

A66 Northern Trans-Pennine Project

TR010062

7.45 Deadline 8 – Closing Submissions

Planning Act 2008

Infrastructure Planning (Examination Procedure) Rules 2010

Deadline 8

16 May 2023

Infrastructure Planning

Planning Act 2008

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

A66 Northern Trans-Pennine Project
Development Consent Order 202x

7.45 Deadline 8 – Closing Submissions

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1. INTRODUCTION

1.1 Purpose of this Document

- 1.1.1. These Closing Submissions have been produced by the Applicant to summarise in one place its submissions on the matters that have been subject to submissions by Interested Parties, Affected Persons and the Applicant during the course of the Examination of the proposed Development Consent Order ('**DCO**') for the A66 Northern Trans-Pennine Project (the '**Project**'). It is provided to ensure that the Examining Authority, and ultimately the Secretary of State, are clear on the Applicant's position in relation to these matters and the remaining points of disagreement that arise from them.
- 1.1.2. These Closing Submissions do not make new points but instead draw on, and refer to, submissions made by the Applicant in its application for the DCO for the Project (the '**DCO Application**') and throughout the course of the Examination. The Applicant notes that the Application Document Tracker (Application Document 1.7) lists each of the DCO Application documents and also provides a breakdown of all submissions made by the Applicant during the Examination, the last version of which will be submitted at Deadline 9. It is submitted to assist all Interested Parties and to aid the Examining Authority and the Secretary of State in the reporting and decision-making process.
- 1.1.3. In doing so, this document re-states the benefits of the Project, the Project's compliance with relevant policy, legislation and guidance and points the Examining Authority and the Secretary of State to the evidence which is considered relevant to the application of section 104 of the Planning Act 2008 ('**PA 2008**').

1.2 The Project

- 1.2.1. The Project proposes to deliver an improvement to the existing A66 route that will avoid constraints on national and regional connectivity, alongside promoting the transformational growth envisaged by the Northern Powerhouse initiative and the achievement of the Government's 'Levelling Up' agenda. The Project would ensure that the entire 80km route of the A66, between the A1(M) and M6, will have two lanes in both directions with consistent standard signage and road markings across the route. This will ensure that the road provides a coherent user experience, improving safety, reliability, journey times and journey quality for all users.
- 1.2.2. The A66 Project has been identified as one of the 'vital infrastructure projects' subject to the UK Government's "Project Speed" initiative. The initiative seeks to cut down the time it takes to design, develop, and deliver the 'right things better and faster than before'.

- 1.2.3. The Applicant refers to its Case for the Project for more detail on the benefits of the Project. The Applicant considers that there is a clear and compelling case in the public interest for the DCO for the Project to be made.

1.3 Design Changes

- 1.3.1. The Applicant submitted a change application to the Examining Authority on 24 March 2023 which contained details of 24 proposed changes to the DCO Application for the Project. The details of all proposed changes are provided in the Change Application, with a high-level summary of each proposed change provided in Table 1 of that document.
- 1.3.2. The Applicant noted that the need for the proposed changes to the Project arose from a variety of factors which included requests from Affected Parties (e.g. including where issues were raised in Relevant Representations); stakeholder feedback (e.g. where, through engagement, the Applicant had sought to resolve issues); the identification of opportunities to further reduce the environmental impacts of the Project and opportunities to reduce the amount of land required for the Project; and the identification of additional safety benefits, building on the assessment work to date.
- 1.3.3. In response, the Examining Authority published its decision on the Change Application on 18 April 2023, accepting 22 of the 24 proposed changes into the Examination of the DCO Application. These are detailed at pages 2-3 of the Examining Authority's Response to Changes. Following this, the Applicant made all necessary updates to its DCO Application documents and submitted the revised documents at Deadline 7 of the Examination.

1.4 Structure of the Document

- 1.4.1. These Closing Submissions are structured as follows:
- Conformity with the National Networks National Policy Statement ('**NNPS**');
 - Need for and benefits of the Project including consideration of the relevant policy, legislation and guidance;
 - Alternative route options considered for the Project and justification for the discounting of alternative route alignments and junction placements, alongside considerations of the Gypsy and Traveller Community and the Brough Hill Fair Community Association (together the '**Gypsy Community**') relating to the Brough Hill Fair ('**BHF**') site;
 - The EMP, including the Register of Environmental Actions and Commitments ('**REAC**'), and the Project Design Principles;

- Environmental matters, with a focus on traffic and transport, carbon emissions, and road drainage and the water environment;
- Equalities Impact Assessment ('EqIA');
- Good design; and
- Consideration of the case and justification for the compulsory acquisition of land and rights and for the temporary possession of land, alongside delivery and funding.

1.5 Continued engagement

- 1.5.1. As the Project moves out of the Examination period, and into a new post-Examination phase of the Project, the Applicant is committed to ongoing engagement with all stakeholders, including the local authorities and statutory environmental bodies. The Applicant believes that the Project will continue to benefit from the established strong working relationships that exist between the Project and its stakeholders being maintained and strengthened.
- 1.5.2. The Applicant recognises the importance of continuing to progress matters post Examination including, but not limited to, the emerging detailed designs for each scheme across the route, the second iteration EMP and the CTMP.
- 1.5.3. Over recent weeks, the Applicant has taken steps to establish a series of meetings that will ensure the engagement with the local authorities in this post-Examination phase is in place. This includes regular detailed design meetings with the Applicant's delivery partners and monthly strategic meetings with representatives from across the Project team which the Applicant will continue to use to provide updates and progress on overarching strategic and local interest matters.

1.6 Key document references

- 1.6.1. The Applicant has set out key document references in Table 1 below. This includes the shorthand document references used throughout these Closing Submissions, along with corresponding full document titles and Examination Library references.
- 1.6.2. The Applicant also refers to its Errata Report submitted at Deadline 8. Insofar as the Errata Report applies to any of the documents in Table 1, the Errata Report and the document in question need to be read together.

Table 1

Document Shorthand	Full Document Name	Examination Library Reference
Air Quality and Dust Management Plan	Environmental Management Plan Annex B4 Air Quality and Dust Management Plan (Rev 2) (Clean)	REP6-009
BHF Statement	Summary Statement on Brough Hill Fair	REP7-156
CA and TP Schedule	Compulsory Acquisition and Temporary Possession Schedule	REP7-101
CA Schedule of Negotiations	Compulsory Acquisition Status of Negotiations Schedule	Document reference 5.10 (Rev 2)
CAH1 Note	Compulsory Acquisition Hearing 1 (CAH1) Post Hearing Submissions	REP1-007
CAH2 Note	Compulsory Acquisition Hearing 2 (CAH2) Post Hearing Submissions (including written submissions of oral case)	REP5-023
CAPS	Consents and Agreements Position Statement	APP-287
Case for the Project	Case for the Project	APP-008
CCC and EDC's LIR	Cumbria County Council and Eden District Council – Local Impact Report	REP1-019
CCC and EDC's Principal Issues to be addressed with the ES	Cumbria County Council and Eden District Council – Principal Issues to be addressed with the Environmental Statement	REP5-036
CCR Assessment	Environmental Statement Appendix 7.2 Climate Change Resilience Assessment	APP-177
CEPP's Comments on D2 Submissions	Climate Emergency Planning and Policy – Comments on Deadline 2 Submissions	REP3-068
CEPP D7 Submission	Dr Andrew Boswell on behalf of Climate Emergency Policy and Planning	REP7-198
CEPP Deferral Request	Climate Emergency Policy and Planning - Deferral request	REP6-037
CEPP's WR	Climate Emergency Planning and Policy – Written Representation - PADSS	REP1-011
Change Application	Change Application – Application Report	CR1-002

Document Shorthand	Full Document Name	Examination Library Reference
Changes Consultation Brochure	Change Application: Consultation Report – Appendix H: Proposed Changes Consultation Brochure	CR1-015
Chapter 2 of the ES	Environmental Statement Chapter 2 The Project	APP-045
Chapter 3 of the ES	Environmental Statement Chapter 3 Assessment of Alternatives	APP-046
Chapter 4 of the ES	Environmental Statement Chapter 4 EIA Methodology	APP-047
Chapter 5 of the ES	Environmental Statement Chapter 5 Air Quality	APP-048
Chapter 6 of the ES	Environmental Statement Chapter 6 Biodiversity	APP-049
Chapter 7 of the ES	Environmental Statement Chapter 7 Climate	APP-050
Chapter 8 of the ES	Environmental Statement Chapter 8 Cultural Heritage	APP-051
Chapter 9 of the ES	Environmental Statement Chapter 9 Geology and Soils	APP-052
Chapter 10 of the ES	Environmental Statement Chapter 10 Landscape and Visual	APP-053
Chapter 11 of the ES	Environmental Statement Chapter 11 Material Assets and Waste	APP-054
Chapter 12 of the ES	Environmental Statement Chapter 12 Noise and Vibration	APP-055
Chapter 13 of the ES	Environmental Statement Chapter 13 Population and Human Health	APP-056
Chapter 14 of the ES	Environmental Statement Chapter 14 Road Drainage and the Water Environment	APP-057
Chapter 16 of the ES	Environmental Statement Chapter 16 Summary	APP-059
Climate and Carbon Submission	Deadline 8 Submission on Climate Matters	Document reference 7.47
Combined Modelling and Appraisal Report	Combined Modelling and Appraisal Report	APP-237
Comments on LIR	Applicant's Comments on Local Impact Report	REP2-018

Document Shorthand	Full Document Name	Examination Library Reference
CTMP	Environmental Management Plan Annex B13 Construction Traffic Management Plan	APP-033
DCC LIR	Durham County Council – Local Impact Report	REP1-020
dDCO	Draft Development Consent Order	Document reference 5.1 (Rev 5)
Draft NNNPS Conformity Statement	Assessment of Conformity with Consultation Draft National Networks National Policy Statement	REP7-161
EM	Explanatory Memorandum	Document reference 5.3 (Rev 4)
EMP	Environmental Management Plan	Document reference 2.7 (Rev 5)
EqIA	Equalities Impact Assessment	APP-243
Errata Report	Errata Report	Document reference 6.1 (Rev 3)
ES Addendum	Change Application – Environmental Statement Addendum	CR1-016 – CR1-017
Examining Authority's Response to Changes	Rules 9 and 17 – The Examining Authority's Procedural Decision in response to the Applicant's proposed changes and the Examining Authority's request for further information	PD-014
ExQ1	Examining Authority's Written Questions	PD-011
FRA	Environmental Statement Appendix 14.2 Flood Risk Assessment and Outline Drainage Strategy	APP-221
Funding Statement	Funding Statement	APP-289
GHG Assessment	Environmental Statement Appendix 7.1 Greenhouse Gas Assessment	APP-176
Ground and Surface Water Management Plan	EMP Annex B7 Ground and Surface Water Management (Clean) - Rev 2	REP3-011
Heritage Mitigation Strategy	Environmental Management Plan Annex B3 Outline Heritage Mitigation Strategy (Rev 4) (Clean)	REP7-009

