



Cumbria County Council and Eden District Council

**The Councils' response to the Applicant's response to the
Examining Authority's Written Questions for Deadline 4 – submitted at 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 Cumbria County Council ("CCC") and Eden District Council ("EDC") 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

Ref No	Subject	Question	Applicant's Response	Councils' further comments										
Air Quality														
AQ 1.1	Castlegate Potential AQMA	Figure 8.6 of the Transport Assessment [APP-236] shows that traffic in Castlegate, Penrith is forecast to decrease. Confirm that reading of Figure 8.6 is correct and give exact figures as to the decrease in traffic flows when comparing Do Minimum to Do Something.	<p>Castlegate is a one-way link in Penrith town Centre that links the A6 Bridge Lane to the A592 Ullswater Road. The Do Minimum flow in the design year is 8,495 vehicles AADT. (this flow is plotted, but not labelled in Figure 8-4 of the Transport Assessment, Document Reference 3.7, APP236). Do Minimum and Do Something is defined in paragraph 5.6.1 of Combined Modelling and Appraisal Report (Document Reference 3.8, APP 237). The Do Something flow is 7,526 vehicles AADT (this flow is plotted, but not labelled in Figure 8-5 of the Transport Assessment, Document Reference 3.7, APP236). It is therefore confirmed that the ExAs reading is correct and that this represents a flow reduction of 969 vehicles or 11% AADT Do Something vs. Do Minimum. This is shown in Table 1.1 below.</p> <p>The reason for a traffic reduction occurring on this link with the project in place is that more traffic is attracted to the improved (and quicker) A66 to travel from south-east to north-west, i.e. traffic on the A66 east of Kemplay Bank is more likely to remain on the A66 and access north western Penrith using junction 40 and the A592, rather than travelling via Kemplay Bank, the A6 and Castlegate. The reduction of traffic is likely to result in a beneficial impact to air quality.</p> <p>Table 1.1: Penrith – Local Road Traffic Flow (AADT)</p> <table border="1"> <thead> <tr> <th>Road</th> <th>Do Minimum flow</th> <th>Do Something flow</th> <th>Flow Change</th> <th>% Change</th> </tr> </thead> <tbody> <tr> <td>Castlegate</td> <td>8,495</td> <td>7,526</td> <td>-969</td> <td>-11%</td> </tr> </tbody> </table>	Road	Do Minimum flow	Do Something flow	Flow Change	% Change	Castlegate	8,495	7,526	-969	-11%	<p>The Applicant's response assumes that more traffic will route via Junction 40, rather than through Kemplay Bank when the scheme is in place. The logic of changing routes to travel into Penrith is hard to understand given local experience of the network and the delays at Junction 40 going westbound. It would be helpful if select link and screenline analysis for these movements could be provided to better understand the traffic movements.</p> <p>Further evidence is required as to the assumed journey times using the two routes with and without the scheme in place for the Councils to understand properly the logic explained by the applicant. To understand the impact on the proposed AQMA, the AADT figures for base year as well as the forecast years needs to be shown.</p> <p>Agreement is subject to the Applicant agreeing to change the EMP as suggested by the Councils as outlined in the "Environmental Issues Note for Deadline 5".</p>
Road	Do Minimum flow	Do Something flow	Flow Change	% Change										
Castlegate	8,495	7,526	-969	-11%										
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	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 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. The Councils have raised in their LIR opportunities for this.										

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		<p>level of detail required to support a compelling case for the inclusion of the relevant CA powers in the DCO [REP1-129, para 27 and 88]; and the rolling back of the acquisition powers sought [REP2-015, page 8].</p>	<p>The primary driver informing the environmental mitigation design was to ensure that mitigation is provided for impacts on protected species and designated sites, and that replacement habitats are provided for those lost, as stipulated in the ES Biodiversity Chapter 6 (APP-049). This also includes full regard of all habitats and species of Principle Importance.</p> <p>The Applicant has also had regard to paragraph 5.33 of the National Networks National Policy Statement which advises that "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.</p> <p>Whilst Biodiversity Net Gain (BNG) is not currently a statutory requirement that is in force for Nationally Significant Infrastructure Projects, one of the Project objectives is to seek to achieve no net loss as a minimum and looks to deliver net gains where such opportunities exist. The BNG Metric was therefore used as a tool alongside the development of the environmental mitigation design to understand the situation against the Project's objective of achieving no net loss and to seek opportunities to maximise net gains. The BNG Metric was not used to influence the area of land included within the Order Limits for mitigation and no land has been included within the Environmental Mitigation Maps (APP-041) for the sole purpose of BNG. All areas of land identified within the Environmental Mitigation Maps, are required for mitigation which is essential for mitigating the potential adverse environmental effects of the Project. Therefore, there is no numerical relationship as such between BNG and the areas identified for environmental mitigation. However, the extent of the Order limits has been informed by the requirement to provide essential environmental mitigation.</p> <p>To ensure the provision of required replacement habitat to mitigate for that which is anticipated to be lost and to allow for some flexibility at the detailed design stage, habitat ratios for each habitat type have been identified, as outlined within Table 6-20 of the ES Biodiversity Chapter 6 (APP-049) and secured within the Environmental Management Plan (Table 3.2 Register of Environmental Actions and Commitments, reference D-BD-05, Document Reference 2.7, APP-019). The purpose of this approach is to inform the quantum of habitat mitigation required to off-set additional or unforeseen habitat losses once the detailed design has been developed. These ratios</p>	

