

A66 Northern Trans-Pennine Project

7.24 Applicant's Responses to the Examining Authority's Written Questions

Planning Act 2008

**Infrastructure Planning (Examination Procedure) Rules 2010
Deadline 4**

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A66 Northern Trans-Pennine Project
Development Consent Order 202x

**7.24 APPLICANT'S RESPONSES TO THE EXAMINING AUTHORITY'S
WRITTEN QUESTIONS**

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1. Introduction

1.1. Purpose of this document

1.1.1 This document sets out the National Highways' (the Applicant) written responses to the Examining Authority's Written Questions issued on 31 January 2023, relating to the A66 Northern Trans-Pennine Project. These can be found in Table 1 in section 2. National Highways have responded only to those questions directed to the Applicant and therefore those questions directed to other Interested Parties are not contained within this document.

1.1.2 The appendices to this document include plans and drawings as requested in the questions, which are referenced in the written responses in Table 1.

2. Responses to the Examining Authority's Written Questions

Table 1. Responses to the Examining Authority's Written Questions

Ref Number	Subject	Response by	Question	Applicant's Response										
AIR QUALITY														
AQ 1.1	Castlegate Potential AQMA	The Applicant	Figure 8.6 of the Transport Assessment [APP-236] shows that traffic in Castlegate, Penrith is forecast to decrease. Confirm that reading of Figure 8.6 is correct and give exact figures as to the decrease in traffic flows when comparing Do Minimum to Do Something.	<p>Castlegate is a one-way link in Penrith town Centre that links the A6 Bridge Lane to the A592 Ullswater Road. The Do Minimum flow in the design year is 8,495 vehicles AADT. (this flow is plotted, but not labelled in Figure 8-4 of the Transport Assessment, Document Reference 3.7, APP236). Do Minimum and Do Something is defined in paragraph 5.6.1 of Combined Modelling and Appraisal Report (Document Reference 3.8, APP 237). The Do Something flow is 7,526 vehicles AADT (this flow is plotted, but not labelled in Figure 8-5 of the Transport Assessment, Document Reference 3.7, APP236). It is therefore confirmed that the ExAs reading is correct and that this represents a flow reduction of 969 vehicles or 11% AADT Do Something vs. Do Minimum. This is shown in Table 1.1 below.</p> <p>The reason for a traffic reduction occurring on this link with the project in place is that more traffic is attracted to the improved (and quicker) A66 to travel from south-east to north-west, i.e. traffic on the A66 east of Kemplay Bank is more likely to remain on the A66 and access north western Penrith using junction 40 and the A592, rather than travelling via Kemplay Bank, the A6 and Castlegate. The reduction of traffic is likely to result in a beneficial impact to air quality.</p> <p>Table 1.1: Penrith – Local Road Traffic Flow (AADT)</p> <table border="1"> <thead> <tr> <th>Road</th> <th>Do Minimum flow</th> <th>Do Something flow</th> <th>Flow Change</th> <th>% Change</th> </tr> </thead> <tbody> <tr> <td>Castlegate</td> <td>8,495</td> <td>7,526</td> <td>-969</td> <td>-11%</td> </tr> </tbody> </table>	Road	Do Minimum flow	Do Something flow	Flow Change	% Change	Castlegate	8,495	7,526	-969	-11%
Road	Do Minimum flow	Do Something flow	Flow Change	% Change										
Castlegate	8,495	7,526	-969	-11%										
BIODIVERSITY AND HABITAT REGULATIONS														
BHR 1.1	Trout Beck Bridge, Cringle Beck, and Moor Beck Viaduct Crossings	The Applicant Environment Agency Natural England	<p>In their Written Representations (WR), the Environment Agency (EA) [REP1-024] and Natural England (NE) [REP1-035] state that they are unable to come to a finding on the effect of the Proposed Development on the aquatic environment or find no adverse effect on the integrity on the River Eden SAC, River Eden and Tributaries SSSI, Temple Sowerby Moss SSSI, North Pennines SPA and Bowes Moss SSSI, Asby Complex SAC and Ravensworth Fell SSSI. This is primarily because of a lack of detail in respect to the designs of the Trout Beck bridge, and the Cringle Beck and Moor Beck viaduct structures and placement of pillars.</p> <p>The ExA notes the principles contained within the Project Design Principles document [APP-302] particularly LI04 to LI08, as well as the submission of the Overview of Design Process for Trout Beck Bridge, Cringle Beck Viaduct and Moor Beck Viaduct document at Deadline 3</p>	<p>In respect to the initial part of the question, National Highways assume this should be referring only to the River Eden SAC and River Eden and Tributaries SSSI as the ES and SIAA did not identify any potential impacts on the Temple Sowerby Moss SSSI, North Pennines SPA and Bowes Moss SSSI, Asby Complex SAC or Ravensworth Fell SSSI arising from the design of the structures in question.</p> <p>In respect to the impact of the cited proposed structures on the River Eden SAC and River Eden and Tributaries SSSI engagement with the Environment Agency (EA) and Natural England (NE) has led National Highways to understand that no further information is required by them to understand the impacts of the permanent solutions for the viaducts, and they are content with the controls contained in the Environmental Management Plan Rev 2 (REP3-004) and Project Design Principles Rev 2 (REP3-040). National Highways will continue engagement with the EA and NE and report any additional updates in the latest Statements of Common Ground at Deadline 5.</p> <p>The Applicant has included a series of controls via the Project Design Principles Rev 2 [REP3-040] and first iteration Environmental Management Plan Rev 2 (REP3-004), informed by the assessments contained within the Habitats Regulations Assessment (HRA) Stage 2 Statement to Inform Appropriate Assessment (Document Reference 3.6 / APP-235) and the Environmental Statement Chapter 6 Biodiversity (Document Reference</p>										

Ref Number	Subject	Response by	Question	Applicant's Response
			<p>[REP3-046] following the ExA's request for the Applicant to do so at the Issue Specific Hearing 2 (ISH2) held on Thursday 1 December 2022 [EV-003].</p> <p>However, while the ExA recognises the Applicant wishes to decide on the detailed designs of the three identified viaducts to the detailed design stage, the ExA nevertheless remains concerned that insufficient details remain specifically on the designs and/or commitments/principles for the three viaducts. Accordingly, the ExA is concerned that neither the EA nor NE will be able to advise the ExA or Secretary of State on the effect of the Proposed Development on European sites and on the environment in general.</p> <p>For the Applicant:</p> <p>The ExA recommends:</p> <ul style="list-style-type: none"> - The Applicant submits the full designs for the Trout Beck crossing and the Cringle Beck and Moor Beck viaducts into the Examination; and/or - If that is not possible, update the Project Design Principles and/or the Overview of Design Process for Trout Beck Bridge, Cringle Beck Viaduct and Moor Beck Viaduct document with specific parameters and principles for the three viaducts on which the detailed designs must be based, including specific principles for the supporting piers and their positioning. <p>For the EA and NE:</p> <p>Set out what additional information, if any, would be required from the Applicant on the designs of the Trout Beck bridge and the Cringle Beck and Moor Beck so as to overcome the concerns raised.</p>	<p>3.2 / APP-049) and Chapter 14 Road Drainage and the Water Environment (Document Reference 3.2 / APP-057) and based on engagement and consultation with EA and NE throughout the design development process. This is to ensure there is no adverse effect on the integrity of these sites.</p> <p>As a result of the continuing engagement and following amendments to these controls in response to comments made by EA and NE in their Written Representations, National Highways believes that concerns from EA and NE have been resolved. In particular, REP3-005 (the first iteration EMP main document) included amendments to REAC commitment D-BD-04 regarding the design of the Trout Beck Viaduct piers to allow for migration of the watercourse and to clarify set back distances of watercourses related to the SAC; MW-BD-15 was amended to make it clear that the Method Statement for working in the SAC must include evidence demonstrating that the proposed methods comply with the assumptions of the HRA. Additionally, a number of amendments have been made to Annex C1 and Annex C2 of the EMP (REP3-020 and REP3-022) in response to the Written Representations. REP3-041 (Project Design Principles) has also been amended at Principle 0405.11 (in relation to flood compensation) and 06.16 (Flood risk principles in relation to the structures at Moor Beck and Cringle Beck).</p> <p>The Applicant is of the view that rather than the Overview of Design Process for Trout Beck, Cringle Beck Viaduct and Moor Beck Viaduct document submitted at Deadline 3 (REP3-046), the secured documents in the form of the Project Design Principles [REP3-040) and Environmental Management Plan (REP3-004) provide the means to control the design of the structures as the Project moves into the Detailed Design phase, including having regard to amendments made in response to EA and NE comments, therefore enabling the EA and NE to be able to advise the ExA and Secretary of State on the likely effects of the Project on European sites and the environment in general. Detailed Design is scheduled to continue through 2023 and 2024 meaning that 'full designs' cannot be provided to the Examination.</p>
COMPULSORY ACQUISITION (CA)				
CA 1.1	Need for CA	The Applicant	<p>The ExA wishes to better understand why the CA of land is sought on areas required for temporary construction use, such as on Plots 0102-02-24 and 0102-02-25 said to be required for a temporary haul road [REP1-079</p>	<p>In general terms, the Applicant has sought to achieve a reasonable balance between reducing the land it requires for the Project so far as is practicable and ensuring sufficient flexibility to enable it to deliver the Project.</p> <p>This process has involved seeking to integrate, into the design of environmental mitigation, land that is required temporarily for the purposes of facilitating the Project during its</p>

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			<p>and REP2-015, page 8], in the context of areas being required for environmental mitigation, such as species rich and open grassland on Plots 0102-02-24 and 0102-02-25 [APP-041, Figure 2.8.1]. The response should cover the principles applied over the whole application.</p>	<p>construction. In effect, once the main engineering and construction works driving the requirement for the land have been completed, the land would then be turned to its purpose of providing essential environmental mitigation. This reduces the need to identify additional land separately for either purpose, thereby reducing the overall quantum of land required for the Project and the overall quantum of impact on affected persons.</p> <p>This principle, which has been applied over the whole application, is well illustrated by plots 0102-02-24 and 0102-02-25 which, during construction, are required to service the temporary construction compound envisaged to be located on the neighbouring plot 0102-02-19. Once construction is complete and the need for the compound no longer subsists, the land would then be required for environmental mitigation, as is indicated on the Environmental Mitigation Maps (APP-041). This approach can be seen in other areas across the Project, for example in relation to the temporary construction compound that is indicated to the south of the site of the Llama Karma cafe, on sheet 1 of the General Arrangement Plans for Scheme 03 (APP-012). The land identified for this use is labelled on the Land Plans for Scheme 03 (APP-305) as plots 03-01-46, 03-01-42 and 03-01-43. The same land is shown on sheet 1 of the Environmental Mitigation Maps for Scheme 03 (APP-041) as being required for landscape integration.</p> <p>The Applicant's justification for, and approach to, the compulsory acquisition of land for the purposes of environmental mitigation is discussed in greater detail in its answer to CA 1.2 below.</p>
CA 1.2	Need for CA	The Applicant	<p>The ExA wishes to better understand the numerical relationship, over the application as a whole, between Biodiversity Net Gain, including the minimum of no net loss, and the areas identified for environmental mitigation [REP2-015, page 10 and APP-041]. The response should also be made in the context of: the mitigation identified for and within each scheme (how the Applicant has got from need to provision) in keeping with the individual scheme by scheme Environmental Management Plans [REP1-129, para 26 and [REP2-015, page10], the level of detail required to support a compelling case for the inclusion of the relevant CA powers in the DCO [REP1-129, para 27 and 88]; and the rolling back of the acquisition powers sought [REP2-015, page 8].</p>	<p>To be clear, there is no numerical relationship between biodiversity net gain (BNG) and National Highways' 'no net loss' objective, and the land identified as being required for the Project for ecological mitigation. The driver for the inclusion within the Order land of land for the purposes of environmental mitigation is driven by the need for the Project to mitigate its potential adverse ecological effects. As such, all of the land identified as being required for environmental mitigation is required for essential environmental mitigation. None of it is required solely for the reason of providing biodiversity net gain and no net loss. Therefore, whilst the Applicant has utilised the BNG metric ratios in order to calculate land required to achieve the 'no net loss' objective, this has not been used to inform the land identified as being required for environmental mitigation, as is further explained below.</p> <p>The primary driver informing the environmental mitigation design was to ensure that mitigation is provided for impacts on protected species and designated sites, and that replacement habitats are provided for those lost, as stipulated in the ES Biodiversity Chapter 6 (APP-049). This also includes full regard of all habitats and species of Principle Importance.</p> <p>The Applicant has also had regard to paragraph 5.33 of the National Networks National Policy Statement which advises that "<i>Development proposals potentially provide many opportunities for building in beneficial biodiversity or geological features as part of good design. When considering proposals, the Secretary of State should consider whether the applicant has maximised such opportunities in and around developments.</i>". The Applicant has accordingly sought opportunities to maximise biodiversity enhancements as part of its mitigation where possible. For example, by providing habitat linkages to increase connectivity to areas of semi-natural habitats within the wider area and therefore enhancing and tying into existing green infrastructure networks.</p> <p>Whilst Biodiversity Net Gain (BNG) is not currently a statutory requirement that is in force for Nationally Significant Infrastructure Projects, one of the Project objectives is to seek to achieve no net loss as a minimum and looks to deliver net gains where such opportunities exist. The BNG Metric was therefore used as a tool alongside the development of the</p>

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				<p>environmental mitigation design to understand the situation against the Project's objective of achieving no net loss and to seek opportunities to maximise net gains. The BNG Metric was not used to influence the area of land included within the Order Limits for mitigation and no land has been included within the Environmental Mitigation Maps (APP-041) for the sole purpose of BNG. All areas of land identified within the Environmental Mitigation Maps, are required for mitigation which is essential for mitigating the potential adverse environmental effects of the Project. Therefore, there is no numerical relationship as such between BNG and the areas identified for environmental mitigation. However, the extent of the Order limits has been informed by the requirement to provide essential environmental mitigation.</p> <p>To ensure the provision of required replacement habitat to mitigate for that which is anticipated to be lost and to allow for some flexibility at the detailed design stage, habitat ratios for each habitat type have been identified, as outlined within Table 6-20 of the ES Biodiversity Chapter 6 (APP-049) and secured within the Environmental Management Plan (Table 3.2 Register of Environmental Actions and Commitments, reference D-BD-05, Document Reference 2.7, APP-019). The purpose of this approach is to inform the quantum of habitat mitigation required to off-set additional or unforeseen habitat losses once the detailed design has been developed. These ratios were devised using professional judgement based on the latest guidance at the time the assessment was completed (Natural England, 2019)¹. The primary driver informing the habitat ratios was to ensure potential adverse impacts relating to habitat loss was sufficiently mitigated for and therefore compliant with the NPSNN and the biodiversity conservation duty under section 40 of the Natural Environment and Rural Communities Act 2006.</p> <p>The areas identified for environmental mitigation presented in the outline Environmental Mitigation Maps (APP-041) are indicative and represent how the required environmental mitigation, as stipulated in the Environmental Management Plan (APP-019), could be achieved. The location of the areas identified for environmental mitigation have been devised based on professional judgement to ensure in the first instance that the location is appropriate to fulfil its primary purpose of being able to adequately mitigate for an identified potential impact (e.g., required woodland planting to avoid identified severance impacts for bats and birds at a particular location). In addition to this, collaboration with other environmental disciplines and with design engineers was also undertaken to ensure identified areas of environmental mitigation would be practicable, achievable and capable of minimising potential adverse impacts on other receptors, whilst also achieving the primary function of mitigating for an identified environmental impact. As part of this, opportunities to maximise environmental enhancements have also been sought (see woodland planting example above). It should be noted that as the detailed design progresses it may be the case that the layout or location of the environmental mitigation within the Order limits, as currently shown on the Environmental Mitigation Maps (RR-041), will be refined and may need to be altered based on detailed design development and ongoing engagement with landowners. Importantly, however, this could only be done insofar as the layout complies with and delivers on the Environmental Management Plan Rev 2 (REP-004) and the Project Design Principles Rev 2 (REP3-040).</p> <p>Relating to mitigation identified for and within each scheme and the question of "how the Applicant got from need to provision", the approach taken was to locate the required environmental mitigation as close as possible to the identified impact or where the affected habitat was expected to be lost. Where this was not possible, an alternative location was</p>

¹ Natural England (2021) The Biodiversity Metric 3.0 (JP039)

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				<p>selected within the scheme area where the loss was anticipated. In a small number of circumstances, it was not possible to locate the required environmental mitigation within the scheme area itself due to other environmental constraints associated with landscape and visual impacts and cultural heritage assets or settings. Consequently, as a last resort, alternative locations were sought within other schemes within the Project where the primary function of the required mitigation could still be achieved. For example, additional areas of woodland have been included in Scheme 8: Cross Lanes to Rokeby to account for the woodland deficit in Scheme 7: Bowes Bypass, due to cultural heritage constraints and the requirement to retain open vistas at this location .</p> <p>As such, it is the Applicant's case that all of the Order land identified as being required for environmental mitigation is required to mitigate the potential adverse effects of the Project and is therefore an integral part of the Project. Such land is required in order to secure the delivery of the wider public benefits of the Project set out in Chapter 3 of the Applicant's document 2.2 Case for the Project (APP-008).</p> <p>In terms of the reference to the Applicant's potential ability to "roll back" the use of its compulsory acquisition powers, as has been noted above, the environmental mitigation design shown on the Environmental Mitigation Maps (APP-041) is an indicative design that must be refined as part of the Project's detailed design, within the constraints of the development consent sought, most notably in compliance with the Applicant's obligations contained in the EMP (Document Reference 2.7, APP-019) and Project Design Principles (Document Reference 5.11, APP-302).</p> <p>However, as discussed at the CAH1, and noted in the Applicant's summary of oral submissions (REP1-007) and as is noted in paragraphs 2.5.1 to 2.5.10 of the Applicant's Statement of Reasons (REP2-012), land required for environmental mitigation is shown in pink on the Land Plans denoting that authorisation is sought for its compulsory acquisition. This is necessary to ensure that the essential environmental mitigation required for the Project can be delivered. However, wherever possible the Applicant's preference would be to acquire, by agreement (achieved through negotiations with the relevant landowner) new rights (including restrictive covenants) to enable the environmental mitigation to be delivered and maintained on the land, without the landowner being deprived of ownership of the land.</p> <p>As is explained in paragraph 2.5.7 of the Statement of Reasons (Document Reference 5.8, APP-299), the power of outright compulsory acquisition is also sought in respect of land required for environmental mitigation as a contingency measure, to ensure that a landowner is not left in a position where the Applicant has acquired rights over the land which enable the Applicant to deliver the mitigation measures required for the Project, but which then preclude the continued beneficial use and enjoyment of that land by its owner. In this scenario, outright acquisition of the land may be the preferred choice.</p> <p>It is important to note that the terms of the Applicant's power to acquire land by compulsion contained in article 19 of the draft DCO, extend only to land which is "<i>required for the authorised development, or to facilitate, or as is incidental to it</i>". Therefore, if it is no longer necessary to acquire land required for environmental mitigation, if for example, satisfactory terms have been reached with its current owner or if the Applicant is satisfied that it could secure the interests in that land by the acquisition of rights and imposition of restrictive covenants and it is content that the current owner would not be deprived of the beneficial use of the land, such compulsory acquisition would no longer be "<i>required for the authorised development</i>" and accordingly, in this scenario, CA powers would not be implemented.</p>

Ref Number	Subject	Response by	Question	Applicant's Response
CA 1.3	Need for CA	The Applicant	Explain why the site construction compound areas are subject to CA and not Temporary Possession (TP). The response should cover the principles applied over the whole application.	<p>In general, to reduce the overall quantity of land required for the Project, the Applicant has sought to accommodate temporary construction compounds within land that is required permanently for the Project for other purposes, such as environmental mitigation or areas that are subject to landscape re-profiling. The Applicant's approach to the compulsory acquisition of land required for environmental mitigation is discussed in detail in its answers to CA 1.1 and CA 1.2.</p> <p>In relation to landscape re-profiling, the Applicant has shown these areas in pink on the Land Plans denoting that the Applicant seeks the power to compulsorily acquire that land, as a 'worst case'. The Applicant's underlying concern is that at this stage in the process, it is not able to guarantee that, where land is required to be re-profiled to mitigate the adverse impacts of the Project, it will also be possible, post-that re-profiling, to return the re-profiled land in a condition that would meet the "reasonable satisfaction" of its current owner, in accordance with the reinstatement provisions of article 29 of the draft DCO. This scenario could arise, for example, where due to the re-profiling, the original landowner was no longer able to use the land for its previous purpose and was therefore of the view that they had been deprived of the beneficial use of the land in consequence of the re-profiling. In this scenario, which of course is very much a 'worst case' scenario, the CA powers could be used by the Applicant to ensure that the re-profiling could still be carried out, thereby safeguarding the deliverability of the Project, albeit that the Applicant would be obliged to acquire the land compulsorily in order to achieve this. In view of this concern the Applicant considers its potential requirement for the land is greater than could be accommodated with the temporary possession power only. As discussed at the CAH1 and as noted in the Applicant's summary of oral submissions [REP1-007] under agenda item 2.2, article 19 of the draft DCO, which is the article that authorises the compulsory acquisition of land, permits the Applicant to acquire compulsorily only so much of the Order Land as is <i>required</i> for the authorised development. The analysis of precisely what land is required can be accurately carried out at a later stage once the detailed design has been fully developed. This principle underlies the Applicant's approach to the proposed use of CA powers over land (including construction compounds) which, ultimately, may only be required temporarily as outlined above.</p>
CA 1.4	Need for CA	The Applicant	Confirm whether the presumption by Penrith Properties of a 6.6m wide cycleway is correct [REP1-120 and REP2-015, page 26]. If so, justify. If not, explain the correct width and are the Order limits justified in practical terms.	<p>The proposed width of the shared cycleway/footway at Ch 9840 (adjacent to plot no 0102-01-20) is 6.5m as shown in 5.18 Engineering Section Drawings Cross - Sections Scheme 0102 M6 Junction 40 to Kemplay Bank (Sheet 1) (APP-334) This comprises a 3m wide cycleway and 2m wide footway with a 1.5m wide separation from the carriageway. This is in accordance with the desirable minimum widths relevant to the speed limit, as outlined in DMRB CD 143. The Applicant must also be cognisant of visibility requirements as well as accommodating street furniture (such as signage and lighting columns) and dealing with any difference in levels as a consequence of the widening. Taking into consideration the above, the speed limit of the A66 and the desire to improve walking and cycling connectivity in and around Penrith, the Applicant considers that the proposed design is appropriate. Taking into account the requirement for a reasonable degree of flexibility for the detailed design to address the above factors and the requirement for the environmental mitigation that has been identified as being required at this location, the Applicant considers that its requirement for the land comprised in plot 0102-01-20 is fully justified.</p>
CA 1.5	Need for CA	The Applicant	The ExA wishes to better understand why the CA of land below and either side of the Trout Beck viaduct spans is sought [REP2-015, page	<p>The compulsory acquisition of land under and adjacent to the proposed viaduct has been sought for a number of reasons.</p>

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			82]. The response should also be made in the context of the physical elements of the viaduct.	<p>Land is required initially for working space to construct the viaduct. It is also required to facilitate the provision of drainage ditches/outfalls, proposed flood compensation and the diversion of utility apparatus. Additionally, the land under and adjacent to the proposed viaduct is required for the provision of two private means of access and the diversion of footpaths 317/009 and 3241/017 (as shown on sheets 4 and 5 of the Rights of Way and Access Plans for Scheme 0405 (APP-344), references 47 and 49 in relation to the private means of access and reference E in relation to the footpath diversion)).</p> <p>Furthermore, the land is required for the purposes of environmental mitigation.</p> <p>In relation to the physical aspects of the viaduct itself, the Applicant would require title to the land on which all structural aspects of the viaduct meet the ground, such as its abutments. The Applicant also needs to be able, during the operation of the Project, to access the adjacent land (including that which lies under the structure) to carry out maintenance over all of the structure. It would also require, as a minimum, the ability to impose restrictive covenants to prevent activities on adjacent land (within the Order limits) that would jeopardise the safe operation of the Project and the stability of the structure. While there is no permanent requirement for the land that is to be used solely for working space, there is a permanent requirement for the use of such land to maintain the viaduct, and for the other uses described above. More generally, the Applicant's established current practice is to acquire the land beneath its structures for precautionary reasons, enabling it to control the use of the land beneath the structure so as to safeguard both the structural integrity of the structure itself and the uninterrupted operation of the highway that the structure supports.</p> <p>In addition to this precautionary approach, there are other reasons why CA powers are sought in the vicinity of the proposed Trout Beck viaduct. For example, outright acquisition is a necessity to facilitate the diversion of a footpath (to ensure that it can be dedicated as highway) and is important in relation to the provision of a private means of access, that is co-incident with a public right of way, to ensure that the land with the benefit of that access can be granted the necessary rights to enjoy 'lawful authority' for such use (see the Applicant's response to TA 1.3 for further information in relation to this aspect), in the event that the Applicant is unsuccessful in negotiating the grant of the required rights.</p> <p>In view of the above important considerations, the detail of which are all to be resolved as part of the Project's detailed design within the confines of the Order limits at this location, it is simply not practicable at this stage to definitively and precisely delineate the extent of compulsory acquisition by, for example, showing where it is envisaged that the compulsory acquisition of rights would be sufficient in a way that would not prejudice the flexibility of the detailed designer to address these competing considerations. The Applicant considers that it has demonstrated that it has a requirement for the land to deliver the Project, and to deliver the wider public benefits that the Project would bring.</p> <p>Following detailed design and ultimately construction, the Applicant will be in a position to exercise compulsory acquisition powers in a way that limits the burden imposed on current landowners, by, for example, compulsorily acquiring rights over land, where rights are sufficient. This need for a flexible exercise of compulsory acquisition powers is discussed in more detail in section 2.5 of the Applicant's Statement of Reasons (REP2-012).</p>
CA 1.6	Need for CA	The Applicant	Explain why CA is being sought on Plot 09-03-26 [APP-310, Sheet 3].	The Compulsory Acquisition and Temporary Possession Schedule sets out that Plot 09-03-26 is required to facilitate the construction of new carriageway on the de-trunked A66 and works to stop up redundant lengths of the de-trunked A66, equestrian track and private