Document Shorthand	Full Document Name	Examination Library Reference
HRA Stage 1 Report	Habitat Regulations Assessment (HRA) Stage 1 Likely Significant Effects Report	APP-234
HRA Stage 2 Assessment	Habitat Regulations Assessment (HRA) Stage 2 Statement to Inform Appropriate Assessment	APP-235
Human Health Effects Significance Statement	Statement of Significance of Human Health Effects	REP4-013
Invasive Non-Native Species Management Plan	EMP Annex B15 Invasive Non-Native Species (INNS) (Clean) - Rev 2	REP3-017
ISH1 Note	Issue Specific Hearing 1 (ISH1) Post Hearing Submissions	REP1-006
ISH1 Note – Response to Agenda Item 2.1 on The Sills	Issue Specific Hearing 1 (ISH1) Post Hearing Submissions - Response to Examining Authority's Request Under Agenda Item 2.1: The Sills Complementary Environmental Consideration	REP3-044
ISH2 Note	Issue Specific Hearing 2 (ISH2) Post Hearing Submissions	REP1-009
ISH3 Note	Issue Specific Hearing 3 (ISH3) Post Hearing Submissions (including written submissions of oral case)	REP5-024
ISH3 Note – Response to Agenda Item 10 on BHF	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
ISH3 Note – Response to Agenda Item 3.2 on Environmental Mitigation	Issue Specific Hearing 3 (ISH3) Post Hearing Submission – Response to Examining Authority's Request Under Agenda Item 3.2: Environmental Mitigation Area Sizes and Locations	REP5-027
Land Acquisition Summary Statement	Summary Statement on Land Acquisition Requirements and Process	REP6-022
LPCS	Legislation and Policy Compliance Statement	APP-242
Materials Management Plan	EMP Annex B8 Materials Management Plan	APP-028

Document Shorthand	Full Document Name	Examination Library Reference
Natural England's PADSS	Natural England – Final Principal Areas of Disagreement Summary Statements	REP7-180
Natural England's RR	Relevant representation of Natural England	RR-180
Natural England's WR	Natural England – Deadline 1 Submission – Written Representation	REP1-035
Noise and Vibration Management Plan	Environmental Management Plan Annex B5 Noise and Vibration Management Plan (Rev 2) (Clean)	REP6-011
NTPRSS	PDOR - Northern Trans-Pennine Routes Strategic Study Stage 1 Report (Appendix 4) and Stage 3 Report (Appendix 5)	APP-248 and APP-249
NYCC and RDC's WR	North Yorkshire County Council and Richmondshire District Council – Written Representation	REP1-040
Outline Carbon Strategy	Outline Carbon Strategy	REP3-043
PDOR	Project Development Overview Report	APP-244
Project Design Principles	Project Design Principles	Document reference 5.11 (Rev 5)
Project Design Report	Project Design Report	APP-009
Response to D3 and D4 Submissions	Applicant's Response to Deadline 3 and 4 Submissions	REP5-030
Response to D3 Submissions	Applicant's Response to Deadline 3 Submissions	REP4-014
Response to D5 Submissions	Applicant's Response to Deadline 5 Submissions	REP6-021
Response to Examining Authority's Schedule of DCO Comments and Changes	Applicant's Response to the ExA's Comments on and Schedule of Changes to the Draft DCO	REP7-166
Response to Examining	Applicant's Responses to the Examining Authority's Further Written Questions	REP6-020

Document Shorthand	Full Document Name	Examination Library Reference
Authority's Further WQs		
Response to RRs	Applicant's Response to Relevant Representations	PDL-010 to PDL-013
Response to WRs by Affected Persons	Applicant's Response to Written Representations made by Affected Persons at Deadline 1	REP2-015
Response to WRs by Interested Parties	Applicant's Response to Written Representations made by Interested Parties subject to an SoCG at Deadline 1	REP2-016
Response to WRs by Other Interested Parties	Applicant's Response to Written Representations made by other Interested Parties subject to an SoCG at Deadline 1	REP2-017
Responses to Examining Authority's WQs	Applicant's Responses to the Examining Authority's Written Questions	REP4-011
RIES	Report on the Implications for European Sites	PD-013
Rights of Way and Access Plans	Rights of Way and Access Plans	APP-342, APP-344, APP-347, APP-349, REP7-128, REP7-129, REP7-130 and REP7-131
Route Development Report	PDOR - Appendix 3 A66 Northern Trans-Pennine Project Route Development Report	APP-247
Scheme Assessment Report	PDOR - Appendix 2 A66 Northern Trans-Pennine Project Scheme Assessment Report	APP-246
Scoping Opinion	EIA Scoping Opinion	APP-149
Site Waste Management Plan	EMP Annex B2 Outline Site Waste Management Plan (Clean) - Rev 2	REP3-007
SoCG with Westmorland and Furness District Council	Statement of Common Ground with Westmorland and Furness District Council	Document reference 4.5 (Rev 4)

Document Shorthand	Full Document Name	Examination Library Reference
SoCG with Durham County Council	Statement of Common Ground with Durham County Council	Document reference 4.5 (Rev 4)
SoCG with the DIO	Statement of Common Ground with the Defence Infrastructure Organisation	REP6-019
SoCG with the EA	Statement of Common Ground with the Environment Agency	Document reference 4.5 (Rev 4)
SoCG with Historic England	Statement of Common Ground with Historic England	Document reference 4.5 (Rev 4)
SoCG with Natural England	Statement of Common Ground with Natural England	Document reference 4.5 (Rev 4)
SoCG with North Yorkshire County Council	Statement of Common Ground with North Yorkshire County Council	Document reference 4.5 (Rev 4)
SoCG with Westmorland and Furness council	Statement of Common Ground with Westmorland and Furness Council	Document reference 4.5 (Rev 4)
Soil Management Plan	Environmental Management Plan Annex B9 Soil Management Plan (Clean) - Rev 2	REP3-013
Statement of Reasons	Statement of Reasons	Document reference 5.8 (Rev 4)
SU Negotiations Schedule	Statutory Undertakers Status of Negotiations Schedule	REP5-020
Technical Appraisal Report	PDOR - Appendix 1 A66 Northern Trans-Pennine Project Technical Appraisal Report	APP-245
Transport Assessment	Transport Assessment	REP2-003
Tree Loss and Compensation Report	Tree Loss and Compensation Planting Report	REP4-012
UKHSA's RR	UK Health Security Agency – Relevant Representation	RR-083
Viaduct Visualisations	Viaduct Visualisations	REP4-016 to REP4-020

Document Shorthand	Full Document Name	Examination Library Reference
WFD Compliance Assessment	Environmental Statement Appendix 14.1 WFD Compliance Assessment	APP-220

2. NATIONAL NETWORKS NATIONAL POLICY STATEMENT CONFORMITY

- 2.1.1. Under section 104(3) of the PA 2008, the application for the DCO must be determined in accordance with the relevant National Policy Statement ('NPS'), except where the Secretary of State is satisfied that one or more of the points set out in sections 104(4) to (8) of the PA 2008 apply. The relevant NPS is the National Networks National Policy Statement ('NNNPS') and the LPCS contains an assessment of the Project's conformity with the NNNPS, as detailed on a paragraph-by-paragraph basis within the NNNPS Conformity Table. The conclusions drawn from this assessment are that the Project is in conformity with all relevant policies of the NNNPS.
- 2.1.2. These Closing Submissions also address compliance with key requirements of the NNNPS and the Applicant can confirm that the information and clarifications to the original application documents submitted during the Examination, to which these Closing Submissions make reference, do not materially change the conclusions reached on policy conformity, as set out in the LPCS and as detailed in the NNNPS Conformity Table.
- 2.1.3. The Applicant confirms that none of the accepted changes under the Change Application has a material impact on the conclusions reached on the DCO Application's conformity with the NNNPS, as set out in the NNNPS Conformity Table.
- 2.1.4. The draft revised NNNPS (the '**draft NNNPS**') was published by the Department for Transport on 14 March 2023, for consultation, with the close of consultation on 6 June 2023. At Examination Deadline 7, the Applicant submitted the Draft NNNPS Conformity Statement. This sets out how the Project aligns with the policy requirements of the draft NNNPS. The Applicant draws attention to the transitional provisions in the draft NNNPS (paragraphs 1.16 and 1.17) which state that: "*for any application accepted for examination before designation of the 2023 amendments, the 2015 NPS should have effect in accordance with the terms of that NPS*" and that the draft NNNPS "*will not come into effect*". However, as also set out in paragraph 1.17 of the draft NNNPS, any emerging draft NPSs (or those designated but not having effect) are potentially capable of being important and relevant considerations in the decision-making process. Therefore, compliance with the NNNPS is the primary consideration in the decision-making process and the Applicant's views in that respect are set out in the LPCS but the Draft NNNPS

Conformity Statement has also been provided to the Examining Authority given the potential for provisions in the draft NNNPS to be important and relevant matters in the decision-making process.

- 2.1.5. To conclude, the conformity of the Project with the NNNPS, as reported in the LPCS and in the ES Chapters, has not changed and continues to be the case. In this regard the Secretary of State can be satisfied that the DCO can be determined to be in accordance with the NNNPS, as required by section 104(3) of the PA 2008.
- 2.1.6. If it would assist the Examining Authority in preparing its report to the Secretary of State, an updated version of the NNNPS Conformity Table could be provided to the Examination by the Applicant at Deadline 9. This updated version of the NNNPS Conformity Table would cross-reference, where relevant, for each paragraph of the NNNPS, any submissions made by the Applicant during Pre-Examination and Examination that relate to the matters set out in the table. In this regard, it would provide additional text (as track changes) to signpost to information and clarifications provided by the Applicant post submission of the DCO Application that are relevant to the consideration of conformity with policy of the NNNPS but it would not be providing any additional interpretation or explanation of how the Project conforms with these policies. The Applicant could also add to the LPCS at Deadline 9, if helpful, by way of an additional Appendix, the Draft NNNPS Conformity Statement submitted at Deadline 7.

