the Applicant's Response to the First Written Questions [REP2-060], section 1.3 which considers the human rights of the project and concludes that public benefits outweigh detriment to human rights.
5d	The Applicant	Implications arising from the Public Sector Equality Duty	The Applicant would submit a statement on the Public Sector Equality Duty at Deadline 9 (see Appendix C).
6	The Applicant	Whether the requirements of PA2008 s131 and s132 are met	The requirements of s131 and 132 of the Planning Act 2008 are met and the ExA does not need to consider Special Parliamentary Procedure as it does not apply in this case. For a more detailed analysis of the relevant submission the ExA should consider the Statement of Reasons [REP4-016].
Session 2			
7	Applicant	The Applicant to set out the current position in relation to negotiations with affected persons	<ul style="list-style-type: none"> • The current position in relation to negotiations with affected persons was unchanged. • The District Valuer representing the Applicant, confirmed that he had held a telephone conversation with the agent representing the Askew family in May 2020 and issued them a proposed breakdown of compensation has been provided to him this week which he will respond to. • Discussions with most other parties are ongoing. Discussions continue with Christopher and Marie Wilson's agent. Mr David Hankey and that the St Mary Magdalene and Holy Jesus Trust's Agent has had difficulty accessing files due to the current circumstances but has confirmed the office has reopened and will be in touch soon. • Most of the other parties are statutory undertakers but the Applicant did not anticipate any land being acquired from Northumbrian Water Limited (save in respect of interests associated with Work No.22. • Provisional agreements have been reached with Mr Robert Henderson, Mr Joseph Skoyles, Mr Craig Barnaby, Lord Ravensworth, Shenstone Properties and James Jones and Sons. • In regard to the works as proposed by Christopher and Marie Wilson, the cost of the retaining wall of half a million pounds, outweighed the saving made in land take and therefore it had not been advanced as the benefit to the Wilsons was outweighed by the benefit to the public purse. The aim was to balance land take against the cost to the public purse, which was achieved most effectively by the existing design before the Examination. The Wilsons would still be able to pursue a claim for compensation for the land they have lost. • In regard to the Askew family, they had not engaged with the process and were concerned that the land referencing undertaken by the Applicant was inaccurate. They had not objected to the principle of the Scheme and had not identified land they may want to retain or to which any alleged referencing error related. The Applicant considers that the diligent enquiry undertaken is not only sufficient but accurate, and that the law makes provision for any disadvantage that might occur notwithstanding the best efforts of an Applicant to be addressed through public notices and engagement with landowners.

Agenda Item:	Question to:	Question	Highways England Response:
			<ul style="list-style-type: none"> Of those persons identified in the agricultural land assessment where mitigation is necessary, those measures are set out in the Outline Construction Environmental Management Plan (CEMP) [REP8-007 and 008]. Measures are also to be recorded in private agreements where necessary and it is in the Applicant's best interests to do so to mitigation the potential for compensation.
8	The Applicant	The Applicant to set out the current position in relation to negotiations with Statutory Undertakers	<ul style="list-style-type: none"> The Applicant will meet with Network Rail in the week commencing 29th June 2020 and are also in contact with Northumbrian Water. The Applicant's position in relation to plot 3/6c, is that a provision would be included within the Order to restrict the application of compulsory acquisition powers over the CNG station land in the event that the additional land was included in the powers. The wording of the DCO would be reviewed and a response provided at Deadline 9 to ensure that no more land would be subject to powers of compulsory acquisition than was necessary.

Appendix A

**Appendix A – Issue Specific Hearing (ISH) 2 Hearing Actions
10am Tuesday 23 June 2020
Landscape and Visual Matters (including matters relating to the Angel of
the North)**

Action:	Date due:	Notes:
Further consideration of Requirement 3, with regard to the Final Sign Strategy before DCO Hearing	DCO Hearing 25 June 2020	Please see written submission of oral case on ISH 2 in relation to item 3(d). Requirement 3(7) has been further revised to include reference to the scheme addressing height, impact on the Angel of the North and public safety.
Update on the potential need and location of replacement planting	8 July (Deadline 9)	<p>This is addressed in the submissions made in respect of the oral case on Issue Specific Hearing 2: Landscape and Visual in relation to item 5(b). The Scheme can deliver Option 1 in the Options Appraisal for Managing and Enhancing the Angel [REP4-086], prepared on behalf of Gateshead Council by Southern Green, as this reflects the current landscape strategy as set out in Figure 7.6: Landscape Mitigation Design of the Environmental Statement (ES) [APP-061].</p> <p>Options 2 and 3 of the Options Appraisal for Managing and Enhancing the Angel [REP4-086], prepared on behalf of Gateshead Council by Southern Green, would require further agreement between the parties to ensure that sufficient land is provided to accommodate additional tree planting in order to secure sufficient land for biodiversity and to secure financial support that would enable planting and maintenance of that planting to take place. Requirement 5(2) has been revised to allow for any of the Southern Green options to be implemented (including Options 2 and 3 provided the required agreements are reached).</p> <p>Without prejudice discussions in relation to the replanting associated with the Angel of the North are continuing and will continue with Gateshead Council into detailed design.</p> <p>In the event that Option 2 or 3 of the Options Appraisal for Managing and Enhancing the Angel [REP4-086], prepared on behalf of Gateshead Council by Southern Green, is to be pursued then it is understood that a potentially suitable location for additional planting outwith the Order limits has been identified by Gateshead Council. However, agreement on the selection of the site, and the mechanisms for funding have yet to be agreed and would be subject to further discussions with the Applicant during detailed design.</p> <p>The status of the discussions is included within the updated Gateshead Council Statement of Common Ground [REP8-009] a revised version of which was submitted at Deadline 9 (08 July 2020). The drafting of Requirement 5 reflects the Applicant's view of the position in respect of these negotiations.</p>
Provide comments on Sir Anthony Gormley documents (power point photographs)	8 July (Deadline 9)	<p>The Applicant welcomes the information and feedback received from Sir Antony Gormley at Issue Specific Hearing 2: Landscape and Visual at 10.00am on 23 June 2020. The images provided span approximately two decades, during which the landscape has substantially changed as a result of the maturation of woodland and stands of trees and shrubs, planted around the time of the formation of the site and the Angel of the North sculpture. Having studied the eight images provided, the Applicant wishes to respond as follows:</p> <ul style="list-style-type: none"> The planting in the images taken in the period immediately following the erection of the Angel of the North in approximately 1999, shows that these were immature trees and shrubs potentially forming a stand of woodland within the highway boundary and were present when the Angel of the North was erected. The photographs show extensive blocks of establishing woodland across the highway slopes, the individual trees being spaced out, comprising a mixture of broadleaf and evergreen species. It would therefore have been reasonable to assume, at the time of the erection of the sculpture that this planting would mature to form a block of woodland, and this planting would over time reduce awareness of the Angel of the North and its associated mound. It should also be noted that Condition 1 for Application 815/94 which granted consent for the Angel of The North states that a landscaping and surfacing treatment scheme will be carried out by the end of the second planting season following commencement of development. Although the plans for this are not available, it is not clear that the sculpture, as consented, had quite the open aspect that Sir Anthony suggested.

