

**A66 Northern Trans-Pennine Project
TR010062**

**7.37 Summary Statement on Brough
Hill Fair Relocation (Rev 2)
(Tracked)**

Planning Act 2008

Infrastructure Planning (Examination Procedure) Rules 2010

09 May~~4 April~~ 2023

Infrastructure Planning

Planning Act 2008

**The Infrastructure Planning
(Examination Procedure)
Rules 2010**

A66 Northern Trans-Pennine Project
Development Consent Order 202x

**7.37 SUMMARY STATEMENT ON BROUGH HILL FAIR
RELOCATION**

Planning Inspectorate Scheme Reference	TR010062
Application Document Reference	7.37
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Version	Date	Status of Version
Rev 1	04 April 2023	Deadline 6
Rev 2	09 May 2023	Deadline 7

CONTENTS

1	Introduction	1
2	Summary of Concerns	2
3	Consideration of Alternative Sites	3
3.1	Need for Replacement	3
3.2	EqIA and Loss of Land.....	3
3.3	Selection and Suitability of Replacement Site	4
3.4	Public Sector Equality Duty	6
3.5	Consideration of Sites suggested by the Gypsy Community and the Heron Family 67	
3.6	Acquisition of Land for the Replacement BHF Site.....	10
4	Intangible Cultural Heritage of Brough Hill Fair and response to ExQ HE 2.1	12
4.1	Introduction	12
4.2	Convention for the Safeguarding of Intangible Cultural Heritage	12
4.3	Paragraph 5.125 of the National Networks National Policy Statement	13
4.4	Public Sector Equality Duty under the Equality Act 2010.....	17
5	Future Management and Ownership of the Replacement Brough Hill Fair Site and response to ExQ CA 2.3	19
6	Additional Issues relating to Detailed Design	21
7	Further Support for the Gypsy Community	23
8	Applicant’s Operational Risk Assessment	25
	Appendix 1	27

1 Introduction

- 1.1.1 National Highways (“**the Applicant**”) notes that submissions were made at Deadline 5 by the Brough Hill Fair Community Association [REP5-031] and George F White LLP on behalf of J Heron, Mrs D and I Heron, Mr J and Mrs M Heron, Mr S and Mrs C Heron and Mr D and Mrs M Heron [REP5-044] (the “**Heron family**”) outlining concerns in relation to the proposed replacement Brough Hill Fair (“**BHF**”) site.
- 1.1.2 Mr Billy Welch is the representative of the Gypsy Community and Mr Bill Lloyd is the representative of the BHF Community Association. The Applicant considers that the issues discussed in this document are relevant to both organisations and therefore refers to them collectively as the “**Gypsy Community**” throughout.
- 1.1.3 The Applicant has been in regular consultation with both the Gypsy Community and the Heron family before and throughout the Examination.
- 1.1.4 The Applicant considers that the concerns of the Gypsy Community and the Heron family are linked and has therefore produced this document to assist the Examining Authority (the “**ExA**”), by responding to the current and outstanding issues relating to the BHF and its proposed replacement site. Reference is made to other documents submitted by the Applicant during the Examination as appropriate.
- 1.1.5 The Applicant also refers to the ExA’s Further Written Questions [PD-012] (“**ExQ2**”), specifically questions CA 2.3 and HE 2.1 relating to the replacement BHF site and is using this document to supplement responses to these questions as identified below.
- 1.1.6 In addition, the Applicant notes that submissions were made at Deadline 6 by the Brough Hill Fair Community Association [REP6-035 and REP6-036] and the Heron family [REP6-040 and REP6-041]. The Applicant also received two documents from the Brough Hill Fair Community Association that it intended to submit at Deadline 7, entitled “Deadline 7 Request to the Examining Authority” and “Deadline 7 Comments on NH BHF Relocation Deadline 6 Submission” which the Applicant was grateful for the opportunity to view in advance of their submission.
- 1.1.7 The Applicant considers that the majority of the points raised by the Gypsy Community and the Heron family in these new submissions has been responded to by the Applicant in Rev 1 of this Summary Statement [REP6-023] and in the associated documentation to which this refers.
- ~~4.1.5~~1.1.8 However, the Applicant has updated this Summary Statement in Rev 2 to include responses to any new issues raised by either the Gypsy Community or the Heron family in the above referenced submissions. Where the Applicant considers that issues raised in these submissions have previously been responded to, the Applicant has added a note to this effect at the end of the relevant section of this Summary Statement.

2 Summary of Concerns

2.1.1 The Applicant considers that, with regard to the concerns from the Gypsy Community and the Heron family, submitted at Deadlines 5-7, the issues relating to the replacement BHF site that have arisen throughout the Examination can be split into three categories, as follows:

- the suitability of the replacement BHF site and the consideration of alternative replacement sites;
- the intangible cultural heritage of the BHF, including concerns relating to human rights; and
- the future management and ownership of the replacement BHF site (previously referred to as the “Bivvy Site”).

2.1.2 The following sections set out the Applicant’s response to each issue in turn. In addition, the Applicant has included at the end of this document sections covering other issues that have arisen in relation to the detailed design stage, further support for the Gypsy Community and an update on its Operational Risk Assessment.

~~2.1.2~~ 2.1.3 In paragraphs 3-6 of [REP6-035], the Gypsy Community expressed concerns over the Statement of Common Ground (‘SoCG’). The Applicant notes that it has sought throughout the examination process to work with the Gypsy Community to prepare a joint SoCG. The SoCG and accompanying Statement of Commonality are clear that the document to date has been largely drafted by the Applicant. A further meeting was held with the Brough Hill Fair Community representatives and their Planning Consultant on 19 April 2023 to discuss the SoCG, however representatives on the call focused on the choice of site and the options assessment undertaken to inform the choice of site rather than detailed discussions on the SoCG. The Applicant refutes the Gypsy Community’s claim that the cultural importance of the BHF is not understood. The cultural heritage and importance of the BHF is reported in the SoCG. The Applicant, at the meeting of the 19 April 2023, confirmed that any new matters raised in the Principal Areas of Disagreement Summary Statement (‘PADSS’) at Deadline 7 would be reported in the SoCG for submission at Deadline 8. The Applicant requested early sight of the PADSS to inform further dialogue on the SoCG. The Applicant considers that this explanation also constitutes a response to paragraph 1.5 of [REP6-036].

3 Consideration of Alternative Sites

3.1 Need for Replacement

- 3.1.1 The Applicant has carried out a full appraisal of reasonable alternatives for the Project as a whole and concluded that all the alternatives assessed, due to the road alignment, would result in a loss of the current BHF site. The Applicant explained the need to replace the BHF site in its material produced for statutory consultation (page 67 'A66 Northern Trans-Pennine project Statutory consultation Autumn 2021, booklet) and in a supplementary consultation. The Applicant also refers to section 5.5 of the Project Development Overview Report [Document Reference 4.1, APP-244] for the initial assessment of the BHF site, particularly paragraphs 5.5.84 – 5.5.89, which set out the development of the design of the Project, including alternative routes considered and the decision-making process.
- 3.1.2 The issue of alternative sites for the BHF is also addressed in the Applicant's Post Hearing Submissions for Compulsory Acquisition Hearing 2 [Document Reference 7.29, REP5-023] under Agenda Item 4.0 in a post hearing note. In that note, the Applicant in turn referred to pages 41-42 and pages 54-55 of its Response to Written Representations made by Affected Persons at Deadline 1 [Document Reference 7.6, REP2-015]. Further detail on this process is provided in the Applicant's Issue Specific Hearing 3 Post Hearing Submission – Response to Examining Authority's Request Under Agenda Item 10: Replacement Sites Considered for Brough Hill Fair [Document Reference 7.30, REP5-029]. This demonstrates that the Applicant has considered the need to replace BHF throughout the preliminary design stage and into the Examination.
- 3.1.3 The Applicant's project team has engaged with the Heron family and the Gypsy Community throughout the preliminary design stage and discussions are ongoing. This engagement includes meetings with Billy Welch, which are documented in a Statement of Common Ground [the latest version of which, Rev 3 is at Document Reference 4.5, REP5-011, submitted at Deadline 5]. The Applicant has always acknowledged the historic and cultural importance of the BHF to the Gypsy Community.

3.2 EqIA and Loss of Land

- 3.2.1 In addition, the Applicant notes that the Equalities Impact Assessment ("**EqIA**") submitted with the Development Consent Order ("**DCO**") application [APP-243] acknowledges the importance of the BHF to the Gypsy Community. The EqIA acknowledges that the Project would lead to a direct loss of most of the BHF site, which will be required for construction of the proposed Project. The loss of the majority of the existing site and the proposed alternative sites were discussed in a number of meetings with Billy Welch as representative of the Gypsy Community in the preliminary design stage, leading up to statutory consultation (autumn, 2021). In regard to feedback at statutory consultation, the design team sought an alternative location for the BHF. A supplementary consultation was undertaken (February 2022) where

two alternative sites were considered: (1) the proposed replacement BHF site, which lies to the immediate west of the existing site and is currently used by the Ministry of Defence (“MoD”) as a “camping site and training area”; and (2) an alternative eastern site, which sits to the south of the A66, approximately 1.6 miles to the east of the current site and immediately south-west of Brough. A summary of matters raised and the outcomes from this supplementary consultation are provided in Chapter 7 of the Consultation Report [Document Reference 4.4, APP-252] and its supporting Annex P [Document Reference 4.4, APP-273].

[3.2.13.2.2 In response to paragraph 3.2.1 of the Gypsy Community’s early Deadline 7 submission, entitled “Deadline 7 Comments on NH BHF Relocation Deadline 6 Submission”, the Applicant highlights the distinction between the requirements of the EqlA and its need to demonstrate “due regard” under the Applicant’s Public Sector Equality Duty with the requirements of EIA under the Infrastructure Planning \(Environmental Impact Assessment\) Regulations 2017 to assess significance and consider how the likely significant adverse effects of the project could be avoided, prevented, reduced, or, if possible, offset. The EqlA is therefore not required to, and does not attempt to, make an assessment of the 'significance' of effects, but rather considers the potential for disproportionate or differential effects on protected characteristic groups. In doing so it, to some extent, relies on the assessment of effects coming out of the EIA. The EqlA provides information on embedded mitigation for the Project that will help to minimise or eliminate potential adverse equality effects. The Gypsy Community have been actively engaged with by the Applicant at numerous points throughout the development of the Project; indeed, considerably more so than other receptors along the route. It was considered that suitable alternative sites were put forward in consultation as possible replacement sites for the loss of the Brough Hill Fair site, with the preferred site being immediately adjacent to the existing, and still retaining some of, the old site. The EqlA states a commitment to undertake 'additional works to make it suitable for its intended use. The details of this will be confirmed at detailed design but could possibly include re-profiling and remediation of the land and screening planting along the boundaries'. The aim of this was to mitigate concerns, as raised at the time, by the Gypsy Community.](#)

3.3 Selection and Suitability of Replacement Site

3.3.1 The Gypsy Community had reservations about both sites, however it was concluded by the Applicant’s project team that the proposed replacement BHF site is the preferred replacement site. This was due to several factors arising when the Applicant assessed each of the potential replacement sites against the identified criteria, which are summarised in REP5-029. The proposed replacement BHF site is a relatively flat site, with 5.4 acres of usable area (i.e. the same size as the existing BHF site). The replacement BHF site is within both the extents of Scheme 06 ‘Appleby to Brough’ and the Order limits, alongside being south of the existing A66 and therefore outside the MoD training range and North Pennines AONB. Safe access to the

replacement BHF site is provided via Station Road, which is an existing local road. As discussed later in this document, the proposed layout for the replacement BHF site also utilises part of the existing BHF site and the Applicant has reached an agreement with the MoD to acquire the land for the proposed replacement site. In addition, it is this site where appropriate mitigation and management measures could address issues raised with the suitability of the replacement BHF site. This may include additional works to make it wholly suitable for its intended use. The details of this will be confirmed during detailed design but could possibly include re-profiling of the land and appropriate boundary treatments, including fencing, screen planting and bunding along the various boundaries.

3.3.2 The details of the formal Scheme for the replacement BHF site would be developed in consultation with representatives of the Gypsy Community and the relevant local authorities and submitted for the approval of the Secretary of State in accordance with article 36 of the draft DCO.

3.3.3 Sections 3.1 and 3.3 of this Summary Statement constitute a response to the points made in paragraph 18 of the Gypsy Community's submission for Deadline 7, received early by the Applicant and entitled "Deadline 7 Request to the Examining Authority".