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				<p>means of access and the provision of landscaping and reprofiling. (5.9 Compulsory Acquisition and Temporary Possession Schedule, APP-300).</p> <p>More specifically, plot 09-03-26 has been identified as being required during construction to host a temporary construction compound as illustrated on 2.5 General Arrangement Drawings Scheme 09 Stephen Bank to Carkin Moor, Sheet 3 of 4, (APP-017) and thereafter is required for essential environmental mitigation. The Applicant acknowledges that the Environmental Mitigation Maps for Scheme 09 (Sheet 3) show this area of land as blank. This is a drafting error that will be corrected via errata.</p>
CA 1.7	CA Schedule Omission	The Applicant	<p>Confirm whether the "Moss Family" [REP2-015, page 44] should appear in the Compulsory Acquisition Status of Negotiations Schedule [REP2-020] and if not, why not.</p>	<p>National Highways has undertaken ongoing diligent inquiries as part of the land referencing process for the DCO application. Mr. Peter Moss did not respond to the Land Interest Questionnaire sent on 24 September 2021. He was contacted by email on 9 December 2021, and by phone on 19 January 2022 following the non-return of the questionnaire. Mr. Peter Moss stated that he would not be returning the questionnaire.</p> <p>A representative of Mortham Estate confirmed to the Applicant that Mr. Peter Moss has a Farm Business Tenancy on the Mortham Estate land.</p> <p>The Applicant did not issue a Letter to Negotiate to the Moss Family as based on our understanding of land ownership the Moss Family do not have a Freehold or Leasehold interest in any surface-level land that the Applicant is proposing to acquire permanently, use temporarily, and/or over which it seeks the acquisition of permanent rights. As such the Moss Family are not listed in the Compulsory Acquisition Status of Negotiations Schedule, as they are not being negotiated with at this stage.</p> <p>Based on the Order limits and inclusionary criteria for entering into negotiations for land acquisition, Mr. Peter Moss does not currently need to be cited in the Compulsory Acquisition Status of Negotiations Schedule as it is limited to those with a Freehold or Leasehold interest in any surface-level land i.e. those persons that are capable of granting to the Applicant the interests in land that it requires to deliver the Project.</p> <p>Mr. Peter Moss may be included in negotiations should National Highways enter into mutual negotiations with the Mortham Estate, and/or if compulsory acquisition powers are granted and implemented – e.g. where National Highways may seek to allow Peter Moss to continue to tenant the land for a specified term once acquired by National Highways, and before the land is required for construction and operation.</p>
CA 1.8	Impact from CA	The Applicant	<p>In terms of the Mainsgill Farm Shop, explain "removing their direct access" to the A66 as a result of CA [REP1-102, para 2.5.2] is a component of the measures necessary to achieve the safety objectives of the scheme [REP2-015, page 59].</p>	<p>Improving road safety is one of the core Project objectives. Since 2017, National Highways has been working hard to deliver a safer, more connected A66 for local people, businesses, tourists and other road users between Penrith and Scotch Corner. National Highways proposes to remove potentially hazardous junctions between the A66 mainline carriageway and adjoining minor side roads and/or private accesses, as part of the Project, where practicable.</p> <p>To reduce risk, the Applicant has designed the improvements so that there are no gaps in the central reservation. This prevents dangerous right turn movements into fast flowing dual carriageway traffic. Where appropriate, junctions that are connected to the local road network have been included in the proposals, which enable drivers to safely join and leave the route in the direction of travel only.</p>

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				<p>A separate direct access for Mainsgill Farm Shop onto the westbound carriageway of the new A66 mainline dual carriageway has not been included within the Project due to the proximity of a proposed new all-movement junction which is required in this location (slightly to the west of Mainsgill Farm Shop) to provide connectivity between the new A66 and existing local access roads both north and south of the A66. Providing a separate A66 westbound direct access to Mainsgill Farm Shop in addition to, and located close to, this new all-movement junction would directly result in junction spacing standards being significantly compromised and would be inherently unsafe as a consequence.</p> <p>Mainsgill Farm Shop currently has a direct access onto the existing A66. Within the Project proposals, the existing access to Mainsgill Farm Shop will not be removed; however, for the reasons explained above, this access will be retained onto what will become the de-trunked A66. As noted above, the new junction located approximately 165m to the west of the Farm Shop access will provide local access from the de-trunked A66 to the new A66 dual carriageway, via a grade separated junction, for eastbound and westbound travel, and vice versa. These elements of the project are shown on Sheet 3 of the General Arrangement Drawings for Scheme 09 (APP-017) and on Sheet 3 of the Rights of Way and Access Plans for Scheme 09 (APP-348).</p>
CA 1.9	Impact from CA	The Applicant	Explain how has the "additional space for vehicle turning" for W Austen Richardson Ltd been 'sized' in the context of vehicle dimensions and turning circles [REP1-136, para 2.6.1 and REP2-015, page 64]. Any response could be in a plan form.	Please see the plan within Appendix A to this document which shows an area for a replacement slurry tank and associated indicative swept path arrangement for vehicles to access and manoeuvre within the adjacent space (sketch ref:HE565627-AMY-HAC-S09-SK-CH-701205.). This is located on plot 09-01-19 as shown on Sheets 1 and 2 of the Stephen Bank to Carkin Moor Land Plans (APP-310). The area for the replacement tank has been sized based on the existing tank. Additional space is included, to provide for flexibility in locating the tank. Vehicle swept paths are based on a 16.5m articulated lorry and for a tractor/ trailer combination. Options have been shown for the vehicles to drive in and turn around in one movement or to adopt a stop and reverse manoeuvre. Further discussions will be required with the landowner as to the preferred option and sizing of the tank and turning area to allow refinement where possible, but it is clear from the plan provided in Appendix A that there is sufficient space to accommodate the desired vehicle movements.
CA 1.10	Statutory Undertakers	The Applicant	Set out whether any of the following representations engage s127 of the PA2008. If so, whether agreement is subsequently reached with the Statutory Undertaker (SU) concerned, and whether the Applicant will seek to have the representation withdrawn in writing by the SU. The SUs are: National Grid Electricity Transmission plc [REP1-031]; National Grid Gas plc [REP1-032]; Network Rail Infrastructure Limited [REP1-036 and REP1-037]; Northern Powergrid Yorkshire plc [RR-158]; United Utilities Water Limited [RR-120]; and the Environment Agency [REP1-024].	<p>The Applicant confirms that each of the representations by the statutory undertakers (SU) referred to by the ExA in question CA 1.10 would engage s127 of the PA2008 in the event that the representation was not withdrawn.</p> <p>Discussions with National Grid Electricity Transmission plc, National Grid Gas plc, Network Rail Infrastructure Limited, Northern Powergrid (Yorkshire) Plc and United Utilities Water Limited are ongoing in respect of the form of protective provisions to be included in the draft DCO and any associated side agreement. An update on the status of negotiations was provided at Deadline 2 (REP2-022) and a further update will be provided at Deadline 5 in accordance with the timetable set out in the Rule 8 letter.</p> <p>The Applicant is confident that agreement with the above-mentioned statutory undertakers will be reached prior to the end of the Examination and the representations will be withdrawn.</p>
CLIMATE CHANGE				
CE 1.1	Typographical Error	The Applicant	Clarify whether 'traded tonnages of carbon' be 'non- traded tonnages of carbon' [REP1- 009, Appendix 9, page 75, first bullet point 2].	It is confirmed that the text, " <i>traded tonnages of carbon</i> ", within REP1-009, Appendix 9, page 75, should state " <i>non- traded tonnages of carbon</i> ".

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				It is confirmed that this is a typographical error and has no other impact on the other figures presented. National Highways will provide a further update to the Errata Report (REP3-042), prior to the end of the examination period, which will include this typographical error.
CE 1.2	Typographical Error	The Applicant	Clarify whether '£9.28m Traded emissions' be £28.13m [APP-237, Table 6-9].	<p>It is confirmed that the text, "£9.28m", within Table 6.9 of the 'Combined Modelling and Appraisal Report' (Document Reference 3.8, APP-237), should state "£28.13m".</p> <p>It is confirmed that this is a typographical error within this cell of the table and has no other impact on all other figures presented within the appraisal. National Highways will provide a further update to the Errata Report (REP3-042), prior to the end of the examination period, which will include this typographical error.</p>
CE 1.3	Greenhouse Gas Assessment	The Applicant	<p>The ExA wishes to better understand, in the context of the Proposed Development and in an overview form, the sources of traded and non-traded emissions used in the greenhouse gas assessment in order to understand the nature of the departure from the advice in paragraph 4.1.5 of TAG Unit A3 Environmental Impact Appraisal, where it is suggested that only non-traded carbon values are used [REP1-009, Appendix 9, page 76].</p>	<p>For the reasons set out in detail below, the assessment presented for the A66 Project accounts for both traded and non-traded carbon emissions. National Highways consider it appropriate to value both traded and non-traded carbon in the appraisal as part of a conservative, worst case approach.</p> <p>The emissions have been classified as traded and non-traded as advised in Unit A3 Environmental Impact Appraisal paragraph 4.1.4 which states: <i>'The traded sector covers emissions from power and heat generation, energy-intensive industry, aviation and electricity consumption in transport. The non-traded sector covers all other carbon emissions and therefore includes other types of transport fuel, including petrol, diesel and gas oil.'</i></p> <p>Therefore, with reference to the tables in Issue Specific Hearing 2 (ISH2) Post Hearing Submissions (including written submissions of oral case) Appendix 9 – Climate effects – Note containing explanation of costs in the Combined Modelling and Appraisal Report (REP1-009) the following sources have been classified as follows:</p> <p>Traded:</p> <ul style="list-style-type: none"> • Construction emissions <ul style="list-style-type: none"> • PAS 2080 modules: A1-A3 (Products and materials), and A4 (Transport to works site) - Table 2 • Maintenance emissions <ul style="list-style-type: none"> • PAS 2080 modules: B2-B5 (Maintenance and Replacement) - the materials and transportation associated with maintenance - Table 8 • End user emissions <ul style="list-style-type: none"> • PAS 2080 module B9: (Vehicles using the highways infrastructure) Electricity consumption in transport, Electric vehicles - Table 6 <p>Non-traded:</p> <ul style="list-style-type: none"> • Construction emissions <ul style="list-style-type: none"> • PAS 2080 module A5: Construction processes - Table 2 • Maintenance emissions <ul style="list-style-type: none"> • PAS 2080 modules: B2-B5 (Maintenance and Replacement) - the construction processes associated with maintenance - Table 8 • End user emissions <ul style="list-style-type: none"> • PAS 2080 module B9: (Tailpipe emissions) fossil fuelled vehicles – Table 6 • Land Use Change Emissions <ul style="list-style-type: none"> • PAS 2080 module D: (Land Use and forestry) change in land use due to construction - Table 2

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				<ul style="list-style-type: none"> PAS 2080 module D: (Land Use and forestry) future ability to sequester carbon from habitats gained – Table 4 <p>It should be noted that the Total Project Carbon Valuation of £202.05m as noted in Table 6-9 of the Combined Modelling and Appraisal Report (APP-237) includes a valuation of Traded Carbon Emissions of £28.13m (please see response to CE.1.2 above).</p> <p>TAG Unit A3 reasons that the traded sector caps relevant emissions and creates a market for them. The cost of any permits to cover traded emissions will be reflected in the purchase price of traded sector goods. Since the purchase price is used in transport appraisal, the cost of the relevant permits will be included in the cost benefit analysis (as part of the capital cost).</p> <p>Had the advice in paragraph 4.1.5 of TAG Unit A3 Environmental Impact Appraisal been followed, then the Total Project Carbon Valuation would be £173.91m as the total valuation of traded carbon emissions would be zero. TAG only values the non-traded carbon; however National Highways consider it appropriate to value both traded and non-traded carbon in the appraisal. Therefore, in this regard, the appraisal has followed a conservative, worst case approach.</p>
CE 1.4	Greenhouse Gas Assessment	The Applicant	Explain why the (2021) Carbon emissions calculation tool [REP1-009, Appendix 10, Appendix A] is not referred to in the Greenhouse Gas Assessment [APP-176].	The Environmental Statement Appendix 7.1 Greenhouse Gas Assessment (APP-176) references “the National Highways Carbon Emissions Calculation Tool” (NH Carbon Tool) (National Highways, 2021). This is the same tool as referenced in the IEMA GHG Guidance Appendix A, Potential Stakeholders and Sources of GHG Information (REP1-009), although given a different reference in that guidance as “National Highways Carbon Tool”. Despite the different names, these are the same tool, and it is this tool that has been used for the purposes of the Greenhouse Gas Assessment.
CE 1.5	Greenhouse Gas Assessment	The Applicant	<p>- Explain whether any vehicle trips in the ‘modelled 2029 and 2044 Do-Minimum and Do-Something scenarios’ [APP-050, para 7.11.16 and APP-237, para 5.6.1, Table 5-32 and Table 5-33], that lead to the projected additional greenhouse gas emissions (GHG) emissions from “Vehicles using the highways infrastructure” [APP-050, Table 7-23], represent trip reductions on local roads or the wider UK road network [APP-008, para 4.4.2]. If so, explain what proportion of these additional GHG emissions represent trip reductions elsewhere [APP-237, Figure 3- 11 and para 5.7.3].</p> <p>- Explain whether any such proportion represent part of the “conservative approach taken to quantification of emissions arising from the Project” [APP-050, page 68, footnote 79] in the context of the “Comparison of emissions against UK Carbon Budgets” [APP-050, Table 7-24]. The response should also generally identify trip reductions in terms of the Climate Emergency Planning and Policy contextualisation method</p>	<p>(i) For the reasons explained in detail below, trip reductions are included within the final GHG estimation for the Project.</p> <p>Paragraph 6.2.14 and 6.2.15 of the Combined Modelling and Appraisal Report (Ref 3.8 [APP-237]) states that “The environmental impacts of the Project which are quantified and monetised are listed below.</p> <ul style="list-style-type: none"> noise – changes in noise levels on sensitive receptors (residential properties). air quality – changes in the exposure of people to air pollutants. greenhouse gases – the overall change in emissions of greenhouse gases including carbon dioxide, including an assessment of construction, road user (tailpipe), renewal/maintenance, and corporate/operational emissions. <p>Each aspect is assessed using assigned network flows from the A66TM, for the whole-route, in each modelled time period by vehicle type, at base year 2019 and at forecast years 2029, 2044 and 2051. The modelled network hourly traffic flows are annualised to equivalent 18- hour AAWT (Average Annual Weekday Traffic), for noise, and to 24-hour AADT (Average Annual Daily Traffic), for air quality and greenhouse gases.”</p> <p>Therefore, each road link within the Fully Modelled Area (as defined in paragraph 4.5.1 to 4.5.5 of Combined Modelling and Appraisal Report – (APP-237) is assessed in terms of emissions considering the average daily speed and flow (24-hour AADT) by vehicle type. This is undertaken for each forecast year (2029, 2044 and 2051) for the modelled Do</p>

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			<p>boundaries of the traffic model study area [REP1-013, Section 6.2] and the Cumbria, County Durham, and North Yorkshire planning authority areas.</p> <ul style="list-style-type: none"> - Explain whether the projected reduction in congestion and other improvements in traffic flow conditions along all of the A66 M6 to A1(M) route lead to reduced vehicle GHG emissions for vehicles using the A66 [APP-237, para 5.7.7 to 5.7.18] If so and not taken into account in the 'quantification of emissions arising from the Project', would they also represent part of this 'conservative approach' [APP008, para 3.5.10]. 	<p>Minimum and Do Something scenarios (as defined in paragraph 5.6.1 of the Combined Modelling and Appraisal Report (APP-237)).</p> <p>The Traffic Reliability Area (TRA) has been used as the largest accurate area of the traffic model associated with the Project. The TRA is the area of the traffic model considered to provide reliable estimates of traffic when the base traffic model is compared to observed traffic, this has been defined by considering the area across which the Project can be seen to have an impact, otherwise known as the Affected Road Network (ARN). Using the AADT outputs from this, vehicle kilometres were aggregated to calculate the greenhouse gas emissions for the total Project. Aligning with DMRB LA 114, emissions have been calculated for the Do-Minimum and Do-Something Scenarios for the baseline (2019), Opening Year (2029) and Design Year (2044). Therefore, the model is used to define the Traffic Reliability Area, which is the area over which a notable change in traffic can be seen - i.e. reduction or increase – aligning with DMRB LA 105, paragraph 2.1. By using this model output the assessment is inherently accounting for 'transfers' of traffic in this way by incorporating both the reductions on some roads and increases on some roads, therefore trip reductions are included within the final GHG estimation for the Project.</p> <p>(ii) The "conservative approach" in footnote 79 of [APP-050] refers, as is relevant to that part of the ES Chapter, to the inclusion of maintenance emissions in the DS scenario, but exclusion of maintenance within the DM scenario as this will be marginal for the existing A66. By including maintenance within the DS scenario this slightly overestimates total GHG emissions associated with the Project, providing a precautionary assessment. This footnote does not relate to the end-user emissions assessment as this question is discussing.</p> <p>In terms of contextualisation, please see the Applicant's detailed response that is provided in Appendix 1 to the Applicant's Response to Written Representations made by other Interested Parties at Deadline 1 - Rev 1 (REP2-017), pages 78 – 81. This provides a full and detailed explanation of how the GHG assessment for the A66 Project has been contextualised, which is against national carbon budgets.</p> <p>The Climate Emergency Planning and Policy method is not very meaningful, for the reasons set out below. In brief, it cannot be demonstrated that a local budget actually represents what the Government would adopt as a regional trajectory were it to undertake the exercise. Appraisal against a trajectory which is not demonstrably consistent with Government policy is not a meaningful exercise, is not required by the EIA Regulations or the IEMA Guidance and should not be given any material weight in the decision-taking process.</p> <p>The Applicant notes that there is no statutory basis or established framework (i.e. DMRB or IEMA) to contextualise or assess GHG emissions at a local level, and such a local contextualisation is not required by law, by the National Policy Statement for National Networks (NPS NN) nor by DMRB or IEMA Guidance. Local/regional carbon budgets have no basis in law or policy and cannot reflect how Government would distribute the national carbon budget.</p> <p>The position with regard to local carbon budgets was recently examined by the High Court in <i>Bristol Airport Action Network Co-Ordinating Committee v Secretary of State for Levelling Up, Housing and Communities [2023] EWHC 171 (Admin)</i>. Ground 4 of this case</p>

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				<p>asserted that the Panel (in a Planning Inspectorate appeal) had erred in law in discounting the impact of expansion of Bristol Airport in relation to the local carbon budget of the local council, North Somerset Council.</p> <p>Justice Lane rejected that there is any basis in law to assess a project against local carbon budgets. The judgment states:</p> <p><i>“Applying these principles, I am in no doubt that the Panel did not act irrationally in giving the issue of local carbon budgets no weight, on the ground that such budgets have no basis either in law or in policy. They plainly have no basis in law. Contrary to [the Claimant’s] submission, the fact the fact that they have no basis in policy is significant, given that, in the planning field, we are concerned with decision-making which is intensely concerned with matters of policy.</i></p> <p><i>The fact that [the Claimant’s expert] evidence on this issue was not contradicted by [Bristol Airport Limited’s; BAL] climate expert did not, therefore mean the Panel had no alternative but to ascribe weight to what [the Claimant’s expert] had said about local carbon budgets.</i></p> <p><i>BAL makes the point that its EIA had focussed on aircraft emissions in the national context. As the IEMA Guidance indicates, this is one of the ways of assessing the impact of a project. Indeed, in the present context, looking at the effect of the Airport’s expansion proposal in the national context was manifestly appropriate, for the reasons I have already given. I accordingly find that the Panel was entitled to ascribe no weight to the evidence about the local carbon budget”.</i></p> <p>Further, the IEMA Guidance advises that:</p> <p><u>“Effects of GHG emissions are not geographically circumscribed so a geographic budget (below a national budget...) is not very meaningful...Its unclear whether emerging local authority or regional budgets will add up coherently to the UK budget.”</u></p> <p>(iii) As discussed above the ‘conservative approach’ refers to the maintenance issue within the footnote of the climate chapter.</p> <p>Improvements, such as congestion changes associated with the Project and vehicle efficiencies, are included within the traffic model and associated GHG calculations. The carbon factors associated with road types and speed categories from the Emission Factor Toolkit (v11) align with congestion changes within the model to ensure this is accounted for within the assessment approach.</p>
CE1.6			<p>Explain whether the Outline Carbon Strategy [REP3-043] makes “quantifiable carbon reductions a fundamental part of local transport planning and funding” as required by the Transport Decarbonisation Plan, SoST, July 2021 [REP3-068, para 20(a)(2)]. If so, how and if not, why not.</p>	<p>The purpose and content of the Outline Carbon Strategy [REP3-043] is defined within the Environmental Management Plan [latest version being REP3-004], Table 3.2 Commitment reference MW-CL-01. This is a construction phase commitment, and the purpose of this strategy is defined as “Minimising GHG emissions through the construction”, and therefore the content of it is focussed on the measures that will be identified and implemented during construction to further reduce construction-phase GHG emissions. As such, the Outline Carbon Strategy does not make “quantifiable carbon reductions a fundamental part of local transport planning and funding” as it relates solely to construction of the Project and not local transport planning and funding.</p> <p>The Transport Decarbonisation Plan relates to the decarbonisation of all forms of transport and not purely those under the jurisdiction of National Highways – the particular section of the TDP quoted in REP3-068, para 20(a)(2) refers to the approach to be followed by local</p>

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				highway authorities when preparing their local transport plans on the local road network, and not National Highways. National Highway's response to the Transport Decarbonisation Plan is set out in the National Highways Net Zero Plan (Net zero highways: our 2030/2040/2050 plan), which sets out the pathway and actions towards Net Zero for the Strategic Road Network as a whole (including, but not limited to, the A66).
DRAFT DEVELOPMENT CONSENT ORDER (draft DCO)				
DCO 1.1	Article 2 Interpretation	The Applicant	<p>Cycleways and Cycle Tracks – The ExA notes that the definition of cycleway in Article 2 of the draft DCO [REP2-005] has been amended to remove “constituting or” from the definition. The definition of a cycle track remains the same in as much it “has the meaning given to it by section 329(1)(a) of the 1980 Act”. Clarify the following:</p> <p>i) Explain whether the “(a)” in the definition of a cycle track is required as it does not relate to the actual definition but a footnote about how and when the definition was changed. And</p> <p>ii) The definition in the Highways Act 1980 for a cycle track is “a way constituting or comprised in a highway, being a way over which the public have the following, but no other, rights of way, that is to say, a right of way on pedal cycles (other than pedal cycles which are motor vehicles within the meaning of the Road Traffic Act 1988) with or without a right of way on foot.” The ExA assume that the changed cycleway definition is to make clear that cycleways are intended to be part of a wider highway and thus cycle tracks are intended to be a specific route not forming part of a wider highway. Explain whether the definition of cycle track also needs to be amended to clarify they will not form part of a wider highway.</p>	<p>(i) The footnote “(a)” in the definition of “cycle track” is required. Paragraph 3.21.2 of the National Archives’ <i>Statutory Instrument Practice (5th edition)</i> confirms that “A reference in an SI to an Act... should have a footnote giving the year and chapter number..”. It goes on at paragraph 3.21.4 to instruct “Footnote the amendment history of the legislation you have referenced where it is relevant and helpful to the reader. This amendment history may be specific to the legislation you have referenced and only included if relevant to the SI.” In this case, it is considered the footnote is relevant because the definition being applied in this article is one that has been amended.</p> <p>(ii) The Examining Authority is correct that the intention behind the amendment to the definition of “cycleway” in article 2(1) made in the second version of the draft DCO (REP2-005) was to make it clear that, for the purposes of this Order, a “cycleway” is a way comprised only in a wider highway and is not a highway in its own right.</p> <p>In relation to the definition of “cycle track”, having considered the matter further, the Applicant is minded to retain the definition as it currently stands. The definition is applied directly from the Highways Act 1980 and so it is readily understood, and the Applicant can see little benefit in further modifying. In contrast, the term “cycleway” does not benefit from an established legislative definition and so there is benefit to adapting it to more closely reflect its particular use in this draft Order.</p>
DCO 1.4	Article 53 Environmental Management Plans (EMP)	The Applicant	<p>As the ExA understand it, the criteria for the Secretary of State to discharge an EMP for a given part is contained within paragraphs 1.4.8 to 1.4.51 of the first iteration Environmental Management Plan [APP-019]. These are known as “the Consultation and Determination Provisions” in the draft DCO [REP2-005].</p> <p>- The ExA wishes to better understand how the mechanism for approving the second iteration EMP is controllable and enforceable if they are contained within the</p>	<p>National Highways has responded to each ‘sub-point’ below in turn.</p> <p><u>Consultation and determination provisions</u></p> <p>The term “consultation and determination provisions” is defined in article 53(12) of the draft DCO [REP2-005] as “...the provisions contained in paragraphs 1.4.9 to 1.4.51 of the EMP that set out the matters on which consultation is required and the procedures that apply to the conduct of that consultation and which require the undertaker to maintain functional separation when making determinations under this article...” (our emphasis).</p>

