

## **Cumbria County Council and Eden District Council**

### **The Councils' response to the Examining Authority Written Questions for Deadline 4**

This document represents a table of responses to the Examining Authority’s Written Questions for Deadline 4, in respect of National Highways’ (“the Applicant’s”) application for development consent for the A66 Northern Trans-Pennine Project (“the Project”). It has been prepared jointly by Cumbria County Council (“CCC”) and Eden District Council (“EDC”) together as the “the Councils”. The Councils comments for Deadline 4 are entered in the right-hand column and relate to the matters addressed to the Councils.

Reference No	Subject	Response by	Question	Councils’ further comments (proposed / draft)
<b>Air Quality</b>				
AQ 1.2	<i>Castlegate Potential AQM</i>	<b>Eden DC/ Cumbria CC</b>	Provide a plan showing the potential Castlegate Air Quality Management Area (AQMA). Also, given that there is forecast to be a reduction in traffic flows on Castlegate explain whether the Council is satisfied that the Project will not create any additional air quality issues in Castlegate that would impact on the Council’s proposed AQMA.	<p>Please see the attached plan in Annex 1.</p> <p>A reduction in traffic flows has the potential to reduce air quality issues on Castlegate. However, it is not possible to judge with confidence that additional air quality issues will not be created without a detailed understanding of the impact of the Project on traffic flows on adjoining roads such as Ullswater Road, King Street, Victoria Road and Clifford Road. It is possible that the reduction in flows on Castlegate could cause, or be a result of, redistribution of traffic to these adjoining roads by the Project and therefore causing additional air quality issues in Penrith.</p> <p>The forecast reduction in traffic flows is not described in the air quality evidence base (Chapter 3.2 Environmental Statement Chapter 5 Air Quality or 3.4 Environmental Statement Appendix 5.2 Air Quality Assessment Methodology) in the form of tabulated modelled traffic data output which can be scrutinised.</p>

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				<p>It would be beneficial if these data were provided by the Applicant.</p> <p>Furthermore, Section 3.4 Environmental Statement Appendix 2.1 Traffic Modelling Report (Figure 2.1.2) indicates that increases in traffic in 2029 will exceed the Detailed Assessment 100 AADT (adjacent to an AQMA) or 500AADT (elsewhere) criteria contained in the IAQM/EPUK Land-Use Planning &amp; Development Control: Planning for Air Quality criteria which trigger the need for Detailed Assessment. Figure 2.1.2 shows that even the higher screening criteria contained in DMRB LA105 (1,000AADT) could be exceeded by the flow changes on Ullswater Road, Queen Street and Clifford Street. A higher resolution version of this figure would allow the Councils to better understand the traffic flow changes in the key areas in central Penrith.</p> <p>The Councils therefore do not agree that a forecast to be a reduction in traffic flows on Castlegate has been adequately demonstrated yet and is not satisfied that the Project will not create any additional air quality issues in Penrith.</p>

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<b>Draft Development Consent Order (draft DCO)</b>				
DCO 1.2	<i>Article 9 (1) and (2) Construction and maintenance of new, altered or diverted streets and other structures</i>	<b>Cumbria CC, Durham CC, and North Yorkshire CC</b>	Article 9 (1) and (2) stipulate that any highway constructed, altered, or diverted must “be maintained by and at the expense of the local highway authority from its completion.” Confirm that the wording of this Article does not allow for any maintenance period after completion.	<p>The Council is aware of its statutory duties, under the Highways Act 1980, that will apply to new, altered or diverted de-trunked highway after the scheme is open to traffic. This would include winter maintenance. The scope of the phased maintenance requirements and associated timescales have not been set out in detail within the Construction Traffic Management Plan [APP-033].</p> <p>Therefore, the Council requires a legal side agreement to clarify this and for the agreement to align with the Applicant’s own contractual arrangements with its contractors; any construction defects would remain the responsibility of the Applicant for a period of 12 months from the completion of the highways works as is standard practice for the construction of new highway.</p>
DCO 1.6	<i>Article 53 EMP – Second Iteration Amendments Approvals Process</i>	<b>Environment Agency Natural England Historic</b>	Comment on the revised wording of Article 53 submitted at Deadline 2 [REP2-005] in particular the amendments and additions made to new paragraphs (7), (8) and (9) and whether the Secretary of State’s call-in mechanism, and the timescale given of 14-days, eliminates	The Councils’ position is that the EMP process should not disadvantage the Councils in any way and their input to and influence over the matters contained within each iteration of the EMP should be no less than would have been the case had the approvals followed the normal DCO requirements process.

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		<p><b>England</b> <b>All Relevant Local Authorities</b></p>	<p>the concerns over the so-called "self-approval" process of amending the second iteration of the EMP.</p>	<p>The Councils welcome the amendment to Article 53 and continued engagement with the Applicant, but still have wider concerns about the EMP process. These concerns were set out in detail in the Councils' response to Written Representations to National Highways at Deadline 3.</p> <p>The Councils generally support the proposed changes to Article 53, but still have concerns as set out below.</p> <p>The Councils welcome the Applicant's proposal to include a mechanism for notification to the Secretary of State (SoS), when it proposes to determine a change to the 2nd iteration EMP, giving the SoS the opportunity to 'call-in' the decision. To require the Councils' views to be taken into account by the SoS in deciding whether to exercise call-in powers, it is requested that the Article should also include a provision requiring the Applicant to notify the Councils and other interested parties of the changes at the same time as the notification to the SoS takes place. This will afford them an opportunity to make timely representations to the SoS about the matter.</p> <p>The Councils consider that the proposed period of 14 days for the SoS to make a decision under Article 53 (8) (b) is insufficient, particularly if adequate opportunity is to be afforded to other parties to make representations to the SoS, as suggested above.</p>

