

# **A1 in Northumberland: Morpeth to Ellingham**

## **7.37 Applicant's Response to Secretary of State's Request**

Planning Act 2008

Infrastructure Planning (Examination Procedure) Rules 2010

January 2022

Infrastructure Planning

Planning Act 2008

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

**The A1 in Northumberland: Morpeth to  
Ellingham**

Development Consent Order 20[xx]

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**Applicant's Response to Secretary of  
State's Request**

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<b>Author:</b>	A1 in Northumberland: Morpeth to Ellingham Project Team, National Highways

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# 1 INTRODUCTION

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- 1.1.1. This document relates to an application for a Development Consent Order (DCO), made on 7 July 2020, by Highways England (the 'Applicant') to the Secretary of State for Transport via the Planning Inspectorate (the 'Inspectorate') under section 37 of the Planning Act 2008 (the '2008 Act'). If made, the DCO would grant consent for the A1 in Northumberland: Morpeth to Ellingham (the 'Scheme').
- 1.1.2. The Scheme comprises two sections known as Part A: Morpeth to Felton (Part A) and Part B: Alnwick to Ellingham (Part B), a detailed description of which can be found in Chapter 2: The Scheme, Volume 1 of the Environmental Statement (ES) [APP-037].
- 1.1.3. The purpose of this document is to set out the Applicant's response to the Secretary of State for Transport's request for comments set out in their letter dated 22 December 2021.

## 2 APPLICANT'S RESPONSE TO SECRETARY OF STATE'S REQUEST

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### 2.1 UPDATE TO THE ENVIRONMENTAL INFORMATION

#### Secretary of State's request

- 2.1.1. The Secretary of State requests that the Applicant provides additional information on:

*The Secretary of State invites the Applicant to update its response of 12 November 2021 to provide (or, to the extent that it has already been provided, identify) its assessment of the cumulative effects of Greenhouse Gas emissions from the scheme with other existing and/or approved projects on a local, regional and national level on a consistent geographical scale (for example an assessment of the cumulative effects of the Roads Investment Strategy RIS 1 and RIS 2 at a national level).*

*This should: take account of both construction and operational effects; identify the baseline used at each local, regional and national level; and identify any relevant local, regional or national targets/budgets where they exist and how the assessment complies with these (including the carbon budgets, the 2050 zero target under the Climate Change Act 2008, and the UK's Nationally Determined Contribution under the Paris Agreement). It should be accompanied by reasoning to explain the methodology adopted, any likely significant effects identified, any difficulties encountered in compiling the information, and how the assessment complies with the Environmental Impact Assessment Regulations.*

*The Secretary of State would also welcome confirmation that the response to all parts of this question has been prepared by a competent expert. Please can links be provided to any documents referenced and their relevance fully explained.*

#### National Highways' Response

- 2.1.2. National Highways has responded to this request by breaking it down into various constituent parts as follows:

- National Highways' assessment (or updated assessment) of the cumulative effects of greenhouse gas emissions from the A1 in Northumberland: Morpeth to Ellingham (Scheme) with other existing and/or approved projects.
- For the assessment (or updated assessment) to be on a consistent geographical scale at a national, regional and local scale accounting for construction and operational contributions.
- How the assessment (or updated assessment), which identifies the baseline used at each local, regional and national level, compares against any identified relevant local, regional or national carbon targets and/or budgets (including the carbon budgets, the 2050 net zero target under the Climate Change Act 2008 and the UK's Nationally Determined Contribution under the Paris Agreement).

- How an assessment was undertaken to evaluate the likely significant effects of the Scheme and any difficulties encountered in compiling the information.
- How the assessment presented for the Scheme complies with the Environmental Impact Assessment Regulations.
- A confirmation that this response has been prepared by a competent expert.

2.1.3. To assist the Secretary of State, National Highways has set out its response for each of the matters raised in turn.

### **Assessment of Cumulative Effects of Greenhouse Gas Emissions from the Scheme with other Existing and/or Approved Projects**

2.1.4. National Highways follows the advice set out in the Design Manual for Roads and Bridges (DMRB) for the design and evaluation of the impact of any of its road schemes. This ensures consistency in how any scheme is progressed and how the outcomes are evaluated.

2.1.5. In respect of the assessment of cumulative effects, DMRB Chapter LA 104- Environmental assessment and monitoring<sup>1</sup> provides the following overarching advice on the assessment and evaluation of cumulative impacts on pages 17-18:

*“Paragraph 3.21 Environmental assessments shall assess cumulative effects which include those from:*

- 1) a single project (e.g. numerous different effects impacting a single receptor); and*
- 2) different projects (together with the project being assessed).*

*Paragraph 3.21.2 The assessment of cumulative effects should report on:*

- 1) roads projects which have been confirmed for delivery over a similar timeframe;*
- 2) other development projects with valid planning permissions or consent orders, and for which EIA is a requirement; and*
- 3) proposals in adopted development plans with a clear identified programme for delivery.*

*Paragraph 3.22 The assessment of cumulative effects shall:*

- 1) establish the zone of influence of the project together with other projects;*
- 2) establish a list of projects which have the potential to result in cumulative impacts; and*

