



# TECHNICAL NOTE 1

<b>DATE:</b>	14 March 2023	<b>CONFIDENTIALITY:</b>	Public
<b>SUBJECT:</b>	A66 - Principal issues to be addressed with the Environmental Statement		
<b>PROJECT:</b>	A66 NTP	<b>AUTHOR:</b>	Various
<b>CHECKED:</b>	Various	<b>APPROVED:</b>	Hywel Roberts

## INTRODUCTION

WSP (UK) Ltd (WSP) has prepared this Technical Note in response to a request from National Highways to detail and elaborate upon the principal areas within the Environmental Statement (ES) where the assessment is insufficiently detailed for the Councils to identify the nature and degree the impacts upon assets that they are statutorily obliged to protect.

WSP has prepared this Technical Note on a topic by topic basis reflecting the same environmental factors considered within the ES. This Technical Note also identifies where amendments to the Environmental Management Plan (EMP) would provide greater clarity, assurance and comfort to the Councils.

All of the proposals within this Technical Note have been previously discussed with the relevant Officers of the Councils to ensure that their requirements are included. This Technical Note is largely based upon the comments made within the Councils' Local Impact Report (LIR) although it provides greater clarity upon the information that should be provided by the Applicant to resolve the matter in question.

## AIR QUALITY

As raised by the Examining Authority (ExA) in the written questions there is concern about the degree and nature of the impact on air quality on Castlegate in Penrith. Eden District Council (EDC) is considering declaring an Air Quality Management Area (AQMA) on Castlegate in 2023 due to elevated concentrations of nitrogen dioxide (NO<sub>2</sub>) particularly the upper segment of this road. In the latest annual submission to Defra, in which monitoring data for full calendar year 2021 are reported, the observed annual mean NO<sub>2</sub> concentrations on Castlegate were 35.6 µg/m<sup>3</sup> (monitor C1) and second highest was 35.2 µg/m<sup>3</sup> (monitor GAF04) which are close to the 40 µg/m<sup>3</sup> objective. Any additional or redistributed traffic has the potential to push these concentrations over the 40 µg/m<sup>3</sup> objective which would make an AQMA declaration a necessity.

## Traffic data screening

### Application of Traffic Screening Criteria

The scope of an air quality assessment is determined by screening of traffic data changes to determine if there is a risk of significant effects. For the strategic road network this is completed using change criteria (>±2000 AADT) contained in Defra guidance document LA105. Roads which meet these criteria form the 'Affected Road Network'. This has been applied by National Highways to the strategic network as described in section 2, note 4 of DMRB LA105.

Without prejudice to comments raised by the Councils in response to National Highways response to Written Question AQ 1.1 and with reference to Environmental Statement Figure 5.1 sheet 3/15, Castlegate forms part of the Affected Road Network the Councils are unsure of the modelled impact. There appears to be a conflict with the data presented in Plate 1 of section 2.1.2 Appendix 2.1 Traffic Modelling Report in



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which the traffic flows appear to reduce by less than 2,000 AADT. On this basis, it appears that air quality impacts have not been assessed on Castlegate despite elevated monitored concentrations on this road and the presence of long-term human exposure.

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 AADT changes in central Penrith. This would allow modelled traffic data output which can be scrutinised to determine if screening has been applied correctly. It is requested that these data and a higher resolution version of Plate 1 of section 2.1.2 Appendix 2.1 Traffic Modelling Report is provided to understand the traffic flow changes in the key areas in central Penrith and should include Clifford Road, Ullswater Road, Castlegate, King Street and Victoria Road as a minimum and any other significantly affected link in central Penrith.

## Alternative Precautionary Traffic Screening Criteria

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 & Development Control: Planning for Air Quality criteria which trigger the need for Detailed Assessment. The IAQM/EPUK criteria are commonly applied in local planning to determine whether a detailed air quality assessment is required. Therefore, even if the tabulated modelled traffic data provided do not trigger the LA105 criteria, they may trigger the IAQM/EPUK criteria on Castlegate where there are elevated monitored concentrations and long-term human exposures. If these criteria are triggered then a Detailed Assessment in accordance with IAQM/EPUK is required by EDC to ensure that air quality objectives for nitrogen dioxide are not exceeded.