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			<p>were devised using professional judgement based on the latest guidance at the time the assessment was completed (Natural England, 2019)¹. The primary driver informing the habitat ratios was to ensure potential adverse impacts relating to habitat loss was sufficiently mitigated for and therefore compliant with the NPSNN and the biodiversity conservation duty under section 40 of the Natural Environment and Rural Communities Act 2006.</p> <p>The areas identified for environmental mitigation presented in the outline Environmental Mitigation Maps (APP-041) are indicative and represent how the required environmental mitigation, as stipulated in the Environmental Management Plan (APP-019), could be achieved. The location of the areas identified for environmental mitigation have been devised based on professional judgement to ensure in the first instance that the location is appropriate to fulfil its primary purpose of being able to adequately mitigate for an identified potential impact (e.g., required woodland planting to avoid identified severance impacts for bats and birds at a particular location). In addition to this, collaboration with other environmental disciplines and with design engineers was also undertaken to ensure identified areas of environmental mitigation would be practicable, achievable and capable of minimising potential adverse impacts on other receptors, whilst also achieving the primary function of mitigating for an identified environmental impact. As part of this, opportunities to maximise environmental enhancements have also been sought (see woodland planting example above). It should be noted that as the detailed design progresses it may be the case that the layout or location of the environmental mitigation within the Order limits, as currently shown on the Environmental Mitigation Maps (RR-041), will be refined and may need to be altered based on detailed design development and ongoing engagement with landowners. Importantly, however, this could only be done insofar as the layout complies with and delivers on the Environmental Management Plan Rev 2 (REP-004) and the Project Design Principles Rev 2 (REP3-040).</p> <p>Relating to mitigation identified for and within each scheme and the question of "how the Applicant got from need to provision", the approach taken was to locate the required environmental mitigation as close as possible to the identified impact or where the affected habitat was expected to be lost. Where this was not possible, an alternative location was selected within the scheme area where the loss was anticipated. In a small number of circumstances, it was not possible to locate the required environmental mitigation within the scheme area itself due to other environmental constraints associated with landscape and visual impacts and cultural heritage assets or settings. Consequently, as a last resort, alternative locations were sought within other schemes within the Project where the primary function of the required mitigation could still be achieved. For example, additional</p>	

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			<p>areas of woodland have been included in Scheme 8: Cross Lanes to Rokeby to account for the woodland deficit in Scheme 7: Bowes Bypass, due to cultural heritage constraints and the requirement to retain open vistas at this location.</p> <p>As such, it is the Applicant's case that all of the Order land identified as being required for environmental mitigation is required to mitigate the potential adverse effects of the Project and is therefore an integral part of the Project. Such land is required in order to secure the delivery of the wider public benefits of the Project set out in Chapter 3 of the Applicant's document 2.2 Case for the Project (APP-008).</p> <p>In terms of the reference to the Applicant's potential ability to "roll back" the use of its compulsory acquisition powers, as has been noted above, the environmental mitigation design shown on the Environmental Mitigation Maps (APP-041) is an indicative design that must be refined as part of the Project's detailed design, within the constraints of the development consent sought, most notably in compliance with the Applicant's obligations contained in the EMP (Document Reference 2.7, APP-019) and Project Design Principles (Document Reference 5.11, APP-302).</p> <p>However, as discussed at the CAH1, and noted in the Applicant's summary of oral submissions (REP1-007) and as is noted in paragraphs 2.5.1 to 2.5.10 of the Applicant's Statement of Reasons (REP2-012), land required for environmental mitigation is shown in pink on the Land Plans denoting that authorisation is sought for its compulsory acquisition. This is necessary to ensure that the essential environmental mitigation required for the Project can be delivered. However, wherever possible the Applicant's preference would be to acquire, by agreement (achieved through negotiations with the relevant landowner) new rights (including restrictive covenants) to enable the environmental mitigation to be delivered and maintained on the land, without the landowner being deprived of ownership of the land.</p> <p>As is explained in paragraph 2.5.7 of the Statement of Reasons (Document Reference 5.8, APP-299), the power of outright compulsory acquisition is also sought in respect of land required for environmental mitigation as a contingency measure, to ensure that a landowner is not left in a position where the Applicant has acquired rights over the land which enable the Applicant to deliver the mitigation measures required for the Project, but which then preclude the continued beneficial use and enjoyment of that land by its owner. In this scenario, outright acquisition of the land may be the preferred choice.</p> <p>It is important to note that the terms of the Applicant's power to acquire land by compulsion contained in article 19 of the draft DCO, extend only to land</p>	