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<sup>1</sup> [REDACTED]

3) *obtain further information and detail on the list of identified projects to support further assessment.*”

- 2.1.6. The DMRB LA 114, Climate<sup>2</sup> describes the approach to be undertaken to assess and evaluate the climate impacts and adaptation for schemes. This is set out in Chapter 16 [APP-062] of the environmental statement for the Scheme.
- 2.1.7. The assessment of carbon dioxide (CO<sub>2</sub>) undertaken has assessed the construction and operational effects of the Scheme as follows:
- Construction – the materials and energy required to construct the Scheme.
  - Operational – emissions produced by vehicles using the completed Scheme and associated journeys from the wider road network that incorporate or have a change in their journey following opening of the scheme; emissions produced by maintenance activities over its design life (i.e. 60 years).
- 2.1.8. The traffic modelling for the Scheme has been undertaken in line with Transport Appraisal Guidance published<sup>3</sup> by the Department for Transport (DfT). The Transport Assessment Report for the Scheme has been submitted to the DCO examination<sup>4</sup>. The traffic model used for the Scheme has been developed in line with DfT requirements and is inherently cumulative. This is because, in brief, traffic models used to support scheme assessment contain data about the following:
- 1) The proposed scheme and adjoining Strategic Road Network and local road network;
  - 2) other schemes promoted by National Highways in the near vicinity of the proposed scheme with high certainty that they are to be progressed i.e. progressed beyond preferred route announcement stage;
  - 3) they are based on discussions with the relevant planning authority, of foreseeable developments promoted by third parties as likely to be developed in a similar timeline to the proposed National Highways' scheme. Knowing where the proposed third party development is to be sited, the extents and types of development, and the timescales of when it is to be completed are requirements to ensure that the third party developments can be reasonably described in the traffic model; and
  - 4) national government regional growth rates, which include a representation of likely growth rates excluding known planning developments already included in the traffic

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<sup>2</sup> [REDACTED]

<sup>3</sup> [REDACTED]

<sup>4</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010059/TR010059-000744-Case%20for%20the%20Scheme.pdf>

model. This is represented by DfT's NTEM/TEMPRO<sup>5</sup> growth factors for car usage, and growth in freight is derived from DfT's National Transport Model<sup>6</sup>.

- 2.1.9. In terms of operational carbon, when National Highways evaluates the changes in CO<sub>2</sub>e emissions of their proposed schemes they do so by comparing changes in the road traffic on the Strategic Road Network and local road network between the 'without scheme scenario' and the 'with scheme scenario'. This takes into account the assessment of the proposed scheme and all other developments likely to have an influence on the proposed road scheme and on the area the proposed road scheme is likely to influence.
- 2.1.10. In essence, as both with and without scheme scenarios already include all likely developments and traffic growth factors, the assessment is inherently cumulative as regards operational carbon emissions. This is a state of affairs recognised in general terms in paragraph 3.4.4 of the Planning Inspectorate's Advice Note 17 ("Cumulative effects assessment relevant to nationally significant infrastructure projects"), the first two sentences of which state that:

*"Certain assessments, such as transport and associated operational assessments of vehicular emissions (including air and noise) may inherently be cumulative assessments. This is because they may incorporate modelled traffic data growth for future traffic flows. Where these assessments are comprehensive and include a worst case within the defined assessment parameters, no additional cumulative assessment of these aspects is required (separate consideration may be required of the accumulation or inter-relationship of these effects on an individual set of receptors e.g., as part of a socio economic assessment)."*

### **The Appropriate Geographical Scale of Assessment of Greenhouse Gas Emissions,**

- 2.1.11. In line with the requirements set out in Climate Change Act 2008<sup>7</sup> (CCA 2008), Part 1, Section 4 (see below) parliament has set carbon budgets<sup>8</sup> at the national scale.

#### **"Carbon budgets**

1) *It is the duty of the Secretary of State—*

*(a) to set for each succeeding period of five years beginning with the period 2008-2012 ("budgetary periods") an amount for the net UK carbon account (the "carbon budget"), and*

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<sup>5</sup> [REDACTED]

<sup>6</sup> [REDACTED]

<sup>7</sup> [REDACTED]

<sup>8</sup> [REDACTED]



*(b) to ensure that the **net UK carbon** account for a budgetary period does not exceed the carbon budget” [our emphasis].*

2.1.12. Carbon budgets cover the following 11 sectors:

- 1) Surface Transport
- 2) Buildings
- 3) Manufacture and Construction
- 4) Electricity Generation
- 5) Fuel Supply
- 6) Agriculture and land use, land use change and forestry
- 7) Aviation
- 8) Shipping
- 9) Waste
- 10) Fluorinated gases (F-gases)
- 11) Greenhouse gas removals

2.1.13. The national carbon budgets are themselves cumulative, i.e. the sum of carbon emissions from a range of sectors between now and the end of the 6th carbon budget (2037).

