



Westmorland and Furness Council

The Council's response to the Examining Authority's Schedule of recommended amendments to the Applicant's draft DCO submitted at Deadline 5

This document represents a table of responses to the Examining Authority's (ExA) Schedule of recommended amendments to the Applicant's draft DCO submitted at Deadline 5 [REP5-012]. It has been prepared by Westmorland & Furness Council (the "Council"). The Council's comments for Deadline 7 are entered in the right-hand column and relate to the matters to which the Council considered it relevant to respond to.

Reference	Wording at D5 [REP5-012]	ExA's Recommended Change	Reason	Westmorland and Furness Council comments
Part 5 Article 53(2) <i>Environmental Management Plan (EMP)</i>	No current wording	INSERT NEW PARAGRAPH (2) <i>(2) "The Secretary of State must consult the relevant statutory environmental bodies, local authorities and highway authorities, allowing each party a period not exceeding 30 days (unless the Secretary of State gives written consent for further time to be allowed) to respond to the Secretary of State."</i>	The ExA discussed the issue of inserting such wording at Issue Specific Hearing 3 (ISH3) held on Thursday 2 March 2023 [EV-046 to EV-053] and has noted the Applicant's written response [REP5-024]. Notwithstanding the text contained within the first iteration EMP, the ExA nevertheless considers Interested Parties (IPs) and Statutory Parties would benefit from clear and unambiguous understanding of the consultation the Secretary of State must undertake in the approval of the second iteration EMP, and the timescales to respond, within the Article itself. The ExA suggests such wording be inserted as suggested.	The Council supports the additional wording suggested by the ExA.
Part 5 Article 53(4)(a) and (7)(a)(ii) Article 54(2) <i>EMP Detailed Design</i>	<i>"...would not give rise to any materially new or materially worse adverse environmental effects..."</i>	<i>"...would not give rise to any materially new or materially worse adverse different environmental effects..."</i>	The Applicant stated in its response to Further Written Question (FWQ) DCO 2.1 [REP6-020] that it would amend the said text <i>"to align with DfT's preferred formulation"</i> . The ExA, welcomes the change as it broadly aligns with the request made at ISH2 held on Thursday 1 December 2022 [EV-019 to EV-028] and will expect to see the revised wording for the next iteration of draft DCO at Deadline 7, Tuesday 9 May 2023 .	The Council supports the amendment suggested by the ExA.

<p>Part 5 Article 54(1)</p>	<p><i>(1) "Subject to article 7 (limits of deviation) and the provisions of this article, the authorised development must be designed</i></p>	<p><i>(1) "Subject to article 7 (limits of deviation) and the provisions of this article, the authorised development must be designed in</i></p>	<p>The Applicant stated in its response to Further Written Question DCO 2.2 [REP6- 020] that it would amend the paragraph as suggested by the ExA. The ExA welcomes</p>	<p>The Council supports the amendment suggested by the ExA.</p>
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Reference	Wording at D5 [REP5-012]	ExA's Recommended Change	Reason	Westmorland and Furness Council Response
<i>Detailed Design</i>	<i>in detail and carried out so that it is compatible with –“</i>	<i>detail and carried out so that it is compatible substantially in accordance with”</i> –	the change and will expect to see the revised wording for the next iteration of draft DCO at Deadline 7, Tuesday 9 May 2023.	
Part 5 Article 54 (4) <i>Detailed Design</i>	No current wording	INSERT NEW PARAGRAPH: <i>(4) “The undertaker must not commence construction of each of the viaducts comprised in Work Nos. 0405-1A(xii), 0405- 2A(x), 06- 1C(vi) and 06-1C(x) until details of the external appearance of the viaduct have been submitted to, and following consultation with the relevant planning authority, approved in writing by the Secretary of State.”</i>	<p>The ExA notes the Applicant's response to ISH3 held on 02 March 2023, together with its response to FWQ DCO 2.2 [REP6-020].</p> <p>However, the ExA remains concerned that the designs of the Trout Beck, Cringle Beck and Moor Beck viaducts should be approved by the Secretary of State given their size and the potential landscape and visual effects that may occur. In the absence of draft detailed designs, including the Applicant's decision not to provide photomontages, the ExA is not persuaded that the Design Principles are sufficiently detailed, or at an advanced stage to allow these viaducts to be constructed without approval.</p> <p>The ExA accepts the Applicant position on this matter and that it disagrees and will likely reject the change. Nevertheless, the ExA wishes to give the Applicant the opportunity to review its position before the Secretary of State makes their decision on the need for this additional paragraph.</p>	The Applicant welcomes the suggestion by the ExA of including this additional wording in Article 54 to secure Secretary of State approval to the detailed design of the viaducts.