Action:	Date due:	Notes:
		<ul style="list-style-type: none"> The earliest images also include a hedge planted along the highway boundary at the top of the slope, delineating the Angel of the North site with the highway verge. This hedge is no longer discernible amongst the trees that have subsequently established. The intermediate images, taken approximately 10 years ago, demonstrate the effect of the maturing woodland planting in limiting the view of the Angel of the North and the mound. The block of planting in the foreground, which has been removed in the last 5 years, is positioned closer to the A1, and as such raises the angle of view towards the Angel, further limiting the views experienced for the travelling public on the northbound A1. It is woodland planting that Sir Antony Gormley now identifies as screening the lower sections of the sculpture and the mound on which it is placed, and it is this planting that the Applicant has also correctly identified as similarly limiting awareness of the sculpture and the mound, in Applicant's Responses to ExA's First Written Questions, Appendix 1.5 A - Angel of the North Narrative [REP2-019]. This planting has the effect of screening and at times obscuring the Angel of the North within views from the A1. <p>Notwithstanding the above, the Applicant has correctly described the present landscape, that includes the maturing woodland surrounding the Angel of the North, which forms the baseline. It is this baseline that has been described in assessing the impacts of the Scheme and the effects on the perception of landscape and visual amenity within Chapter 7: Landscape and Visual of the ES [APP-028]. The Applicant's landscape specialist has not assumed a modified baseline, based on any of the options as set out within the Options Appraisal for Managing and Enhancing the Angel [REP4-086], prepared on behalf of Gateshead Council by Southern Green, as it would be inappropriate and against the guidance (IAN 135/10 and GLVIA3) which the assessment of landscape and visual effects are undertaken in accordance with.</p> <p>The Applicant continues to discuss with Gateshead Council, and hence through them indirectly with the Antony Gormley Studio, how the Scheme could support the aspiration to open up views of the Angel of the North, without changing the findings of Chapter 7: Landscape and Visual of the ES [APP-028] and Chapter 8: Biodiversity of the ES [APP-029]. These 'without prejudice' discussions are based on the fact that in the absence of the Options Appraisal for Managing and Enhancing the Angel [REP4-086], prepared on behalf of Gateshead Council by Southern Green, the landscape mitigation strategy would be to replicate woodland where it would otherwise have been removed by the Scheme, in order to replace landscape features that contribute to landscape character or planting that currently provides screening of the A1 within views from the Angel of the North.</p> <p>The Applicant considers that supporting the aspirations of both Gateshead Council and Antony Gormley Studio, is beyond the requirements of the Scheme to mitigate impacts from arising from the Scheme on the landscape, visual amenity and biodiversity of the study area, and it is therefore the responsibility of Gateshead Council to support the Applicant in undertaking the necessary works, either financially or through the availability of appropriate land on which to provide woodland, where this cannot be accommodated within the Order limits.</p>
Further consideration of Requirement 3, with regard to design details before DCO Hearing	DCO Hearing 25 June 2020	Requirement 3(1) has been added to include provision for the approval of certain elements of the design of Work 5a (the replacement Allerdene bridge). This includes parapet systems and the design colour scheme
Submission regarding any outstanding matters of disagreement in relation to the effects upon Longacre Wood	8 July (Deadline 9)	Gateshead Council have agreed that inclusion of agreement to controls within action [G15] of Table 3-1 Record of Environmental Actions and Commitments (REAC) of the Outline Construction Environmental Management Plan (CEMP) [REP8-007 and 008], a revised version of which was submitted at Deadline 9 (08 July 2020), as follows "Should plant and equipment be required to use the public footpath through Longacre wood to undertake headwall works, the details of such usage including arrangements for signage, will be consulted on in advance with the local authority", with an agreement for later consultation is sufficient at this stage.

Action:	Date due:	Notes:
		<p>Gateshead Council agreed to the inclusion of control measures within action [B27] of Table 3-1 REAC of the Outline CEMP [REP8-007 and 008], a revised version of which was submitted at Deadline 9 (08 July 2020). The additional wording included "Control measures will be implemented to minimise impacts and, where possible, habitat loss within Longacre Wood LWS. This will include locally fencing off working areas and maintaining access as far as possible whilst maintaining worker and public safety.", with an agreement for later consultation is sufficient at this stage. This matter is now resolved.</p>
<p>Update of latest position regarding the Habitats Calculations Update (Table 3.4 of the SoCG with Gateshead Council [REP8-009])</p>	<p>8 July (Deadline 9)</p>	<p>Gateshead Council and the Applicant continue to make progress on their discussions on how the Scheme could support the aspirations of the Council in making changes to the landscape around the Angel of the North, by removing some of the established trees and shrubs and increasing visibility of the Angel of the North within views from the A1. Further discussions are required regarding location of any off-site planting, provision and standard of planting material, and ongoing management and maintenance requirements.</p> <p>Following a discussion on 3 July 2020 it was agreed that:</p> <ul style="list-style-type: none"> • Replacing removed planting within an area to the south of the Allerdene Bridge crossing was undesirable, due to the proposed location's suitability for wading birds. • An off-site location, proposed by Gateshead Council, is therefore preferred, subject to further discussion and agreement; the mechanism for funding this is still to be investigated and agreed. • The preferred option for Gateshead Council remains Option 3 within the Options Appraisal for Managing and Enhancing the Angel [REP4-086], prepared on behalf of Gateshead Council by Southern Green, and the Applicant will support this aspiration, in so much as it does not increase costs to construct and manage the landscape within the Scheme, and that the findings of the Environmental Impact Assessment are not modified. • The final agreement is unlikely to be achieved within the Development Consent Order (DCO) examination period and will be subject to further discussions during the detailed design phase. <p>If Option 1 of the Options Appraisal for Managing and Enhancing the Angel [REP4-086], prepared on behalf of Gateshead Council by Southern Green, is progressed, this closely resembles the current Figure 7.6: Landscape Mitigation Design of the ES [APP-061]. Therefore, this would not result in any deviations from the existing habitat calculations within Table 8-17 of Chapter 8: Biodiversity of the ES [APP-029].</p> <p>Options 2 and 3 of the Options Appraisal for Managing and Enhancing the Angel [REP4-086], prepared on behalf of Gateshead Council by Southern Green, would result in a similar alteration and reduction of woodland planting within the Order limits, ranging between approximately 8500m² and 9900m² respectively, depending upon which option is developed, and the extent to which woodland may still be included within the Order limits, resulting in the requirement for off-site planting. These two options would be subject to the further discussions and agreements detailed above.</p> <p>Without prejudice discussions regarding the landscape mitigation design and habitat calculations will continue in relation to the potential changes associated with the Angel of the North. It is the Applicant's position that any changes to the design – including those to accommodate Southern Green Options 1, 2 or 3, must ensure that the impact assessment detailed within Chapter 8: Biodiversity of the ES [APP-029] and Chapter 7: Landscape and Visual of the ES [APP-028] will remain valid.</p>

Appendix B

ISH4 Hearing Actions 10am Wednesday 24 June 2020 Traffic and Transport Matters

Action:	Date due:	Notes:
Consider matter of providing update on the Highways England website that addresses walking, cycling and horse-riding matters (WCH) during construction including providing references to CEMP	8 July (Deadline 9)	The Applicant confirms that regular updates will be made to the Scheme's website during construction to include WCH diversions and closures. The Construction Traffic Management Plan (CTMP) (Appendix B of the Construction Environmental Management Plan [REP8-007 and 008]) was updated at Deadline 9 to include this.