2.1.14. The CCA 2008 does not impose a legal duty to set carbon budgets at a smaller scale than those set out nationally, i.e. regional or local budgets are not required. Specifically:

- a) In setting carbon budgets parliament has not imposed any legal duty upon local authorities to attain any particular targets whether carbon budgets or for net zero 2050. i.e. there are no legal duties which require particular geographical areas within the UK to achieve particular reductions in carbon emissions by particular dates.
- b) Neither Parliament nor Government has identified any sectoral targets for carbon reductions related to transport, or any other sector. There is no requirement in the CCA 2008, or in Government policy, for carbon emissions for all road transport to become net zero. This was explained in the **R(Transport Action Network) v Secretary of State for Transport** [2021] EWHC 2095 (Admin) (“the TAN case”) in which Holgate J held that:

*“...there is no sectoral target for transport, or any other sector, and that emissions in one sector, or in part of one sector, may be balanced against better performance in others. A net increase in emissions from a particular policy or project is managed within the government's overall strategy for meeting carbon budgets and the net zero target as part of "an economy-wide transition."*

- c) A net increase in emissions from a particular policy or project is thus managed within the Government's overall strategy for meeting carbon budgets and the net zero target as part of an economy-wide transition.

- 2.1.15. There is, therefore, no legal requirement to assess the impact of an individual project against the total carbon emissions from RIS 1 and RIS 2.
- 2.1.16. To conduct an impact assessment at a local or regional scale some form of baseline would need to be identified, and that baseline would need to comprise:
- a) A forecast of carbon emissions from all cumulative sources relevant to the geographic / sectoral scale being adopted;
  - b) a forecast which addresses the time frame relevant to the proposed road scheme;
  - c) a forecast which reflects existing government policy to attain the 6th carbon budget and net zero 2050; and
  - d) a forecast which does not include carbon emissions from the proposed road scheme (to avoid double counting).
- 2.1.17. The Government sets carbon budgets at a national level in accordance with the CCA 2008. Carbon budgets are not produced at a local or regional level.
- 2.1.18. National Highways is, therefore, unable to produce a baseline at a local or regional scale itself. Such a baseline would have to be consistent with the Government's understanding of the likely implications of its policies over time in a particular geographic area. In relation to carbon reductions, those policies are myriad and extend to matters beyond the planning system and into issues relating to the use of fiscal incentives/disincentives to manage carbon emissions across the country as a whole.
- 2.1.19. Relevant to this request for information is that an environmental statement is required to include such information as is reasonably required to assess the environmental effects of the development, and which the applicant can reasonably be required to compile having regard to current knowledge (see ***R. (Khan) v London Borough of Sutton*** [2014] EWHC 3663 (Admin) and ***Preston New Road Action Group v Secretary of State for Communities and Local Government*** [2018] Env. L.R. 18).
- 2.1.20. There is no reasonable basis upon which National Highways can assess the carbon emissions impact of the Scheme at a local or regional level and it is not required to do so by law or by the National Policy Statement for National Networks (NPS NN)<sup>9</sup>.
- 2.1.21. Accordingly, National Highways is not in a position to provide an assessment of the cumulative effects of the greenhouse gas emissions for the Scheme for anything other than at the national level carbon budgets.

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<sup>9</sup> [REDACTED]

## How the Assessment Complies with Various Carbon Budgets and Wider Carbon Policies

- 2.1.22. Overall compliance with, or attainment of, 'carbon budgets' and 'the 2050 zero target' under CCA 2008, and the 'UK's Nationally Determined Contribution' under the Paris Agreement are the responsibility of Government to manage as they are matters of national policy and not policies set at an individual scheme level.
- 2.1.23. The NPS NN sets the national policy framework against which decision makers can evaluate the outcomes of proposed road infrastructure project. The NPS NN sets policy advice across a range of topics such as air quality, noise, biodiversity and carbon (see paragraphs 5.16 to 5.29 pages 49 and 50).
- 2.1.24. The specific advice on the evaluation of carbon impacts from a proposed scheme and decision-making considerations is set out in paragraphs 5.17 and 5.18 respectively.

### **"Applicant's Assessment**

*5.17 Carbon impacts will be considered as part of the appraisal of scheme options (in the business case), prior to the submission of an application for DCO. Where the development is subject to EIA, any Environmental Statement will need to describe an assessment of any likely significant climate factors in accordance with the requirements in the EIA Directive. It is very unlikely that the impact of a road project will, in isolation, affect the ability of Government to meet its carbon reduction plan targets. However, **for road projects applicants should provide evidence of the carbon impact of the project and an assessment against the Government's carbon budgets.** [our emphasis].*

### **"Decision Making**

*5.18 The Government has an overarching national carbon reduction strategy (as set out in the Carbon Plan 2011) which is a credible plan for meeting carbon budgets. It includes a range of non-planning policies which will, subject to the occurrence of the very unlikely event described above, ensure that any carbon increases from road development do not compromise its overall carbon reduction commitments. The Government is legally required to meet this plan. Therefore, any increase in carbon emissions is not a reason to refuse development consent, unless the increase in carbon emissions resulting from the proposed scheme are so significant that it would have a material impact on the ability of Government to meet its **carbon reduction targets.**" [our emphasis].*

- 2.1.25. The NPS NN requires assessment against the Government's climate reduction targets i.e. the carbon budgets which are set at a national geographical scale. It does not require assessment against any local or regional targets. This is because the Government has not identified or adopted any carbon reduction targets at a scale smaller than the UK as a whole i.e. National Carbon Budgets.

