

Issue Specific Hearing 2

Thursday 1 December 2022

Supplementary Agenda Additional Questions

As set out in the Rule 6 Letter [PD-006], the ExA has decided to substitute the normal practice of early written questions with Hearings. We believe that the Hearings will refine and support the primacy of the written process on which a Nationally Significant Infrastructure Project is based and avoid the need for a large number of written questions. Nevertheless, in the preparation for the Hearings, the ExA has a number of questions which require relatively straightforward responses where additional information/evidence is required or clarification is needed on matters from the Applicant and others. The ExA would like these submissions to be made at **Deadline 1, Wednesday 14 December 2022**. These are set out below.

| No. | Subject | Response by | Question |
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| AIR QUALITY | | | |
| ISH2.AQ.01 | ES Chapter 5 Air Quality [APP-048] | Applicant | In respect to paragraph 5.3.2, The Environment Act 2021, confirm that the new air quality targets been brought forward and if so, whether there are any implications for the assessment undertaken. |
| ISH2.AQ.02 | | Applicant and Eden DC | In respect to paragraph 5.7.6, provide an update as to the potential future AQMA at Castlegate, Penrith. |
| BIODIVERSITY | | | |
| ISH2.BIO.01 | Environmental Management Plan (EMP) [APP-019] - Barn Owl | Applicant | EMP REAC Commitment MW-BD-03 in respect to Barn Owl mitigation states <i>“Annual monitoring visits [of Barn Owls] undertaken in July and August for at least 5 years post construction/installation”</i> . It is not clear why these months have been selected. Please clarify. |

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| ISH2.BIO.02 | | Applicant | In reference to ES Chapter 6 [APP-049] and the final bullet point of paragraph 6.8.6, also referred to in EMP REAC Commitment MW-BD-21 [APP-019] states “any use of rodenticide should be avoided where possible on construction compounds so as to prevent deaths of barn owls through eating poisoned rodents”. The ExA is under the impression no rodenticides would be used. Please clarify. |
| CUMULATIVE EFFECTS | | | |
| ISH2.CE.01 | ES Chapter 15 Cumulative Effects [APP-058] | LPAs and LHAs | Paragraph 15.3.37 states that stakeholders were consulted and no comments were made on the methodology adopted. Confirm the list of developments is accurate and that you consider the assessment is robust. |
| DRAFT DCO [APP-285] | | | |
| ISH2.DCO.01 | Article 3 (disapplication of legislation) | Applicant | <ul style="list-style-type: none"> • Explanatory Memorandum [APP-286] paragraph 6.16 states in relation to subparagraph (1)(f) “This consent is not a prescribed consent for the purposes of section 150 of the 2008 Act and so the consent of the building authority is not required for its inclusion in the Order.” The Applicant is requested to provide a further explanation as to why this is so and confirm whether CA powers are required to any of the buildings require demolition. • Explanatory Memorandum does not explain the reason for the disapplication of subparagraph (3). Update the Explanatory Memorandum accordingly with further justification. • Explanatory Memorandum does not explain the reason for the disapplication of Acts listed in subparagraph (4). Update the Explanatory Memorandum accordingly please including confirmation as to whether the three listed Acts are still in force. |
| ISH2.DCO.02 | Article 4 (development consent etc...) | Applicant | Confirm that it has provided information on “any enactments” together with clarification about how far from the Order limits those provisions might bite. |