3.3.4 In relation to the points made in paragraphs 9-10 of the Gypsy Community's submission for Deadline 7, received early by the Applicant and entitled "Deadline 7 Request to the Examining Authority", the Applicant has reviewed the quote referenced by the Gypsy Community in the full context of this section of the hearing, in order to give a clear understanding of how this was discussed. In addressing this point, the Applicant notes that the action agreed at the hearing for it to undertake was to continue to explore the issues with the Gypsy Community via continued discussions and engagement, alongside continuing to update the Examining Authority on this throughout the Examination. This is detailed in the confirmed commitments captured by the Examining Authority at the end of the hearing and can be seen if the whole section from the hearing is listened to in context (rather than on the basis of a limited extract). Further, in its Post Hearing Submissions for Issue Specific Hearing 2 [REP1-009], the Applicant noted that "the Applicant was asked to consider amending article 36(2)(a) to include consultation with representatives of the Gypsy and Traveller community regarding the scheme for the provision of the replacement Brough Hill fair site to be certified by the Secretary of State. The Applicant has reflected on this request and is minded to amend article 36 to provide for consultation with representatives of the Gypsy and Traveller community on the scheme to be certified by the Secretary of State. The Applicant will make the appropriate amendments in the next iteration of the draft Order to be submitted at Deadline 2". This action was undertaken by the Applicant and the Applicant simply does not agree with the Gypsy Community that "the dialogue about alternative sites has never happened" – it has, both before the DCO application and during the Examination. In relation to the points made about 'the death of the Fair' and the Applicant's consideration of the Gypsy Community's values and

[traditions, the Applicant has responded to these points throughout this Summary Statement.](#)

~~3.3.2~~[3.3.5 In relation to the points made in paragraph 7 of the Gypsy Community's submission for Deadline 7, received early by the Applicant and entitled "Deadline 7 Request to the Examining Authority", the Applicant would note that this exploration of issues by the Applicant with the Gypsy Community via continued discussions and engagement, identified above, has informed the development of the proposals for the replacement Brough Hill Fair site, as detailed in the following submissions: Deadline 1 Submission – 7.3 Issues Specific Hearing 2 \(ISH2\) Post Hearing Submissions \[Document Reference 7.3, REP1-009\]; Deadline 3 Submission – 7.16 Brough Hill Fair Technical Note – Rev 1 \[Document Reference 7.16, REP3-045\]; Deadline 4 Submission – 7.24 Applicant's Responses to the Examining Authority's Written Questions \[Question PC1.1 of Document Reference 7.24, REP4-011\]. In addition, the Applicant refers to the wider context of this Summary Statement, and its Deadline 5 Submission -7.32 Issue Specific Hearing 3 \(ISH3\) Post Hearing Submission – Response to Examining Authority's Request Under Agenda Item 10: Replacement Sites Considered for Brough Hill Fair \[Document Reference 7.32, REP5-029\] which sets out the process followed to identify the proposed replacement site.](#)

3.4 Public Sector Equality Duty

3.4.1 For completeness, the Applicant also refers to Agenda Item 5 and Appendices 5 to 9 inclusive of its Post Hearing Submissions for Issue Specific Hearing 2 [Document Reference 7.3, REP1-009]. Alongside responses already covered above, the Applicant responded to additional concerns from the Gypsy Community at this earlier stage and referenced the EqIA [Document Reference 3.10, APP-243], regarding bunding and noise modelling, which again demonstrates that the Applicant has had regard to its public sector equality duty during the development of its proposals for the Project, alongside ongoing consultation and engagement. The Applicant also confirmed that it understands the concern regarding the loss of cultural connection in relation to the BHF but responded that the BHF has not been at its current location for a particularly long time, when considered in the long-term context of the BHF's existence. Indeed, the replacement BHF site sits next to the current BHF site and the Applicant is seeking to ensure the continuity of the traditions, rights and activities in relation to the BHF through re-provision and by incorporating as much of the current BHF site that remains following the implementation of the Project into the replacement BHF site as is practicable.

3.5 Consideration of Sites suggested by the Gypsy Community and the Heron Family

[3.5.1](#) In relation to the suggestion by the Gypsy Community that the A66 road alignment be moved to the north further into the Area of Outstanding Natural Beauty following what is known as the "Billy Welch straight line", the Applicant refers to its Responses to the Examining Authority's Written Questions submitted at Deadline 4 [Document Reference 7.24,

REP4-011] at PC 1.1. Here the Applicant explained that although this alignment would retain some local accesses, the MoD playing field and the current Brough Hill Fair site, due to impacts on both the AONB and operational MoD land the Applicant does not believe this alternative alignment to be a deliverable proposal. There is a risk that operational MoD land could not be secured and, given these impacts, development consent would not be granted for the Project with this alternative alignment. Given that the DCO could not authorise the compulsory acquisition of such land without Crown consent, any proposal which is reliant upon such land which may not be secured by the Applicant from the MoD poses deliverability challenges. As such, the “Billy Welch straight line route” was not developed or considered further by the Applicant. In addition, the Applicant also refers to its Post Hearing Submissions for Issue Specific Hearing 1 [Document Reference 7.2, REP1-006] in which it explained under Agenda item 2.2 the route selection process in this location including in respect of alternative alignments to the north of the proposed route.

3.5.13.5.2 [In relation to paragraph 6 of the Gypsy Community’s early Deadline 7 submission, entitled “Deadline 7 Request to the Examining Authority”, the Applicant notes that the proposed site is similar in size to the current Brough Hill Fair site and is, at its wider point, deeper than the existing site allowing the fair users to park vehicles further from the A66. This is shown on the drawing included at Appendix A of the Applicant’s Deadline 5 Submission – 4.5 Statement of Common Ground with the Gypsy and Travellers Representatives \(Rev 3\) \[Document Reference 4.5, REP5-011\]. This site plan was shared with the Gypsy Community in December 2022 following Issue Specific Hearing 2, and a version that overlays the existing Brough Hill Fair Site and the proposed replacement site is included in Appendix 5 of the Applicant’s Deadline 1 Submission – 7.3 Issue Specific Hearing 2 \(ISH2\) Post Hearing Submissions \[Document Reference 7.3, REP1-009\]. The Applicant’s project team has undertaken a detailed Operational Risk Assessment and has worked with both the Heron family and the Gypsy Community representatives to identify all the risks associated with the replacement BHF site. The risks identified have been shared with both parties ahead of Deadline 7 to ensure that all risks were addressed within the assessment – please see section 8 of this Summary Statement below. This section 3.5.1 of this Summary Statement constitutes a response to the points made in paragraph 4.9 of \[REP6-036\].](#)

3.5.3 In relation to the alternative site proposed by the Heron family, this option is outlined in the Applicant’s Deadline 5 Submission – 7.32 Issue Specific Hearing 3 (ISH3) Post Hearing Submission – Response to Examining Authority’s Request Under Agenda Item 10: Replacement Sites Considered for Brough Hill Fair [Document Reference 7.32, REP5-029], from paragraphs 3.3.37 to 3.3.43 including the reasons for not taking it forward. As outlined at paragraph 3.3.45, the primary reasons for the selection of the replacement BHF site include the means to improve the access to the site via the local road network, the comparable size and topography of the site and the proximity and

means to connect with the existing BHF site to maintain the cultural connection that is of significance to the Gypsy Community. [This section 3.5.2 of this Summary Statement constitutes a response to the points made in paragraphs 6.19-6.21 of \[REP6-036\].](#)

[3.5.4](#) [In relation to paragraph 6.26 of \[REP6-036\], the Applicant is not proposing any other alternative sites – Option 1 is being promoted for the reasons outlined in \[REP5-029\] and corresponding Application documents. As for paragraph 2.5 of \[REP6-040\], the Applicant confirms that engineering works will be required to prepare Option 1 for use as a replacement site for the Brough Hill Fair and that these have been considered as part of the assessment of the site, which is typically used as a camping site for cadets and is not an active MoD firing range. This is referenced in paragraph 5.5.101 of the Project Development Overview Report \[APP-244\] and potential mitigation measures for the site, to be developed during detailed design, were discussed during the site visit as noted in paragraphs 3.3.31 and 3.3.32 of \[REP5-029\].](#)

[3.5.5](#) [As for paragraph 2.6 of \[REP6-040\], it is understood by the Applicant from conversations with the Defence Infrastructure Organisation that there is an emergency water supply to the Bivvy site and that existing services available at the site can be re-purposed for the Brough Hill Fair as appropriate.](#)

[3.5.6](#) [In relation to paragraphs 2.7-2.8 of \[REP6-040\], and as set out in the Applicant's Deadline 5 Submission – 7.32 Issue Specific Hearing 3 \(ISH3\) Post Hearing Submission – Response to Examining Authority's Request Under Agenda Item 10: Replacement Sites Considered for Brough Hill Fair \[Document Reference 7.32, REP5-029\], the Applicant is proposing that safe access will be available to the replacement Brough Hill Fair site, suitable for the vehicles anticipated to be using it. The Applicant maintains its views in respect of Option 5 that even with significant reprofiling, the site would still be unsuitable for use given its elevation above the proposed A66 dual carriageway \(as set out in paragraphs 3.3.37 to 3.3.43 of REP5-029\). Regarding access to the Applicant's proposed replacement site \(the Bivvy site\), the Applicant maintains that Station Road provides the most direct access to the site, however, the Applicant acknowledges that both the Gypsy Community and the Heron family have expressed concerns in respect to the safety of such a provision.](#)

[3.5.7](#) [A potential mitigation for a number of these concerns could be to utilise an amended version of the access suggested by Messrs Heron for Option 5 \(refer to paragraph 2.7 of REP6-040\) to provide an alternative means of access to the Bivvy site at its eastern end. This could provide options at the western end of the Bivvy site to remove access from Station Road, thus allowing for separation of Gypsy Community traffic from those vehicles associated with the Heron family's operations. Further work would be required to implement such a solution, which could be undertaken during detailed design stage in dialogue with the Heron family and the Gypsy Community, and then, if appropriate, be included in the Scheme submitted for approval under article 36 of the draft DCO.](#)

- 3.5.8 On paragraph 2.9 of [REP6-040], the Applicant notes that notwithstanding the earthworks required to reprofile the steeply sloping topography of site Option 5, such that it would be suitable for the intended use as a replacement Brough Hill Fair site, the Gypsy Community has outlined in paragraph 6.26 of [REP6-036] (reiterated in point 3.5.2 of their early Deadline 7 submission entitled “Deadline 7 Request to the Examining Authority”) that the community “...supported the reasoning for rejecting the alternative site proposed by the Heron family”.
- 3.5.9 In relation to paragraph 2.10 of [REP6-040], the Applicant considers that the 7m ‘pinch point’ referenced will be sufficient for vehicles and horses to pass as required. Mitigation measures to reduce any remaining risks associated with poor weather conditions will be developed during detailed design, such as providing an area of well-drained, unbound surfacing throughout this area if it is anticipated to be heavily trafficked by BHF attendees.
- 3.5.10 Sections 3.3 and 3.5 of this Summary Statement constitute a response to the points made in paragraph 1.3-1.4 of [REP6-036] and in paragraph 3.3.1 of the Gypsy Community’s submission for Deadline 7, received early by the Applicant and entitled “Deadline 7 Comments on NH BHF Relocation Deadline 6 Submission”, in relation to alternatives and the “Billy Welch straight line” route.
- 3.5.11 Sections 3.5.2, 4.3.2 and 6.1.7 of this Summary Statement constitute a response to the points made in paragraphs 6.4-6.13 of [REP6-036]. In addition, in relation to Option 1, the proposed replacement BHF site, the Applicant has since produced and submitted at Deadline 7, an Operational Risk Assessment (appended to this Summary Statement). This has been produced with the support and input of the Gypsy Community, the Heron family and their representatives.
- 3.5.12 In relation to paragraphs 2.2-2.4 of [REP6-040], the Applicant can confirm that its Deadline 5 Submission – 7.32 Issue Specific Hearing 3 (ISH3) Post Hearing Submission – Response to Examining Authority’s Request Under Agenda Item 10: Replacement Sites Considered for Brough Hill Fair [Document Reference 7.32, REP5-029] does include in its assessment of Option 5, part of the existing Brough Hill Fair site. This is noted in both Figure 15 and Table 3 of REP5-029.
- ~~3.5.2~~3.5.13 In relation to paragraph 3.3.1 of the Gypsy Community’s early Deadline 7 submission, entitled “Deadline 7 Comments on NH BHF Relocation Deadline 6 Submission”, the Applicant notes that as highlighted in paragraph 5.3 of the Brough Hill Fair Community Association’s Deadline 6 Submission – Responses to ExA’s Further Written Questions [REP6-036], the Applicant has been engaging with the Gypsy Community and their representatives throughout both the Pre-Examination (Preliminary Design) and Examination stages of the Project. Records of this engagement are provided in the Applicant’s Deadline 5 Submission – 4.5 Statement of Common Ground with the Gypsy and Travellers Representatives (Rev 3) [Document Reference 4.5, REP5-011]. The Applicant’s Deadline 5 Submission – 7.32 Issue

[Specific Hearing 3 \(ISH3\) Post Hearing Submission – Response to Examining Authority’s Request Under Agenda Item 10: Replacement Sites Considered for Brough Hill Fair \[REP5-029\]](#) sets out the identification and assessment of five alternative sites considered for relocation of the Brough Hill Fair. Paragraphs 3.3.47 to 3.3.49 of this document set out further development of Option 1, which has occurred since the start of the Examination process in response to direct feedback from representatives of the Gypsy Community. Continued input from representatives of the Gypsy Community, and those landowners and local businesses impacted by the relocation of the Brough Hill Fair to the proposed site, will be key to developing the detailed design of the site and any required mitigation measures. The Applicant is committed to continuing to build on the established relationships with those involved throughout future stages of the Project.