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			<p>very document that needs approving by the Secretary of State. Because it won't have been approved by the SoS at the point of submission, the measures contained therein particularly around the 20-day timescale for responses from Consultees will not be legally binding or agreed by the Secretary of State, making them potentially unenforceable. Provide a response.</p> <ul style="list-style-type: none"> - The definition of "Consultee" as defined in paragraph 1.4.16 of the EMP is stated as meaning "the person or persons that [The Applicant] is required to consult in relation to the Consultation Material". The ExA seeks clarification as to whether this also refers to the Secretary of State. - In so doing, paragraph 1.4.20 of the first iteration EMP states "Each consultee is entitled to respond to the consultation within the Consultation Period (which is 20 working days from the date after the Consultation Material is issued by the Authority. If any Consultee does not provide a response within the Consultation Period, that Consultee is deemed to have made no comments." The ExA seeks clarification as to whether the Secretary of State is bound by time limits and if so, whether the Order should compel the Secretary of State in this way. - The ExA is concerned about the timescales outline in paragraph 1.4.20. Whilst a working 20-day period maybe the standard practice in other made DCOs, the EMP process contained within Article 53 is not. A singular EMP for each part (which the Applicant acknowledges may include part of a Scheme or even more than one Scheme) [REP2-016] of the Proposed Development is likely to be a sizeable document, and likely to need greater resourcing from the Secretary of State and the Consultees to determine. The Applicant has offered no evidence that the Secretary of State has sufficient resources to comply with such a timescale. It is also not clear why the EMP consultation period is 20-working days, yet 	<p>National Highways' intention is that this definition should refer to paragraphs 1.4.9 to 1.4.51 within the first iteration EMP, which would be a certified document for the purposes of the DCO and not subject to subsequent approval from the Secretary of State (see the relevant definition in article 53(12)). Should the DCO be made, the first iteration EMP would be certified at that point (pursuant to article 49 of the DCO), with its content (including the "consultation and determination provisions" and the timescales contained therein) fixed, or 'secured', then. Certification of documents by the Secretary of State for the purposes of the DCO effectively confirms the form of documents that are referred to within the DCO for clarity and certainty. It is not intended that the consultation and determination provisions would be contained in a second iteration EMP, for the very reasons the ExA points out in the question.</p> <p>However, National Highways acknowledges that the definition of the "consultation and determination provisions" in article 53(12) should refer to "the <u>first iteration EMP</u>" as opposed to "the EMP". As such, National Highways will amend the next draft of the DCO to reflect this.</p> <p><u>Definition of "consultee"</u></p> <p>National Highways does not consider that the Secretary of State should be added to the definition of "Consultee". This is because the "consultation and determination provisions" are intended to, in the case of a second iteration EMP (or amendments thereto), govern the process National Highways and its principal contractor(s) are required to go through <i>prior to</i> any submission to the Secretary of State for approval (see paragraph 1.4.15 of the first iteration EMP [REP3-004]). National Highways considers it unnecessary in this context (and is not precedented) for the Secretary of State to be formally consulted on documentation that will be submitted to them for approval in any event.</p> <p><u>Secretary of State and time limits</u></p> <p>See response above. It is not intended that the Secretary of State would be formally consulted on any second iteration EMP (or proposed amendment thereto) prior to it being submitted to them for approval, as this would be unnecessary. The "consultation and determination provisions" would not govern determinations made by the Secretary of State for the purposes of discharging the obligations placed on National Highways under article 53 – the Secretary of State would retain ultimate discretion as to how they wish to determine any submission. The "consultation and determination provisions" only govern determinations made by National Highways.</p> <p><u>Timescales (general)</u></p> <p>As a preliminary point and as stated above, the Secretary of State is not intended to be bound by the time periods set out in the "consultation and determination provisions" – these deal with consultation with prescribed parties prior to a submission being made to the Secretary of State for approval under article 53 and <u>not</u> determinations of such a submission by the Secretary of State. The Secretary of State retains discretion in relation to these.</p>

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			<p>the time periods in Article 52 is 28-days. Respond.</p> <p>The ExA recommends that the Consultation and Determination Provisions are made legally binding within the draft DCO [REP2-005] and thus clear to all parties including the Secretary of State. Given the size and importance of the second iteration EMP for each part, the process should not be time limited particularly on the Secretary of State, who should be at liberty to determine for themselves the time needed to discharge Article 53(1) for each part. If Consultees are to be time limited, it should be reasonable given the likely size of EMP for that part. The ExA considers 20-days to be potentially too short.</p> <p>Provide a response and make any necessary amendments to the next iteration of the draft DCO.</p>	<p>National Highways has previously explained its view on the importance of retaining prescribed timescales for consultation with consultees to safeguard the timely delivery of the Project, particularly in its written submissions made following Issue Specific Hearing 2 [REP1-009, see pages 5 and 6 for example]. However, it has also acknowledged that, at times, these could be challenging for consultees and it is for this reason that amendments were made to the first iteration EMP at Deadline 3 [REP3-004] to (a) provide for a mechanism whereby a consultee could request an extension to the prescribed consultation timescales (see paragraphs 1.4.22 and 1.4.29); and (b) provide for a new commitment whereby consultees must be engaged with on a regular basis, to allow a level of informal engagement between the parties prior to formal consultation (see new REAC commitment ref. D-GEN-22). National Highways considers these appropriate mechanisms to mitigate the difficulties the ExA identifies in its question without diluting the effectiveness of the prescribed consultation timescales.</p> <p>Finally, the 20 <u>working</u> days consultation period in paragraph 1.4.21 of the first iteration EMP equates to the 28 (<u>non-working</u>) days used in article 52 of the DCO. As such, the 20 working days time period in the first iteration EMP is considered reasonable and in-keeping with timescales for consultation/decision-making elsewhere in the DCO – it is fair and consistent, to reflect 'actual' available working time.</p> <p>Given all of this, National Highways does not propose to make any further amendments to the first iteration EMP in respect of the timescales set out but continues to discuss these issues (amongst others) with the prescribed consultees as part of the Statement of Common Ground process.</p>
DCO 1.5	Article 53 (4)(a); (7)(a)(ii) EMP	The Applicant	<p>At the ISH 2 held on Thursday 1 December 2022 [EV-003], the ExA expressed concerns with the words "materially new or <u>materially worse adverse</u>"; the emphasis being the latter words herein underlined. The ExA notes the Applicant's response [REP1-009] to the reason for their inclusion, which is explained as primarily allowing for changes to the first iteration EMP which would improve the environmental effects.</p> <p>While the ExA accepts the need for flexibility, the inclusion of the words "materially worse adverse" could potentially permit a change which considerably worsens the environmental effect and thus would extend beyond the scope and assessment of the environmental statement. Such flexibility could potentially undermine both the conclusions and mitigation proposed in the second iteration EMP, and/or the Habitats Regulations Assessment upon which the Secretary of State's Appropriate Assessment is based. The ExA considers any changes should not be worse than those scoped and assessed in the Environmental Statement.</p>	<p>At the outset it should be noted that there is no provision in the DCO, or in the first iteration EMP itself, intended to permit any change to the first iteration EMP. If development consent is granted the first iteration EMP would be 'fixed' and certified in accordance with article 49 of the draft DCO. Article 53 is concerned with how the first iteration EMP would then be developed into second iteration EMPs and then into third iteration EMPs. The Applicant's response to DCO 1.4 discusses the operation of this article in more detail.</p> <p>Turning to the substance of the question, it remains the Applicant's view that its preferred drafting of "not give rise to any materially new or materially worse adverse environmental effects" would not permit anything that "<i>considerably worsens the environmental effect</i>". Any "<i>considerable worsening</i>" would be material, and would therefore, be beyond the scope of the discretion afforded by the Applicant's preferred drafting. In a similar vein, it is apparent that any worsening that had implications for the appropriate assessment would also be "material" and therefore beyond the scope of the discretion afforded by the Applicant's preferred drafting.</p> <p>The Applicant is grateful to the Examining Authority for suggesting an alternative form of words, but the Applicant notes that this form of words is without precedent. In contrast the Applicant's preferred drafting has precedent in both the A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016 and a very similar formulation was included in the A57 Link Roads Development Consent Order 2022 (in some instances on the recommendation of that ExA) and which was adopted by the Secretary of State in making that Order.</p> <p>The Applicant's preference, therefore, remains with its precedented formulation.</p>

Ref Number	Subject	Response by	Question	Applicant's Response
			<p>As a suggestion, the ExA recommends that the wording in both subparagraphs is amended to say: "...be substantially in accordance with the first iteration EMP insofar as it relates to the relevant part of the authorised development, unless the Secretary of State is satisfied that any part of the second iteration EMP would result in a betterment of the environmental effects, or that it would not give rise to any materially new or materially worse environmental effects to those reported in the environmental statement". The suggested wording would provide the flexibility the Applicant is seeking as set out in its response to the ISH 2 at Deadline 1, while at the same time ensuring changes would remain within the Rochdale Envelope.</p> <p>Provide a response.</p>	
DCO 1.7	Article 54 Detailed design	The Applicant	<p>In relation to WQ BHR 1.1 and LV 1.1, consider whether any additional documents to be submitted into the Examination on the Trout Beck Bridge and the Cringle Beck and Moor Beck viaducts as suggested in those question need to be Certified Documents in Schedule 10 and listed within Article 54 given the importance of the designs of the said structures.</p>	<p>Please see National Highways' responses to WQ BHR 1.1 and LV 1.1. No additional documents are proposed to be secured under article 54 for the reasons set out therein.</p>
DCO 1.8	Article 55 Time limit from when development must begin	The Applicant	<p>The ExA requests a response from the Applicant as to whether this Article ought to contain an end date for the development's commencement. This would prevent a scheme enjoying a perpetuity consent which could be implemented at a point whereby the environmental information may be out of date.</p>	<p>As is explained in paragraph 10.27 of the Explanatory Memorandum [REP2-007]; that is already the effect of article 55(1). It specifies that the authorised development "<i>must not begin later than the expiration of 5 years beginning with the date on which this Order comes into force.</i>" After the expiration of this five year period, the authorised development cannot begin and so the development consent is not a 'perpetuity consent'.</p> <p>It uses the word "begin" rather than "commence" in order to be consistent with section 155 of the Planning Act 2008, which is applied by paragraph (2).</p> <p>It should be noted that this article merely seeks to apply the "default" provisions for the duration of an order granting development consent in section 154 of the Planning Act 2008 which is prescribed in Regulation 6 of the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015. The only modification from the default provision is to allow that 5 year period to run from the date on which the Order "comes into force" rather than on the date the Order is made. Commonly, development consent Orders come into force around two weeks after they are made.</p> <p>The principle behind this provision is very well precedented and would usually appear in Schedule 2 (requirements). Given that this provision does slightly modify the statutory "default" position the Applicant considered that it was most appropriate for it to appear in the main body of the Order, rather than to have it stated in the first iteration EMP.</p>

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ENVIRONMENTAL MANAGEMENT PLAN				
EMP 1.1	EIA Regulations Compliance	The Applicant	<p>S30(2)(b)(i) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017, in relation to approve an application (for development consent), states amongst other things that a decision must contain:</p> <ul style="list-style-type: none"> - The reasoned conclusions of the Secretary of State...on the significant effects of the development on the environment, taking into account the results of the examination referred to, in the case of an application for an order granting development consent in Regulation 21. - A description of any features of the development and any measures envisaged in order to avoid, prevent or reduce and, if possible, offset, likely significant adverse effects on the environment. - Any monitoring measures considered appropriate by the Secretary of State or relevant authority, as the case may be. <p>Regulation 21 of the said Regulations requires the Secretary of State, amongst other things, to examine the environmental information; reach a sound conclusion on the significant effects of the Proposed Development on the environment.</p> <p>Provide an explanation as to how the Secretary of State, in making the Order for development consent, can discharge their duties under the said Regulations, having regard to the information contained within the first iteration of the Environmental Management Plan [APP-019 to APP-042] and the powers contained within Article 53 of the draft DCO [REP2-005].</p>	<p>National Highways acknowledges the provisions of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (the Regulations) cited in the question.</p> <p>National Highways has assessed the impacts of the Project on the environment and reported the likely significant effects in the Environmental Statement that accompanied the application for development consent as required by the Regulations.</p> <p>The Environmental Statement sets out, where necessary, additional mitigation measures that are required to be implemented to reduce, minimise or remove any likely significant effects reported. It is these reported mitigation measures that have informed and been 'transposed' into the first iteration EMP so that they are secured and legally enforceable through the mechanisms contained in the DCO, specifically article 53.</p> <p>However, the precise way in which certain mitigation will be implemented cannot be confirmed at this stage, in the absence of a detailed design and construction methodology. It is for that reason that there is, effectively, a two-stage process for securing mitigation:</p> <ul style="list-style-type: none"> (i) the first iteration EMP sets out the mitigation principles or outcomes to be achieved by the Project; and (ii) a second iteration EMP contains the detailed measures for achieving those principles or outcomes, in particular by way of a number of detailed management plans and method statements, as informed by the detailed design and settled upon construction methodology post-consent. <p>Article 53 of the draft DCO sets out the legal mechanisms for ensuring both 'stages' are legally secured and enforceable, thus 'binding' the Project to the mitigation measures and outcomes set out.</p> <p>This is through a second iteration EMP (including the relevant management plans and method statements) for a part of the Project being required to be subject to Secretary of State approval prior to works commencing on that part (article 53(1)). Such a second iteration EMP must be 'substantially in accordance' (article 53(4)(a)) with the first iteration EMP, ensuring the environmental principles or outcomes in that first iteration EMP are 'followed through' and built on in a second iteration EMP. The content of the first iteration EMP is 'fixed' should the DCO be made, as it would be certified for the purposes of the DCO.</p> <p>Ultimately, the first iteration EMP secures and confirms the environmental 'envelope' within which the Project can be constructed, as informed by the Environmental Statement – this ensures the reported likely significant effects will be adequately controlled, achieving the environmental 'outcomes' reported. This is then built upon in detail in a second iteration EMP, which is subject to Secretary of State approval. If a second iteration EMP is not approved (because, for example, the Secretary of State is not satisfied a second iteration EMP contains the necessary measures or provides sufficient detail as to their effectiveness), works cannot start.</p> <p>As such, the Secretary of State will have sufficient certainty (and indeed control, post-consent, through the necessary approvals) as to the effects of the Project on the</p>

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				<p>environment, by way of the Environmental Statement and the mechanisms contained in article 53 of the DCO (and therefore through the first iteration EMP and second iteration EMPs) to secure the effects reported in that Environmental Statement.</p> <p>It should be noted that what is proposed in respect of the Project is, in substance, no different to the 'standard' way mitigation measures have been secured through DCO requirements to date (National Highways has commented on this previously in its written submissions post Issue Specific Hearing 2 [REP1-009]). In particular, on previous highways DCOs, the Secretary of State has approved an approach whereby detailed 'schemes' or 'management plans' are subject to post-consent approvals (see paragraph 4 of schedule 2 to the A57 Link Roads Development Consent Order 2022 and paragraph 4 of schedule 2 to the A47 North Tuddenham to Easton Development Consent Order 2022, as examples – there are many more).</p> <p>The granting of a DCO in those instances has therefore not been subject to that detail being provided, in recognition that detailed designs and construction methodologies are routinely not available pre-consent. As such, the approach secured through article 53 of the DCO and the EMPs is very much a 'tried and tested' model of securing mitigation and therefore environmental outcomes, thereby allowing the Secretary of State to discharge their duties under the Regulations.</p>
FLOOD RISK, DRAINAGE AND WATER QUALITY				
FDW 1.4	Flood Risk Modelling	The Applicant	The ExA understands that a written response alongside sensitivity testing reports, to address EA comments regarding the baseline flood models, have been issued to the EA for their review [REP1-009, Section 2, Agenda Item 3.3] and that this review has raised various issues that need to be addressed [REP3-061, Table 1]. Explain whether these issues been addressed and whether the outstanding matter can be closed. If not, explain with which party does this matter currently lie and when is the next action expected to be completed.	National Highways are engaging with EA on the hydraulic modelling written response and sensitivity testing reports and as such we are not yet able to respond to the issues which have been identified as referred to in Table 1 of the Principle Areas of Disagreement Statement [REP3-061]. National Highways is liaising with the EA and a response is expected to be received from the EA in late February 2023. When such response is received, National Highways will work with the EA to address any issues identified – we note from the Principle Areas of Disagreement Statement that the EA considers that there is a "high likelihood" of the concern being addressed during the examination.
FDW 1.5	Flood Risk Assessment	The Applicant	Explain whether the 50% climate change allowance sensitivity check relates to the 'Upper end: Total potential change anticipated for the '2080s' (2070 to 2115)' [APP-221, para 14.2.2.35 and Table 4]. If not, why not.	The 50% climate change allowance is the upper end allowance for the 2070s epoch (2061 and 2125) in the Cumbria region. This is based on the latest EA's Climate Change Allowances for Peak rainfall in England (Climate change allowances for peak river flow in England (data.gov.uk)). Note, in addition to the increase in the published climate change allowance (May 22), the epoch and design life dates also changed, but this has no material effect on the design calculations.
FDW 1.6	Flood Risk Assessment	The Applicant	Explain whether the Proposed Development would reduce the risk of flooding for any of the surrounding area [NNNPS Para 5.103]. If so, set out whether this risk would be reduced and what benefits would arise.	<p>The hydraulic modelling reports contained in Annex E of the Flood Risk Assessment (APP-221) show depth difference maps and flow/level tables which highlight areas where flood risk is reduced. These- reductions are considered to be within the tolerance of the model and not reported as benefits.</p> <p>While this is a linear scheme, in general terms, it follows an existing road corridor so many of the opportunities to use linear infrastructure to reduce flood risk have already been realised.</p>

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				The Statutory Environmental Bodies require open span structures with natural beds for watercourse/flood plain crossings and these have been incorporated into the design. This removes opportunities to throttle river flows in these locations. Where the Project affects existing culverts the design seeks to keep the capacity similar to existing to ensure upstream and downstream flood risk is not increased.
FDW 1.7	Preliminary Drainage Design	The Applicant	Explain how the additional drainage system storage for attenuation, designed for a 40% climate change uplift, would manage flows under the sensitivity check for 50% climate change uplift [APP-221, para 14.2.2.110 and REP2-016, page 27]. The response should cover the Proposed Development in its entirety.	<p>The drainage system for the Project has been designed in accordance with the DMRB CG 501 which requires the calculations to include 20% uplift in peak rainfall intensity (climate change allowance) and a sensitivity test for 40% uplift in peak rainfall intensity (now 50% in Cumbria following the increase in published climate change allowance in May 22). The way the difference in flows/volume between the 20% and 50% allowances are accommodated and would be managed in the system varies for each drainage network, typically:</p> <ul style="list-style-type: none"> • For networks with an attenuation pond, the pond shape/slopes/depth will be refined to accommodate the increase in volume. Alternatively, where this is not achievable within the Order Limits, the additional volume will be accommodated within the pond freeboard allowance. • For networks with oversize storage pipes, pipe sizes will be increased to accommodate the additional volume. Alternatively, the additional volume will be held within the highway boundary. • For networks where the proposed flows are less than existing, the discharge rate can be increased, minimising the need for further attenuation, without increasing downstream flood risk.
FDW 1.8	Preliminary Drainage Design	The Applicant	For Scheme 06, the ExA wishes to better understand how the level for level flood compensation volumes to be provided compare with those lost and under what conditions and how these would come online and drain, notwithstanding their hydraulic connectivity with the floodplain [APP-221, para 14.2.5.131 and Table 25 and REP1-024, page 26].	<p>This request is related to the Environment Agency's Written Representation (page 29 of Applicant's Response to Written Representations, REP2-016), which requests how much flood storage is lost due to the scheme and the flood magnitude at which both the lost storage and the compensatory storage comes online. National Highways are currently working on this matter with the EA and have shared a draft Flood Compensation Supplementary Information report with the EA to explain the volumes and function compensation areas and assist the EA with their ongoing review. National Highways will meet with the EA in late February 2023 with a view to reaching agreement on these matters and the position will be updated in the SoCG, which will be submitted at Deadline 5 of the examination.</p> <p>For all schemes which require flood compensation, including the Appleby to Brough scheme (Scheme 06), level-for-level flood compensation areas replicate lost volume at the same elevation where possible. On steep catchments this is not appropriate as the level (in mAOD) of the loss area may be significantly lower than the floodplain compensation area. Where this occurs, a "relative level" approach is used to replace the lost volume, based on the difference in flood level between the loss site and the gain site. The areas are hydraulically linked to flood plains and will fill during large flood events and drain back to the watercourse by gravity when flood levels reduce.</p>
FDW 1.9	Preliminary Drainage Design	The Applicant	For each scheme, provide a set of plans to identify 'level for level' compensation and 'indirect storage (or volume for volume compensation)' areas [APP-221, para 14.2.5.132 and Plate 4]. This set of plans should be in a similar format to the environmental mitigation maps [APP-041] and could be added to the mitigation maps if the Applicant considers this to be a better way of comprehensively	<p>Flood compensation areas have been designed for the Main Rivers in Scheme 4,5 and 6. A separate set of plans has been prepared (see Appendix B of this document) to highlight the compensation areas proposed for these schemes. The plans are based on the Environmental Mitigation plan style and sheet numbering system. For clarity, only sheets that include flood compensation areas have been provided.</p> <p>The location and shape of the mitigation measures shown on the plans provided demonstrate how they can be incorporated into the detailed design of the Project, but are subject to re-location and/or further refinement at the detailed design stage, in accordance</p>

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			identifying the future purposes of land within the Order limits in terms of any Compulsory Acquisition of land and rights.	with the provisions of the Environmental Management Plan (Application Document 2.7, [APP-019] as updated) and the Project Design Principles (Application Document 5.11, [APP-302] as updated), see in particular measures D-RDWE-12 (which requires consultation with the statutory bodies that possess functions relevant to the control of flood risk) and D-RDWE-13 (which requires further hydro morphology and geomorphology assessments to determine flood compensation storage requirements) and D-RDWE-14 (which makes provision for further flow modelling in relation to the works associated with Warcop Junction). Subject to detailed design carried out in accordance with the Environmental Management Plan and Project Design Principles, other flood compensation areas may be required in other areas of those Schemes or in respect of other Schemes and so, in relation to land requirements the plans contained in Appendix B are not definitive..
FDW 1.10	Preliminary Drainage Design	The Applicant	For the 'proposed volume for volume flood compensation storage adjacent to Moor Beck at Warcop Junction' [APP-221, para 14.2.5.132 and Plate 4], the ExA wishes to better understand how the scheme would be designed, whether it would be excavated into existing floodplain, how (and at what return period/ flow magnitude) it would fill and how it would subsequently drain.	<p>National Highways are currently working on this matter with the EA and have shared a draft Flood Compensation Supplementary Information report with the EA to explain the volumes and function compensation areas and assist the EA with their ongoing review. National Highways will meet with the EA in late February 2023 to reach agreement on these matters and the position will be updated in the SoCG, which will be submitted into Deadline 5 of the examination.</p> <p>The flood compensation adjacent to Moor Beck at Warcop Junction is excavated into the existing flood plain with an embankment located around it to limit the pass forward flow of water and limit conveyance downstream during a large flood event, this will artificially hold back water in the compensation area. The model shows the compensation area will start to fill somewhere between the 1 in 2 and 1 in 10 year return period events. This compensation area has been designed for events up to and including the 1 in 100 year return period plus 94% climate change allowance. The volume lost from the flood plain for the 1 in 100 year return period plus 94% climate change allowance is approximately 12500m³, the compensation volume provided is approximately 15500m³. This allows for refinement of the models following EA comments and during the detailed design stage. The area will drain by gravity back into Moor Beck when the flood level reduces.</p>
FDW 1.11	Drainage Asset Transfer	The Applicant	Explain how the transfer of drainage assets would take place from local authorities to the Applicant in the context of Cumbria County Council's request for a review of asset condition and formal agreement [REP1-019, para 5.5].	<p>National Highways has understood this question to refer to the transfer of drainage assets from National Highways to the Local Authorities. However, for completeness, National Highways can confirm that except where there is a direct design interface and therefore incorporation into and resolution within the detailed design of the Project, we are not expecting to acquire / receive any drainage assets from Local Authorities as a part of the Project. For the completed works, the drainage assets maintenance would be incorporated into the maintenance of the highways that they serve.</p> <p>National Highways proposes that highway drainage would transfer to the relevant Local Highway Authorities pursuant to the provisions of the Development Consent Order that would transfer the maintenance responsibility for the highways that they serve (see the Applicant's response to TA 1.1 for more information on the relationship between the draft DCO and the de-trunking agreements).</p> <p>National Highways has submitted de-trunking proposals to each local authority for comment on the dates shown below.</p>

Ref Number	Subject	Response by	Question	Applicant's Response																																
				<table border="1"> <thead> <tr> <th rowspan="2">Status</th> <th colspan="2">CCC</th> <th rowspan="2">DCC</th> <th rowspan="2">NYCC</th> </tr> <tr> <th>Element</th> <th>Date</th> </tr> </thead> <tbody> <tr> <td rowspan="5">Draft – Version 00</td> <td>Structures</td> <td>14/09/2022</td> <td rowspan="5">20/09/2022</td> <td rowspan="5">5/09/2022</td> </tr> <tr> <td>Pavement</td> <td>31/08/2022</td> </tr> <tr> <td>VRS</td> <td>18/08/2022</td> </tr> <tr> <td>Drainage</td> <td>8/09/2022</td> </tr> <tr> <td>Other assets</td> <td>21/09/2022</td> </tr> <tr> <td rowspan="2">Draft – Version 01</td> <td>Structures</td> <td>20/09/2022</td> <td rowspan="2"></td> <td rowspan="2">10/10/2022</td> </tr> <tr> <td>Other assets</td> <td>30/11/2022</td> </tr> <tr> <td>Draft – Version 02</td> <td></td> <td></td> <td></td> <td>30/11/2022</td> </tr> </tbody> </table> <p>National Highways acknowledge that for drainage assets, the inventories and / or condition surveys are incomplete. Whilst these assets have historically, performed adequately (and continue to do so) there is the requirement for normal maintenance expenditure to keep them operating as required. National Highways have addressed this, in the de-trunking proposals, by:</p> <ol style="list-style-type: none"> 1) Suggesting prerequisites on the condition grading that must be substantially achieved before handover can take place. 2) Allowing the Local Authority 10 working days from the completion of the surveys mentioned in (1) above, to respond in writing to explain why the prerequisites are not, in their opinion, substantially achieved or list any new safety critical defects that require remediation prior to the transfer of those assets. <p>Following confirmation from the Local Authority that the prerequisites are substantially complete or the Local Authority failing to respond to the notification within 10 working days, then the payment where appropriate of a commuted sum*, adjusted for inflation, will then formally transfer all drainage assets associated with that section from National Highways to the Local Authority. If no commuted sum is required then a £1 nominal payment will formally transfer all drainage assets associated with that section from National Highways to the Local Authority.</p> <p>*Those drainage assets at or nearing (defined as less than half) the end of their serviceable life, at the date of handover, will be accompanied with a commuted sum to fund renewal works at the optimal time for an intervention. Rates are based on The Association of Directors Environment, Economy Planning and Transport (ADEPT - formerly the County Surveyors Society) which is endorsed by both CCC and NYCC. For those items that are outside the scope of ADEPT, rates have been based on recent similar Local Authority schemes.</p>	Status	CCC		DCC	NYCC	Element	Date	Draft – Version 00	Structures	14/09/2022	20/09/2022	5/09/2022	Pavement	31/08/2022	VRS	18/08/2022	Drainage	8/09/2022	Other assets	21/09/2022	Draft – Version 01	Structures	20/09/2022		10/10/2022	Other assets	30/11/2022	Draft – Version 02				30/11/2022
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FDW 1.12	Water Quality	The Applicant	Explain whether the 'up to 79.5m' mitigation for the Eamont (Upper) water body catchment in the EMP [APP-019, D-RDWE-08] reflect the 79.5m of additional mitigation required by the WFD Compliance Assessment [APP-220, Table 15]. This point repeats for other catchments.	Yes, the applicant can confirm that the mitigation outlined in Table 3-2 'register of environmental actions and commitments' of the EMP (APP-019) under line reference D-RDWE-08 is reflective of and secures the total length of additional mitigation required and outlined in Table 15 of the WFD Compliance Assessment [APP-220]. This statement is applicable to all waterbody catchments named under line reference D-RDWE-08 which also correspond to the mitigation levels required as outlined in Table 15 of the WFD Compliance Assessment.																																