Appendix C

Appendix C – ISH5 Hearing Actions Session 1 – 10am Thursday 25 June 2020 Draft Development Consent Order Matters

Action:	Date due:	Applicant's Response:
Article 2(1) "commence" - Provide update on interpretation and associated drafting	8 July (Deadline 9)	This submission is contained in the Applicant's written case for ISH5 in relation to agenda item 4(a).
Submission on interrelationship of Permitted Development Rights and the draft DCO	8 July (Deadline 9)	This submission is contained in the Applicant's written case for ISH5 in relation to agenda item 4(b).
Article 2(1) "maintain" – Provide confirmation of interpretation with regard to the terms 'alter', 'improve', and 'landscape'	8 July (Deadline 9)	This submission is contained in the Applicant's written case for ISH5 in relation to agenda item 4(b).
Article 7, Limits of Deviation – Consider potential unforeseen adverse effects	8 July (Deadline 9)	<p>As stated in paragraph 4.5.4 of Chapter 4: Environmental Assessment Methodology [APP-025] of the Environmental Statement (ES), the draft DCO contains powers of lateral and vertical deviation as shown on the Works Plan [REP4-006] and detailed in paragraphs 2.5.10 – 2.5.12 of Chapter 2: The Scheme [APP-023] of the ES. However, the existing geometry of the A1 within the Scheme Footprint is such that it can be expected that the design shown on the Engineering Section Drawings [REP4-010] and General Arrangement Plan [REP4-009] that accompanied the Application will not vary materially in either the horizontal or vertical plane. As such, the reference design shown on those drawings was assessed for the purposes of Environmental Impact Assessment (EIA). On this basis, the outputs of the assessments presented Chapter 6 – Chapter 14 of the ES [APP-027 – APP-035] are not considered likely to change materially as a result of the power of deviation.</p> <p>Notwithstanding the above, the potential unforeseen adverse effects resulting from a vertical 1m (+/-) Limits of Deviation (LoD) have been considered as part of this response. This has been undertaken based on professional judgement of the competent experts detailed within the ES.</p> <p>For Chapter 6: Cultural Heritage of the ES [APP-027], a +/- 1m vertical LoD is not considered to materially affect the assessment of the setting of heritage assets as the sensitivity of the assets would remain the same and it is considered that the LoD would not result in a change to the magnitude of impact. As such, the significance of effects as assessed in the ES remains valid.</p> <p>For Chapter 7: Landscape and Visual of the ES [APP-028] the +/- 1m LoD is not considered to materially affect the assessment of landscape and visual impacts as the sensitivity of the receptors would not change and it is considered that the LoD would not result in a change to the magnitude of impact. As such, the significance of effects as assessed in the ES remains valid.</p> <p>Given the limited variance in height, it is considered that a +/-1m vertical LoD would not affect the impact assessment completed for ecological receptors presented in Chapter 8: Biodiversity of the ES [APP-029] as the assessment is not considered to be sensitive to this variation.</p> <p>Given the large scale nature of the sensitive receptors considered in Chapter 9: Geology and Soils of the ES [APP-030] (e.g. parcels of agricultural land and controlled water bodies), the associated geology and soils effects and impacts are not considered to be sensitive to change as a consequence of the LoD changing by +/- 1m.</p> <p>For Chapter 10: Material Resources of the ES, [APP-031] a +/- 1m vertical LoD may require additional material resources or generate additional waste to landfill. However, the quantities likely to be required or generated is</p>

Action:	Date due:	Applicant's Response:
		<p>not considered to be of a magnitude that would materially affect the assessment of materials and waste.</p> <p>For Chapter 11: Noise and Vibration of the ES [APP-032], a 1m vertical lowering of the road level would be expected to reduce the Scheme within the topography, giving rise to greater potential for additional attenuation of noise due to screening or a better rate of noise attenuation due to acoustically absorbent ground cover. The assessed Scheme therefore represents a worst case in this regard.</p> <p>A 1m vertical increase in road level has the potential to change the noise barrier attenuation that arises at receptors in close proximity to the Scheme. However, a 1m vertical increase would equally apply to proposed noise barriers as well as the road, ensuring that the screening attenuation is retained (i.e. the apex of the noise barrier would remain the same relative level above the road height). In fact, the proposed noise barriers are at locations where the adjacent receptors are below the level of the road. The result in these areas would be that the receptors would be further below road, which in turn means that the noise barriers would provide a slightly better noise attenuation performance.</p> <p>Where receptors are above the level of the road, no significant adverse effects are predicted to arise and this would remain the case due to existing lines of sight to the mainline and slip roads remaining comparable or unchanged. For receptors at an increased distance from the Scheme, a 1m vertical increase in road height has the potential to slightly reduce the rate of noise attenuation arising as a result of acoustically absorbent ground cover. However, in areas where the full LoD could potentially be realised, the resulting differences are small and not sufficient to give rise to a significant change in operational noise levels or therefore assessment outcomes.</p> <p>For Chapter 12: Population and Human Health of the ES [APP-033], a +/- 1m vertical LoD has the potential to affect views from the road (for motorised travellers). Views from the road have been judged to have a low sensitivity, particularly as the focus for motorised travellers is the route ahead, therefore a +/- 1m vertical LoD would not materially affect the outcome of the assessment.</p> <p>The +/- 1m LoD will have no impact on the findings of Chapter 13: Road Drainage and the Water Environment of the ES [APP-034], particularly as the design flood levels are at a significantly lower elevation.</p> <p>For Chapter 14: Climate of the ES [APP-035], an increase of 1m vertical LoD may increase the greenhouse gas (GHG) emissions of the Scheme (as a result of potential additional material resources required). However, this is not considered to materially affect the outcome of the assessment as the GHG assessment concluded that magnitude of change in GHG emissions was considered to be negligible. This was based on the main source of emissions which are anticipated to be embedded carbon in construction materials as well as GHG emissions from the transport of materials to and waste from site. A 1m vertical lowering of the road level would not be expected to increase material resources required therefore would not affect the greenhouse gas (GHG) emissions of the Scheme. The LoD variation is not considered to alter the emissions from these sources. There would be no material impacts to the climate resilience assessment as a result of changes to the LoD as the proposed adaptation measures, to make the Scheme climate resilient, would not be altered by the LoD.</p>
Article 32(9) – Provide submission in relation to the matter of the potential acquisition of any undefined new rights and relationship with Article 26	8 July (Deadline 9)	This submission is contained in the Applicant's written case for ISH5 in relation to agenda item 4(d).
Article 32(9) – Provide clarification of the plots which may be affected by the acquisition of any undefined new rights	8 July (Deadline 9)	The Applicant confirms that there are no applicable areas which be affected by the acquisition of any undefined new rights. As explained in the Applicant's written case for ISH5 in relation to agenda item 4(d), this Article does not allow the creation of new rights. It prohibits the creation of new rights but effectively a saving provision for

