

TR010062: Application by National Highways for the A66 Northern Trans- Pennine Project
The Examining Authority's Further Written Questions and requests for information
Issued on Friday 24 March 2023

The following table sets out the Examining Authority's (ExA's) Further Written Questions and requests for information, herein referred to as FWQs.

Questions are set out using an issues-based framework derived from the Initial Assessment of Principal Issues provided as Annex C to the Rule 6 letter of 17 October 2022. Questions have been added to the framework of issues set out there as they have arisen from representations and to address the assessment of the application against relevant policies.

Column 2 of the table indicates which Interested Parties (IPs) and other persons each question is directed to. The ExA would be grateful if all persons named could answer all questions directed to them, providing a substantive response, or indicating that the question is not relevant to them for a reason. This does not prevent an answer being provided to a question by a person to whom it is not directed, should the question be relevant to their interests.

Each question has a unique reference number which starts with an alphabetical code and then an issue number (indicating that it is from FWQs) and a question number. For example, the first question on air quality is identified as AQ 2.1. When you are answering a question, please start your answer by quoting the unique reference number.

If you are responding to a small number of questions, answers in a letter will suffice. If you are answering a larger number of questions, it will assist the ExA if you use a table based on this one to set out your responses. An editable version of this table in Microsoft Word is available on request from the case team: please contact A66Dualling@planninginspectorate.gov.uk and include 'A66 Trans-Pennine Project FWQs' in the subject line of your email.

Responses and information requested are due by Deadline 6: Tuesday 04 April 2023

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AQ	Air Quality	
AQ 2.1	<p><i>Design Manual for Roads and Bridges (DMRB) LA105 Assessment</i></p> <p>The Applicant Natural England (NE)</p>	<p>Natural England (NE) state in their Principal Areas of Disagreement Summary Statement (PADSS) [REP5-060] <i>"Natural England have discussed the chosen methodologies with the air quality specialists from National Highways, we are awaiting the promised technical notes to be produced. It is likely that Natural England's concerns will be addressed in these technical notes and therefore during examination"</i>. This position is the same as the previous NE PADSS [REP3-063]. It is stated in the NE Statement of Common Ground (SoCG) [REP5-009], that <i>"A technical note which sets out National Highways position is being produced and will be shared with Natural England during the week commencing 13th March 2023"</i>.</p> <p>Explain whether this matter been progressed and can both parties summarise the progress to date and detail whether they will be able to reach agreement within the Examination period.</p>
AQ 2.2	<p><i>Outstanding Matters – Durham County Council</i></p> <p>The Applicant Durham County Council (Durham CC)</p>	<p>In the SoCG between the Applicant and Durham County Council (Durham CC) [REP5-006], it states that <i>"most items raised by Durham CC and their Consultant have now reached understanding and agreement. There remains a small number of questions relating to the Construction Phase, specifically relating to the section of The Sills between County Bridge and Bowes Road in Barnard Castle which are subject to ongoing discussion."</i></p> <p>Confirm whether these matters have been progressed and agreed and that they will be able to reach agreement by the end of the Examination period.</p>



CA	Compulsory Acquisition	
CA 2.1	<i>Statement of Common Ground (SoCG)</i> Defence Infrastructure Organisation	Confirm the position with the SoCG submitted by the Applicant [REP5-021], including the matters said to be agreed and the absence of any matters not agreed or remaining under discussion.
CA 2.2	<i>Affected Persons and Interested Parties</i> The Applicant	Provide a response to Affected Persons and Interested Parties represented by Addison's Chartered Surveyors in respect of points made in a Deadline 1 (DL1) Representation [REP1-139].
CA 2.3	<i>Affected Persons and Interested Parties</i> The Applicant	The ExA wishes to better understand the Applicant's position on the suggested transfer of the 'Bivvy Site' to the Heron representors [REP5-044, para 29].
CA 2.4	<i>Skirsgill Depot</i> Cumbria County Council (Cumbria CC)	In view of the apparent inconsistency between Cumbria County Council (Cumbria CC) being " <i>pleased to report that positive engagement had been ongoing with the Applicant and some progress was being made</i> " [REP5-035, para 2.1] and Cumbria CC being said by the Applicant to " <i>oppose land take and are not willing to negotiate with the Applicant at this stage</i> " [REP5-018, page 22, No. 66] concerning the Compulsory Acquisition (CA) sought in the area of the Cumbria CC Skirsgill Depot, what are the Council's current concerns in terms of particular areas of the depot that would be subject to CA bearing in mind the progress being made? Any explanation may be helped by reference to the areas that were viewed at the Accompanied Site Inspection (ASI).