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HISTORIC ENVIRONMENT				
HE 1.1	Brougham Fort and Castle	The Applicant	<p>Respond to the point made in Historic England's Deadline 1 submission [REP1-026], regarding the scheduled monument known as Brougham Fort (02-0002) being conflated with another scheduled monument, north of the A66, known as "Settlement 1/3 mile (540m) east northeast of Brougham Castle" (03-0004). Both are referred in Chapter 8 of the Environmental Statement Cultural Heritage [APP-051] as "Brougham Roman fort (Brocaum)</p> <p>and civil settlement and Brougham Castle" and given the record number 02- 0002, however HE advises that the monuments are two separate scheduled monuments and therefore should be clearly separated out.</p> <p>The ExA notes that the Project Design Principles has been updated to reflect the two separate assets [REP3-041]. Confirm whether the following documents also need to be updated, as per Historic England's advice:</p> <ul style="list-style-type: none"> - Impact Assessment Tables [APP-187] - Annexe C3: Scheduled Monuments Method Statement [APP-038] 	<p>In National Highways response to Historic England's Deadline 1 submission at Deadline 2 (REP2-016 page 46) agreed to checking and updating documents [APP-187] and [APP-038] in line with Historic England's comments. Further to this check, APP-038 has been amended and will be submitted at Deadline 4 (as Environmental Management Plan Annex C3 Scheduled Monuments Method Statement (Rev 2) (Document Reference 2.7). APP-187 did not require amendment in light of Historic England's comment at Deadline 1 as the impacts were correctly identified and assessed in the table. However, the document will be re-submitted at Deadline 4 (as Environmental Statement Appendix 8.10 Impact Assessment Table (Rev 2) (Document Reference 3.4) following minor amendments to the introductory text which came to light during ongoing engagement with Historic England.</p>
LANDSCAPE AND VISUAL				
LV 1.1	Design of the Trout Beck Bridge and the Cringle Beck and Moor Beck Viaducts	The Applicant	<p>In their Written Representation, Cumbria County Council with Eden District Council [REP1-019.1] state that they require further design information to understand the impacts and design of the viaduct structures proposed, including an illustrative drawing of their appearance and a materials palette.</p> <p>The ExA notes the principles contained within the Project Design Principles document [APP-302], particularly LI04 to LI08, in addition to the submission of the Overview of Design Process for Trout Beck Bridge, Cringle Beck Viaduct and Moor Beck Viaduct document at Deadline 3 [REP3-046] following the ExA's request for the Applicant to do so at the ISH 2 held on Thursday 1 December 2022 [EV-003].</p> <p>Whilst the ExA recognises the Applicant wishes to decide on the detailed designs of the viaduct structures at the detailed design stage, the ExA nevertheless remains concerned that</p>	<p>This response needs to be read alongside that to BHR 1.1 Illustrative visualisations have been prepared by the Applicant in relation to the Trout Beck, Cringle Beck and Moor Beck viaducts as part of the Applicant's Deadline 4 submissions [Document Reference 7.28]. These show an indicative materials palette, for example including the use of a combination of concrete and weathering or painted steel, and a design intent for the structures which interprets the relevant Design Principles contained within the Project Design Principles [Document Reference 5.11, AAP-302]; specifically Design Principles LI04 to LI08 within that document. The illustrative visualisations also show how the proposed structures could sit in their landscape context.</p> <p>The technical approach to the production of these illustrative visualisations is set out in the Applicant's Deadline 4 submission, Viaduct visualisations Technical Note [Document Reference 7.28]. The illustrative visualisations were developed collaboratively with the Project engineers who produced the Aesthetic Appraisal Documents and Structures Options Reports referenced within the Applicant's Deadline 3 submission, Overview of Design Process for Trout Beck Bridge, Cringle Beck Viaduct and Moor Beck Viaduct [Document Reference 7.17, REP3-046]. The illustrative visualisations are consistent with the Design Outcome Objectives contained within that document and the Project Design Principles.</p>

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			<p>insufficient detail has been provided, specifically with regard to the designs and/or commitments/principles for the viaduct structures.</p> <p>The ExA recommends that:</p> <ul style="list-style-type: none"> - The Applicant submits the designs of the Trout Beck, Cringle Beck and Moor Beck viaducts into the Examination; and/or - If that is not possible, either the update the Project Design Principles and/or the Overview of Design Process for Trout Beck Bridge, Cringle Beck Viaduct and Moor Beck Viaduct document with specific design parameters and principles for the three viaducts on which the detailed designs must be based, including specific principles for the supporting piers and their positioning. <p>The Applicant may wish to combine its response with BHR 1.1.</p>	<p>National Highways has noted the request for a materials palette and is considering how this could be incorporated into the detailed design to provide some more certainty as to the visual appearance of the structures in question. National Highways will provide an update on this at ISH3.</p>
LV 1.2	Skirsgill Park	The Applicant	<p>In his Relevant Representation (RR) [RR-033] and WR [REP1-057 to REP1-061], Dr and Lady Leeming propose an alternative planting area within Skirsgill Park on a triangular piece of land between the River Eamont and the M6 highway. Dr and Lady Leeming cite reasons, amongst other things, as better respecting the openness of the park and maintenance of views to and from Skirsgill Hall. The Applicant responded at Deadline 2 [REP2-015] stating that the matter was being considered.</p> <p>Based on the evidence before us, the ExA considers the suggestion would appear to be both logical and sensible, and the ExA requests an update as to whether the Applicant will be consenting to the change. If so, advise whether such a change will be added the forthcoming package of Change Requests and the implications for CA and timescales.</p>	<p>As a preliminary point, the Applicant's existing planting proposals have been informed by the Design Manual for Roads and Bridges (DMRB) LD 117 <i>Landscape Design</i> and are based on mitigating the identified potential effects and losses across the Project, including at this location within Skirsgill Park. Mitigation proposals are based on a number of factors which take into account ecological function, connectivity, proximity to habitat anticipated to be lost, as well as potential landscape impacts. The mitigation is designed in collaboration with ecology, landscape, and cultural heritage technical specialists, so as to ensure, wherever possible, that the proposals do not create any additional potential effects on other receptors.</p> <p>The original woodland habitat replacement planting proposal at this location was to supplement existing areas of woodland within Skirsgill Park with additional tree planting. This was altered to the current location set out in the Environmental Mitigation Maps (Document Reference 2.8, APP-041) following a landowner meeting in November 2021 at which Dr Leeming noted objection to adding woodland to already existing woodland and suggested that it may be better to place all the woodland at the south end of Skirsgill Park (as currently proposed in the DCO application documentation, as noted above).</p> <p>Notwithstanding the rationale (explained above) for this approach, the Applicant has noted the point made by Dr and Lady Leeming in their submissions (REP1-057 to REP1-061) and has carefully considered the proposed alternative location for planting. The Applicant's landscape, cultural heritage and biodiversity specialists have reviewed the landowners' current proposals for an alternative planting area. The Applicant's response, given in REP2-015, identified the need for confirmation that 'the [proposed alternative] area is sufficient for the purposes proposed and that biodiversity options are retained'. On this point, it is worth noting that the selected area of woodland planting is required as woodland habitat replacement to avoid significant effects on that habitat. Any change in location of</p>

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				<p>this planting would need to provide the same area of woodland habitat creation. The currently proposed alternative location, as presented by Dr and Mrs Leeming, does not achieve this requirement as it is too small an area (i.e. it is circa 0.4Ha smaller than the area identified as necessary in the current scheme proposals).</p> <p>As set out in REP2-015 (page 6) the areas of ecological mitigation presented in the outline Environmental Mitigation Maps (Document Reference 2.8, APP-041) are indicative and represent how the required environmental mitigation as stipulated in the Environmental Management Plan could be achieved (Document Reference 2.7, APP-019). As detailed design and consequent mitigation is developed further, it may be that the mitigation requirements change. These proposals are therefore not fixed and will be refined during the detailed design stage, which will include consultation with Dr and Lady Leeming to explore the potential for a planting design which resolves the woodland habitat mitigation requirement alongside the comments made by Dr and Lady Leeming to retain the character of the Parkland and the long views from Skirsgill Hall.</p>
PEOPLE AND COMMUNITIES				
PC 1.1	Brough Hill Fair	<p>Applicant</p> <p>The Representative of the Gypsy and Traveller Community</p>	<p>Several Interested Parties (IPs) make mention of the "Billy Welch straight line route" to the north of the existing A66 that avoids the current Brough Hill Fair site. Provide a plan showing the approximate location of this option.</p>	<p>The Applicant has appended plans to this document, in order to assist with its response to the ExA's question.</p> <p>The first three plans in Appendix C show the approximate location of the "Billy Welch straight line route" against OS background mapping in line with the ExA's drafting request as set out in the Rule 6 letter [PD-006]. These sheets include annotations to highlight key features.</p> <p>The final plan in the set, at the end of Appendix C, shows an unannotated version of the same route against a background of aerial imagery to provide further illustrative context for the route.</p> <p>The alignment shown in the plans has been interpreted from, and therefore considered representative of, a route suggested by Interested Parties.</p> <p>An unannotated plan of this route was discussed during a meeting between the Project team and the local community, including members of the Warcop and Musgrave Parish Councils, in November 2021. As such, those sections of alignment to the west and east of the alternative represent the alignment as it was at that point in time - i.e., the proposals taken to Statutory Consultation. At this meeting, a number of alternative alignments were discussed, including a version of the updated alignment at Sandford now incorporated into the DCO design.</p> <p>Regarding what has come to be known as the "Billy Welch straight line route" (originally proposed by Mr Welch and Warcop Parish Council), meeting attendees were informed that the plan presented did not include drainage infrastructure or environmental mitigation measures, which were expected to be significant given the incursion into the North Pennines Area of Outstanding Natural Beauty. In addition, local topography would require significant earthworks, include large cuttings within operational MoD land, for the route to be constructed (as can be seen on the long sections shown on the plans included in Appendix C).</p> <p>Although this alignment would retain some local accesses, the MoD playing field and the current Brough Hill Fair site, meeting attendees were informed that due to impacts on both the AONB and operational MoD land, the Applicant did not believe this requested alternative alignment to be a deliverable proposal likely to be granted Development Consent. As such, the "Billy Welch straight line route" was not developed or considered further.</p>

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PC 1.2	Brough Hill Fair	<p>Applicant</p> <p>The Representative of the Gypsy and Traveller Community</p>	<p>At ISH2 held on Thursday 1 December 2022 [EV-003], mention was made by Mr Welch concerning the gypsy and traveller community's concerns over the safety of horses on the proposed site. The Brough Hill Fair Technical Note [REP3-045] analyses a number of close boarded fence options that form both a noise barrier and horse safety fencing.</p> <p>For the Applicant:</p> <p>Provide details of the height of fence being proposed as the barrier along the site.</p> <p>For the Representative of the Gypsy and Traveller Community:</p> <p>Comment on the suitability and height of a close boarded fence to prevent horses getting onto the A66</p>	<p>The Brough Hill Fair Technical Note [REP3-045] referenced by the Examining Authority presented an indicative range of boundary fence heights.</p> <p>Based on the outcomes of this assessment and consideration of the safety requirements for the site, the Applicant currently favours an arrangement comprising a solid impermeable fence without gaps or holes, with a height of 2.0m. Details of this fencing arrangement, which may be softened visually with landscaping and planting, will be confirmed during the detailed design stage.</p>
PC 1.3	Brough Hill Fair	The Applicant	<p>Cumbria CC and Eden DC in their response [REP2-028] to the Applicant's ISH2 post Hearing Submissions [REP1-009], note that "Cumbria CC has been asked by the Applicant to consider taking on responsibility for future management of the Brough Hill Fair. The Council is not willing to take on this responsibility and it understands that the Ministry of Defence is unwilling to continue in this role." Clarify for the proposed site for the Brough Hill Fair who will be taking on its management.</p>	<p>The Applicant is aware of the views of Cumbria County Council, Eden District Council and the Ministry of Defence in relation to the long term management of the replacement Brough Hill Fair site.</p> <p>Discussions on this issue are ongoing, therefore at this point it is not possible to give a definitive answer to who will bear this responsibility.</p> <p>However, the Applicant notes that the replacement Brough Hill Fair site is Crown land and so the Applicant's development consent Order cannot authorise the compulsory acquisition of the Crown's interests. The Applicant anticipates that the responsibility for managing the replacement Brough Hill Fair site will be one of the matters that will be determined as a result of those discussions and in the terms of the consent to be granted by the MoD for the use of the land.</p>
PC 1.4	Warcop Proposed Footpath	The Applicant	<p>Warcop PC in their respective RR and WR [RR-013] and [REP1-137] suggested the Applicant should consider a new pedestrian footpath. The Applicant has responded [REP2-107] stating that a designated funds application has been submitted to undertake a feasibility study for this footpath provision. Provide:</p> <ul style="list-style-type: none"> i) An update of this application. ii) A plan showing the proposed footpath. And iii) An update as to the next steps in delivering the footpath assuming the funds application is granted. 	<p>The designated fund application was reviewed by the National Highways investment decision committee on 30 January and has been approved for feasibility funding and will commence soon. The application is for a feasibility study for an active travel route that will connect Warcop Primary School and Red Squirrels Nursery to Warcop Village, likely at Brookside. A plan showing the proposed footpath is not available as the exact route will be explored during the feasibility stage and is subject to landowner agreement. This engagement will be undertaken now that funds for the feasibility study are granted. Once the feasibility study has been procured and completed, a further bid for detailed design and implementation funding will be undertaken. The Applicant welcomes the support of the local community, including Warcop PC, in developing and implementing this scheme.</p>

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TRAFFIC AND ACCESS				
TA 1.1	Detrunking Arrangements	<p>The Applicant</p> <p>Cumbria CC</p> <p>Durham CC</p> <p>North Yorkshire CC</p>	<p>Provide an update on progress of detrunking agreements. Although not part of the Application the ExA needs to establish that any recommended DCO wording will correctly reflect any agreements made between the Applicant and LHA's concerning detrunking arrangements.</p>	<p><u>Update on progress of de-trunking agreements</u></p> <p>Cumbria County Council (CCC) shared a working draft of their <i>Detrunking Principles Document</i> with National Highways and separately with Durham County Council (DCC) and North Yorkshire County Council (NYCC) in April 2022.</p> <p>In September 2022, National Highways submitted de-trunking proposals back to the Local Highway Authorities that are considered to both meet the 'spirit' of the CCC <i>Detrunking Principles Document</i>, where feasible, but also working within the constraints and limitations associated with existing assets. NYCC's March 2022 Interim Guidance Note 28, available on their website, was also considered in the development of these proposals.</p> <p>These de-trunking proposals submitted by National Highways advised that a number of aspects required further consideration and that some aspects of the CCC <i>Detrunking Principles Document</i> are unachievable. For example, the residual serviceable life that has been specified for assets, including those for which there is no recognised means of assessment. In other instances, a residual serviceable life has been specified by CCC that exceeds industry expectations. There are also a number of proposals where the specification requested exceeds that on the lengths of the A66 that are not being improved by Project.</p> <p>National Highways accepts that, at handover, some assets will be at or nearing the end of their serviceable life and it may be appropriate that a commuted sum is provided to allow the Local Authority to fund renewal works at the optimal time for an intervention and not before. Assets, at handover, with more than half of their residual life remaining are expected to be inspected by the relevant Local Highway Authority and renewal works planned and funded through the uplifted central Government grant.</p> <p>National Highways and the Local Highway Authorities continue to work together to reach an agreed position on matters of principle and detail. The Applicant provided updated Statements of Common Ground for each of the Local Authorities at Deadline 3; please refer to REP3-031, REP3-038, REP3-039 for further information relating to issues being discussed with Durham County Council, Cumbria County Council and Eden District Council and North Yorkshire County Council and Richmondshire District Council, respectively.</p> <p><u>DCO Wording</u></p> <p>Two key provisions of the draft DCO deal with de-trunking, article 9(5) and article 40(6). It should be noted that these give the authorisation necessary for the de-trunking to be carried out and set out the obligations on National Highways and the relevant Local Highway Authority, in the absence of any agreement to the contrary.</p> <p>Article 40(6) provides for the de-trunking of the roads referred to in that paragraph by reference to Schedule 7 on the day or days determined by the undertaker, "unless otherwise agreed in writing with the Local Highway Authority".</p> <p>Article 9(5) deals with maintenance of de-trunked roads and confirms (a) that the land comprised in the de-trunked highways is to vest in the Local Highway Authority and (b) that</p>

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				<p>the de-trunked road is to be maintained by the Local Highway Authority "unless otherwise agreed in writing".</p> <p>It follows then, that the drafting of the DCO permits the precise arrangements for the handover of de-trunked roads to be agreed between the parties.</p>
TA 1.2	Active Travel England	Applicant	<p>Cumbria CC in Section 6 of their Local Impact Report (LIR) [REP1-019] ask for assurances that design of new WCH routes are to a standard acceptable to Active Travel England. Please confirm the current statutory consultee status of Active Travel England with respect to this Application and also explain how such a request could be accommodated as part of the ongoing design process.</p>	<p>On 13 January 2023, the Department for Levelling Up, Housing & Communities published a Planning Newsletter, which stated that Active Travel England (ATE) will become a statutory consultee for certain planning applications from 1 June 2023. However, the Applicant notes that:</p> <ul style="list-style-type: none"> a) this will only come into effect after the Examination has closed; b) there is no reference in the Planning Newsletter to ATE becoming a statutory consultee for the purpose of the Planning Act 2008 and therefore for DCO applications; and c) should the status of ATE as a statutory consultee for DCO applications change, this would require either an update to the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 or the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015, but the Applicant notes that there are currently no proposed changes listed for either of these Regulations. <p>This therefore sets out and explains the status of ATE in the Planning Act 2008 context.</p> <p>The Applicant will continue to engage with Cumbria CC on the design of the new WCH routes and will have regard to any standards and guidance issued by ATE once they become a statutory consultee.</p>
TA 1.3	Cycle Route and Private Means of Access	Applicant	<p>The ExA note concerns expressed by the Penrith Ramblers [REP1-137] and other IPs with regard to coincident cycle track/ cycleways with private vehicle rights of access. The ExA seeks clarification of the legal status of these coincident uses. Taking one example (reference c on page 121 of the draft DCO [REP2-005]) that states, "To be substituted by a new private means of access 10 metres north-west of the existing access Reference c, together with a right of vehicular access over the new (note the and new have been corrected from what is written in the draft DCO) cycle track References C, B and E, for the benefit of the land affected by the stopping up of private means of access reference C." Explain:</p> <ul style="list-style-type: none"> i) How such private vehicle right of access can be regulated along a public highway. ii) How would these be signed. And 	<p>Legal status of co-incident public rights of way and private means of access</p> <p>The legal status of public rights of way over which is granted a private means of vehicular access is that they would be a public right of way in relation to which the appropriate land would benefit from a private means of vehicular access.</p> <p>It is generally an offence to drive a mechanically propelled vehicle (i.e. a motor vehicle) on a public footpath, bridleway or restricted byway, under section 34 of the Road Traffic Act 1988, "without lawful authority" (section 21 of that Act makes equivalent provision for cycle tracks). However, the exercise of a private right over a public right of way is considered to be sufficient "lawful authority" to avoid the commission of such an offence.</p> <p>It follows then, that members of the public at large will be entitled only to exercise the public rights of way as accords with the status of that public right of way (e.g. on foot or on bicycle in the case of a cycle track, on foot only in the case of a footpath etc.) whereas only persons with 'lawful authority' such as that derived from a private right to use motor vehicles over that way, would be entitled to exercise that private right.</p> <p>It should be noted that such arrangements, where there are private rights that are at odds with the rights that the public is entitled to enjoy, are an acknowledged feature of the system for regulating public rights of way and are not uncommon in rural areas.</p> <p>For example, section 50(1) and (2) of the Countryside and Rights of Way Act 2000 preserved existing private rights and granted private rights to use motor vehicles over restricted byways when they were created or converted from "roads used as a public path". Drivers are required by law to drive with the appropriate degree of care and attention. It should be noted that Highway Code advises drivers approaching pedestrians on narrow</p>