### **How an Assessment was Undertaken to Evaluate the Impacts of the Scheme Including Consideration of Likely Significance Effects**

- 2.1.26. National Highways' approach to assessing and evaluating the CO<sub>2</sub>e impacts associated with proposed schemes is set out in DMRB LA 114 Climate, Section 3 Methodology. Within Section 3 of LA 114, paragraphs 3.18 to 3.20 define the reporting requirements for comparison against the relevant carbon budgets (in existence at the time of the assessment) and the evaluation criteria for significance, which is consistent with the decision-making requirements set out in paragraphs 5.17 and 5.18 of the NPS NN.
- 2.1.27. Chapter 14 Climate Part A, [APP-058] Chapter 14 Climate Part B [APP-059] and Appendix 16.9 Climate Likely Significant Effects of The Scheme [APP-335] of the environmental statement for the Scheme sets out the climate assessment completed for the Scheme. It concludes that the Scheme does not cause a significant effect for changes in CO<sub>2</sub>e emissions when compared to carbon budgets.
- 2.1.28. However, since the submission of the environment statement, and the DCO examination, the Department for Environment, Food and Rural Affairs (Defra) has released (on the 19th November 2021) a new version of the Emission Factor Toolkit (version 11). This update is notable because, for the first time, the EFT now includes data relating to the UK vehicle fleet and associated emissions for the period between 2031 and 2050 inclusive. EFT v11 also now includes a greater uptake rates of electric vehicles, aligned to electric vehicle penetration rates described in worksheet labelled 'A1.3.9' of DfT's Databook[1] for all road types (motorways, urban and rural) listed in EFT."
- 2.1.29. In addition, DfT has published their Transport Decarbonisation Plan (TDP)<sup>10</sup> on the 14th July 2021, which sets out Government's aspirations to decarbonisation transport to support the wider approach to achieving Net Zero by 2050. The TDP represents a series of policy and measures Government is considering to decarbonise transport. "Figure 2: Decarbonising Transport domestic transport GHG emission projections, versus the baseline", page 45 of the TDP, illustrates the anticipated reduction in CO<sub>2</sub>e emissions from transport, including road traffic between 2020 and 2050."
- 2.1.30. The DfT has advised National Highways that a sensitivity test based on the impact of the policy measures set out in TDP can now be undertaken for schemes. The DfT have approved a sensitivity test based on the rate of improvement shown in Figure 2 of the TDP which can be applied to CO<sub>2</sub>e emissions calculated for the Scheme assessment.

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<sup>10</sup> [REDACTED]

2.1.31. Table 2-1 presents the change in CO<sub>2</sub>e emissions between the 'with scheme scenario' (also referred to as the **Do-something scenario**) and 'without scheme scenario' (also referred to as the **Do-minimum scenario**), split by carbon budgets, for the CO<sub>2</sub>e emissions previously reported in the environmental statement, the updated CO<sub>2</sub>e emissions based on November 2021 DfT Tag Data books and road traffic statistics and TDP sensitivity test (upper and lower bounds).

**Table 2-1 - Change in CO<sub>2</sub>e Emissions (With Scheme Scenario – Without Scheme Scenario)**

	<b>CO<sub>2</sub>e (Million tonnes)</b>			
<b>Carbon Budget Period</b>	<b>3 (2018-2022)</b>	<b>4 (2023-2027)</b>	<b>5 (2028-2032)</b>	<b>6 (2033-2037)</b>
<b>Carbon Budget</b>	2,544	1,950	1,725	965
<b>Previously Reported in the Environmental Statement</b>				
<b>Construction (a)</b>	0.039	0.020	0	0
<b>Operation (b)</b>	0	0.141	0.185	0.201
<b>Total</b>	0.039	0.161	0.185	0.201
<b>Updated Government Guidance Since the Publication of the Environmental Statement</b>				
<b>Construction (c)</b>	0.038	0.019	0	0
<b>Operation (d)*</b>	0	0.138	0.169	0.171
<b>Total</b>	0.038	0.157	0.169	0.171
<b>Sensitivity Test for Operational Emissions</b>				
<b>TDP (upper bound)</b>	0	0.1848	0.1522	0.1025
<b>TDP (lower bound)</b>	0	0.1467	0.0880	0.0457
<b>Notes:</b> (a) National Highways Carbon Emissions Calculation Tool v2.2 (b) Department for Transport TAG data book May 2019 V1.12 & Department for Transport Road Traffic Statistics May 2019 (c) National Highways Carbon Emissions Calculation Tool v2.4 (2021)				

	CO <sub>2</sub> e (Million tonnes)
(d) Emission Factor Toolkit v11 *includes resurfacing emissions. Other maintenance data was scoped out of the assessment.	