DCO	Draft Development Consent Order (draft DCO)	
DCO 2.1	<p><i>Article 53 (4)(a) and (7)(a)(ii)</i></p> <p><i>Environmental Management Plan (EMP)</i></p> <p>The Applicant</p>	<p>In Written Question DCO 1.5 [PD-011], the ExA expressed concerns with the wording “<i>materially new or materially worse adverse</i>”. This was because, in our view, a considerable level of worsening of the scheme (or any part) could occur before a change is deemed “<i>materially worse adverse</i>” and as such, could extend beyond the scope and assessment of the Environmental Statement (ES). The ExA notes the Applicant’s response at Deadline 4 [REP4-011] but nevertheless remains concerned.</p> <p>The ExA is considering whether the test should be “<i>...materially worse, or materially new adverse</i>”. Switching the wording would ensure the second iteration EMP (in the case of paragraph (4)(a); or any changes to the second iteration EMP (in the case of paragraph (7)(a)(ii)) could not be significantly worse in comparison with those reported in the ES but at the same time, would allow the flexibility to achieve a betterment of the scheme as the Applicant desires.</p> <p>Consider and provide a response.</p>
DCO 2.2	<p><i>Article 54</i></p> <p><i>Detailed Design</i></p> <p>The Applicant</p>	<p>The ExA is not convinced that the wording contained within Article 54 is sufficiently precise, particularly regarding the procedure for possible changes to the Design Principles, which are set out in the Project Design Principles document [REP3-040]. Paragraph 1 regulates that the detailed design must be “<i>compatible with</i>” (see part ii question below) the Design Principles (and others). However, paragraph (2) appears to jump ahead and by stating that the Secretary of State “<i>may approve</i>” a design that departs from the Design Principles. While the Applicant’s comments at DL5 [REP5-024] are noted, it is not sufficiently clear if the Article requires any/all change(s) to the Design Principles to be approved by the Secretary of State or whether the decision to request the Secretary of State’s approval rests with the Undertaker. Of particular concern to the ExA’s, as referred to by NE in its PADSS [REP5-056] is whether even</p>



DCO	Draft Development Consent Order (draft DCO)	
		<p>minor changes to the Design Principles could potentially undermine the outcomes of the Habitats Regulations Assessment.</p> <ul style="list-style-type: none"> <li data-bbox="792 475 2056 719">i. The ExA considers the similar powers contained in Article 53 (6) through to (9) should substitute the current Article 54 (2). Suggested wording is set out at Annex B to these questions. The revised wording mirrors Articles 53(6) to (9) but amended only to refer to the Article in question (as well as incorporating the suggested change set out in DCO 2.1 above) and would, in the ExA’s view, provide a clear mechanism for submissions to, and the Secretary of State’s approval of departures from the Design Principles. Consider and respond. <li data-bbox="792 756 2056 858">ii. Amend Article 54(1) so that the authorised development must be designed in detail and carried out so that it is “<i>substantially in accordance with...</i>”, which aligns with and is consistent with the tests in Article 53. <p>The ExA will additionally consider whether Article 54 requires further amendments in respect to whether specific approval ought to be required of the Trout Beck, Cringle Beck and Moor Beck viaducts (and other structures and/or hardstanding), and if so, will notify the Applicant at a later date.</p>
DCO 2.3	<p><i>Schedules 2 and 7</i> The Applicant</p>	<p>In its response [REP1-005] to the ExA’s Supplementary Agenda Additional Question ISH2.DCO.18 [EV-004], the Applicant suggested that the classification number to the de-trunked section of the A66 should be unique and is under discussion with Cumbria CC. The latest draft DCO [REP5-012] still refers to the B1066, which is not a unique classification number. Explain why this has not been amended.</p>



