

The Council's response to the Examining Authority's Further Written Questions and requests for information for Deadline 6

This document represents a table of responses to the Examining Authority’s Further Written Questions and requests for information (ExQ2) [PD-012], in respect of National Highways’ (“the Applicant’s”) application for development consent for the A66 Northern Trans-Pennine Project (“the Project”). It has been prepared by Westmorland & Furness Council (the “Council”), as statutory successor to Cumbria County Council (“CCC”) and Eden District Council (“EDC”) on 1st April 2023. The Council’s comments for Deadline 6 are entered in the right-hand column and relate to the matters addressed to the Council and other matters to which the Council considered it relevant to respond to.

Reference No	Subject	Response by	Question	Council’s further comments (proposed / draft)
AQ 2.1	Design Manual for Roads and Bridges (DMRB) LA105 Assessment	The Applicant Natural England (NE)	Natural England (NE) state in their Principal Areas of Disagreement Summary Statement (PADSS) [REP5-060], “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”. 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 “A technical note which sets out National Highways position is being produced and will be shared	The Council will seek to align with Natural England on this aspect and awaits the submission of the Applicant’s Technical Note at Deadline 6. In the Council review, we intend to set out the expectations for inclusion in the second iteration of the Environmental Management Plan (EMP).

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			<p>with Natural England during the week commencing 13th March 2023". 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>	
<p>CA 2.4</p>	<p>Skirsgill Depot</p>	<p>Westmorland and Furness Council</p>	<p>In view of the apparent inconsistency between Cumbria County Council (Cumbria CC) being "pleased to report that positive engagement had been ongoing with the Applicant and some progress was being made" [REP5-035, para 2.1] and Cumbria CC being said by the Applicant to "oppose land take and are not willing to negotiate with the Applicant at this stage" [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</p>	<p>The Council has been in further discussion with the Applicant with regards to land acquisition at Skirsgill depot. The Applicant has reviewed its proposals and the need for permanent land take and in order to satisfy the Council that its operational land will not be affected by the Project, the parties have agreed to enter into a side agreement to reflect the negotiations to date.</p> <p>The Council will update the ExA as to progress.</p>

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			<p>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).</p>	
<p>DCO 2.1</p>	<p>Article 53 (4)(a) and (7)(a)(ii) Environmental Management Plan (EMP)</p>	<p>The Applicant</p>	<p>In Written Question DCO 1.5 [PD-011], the ExA expressed concerns with the wording “materially new or materially worse adverse”. This was because, in our view, a considerable level of worsening of the scheme (or any part) could occur before a change is deemed “materially worse adverse” 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. The ExA is considering whether the test should be “...materially worse, or materially new adverse”. Switching the wording would ensure the second iteration EMP (in the case of</p>	<p>The Council agrees with the ExA’s suggested wording but would also suggest that clarity is needed on how the evidence for ‘materially worse or materially new adverse’ effects would be provided to them as a consultee and to the Secretary of State as approver. The Council would therefore suggest that the additional italicised text is added to the end of Article 53(4)(a). “would not give rise to any materially new or materially worse adverse environmental effects, <i>having been suitably evidenced</i>, in comparison with those reported in the environmental statement”.</p> <p>The Applicant also indicated in its submissions at ISH3 and its post hearing note that it will make it clearer in the EMP that the Council (and other statutory environmental bodies/ relevant authorities) will be consulted when a referral has been made to the Secretary of State in relation to proposed amendments to the second iteration EMP.</p> <p>The revised EMP will be submitted by the Applicant at Deadline 6 and therefore the Council reserves its position to make further comments once it has had the opportunity to review the amendments.</p>

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			<p>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. Consider and provide a response.</p>	
<p>DCO 2.2</p>	<p>Article 54 Detailed Design</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 “compatible with” (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 “may approve” a design that departs from the</p>	<p>The Council welcomes and supports the ExA’s revised wording for Article 54 and notes that further amendments may be suggested at a later stage in the Examination particularly in relation to Trout Beck, Cringle Beck and Moor Beck viaducts (and other structures and/or hardstanding).</p> <p>The Council has made comments on the draft amendments suggested by the ExA in Annex B below and has concerns regarding the following:</p> <ul style="list-style-type: none"> In paragraph 4 (i) reference to the ‘submission’ is odd in this context as there has been no requirement to submit anything – there is a suggestion to amend this in Annex B below. Article 53 operates differently in that there is a requirement to submit any changes to the