Action:	Date due:	Applicant's Response:
		the acquisition of land or rights over the same land over which the temporary possession of land is required. This provision is necessary in order to ensure that that the compulsory acquisition rights granted in terms of Article 23 and 26(1) can still be exercised and are not prohibited by the first part of Article 33(9).
Schedule 1, Work 5(a) (i),(ii) & (iii) (Replacement Allerdene Bridge) - Redraft for clarity	8 July (Deadline 9)	The revised wording has been included in the Deadline 9 draft DCO.
Requirement 3 – Insert sub-headings	8 July (Deadline 9)	The sub-headings have been included in the Deadline 9 draft DCO.
Requirement 3 – Submissions regarding (a) securing of approval for detailed design (including any appropriate drafting) and (b) revised drafting for 3(9)	8 July (Deadline 9)	Additional provision has been added at Requirement 3(10) in relation to the detailed design of the Allerdene Bridge. This is explained in the Applicant's written case for ISH5 in relation to agenda item 6(a), Revised wording has been included in Requirement 3(9) to clarify that any further works to the gantries must be within the assessed parameters of the Scheme.
Requirement 4 – Provide update to ensure consistency of drafting in relation to 'substantially in accordance'. Also 'environment agency' to be capitalised	8 July (Deadline 9)	There is no change to the wording of Requirement 4 in relation to the "substantially in accordance" wording as this is already included. Further justification for this approach is set out in Applicant's written case for ISH5 in relation to agenda item 6(b). However, the wording of Requirements 5, 8, 9 and 13 has been revised to be consistent with the wording of Requirement 4. The term "environment agency" has been capitalised in Requirement 4.
Requirements 5, 8, 9, 13 – Update to ensure consistency in relation to 'reflect' and 'substantially in accordance'	8 July (Deadline 9)	The wording of these requirements has been made consistent with the "substantially in accordance" wording in Requirement 4.
Requirement 12 – Review title to reflect content (North Dene Footbridge)	8 July (Deadline 9)	The title has been changed to " <i>Design of North Dene Footbridge.</i> "
Requirement 13 – Consider any possible inconsistency and contradiction with measures N2 and N3 of the REAC.	8 July (Deadline 9)	Measures N2 and N3 should not be subject to Volume 1, Series 0300 of the Manual of Contract Documents for Highway Works as different standards apply to acoustic barriers. Additional wording has been added to Requirement 13 to clarify the position.
Requirement 14 – Review use of 'generally in accordance' in the context of design	8 July (Deadline 9)	This wording has been revised so that it consistent with Requirement 4.

Appendix D

Appendix D – CAH1&2 Hearing Actions Session 1 – 10am Friday 26 June 2020 Compulsory Acquisition Matters

Action:	Date due:	Notes:
Provide submission regarding the implications arising from the Public Sector Equality Duty	8 July (Deadline 9)	Please refer to Appendix G

Session 2 – 2pm Friday 26 June 2020

Action:	Date due:	Notes:
<p>Provide submission in response to the ExA's question regarding the implications of the additional land and siting of the potential CNG station (in terms of the need to demonstrate that the land proposed to be acquired is no more than is reasonably necessary)</p>	<p>8 July (Deadline 9)</p>	<p>The additional land is required to allow the 3 span bridge option to be constructed. There is no source of suitable engineering fill material on the scheme, so this has to be imported. With a source of engineering fill material close to the proposed embankment, the embankment can be constructed / formed at a higher output rate than the rate of imported fill can be delivered through the construction access gates off Lameseley Road.</p> <p>The Applicant has assessed the area of additional land required to stockpile this material and it is based upon stockpiling the bare minimum quantity required to complete the majority of the embankment, with the short fall being delivered to site direct to the embankment core whilst the previously formed stockpile area is being drawn upon to build the embankment.</p> <p>Without the additional plot of land, this embankment would take longer to construct as the import rate would govern the rate of the embankment rise.</p> <p>The Contractor has discussed the proposed CNG Plot with Northern Gas Networks (NGN) and have developed the methodology to allow this plot to be made available to NGN. Should the additional land not be granted, then CJP would require the footprint of the proposed CNG site to stockpile fill material. Although this plot of land would not provide the same footprint area as the larger area to the south, it would provide some benefit to the construction programme.</p>

Appendix E

Statutory undertaker name	Nature of the undertaking	Land and / or rights affected	In relation to land, whether and if so, how the tests in s127(3) (a) or (b) can be met	In relation to rights, whether and if so, how the tests in s127(6) (a) or (b) can be met	Status of any protective provisions and / or commercial agreements	Settlement reached	Representation(s) withdrawn in whole or part
Environment Agency	Environmental protection	<p>Land</p> <p>CA: 3/2b, 3/3m, 3/3o, 3/3t, 3/3u,</p> <p>TP: 3/3c, 3/3k, 3/3n, 3/3p, 3/3q, 3/3r, 3/3w, 3/3x, 3/3y</p> <p>Rights</p> <p>CA: 3/3m, 3/3o, 3/3u</p> <p>TP: 3/3c, 3/3k, 3/3p, 3/3w, 3/3x</p>	The test in section 127(3) can be met. Although the land to be acquired includes a gauging station operated by the Environment Agency, the works relating to the construction of the scheme would be downstream of the gauging station and would not directly interfere with its continued operation. Notwithstanding this, protective provisions have been drafted to ensure that the Environment Agency can continue to operate their gauging station.	The test in s127(6)(a) can be met. The compulsory acquisition of land subject to rights, land itself or rights in land would not result in serious detriment to the carrying on of the undertaking. The Scheme would not affect the undertaker's ongoing interest in the land.	Subsequent to Deadline 8 and the examination hearings, the Environment Agency has confirmed that it wishes to withdraw the protective provisions from the draft DCO and will no longer be seeking statutory protection in the form of these provisions. The Environment Agency has confirmed that it will be seeking to protect its apparatus in the vicinity of the scheme through ongoing management via the oCEMP and final CEMP as well as licensing and that this will be sufficient for its purposes.	Negotiations are underway	No, but this is anticipated to follow shortly.
Gateshead Council	Highway authority	<p>Land</p> <p>CA: 1-1, 3-2b, 3-3a, 3/3g, 3/3h, 3-3j, 3-3l, 3-3m, 3-3o, 3-3t, 3-3u, 3/3ff, 3/3hh, 3-3ii, 3-3kk, 3-3nn, 3-3rr, 3-3uu, 3-3vv, 3-3zz, 3-3ddd, 3-3iii, 3-3mmm, 3/4a, 3/4b, 3-4c, 3-4d, 3-4g, 3-4i, 3-4n, 3-4o, 3-10b, 3-10c, 3-10g, 4-1k, 4-1s, 4-1t, 4-2c, 4-3c, 4-3d, 4-3e, 4-3f, 4-3g, 4-3h, 4-3k, 4-3r, 4-3s, 4-3t, 4-7a, 4-11, 4-12c, 5-5b, 5-5d, 5-5f, 5-10a, 5-10c, 5-10d, 5-10e, 5-10f, 5-10g</p>	The test 127(3) can be met. The compulsory acquisition of highway land, as well as any stopping up of any highway owned by the local highway authority, is for the purpose of improvements to the existing highway authority network. Whilst there may be temporary adverse impacts upon the local highway network at the time that works are ongoing, the resultant effect of the completed works will be beneficial to the highway authority and to users of the local highway network.	The test in s127(6)(a) can be met. The compulsory acquisition of rights over the land of the highway authority would not result in serious detriment to the carrying on of the undertaking, rather a benefit. The improvement of local highway authority land through a significant capital improvement programme would result in substantial benefits to both the highway authority and motorists with no cost to the local highway authority.	Gateshead Council has not sought the inclusion of specific measures in the draft DCO. The draft DCO, outline CEMP and outline CTMP contain provisions for the protection of the local highway network and the undertaking of the local highway authority.	Negotiations are underway	No, but the Examining Authority will be aware that the Council has not pursued any objection.