## Verification sites

### Exclusion of Monitoring Sites

It remains of concern that the verification adjustment factor used within the assessment only uses monitoring sites on Victoria Road (EB15, EB18, EB20, V1 and V3). It is good practice to use as many monitoring sites as possible to verify such is the local variability in dispersion model performance and particularly in areas of specific concern such as Castlegate.

The monitoring sites on Castlegate C1, GAF04, C30 and GAF05 were all excluded from the verification on the basis that they could not be accurately located. However, Eden District Council was not consulted on this matter and would have been happy to discuss the location of these monitors in dialogue with the Applicant so that they could have been included in the verification process.

Without the inclusion of these sites, the Councils are concerned that the verification factor, and therefore predicted concentrations, may have been underestimated. Please can the Applicant provide an updated verification factor that makes use of these four monitoring points on Castlegate and report on any implications to the assessment presented to date.



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## Ullswater Road

The Applicant has responded to the Council's request at the S42 stage to undertake additional monitoring on Ullswater Road and this is welcomed. However, as only four months of monitoring was presented in the ES, it would be beneficial for the Councils to understand if further monitoring was undertaken to provide a more robust annualised average. Results from this site could then be incorporated into an updated verification.

## Construction compound locations

Section 3.3 Environmental Statement Figure 2.3 sheet 1/8 shows the proposed construction compounds east of Penrith located to the south of the development. Construction phase emissions are generally short term and intermittent and can usually be mitigated to produce a non-significant residual effect. However, there may be cases where even with mitigation in place there may be a significant effect depending on the intensity, duration and location of the emission. It is therefore important to consider the specific activities and magnitude of dust emissions at the construction compound so specific mitigation can be applied by design when required.

There is a lack of detail in the draft EMP as to what activities will occur at construction compounds in locations adjacent to sensitive receptors and the text is presented at present could allow National Highways or their Delivery Integration Partner to create a dust nuisance that Eden District Council would normally be able to control through a suitably worded planning condition. EDC do not refute that National Highways will not implement reasonable dust control measures during the construction phase of the Project, but they do require some amendments to the draft EMP to ensure that they are party to, and involved in, the investigation of any complaints and subsequent remedial action. The Councils therefore require the following amended wording to the Air Quality and Dust Management Plan as shown with underline and in red.

### Paragraph B 4.8.1

*The A66 Project Helpline Number will be used to deal with enquiries and complaints from the public. Details of the complaints will be ~~related~~ relayed to the Project IDT Stakeholders team and the relevant local authority as soon as practicable. The extent of the action taken will depend on the validity and nature of the complaint although the relevant local Authority will be advised by National Highways, or their Delivery Integration Partner, prior to the implementation of any action and the relevant local authority will be invited to visit the site to view and validate the success or otherwise of the remedial action. Should further reasonable mitigation be appropriate to prevent a re-occurrence then an updated EMP will be produced to secure this.*

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## BIODIVERSITY

The Councils raise the following key points with regard to biodiversity.

### Landscape and Environmental Management Plan

The Councils request the following amendments, or clarifications, to the Landscape and Environmental Management Plan (LEMP) as inserted in red underline.

Paragraph B1.1.3 of the LEMP “*To provide a variety of foraging, nesting and roosting opportunities for protected and notable species, including bats, badgers, otters, red squirrels, invertebrates, amphibians, reptiles and birds, particularly barn owls.*”

Paragraph B1.2.3 - Please can National Highways identify which bodies will be represented on this Working Group? The Councils request that they, or any other suitable external party, are appropriately represented on this Working Group. This is considered particularly pertinent given the inclusion of the commitment to explore opportunities to link mitigation to the Local Nature Recovery Networks.