3.6 Acquisition of Land for the Replacement BHF Site

[3.6.1](#) The Applicant is making good progress in discussions with the MoD for the acquisition of the land sought for the replacement BHF site. The Applicant anticipates being able to provide the necessary Crown consent letter by the end of the Examination and refers to the confirmation of this in its Post Hearing Submissions for Compulsory Acquisition Hearing 2 [Document Reference 7.29, REP5-023] under Agenda Item 5.2. The Applicant also notes that Section 2.10 of the EqIA [Document Reference 3.10, APP-243] identifies potential positive impacts on the Gypsy Community as a result of the relocation of the BHF site. The proposed replacement BHF site will provide greater separation from the A66, alongside safer access as it is accessed from local roads rather than directly from the A66.

[3.6.2](#) [As for the points made in paragraphs 6.14-6.18 of \[REP6-036\], the Applicant refers to sections 3.5.1 and 4 of this Summary Statement in relation to the points on consideration of alternatives and cultural heritage respectively. In addition to the points which the Applicant has already addressed, the Applicant notes that in its Relevant Representation \[RR-228\], the MoD made it clear to the Examining Authority and therefore the Applicant “the difference between the tactical land to the north of the existing A66, of greatest concern, where present and future use of land containing facilities such as training areas, stores, accommodation and roadways would be affected, as distinct from non-tactical land to the south of the present A66, which is of far lesser concern”.](#) This confirmed the position that the MoD had advised the Applicant of during its pre-application consultation and engagement. In addition, the current NNNPS notes the importance of the protection of defence assets, including paragraph 5.55 which requires any applicant to undertake an assessment of potential effects of any proposed development on defence assets. Therefore, the Applicant’s position was established as part of the Project development, namely that it could not progress the northern route option, due to policy requirements and fully taking into account the information provided above by the MoD in relation to which of its land is of the greatest operational importance in informing the alternative considerations and preferred route, as this

would significantly compromise the MoD's operational needs as referred to by the Gypsy Community.

3.6.3 Section 3 of this Summary Statement constitutes a response to the points made in paragraphs 11-14 and 19 of the Gypsy Community's submission for Deadline 7, received early by the Applicant and entitled "Deadline 7 Request to the Examining Authority".

3.6.4 Sections 3 and 4.3 of this Summary Statement constitute a response to the points made in paragraphs 4.7-4.8 of [REP6-036].

3.6.5 Sections 3 and 4 of this Summary Statement constitute a response to the points made in paragraph 3.1.1 of the Gypsy Community's submission for Deadline 7, received early by the Applicant and entitled "Deadline 7 Comments on NH BHF Relocation Deadline 6 Submission", in relation to reasonable alternatives and cultural heritage respectively.

4 Intangible Cultural Heritage of Brough Hill Fair and response to ExQ HE 2.1

4.1 Introduction

4.1.1 The Applicant notes that the Gypsy Community raised concerns in relation to the consideration of the intangible cultural heritage of the BHF at Issue Specific Hearing 3 and in its Deadline 5 submission [REP5-031]. The issue of intangible cultural heritage has not been raised by any party prior to that point either during the Examination or during the Applicant's pre-application statutory consultation.

4.1.2 The Applicant provided a response in its Post Hearing Submissions for Issue Specific Hearing 3 [REP5-024], at Appendix F, to some of the concerns of the Gypsy Community with reference to the Environmental Statement's Volume 1 Chapter 8 Cultural Heritage (APP-051), ES Volume 1 Chapter 13: Population and Human Health (APP-056) (and the Equalities Impact Assessment (EqIA) (APP-243). These documents consider the impact on the BHF site within the scope of the topic under consideration, such as the human impact considered in chapter 13 of the ES and the impacts on a group with protected characteristics within the EQIA. This section addresses the consideration of intangible cultural heritage and explains how the Applicant has had regard to the issues raised on this subject by the Gypsy Community, at Issue Specific Hearing 3 and in its Deadline 5 submission [REP5-031] and how these issues have informed the development of the Project and specifically informed the consideration and identification of an alternative BHF site. [This section 4.1.2 of this Summary Statement constitutes a response to the points made in paragraphs 6.1-6.3 of \[REP6-036\] and the point made by the Gypsy Community in paragraph 3.1.1 of the Gypsy Community's submission for Deadline 7, received early by the Applicant and entitled "Deadline 7 Comments on NH BHF Relocation Deadline 6" that "NH has not addressed our point that its Environmental Statement fails to make appropriate reference to Brough Hill Fair"](#).

4.2 Convention for the Safeguarding of Intangible Cultural Heritage

4.2.1 In summary, the Convention for the Safeguarding of Intangible Cultural Heritage (the "**Convention**") was adopted by the general convention of UNESCO in 2003. However, the UK has not signed up to the Convention and therefore the Convention has no standing in UK law.

4.2.2 The Convention includes a lengthy definition of "intangible cultural heritage" in Article 2, but confirms that intangible cultural heritage is manifested in the following ways:

- Oral traditions and expressions, including language as a vehicle of the intangible cultural heritage;
- Performing arts;
- Social practices, rituals and festive events;
- Knowledge and practices concerning nature and the universe;
- Traditional craftsmanship.

4.2.3 The definition in Article 2 of the Convention further confirms that intangible cultural heritage is “transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity.”

4.2.4 By its nature then, intangible cultural heritage, while it may be manifested through objects, is fundamentally an activity or practice rather than a thing or object.

4.2.5 As part of the wider context and consideration in relation to this issue, the Applicant notes that the Design Manual for Roads and Bridges LA106 (guidance on cultural heritage assessment) is the key guidance in relation to the assessment of the impact to cultural heritage of major highway projects. The Applicant’s heritage assessments accord with industry guidance, good practice and is based upon the EIA Scoping Report, including responses from heritage consultees.

4.2.6 As for the points made in paragraphs 5.6-5.8 of [REP6-036], in relation to the Gypsy Community’s concern that the Brough Hill Fair was not considered in the Scoping Report, the Applicant refers to its explanation surrounding intangible cultural heritage in Section 4 of this Summary Statement. The Applicant also notes that, as the Gypsy Community have pointed out, Historic England were consulted at this stage and did not raise the Brough Hill Fair as an aspect that should be considered in the scope of the Environmental Statement. The Local Planning Authorities also shared this view. The Applicant also notes that it is not for the Applicant to consult on the Scoping Report; rather, the Planning Inspectorate (on behalf of the Secretary of State) undertakes the consultation as prescribed in regulation and based on prescribed bodies from legislation and guidance, as part of its exercise in undertaking and compiling its Scoping Opinion. As for the consultation of the Homes and Communities Agency, the Scoping Opinion [APP-149] does list this body as a statutory undertaker which the Applicant has consulted with. In relation to the Equality and Human Rights Commission, this body has been removed from the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 by SI 2013/522, meaning that the Applicant is not required to consult with it as part of this process.

4.2.54.2.7 Section 4.2 of this Summary Statement constitutes a response to the points made in paragraphs 5.11-5.12 of [REP6-036].

4.3 Paragraph 5.125 of the National Networks National Policy Statement

4.3.1 However, the Applicant notes that paragraph 5.125 of the NNNPS affords the Secretary of State the opportunity to consider impacts on non-designated heritage assets that arise during Examination. Whilst it is not clear to the Applicant that the intangible cultural heritage of the Gypsy Community expressed at the existing BHF comprises a “non-designated heritage asset” within the terms of paragraph 5.125 of the NNNPS, should the Secretary of State wish to consider and arrive at a

different conclusion the Applicant has set out below its consideration of the issue.

- 4.3.2 Throughout the development of its proposals for the Project, the Applicant has had regard to the importance of maintaining the continuity of the traditions, rights and activities in relation to the BHF. The Applicant has directly enabled this through its engagement with the Gypsy Community on the development of the Project and its proposals for the relocation of the BHF. This process, and the Applicant's consideration of alternative locations for the replacement BHF site, are set out in detail in Document 7.32 Issue Specific Hearing 3 (ISH3) Post Hearing Submission – Response to Examining Authority's Request Under Agenda Item 10: Replacement Sites Considered for Brough Hill Fair [REP5-029].
- 4.3.3 In relation to the suitability of the replacement BHF site, the Applicant also notes that the existing BHF has not been at its current location for an extended period of time (since 1947), when considered in the long term context of the BHF's existence, which is traced back to 1330. The Applicant notes that, to the extent that the location of the existing BHF is a characteristic of its intangible cultural heritage, the replacement BHF is located on a site adjacent to the existing site and incorporating as much of the existing site as is practicable that remains following the Project's implementation.
- 4.3.4 In this regard, it is of critical importance to consider how article 36 of the Applicant's draft DCO [REP5-012] will operate to ensure that activities (i.e. the intangible cultural heritage) carried out at the existing BHF site will be enabled to continue should development consent be granted.
- 4.3.5 Article 36 provides that the Applicant is not to take exclusive possession of the existing BHF site for the purposes of the Project until the Secretary of State has approved a Scheme for the provision of the replacement BHF site and certified that the Scheme has been satisfactorily implemented. Article 36(2) goes on to explain that the Scheme must include facilities that are at least equivalent to those of the existing BHF site, and it must make provision for safe access to the replacement BHF site for vehicles, horses and persons. The Scheme must make appropriate provision for the treatment of boundaries of the replacement BHF site to secure the safe use and enjoyment of the site having regard to the use and amenity of adjacent land and set out the intended arrangements for maintenance. Article 36(3) requires the Scheme to be developed in consultation with the representatives of the Gypsy Community, the owners and occupiers of adjacent land, the relevant planning authority and the local highway authority.
- 4.3.6 Article 36 therefore ensures that there is continuity to the aspects of intangible cultural heritage expressed at the existing Brough Hill Fair site as there can be no interruption to those activities unless the Scheme has been developed in consultation, approved by the Secretary of State and then satisfactorily implemented.
- 4.3.7 Consequently, given the high degree of protection afforded to the activities carried out at the existing BHF site by the provisions of article

36 the Applicant considers it to be unnecessary to make further provision within the Environmental Management Plan. The safeguards contained in article 36 ensure that the cultural activities, traditions and associations of the BHF would be retained and provided with continuity on the replacement BHF site.

4.3.8 This is not to say that the Applicant will not have regard to the cultural heritage of the Gypsy Community as it takes forward the Project, if development consent is granted. In this regard it is relevant to note that, the Applicant's Detailed Heritage Mitigation Strategy (Environmental Management Plan Annex B3) [REP3-010]], includes a section at paragraph B3.2.5 that sets out a research agenda that provides a framework for all future historic environment investigation within the Order limits, covering both research topics/questions on a period basis and across four key 'data themes'. Included amongst these four key data themes is the identification of new sites or research topics and which makes clear that this extends beyond archaeological or built heritage to include a wider range of subject areas including 'intangible heritage'. Measure D-CH-01 contained within the Environmental Management Plan (a revised version of which is submitted at this Deadline 6) ensures that this strategy is further developed prior to the start of the Project.

4.3.9 The Applicant believes that the above detail in relation to intangible cultural heritage also constitutes a sufficient response to HE 2.1 of ExQ2 [PD-012].