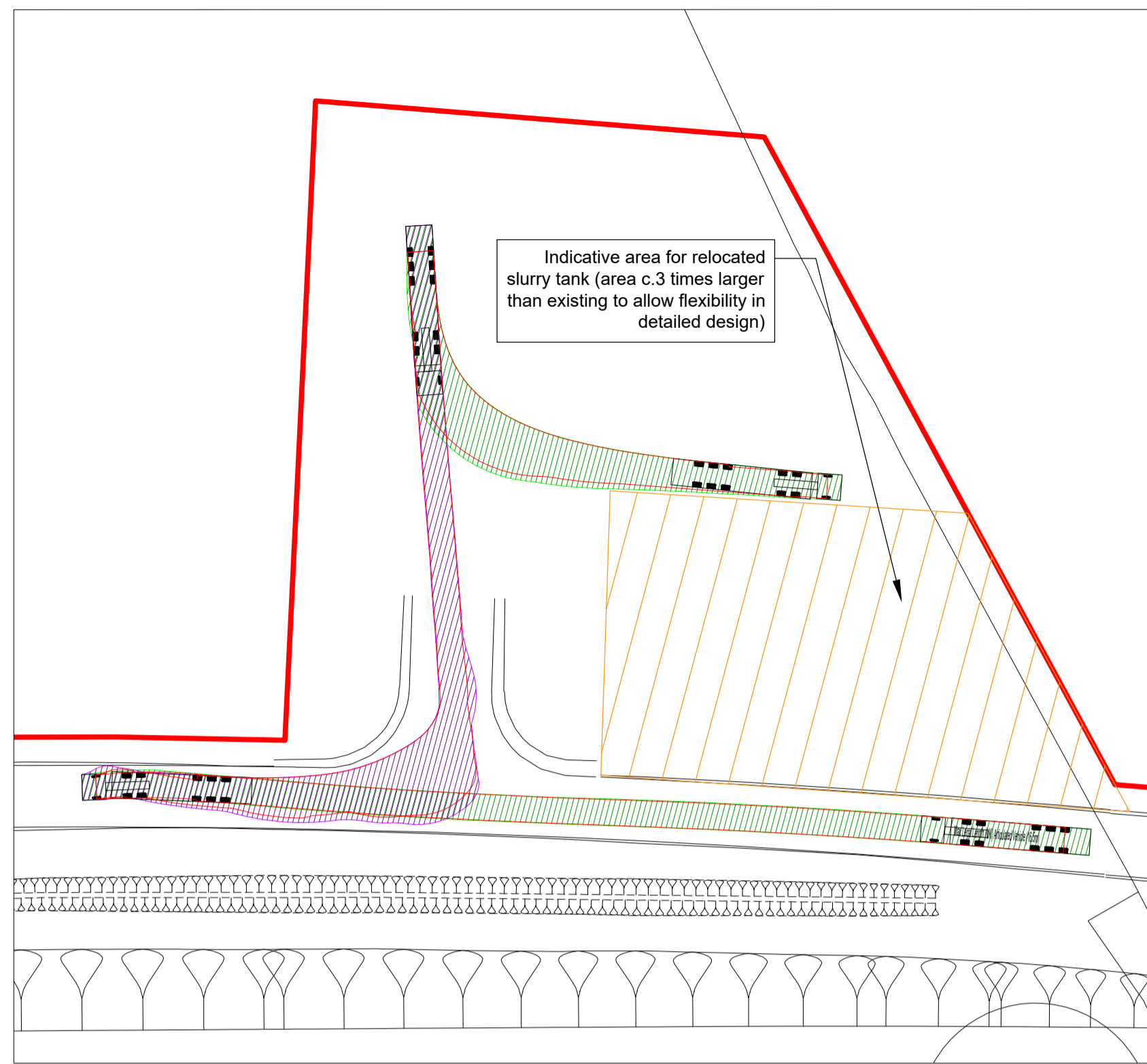
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			<p>iii) How safety considerations of vehicles using cycleways and cycle tracks have been taken into account.</p>	<p>rural roads without a footway or footpath to “<i>Always slow down and be prepared to stop if necessary, giving them plenty of room as you drive past.</i>”</p> <p>The Applicant notes the typographical error identified in the question and will correct it in the next iteration of the draft DCO.</p> <p>In relation to each of the sub-questions:</p> <p>(i) Private vehicular rights would be regulated in the same way as other moving traffic offences on the highways, by the police.</p> <p>(ii) There would be no particular signage requirements as there is no appropriate sign provided for by the Traffic Signs Regulations and General Direction. It would be open to the relevant traffic authority to consider and implement bespoke warning signs, should they be considered to be warranted.</p> <p>(iii) Private means of access that will share rights with public right of way have been designed as 4m wide with 1m verges with forward visibility as set out in the DMRB and Cycling by Design. The detailed design will develop the proposals which may include design detail and mitigation measures such as widening on bends and passing bays/ build outs. The detailed design will also be subject to a Stage 2 Road Safety Audit to highlight any potential safety considerations.</p>
TA 1.4	Shared cycleways	Applicant	Page 116 of the draft DCO [REP2-050] and corresponding reference on the Rights of Way Plan [APP-349] detail a shared cycleway. The definition of cycleway already includes the potential use of pedestrians but no definition or explanation is provided of what a shared cycleway is. Provide clarification and definition of a shared cycleway.	The Applicant does not intend “shared cycleway” to have a meaning that is in any way different to the definition given for “cycleway” in article 2(1). Consequently, the Applicant does not intend to separately define the term, but will consider whether greater clarity can be provided, for example, by deleting references to “shared” where it appears with “cycleway”.
TA 1.5	ROW drafting and amendments	Applicant	A number of representations including Penrith Ramblers Group, Cumbria and Lakes Joint Local Access Forum, Cumbria, Durham and North Yorkshire County Councils and others have referred to a number of drafting and consistency issues relating to the ROW plans and the draft DCO. To assist in the Examination, provide a schedule/ table of the issues mentioned alongside, the source of the issue, the Applicants response to the concern and finally when and how any corrections/ modifications will be made to the ROW plans and the draft DCO.	Please refer to Appendix D of this document for a schedule as requested by the ExA of issues raised in submissions that suggest that corrections are required to Schedule 2 of the draft Development Consent Order (REP2-005) and any corrective actions that is required.
TA 1.6	Diversion Routes	Applicant	Given the representations from the Councils in their LIRs and WRs [REP1-109], [REP1- 020], [REP1-022], [REP1-040] and [REP1-042] concerning potential diversion routes both during construction and for operational purposes provide an update on discussions on the approach to dealing with the need for diversions both during construction and during operation.	Whilst diversions during construction are not anticipated to be implemented, the Environmental Management Plan (EMP) (latest version REP3-004) provides flexibility in the event that diversions are required. The EMP includes commitment D-GEN-10, requiring a detailed Construction Traffic Management Plan (CTMP). The EMP requires that document to be produced, consulted upon with the Local Authorities (and other relevant stakeholders) and approved by the Secretary of State as part of the second iteration of the EMP. The CTMP must include details of proposed diversion routes, durations of use and proposals for encouraging compliance with designated diversion routes (with consideration for potential noise impacts). The commitment requires that the diversion routes shall be

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				<p>developed in consultation with the Local Highway Authority and specifies a range of considerations that must feed into this decision making. National Highways will continue to engage with the Local Authorities, including on the production of the CTMP to set out how diversions, including their suitability, will be coordinated and managed during construction of the Project.</p> <p>National Highways have implemented a series of regular meetings between the Local Authorities and the Delivery Integration Partners (DIPs) to discuss and agree matters relating to the construction of the Project. As part of resolving issues associated with the Statements of Common Ground (SoCG) it has been agreed between National Highways and the Local Authorities that discussions on construction diversions and construction traffic management will be progressed in the next meeting on 14 February 2023 and the position will be updated in the SoCG submitted at Deadline 5.</p> <p>In respect of diversions during operation, these would only be related to incidents which require the closure of the A66. There is no change to operational diversions of the A66 as a result of the Project and we would anticipate diversions to be less frequent as the dualling allows for better incident management.</p> <p>The Applicant notes that Cumbria County Council, in their Local Impact Report (REP1-019), refer to proposed diversions in and around Penrith and network resilience if and when the bridge at Eamont Bridge on the A6 is closed and the closure of the Brougham junction. The Applicant's understanding is that this relates to the movements between Brougham Castle and the A66 eastbound as a consequence of the removal of right turns across the dualled sections delivered by the Project. In relation to this matter, the objectives of the Project include improving road safety. This is taken forward in the principles as set out at Section 4.2.2 of the Project Overview Development Report (PDOR) (APP – 244) which specifies 'no right-turn' junctions will improve safety by removing the need to cross the central reserve and opposing traffic. A continuous safety barrier will be included in the central reserve.</p> <p>When Eamont Bridge is closed, traffic heading eastbound will need to turn west and use the Kemplay Bank roundabout to access the east bound carriageway. To reduce risk, National Highways have designed the improvements so there are no gaps in the central reservation, removing right turns. Resilience is provided in the upgraded Kemplay Bank junction and whilst it is appreciated that there will be an extra distance for traffic wishing to travel east from the B6262 (to turn at Kemplay Bank junction) this should be a relatively infrequent event. This has been communicated to Cumbria CC and is set out within the Statement of Common Ground submitted (APP-277).</p>
TA 1.8	<i>M6 Junction 40 and Kemplay Bank Roundabout – junction modelling</i>	Applicant Cumbria CC Eden DC	In its LIR response [REP2-018], Cumbria CC and Eden DC state in paragraph 2.3.19. that it is believed the model accurately represents the conditions that were surveyed in 2017, the operational model is currently being updated using September 2022 traffic data. National Highways propose to consult directly with the Councils about the outcomes of the model and discuss the associated key issues at forthcoming planned meetings with Cumbria CC and Eden DC. Provide an update as to any	<p>Issue 3-2.14 of the Deadline 3 Submission Statement of Common Ground Cumbria County Council and Eden District Council - Rev 2 (Document Reference 4.5 REP3-038) discusses the National Highways position on Traffic Modelling & Junction designs at M6 Junction 40, Kemplay Bank and Skirsgill Depot – Penrith, including a statement that the latest position is set out at section 2.3 of the Applicant's Comments on Local Impact Report (LIR) (REP2-018).</p> <p>Work to update the operational model to reflect the data collected in September 2022 has recently been completed. Further consultation in the coming weeks is planned with Cumbria CC and Eden DC in which the model results, will be presented for discussion. In</p>

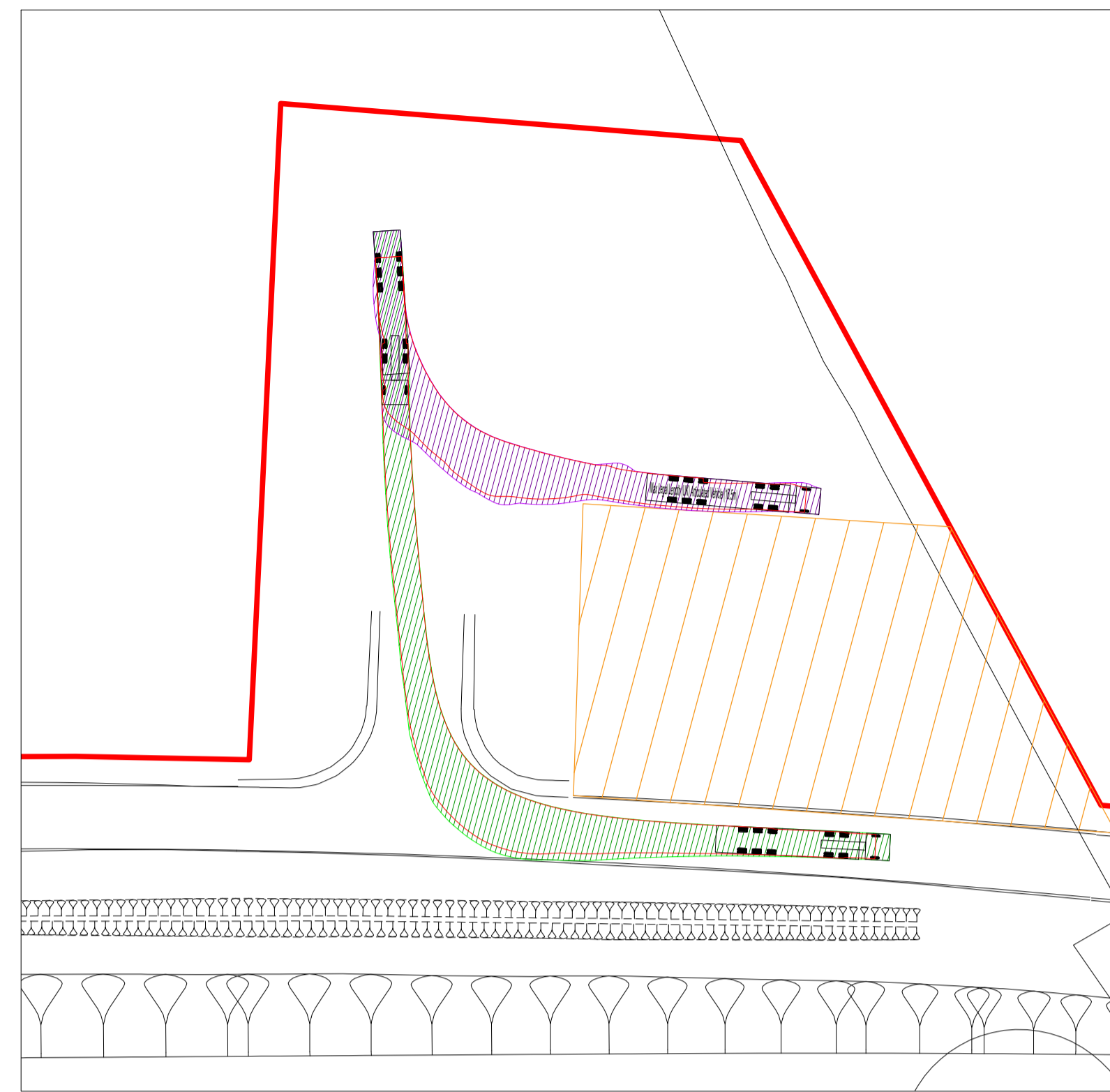
Ref Number	Subject	Response by	Question	Applicant's Response
			revised modelling and whether this addresses the outstanding concerns from the Councils.	<p>addition to this, technical material will be provided to Cumbria CC and Eden DC for comment.</p> <p>The intention is that the outcomes of this exercise will be presented for the Deadline 5 SoCG submission on the 14th of March 2023.</p>
TA 1.10	HGV Facilities	Applicant	The ExA understand there is a nationwide freight study running in parallel with the DCO application to establish what interventions can be undertaken to improve the service National Highways provides for its freight customers. Parking, facilities, information provision and customer insight fall within the scope of the freight study. To enable the ExA to properly inform the SoS of any potential issues, we would like to understand if the Applicant is confident that this nationwide study is not likely to recommend additional infrastructure interventions within the limits of the current project that would require retrofitting solutions after completion of any works.	To help inform the ExA's understanding, we can confirm that National Highways is undertaking a specific piece of work to review, understand and inform how to improve the service provided to its freight customers, including parking, facilities, information provision and customer insight all of which fall within scope of this review. At this stage the freight study has been scoped around the whole A66, including interface with the A1(M) and M6 and is the forerunner to wider national considerations. Based on progress to date National Highways is confident that the review is not likely to recommend additional infrastructure interventions within the Order limits of this Project.
TA 1.11	Kirkby Stephen bypass	Applicant	Anthony Metcalfe [RR-040] and [REP1-050] queries whether the Applicant's quoted cost of £88 million is correct, as he considers this is an overestimate, and thus queries whether the value for money calculation of the Kirby Stephen bypass has been done correctly. In the Applicant's response [PDL-011] it is stated that the Applicant does not know where this £88 million figure was taken from. This figure is in Table 1.9 [APP-249] Appendix 5 Northern Trans-Pennine Routes Strategic Study Stage 3 Report. Respond to his concern and explain whether this figure has been used in considering the assessment of the Kirby Stephen bypass option.	<p>The Applicant can confirm that the quoted cost for the A685 Kirkby Stephen Bypass (as shown in Table 1.9 of APP-249 to be £88 million) is considered to be robust and representative of the time of assessment.</p> <p>This is set out in the Applicant's Response to Written Representations made by Affected Persons at Deadline 1 (REP2-015, page 7 of 97), which goes on to say:</p> <p><i>"The cost estimate would have taken into consideration the number and costs of structures needed to span the significant number of watercourses in the area, including the River Eden. As well as cost implications, consideration was also given to the environmental impacts of the scheme and the encroachment into the Yorkshire Dales National Park which was extended further into Cumbria in 2016."</i></p>

3. Appendices

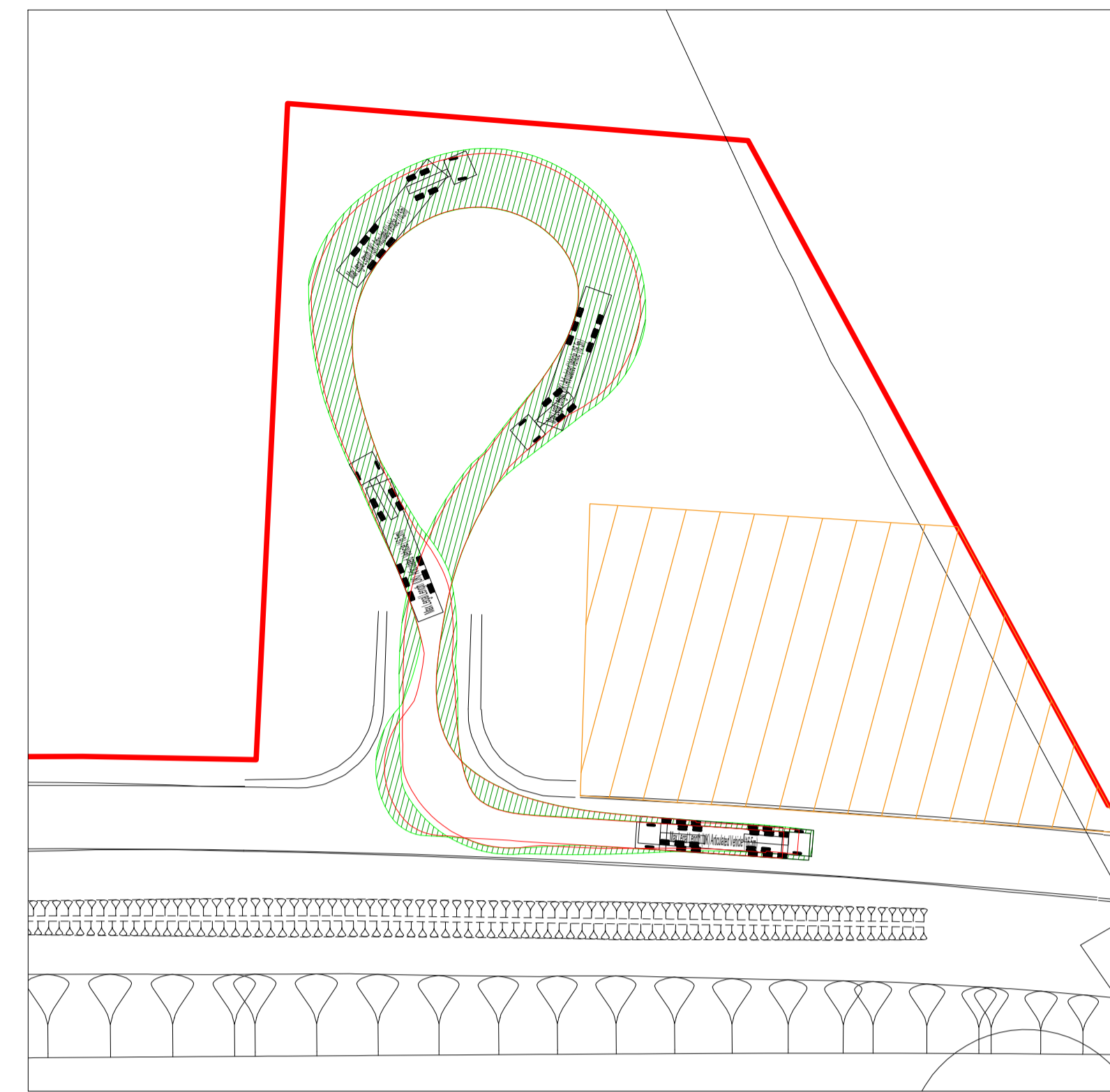
**3.1. Appendix A: CA 1.9 Area for Replacement Slurry Tank and
Associated Indicative Swept Path Arrangement**



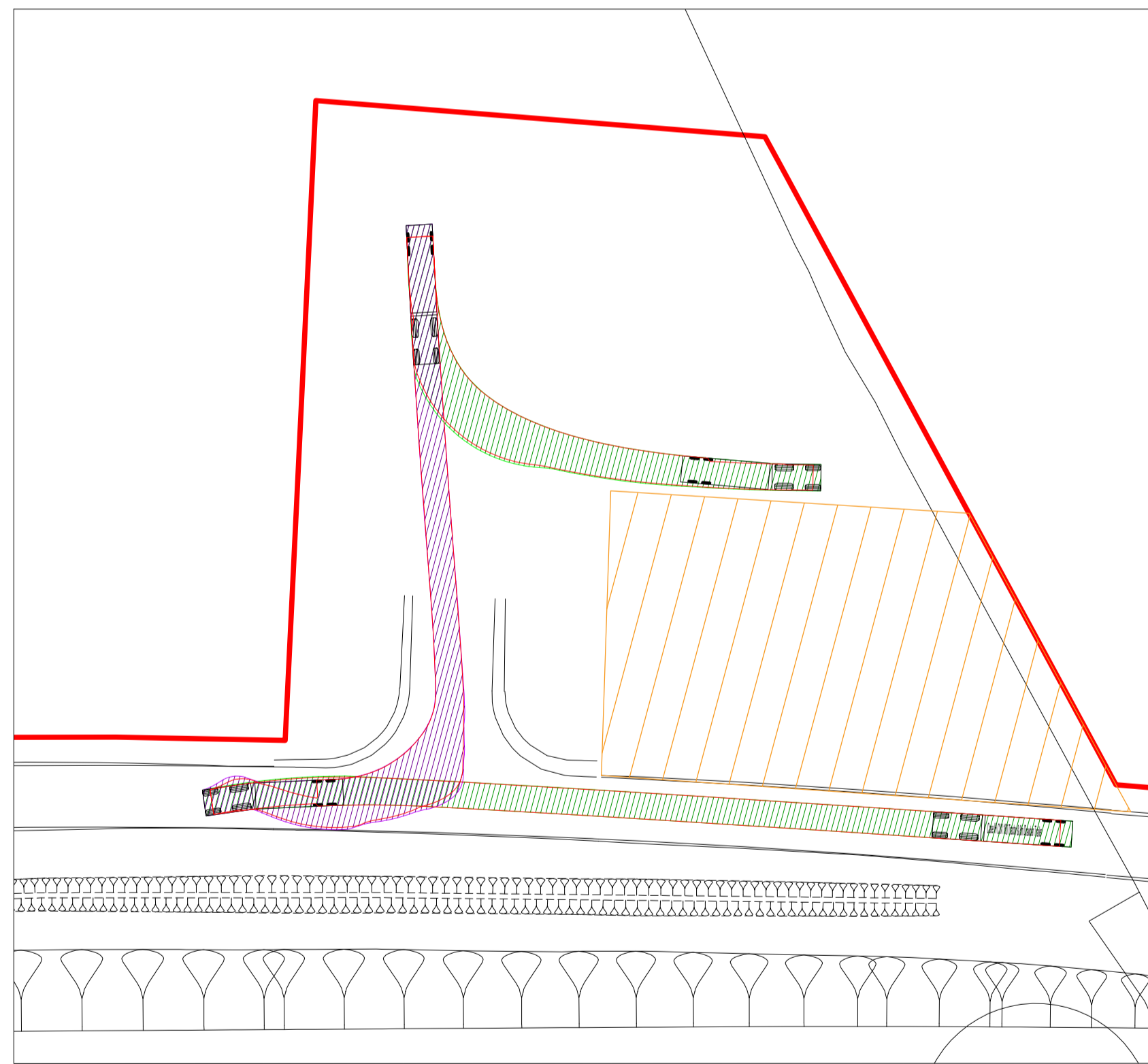
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Drive up and reverse into location



Max Legal Length (UK) Articulated Vehicle (16.5m)
Drive out of location



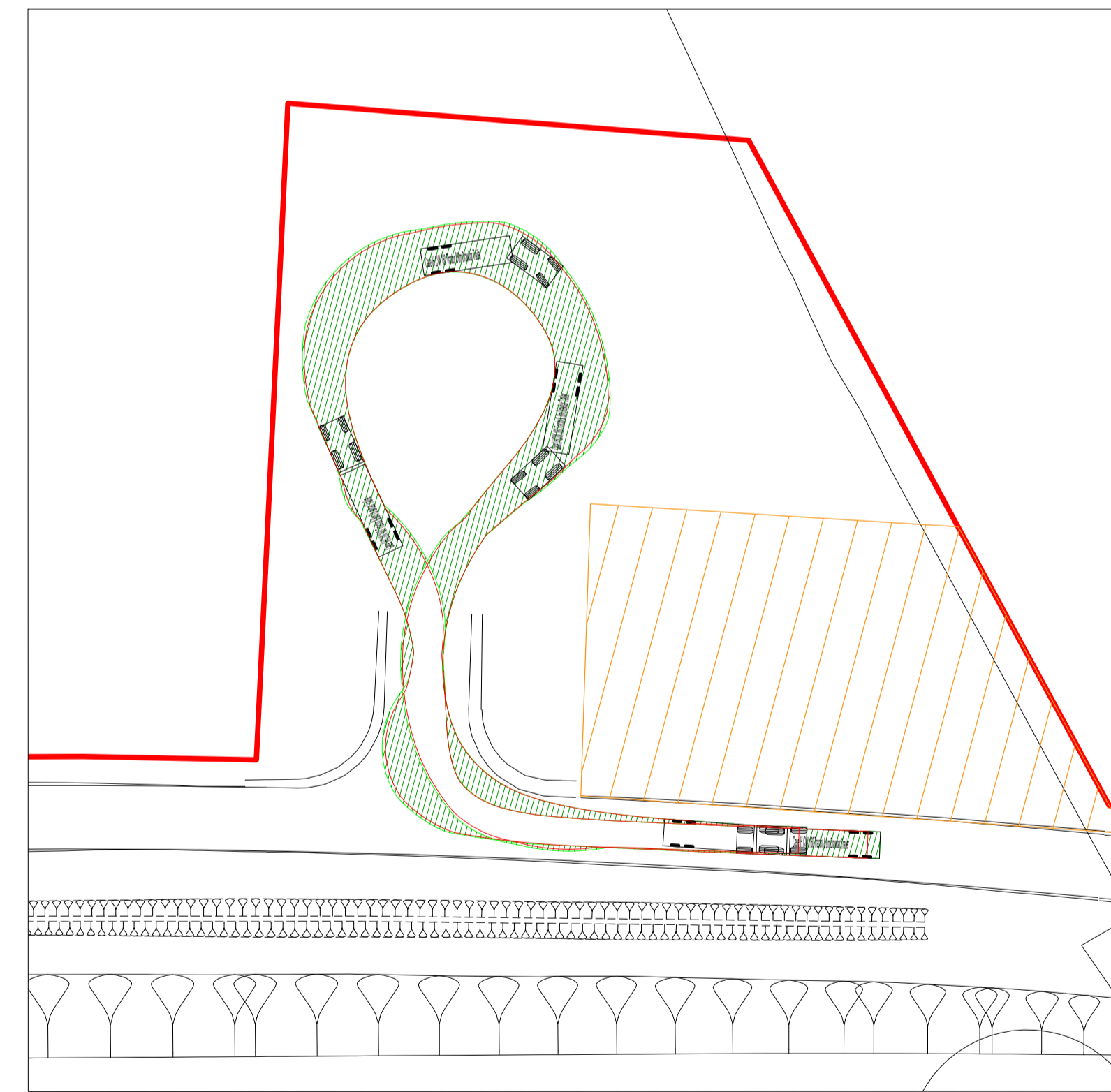
Max Legal Length (UK) Articulated Vehicle (16.5m)
Full turn into and out of location



Case IH CVX 160 Tractor & 8m Drawbar Trailer
Drive up and reverse into location



Case IH CVX 160 Tractor & 8m Drawbar Trailer
Drive out of location

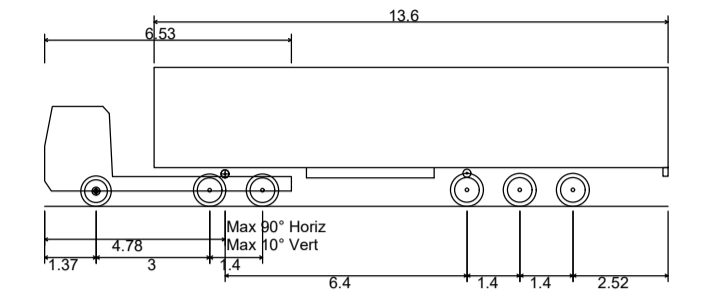


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Full turn into and out of location

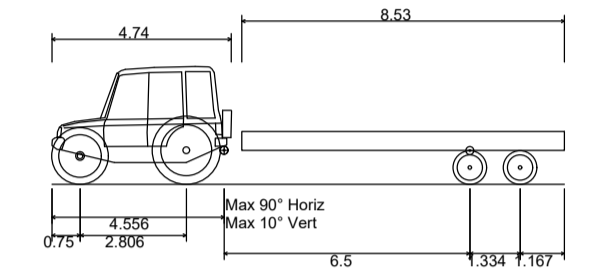
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1. ALL DIMENSIONS ARE IN METRES UNLESS NOTED OTHERWISE.
2. FOR ENVIRONMENTAL DETAILS REFER TO THE ENVIRONMENTAL MASTERPLAN AND ASSOCIATED DRAWINGS/DOCUMENTS.
3. THE DESIGN OF THE SCHEME IS SHOWN HERE FOR ILLUSTRATIVE PURPOSES ONLY AND WILL BE SUBJECT TO DETAILED DESIGN DEVELOPMENT IN ACCORDANCE WITH THE PROVISIONS OF THE DEVELOPMENT CONSENT ORDER.
4. THESE PLANS SHOULD BE READ IN CONJUNCTION WITH RIGHTS OF WAY AND ACCESS PLANS.