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			<p>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 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.</p>	
Draft Development Consent Order (draft DCO)				
DCO 1.4	Article 53 Environmental Management Plans (EMP)	<p>As the ExA understand it, the criteria for the Secretary of State to discharge an EMP for a given part is contained within paragraphs 1.4.8 to 1.4.51 of the first iteration Environmental Management Plan [APP-019]. These are known as "the Consultation and Determination Provisions" in the draft DCO [REP2-005].</p> <ul style="list-style-type: none"> - 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 	<p>National Highways has responded to each 'sub-point' below in turn.</p> <p><u>Consultation and determination provisions</u></p> <p>The term "consultation and determination provisions" is defined in article 53(12) of the draft DCO [REP2-005] as "...the provisions contained in paragraphs 1.4.9 to 1.4.51 of the EMP that set out the matters on which consultation is required and the procedures that apply to the conduct of that consultation and which require the undertaker to maintain functional separation when making determinations under this article..." (our emphasis).</p> <p>National Highways' intention is that this definition should refer to paragraphs 1.4.9 to 1.4.51 within the first iteration EMP, which would be a certified document for the purposes of the DCO and not subject to subsequent approval from the Secretary of State (see the relevant definition in article 53(12)). Should the DCO be made, the first iteration EMP would be certified at that point (pursuant to article 49 of the DCO), with its content (including the "consultation and determination provisions" and the timescales contained therein) fixed, or 'secured', then. Certification of documents by the Secretary of State for the purposes of the DCO effectively confirms the form of documents that are referred to within the DCO for clarity and certainty. It is not intended that the consultation and determination provisions would be contained in a second iteration EMP, for the very reasons the ExA points out in the question.</p> <p>However, National Highways acknowledges that the definition of the "consultation and determination provisions" in article 53(12) should refer to "the first iteration EMP" as opposed to "the EMP". As such, National Highways will amend the next draft of the DCO to reflect this.</p> <p><u>Definition of "consultee"</u></p>	<p>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.</p> <p>The Councils await sight of the Applicant's post hearing note/ submissions following Issue Specific Hearing 3 on further proposed amendments put to it by the Examining Authority in that hearing and reviewing the Applicant's further draft DCO which is due to be submitted at Deadline 5. The Council reserves its position until it has reviewed these documents.</p>

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		<p><i>Material</i>". The ExA seeks clarification as to whether this also refers to the Secretary of State.</p> <p>- In so doing, paragraph 1.4.20 of the first iteration EMP states <i>"Each consultee is entitled to respond to the consultation within the Consultation Period (which is 20 working days from the date after the Consultation Material is issued by the Authority. If any Consultee does not provide a response within the Consultation Period, that Consultee is deemed to have made no comments."</i> 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.</p> <p>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.</p> <p>The ExA recommends that the Consultation and Determination Provisions are made legally binding within the draft</p>	<p>National Highways does not consider that the Secretary of State should be added to the definition of "Consultee". This is because the "consultation and determination provisions" are intended to, in the case of a second iteration EMP (or amendments thereto), govern the process National Highways and its principal contractor(s) are required to go through 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.</p> <p><u>Secretary of State and time limits</u></p> <p>See response above. It is not intended that the Secretary of State would be formally consulted on any second iteration EMP (or proposed amendment thereto) prior to it being submitted to them for approval, as this would be unnecessary. The "consultation and determination provisions" would not govern determinations made by the Secretary of State for the purposes of discharging the obligations placed on National Highways under article 53 – the Secretary of State would retain ultimate discretion as to how they wish to determine any submission. The "consultation and determination provisions" only govern determinations made by National Highways.</p> <p><u>Timescales (general)</u></p> <p>As a preliminary point and as stated above, the Secretary of State is not intended to be bound by the time periods set out in the "consultation and determination provisions" – these deal with consultation with prescribed parties prior to a submission being made to the Secretary of State for approval under article 53 and not determinations of such a submission by the Secretary of State. The Secretary of State retains discretion in relation to these.</p> <p>National Highways has previously explained its view on the importance of retaining prescribed timescales for consultation with consultees to safeguard the timely delivery of the Project, particularly in its written submissions made following Issue Specific Hearing 2 [REP1-009, see pages 5 and 6 for example]. However, it has also acknowledged that, at times, these could be challenging for consultees and it is for this reason that amendments were made to the first iteration EMP at Deadline 3 [REP3-004] to (a) provide for a mechanism whereby a consultee could request an extension to the prescribed consultation timescales (see paragraphs 1.4.22 and 1.4.29); and (b) provide for a new commitment whereby consultees must be engaged with on a regular basis, to allow a level of informal engagement between the parties prior to formal consultation (see new REAC commitment ref. D-GEN-22).</p>	