4.3.10 As for the points made in paragraphs 6.22-6.25 of [REP6-036], the Applicant refers to its Post Hearing Submissions for Issue Specific Hearing 2 [REP1-009], at Agenda Item 5.0 and particularly from pages 52-54, in which it addressed the position relating to the conveyance from Veteripont Estates in 1947. In particular, it is important to note that determining the nature and extent of the Brough Hill Fair rights is not a function of the examination of the Applicant's application for development consent. In any event, such a determination is unnecessary. Article 36 of the draft DCO will operate to ensure continuity and that activities carried out at the existing BHF site will be enabled to continue should development consent be granted. The BHF is a privately operated site, with nothing securing the operation of the BHF at present and nothing forcing the Gypsy Community to allow the land to be used for the purposes of the BHF. The same will be true of the replacement site. Under the draft DCO, the Applicant must deliver at least an equivalent replacement site which is suitable and available for use by the persons who enjoy the BHF rights prior to the exclusive possession of the existing BHF land being taken by the Applicant for the purposes of constructing the Project. Therefore, any subsequent decision from the Gypsy Community not to use the replacement site for the BHF would be their choice, rather than arising as a consequence of the Project. Therefore, as the Applicant has provided sufficient evidence to demonstrate that the replacement BHF site is suitable and can be made available for use, the conclusions of the Environmental Statement remain accurate as well, as appropriate mitigation for the loss is

[provided for. The Applicant refers to paragraphs 5.1.2 and 7.1.4 of this Summary Statement for additional detail on how the Applicant is ensuring that the continuity of any established BHF rights are maintained, alongside how the rights are transferred, noting that it is not a function of the DCO process to determine those rights. Paragraph 5.150 of the current NNNPS explains that “great weight” must be given to conserving landscape and scenic beauty in AONB land. Indeed, the policy is to refuse development consent in these areas except in exceptional circumstances and where it can be demonstrated that it is in the public interest. In examining whether exceptional circumstances exist, the NNNPS requires consideration of a number of matters, including the scope for delivering the scheme outside of the AONB \(NNNPS paragraph 5.151\). There is a strong presumption against any significant road widening or the building of new roads and strategic rail freight interchanges in an AONB, unless it can be shown there are compelling reasons for the new or enhanced capacity and with any benefits outweighing the costs very significantly. The Applicant refers to its Legislation and Policy Compliance Statement \[APP-242\], at pages 178-183, for full detail on its compliance with paragraph 5.151 of the NNNPS.](#)

[4.3.11 In relation to the Gypsy Community’s objection to article 36\(3\) of the draft DCO, raised at paragraphs 1.7 and 7.1-7.3 of \[REP6-036\], the Applicant can confirm that this paragraph was removed from the draft DCO at Deadline 2 \[REP2-006\] after the initial hearings. As for the point made in paragraph 20 of the Gypsy Community’s submission for Deadline 7, received early by the Applicant and entitled “Deadline 7 Request to the Examining Authority”, the Applicant notes that the current draft DCO includes an acceptable replacement BHF site \(as evidenced by the information provided with the DCO application and to the Examination\) and the additional provision proposed by the Gypsy Community \(i.e. a pre-commencement requirement\) would mean that the implementation of the consent for the Project would be outside the Applicant’s control, because it is not clear how acceptability would be defined and agreed. But in any event the Applicant considers that such a condition is just not necessary as it has already made provision for an acceptable replacement site for BHF and article 36 regulates the subsequent detailed design process.](#)

[4.3.12 Sections 4.1-4.3 of this Summary Statement constitute a response to the points made in paragraphs 3-6 of \[REP6-035\], relating to the cultural importance of the BHF, and paragraphs 4.4-4.5, 5.2-5.5, 5.9-5.10 and 5.15-5.19 of \[REP6-036\].](#)

[4.3.13 Sections 4.3.2-4.3.7 of this Summary Statement constitute a response to the points made in paragraphs 5.13-5.14 of \[REP6-036\] and paragraph \(v\) on the second page of \[REP6-041\].](#)

[4.3.9 4.3.14 In relation to the point made in paragraphs 15-17 of the Gypsy Community’s submission for Deadline 7, received early by the Applicant and entitled “Deadline 7 Request to the Examining Authority”, the Applicant refers to its responses on the cultural importance of the BHF in this section 4.3 and throughout this Summary Statement in relation to](#)

environmental impacts and equalities legislation. In addition, the Applicant's site selection criteria were identified through its understanding of the use of the BHF site, including through engagement with the Gypsy Community, which gave rise to the five potential sites set out in Table 2 of [REP5-029]. It is only recently that the criteria for a suitable site have been changed and further developed through submissions made by the Gypsy Community. The Applicant set the initial criteria for the land for the replacement BHF site to be within the Order Limits of the Project and/or available for acquisition by agreement, as this is the natural starting point. Given that the Applicant considers the replacement BHF site that it has identified to be a suitable replacement site, it did not consider it necessary to search for other sites in relation to which it would be required to utilise powers of compulsory acquisition, as these powers would only be available if the Applicant could make out a compelling case in the public interest that there was no suitable alternative that did not require these powers, which the Applicant would not be able to do.

4.4 Public Sector Equality Duty under the Equality Act 2010

4.4.1 Section 149 of the Equality Act 2010 imposes a public sector equality duty on a number of public bodies, including the Applicant. Section 149(1) requires:

A public authority must, in the exercise of its functions, have due regard to the need to—

(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

4.4.2 The Applicant has had due regard to its public sector equality duty throughout the development of the Project and will continue to have full regard as the Project progresses.

4.4.3 The Applicant's Equalities Impact Assessment [APP-243] records its consideration of its public sector equality duty. The Applicant identified the Gypsy Community as a key stakeholder in the development of the Project. In the baseline (section 2.6), under the Protected Characteristic Group (PCG) of 'Race', it acknowledges the presence of the Gypsy Community in the study area, the historic nature of both the Appleby Horse Fair and the BHF, and the cultural significance of these gatherings. It notes that Appleby Horse Fair is "a historic gathering of Gypsies and Travellers" and that "for the Gypsy and Traveller community, Appleby Horse Fair is a major cultural event with attendees from all over the UK and abroad coming to show and trade horses, meet family and friends, and sustain traditions". It also highlights that "Brough Hill Fair is an annual Gypsy and Traveller fair" and that "a horse Fair has been held in the local area for over 700 years and the Gypsy Community have had a longstanding historic association with the fair".

- 4.4.4 Section 2.9 of the EqIA assesses the potential effects on the Gypsy Community as a result of the construction of the Project on both fair sites and the traditions, rights and activities. It also assesses the potential impacts during construction on journeys to the Appleby Horse Fair (being the larger and substantially more well-attended of the two fairs), despite the Appleby Horse Fair site no longer being directly affected by the Project.
- 4.4.5 The EqIA, at section 2.10, acknowledges the potential negative effects of the Project on the Gypsy Community during construction and operation of the Project, and notes the potential positive impacts that may result. The Applicant is continuing to have regard to these potential positive and negative impacts and will continue to do so should development consent be granted.
- 4.4.6 The Applicant therefore considers that it has had due regard to its public sector equality duty.
- 4.4.7 [Sections 4.1-4.4 of this Summary Statement constitute a response to the points made in paragraphs 1.2 and 1.6 of \[REP6-036\] and paragraph 3.5 of \[REP6-040\].](#)
- 4.4.8 [Section 4.4 of this Summary Statement constitutes a response to the points made in paragraph 8 of the Gypsy Community's submission for Deadline 7, received early by the Applicant and entitled "Deadline 7 Request to the Examining Authority".](#)
- ~~4.4.6~~4.4.9 [Section 4 of this Summary Statement constitutes a response to the points made in paragraph 4.1.1 of the Gypsy Community's submission for Deadline 7, received early by the Applicant and entitled "Deadline 7 Comments on NH BHF Relocation Deadline 6 Submission", in relation to intangible cultural heritage.](#)

5 Future Management and Ownership of the Replacement Brough Hill Fair Site and response to ExQ CA 2.3

- 5.1.1 The Applicant noted in its Post Hearing Submissions for Issue Specific Hearing 3 [Document Reference 7.30, REP5-024], at Agenda Item 10, that discussions with the MoD regarding transfer of ownership of the BHF site to the Applicant were ongoing. The Applicant also considers that the below detail in relation to the future management and ownership of the replacement BHF site, including the suggestion of a transfer of this site to the Heron family, constitutes a sufficient response to CA 2.3 of ExQ2 [PD-012].
- 5.1.2 The Applicant expects that ongoing management and maintenance responsibilities in relation to the proposed new BHF site, once details are provided as required by article 36 of the draft DCO, will need to be discussed with the Gypsy Community as part of the discussions relating to the terms of their use of the replacement BHF site between the landowner and the Gypsy Community. The Applicant notes, however, that the terms of the Gypsy Community's use of the replacement BHF site will always be subject to the BHF rights – the Applicant is not proposing to alter the nature of the BHF rights in any way. The Applicant will take part in discussions with the Gypsy Community in relation to how the BHF rights are exercised in practice, in relation to the replacement BHF site and the improved facilities that this offers.
- 5.1.3 The Applicant notes that details in relation to ongoing management and maintenance will also need to be provided to the Secretary of State as part of the process of securing approval of the Project required by article 36, so that the Secretary of State can be informed as to how the replacement BHF site will be managed and maintained in the future. The Applicant refers to its amendments to article 36 of the draft DCO, made at Deadline 5, which make this clear.
- 5.1.4 The Applicant considers that the above approach is consistent with the Applicant's Response to Written Representations made by Affected Persons at Deadline 1 [Document Reference 7.6, REP2-015], as summarised in paragraph 3.1.2 above. [Sections 5.1.2-5.1.4 of this Summary Statement constitute a response to the points made in paragraphs 3.6-3.7 of \[REP6-040\].](#)
- 5.1.5 The Applicant has been in discussions with the representative of the Heron family in relation to the suggested transfer of the replacement BHF site to the Heron family. The draft DCO provides for the transfer of the BHF rights to the replacement BHF site which the Applicant intends to acquire, alongside the existing BHF site, from the MoD via a Crown Authority Consent Agreement. Should the DCO be granted in the form applied for in this regard, the Applicant understands that the Heron family would wish to buy the replacement BHF site (being the replacement BHF site and the remaining part of the existing BHF site) from the Applicant. The Applicant notes that in any scenario, the replacement land remains subject to the BHF rights – in essence, the BHF rights will apply to the land irrespective of the ownership of the land.

5.1.6 The Applicant does not object to the proposal in principle. However, as a public body, the Applicant is required to comply with the Crichel Down rules (the “**CD rules**”) in relation to the disposal of surplus land compulsorily acquired or acquired under the shadow of compulsion. In general terms, the CD rules require National Highways, before disposing of land for sale on the open market, to first offer it back to the person from whom it was compulsorily acquired. The CD rules specify a range of circumstances where either the rules do not apply, or where there is an exemption from the duty to offer back the land for sale. The Applicant would not be in a position to reach a determination on the application of the CD rules until such time as it has acquired the land and it has become surplus. Consequently, the Applicant is not currently in a position one way or the other to agree to the suggested disposal to the Heron family. However, subject to compliance with the CD rules, it is possible that the land may be offered for sale on the open market in which case the Heron family would be entitled to negotiate for its acquisition. The Applicant notes, again, that the replacement BHF site will remain subject to the BHF rights and therefore assumes that it will attract market interest accordingly.