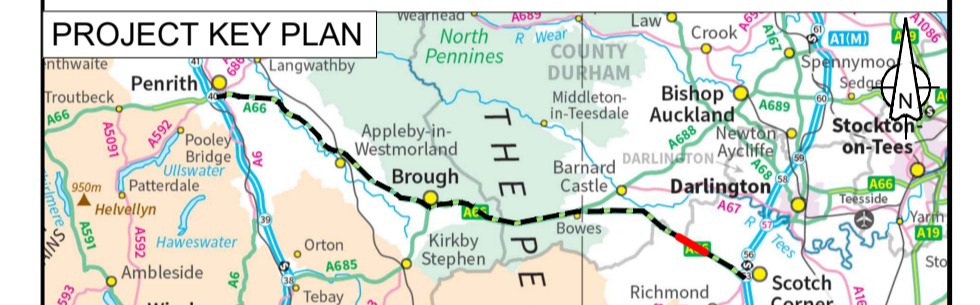
KEY



Max Legal Length (UK) Articulated Vehicle (16.5m)
 Overall Length 16.500m
 Overall Width 2.550m
 Overall Body Height 3.651m
 Min Body Ground Clearance 0.411m
 Max Track Width 2.500m
 Lock to lock time 6.00s
 Kerb to Kerb Turning Radius 6.530m



Case IH CVX 160 Tractor & 8m Drawbar Trailer
 Overall Length 13.556m
 Overall Width 3.350m
 Overall Body Height 3.171m
 Min Body Ground Clearance 0.575m
 Max Track Width 2.540m
 Lock to lock time 6.00s
 Kerb to Kerb Turning Radius 5.400m



P01	EKEL	EKEL	TEGG	TEGG	FMOL
	07/02/23	07/02/23	07/02/23	07/02/23	07/02/23
Revision details					
Revision	Created	Checked	Reviewed	Approved	Authorised
	dd/mm/yy	dd/mm/yy	dd/mm/yy	dd/mm/yy	dd/mm/yy

Purpose	
PINS Reference Number	
TR010062	

Client		
3 Piccadilly Place		
Manchester		
M1 3BN		

Project Name / Scheme Name
A66 Northern Trans-Pennine Project
 Scheme 09
 Stephen Bank to Carkin Moor

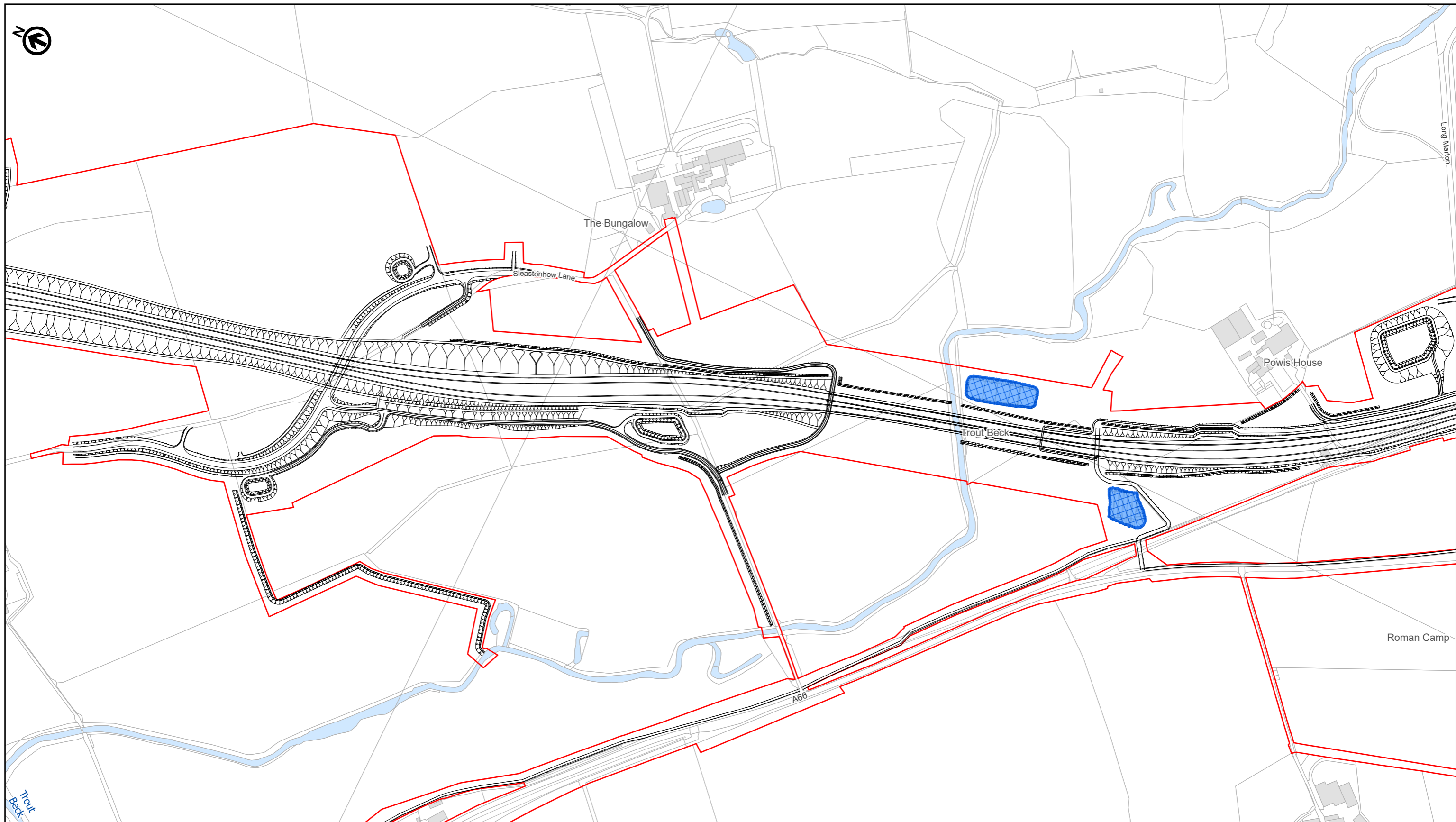
Drawing Title
Stephen Bank to Carkin Moor
 Slurry Tank Access
 Vehicle Tracking

Project Ref. No.	Stage	Scale : 1:2500	@ A1
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Drawing Number	Project	Originator	Volume
HE565627	- AMY	- HAC	-
S09	- SK	- CH	- 701205
Location	Type	Role	Number

Suitability	Suitability Description	Revision
S4	Fit for Stage Approval	P01

3.2. Appendix B: FDW 1.9 Flood Compensation Areas




- Order limits
- Level for level flood compensation area
- Indirect storage (volume for volume) flood compensation area
- Area of Outstanding Natural Beauty (AONB)
- Buildings
- Watercourse/body

Notes:

1. These maps are to be read in conjunction with the Hydraulic Modelling Report, Annex E of Application Document 14.2 Flood Risk Assessment and Outline Drainage Strategy, [APP-221].
2. The location and shape of the mitigation measures shown demonstrate how they can be incorporated into the detailed design of the project, but are subject to further refinement in accordance with the provisions of the Environmental Management Plan (Application Document 2.7, [APP-019]) and the Project Design Principles (Application Document 5.11, [APP-302]).
3. All dimensions are approximate and in metres unless noted otherwise.

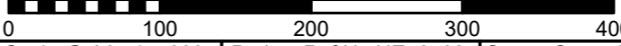




3 Piccadilly Place
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M1 3BN

P01	First Issue				
	PKEL	CESL	KCRO	SBAG	PCAR
	08/02/23	08/02/23	09/02/23	10/02/23	10/02/23
Revision	Created	Checked	Reviewed	Approved	Authorised

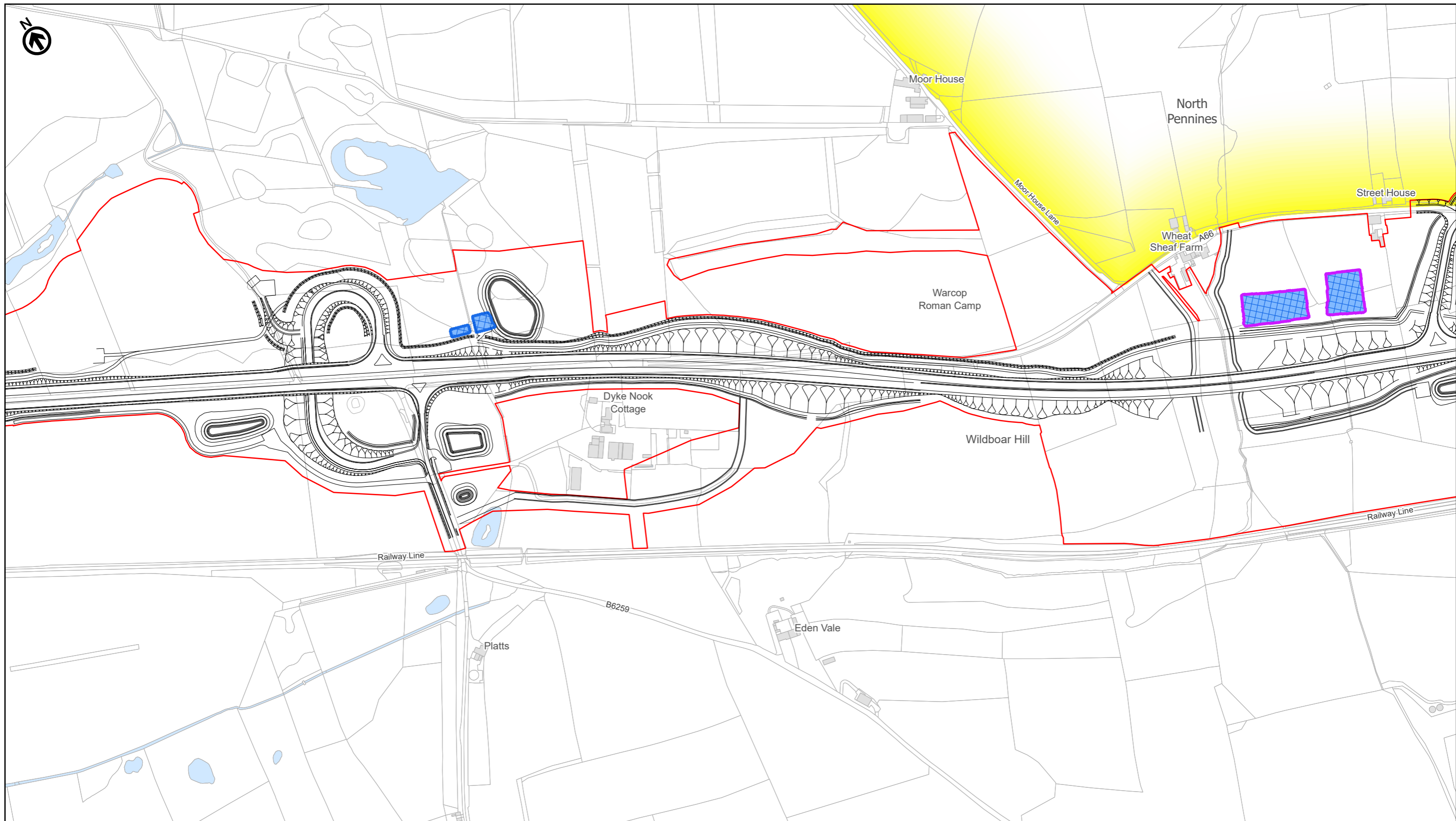
Metres



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Scale @ A3: 1:5,000 | Project Ref No HE565627 | Stage: Stage 3
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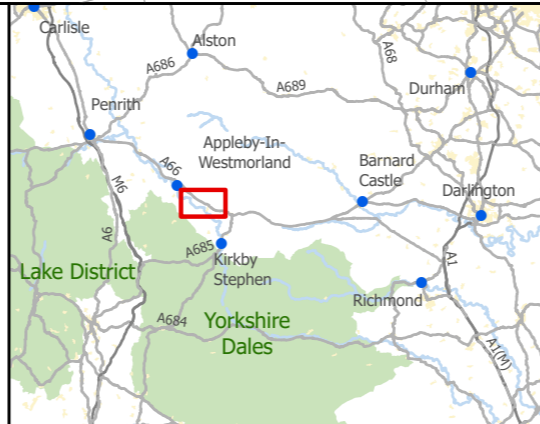
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Map Title Response to Written Question FDW 1.9 Flood Compensation Areas Scheme: 0405, Temple Sowerby to Appleby Sheet 6			
Map Number Project	Originator	Volume	Location
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			Type Role Number
Suitability	Suitability Description		Revision
S4	FIT FOR STAGE APPROVAL		P01



- Order limits
- Level for level flood compensation area
- Indirect storage (volume for volume) flood compensation area
- Area of Outstanding Natural Beauty (AONB)
- Buildings
- Watercourse/body

Notes:

1. These maps are to be read in conjunction with the Hydraulic Modelling Report, Annex E of Application Document 14.2 Flood Risk Assessment and Outline Drainage Strategy, [APP-221].
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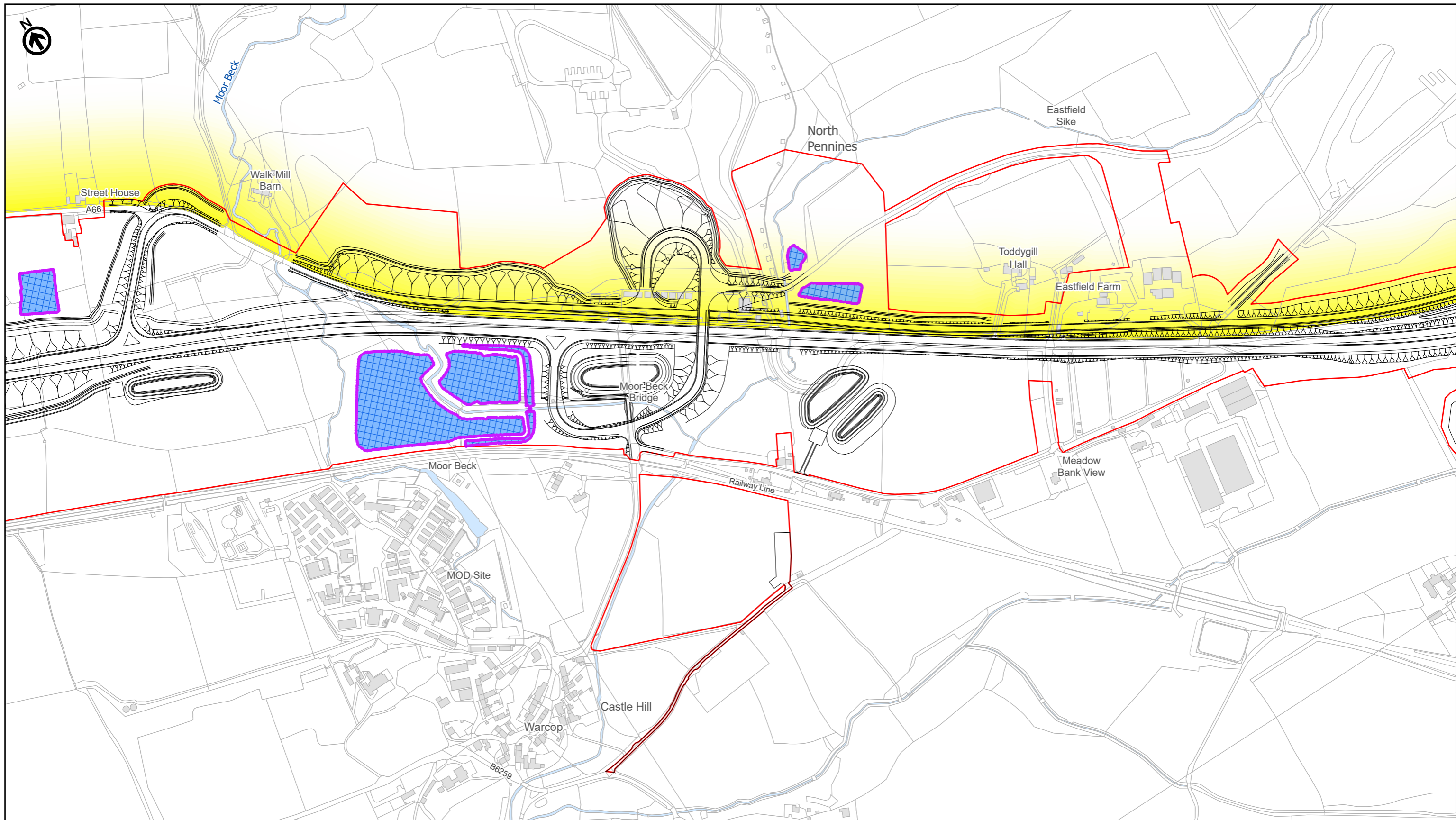
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	08/02/23	08/02/23	09/02/23	10/02/23	10/02/23
Revision	Created	Checked	Reviewed	Approved	Authorised

Metres

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Scale @ A3: 1:5,000 | Project Ref No HE565627 | Stage: Stage 3
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Project Name A66 Northern Trans-Pennine Project			
Map Title Response to Written Question FDW 1.9 Flood Compensation Areas Scheme: 06, Appleby to Brough Sheet 2			
Map Number Project	Originator	Volume	Location
HE565627	AMY	EWE	S00
			MP - LD - 011301
			Type Role Number
Suitability	Suitability Description		Revision
S4	FIT FOR STAGE APPROVAL		P01



Order limits

Level for level flood compensation area

Indirect storage (volume for volume) flood compensation area

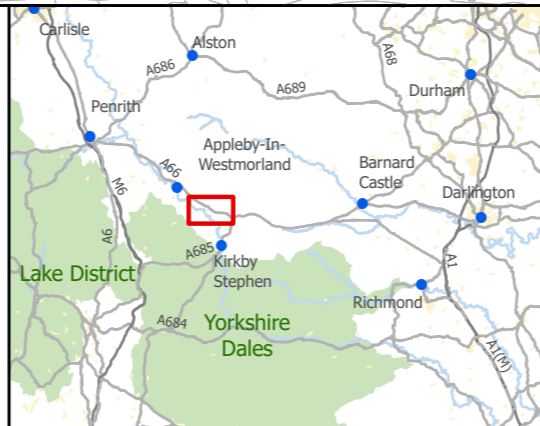
Area of Outstanding Natural Beauty (AONB)

Buildings

Watercourse/body

Notes:

1. These maps are to be read in conjunction with the Hydraulic Modelling Report, Annex E of Application Document 14.2 Flood Risk Assessment and Outline Drainage Strategy, [APP-221].
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P01	First Issue				
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Revision	Created	Checked	Reviewed	Approved	Authorised

Metres

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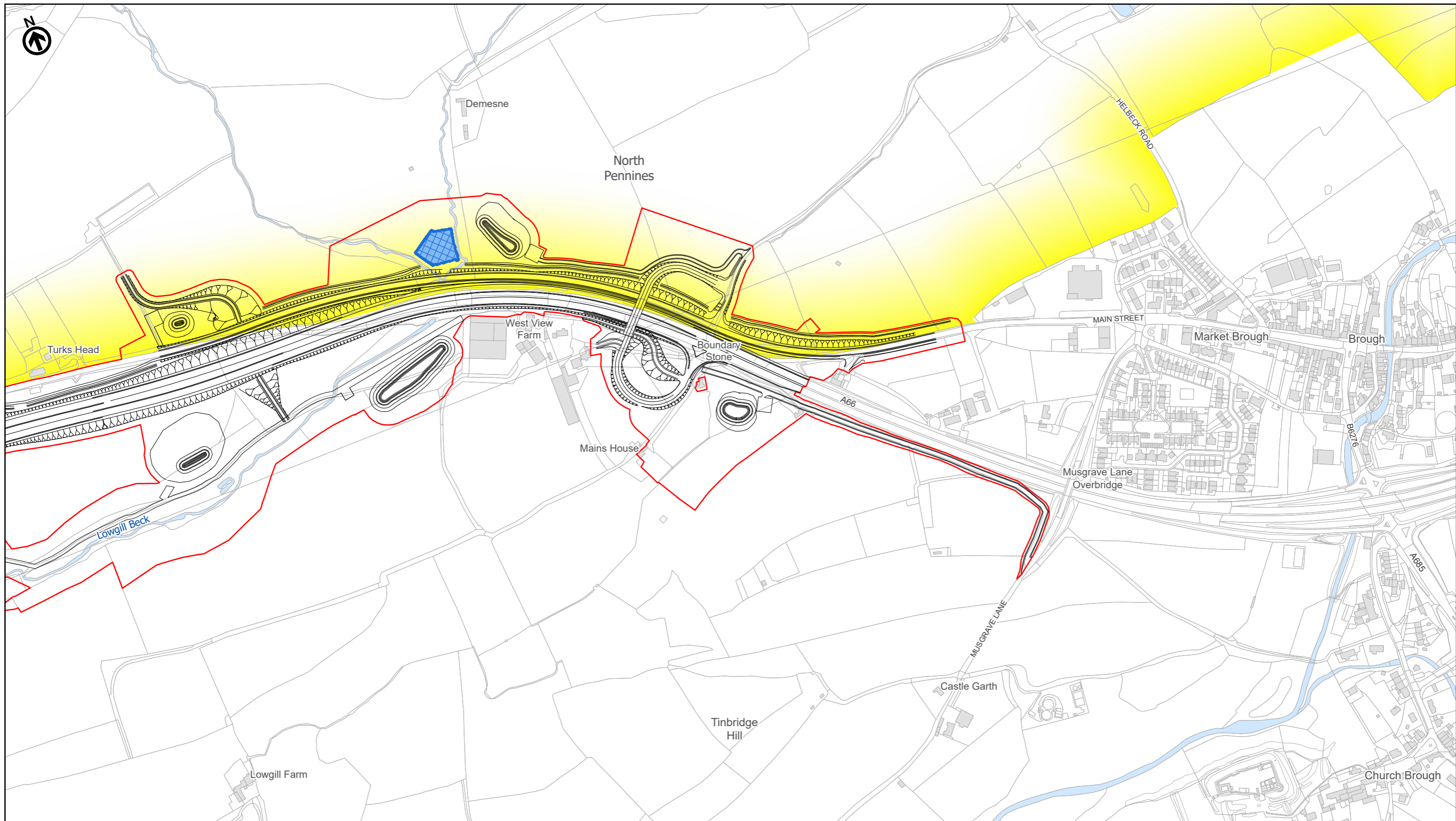
Scale @ A3: 1:5,000 | Project Ref No HE565627 | Stage: Stage 3