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		<p>DCO [REP2-005] and thus clear to all parties including the Secretary of State. Given the size and importance of the second iteration EMP for each part, the process should not be time limited particularly on the Secretary of State, who should be at liberty to determine for themselves the time needed to discharge Article 53(1) for each part. If Consultees are to be time limited, it should be reasonable given the likely size of EMP for that part. The ExA considers 20-days to be potentially too short.</p> <p>Provide a response and make any necessary amendments to the next iteration of the draft DCO.</p>	<p>National Highways considers these appropriate mechanisms to mitigate the difficulties the ExA identifies in its question without diluting the effectiveness of the prescribed consultation timescales.</p> <p>Finally, the 20 <u>working</u> days consultation period in paragraph 1.4.21 of the first iteration EMP equates to the 28 (<u>non-working</u>) days used in article 52 of the DCO. As such, the 20 working days time period in the first iteration EMP is considered reasonable and in-keeping with timescales for consultation/decision-making elsewhere in the DCO – it is fair and consistent, to reflect 'actual' available working time.</p> <p>Given all of this, National Highways does not propose to make any further amendments to the first iteration EMP in respect of the timescales set out but continues to discuss these issues (amongst others) with the prescribed consultees as part of the Statement of Common Ground process.</p>	
DCO 1.7	<i>Article 54 Detailed design</i>	In relation to WQ BHR 1.1 and LV 1.1, consider whether any additional documents to be submitted into the Examination on the Trout Beck Bridge and the Cringle Beck and Moor Beck viaducts as suggested in those question need to be Certified Documents in Schedule 10 and listed within Article 54 given the importance of the designs of the said structures.	Please see National Highways' responses to WQ BHR 1.1 and LV 1.1. No additional documents are proposed to be secured under article 54 for the reasons set out therein.	<p>The Councils remain concerned at the limited detail in many aspects of the Applicant's Landscape and Visual Assessment with insufficient information provided on key sensitive receptors and how impacts will be mitigated.</p> <p>The Councils support the Examining Authority suggested amendments to Article 54 as discussed at Issue Specific Hearing 3.</p>
Environmental Management Plan				
EMP 1.1	<i>EIA Regulations Compliance</i>	<p>S30(2)(b)(i) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017, in relation to approve an application (for development consent), states amongst other things that a decision must contain:</p> <ul style="list-style-type: none"> - The reasoned conclusions of the Secretary of State...on the significant effects of the development on the environment, taking into account the results of the examination referred to, in the case of an application for an order granting development 	<p>National Highways acknowledges the provisions of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (the Regulations) cited in the question.</p> <p>National Highways has assessed the impacts of the Project on the environment and reported the likely significant effects in the Environmental Statement that accompanied the application for development consent as required by the Regulations.</p> <p>The Environmental Statement sets out, where necessary, additional mitigation measures that are required to be implemented to reduce, minimise or remove any likely significant effects reported. It is these reported mitigation measures that have informed and been 'transposed' into the first iteration EMP so that they are secured and legally enforceable through the mechanisms contained in the DCO, specifically article 53. 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</p>	<p>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 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.</p> <p>Agreement is subject to the Applicant agreeing to change the EMP as suggested by the Councils as outlined in the "Environmental Issues Note for Deadline 5".</p>

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		<p>consent in Regulation 21.</p> <ul style="list-style-type: none"> - 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. <p>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.</p> <p>Provide an explanation as to how the Secretary of State, in making the Order for development consent, can discharge their duties under the said Regulations, having regard to the information contained within the first iteration of the Environmental Management Plan [APP-019 to APP-042] and the powers contained within Article 53 of the draft DCO [REP2-005].</p>	<p>construction methodology. It is for that reason that there is, effectively, a two-stage process for securing mitigation:</p> <ul style="list-style-type: none"> (i) the first iteration EMP sets out the mitigation principles or outcomes to be achieved by the Project; and (ii) a second iteration EMP contains the detailed measures for achieving those principles or outcomes, in particular by way of a number of detailed management plans and method statements, as informed by the detailed design and settled upon construction methodology post-consent. <p>Article 53 of the draft DCO sets out the legal mechanisms for ensuring both 'stages' are legally secured and enforceable, thus 'binding' the Project to the mitigation measures and outcomes set out.</p> <p>This is through a second iteration EMP (including the relevant management plans and method statements) for a part of the Project being required to be subject to Secretary of State approval prior to works commencing on that part (article 53(1)). Such a second iteration EMP must be 'substantially in accordance' (article 53(4)(a)) with the first iteration EMP, ensuring the environmental principles or outcomes in that first iteration EMP are 'followed through' and built on in a second iteration EMP. The content of the first iteration EMP is 'fixed' should the DCO be made, as it would be certified for the purposes of the DCO.</p> <p>Ultimately, the first iteration EMP secures and confirms the environmental 'envelope' within which the Project can be constructed, as informed by the Environmental Statement – this ensures the reported likely significant effects will be adequately controlled, achieving the environmental 'outcomes' reported. This is then built upon in detail in a second iteration EMP, which is subject to Secretary of State approval. If a second iteration EMP is not approved (because, for example, the Secretary of State is not satisfied a second iteration EMP contains the necessary measures or provides sufficient detail as to their effectiveness), works cannot start.</p> <p>As such, the Secretary of State will have sufficient certainty (and indeed control, post- consent, through the necessary approvals) as to the effects of the Project on the environment, by way of the Environmental Statement and the mechanisms contained in article 53 of the DCO (and therefore through the first iteration EMP and second iteration EMPs) to secure the effects reported in that Environmental Statement.</p> <p>It should be noted that what is proposed in respect of the Project is, in substance, no different to the 'standard' way mitigation measures have been</p>	