Paragraph B1.5.23 “*There are a number of Tree Preservation Orders (TPOs) across the Project (Application Document 5.24) as well as veteran trees. TPOs will need to be updated and reviewed by the PC at each iteration of the LEMP through confirmation with relevant local authority's database. ~~It may be necessary to instruct~~ Arboricultural Impact Assessments providing details of tree groups, species and root protection areas will be undertaken and shared with the local authorities in advance of construction. The removal of any tree protected by a TPO will only be commenced once the local authority has been consulted on why retention is not reasonably practicable and only following agreement on suitable compensation. These details can alternatively be submitted to the Secretary of State for approval as part of any future iteration of the LEMP.*”

Paragraph B1.7.6 “The PC ~~is encouraged to~~ will take a pro-active approach to demonstrate their understanding of this LE e.g. through the use of advance seeding / test plots that promote best practice in ground preparation and wildflower seeding establishment.

Paragraph B1.7.14 “Where grazing is the selected management method within ecology mitigation areas (EFD), it will be controlled or prevented for the first three years to allow the grassland to become established and seedlings to develop sufficient root systems to prevent uprooting when grazed. Upon establishment, grazing can commence. Exact stocking requirements are specific to the site objectives. In winter and during prolonged wet conditions, livestock will be removed to prevent poaching – the compaction or physical breakdown of soil structure under the feet of heavy animals. The grazing timings and approximate stock densities for species-rich grasslands recommended by the Wildlife Trusts (Norfolk Wildlife Trust, 2022)<sup>8</sup> (Kent Wildlife Trust, 2018)<sup>9</sup> is shown in Table 4: Recommended grazing timings and approximate stocking densities based on guidance by the Wildlife Trusts. All grazing within ecology mitigation areas will be in accordance with these recommendations.”



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Paragraph B1.16.1 *“Individual Trees (LE 5.1) are proposed as a precautionary replacement measure in the locations shown on the Environmental Mitigation Plans. Should existing mature specimen trees be lost at these locations during construction, a like for like replacement in terms of species and size will be required as far as reasonably practical. The function of this planting will be landscape integration (EFB).”*

Paragraph B1.21.15 states *“.....Existing underpasses will also be retained and enhanced to ensure badgers are able to move across the project.”* Please can National Highways identify where these existing underpasses are located and whether they are either on land presently within the control of Cumbria County Council as Highway Authority or due to be transferred to their ownership through the de-trunking process. Should any underpasses be within Cumbria County Council’s present or future control, please can National Highways identify what enhancements further to paragraph B1.20.15 are proposed?

Paragraph B1.21.29 states..... *“Ideally 50-60% of the forest should contain conifers of seed producing ages....”*. The councils require the removal of the word ‘ideally’ or alternatively National Highways should propose what minimum percentage can definitively be provided and then proceed to state a commitment to endeavour to achieve up to 60% seed producing age specimens.

## County Wildlife Sites and Ancient Woodland

The Councils remain concerned with regard to the impacts upon County Wildlife Site and Ancient Woodland as National Highways has not identified within the Environmental Statement the extent, and justification for, the removal of these habitat types.

The Councils note the responses in paragraphs 2.11.11 to 2.11.14 of the Applicant’s response to the Local Impact Report of Cumbria County Council and Eden District Council but the Councils would value additional confirmation at a later stage in the development of the Project of how the mitigation hierarchy has been followed. Therefore, the Councils request that the second iteration LEMP should identify how, for these particular sites, impacts have been avoided and why there is no alternative to the chosen option. The LEMP should be updated during the Examination with this confirmation.

## Habitats

National Highways state in paragraph 2.11.3, of their response the LIR, of how the potential effects of road salts is considered in the application. Whilst this response as noted, the Councils’ query was based on accumulation of road salts, which may then discharge into local watercourses. Could NH confirm this has been considered in the above-mentioned assessments and please provide that outcome.