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Project Name
A66 Northern Trans-Pennine Project

Map Title
**Response to Written Question FDW 1.9
Flood Compensation Areas
Scheme: 06, Appleby to Brough
Sheet 3**

Map Number	Project	Originator	Volume
HE565627	-	AMY	-
S00	-	MP - LD	-
Location	Type	Role	Number
Suitability	Suitability Description		Revision
S4	FIT FOR STAGE APPROVAL		P01



Order limits

Level for level flood compensation area

Indirect storage (volume for volume) flood compensation area

Area of Outstanding Natural Beauty (AONB)

Buildings

Watercourse/body

Notes:

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P01	First Issue	PKEL	CESL	KCRO	SBAG	PCAR
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Revision	Created	Checked	Reviewed	Approved	Authorised	

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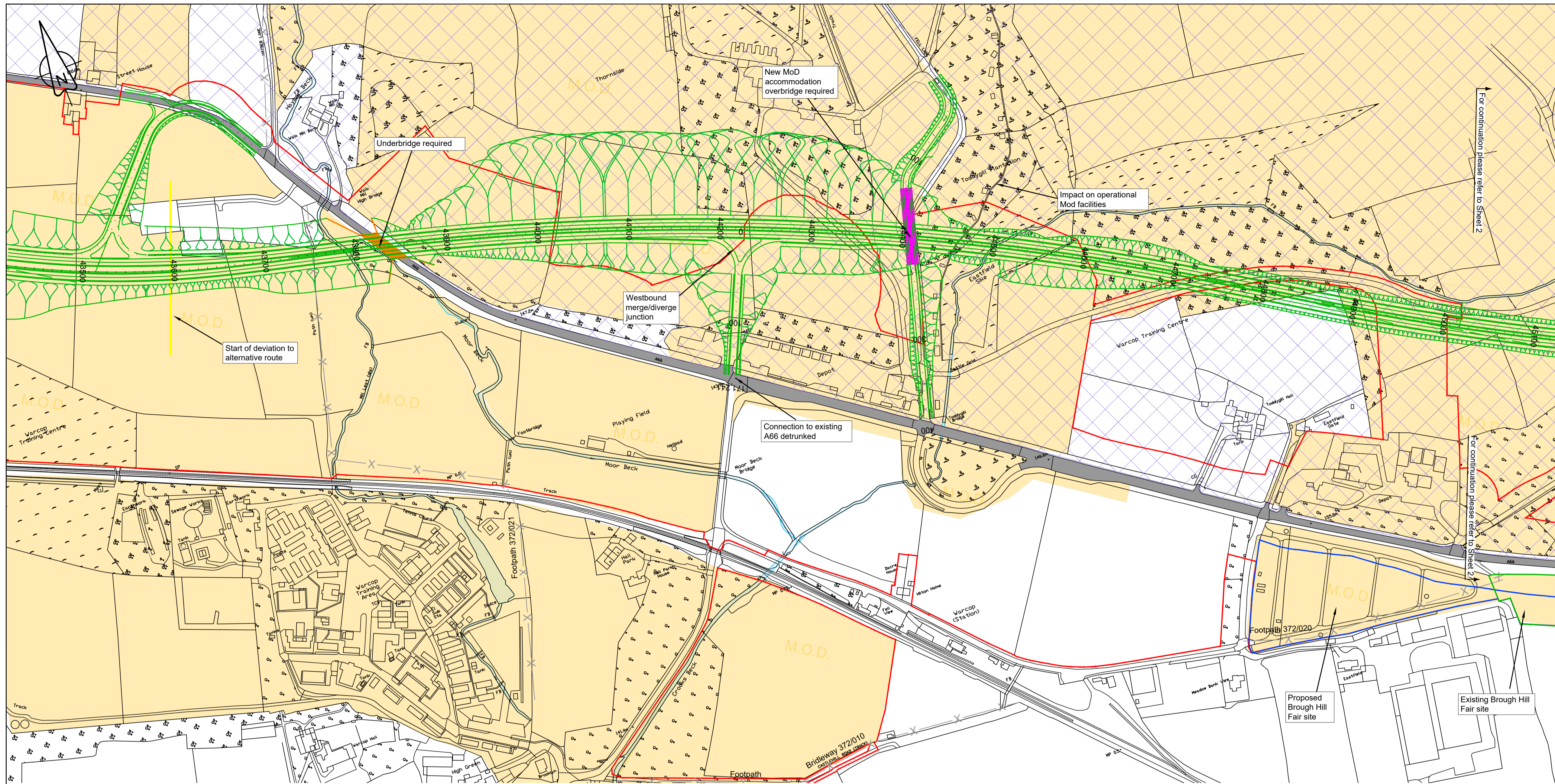
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Scale @ A3: 1:5,000 | Project Ref No HE565627 | Stage: Stage 3

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Project Name A66 Northern Trans-Pennine Project			
Map Title Response to Written Question FDW 1.9 Flood Compensation Areas Scheme: 06, Appleby to Brough Sheet 5			
Map Number Project	Originator	Volume	
HE565627	AMY	EWE	
S00	MP	LD	011303
Location	Type	Role	Number
Suitability S4	Suitability Description FIT FOR STAGE APPROVAL		Revision P01

3.3. Appendix C: PC 1.1 Approximate location of “Billy Welch straight line route” on OS background mapping and Aerial Imagery background

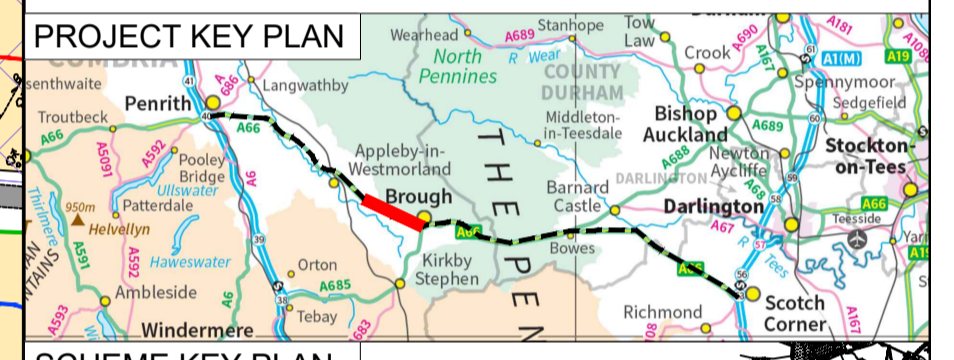


NOTES

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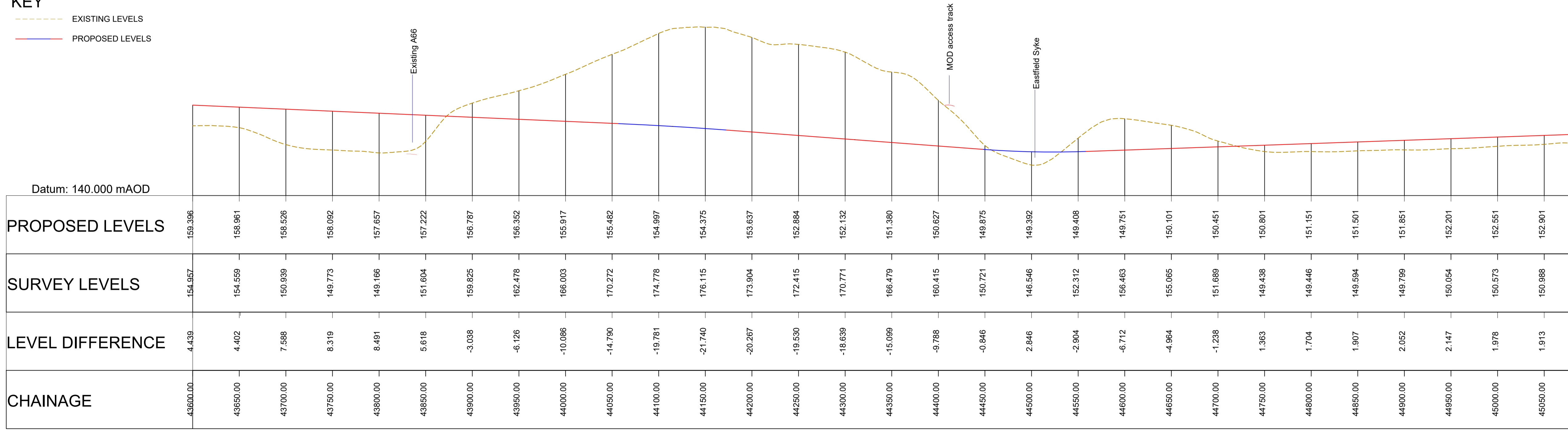
- KEY**
- DCO ORDER LIMITS
 - AREA OF OUTSTANDING NATURAL BEAUTY (AONB)
 - MoD OPERATIONAL LAND
 - EXISTING WATERCOURSE
 - EXISTING A66 CARRIAGEWAY
 - PARISH BOUNDARY
 - EXISTING PUBLIC RIGHT OF WAY
- FOR THE "BILLY WELCH STRAIGHT LINE ROUTE":
- PROPOSED WORKS
 - PROPOSED EARTHWORKS
 - PROPOSED BRIDGE / VIADUCT
 - PROPOSED UNDERPASS / TUNNEL

DRAFT



KEY

- EXISTING LEVELS
- PROPOSED LEVELS



Longitudinal section with 5x vertical exaggeration

P01.1	Submitted in response to PDL-011	CF	AB	PC	PC	AJ
		14/02/23	14/02/23	14/02/23	14/02/23	14/02/23
Revision	Revision details	Created	Checked	Reviewed	Approved	Authorised
		dd/mm/yy	dd/mm/yy	dd/mm/yy	dd/mm/yy	dd/mm/yy

Purpose
Response to ExA's Written Question PC 1.1 [PDL-011]

PINS Reference Number
TR010062

Client
3 Piccadilly Place
Manchester
M1 3BN

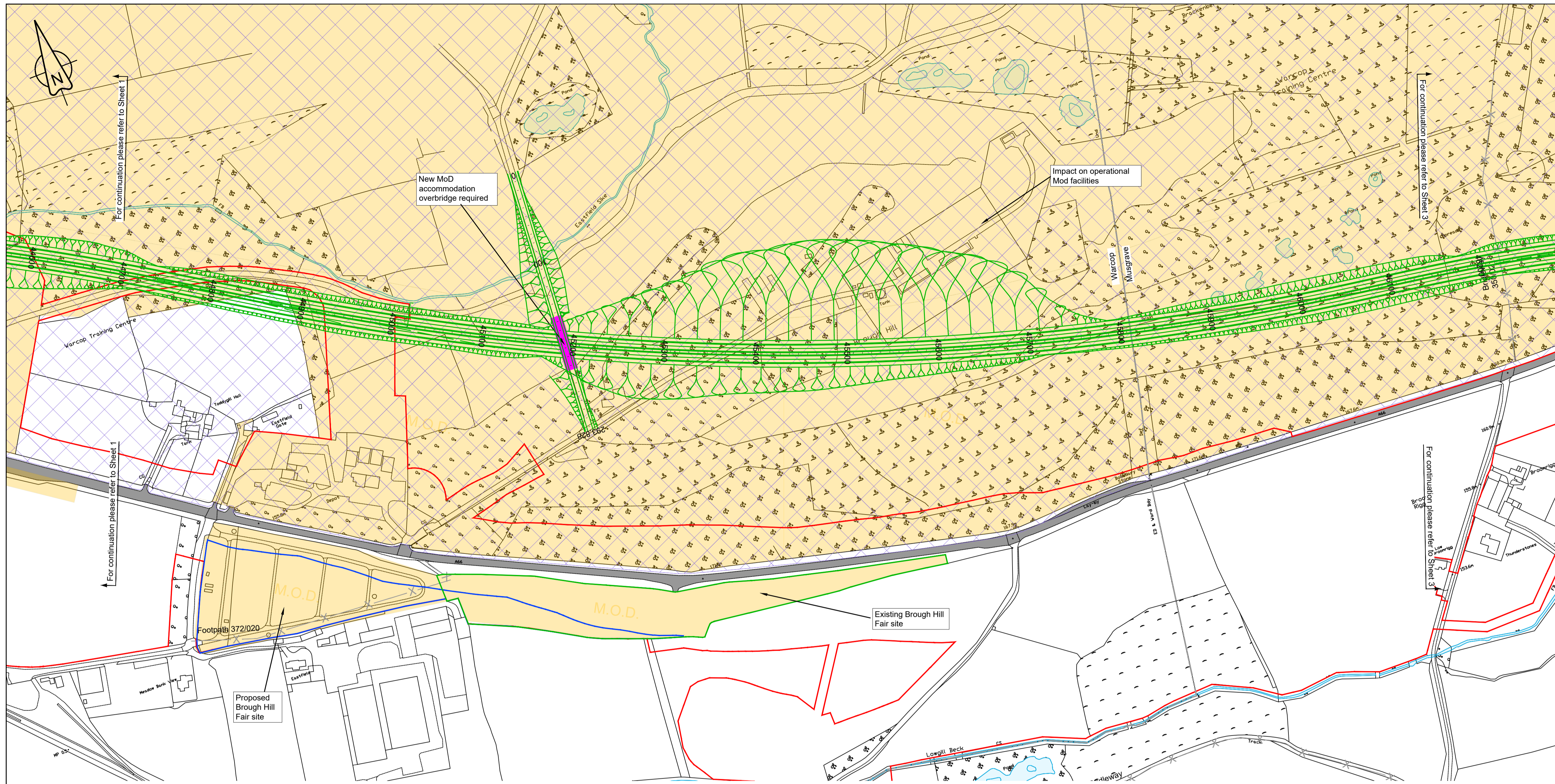
Project Name / Scheme Name
A66 Northern Trans-Pennine Project
Scheme 06
Appleby to Brough

Drawing Title
Approximate location of "Billy Welch straight line route" on OS background mapping
Sheet 1 of 3

Project Ref. No. | Stage | Scale: 1:2500 @ A1
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Drawing Number
Project | Originator | Volume |
HE565627 - AMY - HAC -
S06 -DR-CH- 400020
Location | Type | Role | Number

Suitability | Suitability Description | Revision
S0 | Initial non-contractual code | P01.1

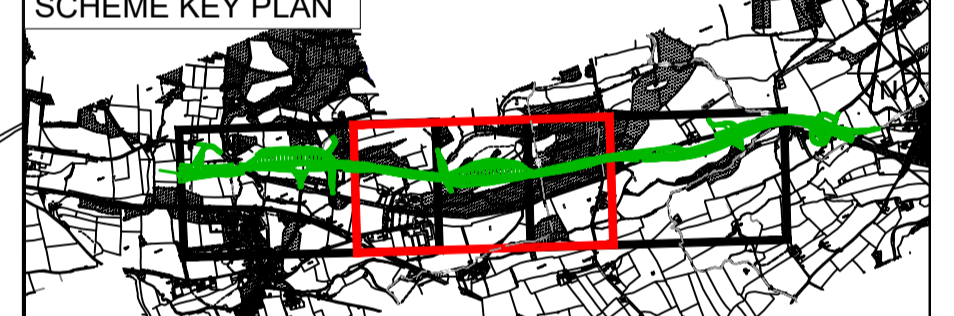
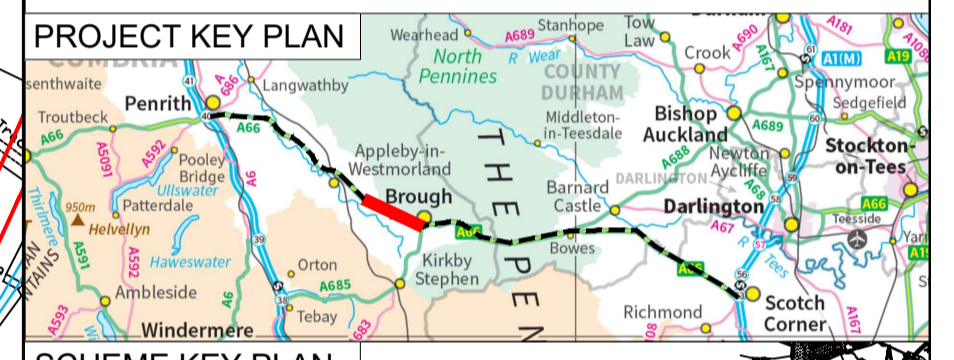


NOTES

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- KEY**
- DCO ORDER LIMITS
 - AREA OF OUTSTANDING NATURAL BEAUTY (AONB)
 - MoD OPERATIONAL LAND
 - EXISTING WATERCOURSE
 - EXISTING A66 CARRIAGEWAY
 - PARISH BOUNDARY
 - EXISTING PUBLIC RIGHT OF WAY
- FOR THE "BILLY WELCH STRAIGHT LINE ROUTE":
- PROPOSED WORKS
 - PROPOSED EARTHWORKS
 - PROPOSED BRIDGE / VIADUCT
 - PROPOSED UNDERPASS / TUNNEL

DRAFT



P01.1	Submitted in response to PDL-011				
	CF	AB	PC	AJ	
	14/02/23	14/02/23	14/02/23	14/02/23	14/02/23
Revision details					
Revision	Created	Checked	Reviewed	Approved	Authorised
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Purpose
Response to ExA's Written Question PC 1.1 [PDL-011]

PINS Reference Number
TR010062

Client
3 Piccadilly Place
Manchester
M1 3BN

Project Name / Scheme Name
A66 Northern Trans-Pennine Project
Scheme 06
Appleby to Brough

Drawing Title
Approximate location of "Billy Welch straight line route" on OS background mapping
Sheet 2 of 3

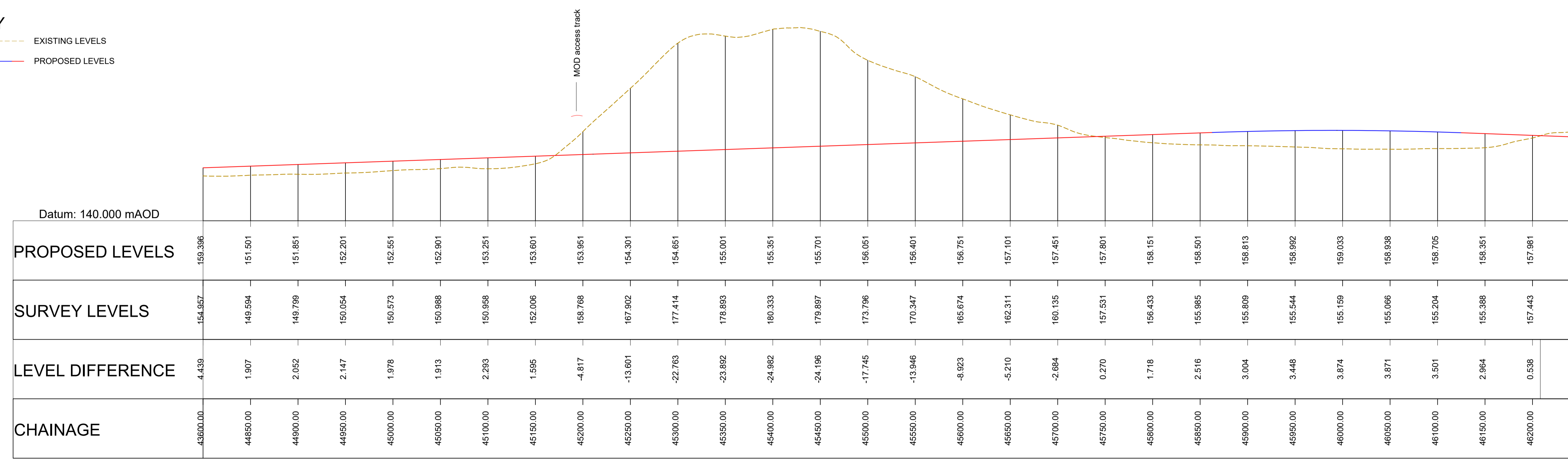
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S06 -DR-CH- 400021
Location | Type | Role | Number

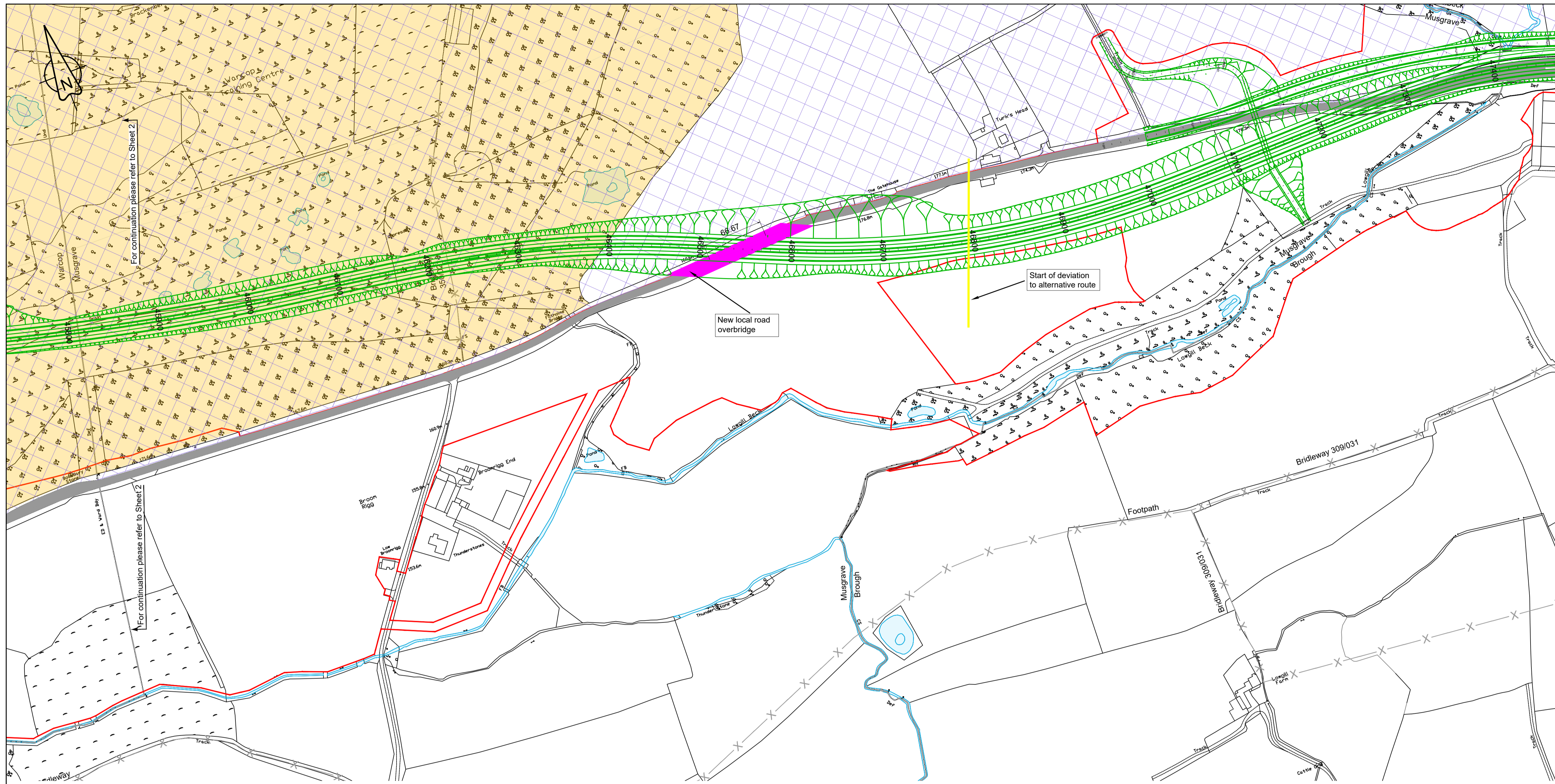
Suitability	Suitability Description	Revision
S0	Initial non-contractual code	P01.1

KEY

- EXISTING LEVELS
- PROPOSED LEVELS



Longitudinal section with 5x vertical exaggeration

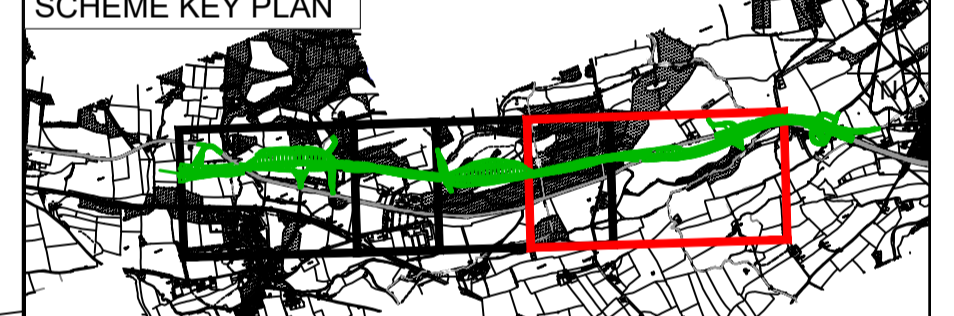
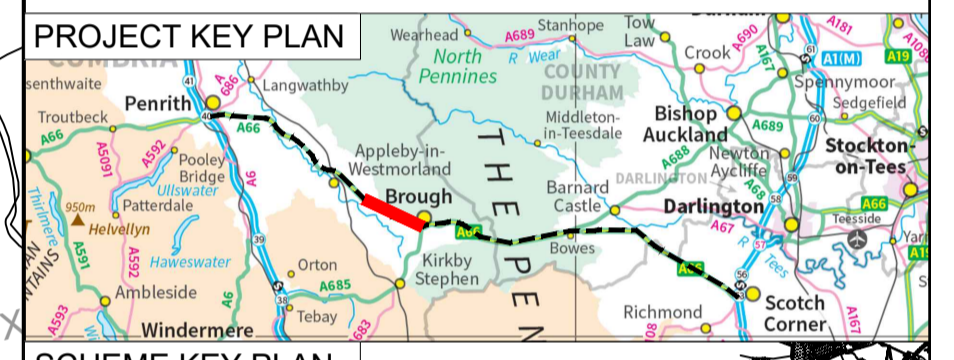