2.1.32. As set out in Table 2-1 the updated CO<sub>2</sub>e emissions calculated using the latest version of EFT (v11) and the sensitivity test based on the policies described by TDP lead to lower changes in emissions for each carbon budget period. A comparison of the change in CO<sub>2</sub>e operational vehicle emissions between the information provided for the Environmental Statement for the scheme (+2,395,232 tonnes) and the latest update using EFT v11 (+1,947,541 tonnes) based calculations demonstrates that the EFTv11 operational vehicle emissions are 447,691 tonnes lower over 60 years.



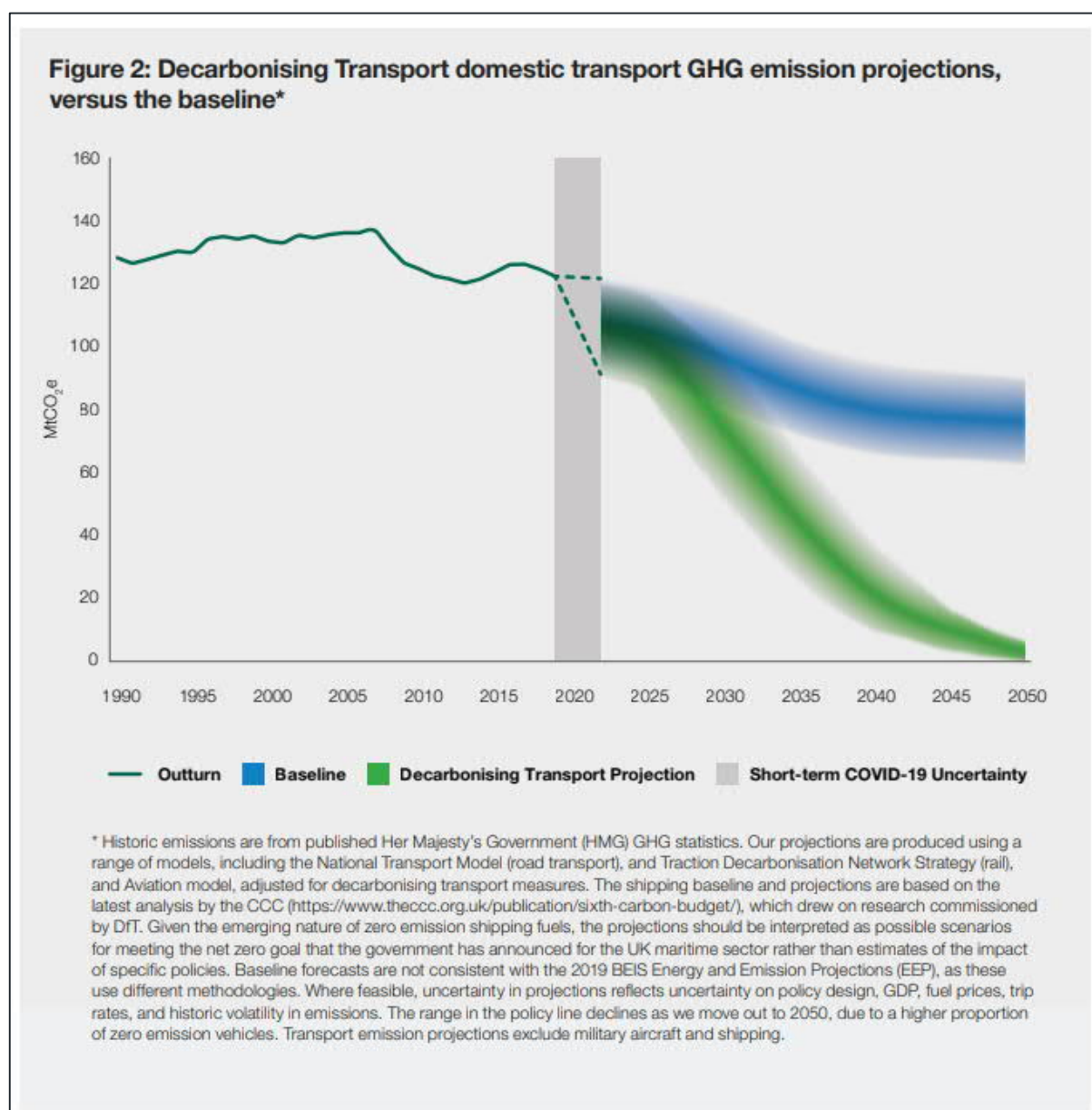


Figure copied verbatim from Transport Decarbonisation Plan

## How the Assessment Presented for the Scheme Complies with the Environmental Impact Assessment Regulations

- 2.1.33. An environmental statement is required to describe the likely significant effects of a proposed development on the environment (Regulation 14 of the Infrastructure Planning

(Environmental Impact Assessment) Regulations 2017<sup>11</sup>. This includes a description of the likely significant effects on the environment from, inter alia, the impact of the project on climate (for example the nature and magnitude of greenhouse gas emissions) and the vulnerability of the project to climate change. An environmental statement is also required to describe the likely significant cumulative impacts of the development proposed together with those from other “existing and/or approved projects” (see paragraph 5 (e) of Schedule 4 to the 2017 Regulations).