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			<p>secured through DCO requirements to date (National Highways has commented on this previously in its written submissions post Issue Specific Hearing 2 [REP1-009]). In particular, on previous highways DCOs, the Secretary of State has approved an approach whereby detailed 'schemes' or 'management plans' are subject to post-consent approvals (see paragraph 4 of schedule 2 to the A57 Link Roads Development Consent Order 2022 and paragraph 4 of schedule 2 to the A47 North Tuddenham to Easton Development Consent Order 2022, as examples – there are many more).</p> <p>The granting of a DCO in those instances has therefore not been subject to that detail being provided, in recognition that detailed designs and construction methodologies are routinely not available pre-consent. As such, the approach secured through article 53 of the DCO and the EMPs is very much a 'tried and tested' model of securing mitigation and therefore environmental outcomes, thereby allowing the Secretary of State to discharge their duties under the Regulations.</p>	
Flood Risk, Drainage and Water Quality				
FDW 1.7	<i>Preliminary Drainage Design</i>	Explain how the additional drainage system storage for attenuation, designed for a 40% climate change uplift, would manage flows under the sensitivity check for 50% climate change uplift [APP-221, para 14.2.2.110 and REP2-016, page 27]. The response should cover the Proposed Development in its entirety	<p>The drainage system for the Project has been designed in accordance with the DMRB CG 501 which requires the calculations to include 20% uplift in peak rainfall intensity (climate change allowance) and a sensitivity test for 40% uplift in peak rainfall intensity (now 50% in Cumbria following the increase in published climate change allowance in May 22). The way the difference in flows/volume between the 20% and 50% allowances are accommodated and would be managed in the system varies for each drainage network, typically:</p> <ul style="list-style-type: none"> • For networks with an attenuation pond, the pond shape/slopes/depth will be refined to accommodate the increase in volume. Alternatively, where this is not achievable within the Order Limits, the additional volume will be accommodated within the pond freeboard allowance. • For networks with oversize storage pipes, pipe sizes will be increased to accommodate the additional volume. Alternatively, the additional volume will be held within the highway boundary. • For networks where the proposed flows are less than existing, the discharge rate can be increased, minimising the need for further attenuation, without increasing downstream flood risk. 	<p>The Councils acknowledge the outline drainage strategy only provides a certain level of detail at this point in the Examination. In the second iteration of the EMP, to be approved by the Secretary of State, the Council acting as the Lead Local Flood Authority (LLFA) will seek to ensure that the Councils' drainage design principles are complied with.</p> <p>The Council welcomes the commitments in the D-RDWE-series to work with the Applicant and be consulted on during the production of the various drainage, flood and water quality plans.</p> <p>This will include, but not limited to:</p> <ul style="list-style-type: none"> • New developments in Cumbria are now designed for 50% uplift and it should not be a sensitivity test of 20% to 50%; • If designs include for 50% uplift then mitigation use of freeboard will not be required (not acceptable for other developments as climate change mitigation); and • As LLFA the Councils are looking to slow flows from upper catchments and networks to prevent flooding downstream.
FDW 1.11	<i>Drainage Asset Transfer</i>	Explain how the transfer of drainage assets would take place from local authorities to the Applicant in the context of Cumbria County Council's request for a review of asset	National Highways has understood this question to refer to the transfer of drainage assets from National Highways to the Local Authorities. However, for completeness, National Highways can confirm that except where there is a direct design interface and therefore incorporation into and resolution within	The Councils agree that they will not be providing the Applicant with any drainage assets currently under their ownership.