3. NEED FOR, AND BENEFITS OF, THE PROJECT

- 3.1.1. It is government policy that there is a need for improvements to the strategic road network to facilitate economic growth, as set out in section 2 of the NNNPS. Therefore, the policy background supports the Project as long as it can be shown that it meets the tests set by the NNNPS and that the adverse impacts of the Project do not outweigh its benefits.
- 3.1.2. In addition, it is necessary to show that the Project would not lead to the breach of duties imposed on the Secretary of State and that the UK's international obligations would not be breached. This is considered in the LPCS. The LPCS contains a detailed assessment of the Project's conformity with the NNNPS, including compliance with policy regarding the need for the development.
- 3.1.3. The Applicant submitted at Deadline 7 the Draft NNNPS Conformity Statement following the publication of the draft NNNPS by the Department for Transport on 14 March 2023. The draft NNNPS has been published for consultation, which closes on 6 June 2023, and the Applicant's submission at Deadline 7 sets out how the Project also aligns with the draft NNNPS.
- 3.1.4. The Case for the Project sets out that the existing A66 is a key national and regional strategic transport corridor. It carries high levels of freight traffic and is an important route for tourism and connectivity for nearby

communities. There are no direct rail alternatives for passenger or freight movements along the corridor.

- 3.1.5. Despite the strategic importance of the A66, the route between the M6 at Penrith and the A1(M) at Scotch Corner is only intermittently dualled and has six separate lengths of single carriageway. The route carries local slow moving agricultural and other traffic making short journeys, which impacts road speeds, safety and capacity. It also includes a high number of private and direct access points along the route. This has a detrimental impact on other users, especially on the single carriageway lengths. The variable road standards, together with the lack of available diversionary routes when incidents occur, affect road safety, reliability, resilience, and attractiveness of the route.
- 3.1.6. If the existing A66 route is not improved, it will constrain national and regional connectivity due to its strategic importance as an east-west connection for freight and other vehicle movements. It may threaten the transformational growth envisaged by the Northern Powerhouse initiative and achievement of the Government's 'Levelling Up' agenda.
- 3.1.7. Various issues with the current A66 have been identified including those outlined in paragraph 1.7.6 of the Case for the Project. To address these issues, the Project Objectives were developed (see Table 1-2 of the Case for the Project), with reference to the following 'themes': economic, transport, community and environment. Table 1-3 of the Case for the Project outlines the Project's conformity with the Project Objectives and demonstrates in each case how they will be met.
- 3.1.8. The benefits derived from the Project have been identified as a result of technical assessments set out in the application, including the Transport Assessment, the Combined Modelling and Appraisal Report and the ES. That assessment of benefits is robust. The benefits include:
- (a) **Safety:** A consistent standard of dual carriageway, with a speed of 50mph at Kemplay Bank and 70mph in all other lengths, will lead to less accidents. Use of the 'old' A66 as part of the local road network will provide better and safer routes for cyclists and pedestrians. For more see Chapter 4 of the Case for the Project.
 - (b) **Connectivity:** Improving connectivity for people living and working nearby and creating better facilities for cyclists and pedestrians. Reducing congestion and improving the reliability of people's journeys between the M6 at Penrith and the A1(M) Scotch Corner and long-distance routes nationwide. It also improves connectivity between the key employment areas of Cumbria, Tees Valley, Durham and Tyne and Wear. Also, overall access for walking, cycling and horse-riding ('WCH') will be improved with approximately 33km of additional WCH route having been brought into the scope of the Project (see section 6 of these Closing Submissions). For more see Chapter 4 of the Case for the Project.

- (c) **Environmental:** Minimising noise levels for people living and working near the route and reducing the congestion currently occurring in the single carriageway lengths. The Project is also being designed to minimise any potential negative impacts on the natural environment and landscapes of the North Pennines and Lake District. For more see Chapter 12 of the ES and Chapter 7 of the Case for the Project.
- (d) **Economic:** Improving strategic regional and national connectivity, particularly for hauliers. HGVs account for a quarter of all traffic on the road and any delays to journeys can have a significant negative effect on business and commerce, including lost working time and missed shipment slots. For more see Chapter 5 of the Case for the Project.
- (e) **Tourism:** Improving access to key tourist destinations such as the North Pennines and Lake District. There are nearly 16 million visitors to the Lake District National Park each year with nearly 5 million visitors to the Yorkshire Dales National Park. While all journeys are not exclusively served via the A66, a significant portion of these journeys is currently made along this route. As the road improves, reduced delays, improved travel conditions and journey times for users will facilitate greater connectivity and reliability for users accessing these key tourist destinations. The potential effects of the Project on the tourism receptors along the route are considered in Chapter 13 of the ES.
- (f) **Community:** Re-connecting communities and providing better links between settlements along the route as well as improving access to services such as healthcare, employment areas and education. For more see Chapter 13 of the ES and Chapter 6 of the Case for the Project.
- (g) **Capacity:** Reducing delays and queues during busy periods and improving the performance of key junctions such as the A66/A6 and the M6 junction 40. For more see Chapter 4 of the Case for the Project.
- (h) **Increasing reliability:** An improved A66 with consistent speed limits, will lead to fewer accidents which will, in turn, make the road more reliable. Also, having a dual carriageway provides the option to close lanes where required due to accidents or breakdowns and to keep the traffic moving. For more see Chapter 4 of the Case for the Project.

3.1.9. In addition, the Project leads to significant benefits on a Scheme-by-Scheme basis. These benefits are considered in detail in Chapter 6 of the Case for the Project. This includes analysis of: (a) the existing problems within each Scheme's boundary; (b) how this has been addressed by the proposed design of each Scheme; and (c) the benefits each Scheme will deliver.

3.1.10. While each Scheme brings about its own benefits, it is clear that the principal strategic benefits of the Project, including those outlined at paragraph 3.1.8 above, are only derived from the dualling of the entire length of the A66 between the M6 and A1(M). Failure to deliver any Scheme in part or in whole would have a detrimental impact on the overall Project. The Project only delivers the identified benefits against the Project Objectives if delivered as a whole. The NTPRSS, which has its findings summarised in the PDOR, highlights some of the strategic benefits of the A66 dualling which includes:

- (a) Journey time savings, particularly for strategic trips (including freight);
- (b) Safety improvements, including a reduction in accidents (due to increased capacity significantly reducing the need for vehicles to overtake others on busy sections of single carriageway); and
- (c) Improved reliability (dual carriageway sections would reduce delays, incidents and the need for road closures).

3.1.11. The LPCS demonstrates conformity of the Project with the NNNPS, the National Planning Policy Framework ('**NPPF**'), the development plans of local authorities and other infrastructure and transport plans and strategies. It provides an analysis of the effects and the wide-ranging benefits of the Project in relation to policy set out in these statements, plans and strategies. Chapter 7 of the Case for the Project, with reference to the findings from the LPCS, describes the careful consideration of the balance of the benefits of the Project against its impacts, and concludes that the Project's benefits significantly outweigh its adverse impacts (paragraph 7.6.5).

4. ALTERNATIVE ROUTE OPTIONS

4.1.1. The route selection for the Project has followed a detailed, careful and proportionate options appraisal process. The options appraisal undertaken followed the Transport Analysis Guidance ('**TAG**') and Project Control Framework (see paragraph 3.2.1 of the PDOR for more details) processes normally used to assess road schemes and comprised a detailed and comprehensive process taking on board a broad range of considerations including environment, policy, engineering and consultation responses.

4.1.2. The NNNPS outlines the approach required in respect of alternatives and, in short, sets out that:

- (a) Applicants should comply with all legal requirements and any policy requirements set out in the NNNPS on the assessment of alternatives including in respect of specific policy tests, requirements of the Environmental Impact Assessment ('**EIA**') Directive and other legal requirements for the consideration of alternatives (see paragraph 4.26); and

- (b) The project should be subject to an options appraisal and the decision-maker must be satisfied that such a process has been undertaken (see paragraph 4.27).
- 4.1.3. Chapter 3 of the ES describes the alternatives that have been considered throughout the Project development process and how environmental impacts have been considered to inform the decision-making process. Details of the options considered including the final selection of the preferred route process have been provided with an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects.
- 4.1.4. In addition to Chapter 3 of the ES, a comprehensive explanation of the Project's background and history in respect of options and alternatives is contained in the PDOR. This document outlines the Project's history and its development over time (see section 1.3, in particular). The PDOR was submitted with the application to assist with describing the development of the route design and alignment given the complex and detailed optioneering history which has taken place.
- 4.1.5. As outlined in Chapter 2 of the ES, the Project comprises a number of 'Schemes' and the development of each is explained in the PDOR. This detailed consideration is reflective of the fact that the Project brings about significant benefits at both a Project-wide and Scheme-by-Scheme level. While each Scheme brings about its own benefits, it is clear that the principal strategic benefits of the Project are only derived from the dualling of the entire length of the A66 between the A1(M) and M6 – see section 3.
- 4.1.6. The PDOR focuses primarily on the changes to the route which were made between statutory consultation and submission of the DCO Application and in doing so it builds on the Route Development Report which was produced for statutory consultation. A number of other key documents relevant to alternatives and optioneering were appended to the PDOR and therefore included as part of the Application including the Technical Appraisal Report (the optioneering document published at the Option Identification stage) and the Scheme Assessment Report (the optioneering document published at the Option Selection stage).
- 4.1.7. This comprehensive suite of optioneering documents should be read alongside the Case for the Project which outlines the overall need and case for the Project and sets out the consideration of policy explaining how it has factored into the selection of certain options and alternatives. This is of particular relevance where certain NNNPS tests have been engaged. Detailed consideration of how such tests were factored into options analysis is outlined in the relevant sections of the Case for the Project.
- 4.1.8. During the Examination, 'Alternative Route Options' were a subject of Issue Specific Hearing 1 ('ISH1') held on 30 November 2022. The ISH1 Note presents a detailed analysis of the case presented by the Applicant

at ISH1 including with reference to the key Application documents supporting the assessment of options and alternatives.

- 4.1.9. In particular, the subject matter of the hearing predominantly related to three main aspects of route selection. A summary of each and signposting to relevant documents is outlined below.