NOTES

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- KEY**
- DCO ORDER LIMITS
 - AREA OF OUTSTANDING NATURAL BEAUTY (AONB)
 - MoD OPERATIONAL LAND
 - EXISTING WATERCOURSE
 - EXISTING A66 CARRIAGEWAY
 - PARISH BOUNDARY
 - EXISTING PUBLIC RIGHT OF WAY
- FOR THE "BILLY WELCH STRAIGHT LINE ROUTE":
- PROPOSED WORKS
 - PROPOSED EARTHWORKS
 - PROPOSED BRIDGE / VIADUCT
 - PROPOSED UNDERPASS / TUNNEL

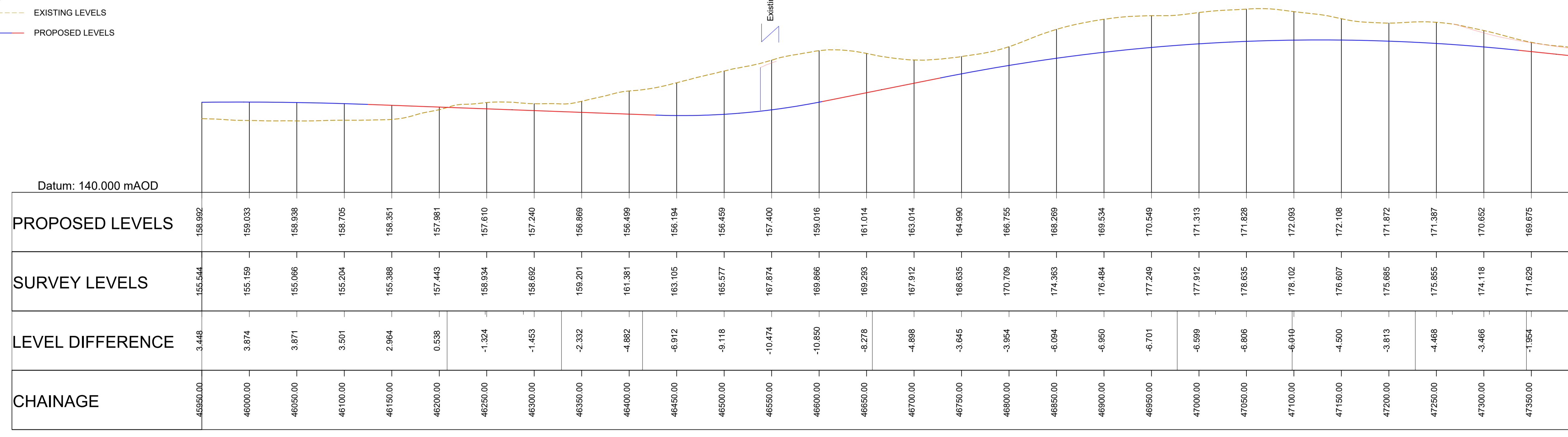
DRAFT



Submitted in response to PDL-011				
P01.1	CF	AB	PC	AJ
	14/02/23	14/02/23	14/02/23	14/02/23
Revision details				
Revision	Created	Checked	Reviewed	Approved
	dd/mm/yy	dd/mm/yy	dd/mm/yy	dd/mm/yy

KEY

- EXISTING LEVELS
- PROPOSED LEVELS



Longitudinal section with 5x vertical exaggeration

Purpose
Response to ExA's Written Question PC 1.1 [PDL-011]

PINS Reference Number
TR010062

Client
3 Piccadilly Place
Manchester
M1 3BN

Project Name / Scheme Name
A66 Northern Trans-Pennine Project
Scheme 06
Appleby to Brough

Drawing Title
Approximate location of "Billy Welch straight line route" on OS background mapping
Sheet 3 of 3

Project Ref. No. Stage Scale: 1:2500 @ A1
Dimensions: M

Drawing Number
Project | Originator | Volume |
HE565627 - AMY - HAC -
S06 -DR-CH- 400022
Location | Type | Role | Number

Suitability Description
S0 Initial non-contractual code
Revision
P01.1



NOTES

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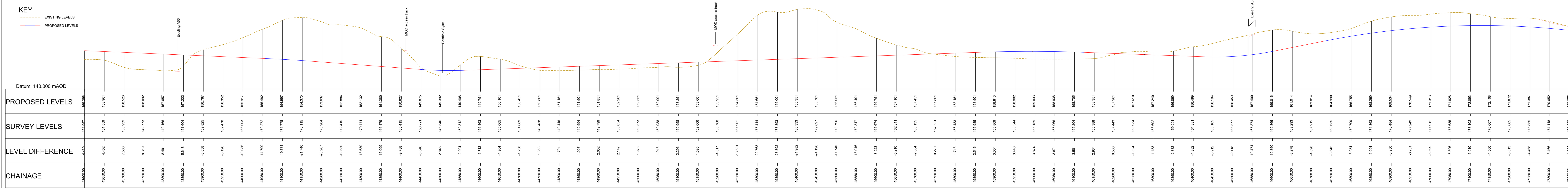
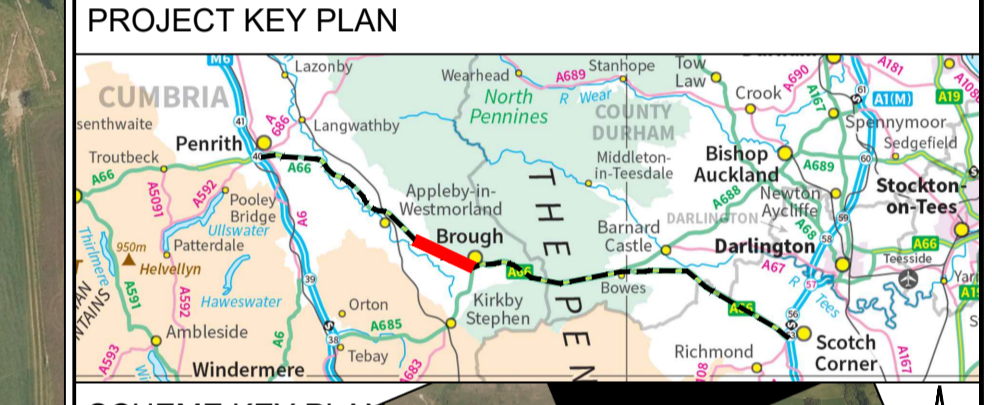
KEY

- DCO ORDER LIMITS
- AREA OF OUTSTANDING NATURAL BEAUTY (AONB)
- MoD OPERATIONAL LAND
- EXISTING BROUGH HILL FAIR SITE
- PROPOSED BROUGH HILL FAIR SITE

FOR THE "BILLY WELCH STRAIGHT LINE ROUTE":

- PROPOSED WORKS
- PROPOSED EARTHWORKS

DRAFT



Longitudinal section with 5x vertical exaggeration

Response to ExA's Written Question PC 1.1 [PDL-011]

PINS Reference Number: TR010062

Client: 3 Piccadilly Place Manchester M1 3BN

national highways

Project Name / Scheme Name: A66 Northern Trans-Pennine Project Scheme 06

Appley to Brough

Drawing Title: Approximate location of "Billy Welch straight line route" on Aerial Imagery background

Project Ref. No.	Stage	Scale: 1:2500	@ A1
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Drawing Number	Project	Originator	Volume
HE565627	- AMY - HAC -		
S06	-DR-CH-400023		
Location	Type	Role	Number
S0	Initial non-contractual code		P01.1

3.4. Appendix D: TA 1.5 Schedule of Potential Amendments to Rights of Way and Access Plans and draft Development Consent Order

Issue raised	Source	DCO ref	Applicant response	Corrective Action
<p>Scheme 09 sheet 3 Footpath 20.23/8/1 change northwards to southwards</p> <p>Scheme 09 sheet 4 Reference M change 46 to 82 metres</p> <p>Scheme 09 sheet 4 Reference M – junction is BW 20.33/17/1 and Warrener Lane (not A66)</p> <p>Scheme 09 sheet 4 Bridleway 20.30/8/1 Carking Moor Farm replace with Warrener House and change south-east to south</p> <p>Scheme 09 sheet 4 Reference N – junction is BW 20.33/17/1 and Warrener Lane (not A66)</p> <p>Scheme 09 sheet 4 Reference N change 180 metres to 222 metres, replace easterly with westerly</p>	<p>North Yorkshire County Council/ Richmondshire District Council</p> <p>Raised in section 3.0 of Written Representation [REP1-040] and re-iterated in para 19.7 of the Local Impact Report [REP1-042]</p>	<p>REP1-039 REP1-040 REP1-042 REP2-016 REP2-018</p>	<p>National Highways Responded on page 14 of its Response to Written Representations [REP1-040]:</p> <p>National Highways acknowledge the comments made on the drafting errors and can confirm the following amendments</p> <p>Footpath 20.23/8/1 - northwards to change to southwards</p> <p>Reference M – distance to be changed from 46 to 82 metres</p> <p>Reference M – description text to be updated to reference “20.33/17/1 and Warrener Lane” (not A66)</p> <p>Scheme 09 sheet 4 Bridleway 20.30/8/1 Carking Moor Farm replace with Warrener House and change south-east to south</p> <p>Reference N – description text to be updated to reference “20.33/17/1 and Warrener Lane” (not A66)</p> <p>Reference N distance to be changed from 180 metres to 222 metres.</p>	<p>Amendments will appear in the next iteration of the Draft Development Consent Order.</p>

<p>2- Requested amendments to plans and draft DCO for Scheme 06 (Appleby to Brough)</p> <p>2.1 We have noted National Highways comments on our relevant representation, but do not agree with many of them.</p> <p>2.2 Many of the amendments are where the new rights of way, listed in the draft DCO and shown with a letter on the plans, are along a route also shown as “private means of access”. Please see the Rights of Way and Access Plans for Scheme 06 (APP-345) and the draft DCO (APP-285) for comments below.</p> <p>2.3 The Walking, Cycling and Horse Riding Proposals (APP-010) and the General Arrangements Drawings (APP-014) also show the intended changes to rights of way. However, there are some differences between these documents and the Rights of Way and Access Plans.</p> <p>2.4 As the draft DCO makes clear (Paragraphs 9-11 and Schedule 2) it is the DCO with the Rights of Way and Access Plans that will make the legal changes to the rights of way.</p> <p>2.5 We accept that where the new right of way is along another highway which is a carriageway, it would not be shown on the plans. This applies where the new right of way is beside the new trunk road or along a new or improved side road.</p> <p>2.6 However a new private means of access is not another highway, so where a right of way is</p>	<p>Penrith Ramblers Group</p>	<p>REP1-127</p>	<p>National Highways responded in its Response to Written Representations [REP2-017] on pages 7 and 8:</p> <p>Paragraphs 2.1 to 2.9, 2.10 (part), 2.11, 2.13 and 2.15 – the Applicant remains of the firm view that its approach to the presentation of walking, cycling and horse riding provision (WCHR) within the bounds of an existing or proposed highway is wholly consistent with the law and established practice. A WCHR provision within the bounds of a highway is by definition not a highway in its own right; it forms a part of the highway within which it is situated. The fact that there may be a co-incident private right of way over that WCHR provision (i.e., over part of the highway) does not in any way change this position.</p> <p>In this regard, when considering the comparison drawn between the approach on Scheme 06 to the approach in Scheme 03 it is important to recognise that the WCHR provisions referred to by the Ramblers in relation to Scheme 03 relate to a cycle track which is treated across the Rights of Way and Access Plans for all Schemes as a highway in its own right with its own highway “proposed side road / new public right of way boundary” (denoted on the Rights of Way and Access Plans by a line broken with squares). As such, where the cycle track is also subject to a</p>	<p>The Applicant proposes no changes in response to the issues raised that pertain to co-incident public rights of way and private means of access.</p> <p>In relation to the remaining drafting points, the following amendments are proposed by the Applicant in the next iteration of the draft DCO:</p> <p>2.10 Scheme 06, sheet 2 of the Rights of Way and Access Plans, the Applicant proposes to amend the description of the ‘starting point’ in relation to References D* and F to refer to the existing reference point of the junction of the B6259 and the access to Dyke Nook.</p> <p>2.12 Scheme 06, sheet 3 of the Rights of Way and Access Plans, the Applicant proposes to amend the description of the “starting point” of Reference J* such that it continues to use the junction of footpath 372/014 with the existing A66 as its existing reference location, but the starting point will be located 265 metres to the east of that location. In relation to reference K* the Applicant intends to amend the “starting point” to</p>
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<p>coincident with a new private means of access it should be shown with the symbol for “new public right of way and new private means of access” on the plans. If the route concerned is another highway, it would be a public carriageway, so should be shown as a side road or the new trunk road, and not as a private means of access. The public would have the right to drive along it.</p> <p>2.7 Draft DCO page 96. New cycleway A* should, at least in part, be shown with right of way symbol. Part of the route is coincident with private means of access 9, so is not part of another highway. It is not clear if the rest of this route is within the new A66, but we note that a similar cycleway in scheme 03 (Penrith to Temple Sowerby) is shown as a new right of way throughout on the plans (document APP-343).</p> <p>2.8 Draft DCO page 96. New route of bridleway 372024, B*, should be shown with right of way symbol on plans, as it is coincident with new private means of access 3. A private means of access is not a highway unless it is also shown as a right of way.</p> <p>2.9 Draft DCO page 97. Part of new route of footpath 372027, C*, where it is coincident with new private means of access 13, should be shown on plans with right of way symbol.</p> <p>2.10 Draft DCO page 97. Description of new paths D* & F are puzzling. The “point immediately south-west of its junction with the existing A66” seems to be the point where D*</p>			<p>coincident private right of way, it is denoted with the “new public right of way and new private means of access” cross hatched stipple to show it is a public right of way, with a private right of way over it.</p> <p>In contrast, in relation to the cycleways identified in the Ramblers Written Representation on Scheme 06, these are all within the highway boundary of the A66 or other side roads and so are not highways in their own right. They form part of the wider highway in which they are situated as is shown clearly by it being within the bounds (shown either by a line broken with squares in the case of a side road or a line broken with circles in the case of the A66 trunk road) of that wider highway. They do not cease to be highway merely because they are also subject to a private right of way.</p> <p>The Applicant has amended the definition of “cycleway” contained in article 2(1) of the draft DCO submitted at Deadline 2 to make it clearer that, for the purposes of this Project, a “cycleway” will only ever comprise part of a highway, as against a highway in its own right.</p> <p>2.10 This suggestion regarding the description include in Schedule 3 will be considered and updated accordingly (if</p>	<p>refer to a point a 135 metres to the south of the junction of footpath 372/021 and the existing A66.</p>
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<p>and F meet. This point would be better described as about 50m east of the B6259. Also a small part of D*, where coincident with private means of access 15, should be shown as a right of way.</p> <p>2.11 Draft DCO page 98. Parts of the new routes of footpaths 372013 & 372014, G* & H*, under the Cringle Beck viaduct, are shown as new private means of access 17 & 18, so should also be shown as a right of way on the plans. For the rest of G*, the new path is at the bottom of the embankment, so is it really part of the new A66?</p> <p>2.12 Draft DCO pages 98-9. For footpath 372021 the descriptions of the new routes J* & K* are puzzling. J* is described as “from a point immediately south of its junction with the existing A66” but appears to be from a point on the new A66 at the Walk Mill underpass. K* is described similarly but appears to run from a point 131 metres south of the existing A66 and run in north-west direction (not north-east). While these new paths are within the boundary of the new roads, they appear not to be alongside the new roads but are separated from them by an embankment. We suggest this means they are not part of the highway so should be shown as a right of way.</p> <p>2.13 Draft DCO pages 99-100. The new route for footpath 372020, O*, is shown as a private means of access 32, so should also be shown as a right of way.</p>			<p>considered appropriate). The small section of D* denoted as PMA is within the Highway boundary and therefore it is not appropriate to show this as a separate Right of Way for the reasons set out above.</p> <p>2.12 This suggestion regarding the description will be considered and updated accordingly (if deemed appropriate). The Applicant notes that the Ramblers' written representation acknowledges that these ways are shown to be within the bounds of the highway, and it is therefore unnecessary for them to be shown as separate highways in their own right.</p> <p>2.14 & 2.15 The stopping up of the length of footpath 329/001 (see sheet 6 of the Rights of Way and Access Plans for Scheme 06 (Document Reference 5.19, APP-345)) is required to facilitate the scheme. As is stated on the pages of the DCO referred to in the Rambler's written representation, it is proposed to be replaced by a new footway (references V* and W*) that will be within the highway boundary of the A66. The replacement ways are footways as they serve as replacement for the type of way that would be stopped up (i.e., a footpath).</p>	
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<p>2.14 Draft DCO pages 101-2. Footpath 329001 should not be closed as the section proposed for closure is coincident with a new private means of access. It needs to remain to give public access to the existing A66 from the footpath.</p> <p>2.15 The new paths V* & W* should be shown as rights of way on the plans, as the West Lane overbridge is shown as a private means of access (42). Should these be bridleways, to maintain connection from bridleway 309003 to the road into Brough?</p>				
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<p>3. The WCH document refers throughout to 'proposed shared cycleway/ footway'; but the DCO Part 1 refers with reference to Scheme 0102 to provision of 'new shared cycleway'; but at Scheme 03 the terms 'new cycle track' or 'new cycleway' are employed (with no reference to 'shared') is used in some locations, and 'new shared cycleway' continues to be referenced in others. Since the WCH uses a term that doesn't feature in the Order, and at least three different terms are used in the Order do we assume that they mean different things – different forms of way for pedal cycles: some that will be shared by pedestrians and some that will not? Or has there been some 'untidy' or inconsistent referencing of terms relating to pedal-cycle provision?</p> <p>4. It is realised that by reference to s329 Highways Act 1980 definitions of 'cycle track' and 'cycleway' are included in the Interpretation section of Part 1 of the DCO, but there is no definition of 'shared cycleway / footway' or of 'shared cycleway'. By definition a 'cycleway' is a way shared with pedal-cycles and pedestrians, so we wonder why the term 'shared' has been added in the text of the DCO? We wonder which other classes of user a 'shared cycleway' may be shared with? Those terms need to be clarified.</p> <p>5. Also, the definition of 'cycle track' is referenced to the definition contained in s329 Highways Act 1980. But that definition is not definitive concerning rights on foot.</p>	<p>Cumbria and Lakes Joint Local Access Forum</p>	<p>REP1-014</p>	<p>National Highways responded in its Response to Written Representations [REP2-017] on pages 51 and 52:</p> <p>National Highways considers that many of these matters are addressed in the Applicant's Response to Relevant Representations Part 2 of 4 (Document Reference 6.5, PDL-011) to the Ramblers, Penrith Group, RR-021.</p> <p>4. The term 'shared' that has been included for several of the descriptions could be deemed superfluous but was provided to help clarify to the reader (who may not be as well versed in the terminology) to understand that the facilities would be shared.</p> <p>5. Both the definition of 'cycle track' and 'cycleway' contained in article 2(1) of the draft DCO extend to a right of way on foot. The key distinction between the terms as they are used in relation to this Project is that a 'cycle track' is considered to be a highway in its own right with its own highway boundary, whereas a 'cycleway' forms part of a wider highway. The Applicant has amended article 2(1) of the draft DCO in the version of the DCO submitted at this Deadline 2 to make that distinction more clearly.</p> <p>9. The comments made in relation to the requirements for the presentation of</p>	<p>Article 2(1) of the draft Development Consent Order was amended at Deadline 2 [REP2-006] to clarify that a "cycleway" is comprised in another highway and is not a highway in its own right.</p> <p>National Highways notes that its use of the term "shared" in relation to cycleways, intended to assist with clarifying that such facilities were not restricted to cyclists only, appears to have had the opposite effect as intended. Consequently, the Applicant proposes to remove all references to "shared" in the next iteration of the draft DCO.</p> <p>9.3 The Applicant has reviewed the description of reference A* in relation to sheet 3 of the Rights of Way and Access Plans for Scheme 03. The "starting point" (the southmost arrow emanating from the reference A* label is located approximately 500 metres southwest of High Barn and the proposed route from that point is generally in a north-easterly direction. The error relates to its termination point which is located to the northeast of High</p>
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<p>9.1 At 0102 a section of footpath 358006 falls within the curtilage of the project and ends at the carriageway, but appears not to be subject to any extinguishment. Is this an oversight?</p> <p>9.3 On sheet 3 of scheme 3 there appears to be an error in the description of A* which refers to a 'shared cycleway' with references to High Barn which possibly are wrongly orientated. And what happens at B* where there is a section or 'shared cycleway' with no notation.</p> <p>9.4 At sheet 1 of scheme 06 reference to a length of new cycle way 'in a generally north westerly direction' should read as 'in a generally south easterly direction'.</p> <p>9.5 A similar comment applies to cycleway ref. A* on sheets 1 to 5 of Scheme 06 between Café 66 and Flitholme. The draughts-person appears to sometimes confuse east and west, north and south.</p> <p>10. In the WCH document the lack of clarity relating to notation for public paths is repeated where the notation fails to clearly differentiate between existing paths that are to be diverted or extinguished and existing paths that are to remain unchanged.</p> <p>11. We wonder if the draughtsperson for the plans at section 06 (APP-345) has been working to a set of different notation / plan key rules. The manner in which public rights of way that are intended to be coincident with private access routes are shown at APP-345 is different from</p>			<p>Side Roads Orders, which have long been adopted for use in Development Consents Orders is noted. The technical expertise required to appreciate what is shown by them and the need for a more user friendly explanation is one of the reasons why National Highways produced the Walking, Cycling and Horse-Riding Proposals (Document Reference 2.4, APP-010).</p> <p>9.1 This section of footpath currently terminates at the existing A66. It is therefore not proposed to extinguish this and so it is not shown as being stopped up.</p> <p>9.3 These references will be reviewed and if required updated accordingly. As reference B* is within the current Highway boundary it is not appropriate to denote this as a separate Public Right of Way.</p> <p>9.4/9.5 These references will be reviewed and if required, corrected in a future iteration of the draft DCO accordingly.</p> <p>10. The comment is noted, but the intention of the Walking, Cycling and Horse-Riding Proposals (Document Reference 2.4, APP-010) is to show how the Project would integrate with the existing public rights of way network by showing the "end state" envisaged. To</p>	<p>Barn (and not to the south). This amendment will be made in the next iteration of the draft DCO.</p> <p>9.4 & 9.5 This amendment was to the description of Reference A* for Scheme 06 sheet 1 was made in the draft DCO submitted for Deadline 2 [REP2-006] page 99 (according to the numbering at the bottom of the page in the footer) of the track changes version. It should be noted that, despite appearing on sheets 1 to 5 of the Rights of Way and Access Plans for Scheme 06, Reference A* for Scheme 06 is described only once in this Schedule, and so no further amendments are required.</p>
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<p>the way they are depicted on other section plans (APP-342 to APP344), especially within the trunk road boundary line. On APP-345 the depiction of public paths on otherwise private roads is inconsistent with the way that such dual-routes are depicted on the mapping for the other sections of the proposals.</p> <p>12. Those errors and oversights on the access and rights of way mapping need attention.</p> <p>13. This local access forum commends to the ExA the further detailed points made in the representations from the Penrith Group of The Ramblers. There is every chance that neither the Ramblers nor the local access forum has identified all those errors. On the other points raised by The Ramblers, the responses made by the applicant at PDL-011 /RR-021 are not understood. Is there some misrepresentation or misunderstanding of what are public footpaths and what are footways?</p> <p>14. This local Access Form also supports the comments made by the Penrith Group Ramblers concerning access to the Countess Pillar ...</p> <p>15. ... and by The British Horse Society concerning lack of provision in the project proposals for horse-rider access.</p> <p>16. In conclusion a thorough checking system needs to be put in place to ensure that the Side-roads Orders that will result from the Development Consent Order are free of errors which once in a confirmed Side Roads Order are</p>			<p>provide this clarity, it necessarily has to lose some of the precision demanded by the requirements of the notation of the Rights of Way and Access Plans. The details pertaining to diverted or extinguished paths is contained within the Rights of Way and Access Plans (for the respective scheme) (Document Reference 5.19, APP-343-349) and Draft Development Consent Order (Document Reference 5.1, APP-285).</p> <p>11/12/13. It is important to clarify that a footpath and cycle track are legal entities that are outside of the highway boundary, whereas a footway and cycleway are within the highway boundary. It is therefore not appropriate to show/denote separate rights of way for footways and cycleways (as they are included within the highway boundary). As a consequence, these have not been hatched as public rights of way and this is why there is a difference between how they have been presented across the various schemes.</p> <p>14. See response to the Penrith Rambler Group above (REP1-127).</p> <p>16. As set out in National Highways Response to Relevant Representations Part 4 of 4 (Document Reference 6.5, PDL-013), the DCO will contain all statutory powers required to facilitate the Project, including those that would</p>	
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next to impossible to correct and can lead to future disputes.			ordinarily be contained in a Side Roads Order. As such, no separate Side Roads Order will be brought forward (and indeed cannot be brought forward under the Planning Act 2008).	
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