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		<p>CAR: 3-3ll, 3-3yy, 3-3hhh, 3-3lll, 3-10e, 4-9b</p> <p>CARS&TP: 3-3e, 3-3f, 3-3i, 3-3z, 3-3dd, 3-3gg, 3-3mm, 3-3pp, 3-3qq, 3-3tt, 3-3ww, 3-3aaa, 3-3kkk, 3-3nnn, 3-4q, 3-10d, 4-2d, 4-3b, 4-7b, 4-14b, 5-5a, 5-9</p> <p>TP: 3-3b, 3-3c, 3-3d, 3-3k, 3-3n, 3-3p, 3-3q, 3-3r, 3-3s, 3-3v, 3-3w, 3-3x, 3-3y, 3-3aa, 3-3bb, 3-3cc, 3-3ee, 3-3jj, 3-3oo, 3-3ss, 3-3xx, 3-3bbb, 3-3ccc, 3-3eee, 3-3fff, 3-3ggg, 3-3jjj, 3-4e, 3-4f, 3-4h, 3-4j, 3-4k, 3-4r, 3-4t, 3-10a, 4-1p, 4-2a, 4-2e, 4-3a, 4-3i, 4-3j, 4-3n, 4-4c, 4-4e, 4-4f, 4-5, 4-12a, 4-13f, 4-14c, 4-15, 5-1a, 5-1b, 5-5c, 5-5e, 5-10b</p>					
Network Rail Infrastructure Limited	Rail infrastructure	<p>Land CA: 3/10b, 3/10c, 3/10g, 3/10j, 3/10k, 3/11, 3/12a, 3/12d, 3/12f</p> <p>CAR: 3/10e, 3/10f, 3/12c, 3/12e</p> <p>CARS&TP: 3/10d, 3/10h, 3/12b</p>	The test in s127(3)(a) can be met. The compulsory acquisition of land would not result in serious detriment to the carrying on of the undertaking, rather a benefit. No works are proposed that would affect the safe and efficient operation of the railway. Indeed, by the replacement of Allerdene Bridge with a modern structure and	The test in s127(6)(a) can be met. The compulsory acquisition of rights would not result in serious detriment to the carrying on of the undertaking, rather a benefit. No works are proposed that would affect the safe and efficient operation of the railway. Indeed, by the replacement of Allerdene Bridge with a modern structure and	Protective provisions are in the process of being negotiated. The current status of these negotiations is set out in the Statement of Common Ground between the Applicant and Network Rail and submitted for Deadline 7. Essentially, the majority of the protective provisions are agreed	Negotiations are underway	No. However, the Applicant considers that in line with recent decisions of the Secretary of State there will be sufficient protection for the benefit of Network Rail overall. This is addressed in separate submissions.

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		<p><i>TP:</i> 3/3ss, 3/9, 3/10a, 3/10i</p> <p><u>Rights</u></p> <p><i>CA:</i> 3/4c, 3/4d, 3/4g, 3/4i, 3/6e</p> <p><i>CAR:</i> 3/6b</p> <p><i>CARS&TP:</i> 3/3mm, 3/6d, 3/6f, 3/6k</p> <p><i>TP:</i> 3/3jj, 3/4e, 3/4f, 3/5, 3/6a, 3/6c</p>	<p>removal of the need for Network Rail's overhead line electrification equipment currently mounted on the Applicant's existing structure, the safe and efficient operation of the railway will be improved as a result of the Scheme. Rather than resulting in serious detriment to the carrying on of the undertaking, the Scheme will improve the future carrying on of the undertaking.</p>	<p>removal of the need for Network Rail's overhead line electrification equipment mounted on the Applicant's structure (as at present), the safe and efficient operation of the railway will be improved as a result of the Scheme. Rather than resulting in serious detriment to the carrying on of the undertaking, the Scheme will improve the future carrying on of the undertaking.</p>	<p>and the undertaking of Network Rail is afforded sufficient protection.</p> <p>Likewise, the Applicant and Network Rail are in the process of negotiating a number of commercial agreements, at the request of Network Rail.</p>		
Northern Gas Networks Limited	Gas distribution	<p><u>Land</u></p> <p><i>CA:</i> 3/6e, 3/6j</p> <p><i>CAR:</i> 3/6b, 3/6l</p> <p><i>CARS&TP:</i> 3/6d, 3/6f, 3/6k</p> <p><i>TP:</i> 3/6a, 3/6c, 3/6g, 3/6h, 3/6i, 3/6m</p> <p><u>Rights</u></p> <p><i>CA:</i> 4/6c</p> <p><i>CARS&TP:</i> 4/6b</p>	<p>The test in s127(3)(a) can be met. The compulsory acquisition of land would not result in serious detriment to the carrying on of the undertaking, and NGN have not raised any concerns to this effect in their relevant representations or written representations.</p> <p>The Applicant's amended proposals also afford an opportunity to accommodate NGN's intended Compressed Natural Gas filling station.</p>	<p>The test in s127(6)(a) can be met. The compulsory acquisition of rights would not result in serious detriment to the carrying on of the undertaking, and NGN have not raised any concerns to this effect in their relevant representations or written representations.</p>	<p>Protective provisions are in the process of being negotiated. The current status of these negotiations is set out in the Statement of Common Ground between the Applicant and Northern Gas Networks, and submitted shortly after Deadline 8.</p>	Negotiations are underway	No, but this is expected to be forthcoming shortly.