4.2 Scheme 08 (Cross Lanes to Rokeby)

- 4.2.1. Discussions were held at ISH1 about this Scheme concerning the route selection process and in particular the reasons for selection of the “Black Option” over the “Blue Option”. The route selection process for Scheme 08 was set out at ISH1 and is outlined in section 2.1 of the ISH1 Note with reference to the heritage assessment and the effect of the proposed development on Rokeby Park Registered Park and Garden (‘RPG’).
- 4.2.2. The junction option development at this location is outlined within the Route Development Report from paragraphs 5.8.20 to 5.8.51 and paragraphs 5.8.92 to 5.8.93. In addition, paragraphs 5.7.33 to 5.7.35 of the PDOR explain the principal considerations. The principal consideration in the preference for the Black Option (with a western junction at Rokeby) is the impact on the Grade II* Rokeby Park RPG.
- 4.2.3. Analysis of paragraphs 5.131 and 5.132 of the NNNPS, which concern the impact of a proposed development on the significance of a designated heritage asset, is set out in the ISH1 Note at pages 11 to 12 and confirmed in ISH1 by Historic England in oral submissions. As set out in the LPCS, there will be no substantial harm to or loss of any heritage assets as a result of the Project, therefore paragraph 5.133 is not considered in any greater detail. If the Blue Option had been taken forward, the identified partial loss would have required more detailed analysis against paragraph 5.131 and 5.132.
- 4.2.4. In policy terms, while it has not been concluded that the Blue Option would cause substantial harm, it would lead to a partial loss as it would have a direct physical effect on the Rokeby Park RPG. The Applicant balanced this and other factors in its consideration of the Blue Option against the Black Option and considered that given the lower level of harm and lack of direct physical effect caused by the Black Option, it was far more favourable in policy terms.
- 4.2.5. The ISH1 Note also records the views of Historic England as expressed at ISH1 and confirms that it considers that the Applicant ought to seek to select the route causing the least harm and therefore supports the choice of the Black Option.
- 4.2.6. The Applicant notes that Durham County Council continues to maintain a preference for the Blue Option over the Black Option, as set out in the SoCG with Durham County Council, where the Applicant’s response is also clearly set out.

4.3 Scheme 06 (Appleby to Brough)

- 4.3.1. Discussions were held at ISH1 concerning the route selection process for the Scheme and in particular the reasons why the alternative route north of the existing A66 into the land owned by the Ministry of Defence ('MoD') and into the North Pennines Area of Outstanding Natural Beauty ('AONB') was discounted.
- 4.3.2. The Applicant's response given at the hearing is outlined in section 2.2 of the ISH1 Note which in turn refers to Section 5.5 of the PDOR, Section 5.6 of the Route Development Report and paragraphs 1.5.47 to 1.5.57 of Chapter 3 of the ES in outlining the rationale for the route selection in this area.
- 4.3.3. As set out on pages 17 and 18 of the ISH1 Note, the alternative route north of the existing A66 has been identified as operational and required for MoD active training purposes and Crown consent for the land could not be secured. In addition, such a route would require a large incursion into the AONB. The Applicant's Response to RRs further outlines the Applicant's rationale for not pursuing a more northern alignment in response to several representations made on this proposed alignment.
- 4.3.4. Given that the promoted route sits on the southern boundary of the AONB and is partially within the AONB, there was a need for the Applicant to consider the policy in paragraphs 5.151 to 5.155 of the NNNPS as part of the route selection process. Such policy concerns development proposed within nationally designated areas (paragraphs 5.151 to 5.153) as well as development which might affect such areas (paragraphs 5.154 to 5.155). Where development is proposed within such areas it is necessary to demonstrate exceptional circumstances and that the development is in the public interest (paragraph 5.151 of the NNNPS).
- 4.3.5. The Applicant has therefore made such a case for the development of Scheme 06, which is outlined in detail within paragraphs 6.5.57 to 6.5.191 of the Case for the Project. These paragraphs also outline how the route conforms with paragraphs 5.152 to 5.155 of the NNNPS.
- 4.3.6. Central to the case under paragraph 5.151 of the NNNPS is the requirement to demonstrate "*the need for the development, including in terms of any national considerations, and the impact of consenting, or not consenting it, upon the local economy*". This is covered in detail from paragraphs 6.5.68 to 6.5.75 of the Case for the Project. This considers the need for the development at both a Project and Scheme level. The Scheme-specific benefits of the Appleby to Brough section of the route are further detailed in section 6.5 of the Case for the Project.
- 4.3.7. The location-specific benefits of Scheme 06 (Appleby to Brough) are outlined in Table 6-4 of the Case for the Project. They include improved road safety and journey time savings and are an integral part of meeting the Project Objectives and the success of the Project as a whole.

Exclusion of part or all of this Scheme, or failure to deliver it as part of the whole Project, would have a detrimental impact on the overall Project. As outlined in Section 3 above, the Project only delivers the identified benefits against the Project Objectives if delivered as a whole.

- 4.3.8. Paragraph 5.151 of the NNNPS requires the Applicant to assess “*the cost of, and scope for, developing elsewhere, outside the designated area, or meeting the need for it in some other way*”. This is outlined in paragraphs 6.5.76 to 6.5.136 of the Case for the Project. Such consideration highlights an alternative at the eastern end of the Scheme outside of the AONB. It is concluded that while there is scope to develop a route wholly outside the AONB at the eastern end, the development of this route would have significant disadvantages compared to the promoted route in relation to cost, environmental criteria and stakeholder and public considerations.
- 4.3.9. In addition, paragraph 5.151 of the NNNPS requires the Applicant to consider “*any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated*”. Such consideration is outlined in paragraphs 6.5.137 to 6.158 of the Case for the Project, which includes detailed consideration of any detrimental effect on a number of environmental areas including landscape and visual impact with reference to the ES.
- 4.3.10. Overall, it is concluded from the assessment that there are exceptional circumstances in favour of the Project being partially within the AONB and that the Project is in the public interest. There is therefore no reason in policy terms for the Secretary of State to refuse development consent for the development of the Project partially within the AONB.
- 4.3.11. In addition, as outlined in the ISH1 Note on page 18, relevant considerations in respect of necessitating that defence interests are considered, including reference to paragraph 5.54 of the NNNPS, have been factored into option analysis at this location. Paragraph 5.54 outlines that: “*...It is important that new national networks infrastructure does not significantly impede or compromise the safe and effective use of any defence assets*”. The proposal for Scheme 06 as presented in the Application minimises the impact on MoD’s operations and has been agreed with the Defence Infrastructure Organisation (‘DIO’) on behalf of the MoD (see the SoCG with the DIO).

4.4 Scheme 0405 (Temple Sowerby to Appleby)

- 4.4.1. Discussions were held regarding this Scheme at ISH1 including consideration of the route selection process at Kirkby Thore having regard to its proximity to residential properties. The route selection process for Scheme 0405 was set out at ISH1 as outlined in section 2.3 of the ISH1 Note. In addition, the route selection process is elucidated in more detail in section 5.4 of the PDOR and in section 5.5 of the Route Development Report.

4.5 Scheme 07 (Bowes Bypass)

- 4.5.1. It is also noted that the Project will result in a further minor encroachment into the AONB at Scheme 07 Bowes Bypass. The policy in paragraphs 5.151 to 5.155 of the NNNPS was therefore considered for this section of the Project at paragraphs 6.6.56 to 6.6.110 of the Case for the Project. Such consideration includes the cost of, and scope for, developing elsewhere, outside the designated AONB, or meeting the need for it in some other way as set out in paragraphs 6.6.78 to 6.6.83.
- 4.5.2. It was concluded that the route alignment outside the AONB was likely to be more costly and more complex and would require additional land and increase negative environmental impacts including those on deciduous woodlands. The conclusion drawn was that there are clear and well evidenced benefits of consenting the route at a national level and at a local level in terms of the economic benefits that would be delivered. The impact of not consenting it, upon the local economy, is that these benefits would not be achieved and this in turn may threaten the transformational growth envisaged by the Northern Powerhouse initiative and the significant benefits of the Project as a whole. This is further evidenced by the explanation in section 3 above that the overall benefits are achieved on a Project-wide basis. These national and local benefits are considered to be 'exceptional circumstances' and are demonstrated to be in the public interest.
- 4.5.3. To conclude, the Applicant's consideration of alternative route options has been detailed and comprehensive and is in compliance with the policy requirements in the NNNPS as well as with other specific policy areas and all legal requirements.

4.6 Proposed replacement site for the Brough Hill Fair

- 4.6.1. 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.
- 4.6.2. The Applicant refers to the BHF Statement for its full response to the issues raised by the Gypsy Community relating to the proposed relocation of the BHF. Throughout its development of the Project the Applicant has sought to understand the submissions and concerns of the Gypsy Community in relation to the BHF. The Applicant has engaged with the Gypsy Community and the concerns raised by them extensively and fully understands the cultural heritage and importance of the BHF to the community, as set out in the BHF Statement.
- 4.6.3. The BHF Statement also responds to issues raised by Messrs Heron, via their agent George F White LLP, relating to the proposed relocation of the BHF. The Applicant has continued to engage with Messrs Heron throughout the Examination, with recent correspondence focusing on the

Operational Risk Assessment (provided by the Applicant as an Appendix to the BHF Statement) in relation to the replacement BHF site, and will continue to do so after the Examination closes.

Alternative route suggested by the Gypsy Community

- 4.6.4. The Gypsy Community proposes its own alternative route, known as the ‘Billy Welch Straight Line’ alignment, which runs north of the existing A66 and would retain the BHF in its present location. As explained throughout the Examination and detailed in the BHF Statement, the Applicant considers this alternative route not to be consentable for two main reasons.
- 4.6.5. First, it would lead to significant incursions into the AONB (contrary to NNNPS paragraphs 5.151 to 5.152) and secondly, it would lead to unacceptable impacts on MoD operational land (contrary to NNNPS paragraph 5.54). The Applicant’s assessment is that the potential concerns raised by the Gypsy Community are not sufficient to outweigh the negative policy implications that would result from its proposed alternative alignment and that Crown consent for the land could not be secured. Further detail of the Applicant’s rationale for the route selection in this area is set out above in the discussion of alternatives for Scheme 06 and in the supporting documents referred to.
- 4.6.6. The Gypsy Community’s case in favour of the alternative alignment is closely related to the arguments it has advanced on EqIA, interruption to its use of the BHF site and unlawful discrimination, and those issues are therefore addressed in the following paragraphs.