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			<p>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 minor changes to the Design Principles could potentially undermine the outcomes of the Habitats Regulations Assessment. 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</p>	<p>Secretary of State to any amendment to the second iteration of the EMP.</p> <ul style="list-style-type: none"> • Paragraph 4 (ii) refers to the Summary Report, but there is no linked requirement for the undertaker to follow the consultation and determination provisions (comparison with Article 53 (4) (b)) which are contained in the EMP). Is the EMP to be updated to reflect the changes to Article 54 and be specific regarding consultation with the relevant bodies on any proposed changes? • Paragraph 6 needs to be amended to reflect that it might be the undertaker making the determination, rather than the Secretary of State. The Secretary of State under paragraph 4 (ii) can notify the undertaker that it is content for the undertaker to make the proposed determination. <p>Generally, the Council has concerns that wording in Article 54 has been taken from Article 53 without reference to other approvals/ consultation or other requirements in other documents e.g. the EMP.</p>

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			<p>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. ii. Amend Article 54(1) so that the authorised development must be designed in detail and carried out so that it is "substantially in accordance with...", which aligns with and is consistent with the tests in Article 53. 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	Schedules 2 and 7	The Applicant	In its response [REP1-005] to the ExA's Supplementary Agenda Additional Question ISH2.DCO.18	The Council confirms that until the DCO is made and the detailed design of the local road network is complete the dDCO

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			[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.	should indicate the classification number for de-trunked sections to be TBC.
GM 2.1	SOCGs	The Applicant All relevant 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.	There are no fundamental disagreements, and the Council is confident that for those matters not resolved we can agree with the Applicant mutually acceptable responses for the final SOCG and PADSS.
FDW 2.1	Flood Risk Assessment	The Environment Agency (EA)	The submitted PADSS at DL5 suggests that "a small number of queries remain outstanding in relation to the Flood Risk	The Council, in its capacity as the Lead Local Flood Authority (LLFA), awaits the conclusion of the modelling review by EA and outstanding queries by the Applicant before aligning with EA's position in relation to the Flood Risk Assessment and setting out

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			<p>Assessment" [REP5-065, page 3] before the EA can be "satisfied that the Applicant has demonstrated that any fluvial flood risk associated with the proposed development can be satisfactorily managed" [REP5-065, page 2]. In the event that the EA cannot complete its "assessment of the suitability of the proposed flood risk mitigation measures for Scheme 6 (Warcop)" by the end of the Examination, the ExA now needs to identify the following matters. 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>	<p>the LLFA expectations for inclusion in the second iteration of the EMP.</p>
<p>TA 2.1</p>	<p>Penrith Traffic Modelling</p>	<p>The Applicant Westmorland & Furness Council</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</p>	<p>A meeting took place on 17th March 2023 and further discussions and screen sharing took place in relation to the future operation of traffic at Penrith. With the VISSIM model on screen, it was clear that progress had been made in relation to evidencing that the operation Kemplay Bank would be efficient, and it was clear to see that with the future grade separation, traffic flowed freely through the junction, and signals appeared</p>

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			<p>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; or iii. Unresolved fundamental concerns about the potential traffic impact. 	<p>to work effectively for a 2029 demand scenario. The operation of M6 J40 however, was less clear, with a number of areas still a work in progress.</p> <p>The models were shared on 03.04.2023, and subsequent documentation and Linsig models will be shared for review by the Applicant. The Council will need to review this information to assess the impacts for each of the assessed scenarios. Note that the timeline outlined by the Applicant for agreeing issues around transport modelling around Penrith is unlikely to align with that outlined on page 22 of REP5-024 (7.30 Issue Specific Hearing 3 (ISH3) Post Hearing Submissions (including written submissions of oral case)), where it is stated that agreement on modelling issues can be made and closed out by mid-April.</p> <p>The following answers are therefore provided in relation to Traffic Modelling.</p> <p>i. Resolved by the end of the Examination; The following are likely to be resolved by the end of the examination, although there is a moderate risk that these matters will still not be resolved, as further information is to be provided by the Applicant, and further review and dialogue is needed to discuss the results and implications of the findings. Note, these points are not currently agreed.</p>