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| ISH2.DCO.03 | Article 5 (maintenance) | Applicant | Should the Article be subject to the provisions of Articles 7 and 9? |
| ISH2.DCO.04 | Article 8 (application of the 1991 Act) | Applicant | Subparagraph (3) sets out those provisions of the 1991 Act which do not apply. Confirm whether they should be set out in Article 3 (disapplication of legislative provisions) |
| ISH2.DCO.05 | Article 10 (permanent stopping up...) | Applicant | Subparagraph (7) uses the words “ <i>the undertaker must apply...</i> ” Explanatory Memorandum paragraph 7.26 describes the need for the power as “ <i>provision that would allow...</i> ” The Applicant is requested to update the Explanatory Memorandum to reflect the wording in the Article. |
| ISH2.DCO.06 | Article 12 (access to works) | Applicant | Confirm that this Article should form “associated development” for the purposes of Schedule 1. |
| ISH2.DCO.07 | Article 17 (felling or lopping of trees...) | Applicant | Confirm that the drafting of this Article has followed the Inspectorate’s Advice Note 15 particularly around tree preservation orders. If not, please update accordingly. |
| ISH2.DCO.08 | Article 20 (CA...minerals code) | Applicant | The ExA considers that Explanatory Memorandum paragraph 8.3 is not explicitly clear on the reasons for Article 20(a) as to why paragraph 8(3) (of the Acquisition of Land Act 1981) is not incorporated into the Order. Update the Explanatory Memorandum accordingly with further justification. |
| ISH2.DCO.09 | Article 22 (CA rights and restrictive covenants) | Applicant | The ExA considers that Explanatory Memorandum paragraph 8.9 is not explicitly clear on its wording that Article 22(3) is “ <i>subject to various sections and schedules</i> ”. Update the Explanatory Memorandum accordingly with further justification. |
| ISH2.DCO.10 | Article 24 (power to override easements...) | Applicant | The ExA considers that Explanatory Memorandum paragraphs 8.13 and 8.14 are not explicitly clear on a legal explanation for the powers sought in this Article. Update the Explanatory Memorandum accordingly with further justification. |
| ISH2.DCO.11 | Article 25 (modification of Part 1...) | Applicant | The ExA considers that Explanatory Memorandum paragraph 8.16 is not explicitly clear on why the notice periods introduced by the Housing and Planning Act 2016 do not apply. Update the Explanatory Memorandum accordingly with further justification. |

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| ISH2.DCO.12 | Article 26 (application of the 1991 Act) | Applicant | The ExA considers that Explanatory Memorandum paragraph 8.18 should explain why the drafting this Article “takes into account the Housing and Planning Act 2016”. Update the Explanatory Memorandum accordingly with further justification. |
| ISH2.DCO.13 | Article 29 (temporary use of land...) | Applicant | The ExA requests the Applicant clarify where, in reference to the explanation contained with Explanatory Memorandum paragraph 8.28 in respect to allowing the undertaker to build works on land taken temporarily but is intended for CA, where this is specifically set out in this Article. |
| ISH2.DCO.14 | Article 35 (Crown land) | Applicant | The Article will need updating to make reference to “His Majesty”. |
| ISH2.DCO.15 | Article 46 (operational land) | Applicant | The ExA considers that Explanatory Memorandum paragraph 10.4 is not explicitly clear on the need for the powers contained in the Article. Update the Explanatory Memorandum accordingly with further justification. |
| ISH2.DCO.16 | Article 52 (consents, agreements etc) | Applicant | The ExA would welcome a further explanation within Explanatory Memorandum paragraphs 10.15 to 10.17 in respect to why the 28-days is deemed sufficient or necessary. The Applicant is asked to consider a period of 42-days to allow local authorities a greater time to consider the material before them. |
| ISH2.DCO.17 | Schedule 1 | Applicant | The Applicant is asked to review the term “ancillary works” both in the Schedule and the EM. The ExA considers that the term is essentially the same as “associated development”. The Applicant is required to either update the Explanatory Memorandum and the Schedule to use only one terminology or explain the difference between the two. |
| ISH2.DCO.18 | Schedule 7 | Applicant | Paragraphs 55 and 56 both reference the new B1066. A and B classified road numbers are usually approved by DfT and are usually unique. There is already a B1066 (south of Bury St. Edmonds). Additionally, the use of a number starting B1... is unusual in road classification numbering to the west of the A1 which usually adopts the B6... sector convention. Confirm that this number been approved by DfT |