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		condition and formal agreement [REP1-019, para 5.5].	<p>the detailed design of the Project, we are not expecting to acquire / receive any drainage assets from Local Authorities as a part of the Project. For the completed works, the drainage assets maintenance would be incorporated into the maintenance of the highways that they serve.</p> <p>National Highways proposes that highway drainage would transfer to the relevant Local Highway Authorities pursuant to the provisions of the Development Consent Order that would transfer the maintenance responsibility for the highways that they serve (see the Applicant's response to TA 1.1 for more information on the relationship between the draft DCO and the de-trunking agreements).</p> <p>National Highways has submitted de-trunking proposals to each local authority for comment on the dates shown below.</p> <table border="1"> <thead> <tr> <th rowspan="2">Status</th> <th colspan="2">CCC</th> <th rowspan="2">DCC</th> <th rowspan="2">NYCC</th> </tr> <tr> <th>Element</th> <th>Date</th> </tr> </thead> <tbody> <tr> <td rowspan="5">Draft – Version 00</td> <td>Structures</td> <td>14/09/2022</td> <td rowspan="5">20/09/2022</td> <td rowspan="5">5/09/2022</td> </tr> <tr> <td>Pavement</td> <td>31/08/2022</td> </tr> <tr> <td>VRS</td> <td>18/08/2022</td> </tr> <tr> <td>Drainage</td> <td>8/09/2022</td> </tr> <tr> <td>Other assets</td> <td>21/09/2022</td> </tr> <tr> <td rowspan="2">Draft – Version 01</td> <td>Structures</td> <td>20/09/2022</td> <td rowspan="2"></td> <td rowspan="2">10/10/2022</td> </tr> <tr> <td>Other assets</td> <td>30/11/2022</td> </tr> <tr> <td>Draft – Version 02</td> <td></td> <td></td> <td></td> <td>30/11/2022</td> </tr> </tbody> </table> <p>National Highways acknowledge that for drainage assets, the inventories and / or condition surveys are incomplete. Whilst these assets have historically, performed adequately (and continue to do so) there is the requirement for normal maintenance expenditure to keep them operating as required. National Highways have addressed this, in the de-trunking proposals, by:</p> <ol style="list-style-type: none"> 1) Suggesting prerequisites on the condition grading that must be substantially achieved before handover can take place. 2) Allowing the Local Authority 10 working days from the completion of the surveys mentioned in (1) above, to respond in writing to explain why the prerequisites are not, in their opinion, substantially achieved or list any new safety critical defects that require remediation prior to the transfer of those assets. <p>Following confirmation from the Local Authority that the prerequisites are substantially complete or the Local Authority failing to respond to the notification within 10 working days, then the payment where appropriate of a</p>	Status	CCC		DCC	NYCC	Element	Date	Draft – Version 00	Structures	14/09/2022	20/09/2022	5/09/2022	Pavement	31/08/2022	VRS	18/08/2022	Drainage	8/09/2022	Other assets	21/09/2022	Draft – Version 01	Structures	20/09/2022		10/10/2022	Other assets	30/11/2022	Draft – Version 02				30/11/2022	<p>The Councils acknowledge incompleteness of drainage asset data but requires complete asset conditional survey information alongside any proposed remediation measures, prior to asset transfer. The Councils note asset renewal may be required in the event of asset conditions not providing at least 20 years life. Suggested prerequisites in the Applicant's de-trunking proposals on condition grading is still yet to be agreed.</p> <p>Condition and location of assets is essential for future maintenance by the Councils. Agreement on replacement of any defective assets and type of replacement should be agreed by all parties prior to any improvement works. (Consideration of existing maintenance contractor do agreed betterment in last remaining years).</p> <p>The Councils have requested that grading needs to be taken one grade lower for acceptance of asset condition.</p> <p>The Councils would require 15 working days to process data provided by contractors. If site inspections are required, the response period will need to be extended by 5 working days.</p>
Status	CCC		DCC		NYCC																															
	Element	Date																																		
Draft – Version 00	Structures	14/09/2022	20/09/2022	5/09/2022																																
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			<p>commuted sum*, adjusted for inflation, will then formally transfer all drainage assets associated with that section from National Highways to the Local Authority. If no commuted sum is required then a £1 nominal payment will formally transfer all drainage assets associated with that section from National Highways to the Local Authority.</p> <p>* Those drainage assets at or nearing (defined as less than half) the end of their serviceable life, at the date of handover, will be accompanied with a commuted sum to fund renewal works at the optimal time for an intervention. Rates are based on The Association of Directors Environment, Economy Planning and Transport (ADEPT - formerly the County Surveyors Society) which is endorsed by both CCC and NYCC. For those items that are outside the scope of ADEPT, rates have been based on recent similar Local Authority schemes.</p>	
People and Communities				
PC 1.3	<i>Brough Hill Fair</i>	Cumbria CC and Eden DC in their response [REP2-028] to the Applicant's ISH2 post Hearing Submissions [REP1-009], note that "Cumbria CC has been asked by the Applicant to consider taking on responsibility for future management of the Brough Hill Fair. The Council is not willing to take on this responsibility and it understands that the Ministry of Defence is unwilling to continue in this role." Clarify for the proposed site for the Brough Hill Fair who will be taking on its management.	<p>The Applicant is aware of the views of Cumbria County Council, Eden District Council and the Ministry of Defence in relation to the long term management of the replacement Brough Hill Fair site.</p> <p>Discussions on this issue are ongoing, therefore at this point it is not possible to give a definitive answer to who will bear this responsibility.</p> <p>However, the Applicant notes that the replacement Brough Hill Fair site is Crown land and so the Applicant's development consent Order cannot authorise the compulsory acquisition of the Crown's interests. The Applicant anticipates that the responsibility for managing the replacement Brough Hill Fair site will be one of the matters that will be determined as a result of those discussions and in the terms of the consent to be granted by the MoD for the use of the land.</p>	For the avoidance of doubt the Councils are not prepared to take on ownership of land nor any maintenance responsibility for the relocated Brough Hill Fair.
Traffic and Access				
TA 1.1	<i>Detrunking Arrangements</i>	Provide an update on progress of detrunking agreements. Although not part of the Application the ExA needs to establish that any recommended DCO wording will correctly reflect any agreements made between the Applicant and LHA's concerning detrunking arrangements.	<p><u>Update on progress of de-trunking agreements</u></p> <p>Cumbria County Council (CCC) shared a working draft of their <i>Detrunking Principles Document</i> with National Highways and separately with Durham County Council (DCC) and North Yorkshire County Council (NYCC) in April 2022.</p> <p>In September 2022, National Highways submitted de-trunking proposals back to the Local Highway Authorities that are considered to both meet the 'spirit' of the CCC <i>Detrunking Principles Document</i>, where feasible, but also working within the constraints and limitations associated with existing assets. NYCC's March 2022 Interim Guidance Note 28, available on their website, was also considered in the development of these proposals.</p> <p>These de-trunking proposals submitted by National Highways advised that a number of aspects required further consideration and that some aspects of</p>	<p>The Councils broadly agrees with the wording of draft DCO articles 9(5) and 40(6) subject to the assets being in an acceptable condition and a side agreement being entered into to assess that condition and maintenance extents.</p> <p>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.</p> <p>Some existing assets contain significant future financial and maintenance implications, with exact agreements not yet in place. The Councils welcome continued discussion around these issues and require the Applicant and their</p>