6 Additional Issues relating to Detailed Design

- 6.1.1 The Applicant notes that concerns have been raised in relation to boundary treatment and the condition of the proposed replacement BHF site throughout the Examination. The Applicant has responded to these concerns as outlined below, with references to documents submitted to the Examination.
- 6.1.2 Regarding boundary treatment to the south of the proposed site, the Applicant responded to concerns raised by George F. White LLP on behalf of the Heron family, in their Deadline 1 submissions [REP1-074 and REP1-075]. The Applicant's Deadline 2 Submission – 7.6 Applicant's Response to Written Representations made by Affected Persons at Deadline 1 – Rev 1 [Document Reference 7.6, REP2-015], notes that as part of the design of the proposed BHF site, earth bunding is included at the boundary of the BHF site and Eastfield Farm. Such bunding will provide visual screening and attenuation of noise from the BHF site at ground floor level, i.e., around animal head height, at Eastfield Farm.
- 6.1.3 Regarding boundary treatment to the north of the proposed site, alongside the proposed A66 dual carriageway, the Applicant has responded to concerns raised by the Gypsy Community at various points throughout the Examination process.
- 6.1.4 At Issue Specific Hearing 2 (“ISH2”) on 1 December 2022, the Applicant clarified the proposals at that time included bunding along the northern edge of the site to provide screening and noise attenuation from the proposed A66 dual carriageway (refer to Agenda Item 5.0 of the Applicant's Deadline 1 Submission – 7.3 Issue Specific Hearing 2 (ISH2) Post Hearing Submissions [Document Reference 7.3, REP1-009]). Within REP1-009, the Applicant included Appendix 6, containing visualisations of the proposals, as shared with the Gypsy Community in April 2022. In addition, Appendix 7 contained the “Brough Hill Noise Assessment Technical Note”, which reported on the assessment work undertaken at the time regarding noise impacts at the proposed site.
- 6.1.5 In response to points raised by Mr Welch at ISH2, the Applicant acknowledged that further work was to be undertaken to consider how this proposed boundary treatment could be developed to form an effective barrier for horses that may escape from the site. The resulting assessment included fencing along the northern edge of the site, and was presented in the Applicant's Deadline 3 Submission – 7.16 Brough Hill Fair Technical Note – Rev 1 [Document Reference 7.16, REP3-045].
- 6.1.6 In the Examining Authority's Written Questions (ExQ1) published on 31 January 2023 [PD-011], question PC 1.2 asked both the Applicant and the Gypsy Community to provide further comment on the fencing proposals. The Applicant responded in their Deadline 4 Submission – 7.24 Applicant's Responses to the Examining Authority's Written Questions [Document Reference 7.24, REP4-011] to confirm the proposed fencing arrangement, noting that details will be confirmed during the detailed design stage. The Gypsy Community responded in their Deadline 4 Submission – Comments on Deadline 3 Submission –

REP3-045 [REP4-041], and in this response introduced the suggestion of provision of a double gate system at the access and egress point to the site.

- 6.1.7 Following Issue Specific Hearing 3 on 2 March 2023, the Applicant provided further information on the selection process for the replacement BHF site in their Deadline 5 Submission - 7.32 Issue Specific Hearing 3 (ISH3) Post Hearing Submission – Response to Examining Authority’s Request Under Agenda Item 10: Replacement Sites Considered for Brough Hill Fair [Document Reference 7.32, REP5-029]. Paragraphs 3.3.45 to 3.3.49 of REP5-029 summarise the primary reasons for the selection of the site and development of the proposals since the beginning of the Examination process, having regard to continued engagement with both the Gypsy Community and the Heron family.
- 6.1.8 Regarding concerns over the condition of the site, these were discussed during a site visit attended by Mr Welch and the Applicant in March 2022 (refer to paragraphs 3.3.31 and 3.3.32 of the Applicant’s Deadline 5 Submission, REP5-029). Paragraph 4.1.3 of the same submission outlines next steps to be undertaken during detailed design.
- 6.1.9 The Applicant also notes that the Heron family have raised concerns in relation to safety and accidents on their farm from visitors to the replacement BHF site. This will be considered in the Applicant’s outline Operational Risk Assessment, as described at section 8 below. [As outlined in paragraph 3.5.6, there is the potential to explore during detailed design alternative means of access to the Bivvy site, which may mitigate a number of the concerns raised.](#)
- 6.1.10 In any event, the Applicant considers that the ongoing management and maintenance responsibilities in relation to the proposed new BHF site, information on which is to be provided by the Scheme required to be approved under article 36 of the DCO, cover its obligations in relation to risk and safety and give confidence that the final detailed design of the replacement BHF site will take into consideration the views of the Gypsy Community, the owners and occupiers of adjacent land and the views of the relevant planning authority and local highway authority. Furthermore, the Secretary of State’s function of approving the required Scheme relating to the BHF site under article 36 of the DCO would include consideration of safety issues as part of overall maintenance and management issues.

7 Further Support for the Gypsy Community

7.1.1 The Applicant notes that, as part of the ongoing consultation and engagement with the Gypsy Community, it sent a letter to Billy Welch on 17 February 2023 which set out details of the discussions between the Applicant and the Gypsy Community alongside a summary of the issues raised and the Applicant's position, in order to provide some consistency to the ongoing engagement.

7.1.2 In addition, the Applicant's engagement with the Gypsy Community has continued after Compulsory Acquisition Hearing 2 and Issue Specific Hearing 3 and the Applicant has offered, by email to Bill Lloyd, to fund legal support to the Gypsy Community in order to further understand their concerns around the legal basis for the transfer of rights proposed by Article 36 of the DCO.

7.1.3 In addition, the Applicant notes that Bill Lloyd has also raised the following concern in relation to the transfer of the BHF rights:

"We have been advised that Prescriptive Rights can only be transferred by way of a Deed, since the Rights must be binding on the Landowner of the replacement site. Under your proposed mechanism for transfer, it would be open to the owner of the replacement site to argue that the Prescriptive Right, which arose from the Doctrine of Lost Modern Grant (See previous submissions for evidence that the criteria have been met), no longer applies, because the criteria have not been met on the new site.

The question is then whether a court would recognise that a Statutory Instrument approved by the Secretary of State would be sufficient to defeat that argument by the landowner of the replacement site. We have been advised that it might not do so, and we would be unable to prove the prescriptive right on the replacement site, which is why we are asking that the transfer of rights be made by a Deed.

The matter is complicated further by the fact that the title to the existing site appears not to be registered at Land Registry, and the only documentary evidence for the Prescriptive Rights is included in the conveyance of 1947".

7.1.4 The Applicant does not agree that for the rights to be transferred and future-proofed, this must be achieved via a Deed. The draft DCO is more than sufficient to preserve the status quo of the BHF rights and the Applicant has added Article 36(7) to the draft DCO [Document Reference 5.1, REP5-013], which constitutes a straightforward technical provision to clarify that the transfer of the Gypsy Community's rights to the replacement BHF site by the DCO should not be regarded as an interruption of the Gypsy Community's enjoyment of their rights. It is not the function of the DCO process to detail those rights and, in any event, the Applicant does not yet own the land on either the current BHF site nor the replacement BHF site. Therefore, a Deed to crystallise the Gypsy Community's rights is not within the Applicant's remit.

7.1.5 The Gypsy Community is not prejudiced in this context; should consent be granted for the Project, their rights will be transferred to the

replacement BHF site by the DCO. It would then be for the Gypsy Community to discuss these rights with the Applicant and to document these in respect of the replacement BHF site, but as these are not documented in relation to the current BHF site (other than as a reservation in the conveyance of 1947), the Gypsy Community is not prejudiced by the approach being taken by the Applicant, pending its ownership of the replacement BHF site.

- 7.1.6 The Applicant believes that this approach supports the consistent position that it has maintained with the Gypsy Community throughout the Examination and is appropriate for guaranteeing the future of the BHF. The Applicant recognises, following recent correspondence with Bill Lloyd, the Gypsy Community's intention to establish prescriptive rights and to that end has included a provision in article 36(7) of the draft DCO [Document Reference 5.1, REP5-013], which ensures that the transfer of the rights to the replacement BHF site shall not be taken as an interruption of their enjoyment of those rights.

8 Applicant's Operational Risk Assessment

- 8.1.1 In its Post Hearing Submissions for Issue Specific Hearing 3 [Document Reference 7.30, REP5-024], the Applicant committed to provide an outline Operational Risk Assessment ('ORA') for the proposed BHF site. This addresses the point raised in paragraph 3.1 of [REP6-040] The Applicant undertook a site visit on Thursday 23 March 2023 to gather information to develop the risk assessment. The visit was attended by Mr Heron and his representative as well as representatives of the Gypsy Community. The Applicant ~~is in the process of preparing~~ has prepared the ORA risk assessment document and ~~intends to submit it at Deadline 7~~ this is appended at Appendix 1 to this Summary Statement. This Appendix also includes correspondence between the Applicant and the representative for the Heron family in relation to matters raised as part of the programme for delivery of the ORA summarised below.
- 8.1.2 ~~This~~ The ORA will assesses the potential risks arising from the intended use of the replacement BHF site for the period of the annual BHF. It ~~will~~ also considers s if any mitigation measures will need to be considered during the detailed design stage of the Project. During the site visit the Gypsy Community raised a number of concerns with respect to the cultural aspects of their community. The Applicant ~~will~~ has considered ed this feedback during the preparation of the Operational Risk Assessment.
- 8.1.3 The Applicant ~~is engaging with the Gypsy Community and the Heron family and will share the draft Operational Risk Assessment with both the Heron Family and the Gypsy Community. The Applicant notes that it will, therefore, no later than 13 April,~~ share d with the Gypsy Community a list containing the risk location, hazard description and hazard effect in relation to each risk with the Gypsy Community on 13 April 2023, for their feedback and commentary ~~on. Subject to the receipt of this, the~~ The Applicant ~~will~~ then update d the draft Operational Risk Assessment with a 'scored' assessment, alongside proposed mitigation for each risk, for further comments by the Gypsy Community and the Heron family. This dialogue has continued during the updating of the ORA by the Applicant and is included in the above-mentioned Appendix to this Summary Statement.
- 8.1.4 In relation to paragraphs 3.2-3.3 of [REP6-040], and in relation to the meeting on site with the surveyor and representatives of the Gypsy Community, the Heron family and the Applicant, it became apparent that the dynamic of the meeting was not conducive to a constructive assessment. As noted, the meeting was paused and continued later without the surveyor. The Applicant apologised to those present and would like to thank them for recognising the efforts of Rachel Smith and Bernice Sanders upon their return to site to continue discussing the concerns of those present. This also covers the point raised in paragraph (v) on the second page of [REP6-041]. The objective of the site meeting was as suggested, a fact-finding exercise which would provide feedback for the wider Applicant team to assess potential risks and inform further design development. This includes elements specific to agricultural operations and Gypsy culture.

~~8.1.3~~8.1.5 In relation to paragraph 5 of the Gypsy Community's early Deadline 7 submission, entitled "Deadline 7 Request to the Examining Authority", the Applicant notes that at the site meeting the project team reiterated that the Applicant appreciates the importance of site selection for the Gypsy Community and, through its engagement with Billy Welch over the years, it thoroughly understands the significance of the BHF and the cultural importance of the current site. This significance is part of the reason that the Applicant has sought to make the proposed replacement BHF site suitable through developing mitigation proposals including fencing, bunding and reprofiling to enable the Gypsy Community to remain on a site which is adjacent and connected to this culturally important Brough Hill Fair location.

~~8.1.4~~8.1.6 The Operational Risk Assessment ~~will~~ also considers the safety of and access to the replacement BHF site, alongside issues relating to animal biosecurity as previously raised by the Heron family.

~~8.1.5~~8.1.7 The Applicant notes that the local highway authority has not raised concerns about safety of and access to the replacement BHF site and also that the local planning authority has raised no concerns regarding the suitability of the replacement BHF site.

~~8.1.6~~ — The Applicant also notes that the Heron family have, via their representative, repeated a concern in relation to animal biosecurity. This concern was initially set out in their Deadline 1 submission [REP1-074] and appends a letter from Arla Foods which details that "*maintenance of the highest animal welfare and biosecurity standards are critically important for both Arla's operations and the maintenance of the UK's food supply chain as a whole*".

~~8.1.7~~8.1.8 The Applicant confirms that the Operational Risk Assessment will consider issues relating to animal biosecurity.

8.1.9 The Applicant envisages that the Operational Risk Assessment will ~~then~~ continue to be updated during the detailed design stage and will form part of the package of information to be submitted to the Secretary of State for Transport, following consultation with the Gypsy Community and others, as part of the process to obtain approval for the Scheme under Article 36 of the DCO.

~~8.1.8~~8.1.10 In relation to the points made in paragraph 2.11 of [REP6-040], the Applicant considers that its ORA addresses these.