GM	General Matters	
GM 2.1	<i>SoCGs</i> The Applicant All Relevant Interested Parties	Table 4.1 of the Statement of Commonality for SoCGs [REP5-003] sets out the position of each SoCG between the Applicant and the relevant Interested Party. The Applicant is requested to update the table setting when it expects the final and signed SoCG will be submitted into the Examination. Interested parties who disagree with their respective draft SoCGs are requested to inform the ExA at Deadline 6, Tuesday 04 April 2023.
FDW	Flood Risk, Drainage and Water	
FDW 2.1	<i>Flood Risk Assessment</i> The Environment Agency (EA)	<p>The submitted PADSS at DL5 suggests that <i>“a small number of queries remain outstanding in relation to the Flood Risk Assessment”</i> [REP5-065, page 3] before the EA can be <i>“satisfied that the applicant has demonstrated that any fluvial flood risk associated with the proposed development can be satisfactorily managed”</i> [REP5-065, page 2]. In the event that the EA cannot complete its <i>“assessment of the suitability of the proposed flood risk mitigation measures for Scheme 6 (Warcop)”</i> by the end of the Examination, the ExA now needs to identify the following matters.</p> <p>Explain what queries remain outstanding, whether any further information is required from the Applicant and why this is required to complete the EA’s assessment.</p>



HE	Historic Environment	
HE 2.1	<i>Intangible Heritage – Brough Hill Fair</i> The Applicant	Regarding points raised by Brough Hill Fair Community Association at Issue Specific Hearing 3 (ISH3) [EV-046 to EV053] relating to 'intangible heritage' in the context of the Brough Hill Fair, together with the explanation provided at DL5 by the Applicant which includes references to the Appleby Horse Fair [REP5-024], the ExA requests the Applicant to confirm whether intangible heritage relating specifically to the Brough Hill Fair has been considered and, if so, how.
HE 2.2	<i>Skirsgill Hall and Park</i> The Applicant	<p>The Skirsgill Park Historic Environment and Landscape Appraisal submitted by Walton Goodland Ltd on behalf of Dr Leeming at DL1 [REP1-058] considers that Plot 0102-01-34 as shown on the Land Plans [AS-013] contributes to the setting of Skirsgill Hall which, amongst other things, defines its significance as a heritage asset. The ExA notes the Applicant's position at DL2 [REP2-015] in which the Applicant accepts the conclusions within the Historic Environment and Landscape Appraisal in relation to heritage matters.</p> <p>Confirm what assessment, if any, has been undertaken with regards to the direct loss of this current open area as a result of the Applicant's proposed landscape mitigation, and the effect on the setting of the heritage asset.</p>



TA	Traffic and Access	
TA 2.1	<p><i>Penrith Traffic Modelling</i></p> <p>The Applicant Cumbria County Council Eden District Council (Eden DC)</p>	<p>The ExA notes that the draft SoCG between the Applicant and Cumbria CC/Eden District Council (Eden DC) [REP5-005] and the PADSS [REP5-037] illustrates that there are still outstanding issues under discussion between the Councils and the Applicant. The SoCG refers to a meeting to take place on 17 March 2023. The ExA wants a clear understanding of the outstanding matters are likely to be:</p> <ul style="list-style-type: none">i. Resolved by the end of the Examination;ii. Resolved during the detailed design process that will be completed after the end of the Examination; oriii. Unresolved fundamental concerns about the potential traffic impact.
TA 2.2	<p><i>Private Means of Access (PMA) and Public Rights of Way (PROW)</i></p> <p>The Applicant Cumbria CC Durham CC North Yorkshire CC</p>	<p>Durham CC in its PADSS [REP5-041] raise the following, "<i>the question of future maintenance; if they are to become public bridleways then our ongoing maintenance responsibility is to a standard suitable for that level of public use, not to a standard for the private vehicular use. In most cases that works fine in practice, but there are concerns that the Applicant may construct very high standard vehicular access which landowners would expect Durham CC to maintain in the future. The ongoing responsibilities need to be clearly communicated to all parties.</i>"</p> <p>Explain the approach to the ongoing maintenance in this scenario and whether this approach has been agreed between the Applicant and the Local Highway Authorities.</p>

ANNEX A

Abbreviations Used

AQ	Air Quality	Eden DC	Eden District Council	ISH	Issue Specific Hearing
ASI	Accompanied Site Inspection	EA	Environment Agency	NE	Natural England
CA	Compulsory Acquisition	EMP	Environmental Management Plan	North Yorkshire CC	North Yorkshire County Council
Cumbria CC	Cumbria County Council	ES	Environmental Statement	PADSS	Principal Areas of Disagreement Summary Statement
Durham CC	Durham County Council	FDW	Flood Risk, Drainage and Water	PMA	Private Means of Access
DCO	Development Consent Order	FWQs	Further Written Questions	PROW	Public Rights of Way
dDCO	Draft Development Consent Order	GM	General Matters	SoCG	Statement of Common Ground
DL	Deadline	HE	Historic Environment	TA	Traffic and Access
DMRB	Design Manual for Roads and Bridges	IPs	Interested Parties		