Statutory undertaker name	Nature of the undertaking	Land and / or rights affected	In relation to land, whether and if so, how the tests in s127(3) (a) or (b) can be met	In relation to rights, whether and if so, how the tests in s127(6) (a) or (b) can be met	Status of any protective provisions and / or commercial agreements	Settlement reached	Representation(s) withdrawn in whole or part
		<i>TP:</i> 3/8, 4/6a					

Appendix F

Statutory Undertaker Name	Nature of the Undertaking	Relevant Rights to be Extinguished; and / or the Relevant Apparatus to be Removed	Whether the Test in s138(4) can be met	Status of any Protective Provisions and / or Commercial Agreements	Settlement Reached	Representation(s) Withdrawn in Whole or Part
Environment Agency	Environmental protection	No relevant rights to be extinguished nor relevant apparatus to be removed.	Yes	Protective provisions were proposed, but the undertaker is understood to prefer to proceed without them and will withdraw its representation on that basis.	Yes	This is anticipated shortly
Centurylink Communications UK Limited	Telecommunications	No relevant rights to be extinguished nor relevant apparatus to be removed. Potential for protection / diversion to be required for apparatus adjacent to the east coast mainline.	Yes	Protection under Schedule 11 Part 2	No representation received	N/A
Northern Gas Networks Limited	Gas distribution	Diversions works required to apparatus, locations: <ul style="list-style-type: none"> • Through Coal House (J67) roundabout • Through embankment located between Coal House (J67) and Allerdene Bridge, see Works 9,10,12,13,14,15 and 16 Above Ground Installation replacement works.	Yes	Protection under Schedule 11 Part 1. It is understood that these are acceptable subject to a commercial agreement, the text of which is agreed.	Yes	It is anticipated that this will be received shortly.
Northern Powergrid Limited	Electricity distribution	No relevant rights to be extinguished nor relevant apparatus to be removed. Potential for protection / diversion to be required location not specified.	Yes	Protection under Schedule 11 Part 1	No representation received	N/A
Northumbrian Water Limited	Utilities	No relevant rights to be extinguished nor relevant apparatus to be removed. Diversions works required to apparatus, locations: <ul style="list-style-type: none"> • Through Coal House (J67) roundabout • Between Allerdene bridge and Smithy Lane see Work 22 • Through Eighton Lodge (J66) Between North Dene footbridge and Birtley (J65)	Yes	Protection under Schedule 11 Part 1 It is understood that acceptable protective provisions can be agreed subject to a commercial agreement, the text of which is still to be agreed.	Not as yet	To be confirmed

Statutory Undertaker Name	Nature of the Undertaking	Relevant Rights to be Extinguished; and / or the Relevant Apparatus to be Removed	Whether the Test in s138(4) can be met	Status of any Protective Provisions and / or Commercial Agreements	Settlement Reached	Representation(s) Withdrawn in Whole or Part
Openreach Limited	Telecommunications	No relevant rights to be extinguished nor relevant apparatus to be removed. Diversionsary works required location not specified.	Yes	Protection under Schedule 11 Part 2	N/A	No representation received
Virgin Media Limited	Telecommunications	No relevant rights to be extinguished nor relevant apparatus to be removed.	Yes	Protection under Schedule 11 Part 2	N/A	No representation received
Vodafone Limited	Telecommunications	No relevant rights to be extinguished nor relevant apparatus to be removed. Diversionsary works required to apparatus adjacent to the east coast mainline and within the J66 (Eighton Lodge) Circulatory Carriageway.	Yes	Protection under Schedule 11 Part 2	N/A	No representation received

Appendix G

Applicant's response to Agenda Item 5(d) of the Compulsory Acquisition Hearing dated 26 June 2020 Regarding implications of the Public Sector Equality Duty

- 1.1 This submission is in response to the ExA's request for details on the implications of the Public Sector Equality Duty (PSED), as set out in section 149 of the Equality Act 2010 ("2010 Act") arising from the delivery of the A1 Birtley to Coal House Improvement Scheme ("Scheme"). Agenda Item 5(d) of the Compulsory Acquisition Hearing requested details on the implications of PSED and the Applicant confirmed in oral submissions that representations would be made at Deadline 9 outlining any PSED implications which are known to arise.
- 1.2 Paragraph 3.21 of the National Networks National Policy Statement (NPS) states:
- "Applicants are reminded of their duty to promote equality and to consider the needs of disabled people as part of their normal practice. Applicants are expected to comply with any obligations under the Equalities Act 2010."
- 1.3 The PSED is one such obligation and introduced a single, integrated public sector equality duty to replace the separate statutory duties for race, disability and gender. The PSED covers all of the characteristics protected by the 2010 Act and applies to all public decisions, including policy formation, budget setting, procurement, service delivery and employment.
- 1.4 The PSED has two elements: the general duty and the specific duties. In terms of the general duty, section 149 of the 2010 Act requires that public bodies must:
- "have due regard to the need to:*
- a. eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act*
 - b. advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it*
 - c. foster good relations between persons who share a relevant protected characteristic and persons who do not share it."*
- 1.5 These are known as the three aims of the general PSED and they set out the overarching goal of the legislation. To 'have due regard' means that in making decisions and in its other day-to-day activities a body subject to the PSED must consciously consider the need to do the things set out in the general PSED: eliminate discrimination, advance equality of opportunity and foster good relations.
- 1.6 The specific duties of the PSED (insofar as they apply in England) relate to the publication of sundry information and are not in themselves relevant to the

determination of an application for development consent. We do not consider them further in this note.

- 1.7 The general PSED must be complied with when a body subject to it is 'exercising a function'. This applies not only to general formulation of policy, but also to decisions made in applying policy in individual cases such as a decision by a Minister of the Crown to grant or refuse to grant development consent under the Planning Act 2008. The Applicant is also subject to the PSED in its own right.
- 1.8 It should be noted that the general PSED does not prevent public authorities from taking particular decisions that have particular impacts, but it does require them to consider at the formative stage the potential consequences of the decision for people who share protected characteristics and to take these consequences into account before the decision is finalised. A public authority must be able to show that there has been proper consideration of all three aims of the general PSED within the decision-making process.
- 1.9 The PSED is ultimately a procedural duty i.e. it does not prescribe any particular substantive outcome that must be achieved. Rather, it requires public bodies to have regard to the impact of their actions and decisions on the protected groups. The decision maker must be clear what the specific equality implications are and they must recognise the desirability of achieving them, but ultimately it is for the decision-maker to decide what weight should be given in light of all relevant factors. Section 149 of the 2010 Act does not proscribe a specific decision or outcome simply because another decision-maker or body would or might have given greater weight to the equality implications of the decision than the decision-maker.
- 1.10 In certain situations, a body subject to the PSED may conclude that other considerations outweigh the equality issues. This could include, for example, local priorities or available resources or, in the present context, the public benefits to be gained from realising the proposed Scheme.
- 1.11 In order to give proper consideration to the aims set out in the general PSED, a relevant body will need to have sufficient evidence of the impact its policies and decisions are having, or are likely to have, on people with different protected characteristics. The key requirement is for the decision-maker to be able to provide sufficient evidence to demonstrate that the equality considerations were in fact taken into account even if they were not in the end determinative of the matter at hand. An Equalities Impact Assessment is one tool that can be used by the decision-making minister as part of his overall consideration of the decision as to whether to make a development consent order but is not a mandatory step under Section 149 of the 2010 Act. The key requirement is that the decision-maker must be able to satisfy himself that enough information is available so as to enable him to have regard to the three aims of the general PSED set out in Section 149.
- 1.12 In the particular context of proposed powers of compulsory acquisition, the principal implication of the PSED will be to require the Applicant to identify whether the land to be compulsorily acquired will disproportionately affect persons within the protected groups with reference to the three aims of Section 149. If those criteria are not engaged or are otherwise not relevant, nothing further needs must be done.