Appendix 1

Activity or Location	Source of Risk Identification (SoCG/PADSS/Site Visit etc)	Hazard Description (state who is affected)	Reported/requested hazard to be assessed	Current Conditions (existing site and surrounds)	Pre-Mit (DCO Application)			Control measures (proposed mitigation)	Residual risk	Post Mitigation		
					Likelihood	Impact	Risk Score			Likelihood	Impact	Risk Score
Transport/vehicle movements	GRT Community (recorded in the SoCG), Heron Family (recorded in Written Representations via George F White) and at the site visit (both Interested Parties).	Potential conflict between users of Station Road: 1- farm/plant vehicles and pedestrians (inc. children)/horses/horse drawn vehicles/caravans accessing and egressing the 'blivv' site and on Station Road. 2- farm vehicle movements include the delivery of animal feed, collection of milk and usual farm activities (quad bikes, tractors etc) 3- operation of the nearby concrete batching plant.	Injury to persons, road traffic collisions (property damage), injury to animals	Current access is direct from the A66. Conflict is with traffic on the A66. Current BHF site has a fence along the northern and eastern boundaries and a wall along the southern and western boundaries.	4	4	16	Warning signs to be set-up for the duration of fair. Passing areas to be identified. Temporary Traffic Management Plan to be prepared based on farm delivery / vehicle movement times etc. GRT to avoid movements during peak periods (if appropriate). Access to Blivv Site can be moved to northern end of the closed section of Station Road. Introduce a stop line at the south west corner of the Blivv Site such that GRT traffic movements stop and give way to vehicles on Station Road.		2	4	8
Vehicle/pedestrian/horse movements	GRT Community (recorded in the SoCG), and at the site visit (Mr Welch and Mr Lloyd).	1- Potential for horses to escape from the site (breaking tether etc) onto A66 2- Potential for children to stray from the fair site due to their inquisitive nature.	Injury to persons, road traffic collisions (property damage), injury to animals	Current access is direct from the A66. Conflict is with traffic on the A66. Current BHF site has a fence along the northern and eastern boundaries and a wall along the southern and western boundaries. No records of horses running onto A66 or children straying from the current BHF site.	4	5	20	1- Proposed fencing solution includes 2-3m high close-boarded barrier fencing, along with smaller internal stock fencing and planting between the two, along the northern boundary of the proposed site. 2- Refer to line 24 below.		1	5	5
Horse/dog/children movements	GRT Community recorded at the site visit (Mr Welch and Mr Lloyd).	Potential for loose horses, dogs and children to leave the site at the proposed exit and be in conflict with farm, concrete and other vehicles including HGVs. The fencing solution does not address this exit area.			4	5	20	The proposed double fencing treatment to the northern boundary could be extended along the western perimeter of the proposed site and include a Pegasus gate to minimise impacts of escaping horses onto Station Road. Currently 3.0m high bunding incorporating planting (hedgess) is proposed along the southern boundary to minimise impacts of horses escaping.	Gate may be left open/ not properly secured.	2	5	10
Horse 'flashing'	At the site visit (Mr Welch)	Potential conflict with vehicles when Flashing horses (displaying horses at speed for assessment prior to trading) on Station Road.	Injury to people / children, animals using Station Road, vehicle / horse impacts - injury to animals and damage to vehicle / property	Current Flashing activities are contained within the BHF site and are undertaken within the BHF field boundary.	4	5	20	National Highways will provide a 'flashing lane' facility within the curtilage of the proposed site to negate the need for 'flashing' on Station Road.	Flashing activities not conducted within the curtilage of the proposed site.	1	5	5
Noise (traffic)	GRT Community (recorded in the SoCG), and at the site visit (Mr Welch and Mr Lloyd).	Increased traffic noise levels from the A66 (converted from single to dual carriageway and speed limit increased to 70mph).	Noise disturbance - to BHF users and adverse impact to fair user's enjoyment	Current speed limit on A66 is 50mph. There are no current mitigations in terms of acoustic barriers etc other than distance from existing A66.	3	1	3	Proposed fencing solution includes 2-3m high close-boarded barrier fencing, along with smaller internal stock fencing and planting between the two, along the northern boundary of the proposed site. Noise modelling has been produced, which looks at the current noise produced by the A66 and predicts how loud that noise would be with additional traffic after the road is constructed. With a solid close-boarded barrier included to the northern boundary, the results indicate that the replacement site is likely to experience lower noise levels than currently experienced at the existing Brough Hill Fair site.		1	1	1
Noise (fair activities)	GRT Community (recorded in the SoCG), Heron Family (recorded in Written Representations via George F White) and at the site visit (both Interested Parties).	Noise in respect to the fair activities – acoustic (non amplified) music and singing etc. 1- Conflict with residents 2- Disruption to calves, cows and heifers.	Noise disturbance - to nearby residents and cattle/livestock.	The centre of the current BHF site is approximately 420m from nearest receptor and approximately 250m from nearest cattle shed.	3	2	6	Currently 3.0m high bunding incorporating planting (hedgess) is proposed along the southern boundary.		3	2	6
Noise (farming activities)	CKCS risk assessment	Farm operations are between 6am and 10pm daily and farm vehicles and equipment emit noise that could disturb the fair attendees	Noise disturbance - to BHF users and adverse impact to fair user's enjoyment	The centre of the current BHF site is approximately 420m from nearest receptor and approximately 250m from nearest cattle shed.	2	2	4	Currently 3.0m high bunding incorporating planting (hedgess) is proposed along the southern boundary.		1	2	2
Contamination (cattle feed)	Site visit (Mr Heron)	Contamination resulting from: 1- waste from fair activities entering farming activities 2- interference in farming activities impacting on cattle feed/welfare.	Cattle illness/death	BHF site waste is controlled by fair users and disposed of via provisions made by MOD. Cattle feed is either stored in silos or on the floor (open). Whilst some feed is stored in silos there are other areas (silage and loose blended feed) which are only enclosed on 3 sides (with roof) which are open to elements and vermin. Farm is fenced and managed with staff attendance and awareness.	2	4	8	BHF site waste will continue to be controlled by fair users and disposed of via provisions made by National Highways. The proposed site boundary will be secured via the double fencing provision to the northern and western boundary and the bunding feature to the southern boundary.		1	4	4
Contamination (milk)	Site visit (Mr Heron) and CKCS risk assessment	Biosecurity and interference with farming activities can spread disease to cattle.	Contamination of milk parlour where up to 20,000 litres of fresh milk is stored and potential impact on food chain (ARLA contract).	Farm is fenced and managed with staff attendance and awareness.	2	4	8	BHF site waste will continue to be controlled by fair users and disposed of via provisions made by National Highways. The proposed site boundary will be secured via the double fencing provision to the northern and western boundary and the bunding feature to the southern boundary. A double gate will provide access/egress from Station Road.		1	4	4
Air pollution (sheep dipping)	Site visit (Mr Heron)	The release of harmful vapours from sheep dipping activities and potential contact with skin.	Human exposure to harmful vapours	Sheep dipping activities carried out away from proposed site, and in accordance with DEFRA/Govt guidance. Dipping is conducted in open air and as such concentrations of vapour are likely to be minimised.	2	2	4	Sheep dipping activities carried out in accordance with DEFRA/Govt guidance. Dipping is conducted in open air and as such concentrations of vapour are likely to be minimised.		1	2	2
Air pollution (traffic)	Site visit (Mr Welch and Mr Lloyd).	Air pollution (particulates etc) from the traffic on the A66	BHF users exposed to harmful air particulates.	There are no current mitigations in terms of barriers etc. Pollutants/ particulates diluted and dispersed naturally. The current concentrations are below the levels set in the UK air quality objectives.	2	2	4	The current and future concentrations as predicted in the ES are below the levels set in the UK air quality objectives.		2	2	4
Air pollution (smoke)	Site visit (both Interested Parties)	Air pollution (smoke) from open fires	Nearby residents exposed to air particulates/fumes etc.	There are no current mitigations in terms of barriers etc. Pollutants/ particulates diluted and dispersed naturally.	2	2	4	Pollutants/particulates diluted and dispersed naturally. Ownership and management of fires by responsible adults.		2	2	4
Air pollution (dust from farming activities)	Caroline Horn e-mail 28 April 2023	Air pollution (dust) from farming activities	BHF users exposed to fine dust particles.	There are no current mitigations in terms of barriers etc. Pollutants/ particulates diluted and dispersed naturally.	3	2	6	Pollutants/particulates diluted and dispersed naturally.		3	2	6
Fires	Site visit (Mr Heron)	Fire risk affecting the straw stored on farm. The fair usually involves campfires at each family plot/caravan and as such embers, sparks etc may be blown into the straw storage area	Fires - loss of materials (straw) and risk to property, storage barn and burns to people.	Straw store is enclosed on 3 sides and covered with a roof. The centre of the current BHF site is approximately 250m behind the straw storage area. No recorded fire incidents with the current BHF site, as reported by interested Parties.	2	4	8	Current straw storage is in a building which adjoins the BHF site. Ownership and management of fires by responsible adults.	A fire could be lit behind the southern bund. Control measures can be discussed during detailed design.	2	4	8
Security (concrete plant)	Site visit (Mr Heron) and CKCS risk assessment	Potential interference to plant and machinery by unauthorised persons	Disruption of daily operations of concrete plant and potential injuries to people	Access to current BHF site is direct from A66. Current concrete plant activities on Station Road not affected.	2	4	8	The proposed site boundary will be secured via the double fencing provision to the northern and western boundary and the bunding feature to the southern boundary. A double gate will provide access/egress from Station Road. A stop line at the south west corner of the Blivv Site will be introduced such that GRT traffic movements stop and give way to vehicles on Station Road.		1	4	4
Security (farm)	Site visit (both Interested Parties)	Concerns that children could: 1- fall into the sheep dip 2- fall into slurry pits 3- be around moving vehicles/machinery 4- enter the milk parlour 5- climb the various structures (e.g. feed silo) 6- be trampled by cattle - Cattle are kept in the 'intensive' area of the farm, they do not go 'out to pasture' as such if children did access this enclosed area they may come into close contact with cattle and risk stampede.	Injury to children and cattle.	No reports of children entering the farm from the current fair, as reported by interested Parties. Farm is fenced and managed with staff attendance and awareness.	4	5	20	The proposed site boundary will be secured via the double fencing provision to the northern and western boundary and the bunding feature to the southern boundary. A double gate will provide access/egress from Station Road. NH will continue to discuss the control measures with the GRT Community during detailed design.	NH will continue to discuss the control measures with the GRT Community during detailed design.	3	5	15
Interruption of farm activities	Site visit (Mr Heron)	Station Road congestion concerns were raised about: 1- 'just in time' farm activities (deliveries might be delayed as well as the collection of milk from the milking parlour) being impacted by the roads in the area being used by horses/fair attendees 2- Concrete deliveries may also be impacted in the same way.	Loss of business, product loss.	Access to current BHF site is direct from A66. Current farm activities on Station Road not affected. Delivery quantum (truck movements/low numbers) to farm to be confirmed by landowners. 'Just in time' contingency plan to be confirmed by landowners.	3	3	9	Warning signs to be set-up for the duration of fair. Passing areas to be identified. Temporary Traffic Management Plan to be prepared based on farm delivery / vehicle movement times etc. Access to Blivv Site can be moved to northern end of the closed section of Station Road. Introduce a stop line at the south west corner of the Blivv Site such that GRT traffic movements stop and give way to vehicles on Station Road.		1	2	2
Affect on farm employees	CKCS risk assessment	An influx of people and additional traffic may cause obstructions to farming activities, which will cause distress to farm staff	Staff welfare impacted	Access to current BHF site is direct from A66. Current farm activities on Station Road not affected.	2	4	8	Warning signs to be set-up for the duration of fair. Passing areas to be identified. Temporary Traffic Management Plan to be prepared based on farm delivery / vehicle movement times etc. Access to Blivv Site can be moved to northern end of the closed section of Station Road. Introduce a stop line at the south west corner of the Blivv Site such that GRT traffic movements stop and give way to vehicles on Station Road.		2	4	8
Affect on local properties	Site visit (both Interested Parties)	Security concerns with an influx of people to the area (not all from gypsy/travelling communities) – potentially leading to increase in thefts etc from the farm and local residences.	Theft of property, property damage	Reports of incidents and conflicts with current site articulated during site visit.	3	3	9			3	3	9

Brough Hill Fair - Operational Risk Assessment for the 'Bivvy' site.
 This risk assessment follows the general principals and requirements of GG104 'Requirements for safety risk assessment' in the Design Manual for Roads and Bridges (DMRB).

5 X 5 matrix

		IMPACT					
		Negligible (e.g. minor cut requiring no treatment other than a plaster). No impact to businesses/residents	Minor e.g. slip, trip or fall or something requiring visit to doctor and/or a medical dressing. Minor impact to businesses/residents	Major Major incident/injury requiring emergency services intervention. Major adverse impact to business.	Very Serious Permanent injury such as loss of limb, or-inability to work. Major adverse impact to businesses/residents.	Fatality(ies) Fatality or multiple fatalities. Business no longer viable. Residents irretrievably affected.	
LIKELIHOOD	Frequent An event that is expected to occur each year	5	5	10	15	20	25
	Probable An event that is likely to occur each year	4	4	8	12	16	20
	Occasional An event that could occur at least once per year	3	3	6	9	12	15
	Remote Unlikely to occur	2	2	4	6	8	10
	Improbable So unlikely that it may never happen	1	1	2	3	4	5
		1	2	3	4	5	

Risk Value	Required action
Low (1-9)	Ensure assumed control measures are maintained and reviewed as necessary.
Medium (10-19)	Additional control measures needed to reduce risk rating to a level which is equivalent to a test of "reasonably required" for the population concerned.
High (20-25)	Activity not permitted. Hazard to be avoided or risk to be reduced to tolerable.