ANNEX B

Suggested wording of Article 54 of the draft DCO

Article	As Worded in REP5-012	Proposed Amendments
54	<p>(1) Subject to article 7 (limits of deviation) and the provisions of this article, the authorised development must be designed in detail and carried out so that it is compatible with—</p> <p>(a) the design principles;</p> <p>(b) the works plans; and</p> <p>(c) the engineering section drawings: plan and profiles and the engineering section drawings: cross sections.</p> <p>(2) The Secretary of State may approve a detailed design that departs from paragraph (1), following consultation with the relevant planning authority, provided that the Secretary of State is satisfied that any amendments to the design principles, the works plans, the engineering section drawings: plan and profiles and the engineering section drawings: cross sections would not give rise to any materially new or materially worse adverse environmental effects in comparison with those reported in the environmental statement.</p> <p>(3) Where amended details are approved by the Secretary of State under paragraph (2), those details are deemed to be substituted for the corresponding design principles, works plans, engineering section drawings: plan and profiles and engineering section drawings: cross sections as the case may be and the undertaker must make those amended details available</p>	<p>(1) Subject to article 7 (limits of deviation) and the provisions of this article, the authorised development must be designed in detail and carried out so that it is compatible substantially in accordance with—</p> <p>(a) the design principles;</p> <p>(b) the works plans; and</p> <p>(c) the engineering section drawings: plan and profiles and the engineering section drawings: cross sections.</p> <p>(2) The Secretary of State may approve a detailed design that departs from paragraph (1), following consultation with the relevant planning authority, provided that the Secretary of State is satisfied that any amendments to the design principles, the works plans, the engineering section drawings: plan and profiles and the engineering section drawings: cross sections would not give rise to any materially new or materially worse adverse environmental effects in comparison with those reported in the environmental statement.</p> <p>(2) Subject to paragraphs (3), (4) and (5), the undertaker may determine to amend the design principles, or any part of it.</p> <p>(3) The undertaker may only determine to amend the design principles or any part of it under paragraph (2) if—</p> <p>(a) the undertaker is satisfied that those amendments—</p>



	<p>in electronic form for inspection by members of the public.</p>	<p><i>(i) are substantially in accordance with the design principles that has been approved by the Secretary of State under paragraph (1);</i></p> <p><i>(ii) would not give rise to any materially worse or materially new adverse environmental effects in comparison with those reported in the environmental statement; and</i></p> <p><i>(iii) would not undermine the outcomes of the Habitats Regulations Assessment.</i></p> <p><i>(4) The undertaker must not determine to amend the design principles (or any part of it) under paragraph (2) unless—</i></p> <p><i>(a) the undertaker has sent to the Secretary of State—</i></p> <p><i>(i) a copy of the submission;</i></p> <p><i>(ii) a copy of the summary report; and</i></p> <p><i>(iii) a statement of the determination the undertaker proposes to make; and</i></p> <p><i>(b) either—</i></p> <p><i>(i) a period of 14 days has elapsed beginning with the date the Secretary of State received the information referred to in sub-paragraph (a) without the Secretary of State notifying the undertaker in accordance with sub-paragraph</i></p> <p><i>(ii) below or giving the undertaker a direction in accordance with paragraph (5) below (in relation to which the Secretary of State may notify the undertaker in writing, before the period of 14 days has elapsed, that the Secretary of State requires longer than this period to notify the undertaker in accordance with sub-paragraph</i></p>
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		<p><i>(ii) below or to give the undertaker a direction in accordance with paragraph (5) below, specifying the longer period required, in which case that longer period will apply for the purposes of this paragraph); or</i></p> <p><i>(ii) the Secretary of State has notified the undertaker in writing that the Secretary of State is content for the undertaker to make the proposed determination.</i></p> <p><i>(5) In relation to any determination proposed to be made by the undertaker to amend the design principles (or any part of it) under paragraph (2), the Secretary of State may direct that—</i></p> <p><i>(a) the undertaker must not make the proposed determination; and</i></p> <p><i>(b) the proposed determination is instead to be made by the Secretary of State as though it were in response to a request for the Secretary of State's approval of amendments to all or any part of the design principles made by the undertaker under paragraph (1).</i></p> <p>(3)(6) Where amended details are approved by the Secretary of State under paragraph (4), those details are deemed to be substituted for the corresponding design principles, works plans, engineering section drawings: plan and profiles and engineering section drawings: cross sections as the case may be and the undertaker must make those amended details available in electronic form for inspection by members of the public.</p>
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