- 1.13 Conversely, if the Section 149 aims would not be achieved it will then be necessary either for the Applicant to provide further evidence as to how such impacts could be mitigated and ameliorated or for the decision-maker to explain why those considerations are nevertheless outweighed by other relevant matters. The onus will in either case be on the Applicant to provide sufficient evidence to enable that balancing exercise to be undertaken.
- 1.14 In terms of the expected impacts of the present Scheme, the Applicant does not consider that:
- a. there is staff, trade union or public stakeholder concern about the proposals in terms of actual, perceived or potential discrimination against a particular group;
 - b. there is potential for or evidence that any part of the proposals to affect adversely equality of opportunity for all or harm good relations between different groups; or
 - c. there is any potential for, or evidence that, any part of the proposals could discriminate indirectly or directly.
- 1.15 However, the Applicant does consider that:
- a. there is no evidence that different groups have different needs, experiences, issues or priorities and will have different levels of access, specifically the Age, Disability and Pregnancy/Maternity groups;
 - b. uptake may be higher or lower for those in different Age groups; and
 - c. the Scheme represents an opportunity to advance equality or foster good relations for persons in the Disability group.
- 1.16 This assessment was undertaken following a meeting between the project team and the Gateshead Diversity Forum in November 2017 to ask if there were any specific groups or communities that the Applicant needed to consult with. Members of the forum advised that they had no specific concerns and did not feel that there were any specific groups or communities. This accorded with information received during the non-statutory consultation which indicated that there were no concerns regarding equality and diversity amongst the people that the Applicant had consulted with at that point. Nevertheless, the wider statutory consultation carried out in 2018 included a diversity questionnaire which enabled the Applicant to analyse the feedback received so as to ensure that due regard was had to the needs of the diverse range of customers and communities who might be affected by the Scheme.
- 1.17 In light of this information, the Applicant has concluded that for the purposes of the PSED the Scheme would have a neutral impact for persons in the following protected groups: sex; religion or belief; race; sexual orientation; gender reassignment; and marriage/civil partnership.
- 1.18 The Applicant further concluded that the Scheme had the potential to deliver positive impacts for persons in the following protected groups: age; disability; and pregnancy/maternity. In particular, North Dene footbridge will be replaced as part of the Scheme to accommodate the widening of the A1. The existing bridge is not compliant with the Equality Act 2010 as it is not currently accessible to wheelchair users and may be less accessible for those with reduced mobility such as the elderly and users with pushchairs. Replacement of the bridge offers the

opportunity to improve access for wheelchair users, persons with mobility issues, and/or those with a disability as well as for users with pushchairs. The demographic of the local area is also predominantly people over the age of 40. With this in mind, the replacement of North Dene footbridge may particularly benefit the older generation who may currently struggle to use the footbridge in its current state.

- 1.19 The Applicant has not identified any negative impacts of the Scheme on any of the protected groups.
- 1.20 On this basis, the Applicant is satisfied that sufficient information has been obtained to enable both the Applicant and the decision-making minister to satisfy the requirements of the PSED and, overall, the Scheme will have a positive equalities impact.

Appendix H

DRAFT SUBMISSION – NETWORK RAIL PROTECTIVE PROVISIONS

1. Introduction

- 1.1 The applicant requires certainty that it can carry out the works and acquire necessary interests in land so that it can carry out the Scheme in the public interest. A provision that would reduce or limit this should only be included if it delivers a material benefit to the person who it protects. The means of testing this in relation to statutory undertakers is under s127 of the Planning Act 2008, which provides that where a representation is made under s127 of the Planning Act 2008 and has not been withdrawn the Secretary of State's power to grant such powers may be exercised only if the Secretary of State is satisfied of specified matters. Principally, this is whether the powers of compulsory acquisition in the proposed DCO can be exercised without serious detriment to the carrying out of the undertaking.
- 1.2 The protection is afforded in relation to statutory undertakers' land, which "has been acquired by the statutory undertakers for the purposes of their undertaking" and they have made a representation in relation to a DCO application. Where the representation is not withdrawn the Secretary of State must consider the matters referred to in paragraph 1.1 above.
- 1.3 In relation to this application, Network Rail has made a representation, but DB Cargo has not. Therefore, s127 applies to the Land, which includes interest in land, interest of Network Rail, but not to the land of DB Cargo.
- 1.4 The Applicant and Network Rail have agreed protective provisions that will ensure that powers of compulsory acquisition can be exercised without detriment to Network Rail's undertaking except in relation to certain points. These are addressed below.

2. Paragraph 20(1)

- 2.1 Paragraph 21(1) of the proposed protective provisions provides that:
The undertaker must not exercise the powers conferred by articles 22 (authority to survey and investigate land), 23 (compulsory acquisition of land), 26 (compulsory acquisition of rights), 27 (private rights over land), 30 (acquisition of subsoil or air-space only), 31 (rights under or over streets), 32 (temporary use of land for carrying out the authorised development), 33 (temporary use of land for maintaining the authorised development), 34 (statutory undertakers), 37 (felling or lopping of trees) or the powers conferred by section 11(3) (powers of entry) of the 1965 Act or by section 203 (power to override easements and rights) of the Housing and Planning Act 2016(1) in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(1) 2016 c.22

- 2.2 Paragraph 21(5) provides:
Where Network Rail is asked to give its consent under this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions.
- 2.3 Paragraph 20(1) provides:
Where under this Part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.
- 2.4 Network Rail seeks the inclusion of an additional phrase at the end of paragraph 20(1) in the Protective Provisions. The paragraph states: *“Where under this Part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network license or under statute, and if applicable, shall be subject to first obtaining the consent and/or surrender of any leaseholder of the railway property”*. The inclusion of the additional underlined text (“Insertion”) is not agreed and is opposed by the Applicant.
- 2.5 Importantly, Network Rail has shown no evidence whatsoever of the detrimental effect the acquisition of small areas of leasehold land owned by DB Cargo (i.e. not Network Rail’s freehold land) would have on Network Rail’s statutory undertaking. There is simply no evidence of this before this Examination.
- 2.6 The effect of Network Rail’s proposed Insertion is to require DB Cargo’s consent in respect of any works, access or approvals required in connection with its land even though DB Cargo has not objected to the proposed DCO. This extends protection to DB Cargo, which is not required to act reasonably and with whom the Applicant has no contractual arrangement in place. That imperils the implementation of the Scheme and is not necessary for the protection of Network Rail or its statutory undertaking, which does not extend to the land which DB Cargo leases from Network Rail. It is the Applicant’s firm position that the additional wording outlined above should not be included for the reasons explained below.
- 2.7 DB Cargo did not object to the order, despite being consulted on the following dates: 4 July 2019, 16 March and 13 May 2020. On this basis the presumption is clearly that DB Cargo has limited concerns over the application of powers on their land. Similarly, DB Cargo has not engaged with the examination process.
- 2.8 It is not necessary for Network Rail to enjoy protection in relation to the estate in land of a third party, even if that third party is the tenant of Network Rail. Network Rail is the freeholder of the corpus of the land in question, but it is owned as to the leasehold estate by DB Cargo. DB Cargo’s interest is separate from that of

Network Rail and so its leasehold interest cannot form part of Network Rail's statutory undertaking. If it is part of any railway undertaking, it is that of DB Cargo.

