



## **Westmorland and Furness Council**

**The Council's response to the Applicant's response to the  
Examining Authority's Further Written Questions submitted at Deadline 6, for Deadline 7, 9<sup>th</sup> May 2023**

This document represents a table of responses to the Applicant's response to the Examining Authority's (ExA) Further Written Questions submitted at Deadline 6 (REP6-020). The Council's comments for Deadline 7 are entered in the right-hand column and relate to the matters it considered relevant to respond to.

| Ref No   | Subject and response by  | Question   | Applicant's Response   | Council's further comments  |
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| <b>Air Quality</b>                                 |  |  |  |   |
| AQ 2.1   | Design Manual for Roads and Bridges (DMRB) LA105 Assessment The Applicant Natural England (NE) t | <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>".</p> <p>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> | <p>Natural England have identified in their PADSS that they disagree with the use of DMRB LA105 as in Natural England's view aspects of it are not Habitats Regulations Assessment compliant.</p> <p>Separate from its role as the Applicant, National Highways have been in discussions with Natural England at a national level outside of this Project regarding updates to DMRB LA105 for a number of years and are currently working to get these into the next update of DMRB LA105, which is due to be consulted on shortly. Natural England are currently involved in discussions regarding the update to DMRB LA105 and National Highways will have regard to their views as part of the proposed guidance update.</p> <p>The technical note referred to in both the Natural England PADSS and SoCG is not to do with DMRB LA105, rather it is to provide written confirmation of how ammonia has been assessed for the Project following a meeting with Natural England on 8th December 2022 where the Applicant explained their approach to Natural England. This note will be shared with Natural England by 06 April 2023. These matters have been progressed and the Applicant is confident that agreement will be reached by close of the Examination</p>   | <p>The Council would value a copy of the Technical Note that is referenced by the Applicant so that they can likewise be reassured on the process and assessment that has been undertaken. If necessary, the Council will provide a further response once it has received and reviewed that Technical Note.</p>   |
| <b>Compulsory Acquisitions</b>                     |  |  |  |   |
| CA 2.4   | Skirsgill Depot Cumbria County Council (Cumbria CC)  | <p>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).</p>  | <p>Since Deadline 5, the Applicant and Cumbria CC have been working together collaboratively to reach an agreed solution regarding the Applicant's proposals to use or acquire land at the Skirsgill Depot for the purposes of the Project. The Applicant has confirmed to Cumbria CC that it will not use (or seek to acquire) land and buildings in the south-easternmost area of the depot. The Applicant has also confirmed that whilst the north-easternmost area of the depot is still required by the Applicant for use as a construction compound, this can be achieved through exercising powers of temporary possession only, such that powers of compulsory acquisition, if granted, will not be exercised in respect of the land needed for the compound. This agreed solution, which is predicated on Cumbria CC's willingness to accept the land being returned in a changed state after it has been used as a construction compound, will be secured through provisions in the overarching legal agreement between the Applicant and Cumbria CC (and as such, no change to the DCO application documentation is proposed to be made). The Applicant's Compulsory Acquisition Status of Negotiations Schedule which was submitted at Deadline 5 [Rev 2, REP5-018] will be updated accordingly at Deadline 8.</p> | <p>The Council is still in negotiations with the Applicant in relation to Skirsgill Depot on a number of issues relating to land acquisition, temporary possession (and maintenance following use of that land as a compound) and issues relating to ongoing access to its operational land. The Council is hopeful that all issues can be resolved in the legal side agreement currently in negotiation and that this will be able to be agreed before the close of the Examination.</p> |
| <b>Draft Development Consent Order (draft DCO)</b> |  |  |  |   |
| DCO 2.1  | Article 53 (4)(a) and (7)(a)(ii) Environmental Management Plan (EMP)                             | <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</p>  | <p>The Applicant maintains its view that its proposed form of wording is appropriate and precedent for the reasons previously set out in its response to the ExA's written question DCO 1.5 [REP4-011].</p> <p>The Applicant is not clear that the form of words proposed achieves what the ExA is intending to achieve. The order in which the words 'materially new' or 'materially worse' appear in the sentence has no bearing on how it is construed and the addition of a single comma is more likely to give rise to confusion than clarity. The Applicant further</p>  | <p>The Council suggests that the wording 'materially different' is sufficient as anything 'new' would also be 'different' to what was previously concluded.</p>   |

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|        | The Applicant           | <p>Applicant's response at Deadline 4 [REP4-011] but nevertheless remains concerned.</p> <p>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.</p> | <p>notes that the formulation "materially new or materially worse adverse" appears elsewhere in the draft Order and it is desirable and a matter of good drafting practice that the same concept is expressed using the same form of words.</p> <p>Having reflected on the issue, the Applicant considers that the ExA's underlying concern could be addressed in another way.</p> <p>In the next iteration of the draft DCO the Applicant intends to replace each instance of "materially new or materially new adverse effects" with "materially new or materially different" so as to align with the Department for Transport's preferred formulation. The Applicant will also add a new paragraph (7) to article 2 (Interpretation) which will clarify that:</p> <p>"In this Order, references to materially new or materially different environment effects in comparison with those assessed in the environmental statement are not to be construed so as to include the avoidance, removal or reduction of an assessed adverse environmental effect or a positive environmental effect, or the increase of an assessed positive environmental effect."</p> <p>The Applicant considers that this formulation strikes an appropriate balance of permitting the improvement of beneficial effects, or the reduction of adverse effects, without permitting a material worsening.</p> | <p>The words 'or a positive environmental effect' need to be omitted. Their inclusion would allow a positive environmental effect to be avoided, removed or reduced, which is clearly not the intention. (The final part of the sentence referring to 'the increase of an assessed positive environmental effect' is supported)</p> |

