

**A66 NORTHERN TRANS-PENNINE DCO**

**Written Submission of case put orally at Examination hearings held on 1 March  
2023 and 2 March 2023**

**Cumbria County Council and Eden District Council**

**14 March 2023**

## 1 INTRODUCTION

This document summarises the case made orally by Cumbria County Council (CCC) and Eden District Council (EDC), together for the purposes of this document only, “the Councils” who are 2 of the host authorities for the National Highways’ (the Applicant) A66 Northern Trans-Pennine DCO (the Project) at the Hearings held on 1 March 2023 and 2 March 2023

Michelle Spark (MS), Partner at Brabners LLP represented the Councils at the Hearings.

## 2 COMPULSORY ACQUISITION HEARING 1

MS stated in introductions that she was acting on behalf of CCC only on this matter.

### 2.1 Agenda Item

MS stated that she was in attendance at the hearing to update the Examining Authority (ExA) following the CCC’s previous attendance at Compulsory Acquisition Hearing 1 and the Councils previous representations at Deadline 3. MS was pleased to report that positive engagement had been ongoing with the Applicant and some progress was being made.

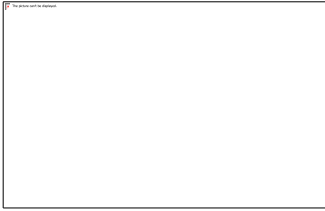
## 3 ISSUE SPECIFIC HEARING 3

MS stated in introductions that she was acting on behalf of both Councils in this matter and she also introduced Hywel Roberts (HR) an Associate Director from WSP.

### 3.1 Agenda Item 2.6 – Design and Landscape

The ExA stated that the local authorities, particularly CCC and EDC had made a number of comments regarding the inadequacy of the Project Design Principles document and asked the local authorities to state specifically what is of concern so that the Applicant could respond.

HR on behalf of the Councils advised that there had been some progress made with regard to the areas of disagreement. He advised that discussions had taken place between the Councils and the Applicant with regard to reaching resolution on a number of points. HR advised that there were specific concerns with regards to the Project Design Principles but also in relation to a number of other topic areas which will be discussed later in the hearing and HR advised that he would deal with a lot of them in a short period of time.



HR advised that in light of the responses that the Applicant gave to the Local Impact Report, the Councils have suggested to the Applicant that it would be helpful for all parties, if we were to submit to them a summary of the specific environmental issues that the Councils are seeking resolution on; this would be in the form of additional information. It is noteworthy and encouraging that some of this information included line and level drawings in the area of Kirkby Thore, for example. This package of information is being prepared as expediently as possible, with the intention of moving forwards towards a position of all matters being agreed, should the Applicant be able to provide that information to us. The second form this would take is in the suggested wording to some of the existing information that is before the Examination, specifically with regard to the EMP, its daughter annex documents and also the Project Design Principles albeit the Project Design Principles document is probably one of the lesser concerns. The greater concerns probably relate to the other areas in relation to the specific environmental disciplines and assessments.

The ExA re-iterated that time is pressing and asked when the documents would be available. They asked if it was a document that could be submitted at Deadline 5.

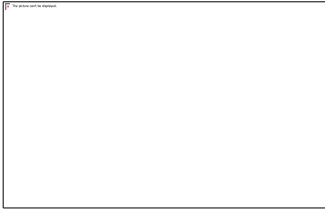
HR confirmed that he hoped that it would be made available to the Applicant in advance but that it would be submitted at Deadline 5.

### **3.2 Agenda Item 3.1 – Biodiversity**

The ExA stated that the Councils in their Local Impact Reports and in subsequent representations made were concerned that there is insufficient information in the Examination and in relation to habitats and species there is insufficient information in the Examination. The Applicant in its responses states that there is, but the Councils' position remains unchanged.

The ExA asked what it is in respect of habitats that is insufficient and the ExA asked for the Councils to start with the impacts on water courses as this was the first bullet point in the Local Impact Report. The ExA asked what more do you want to see from the Applicant or this Application?

HR stated that it was fair to say that progress had been made on a number of issues, particularly in light of the representations made by the Environment Agency and Natural England. HR referred back to his previous response on Agenda Item 2.6 and confirmed that the number of matters not agreed is decreasing in number. The Councils will shortly be submitting a document to the Applicant setting out what the specific matters are and



suggestions on how these could be resolved. HR offered to go into a couple of them if helpful although HB believes that agreement can probably be reached in offline discussions.

The ExA confirmed it was happy for the concerns to be put in writing to assist the ExA and it re-iterated the need for the concerns to be specific and for it to be clear on how these concerns could be overcome.

HR confirmed that the approach taken was suggested to the Applicant over two to three weeks ago and the reason that the note has taken such a long time to prepare is that the Councils are being very specific in order to aid the Applicant and the ExA in ensuring that the issues are clear and the information requested to resolve issues is clear.

### **3.3 Agenda Item 6.1**

#### **Traffic and Access**

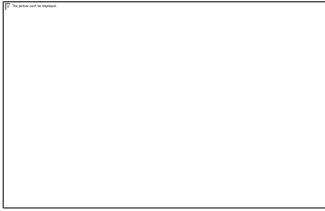
The ExA raised a question of the Applicant in relation to the Diversion Route Arrangements and updates from the Applicant and the local authorities. The ExA understood that the requirements for diversion routes during the construction phase of the Project are still being developed and these will inform the detailed production of the Construction Traffic Management Plan (CTMP). The local authorities would be engaged with and consulted on the production of the CTMP and the subsequent approval will be by the Secretary of State as part of the second iteration of the EMP.

The Applicant confirmed this was the case.