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				<p>The Councils would like the SoS to be consulted now to ascertain his view on whether the proposed approval process for the EMP is acceptable to him and that the timescales are reasonable for his department to consider and respond to any notification by the Applicant. The Councils are concerned that if the time period is too short for the SoS to respond and consider any third-party representations, then the effect of the process will be to operate as deemed approval and their views not taken into account. The Councils wish to point out that this will set a precedent for other DCOs in the future allowing applicants to self-approve amendments to their schemes.</p> <p>The Councils are also concerned that there are no provisions in relation to the approval of the third iteration EMP to deal with any material changes to that version. This is unacceptable as it effectively gives National Highways the ability to make any amendments to the third iteration EMP it wishes.</p> <p>The requirement for the third iteration to 'reflect' the second iteration is too vague and the Councils request that it should be changed to 'substantially in accordance with' the second iteration EMP. There does not seem to be a process for independent decision-making where the third iteration is not in substantial accordance with or does not reflect the second iteration (whichever wording applies) This needs to be rectified</p>

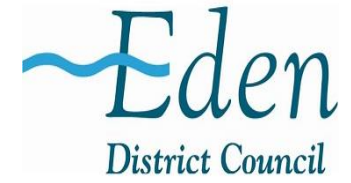
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				and provision made within Article 53 for additional escalation to the SoS.
<b>Traffic and Access</b>				
TA 1.1	<i>Detrunking Arrangements</i>	<b>The Applicant Cumbria CC Durham CC North Yorkshire CC</b>	Provide an update on progress of detrunking 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>De-trunking works will be designed in accordance with a combined A66 NTP Rural Design Guide applicable across all LHA's. However, discussions are ongoing regarding applying the guide to specific parts of the network.</p> <p>The Councils have provided the Applicant with informal written responses to each de-trunking asset proposal received from the Applicant. Formal discussions are now required with the Applicant to resolve any outstanding technical issues and highlight those that should be resolved through legal side agreements to be completed as soon as possible and in any event by the end of the Examination.</p> <p>Acceptance of the de-trunking commuted sum will be required to be signed off by the new Westmorland and Furness Council post 1 April 2023 as the successor authority to CCC.</p>
TA 1.7	<i>Diversion Routes</i>	<b>Cumbria CC</b>	Explain whether there are any barriers to agreeing a suitable approach to diversion management as part of the development	All diversion routes were assessed by the Councils to be unsuitable without mitigation (see Appendix 1 of the Councils' LIR, (REP 1-019)), and all comments and risks that were raised

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		<b>Durham CC</b> <b>North Yorkshire CC</b>	of the Construction Traffic Management Plan and during the operational period. Outline any relevant concerns.	<p>remain valid. Prior to construction, the Councils must have the opportunity to agree a set of diversion routes with the Applicant, alongside funding for any remedial works required to make those routes satisfactory within the planning limitations and agree the strategic operational diversion once the scheme is opened.</p> <p>The Councils continue to be concerned by the construction impact of the scheme on the local community from rat-runs, weight restrictions and suitability of the rural road network to accommodate diverted vehicles, particularly on the A685 through Kirkby Stephen.</p> <p>A strategic diversion plan for the operational phase needs to be provided by the Applicant and agreed by the Councils and secured as part of the EMP</p>
TA 1.8	<i>M6 Junction 40 and Kemplay Bank Roundabout – junction modelling.</i>	<b>Applicant</b> <b>Cumbria CC</b> <b>Eden DC</b>	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	As at the time of writing, the full outputs of the modelling have not yet been disclosed by the Applicant. Initial discussions have been held which have shown the changes in traffic flows since 2019, monthly trends in traffic and the greater levels of traffic flows on Fridays at M6 J40 and Kemplay Bank. Although the Applicant has demonstrated that the modelling has been updated to incorporate 2022 observed traffic levels and altered



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			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 revised modelling and whether this addresses the outstanding concerns from the Councils.	to better represent the longer peak period on a Friday, the Councils still have concerns that the nature and study area of the Vissim modelling does not fully represent the interaction of the A66 and Penrith town centre traffic, especially on a Friday. Further modelling results (base model validation and future year forecasts with and without the scheme) are to be shared and when these have been reviewed by the Councils, a view can be given.
TA 1.9	<i>Skirsgill Depot Access</i>	<b>Cumbria CC</b>	Provide details of outstanding concerns relating to proposed revised access junction onto the A66 from Skirsgill Depot.	<p>Exiting the depot and crossing three lanes to go north or east at J40 roundabout could be a difficult manoeuvre. The Councils require evidence from the Applicant that the junction will operate safely in order to support the proposed junction arrangements.</p> <p>A clear explanation of the proposed construction arrangements is required from the Applicant for the Councils to be satisfied that the depot can continue to operate in a way that allows the Councils to meet their statutory duties.</p> <p>The Applicant has committed to retaining the M6 slip road access.</p>

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				<p>Significant concerns have been raised on a number of occasions in relation to the access to and from the Skirsgill Depot onto the A66. On average there can be up to 500 traffic movements a day from this depot. These movements are a mixture of LGV's, coaches, mini-buses, light-goods, private cars and slow-moving vehicles. The access to the site from the A66 can be at times very dangerous given that there is no deceleration lane or acceleration lane. The number of traffic movements are reduced when the rear access is in use as traffic does not need to use the A66 to gain access.</p>



**Annex 1: Potential Air Quality Management Area at Castlegate, Penrith**