From: Caroline Horn [REDACTED] <[\[REDACTED\]@georgefwhite.co.uk](mailto:[REDACTED]@georgefwhite.co.uk)>

Sent: 18 April 2023 20:53

To: A66 NTP <A66NTP@nationalhighways.co.uk>; Rachel Smith [REDACTED] <[\[REDACTED\]@cjassociates.co.uk](mailto:[REDACTED]@cjassociates.co.uk)>

Subject: RE: National Highways - A66 Northern Trans-Pennine project - Brough Hill Fair risks for Operational Risk Assessment

Bernice / Rachel

Thank you for your email and 'Operation Risk Assessment'.

My comments are below:

1. I do not class this as a Risk Assessment. It does not clearly state what the hazards nor state all of the potential impact of these hazards including severity and likelihood of each, nor does state what Highways are going to do to lower the risks, you are simply highlighting some of the risks. I appreciate you say you have consulted 'the Design Manual for Roads and Bridges (DMRB) GG104 – Requirements for Safety Risk Assessment' but have you consulted the guidance on agriculture?
2. I note the person who attended Eastfield is no longer on the project, therefore please advise who carried out this 'risk assessment' and their qualifications along with when was this completed?
3. A number of risks have been omitted from your list – please refer to the risk assessment carried out by CXCS. I trust you have a copy of this. I mention a few below:
 - Traffic management – has no mention of the farms/haulage vehicles sharing a single track road with the BHF site (During a potentially busy season with harvesting, etc)
 - Vehicle/pedestrian/horse movements – again no mention of the farms/haulage potential collision or potential dangers of the children straying on to the farm
 - Horse flashing – you say it will be within the site but who is going to be monitoring this and ensuring it isn't happening out of boundaries?
 - Noise – No noise metres have taken readings on site
 - Contamination (cattle feed) – Are you saying it is Mr Herons employees responsibilities to ensure people from the BHF site do not contaminate the feed? We do not want staff involved in conflict with anyone who is trespassing. Who is going to be monitoring/controlling unauthorised access onto the farm. This huge concern to Mr Heron and his employees which could cause anxiety for fear of confrontation and safety.
 - Contamination (Milk) – again who is meant to be monitoring this?
 - Fires – There is no real attempt to mitigate the risk, just stating that it hasn't happened before, the straw is a combustible and we want to ensure suitable precautions will be undertaken to ensure a fire is prevented. The HSE guidance is no sources of ignition are to be within 10metres of any combustibles?
 - Security – Again who is going to be monitoring this? Our staff at Eastfield farm are not child minders and will not be watching for children being unsupervised on site, please see HSE guidance with children on farms to try and help with the understanding of the dangers to children - <https://www.hse.gov.uk/pubns/indg472.pdf>
 - Interruption of farm activities – No mitigations in place for this, what happens if traffic can't get to site and Farm/Haulage suffer loss of earnings, contracts and staff?
 - Effect on farm employees – No mitigations in place?
 - Effect on local properties – What are they going to do about this?

4. I am concerned that the Hazards you have stated are not fully understood and maybe this is because of the lack of knowledge and understanding of agriculture and farming. This is particularly concerning reading your reported hazards to be considered.
5. You have a column for current conditions. I'm not sure how this is relevant. The current site is in a completely different location and outlook to the proposed site.
6. You have failed to include proximities of the site to the hazards
7. You state 'no reports of...' – please confirm where you have consulted to be able to factually state this
8. You have failed to identify the likelihood and severity of each hazard – again probably because the assessor does not understand agriculture or farming, nor appreciates or understand the Gypys culture.
9. I'm not going to go into every single point as you can refer to our professional risk assessment carried out by a credible risk assessor who understands agriculture. There is no mention of how animals act when they have given birth, there is no mention of fertiliser, there is no mention of the ARLA contract Mr Heron is bound by.

On the whole this "Risk Assessment" doesn't show any care or compassion for the sites/owners or their employees. The Risk assessment shows lack of understanding to agriculture and simply running a business? There is no mention of the immediate dangers on the farm/haulage side, there are no mitigations what so ever within the entire risk assessment.

As we have said on numerous occasions we are more than happy to explain in detail the hazards and potential impact and consequences and I think this would be worthwhile for Highways to do so they can properly assess whether the site is indeed safe. As we have repeatedly stated my client will not be responsible for any accidents that may occur because of the site location chosen by National Highways when my clients and the Gypsy community have repeatedly explained it is unsafe. If National Highways believe it is safe then we wish to have a indemnity to that effect.

Many thanks

A66NTP

NH responses (in red) to Caroline Horn (George F White) e-mail dated 28 April 2023

Transports / vehicle movements

Your proposed mitigation measures are

- Warning signs
- Passing areas
- GRT to avoid movements during peak periods
- Introduce a stop line such GRT traffic movement stop and give way to vehicles on station road

With all due respect we are all aware that these measures are not appropriate. You are already aware that the GRT community need access at all times and access along station road will be constant and they will not 'avoid movements during peak periods'. The GRT have also stated that they will use Station Road as a flashing track to show the horses that they wish to sell, therefore it is not appropriate that they 'give way' or 'stop' or 'pass' when they wish to show their horses.

This risk item relates to normal vehicle activities only. The proposal of preparing a Temporary Traffic Management Plan and other associated measures is to ensure these risks can be mitigated. Consultation and detailed discussions with all parties will be undertaken to ensure their requirements can be reasonably accommodated. To do this, it will be necessary to assimilate the estimated number / type of vehicles and associated access requirements for each party.

'Flashing' would not be appropriate on this narrow lane, regardless of the level / type of traffic proposed to use the lane. As you rightly suggest, vehicle traffic would not mix well with 'flashing' as this would significantly increase the risk potential for accidents. This is why NH have proposed to accommodate a 'flashing track' within the boundary of the proposed Fair site.

It is agreed that introducing the risk of 'flashing' would mean the potential for an accident to occur would be increased, hence the proposal to accommodate 'flashing' on the Fair site. We believe the risk score is appropriate, but we would welcome your thoughts on the quantification of the risk item identified.

The ORA notes that current flashing activities are contained within the Brough Hill Fair site and are undertaken within the BHF field boundary.

As requested previously, could you please provide details of traffic flows on Station Road associated with the farming and concrete batching plant activities?

I feel like you have missed the point, there is a high chance that an accident will occur because of the dual use. I therefore fundamentally disagree with your scoring on likelihood and impact.

We do recognise the chance of an accident, as reflected in our pre-mitigation risk scoring, but we believe that the proposed mitigation reduces the likelihood of an accident occurring, as reflected in the lower likelihood post-mitigation scoring.

Vehicle/pedestrian/horse movements

You say there are no records of children or horses straying. Where have you searched for these records. My clients have told you numerous times as has Billy that it is their tendency to stray and explore. You are choosing to ignore our comments here. Please amend as per the statements we have provided.

We have no records within National Highways (no accidents involving horses in the area in the last rolling 5 years) or via exchanges with landowners and the GRT Community that horses have strayed from the current Brough Hill Fair site onto the A66. We acknowledge Billy Welch stated that children are curious and want to explore. We have reflected this aspect in our pre-mitigation scoring (Risk Score 20) but believe

that the proposed mitigation reduces the likelihood of the risk occurring, as reflected in the lower likelihood post-mitigation scoring.

You fail to mention that the access is next door to the access to the farmyard. You are aware that the gates cannot be shut at any time. The mitigation you propose is a fence around the site but this does not prevent them walking 3 steps from the access to the Bivvy to the access to the farmyard? This has not been addressed. Therefore I disagree with your scoring on likelihood and severity.

It is correct, the entrances to the Fair site and the track to the farm are close. However, given the proposed mitigation measures, including the double gate feature at the site entry/exit point and the nature of this area we believe the risk score is appropriate. However, we would welcome your thoughts on the quantification of the risk item identified.

Have you referred to HSE guidance - Preventing accidents to children on farms

NH is aware of INDG472 '*Preventing accidents to children on farms*' which notes responsibilities and obligations for parents and all adults working in agriculture, and has considered this in the production of the ORA when considering risk scoring and in the development of the proposed mitigation.

Have you referred to HSE guidance - Handling and housing cattle which highlights the dangers of cattle.

NH is aware of AIS35 '*Handling and housing cattle*' and AIS17 '*Keeping cattle in fields with public access*' which provide advice for farmers. Given the proposed mitigation measures to secure the Bivvy Site, including the double gate feature and boundary fencing, we believe the risk score is appropriate.

Horse/dog/children movements

As I have stated above and as Mr Welch has told you the access gate on/off the fair must be open at all times for traffic entering and leaving the site - horses, dogs and children will disperse via the boundary onto the farm access lane/yard or through the open Bivvy access gate onto Station Road conflicting with my clients heavy traffic as previously explained. Therefore I disagree with your scoring on likelihood and severity.

The proposal is to have a double gated access in and out of the Fair site to mitigate the escape of animals. Please explain why the access needs to be 'open at all times.' Are you suggesting the gated access to the Brough Hill Fair site, directly off the A66, remains open at all times for the current Fair?

We would welcome your thoughts on the quantification of the risk item identified.

You have stated the mitigation would include a Pegasus gate – can you explain what this is?

This is the double gate feature referenced above. Space is provided between the inner and outer gates to create a 'holding pen' such that horses cannot escape via a single gate inadvertently left open/not secured.

Horse Flashing

As Mr Welch has previously told you at the site visit, the Bivvy site is not long enough to accommodate a flashing lane and the GTC will use Station Road as a flashing lane and your proposed mitigation is not possible.

Again, I therefore disagree with you scoring on likelihood and severity.

Mixing 'flashing' activities with regular vehicle movements on any narrow lane is not acceptable as it would pose an unacceptable risk to other road users and the drivers / animals involved in 'flashing' activities. NH has offered a 'flashing track' to be provided so this activity can be managed appropriately within the Fair site boundary. The ORA notes that current flashing activities are contained within the Brough Hill Fair site and are undertaken within the BHF field boundary.

Noise (fair activities)

You have failed to take into account our risk assessment. The Bivvy site is only 12m away from Meadow Bank house, only 12 m from Eastfield House and 3 metres from livestock buildings. The proposed bunding and hedge would be inadequate in reducing the noise at such close proximity and be unacceptable at such close proximity to both houses and livestock housing.

We previously stated distances to receptors/ cattle shed from the centre of the current BHF site. We acknowledge the Bivvy Site is closer. We believe the proposed 3.0m high bunding incorporating planting will mitigate this noise, however we have revised our post-mitigation scoring to reflect the closer proximity of the Bivvy site to the receptors. An updated ORA (v3) is attached.

Noise (Farming activities)

You have failed to take into account our risk assessment. Taking into consideration that the yard where the loading of cattle feed/silage pits is sited only 8m from the proposed fair site, tractors and telehandlers are operating at a noise level over 100+ decibels, it would be impossible to create a noise barrier between the farm yard and the proposed site to an acceptable level for GTC.

We did take account of the CXCS risk assessment and noted the typical farming operations between 4am and 10pm. We believe the proposed 3.0m high bunding incorporating planting will mitigate this noise, however we have revised our post-mitigation scoring to reflect the closer proximity of the Bivvy site to the farmyard. An updated ORA (v3) is attached.

Contamination (cattle feed)

As previously stated the GRT community would come through/over the southern boundary or use the open gate onto Station Road therefore accessing the farm thus not preventing children/teenagers causing potential contamination by tampering/interfering with and damaging animal feedstuffs.

In addition the point you have failed to mention is the hazards of the feed to trespassers. Please refer to HSE Grain dust Guidance Note EH66 (Third edition).

NH is aware of EH66 'Grain Dust' and the guidance provided therein to employers and managers concerning the possible health hazards which could result from occupational exposure to grain dust. Could you confirm whether a COSHH assessment is in place for grain activities on the farm and whether this extends to cover users of the Public Right of Way alongside the Bivvy Site?