The ExA asked the Applicant to confirm if there was a strategic diversion plan for the operational phase being prepared and provided by the Applicant to the Councils and asked the Applicant to confirm if this was something that was being worked on.

The Applicant confirmed that it has been engaging and working with the local authorities to understand the concerns regarding incidents recognising that points had been raised through the Statement of Common Ground (SoCG) and PADSS. The Applicant confirmed it will continue to work with and liaise with the local authorities to come to a resolution.

The ExA asked the Applicant to confirm how the operational diversion plan would be secured as part of the DCO and the Applicant confirmed it would be through the third iteration of the EMP which deals with the operational phase and it would confirm the position in a post hearing note.



The ExA asked the Councils if it had any comments on the Applicant's position.

MS acting for the Councils confirmed that her instructions are in relation to the diversion route arrangements that the position is as per the Councils' Deadline 4 response to the ExA's written questions. MS is instructed that there is a need to make progress and for discussions to be ongoing, and for details of the operational diversions to come forward as soon as possible. MS made a plea to the Applicant for progress to be made.

### **De-trunking**

The ExA asked the Applicant to confirm that there will be side agreements to deal with asset transfer arrangements and amendments to the local highway network.

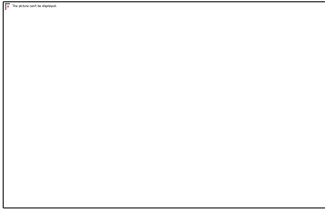
The Applicant confirmed that there have been a number of detailed discussions with the local authorities on the principles around the de-trunking for some months now and they are hopeful that agreement can be reached on de-trunking before the end of the Examination. The Applicant sees no reason why these matters cannot be resolved before the end of the Examination. This week discussions had progressed to Heads of Terms and MS was aware. The Applicant advised that there was an additional complication with Local Government Re-organisation but the Applicant confirmed that it would be issuing the Councils with heads of terms very shortly to deal with the issues the ExA had highlighted.

MS confirmed that CCC and EDC will become Westmorland and Furness Council on 1 April 2023. She confirmed the position is exactly as the Applicant had set out and that the Councils were in very detailed discussions regarding the de-trunking and there are weekly meetings. The parties were making substantial progress and she was confident that the parties could get to a position where the side agreement could be agreed pretty quickly.

### **Private means of access and public rights of way arrangements**

The ExA asked the Applicant for clarity over private means of access sharing rights with public rights of way. The ExA asked for clarity on the interrelation between the differing rights of access from the Applicant in a post hearing note.

MS confirmed that the Councils' position was similar to the ExA in that they needed clarity and further information on the Applicant's proposals and the post hearing note being prepared by the Applicant would be helpful for the Councils to understand the proposals.



### **Traffic Modelling in Penrith**

The ExA asked the Applicant to confirm its position with regards to traffic modelling and discussions which were ongoing with the Councils.

The Applicant advised that there had been a meeting last week or perhaps the week before whereby the Applicant went through some modelling with the Council. The Applicant considered it was a productive meeting and timelines had been shared with a view to updating the SoCG by mid-April for resolution of those matters. From the Applicant's perspective, it believes that the majority of issues will be resolved and that this will be concluded by mid-April.

The ExA then invited MS to speak on behalf of the Councils.

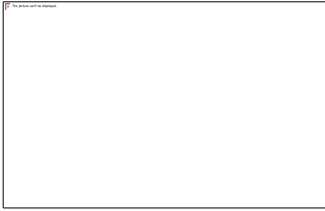
MS confirmed that her instructions were slightly different to the position put forward by the Applicant. In that regard she advised that she would bring in one of the consultants who were available online as she understood that the Councils were still awaiting the results of the revised modelling which would need to be reviewed to determine whether it was acceptable or not, which seems to contradict the Applicant's position and she didn't have any instructions on a timeline for mid-April.

MS introduced Tom Randall (TR) an Associate from WSP.

TR confirmed that there had been a couple of useful meetings to understand the updates in progress with respect to the modelling. The Councils are awaiting the final results so that these can be worked through with the Applicant. There are still some key concerns regarding the interaction between the two junctions in Penrith. We need to see those final results before we can understand the impact of the Project. TR confirmed that the operation of the signals would be important and similar decisions would be key in the Councils coming to a view. In relation to the timeline, this had been set out relatively recently but there is another meeting scheduled on 17 March 2023 which should have a finalised model for the Councils to look at, as it was still in progress last week.

### **3.4 – Agenda Item 8 – PADSS**

The ExA made a point that the PADSS needed to be rationalised and that they need to be reduced – especially in relation to CCC and EDC's PADSS.



MS confirmed that to put the ExA's concerns at bay, the Council were going through a rationalisation exercise on the PADSS to reduce the number of principal areas of disagreement.

### **3.5 – Agenda Item 9 – Draft Development Consent Order**

#### **Maintenance period for new highways, Article 9(1) and (2)**

The ExA asked the Applicant to confirm whether it would be amending the DCO to include maintenance periods or this would be covered in a side agreement with the local authorities.

The Applicant confirmed its preference would be to include it in a side agreement.

MS confirmed that this was the Councils' preferred approach and is consistent with other DCOs she has dealt with.

#### **Article 53 (EMP)**

The ExA noted that in representations from all local authorities that there were concerns regarding Article 53 and the third iteration EMP.

MS advised that the Councils had attended a useful session with the Applicant in the previous week talking through the process and how it would work in practice. MS advised that a position would be set out at Deadline 5.

However, the Applicant has promised a further review of Article 53 and therefore the Councils reserve their position until they have been able to review the post hearing notes and the further draft DCO to be submitted at Deadline 5.