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| ISH2.DCO.19 | | Applicant and Cumbria CC | Paragraph 56 (b) sets out that the B1066 ends at <i>“a point 254 metres west of the junction of Musgrave Lane and Main Street”</i> . Confirm that this is that a suitable point to start a classified road on the unclassified Main Street. Confirm whether it would be more conventional to connect the new B1066 to the existing B6276 on Main Street at its junction with New Road. |
| ISH2.DCO.20 | Schedule 8, Part 4, Revocations and Variations of Existing TROs | Applicant | There is an existing signed no entry restriction for westbound traffic on the extension of Main Street to prevent westbound traffic accessing the existing eastbound off slip of the A66. Confirm whether this would need to be revoked as this is intended to become a two-way B1066. |
| GEOLOGY AND SOILS | | | |
| ISH2.GS.01 | ES Chapter 9 Geology and Soils [APP-052] | Applicant, Natural England and Local Authorities | With regard to proportions of ALC survey that were not surveyed due to access issues, can the Applicant confirm any agreement with Natural England and the Local Authorities that a) an appropriate proportion of ALC surveys have been undertaken to inform the baseline of the assessment or b) whether the areas not yet subject to survey will be surveyed in the future. |
| LANDSCAPE AND VISUAL | | | |
| ISH2.LV.01 | ES Chapter 10 Landscape and Visual [APP-053] | Applicant | Paragraph 10.10.329 states that in year 15 there are predicted to be 13 visual receptors with significant residual adverse effects of which 4 of them are in the Cross Lanes to Rokeby scheme. Paragraph 2.5.8 of the Legislation and Policy Compliance Statement [APP-242] concludes (for Cross Lanes to Rokeby) <i>“No significant effects expected on any heritage asset present within this scheme during construction or operation.”</i> There appears to be a contradiction between the LVIA conclusion about the Rokeby scheme and significant Year 15 visual effects on receptors in the RPG. Applicant to clarify the position. |
| ISH2.LV.02 | | Applicant | Impacts on viewpoints are summarised in table 10-11 (construction) Table 10-12 (operation year 1) and table 10-7 (operation year 15). This table appears to |

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| | | | be incorrectly numbered and it should be 10-13. Table 10-8 is incorrectly labelled; it should be 10-14. Applicant to clarify the position. |
| ISH2.LV.03 | | Applicant | Operational Phase: Table 1 Landscape Value Criteria affords a Very High value to the landscapes of National Parks but only a High value to those of AONBs. Clarify whether this needs amending to Very High, and, if so, whether the change would affect the scope and assessment within the ES. |
| ISH2.LV.04 | | Applicant | There is a lack of consistency with regards to references to lighting, including where it is proposed. Can the Applicant confirm whether lighting at the new roundabout at Rokeby is proposed, and, if it is, how that has been assessed within the LVIA, in terms of night-time assessment, together with the overall significance of effect. |
| ISH2.LV.05 | | Applicant | Paragraph 10.5.9 The vegetation growth rate is stated as conservative average to be 1m every three years. Clarify the basis of this assumption. |
| ISH2.LV.06 | | Applicant | Paragraph 10.10.225 states <i>"In relation to the Rokeby Historic Park and Garden character area, defined by the Applicant"</i> . The RPG is a defined area. Applicant to clarify why it has defined the RPG area differently. |
| POPULATION AND HEALTH | | | |
| ISH2.PH.01 | ES Chapter 13 Population and Human Health [APP-056] | Applicant | With regards to paragraph 13.4.15, clarify whether DMRB LA112 methodology in assigning magnitudes of impact has been amended with respect to professional judgement to take account of safety and environmental quality. If so, has any sensitivity analysis been undertaken using the unamended LA112 approach? |
| ISH2.PH.02 | | Applicant | In respect to paragraph 13.5.3, confirm whether data was collated after 2019/20 to verify assumptions used in the analysis of effects on PROW, open space and community facilities usage. |

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| ISH2.PH.03 | | LPAs and LHAs | In respect to paragraph 13.5.3, confirm that the data used in the analysis of effects is robust given the lack of observed data available at the time of assessment. |
| ISH2.PH.04 | | LPAs and LHAs | In respect to paragraph 13.10.37, confirm that the approach adopted to improve as far as possible the east west connection in the Walking Cycling and Horse-riders provision is satisfactory. |
| ISH2.PH.05 | Environmental Management Plan [APP-019] Table 3.2 REAC | Applicant | D-PH-04, confirm whether consideration be given to improved/ enhanced signing of HGV access to Barnard Castle. It is understood there are already signs advising of recommended HGV routes to Barnard Castle but given the constraint of the County Bridge on the A167 additional advisory signing may be of overall benefit for HGV traffic. |
| ISH2.PH.06 | | Applicant | MW-PH-03, comment on whether Brough Hill Fair be included in this Commitment. |
| TRAFFIC AND TRANSPORT | | | |
| ISH2.TT.01 | Transport Assessment [APP-236] | Applicant | In Section 8.1 flows recorded in the tables do not appear to equate with flows in the associated figures. Additionally changes in flows tabulated are not always a result of comparing the DM and DS flows in the table. Explain and/ or correct as necessary. |
| ISH2.TT.02 | | Applicant | Table 8.6 (and Table 11.1) Confirm the capacity of the A67 Barnard Castle Bridge is correct given the traffic control over the bridge. |
| ISH2.TT.03 | | Cumbria CC | In respect to paragraph 8.3.3, confirm that the peak summer flows in and out of 800 vehicles / hour are robust for assessment purposes and reflect the peak summer period. |
| ISH2.TT.04 | | Durham CC | In respect to paragraph 8.3.3, confirm that the derived traffic flows associated with Mainsgill Farm Shop are robust for assessment purposes. |
| ISH2.TT.05 | | Applicant | In respect to paragraph 9.3.6, confirm whether the accident rates derived for the existing A66 similar to other trunk roads. |
| ISH2.TT.06 | | Applicant | Tables 9.6 and 9.7, Clarify why the scheme would lead to an increase in some cases of both accidents and casualties? |