- 2.1.34. To undertake this work and come to an informed judgement an environmental statement is required to include such information as is reasonably required to describe the environmental effects of the development and which the applicant **can reasonably be required to compile having regard to current knowledge**<sup>12</sup>. In the context of assessing cumulative carbon impacts, the only assessment National Highways can be reasonably required to undertake is one having regard to current knowledge.
- 2.1.35. Accordingly, the environmental statement produced for the Scheme complies with the 2017 Regulations.
- 2.1.36. As regards the additional material now requested by the Secretary of State, this amounts to a request by the Secretary of State for “any other information” within the meaning of regulation 3(1) of the 2017 Regulations.
- 2.1.37. However, there is no reasonable basis upon which National Highways can assess the carbon emissions impact of the Scheme at a local or regional level and it is not required to do so by law or pursuant to the NPS NN.
- 2.1.38. National Highways can only assess the change in CO<sub>2</sub>e emissions from the Scheme in absolute terms and against the national carbon budgets.
- 2.1.39. The procedures and evaluation criteria set out in DMRB LA 114 Climate, are appropriate and sufficient to ensure that the cumulative effects of proposed road schemes upon climate change are assessed in accordance with the 2017 Regulations and to provide sufficient evidence for the decision-making requirements set out in paragraph 5.18 of the NPS NN.

### **The Assessment was Prepared by a Competent Expert**

- 2.1.40. This response to the information requested by the Secretary of State on climate has been prepared by competent experts with relevant and appropriate experience.

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<sup>11</sup> [REDACTED]

<sup>12</sup> see R. (Khan) v London Borough of Sutton [2014] EWHC 3663 (Admin) and Preston New Road Action Group v Secretary of State for Communities and Local Government [2018] Env. L.R. 18)



- 2.1.41. The technical lead for air quality and vehicle emissions is the Principal Air Quality Advisor for National Highways with more than 25 years of relevant experience with appropriate professional qualifications. The technical lead for carbon from construction activities is the Senior Technical Advisor for Sustainable Development and Climate Change for National Highways with more than 16 years of relevant experience with appropriate professional qualifications.
- 2.1.42. National Highways confirm that the assessment work set out in Table 1 has been carried out by a suitably competent expert from WSP. A masters qualified Chartered member of the Institute of Environmental Managers and Assessors (MIEMA); and Chartered Environmentalist (CEnv) lead the assessment. They have over 10 years of knowledge and experience in Climate assessment, and used that knowledge and professional judgement when overseeing and managing the work.

## **2.2 ARTICLE 14(2) AND (3)**

### **Secretary of State's request**

- 2.2.1. The Secretary of State requests that the Applicant provides additional information on:

*The Secretary of State notes that when the roads in Part 1 of Schedule 3 become trunk roads, the roads in Part 3 will be de-trunked automatically, but that the final part of paragraph (2) suggests that the de-trunked roads will only vest in the local highway authority if that authority considers them to be in a reasonably satisfactory state of repair. This could create a scenario where a road is de-trunked but does not vest in the local highway authority.*

*In contrast, paragraph (3) automatically vests a de-trunked highway in the local highway authority, without reference to state of repair.*

*Please could the Applicant confirm the intended approach?*

### **National Highways' Response**

- 2.2.2. Paragraph (3) does not have the effect of vesting trunk roads in the local highways authority. Vesting of former trunk roads is carried out in terms of article 14(2). The purpose of paragraph (3) is to apply section 265 of the Highways Act 1980 to roads which vest in the local highways authority. This is to ensure that the provisions on property and liability for former trunk roads are applied to a road which is transferred in terms of article 14(2) in the same way as if transferred in terms of an order under section 10(2) of the 1980 Act. There is, therefore, no contradiction between the provisions of paragraphs (2) and (3).
- 2.2.3. The intent of the Applicant is that any road, which is proposed for de-trunking, would be in a suitable state of maintenance for the local highways authority to take it on and for it to form part of its adopted highway network. The Applicant will work with the local highways authority to achieve that aim. Article 14(2) requires de-trunked roads to be in a state of

repair that is “reasonably satisfactory” to the local roads authority. It is expected that both parties will take a pragmatic and realistic approach to defining a road to be “reasonably satisfactory”. However, in the event that there is a dispute on whether a road is in a reasonably satisfactory condition which cannot be resolved, then there is provision in Article 48 for disputes to be resolved by means of arbitration. However, having reflected further on the point made by the Secretary of State, the Applicant would suggest that it would be helpful to add the following explicit reference to arbitration at the end of paragraph (2): -

“In the event of a dispute on the state of repair of such a road then the matter may be referred to arbitration in terms of Article 48.”

2.2.4. This will provide a mechanism to resolve any such disputes.

2.2.5. The Applicant would also wish to make it clear that the provisions in Article 14(2) in terms of the state of repair for de-trunked roads are a departure from standard wording on de-trunking and are bespoke to this Scheme. This is not a provision that the Applicant would normally consider appropriate for a highways scheme.

