The North Yorkshire Council

(Previously North Yorkshire County Council and Richmondshire District Council)

The Council's response to the

Examining Authority Written Questions for Deadline 6

Reference No	Subject	Response by	Question	Councils' further comments
DCO 2.1	Article 53 (4)(a) and (7)(a)(ii) Environmental Management Plan (EMP)	The Applicant	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 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.	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, *having been suitably evidenced,* in comparison with those reported in the environmental statement". 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. 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.

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DCO 2.2	Article 54 Detailed Design	The Applicant	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 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	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). The Council has made comments on the draft amendments suggested by the ExA in Annex B below and has concerns regarding the following: • 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 Secretary of State to any amendment to the second iteration of the EMP. • 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. • 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.

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			(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. 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 B k, Cringle Beck and Moor Beck viaducts (and other structures and/or hardstanding), and if so, will notify the Applicant at a later date.	
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 should indicate the classification number for de-trunked sections to be TBC.

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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.	
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.
TA 2.2	Private Means of Access (PMA) and Public Rights of Way (PROW)	The Applicant Westmorland & Furness Council	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	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). 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-

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			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 scenario and whether this approach has been agreed between the Applicant and the Local Highway Authorities.	motorised users permitted. However, the liability for maintaining the PMA should not fall to the Council. 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.