EqIA

- 4.6.7. The EqIA records the Applicant’s consideration of its public sector equality duty (**‘PSED’**). The Applicant identified the Gypsy and Traveller Communities as key stakeholders in the development of the Project. In the baseline (section 2.6), under the Protected Characteristic Group of ‘Race’, the EqIA acknowledges the presence of the Gypsy and Traveller Communities in the study area, the historic nature of both the Appleby Horse Fair and the BHF, and the cultural significance of these annual gatherings.
- 4.6.8. The EqIA acknowledges the potential negative effects of the Project on the Gypsy and Traveller Communities during construction and operation of the Project (at sections 2.9-10) at both Fair sites and the linked traditions, rights and activities. The EqIA also 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 during detailed design and then construction of the Project. In addition, the EqIA provides sufficient

information to enable the Secretary of State to fulfil the PSED upon them in determining the DCO Application.

Continuity and article 36 of the dDCO

- 4.6.9. Throughout the development of its proposals for the Project, the Applicant has engaged with the Gypsy Community extensively – particularly in respect of its proposals for the relocation of the BHF – in recognition of the need to have regard to the importance of maintaining the continuity of the traditions, rights and activities in relation to the BHF. This process, and the Applicant’s consideration of alternative locations for the replacement BHF site, are set out in detail in the ISH3 Note – Response to Agenda Item 10 on BHF. It is noted that despite the criticisms levelled at the Applicant in relation to its choice of site for relocation of BHF, no credible alternative sites have been suggested by the Gypsy Community or Messrs Heron.
- 4.6.10. The Applicant notes the Gypsy Community’s suggestion that the mitigation provided for the loss of the BHF site is inadequate. However, there is no evidence which establishes that in principle a satisfactory replacement site cannot be achieved on the site that has been proposed. Article 36 of the dDCO will operate to ensure that activities carried out at the existing BHF site will be enabled to continue on the proposed replacement BHF site should development consent be granted.
- 4.6.11. 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.
- 4.6.12. That scheme must provide for the replacement BHF site to be a suitable replacement for the existing BHF site in terms of 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. It 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. The scheme must also make provision for the maintenance and management of the replacement BHF site.
- 4.6.13. Article 36(2)(b) of the dDCO requires that 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.
- 4.6.14. Article 36 therefore ensures that there can be continuity to the activities, traditions and associations expressed at the existing BHF site as far as practicable, as there can be no interruption to those activities on the

existing BHF site unless the scheme for the replacement BHF site has been developed in consultation, approved by the Secretary of State and then satisfactorily implemented, such that the replacement BHF site is ready for use.

Unlawful Discrimination

- 4.6.15. For the contention that the Project results in unlawful discrimination as a result of its effect upon the BHF to succeed, it would have to be established that the loss of the current BHF site will result in the loss of the BHF due to the replacement site being unsuitable. It would then need to be established that this constitutes differential treatment in breach of Article 14 of the European Convention on Human Rights and the positive obligation of the state to facilitate the Gypsy way of life: *Chapman v United Kingdom (2011) 33 E.H.R.R.18* at [96].
- 4.6.16. As explained above, article 36 of the dDCO ensures that the Project can only proceed if a suitable replacement site in form and nature is provided. There is no evidence that this cannot be achieved. Once a suitable replacement site is provided, if the Gypsy Community chooses not to use it, then any loss of the BHF is a result of the Gypsy Community's choice and not as a result of the Project. Therefore, it is not a matter which should be given significant weight in the balance against the Project.
- 4.6.17. In these circumstances, the Project cannot be argued to give rise to any differential treatment such that discrimination can be established.
- 4.6.18. Further and in any event, even if the Project were to be assessed as giving rise to differential treatment, it pursues a legitimate aim and its effects are proportionate. The land which currently hosts the BHF is required for the Project. The Project is justified in the public interest. The public interest objectives and benefits of the Project cannot be delivered by an alternative which does not give rise to the same impact upon the BHF site. The delivery of the Project benefits is a legitimate aim.
- 4.6.19. In terms of proportionality, namely whether the aim outweighs the severity of the effect of replacing the BHF site, the dDCO contains commitments to mitigation which ensure that any impacts as may arise have been mitigated as far as reasonably practicable through the provision of a suitable alternative site, secured by article 36 of the dDCO.

5. ENVIRONMENTAL MANAGEMENT PLAN AND PROJECT DESIGN PRINCIPLES

- 5.1.1. The Applicant has considered carefully the need to adequately and robustly secure mitigation measures to ensure the impacts of the Project are suitably controlled. However, the Applicant is also conscious of the need to streamline project delivery, given the Project is subject to the 'Project Speed' initiative.

- 5.1.2. For this reason, the Applicant has opted to promote an approach to the securing of mitigation that differs from the standard approach of ‘requirements’ (akin to planning conditions) being contained in a Schedule to the dDCO. This takes the form of securing, through article 53 of the dDCO, compliance with an EMP mechanism. This works alongside compliance with the Project Design Principles which is secured by article 54 of the dDCO and itself secures design-related required mitigation.
- 5.1.3. The Applicant’s position on both the EMP and Project Design Principles is explained in further detail below.

5.2 EMP

- 5.2.1. The Applicant acknowledges that the proposed EMP mechanism appears novel on its face and explained the reasoning for this approach in some detail at Issue Specific Hearing 2 (‘ISH2’), and a summary of the oral submissions made at that hearing is contained in the ISH2 Note under Agenda Item 2.0.
- 5.2.2. There is no legal or policy requirement for mitigation measures to be secured by way of standalone DCO requirements and the Applicant is clear that the way it is proposing to secure the mitigation in this way through the dDCO is legally robust, given that any provision in a DCO is a legally enforceable mechanism.
- 5.2.3. The Applicant has set out in a number of submissions, including the ISH2 Note, the proposed EMP process, but, in summary:
- (a) should the dDCO be made, the first iteration EMP would be fixed at that point, as a certified document under article 49 of the DCO; and
 - (b) under article 53 of the dDCO, no works on any part of the Project can commence until a second iteration EMP (which must be substantially in accordance with the first iteration EMP) for that part has been consulted on with prescribed consultees (the process for which is set out in Chapter 1 of the first iteration EMP) and then approved by the Secretary of State.
- 5.2.4. Article 53 of the dDCO also makes provision for an approved second iteration EMP to be subsequently amended by the Secretary of State or the Applicant (depending on the nature of the proposed amendment). This process was also explained in detail at ISH2 and a summary of the submissions made by the Applicant at that hearing can be found in the ISH2 Note. Further to comments received from Interested Parties, drafting was added to article 53 of the dDCO to provide for a ‘referral’ process to the Secretary of State where the Applicant wishes to determine to amend a second iteration EMP, to provide a level of external oversight of that process. The Applicant understands this to be welcomed by all Interested Parties.

- 5.2.5. The first iteration EMP contains a number of overarching commitments in the REAC – these will follow through into a more detailed second iteration EMP.
- 5.2.6. The second iteration EMP would be developed and refined in accordance with the first iteration EMP, alongside the detailed design and it is in that document that the detailed mitigation measures would be set out. As such, the first iteration EMP sets out what can be seen as environmental principles, outcomes or parameters that must be met by the Project. However, the question of *how* those outcomes or parameters are complied with would be developed and approved as part of a second iteration EMP. That being said, where the Environmental Statement has concluded that a specific measure or action is needed to be undertaken to mitigate an effect, that specific measure or action is contained in and secured through the first iteration EMP.
- 5.2.7. A number of detailed management plans, schemes, method statements and strategies are also required to be developed to ensure impacts in respect of all environmental topics are suitably controlled. These are set out in the REAC. These would naturally supplement the commitments contained in the REAC, with most being subject to approval by the Secretary of State as part of a second iteration EMP. A number of these documents are in outline/essay plan form as Annexes to the first iteration EMP.
- 5.2.8. In this way, the Applicant's approach is no different to where the provision of a second iteration EMP is secured by way of a DCO requirement in other DCOs approved by the Secretary of State¹. The Applicant has adopted this 'conventional' approach and supplemented it, with a view to ensuring a streamlined approach to the delivery of the Project. In essence, therefore, the Applicant is only promoting a position that is different in form rather than in substance to the 'normal' position, in terms of securing environmental mitigation.
- 5.2.9. Under article 53 of the dDCO, on completion of construction of a part of the Project, a third iteration EMP must be consulted upon and implemented during operation. The Applicant has set out in the ISH2 Note the purpose and scope of a third iteration EMP and why approval by the Secretary of State is not considered appropriate.
- 5.2.10. As set out in the Responses to Examining Authority's WQs in relation to WQ EMP1.1, this approach is fully compliant with the requirements of the Infrastructure Planning (EIA) Regulations 2017 ('**EIA Regs**') in that the Secretary of State will have sufficient certainty (and, indeed, control post-consent) as to the environmental impacts of the Project to enable them to make a fully informed decision on the DCO Application.
- 5.2.11. Engagement has been on-going on the first iteration EMP (and, indeed, on the overall EMP mechanism) both pre-application and throughout the

¹ There are numerous examples of this mechanism being included in highways DCOs – for example see the A57 Link Roads Development Consent Order 2022 and the A428 Black Cat to Caxton Gibbet Development Consent Order 2022.

Examination with a number of Interested Parties, including the host local authorities, Natural England, Historic England and the Environment Agency ('EA'). The amended versions of the first iteration EMP submitted into the Examination take into account a number of comments received from these bodies, both through written submissions into the Examination and through engagement.

- 5.2.12. As set out in the Statements of Common Ground ('SoCGs') with various interested parties, including the host local authorities, Natural England, the EA and Historic England, these parties are generally content with the principle of the EMP process and the mitigation measures set out therein.
- 5.2.13. The Applicant is aware that Historic England has expressed some residual concerns with the EMP process – these are set out in the Statement of Common Ground between the parties. The Applicant has sought to engage positively with Historic England on these points and has sought to make amendments to the EMP where considered appropriate. However, the Applicant acknowledges it has not been able to reach full agreement with Historic England on all points of detail.
- 5.2.14. The Applicant is also aware that Westmorland and Furness Council has some specific outstanding comments on some of the EMP commitments, which the Applicant will continue to engage with the Council on. An update will be provided at Deadline 9.
- 5.2.15. As a final point, at the outset of the Examination a number of Interested Parties expressed concern with the Applicant's proposed 'self-approval' process. As the Applicant has explained throughout the Examination (including in the ISH2 Note), the scope of the matters that the Applicant can self-approve is limited to those matters generally accepted as being appropriate for such a process in other DCOs and, in any event, the Applicant has included provisions that afford to the Secretary of State a power to 'call-in' certain proposed determinations by the Applicant. Ultimately, the Secretary of State has the primary approval role, by way of approving a second iteration EMP (which will set out the scope of the matters that the Applicant can self-approve).

