North Yorkshire County Council and Richmondshire District Council

The Councils' response to the Applicant's response to the Examining Authority Written Questions for Deadline 4 – to be submitted to Deadline 5

This document represents a table of responses to Applicant's responses to the Examining Authority's Written Questions [REP4-011] to be submitted to Deadline 5. It has been prepared jointly by North Yorkshire County Council ("NYCC") and Richmondshire District Council ("RDC") together as the "the Councils" to set out further comments considered necessary in detailing the impacts upon the local area of the Applicant's proposed A66 Northern Trans-Pennine Project ("the Project"), which has been submitted for Development Consent. The Councils comments for Deadline 5 are entered in the right-hand column

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Compulsory Acquisitions					
CA 1.2	*Need for CA*	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].	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. 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. The Applicant has also had regard to paragraph 5.33 of the National Networks National Policy Statement which advises that "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.". 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. 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 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.		The Councils' position is unaltered, and the Councils do not see how enhancement is not a requirement of the Project as paragraph 5.23 of the National Policy Statement for National Networks clearly requires the Applicant to show how opportunities to enhance biodiversity has been achieved.

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			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. 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). 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 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		

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			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 . 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). 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). 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. 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. 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 "*required for the authorised development, or to facilitate, or as is incidental to it*". 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		

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			that the current owner would not be deprived of the beneficial use of the land, such compulsory acquisition would no longer be "*required for the authorised development*" and accordingly, in this scenario, CA powers would not be implemented.		
CA 1.3	*Need for CA*	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.	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. 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 *required* 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.		
CA 1.6	*Need for CA*	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 means of access and the provision of landscaping and reprofiling. (5.9 Compulsory Acquisition and Temporary Possession Schedule, APP-300). 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		The purpose of the CA is understood by the Authorities and we have responded on this point previously. The concern for the Authorities remains in relation to the details of the temporary compound. We understand that the compound is to be the main compound for whole scheme. At this point details of the compound are not known. The site is close to the villages for which the town council has expressed concern about the overall project and we expect there will be a significant amount of local interest.

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			corrected via errata.		The Authorities have only received this information since the DIPS have been appointed (Nov 22) and therefore we are concerned about the level of accurate consultation at will take place We understand that the application is coming forward as a town and county planning act application and is therefore outside of the DCO application. Consultation will take place as a matter of course under the TCPA however it is not clear what will happen if that application is refused. If the compound would go ahead as part of the DCO, simply later in the process, this would understandably not be acceptable to the local community and be very difficult to reconcile Clearer understanding is needed on the process. At this point the authorities await pre application for the compound.
CA 1.8	*Impact from CA*	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].	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. 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. 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. 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		

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			Scheme 09 (APP-017) and on Sheet 3 of the Rights of Way and Access Plans for Scheme 09 (APP-348).		
Draft Development Consent Order (draft DCO)					
DCO 1.4	*Article 53* *Environmental Management Plans (EMP)*	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]. - 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 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. - 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*	National Highways has responded to each 'sub-point' below in turn. <u>Consultation and determination provisions</u> 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). 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. However, National Highways acknowledges that the definition of the "consultation and determination provisions" in article 53(12) should refer to "the first iteration EMP" as opposed to "the EMP". As such, National Highways will amend the next draft of the DCO to reflect this. <u>Definition of "consultee"</u> 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 prior to 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. <u>Secretary of State and time limits</u> 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		Notwithstanding that compliance with the EMP will be a legal requirement upon the Applicant, the Councils are concerned that some details regarding mitigation are not available at this stage.

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		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 the time periods in Article 52 is 28-days. Respond. 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. Provide a response and make any necessary amendments to the next iteration of the draft DCO.	"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. Timescales (general) 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 not determinations of such a submission by the Secretary of State. The Secretary of State retains discretion in relation to these. 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. Finally, the 20 working days consultation period in paragraph 1.4.21 of the first iteration EMP equates to the 28 (non-working) 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. 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.		
DCO 1.5	*Article 53 (4)(a); (7)(a) (ii) EMP*	At the ISH 2 held on Thursday 1 December 2022 [EV-003], the ExA expressed concerns with the words "*materially new or **materially worse adverse**";* the emphasis being the latter words herein underlined. The ExA	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		Notwithstanding that compliance with the EMP will be a legal requirement upon the Applicant, the Councils are concerned that some details regarding mitigation are not available at this stage.