## Species

The Councils would like and would support alternative Red Squirrel mitigation to the proposals that have been identified by National Highways. In their Local Impact Report the Councils expressed a clear preference for alternative proposals that would include grey squirrel control. The Councils are not



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persuaded that the construction of Animex Wildlife Bridges is an effective and cost-efficient solution, and the construction cost, and ongoing maintenance cost, of such a structure would be more effectively used in supporting Red Squirrel elsewhere in the district.

The Councils are also awaiting receipt of confidential species reports from National Highways.

## CULTURAL HERITAGE

### Assessment

The Councils have noted the response of National Highways in Paragraphs 2.15.3 to 2.15.11 of their response to the LIR although the Councils maintain that non-designated heritage assets that are likely to be present along the route of the Project have not been categorised, or identified, to the extent that National Highways have done in other DCO application documents.

The Councils would like to see further detail provided why each mitigation area has been categorised and what are the historical remains that may be present. The information at present does not identify the age or type of feature that is believed to be present and without this information the Councils cannot support the assessment or vouch that the proposed mitigation is appropriate. The Councils refer National Highways to the Schematic Mitigation Plans provided in support of the DCO application for A428 Black Cat to Caxton Gibbet (their Document Reference 9.23 Archaeological Mitigation Strategy) and those provided in support of the A303 (their Document Reference 8.11 (7)).

Should this not be possible within the remaining timescale of the Examination, the Councils would require a commitment from National Highways that secures such an assessment which would be submitted to the Councils (or other relevant Local authority) for approval prior to the submission of any Site Specific Written Scheme of Investigation (SSWSI).

### Annex B3 Outline Heritage Mitigation Strategy

The Councils suggest that the wording of Paragraph B3.1.12 is amended to reflect more appropriately both the chronological obligations of all parties for leading to the approval of a SSWSI.

Paragraph B3.1.12 at present states (as issued by National Highways as Rev 2 at Deadline 3)...

*“The archaeological mitigation will be monitored by Local Authority Curatorial Archaeologists and Historic England. The Local Authority Curatorial Archaeologists (and Historic England where work within Scheduled Monuments is proposed) will be responsible for the sign off, as aligned to and limited by the DCO requirements, of areas for construction, following the completion of archaeological works, and for approving SSWSIs and reports produced by the Archaeological Contractor. The SSWSIs will also identify the museum where the archive will be deposited, in line with the process outlined in this document. Further detail will be added to this document as it is developed through the DCO process.”*

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The Councils would like this alternative wording to be used in its place and included as a suitably worded commitment within the REAC:

*The Local Authority Curatorial Archaeologists (and Historic England where work within Scheduled Monuments is proposed) will be responsible for the sign off of SSWSIs in advance of any excavations or other activities which 'break ground' in the area relating to that SSWSI. The Local Authority Curatorial Archaeologist or Historic England (as appropriate) will be given a reasonable period of time to review and approve the SSWSI and both will monitor (as appropriate) the archaeological mitigation prior to their sign off of areas for construction following the completion of archaeological works to their satisfaction. The SSWSIs will also identify the museum where the archive will be deposited, in line with the process outlined in this document. Further detail will be added to this document as it is developed through the DCO process."*

The Councils have removed the specific wording of "as aligned to and limited by the DCO requirements" as the DCO at present does not refer to any archaeological works and hence it is unclear as to the extent to which the sign off is limited.

The Councils also welcome the commitment within Paragraph B3.1.11 but would also like to be involved within the development of this public engagement and therefore request that the paragraph reads as follows (with the addition shown in red and underlined).