5.3 Project Design Principles

- 5.3.1. The Project Design Principles set out the Project-wide and scheme-specific design principles, and by virtue of article 54 of the dDCO the detailed design of the Project must be carried out substantially in accordance with it. The detailed design of the Project is also regulated further by article 54, by tying it to the works plans and engineering section drawings.
- 5.3.2. This approach is reasonably standard in substance, albeit conventionally these obligations are secured by way of a standalone DCO requirement. As such, as with article 53, the Applicant is promoting an approach with article 54 that is only different in form rather than substance.

- 5.3.3. As with the EMP, the Project Design Principles document has been developed having regard to the conclusions of the Environmental Statement and secures, amongst other things, necessary design mitigation. It also secures principles to ensure the Project is designed sensitively, applying 'good design' outcomes where reasonably practicable.
- 5.3.4. Opportunities have been sought in the design and management of the landscape elements of the Project to promote the conservation, protection and improvement of the physical, natural and historic environment within the Project and its setting, and to ensure the Project is appropriately softened and integrated within its landscape context.
- 5.3.5. Article 54 provides for the Project Design Principles to be amended, but only with the approval of the Secretary of State and ensuring that such an amendment could not give rise to any materially new or materially different environmental effects (as defined in the dDCO).
- 5.3.6. As with the EMP, the Applicant has worked hard to engage positively with Interested Parties on the content of the Project Design Principles and, as reported in the SoCGs, the host local authorities and statutory environmental bodies are generally content with the principle and content of the Project Design Principles following various amendments made during the Examination.

6. ENVIRONMENTAL MATTERS

6.1 Introduction to the Environmental Statement

- 6.1.1. The Applicant submitted an Environmental Statement with the DCO Application, which reported the likely significant effects of the Project on the environment in accordance with the EIA Regs.
- 6.1.2. The Applicant also submitted an ES Addendum which detailed whether the 22 design changes accepted by the Examining Authority gave rise to any new or different likely significant effects on the environment when compared to those reported in the Environmental Statement. The ES Addendum mirrored the structure of the Environmental Statement and adopted the same methodology.
- 6.1.3. Chapter 4 of the ES sets out the methodology for the assessment of likely significant environmental effects. This is then explained in further detail in each topic chapter, which sets out how policy and legislative requirements have been taken into account for that topic.
- 6.1.4. This methodology was developed in consultation with stakeholders and pursuant to the Scoping Opinion. Although some aspects of this have been the subject of representations at Examination, in general the approach to assessment methodology for each chapter was agreed with the relevant statutory body for that discipline as being appropriate and in

accordance with policy requirements as set out in the SoCGs with the appropriate bodies. Those SoCGs also capture areas where there was disagreement or residual issues remain (albeit these are limited).

- 6.1.5. The Applicant has adopted the well precedented *Rochdale* envelope approach to the assessments (given the flexibility sought in the dDCO), ensuring that a reasonable worst-case scenario has been assessed and reported on. This has included consideration of the Limits of Deviation sought in the dDCO.
- 6.1.6. As set out above, necessary environmental mitigation is secured through a combination of the EMP and Project Design Principles, together with the appropriate articles in the dDCO.
- 6.1.7. It is not necessary or proportionate for this document to summarise the outcomes of each topic assessment (see Chapter 16 of the ES which sets out a summary of assessment of residual likely significant effects by scheme). Instead, the below sections focus on the topics where particular issues have arisen during the Examination or where the Environmental Statement reported a number of residual likely significant effects.

6.2 Traffic and Transport

- 6.2.1. Key issues to be addressed by the Project are set out in section 3 of this document. The specific transport-related issues as set out in full at paragraph 1.7.6 of the Case for the Project include regular closures along the route due to planned road works; regular closures along the route due to incidents; lengths of single carriageway; poor diversionary routes upon road closures; local severance issues; variability in average speeds and unreliable journey times; congestion and safety concerns.
- 6.2.2. Responding to these key issues, the Project objectives, as set out in Table 1-2 of the Case for the Project, contain several relating to the transport 'theme' which seek to address the issues with the current route. Those objectives include to:
- (a) Improve road safety, during construction, operation and maintenance for all;
 - (b) Improve journey time reliability for road users;
 - (c) Improve and promote the A66 as a strategic connection for all traffic and users;
 - (d) Improve the resilience of the route to the impact of events such as incidents, roadworks and severe weather events; and
 - (e) Seek to improve WCH provision along the route.
- 6.2.3. As noted in section 3 above, the Project's conformity with the Project objectives is set out at Table 1-3 of the Case for the Project, and the specific transport benefits are set out in Chapter 4 of that document,

including reduced journey times, safety benefits, reduced congestion and wider economic benefits and opportunities.

- 6.2.4. The Transport Assessment assesses and presents the impact of the Project on the strategic and local highway network, road safety and local sustainable modes of transport.
- 6.2.5. Chapter 2 of the Transport Assessment identifies the relevant national, regional and local transport planning policy context of the Project. Other relevant strategies and guidance are also considered. Table 2-1 in that document provides a summary of the compliance of the Transport Assessment with the relevant policies. The Project is supported by, and aligns with, national, regional and local planning and transport policies. It will create a high quality, reliable route from Penrith to Scotch Corner that meets the future needs of traffic demand, enables economic growth, and improves the quality of life for communities, whilst reducing journey times for users.
- 6.2.6. In terms of the operation of the Strategic Road Network a number of factors contributes to overall better network performance as a result of reduced congestion resulting in reduced journey time and reliability, as set out in chapter 7 of the Transport Assessment, which forecasts that with the Project in place it is anticipated that users will save between 10 and 13 minutes (19-22%) when travelling along the A66 corridor in future years. On the local network, this saving produced by the Project will have the effect of relieving the existing highway infrastructure in local communities and allow use more appropriate to its place within the roads hierarchy by removing through traffic and improving the efficiency of local journeys.
- 6.2.7. The improved linkage which would be provided by the Project benefits communities within the north of England, who, due to the rural nature of the region, often lack access to key local services for example, GP surgeries, primary schools and supermarkets. These people are often required to commute over longer distances than average to access improved employment opportunities. The Project is therefore important as it facilitates these longer distance journeys through improved journey times and journey time reliability. The increased flow also reflects more tourists benefiting from improved links to areas such as the Lake District and the AONB, thereby improving the economies within this area.
- 6.2.8. In terms of local access arrangements, the Project aims to accommodate existing access where possible, either in its present form, or by relocation, or by means of new local roads and the use of de-trunked sections of the original A66. Junction upgrades proposed will provide benefit to the local community in ensuring improved and separate local accesses for both business and the local road network, allowing local traffic movements to avoid the A66. Further discussion on local access provisions under each of the Schemes can be found in the Case for the Project and across the application documentation.

- 6.2.9. In terms of road safety, the assessment of the safety impact of the Project is set out in more detail in chapter 9 of the Transport Assessment. The A66 has a higher-than-average number of accidents in some sections of the route, with a number of accident cluster sites. A number of these sites are either located in single carriageway sections or in dual sections adjacent to single carriageway sections. Varying standards along the route with a mixture of single and dual carriageway sections leads to difficulties with overtaking, poor forward visibility, and difficulties at junctions as a result of short merges and diverges and right turning traffic off and on to the A66. A road safety appraisal has been undertaken as part of the Transport Assessment, which assesses the likely change in the number of road accidents within the area of focus and influence of the A66 route as a result of the improvement, and over the 60-year appraisal period, the Project is assessed to save 281 personal injury accidents and result in an overall reduction of 530 casualties.
- 6.2.10. A number of issues were raised during the course of the Examination which related to traffic and transport issues, the Applicant's responses to which can be summarised as follows:
- (a) First, the position on de-trunking arrangements. In ExQ1 at TA1.1 the Applicant was asked to provide an update on the progress of de-trunking agreements. The Applicant's Responses to Examining Authority's WQs set out the latest position and indicated that the Applicant continues to work with the local highway authorities to reach an agreed position on matters of principle and detail. This was updated in the ISH3 Note, where the Applicant confirmed it considered that agreement would be reached before the end of the Examination.
 - (b) Secondly, is traffic modelling in Penrith. This relates to a concern that the Project will worsen current congestion issues in Penrith, notably around M6 Junction 40 and Kemplay Bank roundabout, and additionally impact upon the access/egress arrangements to/from Skirsgill Depot. The Applicant confirmed in ISH3 that the modelling has been discussed with Cumbria County Council, now Westmorland and Furness Council, and that further dialogue is required with the local authority. In the ISH3 Note, the Applicant confirmed that a traffic model would be presented at a meeting on 17 March. Following this and other discussions on the matter the traffic model was provided to Westmorland and Furness Council, which has reported that it is now more confident that the proposed design will cope with the forecasted traffic growth to an acceptable level. It is the Applicant's view that there are no matters remaining which require resolution prior to closure of the Examination. Any outstanding matters relate to the detailed design.
 - (c) Thirdly, the traffic impacts of the Project on 'The Sills' within Barnard Castle. These were discussed at ISH1 which examined

alternative route options. The Examining Authority queried the forecast flow levels associated with the Blue Option and the Black Option for Scheme 07. The ISH1 Note provided clarity on the traffic modelling and concluded that the difference in flows between the Black and Blue Options at The Sills could be predominantly attributed to the location of the westbound A66 junction at Rokeby. The ISH1 Note – Response to Agenda Item 2.1: The Sills considered through a more granular approach the effects and impacts of additional traffic on The Sills on noise, air quality, visual and community health and wellbeing, with regard to the Institute of Environmental Assessment’s Guidelines for the Environmental Assessment of Road Traffic (1993). This granular assessment did not identify any additional impacts that would change the conclusions found in the application documents.