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				<ul style="list-style-type: none"> • Baseline VISSIM Microsimulation Model – it is likely that the Council will reach agreement on the validation of the base model and its compliance with relevant guidance documents and best practice. This is required to assess the future scenario but does not enable the Council to understand the impact of the proposed scheme at Penrith. • Future Scenarios of the VISSIM Microsimulation Model – it is likely that the Council will have a better understanding of the operation of traffic flows at both the Kemplay Bank Roundabout and Junction 40 Roundabout. It is also likely that Council will have a greater understanding of whether the proposed highway design and operation of the proposed traffic signals deliver a safe and congestion free environment (or not) in both the 2029 and 2044 Scenarios, and on a summer Friday for these years. If the operational models demonstrate that further scheme development is required to increase capacity, then this is unlikely to be agreed by the end of the examination <p>ii. Resolved during the detailed design process that will be completed after the end of the Examination; or</p> <p>Given that Detailed Design is expected to take many years to develop, there is clearly the opportunity to resolve a number of</p>

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				<p>issues identified to date. It would be required by the Council for the following to be agreed during that time.</p> <ul style="list-style-type: none"> The operational performance of the proposed scheme at M6 J40, Kemplay Bank and the importance of Traffic Signals for efficient operation – the design of the signals, the layout of the approach lanes, and the allocation of lanes and slip lane capacity to specific movements will need to be further developed during detailed design. This will need to include the design of pedestrian and cycling phases in signal design, and appropriate safety mitigations to protect vulnerable people crossing multiple lanes of traffic, both within J40, and on the approach arms, including residing on traffic islands as part of the crossings. In addition, as the Detailed Design phase will be over a long period of time, there is the opportunity for the impacts associated with the new Local Plan for Westmorland to be included within future option testing and inform the design as it is developed. Interaction of Skirsgill Depot traffic – traffic entering and exiting Skirsgill Depot will need to weave between lanes to access M6 J40. The weaving will be at a location where westbound drivers will also likely be weaving and slowing down in anticipation of negotiating the junction ahead. This increases the risk

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				<p>of a collision occurring and further design work is required to ensure safe operations at this location.</p> <ul style="list-style-type: none"> The Impact within the Town Centre of Penrith – it is likely that the re-assignment of traffic through Penrith as a result of scheme will not be fully understood until the detailed design stage. Currently, local drivers often take circuitous routes to avoid the congestion experienced between M6 J40 and Kemplay Bank, and with the improvement scheme in place, this traffic will re-route through Penrith towards the anticipated less congested future improvement. The scale of this reassignment is not likely to be known as the current transport model does not accurately represent this, and therefore further assessment work is needed, including the impact on the proposed air quality management area in Penrith. Appropriate mitigation will be needed to address significant re-routing within Penrith as a result of the proposed scheme. <p>iii. Unresolved fundamental concerns about the potential traffic impact.</p> <ul style="list-style-type: none"> There is a moderate risk that the future operation of M6 J40 does not deliver on its objectives, and congestion will still exist, particularly on a Friday afternoon during the summer. The risk is that the constraint on the number of lanes on the overbridges (3

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				<p>lanes each direction), combined with the signal phasing that controls vehicle and pedestrian/cycle flow on the roundabout, is not designed or even capable of operating efficiently with the expected future demand in 2044. Due to the timing of receiving the model files from the Applicant for review by the Council (received on 03.04.2023), the Council is not in a position to comment on the information for Deadline 6.</p>
<p>TA 2.2</p>	<p>Private Means of Access (PMA) and Public Rights of Way (PROW)</p>	<p>The Applicant Westmorland & Furness Council</p>	<p>Durham CC in its PADSS [REP5-041] raise the following, “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.” Explain the approach to the ongoing maintenance in this</p>	<p>Clarification from the Applicant has been received that the PMA and PROW will be demarcated and access for vehicles will be controlled for only the private land-holders (see post-hearing note under item 6.1 of REP5 –024).</p> <p>However, there is a need for clarity related to the highway status of the PMA and adjacent PROW and the associated maintenance liability. The Council is willing to maintain new PROW including the cycle tracks, cycleways or equestrian tracks defined in the DCO, to an acceptable standard for the non-motorised users permitted. However, the liability for maintaining the PMA should not fall to the Council.</p> <p>The liability and arrangements for the maintenance of each element need to be explained. The Council agrees with Durham that there is a risk of private means of access becoming a maintenance burden.</p>

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			scenario and whether this approach has been agreed between the Applicant and the Local Highway Authorities.	