## 2.3 ARTICLE 31

### Secretary of State's request

2.3.1. The Secretary of State requests that the Applicant provides additional information on:

*The Secretary of State notes that a number of DCOs contain two additional provisions when modifying Part 1 of the Land Compensation Act 1961:*

*“In section 11A (powers of entry: further notice of entry)— (a) in subsection (1)(a), after “land” insert “under that provision”; and (b) in subsection (2), after “land” insert “under that provision”.*

*” And “In Schedule 2A (counter-notice requiring purchase of land not in notice to treat)— (c) for paragraphs 1(2) and 14(2) substitute — “(2) But see article [\*\*] (acquisition of subsoil and airspace only) of the [\*\*] Development Consent Order [\*\*], which excludes the acquisition of subsoil or airspace only from this Schedule.”;*

*Please could the applicant confirm that the omission of these provisions was deliberate.*

### National Highways' Response

2.3.2. The drafting of Article 31 was based on a previous DCO, which did not include reference to the provisions referred to by the Secretary of State. It is noted, however, that these provisions have been included in other recent DCOs and the Applicant agrees that it would be better to include them in the current DCO. For the second provision, the relevant reference would be to Article 33 of the DCO.

## 2.4 WORK NO 5B

### Secretary of State's request

- 2.4.1. The Secretary of State requests that the Applicant provides additional information on:
- The Secretary of State notes that in paragraph 2.5.6 of the Applicant's response the track length of option 5B(c) is 807 metres but the draft wording in paragraph 2.5.7 notes 552 metres.*

*Please could the Applicant confirm the correct measurement?*

### National Highways' Response

- 2.4.2. The draft wording for option 5B(c) should have been corrected to the measurement 807 metres in length, in a similar manner to the other alternative option. The correct length is 807 metres.

## 2.5 PARAGRAPH 1 OF SCHEDULE 2

### Secretary of State's request

- 2.5.1. The Secretary of State requests that the Applicant provides additional information on:
- The Secretary of State notes the definition of Landscape and ecological management plan proposed by the applicant in its response (dated November 2021) to his request for comments set out in the letter dated 29 October 2021. The proposed definition refers to "the Scheme" as opposed to "the authorised development".*

*Please could the Applicant advise whether its proposed definition should refer to "the authorised development"?*

### National Highways' Response

- 2.5.2. The definition should refer to "the authorised development."

## 2.6 PARAGRAPH 10 OF SCHEDULE 2

### Secretary of State's request

- 2.6.1. The Secretary of State requests that the Applicant provides additional information on:
- The Secretary of State notes that paragraph 10(1) refers to Historic Record Reference 16878 as a non-designated milestone, but that the Historic England Website provides the following reference: "Medieval fishpond and post medieval stack stands survive as earthworks and are visible on air photographs".*

*Please could the Applicant confirm that the reference to Historic Record Reference 16878 is correct?*

## **National Highways' Response**

- 2.6.2. The milestone is not nationally designated and is, therefore, on the local register not Historic England's. Therefore, the DCO is correct, as the reference is listed on the local historic environment record, held by Northumberland County Council.

## **2.7 PART 1 OF SCHEDULE 3**

### **Secretary of State's request**

- 2.7.1. The Secretary of State requests that the Applicant provides additional information on:
- The Secretary of State notes that grid references are missing from the second entry in Part 1 of Schedule 3 of the draft DCO.*
- Please could the Applicant provide grid references for this entry or explain why these have not been included?*

### **National Highways' Response**

- 2.7.2. The A1 Morpeth to Felton entry in Part 1 of Schedule 3 of the draft DCO should state the following coordinates:
- Length totalling 25,500m comprising Work Nos. 1a, 1b, 2a, 2b, 3a, 3b and 4 commencing at grid reference 418219E; 588444N and terminating at grid reference 417482E; 600795N (north and southbound works combined).

## **2.8 PART 3 OF SCHEDULE 4**

### **Secretary of State's request**

- 2.8.1. The Secretary of State requests that the Applicant provides additional information on:
- The Secretary of State notes that in column 2, entries 17, 18 and 19 refer to two sets of grid reference points but say "Access located at" rather than "between".*
- Please could the Applicant advise whether the entries should read "at" or "between"?*

### **National Highways' Response**

- 2.8.2. During Examination, Northumberland County Council commented on the Schedules and clarified that the existing public right of way referenced in Entry 17 does not extend over the current highway. This was corrected on the Rights of Way and Access Plans, but this schedule was not updated. As this right of way does not need to be stopped up, Entry 17 of the schedule should be deleted. The Scheme will provide a new public right of way under the River Coquet bridge at this location which is detailed in Entry 8 of Part 5 of Schedule 3 Classification of Roads, etc. This issue is also clarified 2.10.5 below.

- 2.8.3. The private means of access to be stopped up in Entry 18 for public right of way 115/016 near Duke's Bank Wood is indicated as 34m in length on Sheet 10 and, therefore, should say, "Access located between".
- 2.8.4. Entry 19's private means of access to be stopped up on public right of way 115/008 near Duke's Bank Wood is shown as 149.4m in length on Sheet 10 and, therefore, should say, "Access located between".