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		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. 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. 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. Provide a response.	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. 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 "*considerably worsens the environmental effect*". Any "*considerable worsening*" 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. 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. The Applicant's preference, therefore, remains with its precedented formulation.		
Environmental Management Plan					
EMP 1.1	*EIA Regulations Compliance*	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	National Highways acknowledges the provisions of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (**the Regulations**) cited in the question. National Highways has assessed the impacts of the Project on the environment and reported the likely significant effects in the Environmental Statement that		The Councils' position has not changed; many assessments presented within the ES are not sufficiently progressed to the extent that the significant effects, that are predicted to be experienced by sensitive receptors within the statutory protection of the Councils, are not adequately and appropriately

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		must contain: - 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. 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. 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].	accompanied the application for development consent as required by the Regulations. 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. 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: (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. 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. 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. 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. 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 environment, by way of the Environmental Statement and the mechanisms contained in article 53 of the DCO (and therefore through the first iteration EMP		mitigated. This is due to an absence of survey information or an absence of design information that would remove or reduce any uncertainty as to the eventual effect

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			and second iteration EMPs) to secure the effects reported in that Environmental Statement. 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). 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.		
Traffic and Access					
TA 1.1	*Detrunking Arrangements*	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.	<u>Update on progress of de-trunking agreements</u> Cumbria County Council (CCC) shared a working draft of their *Detrunking Principles Document* with National Highways and separately with Durham County Council (DCC) and North Yorkshire County Council (NYCC) in April 2022. 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 *Detrunking Principles Document*, 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. These de-trunking proposals submitted by National Highways advised that a number of aspects required further consideration and that some aspects of the CCC *Detrunking Principles Document* 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. 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.		The Council broadly agrees with the wording of draft DCO articles 9(5) and 40(6). The Councils are also broadly in agreement to jointly assess all existing assets, with commuted sums provided where appropriate. No agreements have yet been reached on commuted sum values on any of the asset types at this stage. One existing asset contains significant future financial and maintenance implications, with exact agreements not yet in place. The Council welcomes continued discussion around these issues and require the Applicant and their Delivery Integration Partners (DIPs) to devise suitable forward strategies. These will be captured in Side Agreements between the Councils and the Applicant.

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			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. <u>DCO Wording</u> 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. 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". 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 the de-trunked road is to be maintained by the Local Highway Authority "unless otherwise agreed in writing". 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.		
TA 1.5	*PROW drafting and amendments*	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.		As discussed in the ISH3, there is a need for clarity to be given by the applicant in terms of the legal status and type of access for the public rights of way and the private means of access to ensure they provide good quality links for both non-motorised users and the local landowners.
TA 1.6	*Diversion Routes*	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		There should be a clear construction traffic management plan and the establishment of suitable diversion routes to support the construction of the project. The Council acknowledges the strategy to only provide this level of detail in the second iteration of the EMP, to be approved by the Secretary of State. The Council welcomes the commitment in D-GEN-10 to

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			noise impacts). The commitment requires that the diversion routes shall be 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. 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. 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. 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. 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).		work with the Applicant and be part of the CTMP consultation. Potential diversion routes are not suitable without mitigation and there is still a concern that this has not be assessed as part of the EIA and measures may fall outside the DCO boundary. No detailed diversion discussions were held as part of the DIP meeting on 14th Feb 2023. It was agreed that they would be on the agenda for the meeting on 14th March 2023.
Tfor this right of waA 1.10	*HGV Facilities*	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	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,		A meeting was held on 08.03.2023 in which the issue of HGV facilities was discussed in the context of the A66. NH and their consultants provided an update on the Nationwide Freight Study, with particular focus on the A66. It was recognised that there was a specific need to meet the future demand of freight along the A66

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		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.	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.		corridor, and consultation feedback from hauliers was presented which supported this issue. NYCC/RDC supports the study and will continue discussions with National Highways to identify appropriate solutions on the A66 corridor. The Councils understand that this issue will not be resolved by the end of the examination period but support the parallel workstream to deliver an optimal solution.