- (d) Fourthly, infrastructure provision for freight. In ExQ1 at TA 1.10, the Applicant was asked about a separate piece of work it is undertaking in terms of improving the services provided to its freight customers. The Applicant confirmed in its Responses to Examining Authority’s WQs that the freight study was scoped around the whole of the A66, including interface with the A1(M) and M6. The Applicant remains of the view that the review is not likely to recommend additional infrastructure interventions within the Order limits of the Project. This matter remains not agreed with Westmorland and Furness Council, as set out in the SoCG with Westmorland and Furness Council, and the Applicant’s position on this matter in so far as it relates to Westmorland and Furness Council’s concerns is as set out in that document.
- (e) Fifthly, the Applicant is also aware that Westmorland and Furness Council has some outstanding comments on funding for the Appleby Horse Fair Traffic Management Plan as well as comments in relation to providing stopping places on de-trunked sections of the A66. These comments, together with the Applicant’s position on them, are as set out in the SoCG with Westmorland and Furness Council.
- (f) Finally, the Applicant considers that its position on diversions is robust. This has been raised by the local authorities in their local impact reports and written representations (see, e.g. CCC and EDC’s LIR, DCC’s LIR and NYCC’s and RDC’s WR). From a construction phase perspective, any diversions required are provided for by the EMP. The relevant management document is the CTMP, as set out at Ref: D-GEN-10. This specifies that the CTMP will provide for, e.g. *“details of proposed diversion routes, durations of use and proposals for encouraging compliance with designated diversion routes (with consideration for potential noise impacts)”*. As agreed in Statements of Common Ground, the CTMP will include commitments for

diversions to be discussed with the local highway authorities in advance of required closures. In terms of the operational phase, this was also raised in ExQ1 at TA 1.6. The Applicant responded in its Responses to Examining Authority's WQs, and has also provided an update in its ISH3 Note. Diversions would only be necessary where incidents require the closure of the A66. There is no change to operational diversions of the A66 as a result of the Project and the Applicant would anticipate diversions to be less frequent as the dualling allows for better incident management. One of the diversion issues, however, remains not agreed. Westmorland and Furness Council's concern over loss of right hand turns across the A66 carriageway meaning slightly longer routes, particularly during temporary diversions. Whilst it is accepted that slightly longer routes will result for some traffic in some specific instances, the Applicant will continue to engage with the councils on this issue and seek agreement that its proposals represent the optimal solution, as set out in its SoCG with Westmorland and Furness Council.

Walking, Cycling and Horse Riding (WCH)

- 6.2.11. Section 136 of the PA 2008 confirms that an order granting development consent may extinguish a public right of way over land only if the Secretary of State is satisfied that an alternative right of way has been or will be provided, or the provision of an alternative right of way is not required.
- 6.2.12. This is also affirmed in paragraphs 5.184 to 5.185 of the NNNPS which states that: *"Public rights of way, National Trails, and other rights of access to land (e.g. open access land) are important recreational facilities for walkers, cyclists and equestrians. Applicants are expected to take appropriate mitigation measures to address adverse effects on coastal access, National Trails, other public rights of way and open access land and, where appropriate, to consider what opportunities there may be to improve access. In considering revisions to an existing right of way consideration needs to be given to the use, character, attractiveness and convenience of the right of way. The Secretary of State should consider whether the mitigation measures put forward by an applicant are acceptable and whether requirements in respect of these measures might be attached to any grant of development consent"* (paragraph 5.184); and *"Public rights of way can be extinguished under Section 136 of the Act if the Secretary of State is satisfied that an alternative has been or will be provided or is not required"* (paragraph 5.185).
- 6.2.13. Across the Project, the pedestrian, cyclist and horse-rider facilities that would be severed by the dualling works are proposed to be reconnected to the network via grade-separated crossings. As explained in the Case for the Project one of the key benefits of the Project is that overall access for WCH will be improved with the introduction of approximately 33km of additional WCH route having been brought into the scope of the Project.

This parallel provision is in the form of either new routes adjacent to the dualling or along the verge of the de-trunked A66, where it remains.

- 6.2.14. The Rights of Way and Access Plans show the Project's interface with the existing highway network, including public rights of way, and Schedule 2 to the dDCO together with the provisions of article 10 of the dDCO ensure that permanent or temporary replacement routes are provided before existing routes are stopped up. Where the Applicant proposes to stop up but not replace existing public rights of way it is because no replacement is required; the Applicant's public rights of way proposals cater appropriately for those routes.
- 6.2.15. The Applicant has assessed the Project's potential effects on existing public rights of way which are used by walkers, cyclists and equestrians in Chapter 13 of the ES. While there will be some temporary disruption during construction, the assessment concludes that there will be permanent beneficial effects arising from the Project's public rights of way provision.
- 6.2.16. The Applicant is also aware that Westmorland and Furness Council has some outstanding comments regarding connection at Coupland Beck at the western end of Scheme 6. Again, these comments, together with the Applicant's position on them, are as set out in the SoCG with Westmorland and Furness Council.

6.3 Carbon Emissions

- 6.3.1. The Climate assessment is reported in Chapter 7 of the ES. The relevant policy framework is contained in the NNNPS, including paragraphs 5.17 and 5.18. A complete table of NNNPS references and where they are accounted for within the Project assessment is provided in Table 7-2 of Chapter 7 of the ES.
- 6.3.2. The methodology for the Climate assessment follows the guidance set out within the Design Manual for Roads and Bridges ('DMRB') LA 114, DMRB LA 105, DMRB GG 103, IEMA (2020), TAG Unit A3 on Environmental Impact Appraisal, as well as in consideration of the RIS2, the Transport Decarbonisation Plan, PAS2080:2016, IEMA (2022) and various others as listed in full in Chapter 7 of the ES.
- 6.3.3. The Applicant's assessment, as presented in Chapter 7 of the ES provides a detailed and robust assessment of climate impacts and likely significant effects. The Chapter reports on two assessments: (i) impacts of the Project on greenhouse gas emissions (the GHG Assessment); and (ii) vulnerability of the Project to climate change (the CCR Assessment).
- 6.3.4. The GHG Assessment identifies no significant adverse effects at construction or operation. Chapter 7 of the ES explains why it is not required to carry out a detailed CCR assessment for construction, and concludes that there are no likely significant effects on CCR receptors at operation.

- 6.3.5. The Applicant also submitted the Outline Carbon Strategy at Deadline 3, identifying the process the Applicant and its contractors will take to incorporate carbon reduction measures during construction.
- 6.3.6. During the Examination, several issues on GHG matters were raised by Interested Parties and the Examining Authority. The Applicant has fully addressed those issues, as summarised below. For further details, please see the Applicant's key submissions on climate and carbon matters as follows:
- Appendix 1 to the Response to WRs by Interested Parties;
 - The Outline Carbon Strategy;
 - The Responses to Examining Authority's WQs;
 - The Response to D3 Submissions;
 - The ISH3 Note;
 - The Response to D3 and D4 Submissions; and
 - The Applicant's Submission on Climate Matters at Deadline 8.
- 6.3.7. **Assessment of significance in accordance with the NNNPS and the Climate Change Act 2008:** as set out in detail in p. 76-78 of the Response to WRs by Interested Parties, in accordance with section 104 of the PA 2008, the Secretary of State when determining an application for a Nationally Significant Infrastructure Project ('NSIP') must have regard to the relevant NPS which, for the Project, is the NNNPS, in particular paragraphs 5.16 – 5.18. Further information on the NNNPS can also be found in the Applicant's LPCS.
- 6.3.8. The Applicant's GHG Assessment of GHG emissions arising from the Project is placed in the context of the UK's statutory carbon budgets. The Applicant's approach therefore contextualises GHG emissions against a baseline trajectory that is consistent with the UK's statutory obligation to meet net zero. The Applicant notes that this approach is in accordance with the NNNPS and IEMA guidance (2022), as well as with recent infrastructure DCO determinations made by the Secretary of State – please see, for instance, paragraph 131 of the decision letter relating to the recently made A47 Wansford to Sutton DCO, which is quoted in full below.
- 6.3.9. **Contextualisation against local, regional or sectoral targets:** the Applicant refers the Examining Authority to pages 78 to 81 of the Response to WRs by Other Interested Parties and section 3.1.1 of the Applicant's Response to D3 Submissions in relation to submissions made by the Friends of the Lake District. The Applicant's position, which has been confirmed by the High Court in *Bristol Airport Action Network Co-ordinating Committee v Secretary of State for Levelling Up, Housing and*

Communities [2023] EWHC 171 (Admin), is that local carbon budgets have no basis either in law or policy.

- 6.3.10. The Applicant also refers to paragraph 128 of the decision letter relating to the recently made A47 Wansford to Sutton DCO, which is consistent with the position taken by the Applicant on the A66 Project.
- 6.3.11. **Cumulative impact appraisal:** the Applicant notes its detailed submissions on this point set out in pages 81 to 84 of the Response to Written Representations by Other Interested Parties, and in pages 10 to 12 of the Response to D3 and D4 Submissions.
- 6.3.12. The Applicant notes the statutory requirement for cumulative assessment as set out in Schedule 4 to the EIA Regs that an Environmental Statement is to include “*a description of the likely significant effects of the development on the environment...*” (emphasis added). Therefore, the focus of an Environmental Statement is on whether the proposed development itself is likely to have a significant effect on the environment of itself and/or in combination with other existing and/or approved projects.
- 6.3.13. The Applicant notes also the following passages from the IEMA guidance, which state that: “*the approach to cumulative effects assessment for GHG differs from that for many EIA topics where only projects within a geographically bounded study area of, for example, 10km would be included.*” The IEMA guidance further states that “*effects of GHG emissions from specific cumulative projects therefore in general should not be individually assessed, as there is no basis for selecting any particular (or more than one) cumulative project that has GHG emissions for assessment over any other*”.
- 6.3.14. The Project fully complies with the EIA Regs, as well as applicable guidance including IEMA guidance and standards including the DMRB. Indeed, any suggestion that the Project’s cumulative carbon assessment can only have been undertaken in accordance with a different method would be inconsistent with IEMA guidance, which states that “*there is not one single agreed method by which to assess a project’s carbon budget*”.
- 6.3.15. Comments criticising the Applicant’s approach to cumulative carbon assessment have been made during Examination including at CEPP’s WR and CEPP’s Comments on D2 Submissions. The Applicant has responded to those submissions in detail in the Response to WRs by Other Interested Parties (particularly pages 81-84) and the Response to D3 and D4 Submissions (pages 10-13). In summary, these objections criticise the Applicant’s methodology for cumulative carbon assessment including in particular the ‘do something, do minimum’ approach.
- 6.3.16. The approach to cumulative carbon assessment that has been adopted on the A66 Project is the same as that used on previously granted DCOs. Similar objections to the Applicant’s approach to cumulative carbon assessment as those received during the A66 Examination were received during the A47 Wansford to Sutton examination. The Secretary of State

addressed these objections in detail in the decision letter relating to the A47 Wansford to Sutton DCO. As is set out in detail in paragraphs 133, 135 and 142 (quoted below) of that decision letter, that criticism was soundly rejected by the Secretary of State (emphasis added):