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			<p>the CCC <i>Detrunking Principles Document</i> are unachievable. For example, the residual serviceable life that has been specified for assets, including those for which there is no recognised means of assessment. In other instances, a residual serviceable life has been specified by CCC that exceeds industry expectations. There are also a number of proposals where the specification requested exceeds that on the lengths of the A66 that are not being improved by Project.</p> <p>National Highways accepts that, at handover, some assets will be at or nearing the end of their serviceable life and it may be appropriate that a commuted sum is provided to allow the Local Authority to fund renewal works at the optimal time for an intervention and not before. Assets, at handover, with more than half of their residual life remaining are expected to be inspected by the relevant Local Highway Authority and renewal works planned and funded through the uplifted central Government grant.</p> <p>National Highways and the Local Highway Authorities continue to work together to reach an agreed position on matters of principle and detail. The Applicant provided updated Statements of Common Ground for each of the Local Authorities at Deadline 3; please refer to REP3-031, REP3-038, REP3-039 for further information relating to issues being discussed with Durham County Council, Cumbria County Council and Eden District Council and North Yorkshire County Council and Richmondshire District Council, respectively.</p> <p><u>DCO Wording</u></p> <p>Two key provisions of the draft DCO deal with de-trunking, article 9(5) and article 40(6). It should be noted that these give the authorisation necessary for the de-trunking to be carried out and set out the obligations on National Highways and the relevant Local Highway Authority, in the absence of any agreement to the contrary.</p> <p>Article 40(6) provides for the de-trunking of the roads referred to in that paragraph by reference to Schedule 7 on the day or days determined by the undertaker, "unless otherwise agreed in writing with the Local Highway Authority".</p> <p>Article 9(5) deals with maintenance of de-trunked roads and confirms (a) that the land comprised in the de-trunked highways is to vest in the Local Highway Authority and (b) that the de-trunked road is to be maintained by the Local Highway Authority "unless otherwise agreed in writing".</p> <p>It follows then, that the drafting of the DCO permits the precise arrangements for the handover of de-trunked roads to be agreed between the parties.</p>	<p>Delivery Integration Partners (DIPs) to devise suitable forward strategies.</p> <p>These will be captured in side agreements between the Councils and the Applicant.</p>

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TA 1.2	<i>Active Travel England</i>	Cumbria CC in Section 6 of their Local Impact Report (LIR) [REP1-019] ask for assurances that design of new WCH routes are to a standard acceptable to Active Travel England. Please confirm the current statutory consultee status of Active Travel England with respect to this Application and also explain how such a request could be accommodated as part of the ongoing design process	<p>On 13 January 2023, the Department for Levelling Up, Housing & Communities published a Planning Newsletter, which stated that Active Travel England (ATE) will become a statutory consultee for certain planning applications from 1 June 2023. However, the Applicant notes that:</p> <ul style="list-style-type: none"> a) this will only come into effect after the Examination has closed; b) there is no reference in the Planning Newsletter to ATE becoming a statutory consultee for the purpose of the Planning Act 2008 and therefore for DCO applications; and c) should the status of ATE as a statutory consultee for DCO applications change, this would require either an update to the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 or the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015, but the Applicant notes that there are currently no proposed changes listed for either of these Regulations. <p>This therefore sets out and explains the status of ATE in the Planning Act 2008 context.</p> <p>The Applicant will continue to engage with Cumbria CC on the design of the new WCH routes and will have regard to any standards and guidance issued by ATE once they become a statutory consultee.</p>	<p>Although the programme for establishing ATE's formal status will mean it will not become a statutory consultee during the Examination period of this DCO, the preliminary and detailed design of the active travel network will be undertaken after ATE become a statutory consultee on planning applications on 1st June 2023. The A66 NTP has a site area well in excess of 5 hectares (one of the minimum thresholds for consultation on a planning application for ATE), and although the DCO is not a planning application, we would expect ATE to be consulted for this flagship active travel network particularly as the design of the cycling and walking route is still conceptual at this stage.</p> <p>It is expected that LTN1/20 is the design standard that Applicant must adhere to, and this is the standard that Active Travel England advise that all new walking and cycling schemes should be compliant with.</p>
TA 1.6	<i>Diversion Routes</i>	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.	<p>Whilst diversions during construction are not anticipated to be implemented, the Environmental Management Plan (EMP) (latest version REP3-004) provides flexibility in the event that diversions are required. The EMP includes commitment D-GEN-10, requiring a detailed Construction Traffic Management Plan (CTMP). The EMP requires that document to be produced, consulted upon with the Local Authorities (and other relevant stakeholders) and approved by the Secretary of State as part of the second iteration of the EMP. The CTMP must include details of proposed diversion routes, durations of use and proposals for encouraging compliance with designated diversion routes (with consideration for potential noise impacts). The commitment requires that the diversion routes shall be developed in consultation with the Local Highway Authority and specifies a range of considerations that must feed into this decision making. National Highways will continue to engage with the Local Authorities, including on the production of the CTMP to set out how diversions, including their suitability, will be coordinated and managed during construction of the Project.</p> <p>National Highways have implemented a series of regular meetings between the Local Authorities and the Delivery Integration Partners (DIPs) to discuss and agree matters relating to the construction of the Project. As part of resolving issues associated with the Statements of Common Ground (SoCG) it</p>	<p>There should be a clear construction traffic management plan and the establishment of suitable diversion routes to support the construction of the project. The Councils acknowledge 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 work with the Applicant and be part of the CTMP consultation.</p> <p>Potential traffic and NMU diversion routes are not suitable without mitigation and there is still a concern that this has not been assessed as part of the EIA and measures may fall outside the DCO boundary.</p> <p>No detailed diversion discussions were held as part of the DIP meeting on 14 Feb 2023. It was agreed that they would be on the agenda for the meeting on 14 March 2023.</p> <p>The Councils welcome the Project's objective to remove right-turns from the A66 to improve road safety and accept the longer diversion routes when using the A66. However,</p>