- 2.9 The DB Cargo land is not "operational land" of Network Rail within the meaning of s.263(1) of the Town and Country Planning Act 1990. To be operational land, it must be used by a statutory undertaker for the purposes of its undertaking and an interest must be held in the land for that purpose. The Applicant has demonstrated that the land is not held by a statutory undertaker and is therefore not held for the purposes of any undertaking. Whilst it is arguable that Network Rail hold a reversionary interest in the land for that purpose (i.e. for maintenance of the railway) the rest of the definition of operational land is not satisfied, the land is not currently used as such by Network Rail. Further, if the Secretary of State found that Network Rail's reversionary interest resulting in the DB Cargo land forming part of the statutory undertaking of Network Rail, this would suggest that DB Cargo did not in fact have exclusive possession of their estate and would therefore be occupying the land under licence.
- 2.10 Whether or not the Secretary of State makes any finding on the law, it is possible to find that the acquisition of the lease of DB Cargo can take place without detriment to the statutory undertaking of Network Rail. The provision relating to the ability of a leaseholder to prevent the implementation of the Scheme must be removed on the basis that Network Rail has failed to justify its position that the DB Cargo land enjoys any form of enhanced statutory protection for Network Rail's protection. It is not for Network Rail to seek protection of third party land owned by consultees who did not object to the Application.

3. Paragraph 32(4)

- 3.1 The protective provisions that Network Rail seeks, and which are in large part agreed, include an indemnity. The Applicant considers that this is only acceptable with the inclusion of paragraph 32(4) within the protective provisions, which states that *"In no circumstances is the undertaker liable to Network Rail under sub paragraph (1) for any indirect or consequential loss or loss of profits, except that the sums payable by the undertaker under that sub paragraph include a sum equivalent to the relevant costs in circumstances where (a) Network Rail is liable to make payment of the relevant costs pursuant to the terms of an agreement between Network Rail and a train operator; and (b) the existence of that agreement and the extent of Network Rail's liability to make payment of the relevant costs pursuant to its terms has previously been disclosed in writing to the undertaker, but not otherwise"* The effect of this paragraph is to ensure that the Applicant is not liable for losses which are too remote to be reasonable in any indemnity that was relied upon by Network Rail. The Applicant has asked Network Rail to provide details of the types of loss which may be applicable in the circumstances in order to reasonably assess its exposure. No such details have been provided to the Applicant on the basis that Network Rail considers the information contained in its commercial agreements with train operating companies to be "sensitive". The

Applicant seeks this reasonable and precedented provision to ensure that any loss suffered by Network Rail as a result of the works is reasonably quantifiable in accordance with the well established case law in this area.

- 3.2 Whilst Network Rail asserts that the deletion of this paragraph represents the “standard indemnity” which has been included in many statutory orders, this is not now the case.
- 3.3 The text proposed by the Applicant was included in the National Grid (Hinckley Point C Connection Project) Order 2016. The examining authority’s recommendation report in relation to that application stated that the protective provisions contained within the recommended order “would give adequate safeguards” (paragraph 9.2.137). The Secretary of State’s decision letter points to the examining authority’s finding that Network Rail’s proposed indemnity wording was “unduly onerous”, and states that the Secretary of State was satisfied with the examining authority’s finding on this issue, thereby confirming the point. This precedent is particularly relevant since it involved a finding by the Secretary of State (who is the shareholder of both Network Rail and the Applicant) that the wording was not required, notwithstanding that it had been included in previous DCOs.
- 3.4 In addition, the examining authority took the same approach in relation to analogous provisions in the recent M4 Motorway (Junctions 3 to 12) (Smart Motorway) Development Consent Order 2020. At paragraph 5.15.8 and 5.15.9 of the examining authority’s recommendation report, it was found that the provisions sought by Cadent in respect of an indemnity covering indirect and consequential loss were at variance with the tests set out in s.127 of the Planning Act 2008. It was specifically stated that whilst s.127 protects statutory undertakers from serious detriment, that protection did not extend to all the costs which might be incurred. Further, the examining authority stated that the benefits of the scheme would be enjoyed by the statutory undertaker and this should be taken into account. As such, there would be no serious detriment to Network Rail’s undertaking as a result of the inclusion of a limitation upon the indemnity. In this case, Network Rail is benefitting through the replacement of the Existing Allerdene Railway bridge, which is reaching the end of its operational life. As part of the works, overhead lines are being removed from the bridge structure and replaced with modern apparatus and the disruption to the railway caused by bridge and overhead line maintenance is being managed.
- 3.5 Finally, the examining authority’s recommendation report for the Hornsea Three Offshore Wind Farm Order, issued on 1 July 2020 includes the following wording:
- 18.13 The Secretary of State notes that the application includes powers of compulsory acquisition in respect of statutory undertakers and that Protective Provisions in the Order were also sought with a number of statutory undertakers. At the close of the Examination only Network Rail had not reached agreement with the Applicant in respect of Plot 30-028 and the only remaining disputed Network*

Rail Protective Provisions in question related to indemnity, transfer of benefit of the Order and arbitration [ER 19.6.37 – ER 19.6.43 and ER19.5.64 - ER 19.5.71]. Where a representation is made under s127 of the Planning Act 2008 and has not been withdrawn the Secretary of State's power to grant such powers may be exercised only if the Secretary of State is satisfied of specified matters. The Secretary of State agrees that the Applicant's preferred provisions would be sufficient to ensure that the exercise of compulsory acquisition powers in respect of the Plot in question would not result in serious detriment to Network Rail's undertaking [ER 19.6.34 – ER 19.6.36 and ER 19.6.37 – ER 19.6.43]. 18.14 In view of the above, the Secretary of State agrees that the tests in sections 127(6) and 138 of the Planning Act 2008 are satisfied [ER 19.6.44]

- 3.6 Again' Network Rail's proposed indemnity was found to be overly onerous and was tempered in the same manner as is proposed by the Applicant.
- 3.7 The above examples demonstrate that the Secretary of State in decision-making has moved properly to limit the liability of Applicants in the public interest and is tempering the exposure to third party costs. This is entirely appropriate, particularly where those Applicants are public sector organisations who have sought to engage constructively with the statutory undertakers in question. The Applicant requests that the provision in 32(4) be included in the Order.

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