*The Archaeological Contractor will also be responsible for the creation of a strategy and programme for public engagement, to be agreed in consultation with National Highways and the relevant local authorities, and include outreach and engagement with the local community and local/regional museums. This commitment will be confirmed and developed through the DCO process. Where nationally significant discoveries are identified during the archaeological works, the Archaeological Contractor will include within this strategy proposals for a specific exhibition that allows visitors, tourists and local residents to learn and discover more about the archaeological heritage of the A66NTP route corridor.*

Finally, the Councils require the following amendment to D-CH-01 as follows:

*No part of the Project can start until the Outline Heritage Mitigation Strategy (HMS) is further developed (to the extent applicable to that part), in substantial accordance with the HMS included at Annex B3 of this EMP, has been subject to stakeholder consultation as described in Chapter 1 and has been approved by the relevant local authorities in relation to that part.*

## CLIMATE

The Councils remain supportive of further proposals that can be supported by National Highways that address the significant increase in carbon emissions during the construction of the Project. This would build upon the Council's earlier comments in Paragraph 10.25 of their LIR. They continue discussions with National Highways that address this concern.



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## LANDSCAPE AND VISUAL

### Arboricultural Impact Assessment

Whilst acknowledging that National Highways has agreed to submit an Arboricultural Impact Assessment into the Examination at Deadline 5, the Councils are concerned as to how trees out with the Order Limits will be protected during construction. The Councils note the response of National Highways in Paragraph 2.17.16 of their response to the LIR, but the Councils remain unsure as to whether National Highways is intending, or is at least seeking consent for, the removal or harm to trees out with the Order Limits. The Councils do not see how National Highways can avoid such harm if they receive consent and approval for vegetation clearance up to the Order Limits.

The Councils would like to see confirmation from National Highways that trees and other vegetation out with the Order Limits will not be harmed through vegetation clearance within the Order Limits. This is of particular interest to the Councils where Tree Preservation Orders are present in the Penrith area. The Councils have raised this as a matter of concern previously and National Highways have responded in Paragraph 2.17.6 of their response to the LIR to the Council's concerns. The Councils are concerned about the response as it makes no reference to the protection of vegetation out with the Order Limits. The Applicant commits to Tree Protection Plans but these only serve the purpose when there is a realistic opportunity to retain the tree in question and Tree Protection Plans serve no purpose if an arboricultural feature is to be removed. In the absence of this information, it can only be assumed that some vegetation out with the Order Limits will be harmed and the Councils therefore do not see how and where suitable mitigation and compensation for this impact is allowed for.

If National Highways cannot confirm that vegetation out with the Order Limits will not be harmed (and at the present stage of the Examination there is no information to inform as to the status of this vegetation i.e. the presence of Ancient/Veteran trees) then the Councils require assurance that the impacts are provided and secured through a Requirement for an AIA that would fully justify the removal or harm caused to all Ancient/Veteran trees through demonstrating that there was no reasonable alternative to the design.

### Design Changes

Notwithstanding that amendments to the DCO application have not yet been accepted into the Examination, if it is assumed that amendments to the Center Parcs junction (DC-08) are accepted, then the Councils require a commitment from National Highways within the LEMP that pursues all reasonable opportunities to retain the symbolic Scots Pine that is present the west of the existing junction.

### Environmental Management Plan

Notwithstanding comments made by the Councils elsewhere on the appropriateness of the novel approach to the Environmental Management Plan, the Councils would like all final form of structures and hard



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landscaping to be approved via the Environmental Management Plan process by the Secretary of State having consulted the Councils and all suitable regulators and interested parties. The Project passes through highly sensitive landscapes and it is therefore of integral importance that all hard engineered surfaces that will be visible are designed to be as sympathetic as possible. To that end, all final appearances and proposals require Secretary of State approval. This point was raised by the Councils in paragraph 10.42 of their Local Impact Report although no response was made by National Highways in their response to this document which was submitted at Deadline 2.

## NOISE AND VIBRATION

The Councils were pleased to see the commitment from the Applicant for providing line and level drawings of the Kirkby Thore bypass at the recent Issue Specific Hearing held on the 2<sup>nd</sup> of March 2023. The Councils agree with the proposed locations that were shared on screen by National Highways during the Issue Specific Hearing and look forward to receipt of the information.