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			<p>has been agreed between National Highways and the Local Authorities that discussions on construction diversions and construction traffic management will be progressed in the next meeting on 14 February 2023 and the position will be updated in the SoCG submitted at Deadline 5.</p> <p>In respect of diversions during operation, these would only be related to incidents which require the closure of the A66. There is no change to operational diversions of the A66 as a result of the Project and we would anticipate diversions to be less frequent as the dualling allows for better incident management.</p> <p>The Applicant notes that Cumbria County Council, in their Local Impact Report (REP1- 019), refer to proposed diversions in and around Penrith and network resilience if and when the bridge at Eamont Bridge on the A6 is closed and the closure of the Brougham junction. The Applicant's understanding is that this relates to the movements between Brougham Castle and the A66 eastbound as a consequence of the removal of right turns across the dualled sections delivered by the Project. In relation to this matter, the objectives of the Project include improving road safety. This is taken forward in the principles as set out at Section 4.2.2 of the Project Overview Development Report (PDOR) (APP – 244) which specifies 'no right-turn' junctions will improve safety by removing the need to cross the central reserve and opposing traffic. A continuous safety barrier will be included in the central reserve.</p> <p>When Eamont Bridge is closed, traffic heading eastbound will need to turn west and use the Kemplay Bank roundabout to access the east bound carriageway. To reduce risk, National Highways have designed the improvements so there are no gaps in the central reservation, removing right turns. Resilience is provided in the upgraded Kemplay Bank junction and whilst it is appreciated that there will be an extra distance for traffic wishing to travel east from the B6262 (to turn at Kemplay Bank junction) this should be a relatively infrequent event. This has been communicated to Cumbria CC and is set out within the Statement of Common Ground submitted (APP-277).</p>	<p>the concern still remains that the use of the A6 as the strategic diversion will still be subject to risks at Eamont Bridge.</p> <p>The Councils reserve their position until the Applicant's note submitted at Deadline 5 has been reviewed.</p>
TA 1.8	<p><i>M6 Junction 40 and Kemplay Bank Roundabout – junction modelling.</i></p>	<p>In its LIR response [REP2-018], Cumbria CC and Eden DC state in paragraph 2.3.19. that it is believed the model accurately represents the conditions that were surveyed in 2017, the operational model is currently being updated using September 2022 traffic data. National Highways propose to consult directly with the Councils about the outcomes of the model and discuss the associated key issues at forthcoming planned meetings with</p>	<p>Issue 3-2.14 of the Deadline 3 Submission Statement of Common Ground Cumbria County Council and Eden District Council - Rev 2 (Document Reference 4.5 REP3-038) discusses the National Highways position on Traffic Modelling & Junction designs at M6 Junction 40, Kemplay Bank and Skirsgill Depot – Penrith, including a statement that the latest position is set out at section 2.3 of the Applicant's Comments on Local Impact Report (LIR) (REP2-018).</p> <p>Work to update the operational model to reflect the data collected in September 2022 has recently been completed. Further consultation in the coming weeks is planned with Cumbria CC and Eden DC in which the model</p>	<p>The Applicant has yet to show the Councils the completed operational models, validated to relevant accepted standards, which cover Junction 40 and Kemplay Bank. Given the interactions between the junctions for traffic and queuing, it has been difficult for the Applicant's consultants to replicate the current conditions, particularly on a Friday.</p> <p>The Councils await further information that shows the base year models to be valid representations of current conditions and the forecast year models that show how</p>

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		Cumbria CC and Eden DC. Provide an update as to any revised modelling and whether this addresses the outstanding concerns of the Councils.	<p>results, will be presented for discussion. In addition to this, technical material will be provided to Cumbria CC and Eden DC for comment.</p> <p>The intention is that the outcomes of this exercise will be presented for the Deadline 5 SoCG submission on the 14th of March 2023.</p>	<p>the scheme is expected to cope with the additional background and scheme related traffic growth predicted. This information needs to cover both the infrastructure changes, assumed lane designations and operation of signals, which are shown to be critical from early demonstrations of the operational model. It would be beneficial for a junction model (such as Linsig or Transyt) of the M6 J40 be developed so that capacities and saturation flows can be understood on each arm, and also the future operational performance in addition to the VISSIM model under development.</p> <p>Overall, the Councils are still concerned that the design of the two junctions at the western end of the A66 do not provide sufficient capacity for the additional traffic predicted for the A66 and for the existing congestion and queuing to be improved, especially on Fridays through the year. Of most concern is the potential queuing at Junction 40 for both the M6 southbound off slip, and also the A66 westbound approach. For the latter, as Kemplay Bank is proposed to be grade-separated, then more traffic will arrive at the M6 junction unimpeded, but as the M6 J40 roundabout itself remains relatively unchanged from its existing layout, then the potential for is high.</p>
TA 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 customer insight fall within the scope of the freight study. To enable the ExA to properly inform the SoS of any potential issues, we would like to understand if the Applicant is confident that this nationwide study is not likely to recommend additional infrastructure interventions within the limits of the current project that would require retrofitting solutions after completion of any works.	To help inform the ExA's understanding, we can confirm that National Highways is undertaking a specific piece of work to review, understand and inform how to improve the service provided to its freight customers, including parking, facilities, information provision and customer insight all of which fall within scope of this review. At this stage the freight study has been scoped around the whole A66, including interface with the A1(M) and M6 and is the forerunner to wider national considerations. Based on progress to date National Highways is confident that the review is not likely to recommend additional infrastructure interventions within the Order limits of this Project.	<p>A meeting was held on 8 March 2023 in which the issue of HGV facilities was discussed in the context of the A66. The Applicant and its 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 corridor, and consultation feedback from hauliers was presented which supported this issue.</p> <p>The Councils support the study and will continue discussions with the Applicant 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.</p> <p>National Highways will need to make a written binding commitment to implementing the recommendations of the freight study.</p>