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| ISH2.TT.07 | | Applicant | Tables 9.8 and 9.9, it is acknowledged that there will be savings in fatal and serious accidents along the whole of the project, but these tables show that there will be an increase in injury accidents along the whole length of the A66 as result of the scheme. Confirm whether this is something that requires any intervention as part of this project. |
| ISH2.TT.08 | | Applicant | Tables 10.9 and 10.10, do not show the Hodgsons Service 34 that stop on Middleton Tyas Lane at Scotch Corner. Confirm whether this an omission and if so, correct it. |
| ISH2.TT.09 | | Applicant | Table 10.14. This table records no impact on existing bus routes or stops at Scotch Corner (Scheme 11) but the General Arrangement Plan [APP-018] shows the existing bus stop being amended. This appears to be used by a service 34 from Darlington to Richmond. The works and possible disruption to the service needs to be recorded and also consideration should be given for pedestrian facilities to enable access to the services on the other side of Middleton Tyas Lane. Confirm. |
| ISH2.TT.10 | | Applicant | In respect to figure 11.1, the programming shown is different from the programme shown in the ES (Plate 2.1 [APP-045]) and the EMP (Plate 1.1 [APP-019]). Confirm, and clarify whether there are any consequential implications for the construction traffic modelling undertaken. |
| ISH2.TT.11 | | Applicant | Paragraph 11.8.4 does not mention bus stop on Middleton Tyas Lane that will be affected by Scheme 11 works. Clarify whether this be included in consideration of CTMP. |
| ISH2.TT.12 | Transport Assessment Appendix F | Cumbria CC | Confirm whether consultation has occurred on the construction traffic diversion routes set out in Appendix F of the TA, in particular, about the use of the A685 as a local construction diversion route. It is assumed any issues you may have will be set out in written submissions. |
| ISH2.TT.13 | | Durham CC | Confirm whether consultation has occurred on the construction traffic diversion routes set out in Appendix F of the TA, in particular, about the use of Abbey Lane as a local construction HGV diversion route. It is assumed any issues you may have will be set out in written submissions. |

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| ISH2.TT.14 | Combined Modelling & Appraisal Appendix E Stage 3 Economic Appraisal [APP-241] | Applicant | DfT “Forthcoming change to TAG data book” was announced in October 2022 and was expected to be released in November 2022. Confirm whether this has been done and what impact, if any, do these changes have for the appraisal of the scheme. |
| ISH2.TT.15 | Walking, Cycling and Horse-riding Proposals [APP-010] | Applicant | Section 2.1 - National Highways Context. This section sets out how the document “Cycling Strategy, Our Approach” has formed the approach. Confirm whether similar a vision statement for pedestrians and horse riders exists. |
| ISH2.TT.16 | | Applicant | Detail the improvements/ betterments in addition to reconnecting existing bridleways, etc. specifically included for equestrians. |
| ISH2.TT.17 | Draft SoCG with Cumbria CC & Eden DC [APP-277] | Applicant | Paragraph 8.1 - HGV parking and service provision across the route – It is understood that design of the laybys will be to DMRB standards and that there is acknowledged demand for improved HGV facilities on the A66. It also states that consideration of such improved facilities lies outside this project. Confirm whether the provision currently proposed within the Order limits accommodate any part of the acknowledged need for improved facilities along the whole A66. |