These line and level drawings will aid the Councils understanding of the mitigation proposals in the Kirkby Thore area that they are still seeking greater resolution and justification for the resulting noise effects that will be experienced in the operational phase. The Councils have previously stated the following in their LIR... *“The Councils would particularly note that no noise barrier is proposed in the Kirkby Thore area “due to engineering constraints” and Table 12-45 states that “additional mitigation measures assessed as not sustainable”. The Councils request that these engineering constraints and unsustainable measures are clearly identified.”* The response from National Highways does not go into sufficient detail to reassure the Councils of the justification and therefore, to be specific, the Councils require:

- A line and level section drawing that shows the height of the carriageway, any bunding and barrier and the respective level of properties on Sanderson Croft.
- Analysis, accompanied by suitable modelling results, of the effect of the inclusion of a noise barrier on top of the bund at 1m, 2m and 3m in height (for example). The cost-benefit analysis should also be provided, as well as a detailed justification for any design reason the barrier cannot be constructed. This should also be balanced with any justification for not increasing the height of the bund, including consideration of engineered slopes to minimise the impact on land take.
- Should the barriers/increased bund height demonstrate a significant reduction in noise level, then National Highways should update the proposals to ensure that it is secured through the DCO because the Councils cannot see at present how such a barrier (assuming it delivers significant noise reductions) would be unsustainable.

With regard to D-NV-03 the Councils are concerned that the nature of the resulting noise at Skirsgill Lodge has not been identified. The Councils do not believe that it is appropriate to identify the mitigation at a later stage (post Examination) in consultation with Historic England and the residents. This consultation should be progressed prior to determination so that the SoS can make an informed decision on the resulting noise effects.

With regard to D-NV-04, this action should include a commitment to share the updated assessment with the relevant Local Authority and should the assessment identify a resulting effect that is worse than presented

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in the Environmental Statement, then mitigation should only be implemented following the agreement of the Secretary of State. The Councils do not consider that it is appropriate for National Highways to be the sole arbitrator of what is appropriate mitigation without first seeking the opinion of the relevant Local Authority or allowing the SoS to arbitrate should the Local Authority not be in agreement with the proposals.

The Councils note that the assessment of construction noise impacts is likely to be a worst case scenario (as is normal for such assessments) but the level of noise at Kirkby Thore Primary school during the construction phase is of concern and could be detrimental to the educational experience of the pupils; a position which would be unacceptable to the Councils. The Councils therefore require a commitment within the DCO that stipulates that an updated construction noise assessment will be undertaken specifically for Kirkby Thore Primary School when greater detail on the construction process and any specific mitigation is available. This would be appended to any future EMP and would be submitted to the Councils for comment and the SoS for approval.

The Councils require the following updates in red underline to the Noise and Vibration Management Plan.

*B5.6.9 - Results of noise and vibration monitoring will be compared against predictions in the Section 61 consent. Any readings that are significantly greater than predicted levels or noise levels stipulated in the section 61 consent will cause a review of the construction process and implementation of remedial action. The level will be reported to the Local Authority Environmental Health Officer as soon as reasonably practicable and the relevant prediction calculations reviewed if exceedance levels are significant.*

*B5.8.1 - The communication strategy will minimise the likelihood of complaints. Residents will be provided with a point of contact for the Principal Contractor CRM for any queries or complaints. In addition, the National Highways Customer Contact Centre (NHCCC) will also be available to deal with queries from the public. This includes an information line staffed by National Highways 24/7. A complaint management system will be in place, in line with systems used by National Highways on other major infrastructure projects. Any noise and vibration complaints will be investigated, and appropriate action taken as required. The complainant and the relevant local authority will be provided with a response outlining the results of the investigation and any action taken. The relevant local authority will be invited to visit the site to view and validate the success or otherwise of the remedial action. Should further reasonable mitigation be appropriate to prevent a re-occurrence then an updated EMP will be produced to secure this.*

## ROAD DRAINAGE AND THE WATER ENVIRONMENT

The Councils and National Highways are in separate discussions with regard to agreeing Protective Provisions with regard to their statutory responsibilities and it is anticipated that successful resolution and agreement in this regard would satisfy all remaining issues with regard to Road Drainage and the Water Environment.