Part 5 Article 54(5)	No current wording	INSERT NEW PARAGRAPH:	The design for Work No 06-07 and the associated Ancillary Works were the topic of discussion at ISH1 [EV-013 to EV-018].	The Council supports the insertion of new paragraph in Article 54 as suggested by the ExA.
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Reference	Wording at D5 [REP5-012]	ExA's Recommended Change	Reason	Westmorland and Furness Council Response
<i>Detailed Design</i>		<i>(5) "The undertaker must not commence the construction of Work No. 06-7 until the detailed designs of the positioning of the access road and the associated Ancillary Works have been submitted to approved in writing by the Secretary of State following consultation with the relevant planning authority."</i>	<p>The Change Request [CR-002] number DC-25 proposed a change to the location of the Langrigg to Flitholme link road and removal of the A66 Langrigg Lane junction. The Applicant states in paragraph 3.25.16 that <i>"Many of the other issues raised at consultation, such as those relating to drainage and land, will be addressed through further engagement and through provisions of the EMP. For example, [The Applicant] proposed to rationalise the pond designs and associated access for maintenance which may involve amendments to pond locations and/or shape to better fit the existing landscape/ field patterns. This will be undertaken in consultation with the drainage authorities and the land interests affected."</i></p> <p>Owing to the uncertainties around the final design of this area and having regard to concerns expressed by IPs and shared by the ExA regarding the living conditions in nearby residential properties, that the final design of the link road and ancillary works at Langrigg should be approved by the Secretary of State to allow the IPs and others to comment.</p>	

<p>Schedule 1</p> <p><i>Ancillary Works</i></p>	<p><i>(a) "works within highways, including -</i></p> <p><i>(i) alteration of the layout of any street permanently or temporarily, including increasing or reducing the width of the carriageway of any street by increasing or reducing the width of any kerb, footway,</i></p>	<p><i>(a) "works within highways, including -</i></p> <p><i>(i) alteration of the layout of any street permanently or temporarily, including increasing or reducing the width of the carriageway of any street by increasing or reducing the width of any footway, cycleway,</i></p>	<p>A kerb is a building block of elements of highways such as footways, footpaths, cycleways, etc, and as such its use in this paragraph is not required. It should be removed to provide greater clarity in the meaning of this paragraph.</p>	<p>The Council supports the amendments suggested by the ExA.</p>
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Reference	Wording at D5 [REP5-012]	ExA's Recommended Change	Reason	Westmorland and Furness Council Response
	<i>cycleway, or verge within the street; and altering the level or increasing the width of any such kerb, footway, cycleway or verge within the street; works for the strengthening, improvement, repair, maintenance or reconstruction of any street; and works associated with the tie-in of the authorised development to the existing highway;</i>	<i>or verge within the street; and altering the level or increasing the width of any such footway, cycleway or verge within the street; works for the strengthening, improvement, repair, maintenance or reconstruction of any street; and works associated with the tie-in of the authorised development to the existing highway;"</i>		

Responses are to be received by **Deadline 7, Tuesday 9 May 2023.**