Your proposed mitigation is that BHF site waste will continue to be controlled by fair users and disposed of via provisions made by National Highways. We are aware that your intentions are to sell the site so how can this be the case?

NH will adopt a similar approach to MOD for disposal of waste from the Fair site such that waste is controlled. If NH decides to dispose of the site, the sale will be subject to conditions as noted in our Deadline 6 submission 7.37 Summary Statement on Brough Hill Fair Relocation and amended Article 36 of the DCO, submitted at Deadline 5.

You also state you will double fence – please refer to comments above and that they will simply walk from the access to the Bivvy site to the access to the farmyard.

Your mitigation are not practical for reducing contamination and or reduces the worry this poses on my client therefore I disagree with your scoring assessment.

Given the proposed mitigation measures to secure the Bivvy Site, including the double gate feature and boundary fencing, we believe the risk score is appropriate.

Anyone entering the farm without permission would be trespassing. Malicious tampering with feedstocks/ milk is a criminal offence.

Could you please confirm what security measures are already deployed on site?

Contamination (milk)

As stated above - mitigation measures to the south boundary will not stop GRT entering the farm yard/buildings.

It is not my clients responsibility to manage the site or ask his employees to manage or act as security guards.

The mitigation you have proposed will simply not reduce the risk at all.

Given the proposed mitigation measures to secure the Bivvy Site, including the double gate feature and boundary fencing, we believe the risk score is appropriate.

Anyone entering the farm without permission would be trespassing. Malicious tampering with feedstocks/milk is a criminal offence.

Could you please confirm what security measures are already deployed on site?

Air Pollution (sheep dipping)

Firstly the risk is not air pollution it is harm to people from sheep dipping. Please refer to our risk assessment.

We totally disagree that the sheep dipping activities carried out away from the proposed site . The sheep exiting the dipping bath are only 3m away from GRT caravans and attendees. If this activity was carried out so close to any public campsite we would definitely be reported to the Environmental Health as a health hazard. You state that it is in accordance with DEFRA/Govt guidance – please refer me to this.

You state that its fine as it is carried out in open air so concentration are minimised. Please refer me to document you have consulted. To be clear it is not just the vapor and air pollution we are referring to.

You will see our mitigation measures – they too are not practical.

Again I do not agree with your mitigation measures are in fact mitigation measures therefore do not agree with your scoring assessment.

NH is aware of AIS41 'Advice for farmers and others involved in sheep dipping' which provides advice for farmers to protect their health when involved in dipping sheep. This is the guidance we are referring to above. The sheep dipping will be >3m away from 'GRT caravans' as it is proposed to include a 3m high mound along the southern boundary of the Bivvy Site, separated from the farm boundary by the Public Right of Way/farm track. Could you confirm whether a COSHH assessment is in place for sheep dipping activities on the farm and whether this extends to cover users of the Public Right of Way alongside the Bivvy Site?

Air Pollution (traffic)

As previously stated silage pits/ feed stores are only 8m from Bivvy site therefore when dry feed/straw is being loaded and mixed in the feeder wagon, this creates a huge amount of fine dust into the surrounding atmosphere. Our employees wear dust masks for the prevention of respiratory issues. There would also be fumes from diesel engines operating on the farm.

You state the current as future concentrations as predicted in the ES are below the levels set in the UK air quality objectives. Please advise me how you have made these assessments when you do not understand what machinery movements/types of engines/feed stuff are used?

You said there isn't any current mitigations. Again you fail to recognise that the site is in a completely different location to the proposed site with significant proximity differences.

This risk, as stated in the ORA, relates to air pollution from the traffic on the A66 which is below the levels set in the UK air quality objectives. We have added a further risk to the ORA (v3) to include a risk associated with 'Dust from Farming Activities.'

Air Pollution (smoke)

You state there are no current mitigation in terms of barriers and pollutants /particulates diluted and dispersed naturally. Again you fail to recognise the different location of the current site to the proposed site and the significant differences in proximities.

Your proposed mitigation of the current situation is that 'ownership and management of fires by responsible adult'. In my client experience, as they have farmed next to the current GRT site for 60 years there has been many cases of inappropriate positioning of fires by children/teenagers.

You state that control measures can be discussed during detailed design. Again this is not an appropriate mitigation. How can you complete a risk assessment or reduce my clients concerns when you don't even know how to deal with this risk. Also please advise who would police your proposed mitigation and be accountable for it when there is a accident and or Eastfield Farm is set alight?

We did not state that smoke control from fires can be discussed during detailed design. We noted this mitigation against the Fires risk. We wish to discuss mitigation measures with the GRT Community and The Herons such that this risk, which exists on the current site, can be reduced/controlled on the Bivvy Site. We correctly state that the ownership and management of fires is by responsible adults. We also acknowledge the GRT community cultural aspect of lighting campfires at Brough Hill Fair. Please refer to v3 of the ORA (attached) which includes the same pre and post-mitigation scoring, pending further discussions with the GRT Community and The Herons on this matter.

Fires

You state there are no records of fires – please advise where you have got this information from.

Could you please advise if there has been a fire at the farm previously?

Your proposed mitigation of the current situation is that 'ownership and management of fires by responsible adult'. In my client experience, as they have farmed next to the current GRT site for 60 years there has been many cases of inappropriate positioning of fires by children/teenagers.

You state that control measures can be discussed during detailed design. Again this is not an appropriate mitigation. How can you complete a risk assessment or reduce my clients concerns when you don't even know how to deal with this risk. Also please advise who would police your proposed mitigation and be accountable for it when there is an accident and or Eastfield Farm is set alight?

This is a repeat of the above. Please refer to our response above.

I am concerned that you have not consulted our risk assessment otherwise you would have highlighted that my clients buildings contain straw, fertiliser, hay and livestock and are only 3 and 8 m from the proposed fair site. These buildings have wooden Yorkshire boarding side cladding to allow airflow into the building. Taking into consideration that a campfire could be positioned 3m away from the above, sparks and embers rising from the fire could easily start a fire and or enter the buildings through the timber side cladding and through the air outlet at the peak of the roof.

We struggle to see what mitigation can be implemented to avoid this very serious risk. If our silage/feed is set on fire within these buildings it would easily mean the fire would spread to the rest of the farm and the result would simply be catastrophic resulting in the closure of the farm and dairy business. Please advise if

you firmly believe your mitigation measures are acceptable whether an indemnity will be provided to my client. Who is responsible for policing to ensure this risk doesn't happen.

An indemnity will not be provided by National Highways.

We acknowledged the potential impact of fire, as noted by Mr Heron on the site visit and in the CXCS Risk Assessment, in the ORA. This is reflected in our impact score of 4 in both the pre and post-mitigation scoring. We have stated in the ORA, against this particular risk, that we wish to discuss fire control measures during detailed design. You will note that we did not reduce the post mitigation risk scoring, given the need for further discussion on this matter.

Security (concrete plant)

As I have already stated and as Mr Welch has stated the access gate on/off the fair must be open at all times for traffic entering and leaving the site - so horses, dogs and children will disperse via the boundary and down Station Road, entering the concrete plant/ haulage yard and as previously explained, the haulage and concrete plant is a very busy yard with heavy plant machinery constantly moving around. It is recognised as dangerous area.

Your mitigation measures are fencing which will not stop GRT from exiting and straying out of the access. The concrete plant is in close proximity to the access to the Bivvy site.

With respect a 'Stop line' is not going to be adhered to so will not help in anyway and in our view is not a mitigation measure.

As noted above and in the ORA, the proposed site boundary will be secured via double fencing provision to the northern and western boundary and bunding feature to the southern boundary. A double gate will provide access/egress from Station Road. Please explain why the access needs to be 'open at all times' mindful of how the current access to the Brough Hill Fair site, directly off the A66, operates.

Security (farm)

As I have already stated and as Mr Welch stated the access gate on/off the fair must be open at all times for traffic entering and leaving the site - so horses, dogs and children will disperse via the boundary onto the farm access lane/yard or through the open Bivvy access gate onto the farm lane conflicting with my clients heavy traffic.

Your proposed mitigation of fencing and a double gate as I have repeatedly stated throughout this letter will not work.

The access will not work for the GRT nor my client. National Highways cannot expect my clients employees become security guards.

As noted in our responses above and in the ORA, the proposed site boundary will be secured via double fencing provision to the northern and western boundary, bunding to the southern boundary and a double gate to provide secure access/egress from Station Road.

Interruption of farm activities

With respect your proposed mitigation works will not work.

It is apparent that you do not understand the GRT culture and would advise you spend further time understanding and appreciating the GRT culture.

Please refer to our Deadline 6 submission '7.37 Summary Statement on Brough Hill Fair Relocation' which summarises our understanding of the Brough Hill Fair and signposts to several submitted DCO documents to confirm our understanding of the GRT Culture.

- Signage simply will not work and the GRT community would also state this.
- A Traffic plan is impossible to do as farm traffic, HGV movements and concrete wagon movements are not to a set timetable and are constant throughout the day, and I'm sure even if a plan was done how this would then be a mitigation measures and who would control and police this. What would happen if it was not adhered to? It sounds like a paper exercise that would actually serve a purpose.
- Access to Bivvy Site - moving the access to the northern end would then create yet another serious risk of GRT traffic/horses colliding with farm traffic on a blind corner at our road end. This does not remove any of the concerns we are raising and again is not an appropriate measure.
- Introduce a stop line – as I have repeatedly said this would simply be disregarded.

Affect on local properties

It appears you have not assessed any mitigation measures here. Therefore assume there are none. Therefore I do not believe the mitigation measures you have stated on other hazards are adequate.

The omission of specific mitigation measures for potential theft of property/property damage does not bring into question the adequacy of the other risks jointly identified, all of which include mitigation measures.

You have failed to state the different location and the significant differences in proximities to properties.

In your e-mail you have asked if we can set out the current security measures deployed on the farm. I feel you are missing the point here. You have failed to understand the difference in the location of the current and the proposed fair site and the significant differences in the proximities to buildings and hazards on the site.

The potential for theft of property/ property damage exists in most situations, not just at Eastfield Farm. You will note that pre and post-mitigation scoring for this risk are the same (a score of 9). We have noted the likelihood as 3 (occasional – an event that could occur at least once per year) based on feedback provided by both interested parties at the site visit.

You have also asked us to clarify the effect on farm employees. There are numerous newspaper articles available reporting on Appleby fair whereby there are conflicting uses of land and roads between the fair users and other road users. There are cases whereby the conflicting /dual use of roads/land result in arguments / physical fights between users. We feel that what you are proposing is a dual use of an area of land and roads and that the same will happen at my clients farm. This is a serious worry for my client and their employees.

Our impact score (a score of 4 – very serious injury) reflects what could potentially happen if this risk is realised. We believe our post-mitigation likelihood score of 2 reflects the reduced likelihood of this risk occurring as a result of the mitigation measures proposed for the site.

Overall

Overall I still do not believe this is a proper risk assessment. You seem to have disregarded our risk assessment and the real practical risks that you are creating by moving the fair site to the proposed Bivvy site. I am concerned that HSE agricultural guidance has not been referred to, nor has the risk assessment been carried out by someone who is competent nor understands the agricultural industry. Please confirm who has carried out the risk assessment and their qualifications and experience within the agricultural industry.

The ORA has been compiled by National Highways and their professionally qualified supply chain partners on A66. Staff involved have considerable experience in undertaking risk assessments in accordance with GG104 and hold industry-recognised safety qualifications. We have reviewed and considered the points

raised in the CXCS Risk Assessment, together with the risks identified at the site visit and compiled the ORA using this information alongside HSE agricultural guidance as referenced above.

I appreciate you saying signage etc as mitigation measures but you cannot state these as mitigation measures when you have not taken into account the users and their culture. You simply cannot ignore this which it appears you are for the purpose of ticking a box to say you have completed a risk assessment. The risk assessment has to be accurate, reasonable and practicable taking into account what owners and users of the site including my clients and the GRT community have said.

As noted above, we believe the risks identified in the ORA are an accurate reflection of the risks raised at the site visit and in the CXCS Risk Assessment. No further risks have been proposed or suggested in your exchanges on this matter, during production of the ORA.

I am still concerned over who has done this risk assessment. On my previous email (attached) I have asked several questions which have not been answered including a very simple question of who has carried out this assessment and their qualifications? Please respond.

As noted above, the ORA has been compiled by National Highways and their professionally qualified supply chain partners on A66.

Please also respond on my query on who is responsible if an accident happens on my clients farm because of the risks we have highlighted that have not been addressed by Highways appropriately.

As noted above, National Highways will not provide an indemnity.