## 2.9 PART 1 OF SCHEDULE 5

### Secretary of State's request

- 2.9.1. The Secretary of State requests that the Applicant provides additional information on:

*The Secretary of State notes that the Key to the Plans include the word "(footpath)" and is therefore minded to insert "(footpath)" into the Note to Schedule as shown below:*

*"Except for the first entry (Low Espley), the extent of the temporary prohibitions on vehicular traffic and pedestrians set out in the table in Part 2 of this Schedule are identified on the relevant sheet of the rights of way and access plans as "public right of way (footpath) to be stopped up"*

*Please could the Applicant confirm whether the Key to Plans include the word "(footpath)"?*

### National Highways' Response

- 2.9.2. Rights of Way and Access Plans [REP10-006] Sheets 1 of 19 to Sheet 19 of 19 include the phrase "(public footpath)" in the Key for public right of way. Therefore, the Applicant recommends that the text proposed by the Secretary of State should be substituted with "(public footpath)" in the Note to Schedule.

## 2.10 PART 2 OF SCHEDULE 5

### Secretary of State's request

- 2.10.1. The Secretary of State requests that the Applicant provides additional information on:

*The Secretary of State notes that in column 3, a number of the entries are unclear, in particular entries 2 and 4. Entry 6 also refers to "a diversion route from point PR 9/1 and PR 2/1", which would be a considerable distance and, in column 2, refers to points 9/h and 9/i on Sheet 9, neither of which can be located on the deadline 10 plans.*

*Please could the Applicant review the entries, correct any errors and consider using clearer wording?*

### National Highways' Response

- 2.10.2. The Applicant has undertaken a review of Part 2 of Schedule 5 to ensure that all entry descriptions of new public rights of way to be substituted are clearly set out.
- 2.10.3. The Applicant agrees that Column 3 for Entry 2 is not clear and should be reworded:  
“Diverted early in construction phase onto new permanent alignment route from point PR 3/2 to point PR 3/3 on Sheet 3 of the rights of way and access plans.”
- 2.10.4. The Applicant also confirms that Column 3 for Entry 4 should be reworded:  
“Diverted early in construction phase onto new permanent alignment route from point PR 4/1 to point PR 4/2 west of A1, and point PR 4/3 to point PR 4/4 east of A1 via new footpath at Fenrother Junction, on Sheet 4 of the rights of way and access plans.”
- 2.10.5. As described in 2.8.2 above, Entry 6 from this schedule should be removed. NCC confirmed that the existing public right of way does not currently extend over the highway and, therefore, does not require to be temporarily prohibited and listed in this schedule. The Scheme will provide a new public right of way under the River Coquet bridge, which is detailed in Entry 8 of Part 5 of Schedule 3 Classification of Roads, etc.

## 2.11 PART 1 OF SCHEDULE 9

### Secretary of State's request

- 2.11.1. The Secretary of State requests that the Applicant provides additional information on:  
*The Secretary of State notes that in column 1, entries 11, 16, 17 and 22 refer to two sets of grid reference points but say “Hedgerow located at” rather than “between”.  
Please could the Applicant advise whether the entries should read “at” or “between”?*

### National Highways' Response

- 2.11.2. The Applicant has reviewed the column 1 entries in this schedule and can confirm the following entry amendments. All are to replace “at” with “between” with further amendments to two sheet numbers and one set of coordinates.
- Entry 10 “Hedgerow located between E418495, N590921 and E418480, N590923 on Sheet 5 of the vegetation clearance plans. (West)”.
  - Entry 14 “Hedgerow located between E418013, N592400 and E418037, N592422 on Sheet 7 of the vegetation clearance plans (East)”.
  - Entry 15 “Hedgerow located between E418017, N592414 and E418857, N592842 on Sheet 7 of the vegetation clearance plans (North)”.
  - Entry 16 “Hedgerow located between E418027, N592412 and E418806, N592436 on Sheet 7 of the vegetation clearance plans (South)”.



- Entry 21 “Hedgerow located between E418423, N595154 and E418840, N595263 on Sheet 13 of the vegetation clearance plans (North)”.

## **2.12 PART 4 OF SCHEDULE 10**

### **Secretary of State's request**

2.12.1. The Secretary of State requests that the Applicant provides additional information on:

*The Secretary of State notes that paragraph 8(1) only applies to Part one of the Schedule.*

*Please could the Applicant confirm whether the reference to paragraph 8(1) in section 2 under the heading “Removal of apparatus” should be a reference to paragraph 29 (1)?*

### **National Highways' Response**

2.12.2. The Applicant has discussed the above query with National Grid Gas Plc's legal team. The parties agree that the cross reference to paragraph 8(1) at paragraph 29(2) of Schedule 10 to the draft Development Consent Order should instead refer to paragraph 30(1). This is the equivalent provision to paragraph 8(1) in the protective provisions that relate to National Grid Gas Plc.