Annex B				
Suggested Wording of Article 54 of the draft DCO				
Article	As worded in REPS-012	Proposed Amendments		
54	(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— (a) the design principles; (b) the works plans; and (c) the engineering section drawings: plan and profiles and the engineering section drawings: cross sections. (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	(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— (a) the design principles; (b) the works plans; and (c) the engineering section drawings: plan and profiles and the engineering section drawings: cross sections. (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	MS DM	(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— (a) the design principles; (b) the works plans; and (c) the engineering section drawings: plan and profiles and the engineering section drawings: cross sections. (2) Subject to paragraphs (3), (4) and (5), the undertaker may determine to amend the design principles, works plans and/or engineering section drawings: plan and profiles and the engineering section drawings: cross sections, or any part of them. (3) The undertaker may only determine to amend the design principles, works plans and/or engineering section drawings: plan and profiles and the engineering section drawings: cross sections or any part of them under paragraph (2) if— (a) the undertaker is satisfied that those amendments— (i) are substantially in accordance with the design principles, works plans and/or engineering section drawings: plan and profiles and the engineering section drawings: cross sections that has have been approved by the Secretary of State under paragraph (1);

	<p>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 in electronic form for inspection by members of the public.</p>	<p>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>(i) are substantially in accordance with the design principles that has been approved by the Secretary of State under paragraph (1);</p> <p>(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</p> <p>(iii) would not undermine the outcomes of the Habitats Regulations Assessment.</p>	<p>(ii) would not give rise to any materially worse or materially new adverse environmental effects having been suitably evidenced in comparison with those reported in the environmental statement; and</p> <p>(iii) would not undermine the outcomes of the Habitats Regulations Assessment.</p> <p>(4) The undertaker must not determine to amend the design principles, works plans and/or engineering section drawings: plan and profiles and the engineering section drawings: cross sections (or any part of them it) under paragraph (2) unless—</p> <p>(a) the undertaker has sent to the Secretary of State—</p> <p>(i) a copy of the proposed amendments submission;</p> <p>(ii) a copy of the summary report; and</p> <p>(iii) a statement of the determination the undertaker proposes to make; and</p> <p>(b) either—</p> <p>(i) a period of 14 days has elapsed beginning with the date the Secretary of State received the information referred to in subparagraph (a) without the Secretary of State notifying the undertaker in accordance with subparagraph (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 subparagraph (ii) below or to give the undertaker a direction in accordance with paragraph (5) below, specifying</p>
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		<p>(4) The undertaker must not determine to amend the design principles (or any part of it) under paragraph (2) unless—</p> <p>(a) the undertaker has sent to the Secretary of State—</p> <ul style="list-style-type: none"> (i) a copy of the submission; (ii) a copy of the summary report; and (iii) a statement of the determination the undertaker proposes to make; and <p>(b) either—</p> <ul style="list-style-type: none"> (i) a period of 14 days has elapsed beginning with the date the Secretary of State received the information referred to in subparagraph (a) without the Secretary of State notifying the undertaker in accordance with subparagraph (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 	<p>the longer period required, in which case that longer period will apply for the purposes of this paragraph); or</p> <p>(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.</p> <p>(5) In relation to any determination proposed to be made by the undertaker to amend the design principles, works plans and/or engineering section drawings: plan and profiles and the engineering section drawings: cross sections (or any part of them it) under paragraph (2), the Secretary of State may direct that—</p> <ul style="list-style-type: none"> (a) the undertaker must not make the proposed determination; and (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, works plans and/or engineering section drawings: plan and profiles and the engineering section drawings: cross sections made by the undertaker under paragraph (1). <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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		<p>(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).</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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