**Traffic and Access**

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| TA 2.1 | Penrith Traffic Modelling The Applicant Cumbria CC Eden District Council (Eden DC) | <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"> <li>i. Resolved by the end of the Examination;</li> <li>ii. Resolved during the detailed design process that will be completed after the end of the Examination; or</li> <li>iii. Unresolved fundamental concerns about the potential traffic impact.</li> </ul> | <p>A meeting was held between the Applicant and Cumbria CC (as the Local Highway Authority for Eden District) on the 17<sup>th</sup> March at which the VISSIM model of Junction 40 (which also includes the access to Skirsgill Depot) and Kemplay Bank was presented. The presentation included a demonstration of the base model which has been calibrated and validated to TAG standards. The presentation also included an initial run of the opening year model run demonstrating that proposed scheme improvements at both roundabouts would operate at an acceptable level, i.e. in which the excessive queuing currently observed during the critical Friday peak period and reflected within the base model, does not occur.</p> <p>An action agreed at this meeting was for the Applicant to share the modelling with Cumbria CC such that a technical review can be undertaken. Since this meeting, the base and future year (opening year and design year) VISSIM models have been shared with Cumbria CC to allow the technical review to be undertaken.</p> <p>Technical documentation to supplement the VISSIM models will be shared by Thursday the 6<sup>th</sup> of April. In addition to this, a further junction model (LINSIG) of the proposed M6 Junction 40 layout will be shared as requested by this date. This will supplement the VISSIM models, to provide Cumbria CC with a better understanding of the capacities and saturation flows on each arm of the roundabout, in addition to the future operational performance.</p> <p>With reference to the PADSS [REP5-037], the Applicant will have provided, by the 6<sup>th</sup> of April [the Councils / Cumbria CC] with all relevant modelling information it has requested. The Applicant looks forward to discussing this further once their technical review is complete. Therefore, NH consider that it should be possible for all of the traffic capacity related issues around M6 Junction 40, Skirsgill Depot and Kemplay Bank roundabout to be resolved by the end of the Examination.</p> | <p>The Council welcomes the additional modelling undertaken, both in microsimulation software VISSIM, and junction signal software LinSig, to help inform the understanding of the potential impacts.</p> <p>Following the review to date, the Council is more confident that the proposed design will cope with the forecasted traffic growth to an acceptable level. The Vissim modelling results show reductions in traffic queuing compared to the without scheme option, and the LinSig shows that the junction can operate with the expected flows in 2044.</p> <p>There are some outstanding issues identified that require resolution both to:</p> <p><b>1) provide further confidence that the Proposed Scheme operates efficiently and safely for all modes, and</b></p> <p><b>2) to improve the design evolution process of the Proposed Scheme itself so that the signal control at M6 J40 and Kemplay Bank is optimised.</b></p> <p>The Council has set out a detailed breakdown of these issues in a Technical Note issued to the Applicant on 18th April 2023 in Appendix A to C. Some of these issues can be addressed during the Examination for example, providing further information about assumptions used, and other issues are likely to need progressing after the Examination closes, where further design input is needed to optimise the future operation of the proposed Scheme.</p> <p>The main issues from this Technical Note were discussed with Applicant and Arup on 17th April 2023, and it was agreed that the issues in this Technical Note would be reviewed, with commentary to be</p> |
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|        |   |   |   | <p>provided in response to the issues set out in Appendix A-C before the end of the Examination so that the Council can record its expectation for further refinements to the design during the Detailed Design process post Examination.</p> <p>The Applicant has responded to these issues and we now have a record of the design elements that require development post Examination which are contained in two Technical Notes submitted into the Examination alongside the Council's Covering Letter at Deadline 7:</p> <ol style="list-style-type: none"> <li>1. A66 Traffic Modelling Review Technical Note - Response from the Applicant 27.04.23</li> <li>2. A66 Traffic Modelling Councils' Review of Applicant Responses Technical Note 04.05.23</li> </ol> |
| TA 2.2 | Private Means of Access (PMA) and Public Rights of Way (PROW)<br>The Applicant<br>Cumbria CC<br>Durham CC<br>North Yorkshire CC | <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> | <p>The Applicant notes and agrees with the matter raised by Durham CC and its statement of its duty to maintain public highways to a standard appropriate to the permitted public use. In this regard discussions are continuing with the local highway authorities in relation to how the provisions contained within the draft DCO are to be operated and maintained in practice.</p> | <p>The Council welcomes confirmation that the PMA and PROW will be delineated or segregated. However, there is still insufficient clarity relating to the adopted status of the PMA and associated PROW. The highway status of each element (or combined) and associated maintenance liability for the Council needs to be made clear.</p> <p>The Council still has concerns in this regard and has not yet had any engagement from the Applicant to discuss the arrangements.</p>  |