- 6.3.17. *The ExA considered that analysis of the Proposed Development's impact on carbon **should be undertaken based on the difference between the Proposed Development happening and not happening** and there is nothing to indicate that if the Proposed Development was not built, that the existing road network would not continue to be utilised [ER 10.5.15]. **The Secretary of State considers this approach to be appropriate as it demonstrates: the baseline carbon levels at present and in the future if the Proposed Development was not to proceed, taking account of other developments where there is an appropriate level of certainty they will proceed; the total amount of carbon resulting from the Proposed Development and the baseline as well as the difference between the two. An assessment of the latter against the legally binding cumulative carbon budgets allows the Secretary of State to consider how significant an impact the Proposed Development will have on carbon by considering if it will impact Government's ability to meet its legally binding targets...**135. The Secretary of State notes that some IPs have argued that the Applicant has failed to carry out a cumulative assessment of carbon emissions at all and that, accordingly, the ES is deficient. **The Secretary of State does not agree that the ES is deficient in this regard.** The ES provides information on cumulative effects, through its presentation of data on the 'Do Minimum' and 'Do Something' scenario and carbon budgets, and the Secretary of State considers there is sufficient information to consider whether any effects, including cumulative effects, are significant and to reach a reasoned conclusion on any significant effects.*
- 6.3.18. *Paragraph 142:... No specific additional schemes have been suggested as relevant to the sort of different cumulative assessment that is being suggested and instead there is a focus on all development in the area that forms part of the transport modelling. **The Secretary of State considers that a local or regional approach to assessing cumulative effects carries a risk of being arbitrary and uncertain** because, as noted above, the effects of carbon emissions are not limited to one geographical area, and it is not clear what limits to the area are being proposed or the projects that are being suggested for inclusion or the reason for them. **The IMEA [sic] guidance notes that one of the limitations of a sub-national assessment is that its results may not be very meaningful.** The approach adopted by the Applicant, to look at the effects of the Proposed Scheme on a **national scale having regard to the carbon budgets which set out the legal limits of emissions that the Government has set for those periods, avoids this risk and is also considered to be consistent with the relevant legal and policy tests.***
- 6.3.19. Accordingly, the Applicant's approach to cumulative carbon assessment within the A66 Project is robust, appropriate, in accordance with all

applicable policy and guidance including IEMA guidance and is consistent with recently determined DCOs for NSIPs. No challenge to the contrary has been adequately or properly made out.

- 6.3.20. **Proper forum for challenge:** the Applicant notes that one interested party has deferred their substantive submissions on certain topics to a later Examination deadline (CEPP D6 Deferral Request and CEPP D7 Submission). Whilst those substantive submissions have not yet been received, the CEPP D7 Submission indicates that the party wishes to make comment on the Government’s revised Net Zero Strategy: Powering Up Britain and the Carbon Budget Delivery Plan. To the extent that Climate Emergency Policy and Planning (‘CEPP’) seeks to (in the CEPP D7 Submission, or any further submissions they seek to make) challenge the lawfulness of these new policy documents, the Applicant’s position is that the consideration of the application for development consent for the A66 Project is not the proper forum in which to make submissions or challenges of that nature. As CEPP will be aware, any challenges they may have to the Government’s policy documents can be made via judicial review of those policy documents directly and that is the appropriate forum to do so.
- 6.3.21. **Contextualisation against the Carbon Budget Delivery Plan:** the Applicant notes the Carbon Budget Delivery Plan (‘CBDP’) that was issued by the Government on 30 March 2023. The Applicant further notes paragraph 19 and Table 2 of the CBDP. Table 2 sets out projected sectoral emissions across the carbon budgets. In order to assist the Examination, at Deadline 8 the Applicant has voluntarily provided a contextualisation of the A66 Project’s GHG emissions figures against the CBDP table 2 projects. For the reasons provided within the Deadline 8 submission, the contextualisation against Table 2 of the CBDP is provided for information only and does not form an assessment of GHG emissions. The Deadline 8 submission does not alter the assessment of GHG emissions that is provided by the Applicant in Chapter 7 of the ES.
- 6.3.22. **Locally committed development:** an objection has also been made during Examination that the Applicant in its assessment methodology ought to have identified locally committed development for the purposes of its cumulative carbon assessment. The Applicant has robustly responded to these submissions in Examination including by setting out the requirement for assessment in accordance with the relevant legislation, the EIA Regs, and explaining in detail the data and modelling on which the carbon assessment is based. These submissions can be found at the Response to WRs by Other Interested Parties (particularly pages 81-84) and the Response to D3 and D4 Submissions (pages 10-13).
- 6.3.23. A similar objection, that specific local developments were not included in the assessment, was made during the examination of the recently consented A47 Wansford to Sutton DCO. The Examining Authority’s Report at paragraph 10.5.18 (which the Applicant considers is relevant

given the similar approach adopted by the Applicant in the A66 Project) states:

- 6.3.24. *The Applicant’s overall approach is to assess the effects cumulatively in respect of the other schemes promoted by National Highways in the near vicinity, discussions with the relevant planning authorities as to where third-party development is to be located, and national government regional growth rates, excluding known planning developments already included. While CEPP considers that this should go beyond this to includes all relevant developments in the area, to my mind any assessment **needs to be undertaken in relation to a degree of certainty**. Given the English planning system is a plan-based system, and the plan has been included within the assessment, I consider that the Applicant’s approach is reasonable and proportionate.*
- 6.3.25. The Secretary of State in their Decision Letter on that A47 project rejected these objections. In particular, the Secretary of State concluded at paragraphs 130 and 131 (our emphasis added):
- 6.3.26. *130: The Applicant’s overall approach to assessing cumulative effects is set out at ER 10.5.18. Whilst the Secretary of State notes that some IPs consider that this approach should include all relevant developments in the area, he agrees with the ExA regarding the need for certainty to allow assessments to be undertaken and that the Applicant’s approach is both reasonable and proportionate [ER 10.5.18].*
- 6.3.27. *131: Like the ExA, the Secretary of State agrees that there are no geographical boundaries against which to judge significance [ER 10.5.14] as unlike other environmental topics, there is only a single receptor impacted by carbon (the atmosphere) and it is a global one. The Secretary of State considers that as carbon budgets and the 2050 target relate to the whole of the UK economy and society and are legally binding, they reflect what the UK’s impact will be on this receptor as they set out what carbon levels can reasonably be expected to occur in the future (because they represent a legal limit on what can be emitted). It is therefore considered that these legally binding budgets provide a reasonable reference point for considering the effects of carbon from the Proposed Development and that these legally binding budgets are relevant to a consideration of cumulative effects in that they represent the limit of the emissions that are permitted within each carbon budget period from a range of sectors including transport. The Secretary of State therefore agrees with the ExA that the Applicant’s approach which takes account of these carbon budgets for the purposes of the Applicant’s cumulative assessment is reasonable and proportionate.*
- 6.3.28. The Applicant notes that in *R (Substation Action Save East Suffolk) v the Secretary of State for BEIS [2022] EWHC 3177*, Lang J concluded that the approach recommended in PINS Planning Advice Note 17 that “*other existing or approved development*” for the purposes of the assessment of cumulative impacts was appropriate. Therefore it is submitted that similar to the position in the A47 Wansford to Sutton DCO Decision Letter,

cumulative assessment ought to embrace plans and projects that are reasonably foreseeable and where there is sufficient certainty as to their existence.

6.3.29. Accordingly, the Applicant's approach to the assessment of carbon emissions, including to considering other developments and cumulative carbon assessment, is proportionate, appropriate, consistent with applicable guidance and is in accordance with recent case law and granted NSIPs.

6.3.30. **Traffic modelling:** During Examination, the Applicant responded to detailed questions from the Examining Authority regarding traffic modelling, including explanation of how the traffic modelling has been compiled and how it relates to the GHG Assessment. In brief, the assessment of road user GHG emissions is based on considering traffic volumes for the Traffic Reliability Area, which is the area of the traffic model considered to provide reliable estimates of traffic when the base traffic model is compared to observed traffic. It is the widest possible area affected by significant demand or route choice change; it can therefore be relied upon to forecast the likely significant effects of the Project and is considered to present a highly precautionary approach. A detailed explanation of the traffic modelling and the Applicant's precautionary approach can be found: (i) in response to question CE.1.5 in the Responses to Examining Authority's WQs; (ii) against agenda item 4.0 in the ISH3 Note; and (iii) within Appendix E to the ISH3 Note.

6.4 Road Drainage and the Water Environment

6.4.1. The Road Drainage and the Water Environment assessment is reported in Chapter 14 of the ES. The Applicant also submitted the FRA and the WFD Compliance Assessment. The effects of the design changes on the water environment (if any) were considered in the ES Addendum.

6.4.2. With the implementation of mitigation, Chapter 14 of the ES concluded that with one exception, there would be no likely significant effects on the receiving water environment as a result of the Project during both construction and operation. The one exception noted is a residual significant effect during operation on the Flitholme Fen and Flitholme Woodland groundwater-dependent terrestrial ecosystems due to a loss or degradation of potential supporting habitats. Whilst mitigation will be implemented to seek to reduce this effect (through the creation of new habitat, as secured in the EMP), due to the nature of the design of the Project at this location, it is not currently possible to guarantee that impacts can be avoided. As such, a residual significant effect must be reported.

6.4.3. The WFD Compliance Assessment concluded there would be no WFD compliance issues remaining following the implementation of mitigation. The relevant mitigation measures, including the parameters of the drainage design, are secured in the first iteration EMP and, to an extent, in the Project Design Principles.

- 6.4.4. The Applicant acknowledges that during the Examination, flood risk has drawn a particular focus, primarily the hydraulic modelling undertaken by the Applicant. Concerns were raised by the EA and the Lead Local Flood Authorities as the hydraulic model had not been accepted by the EA at the time of submission of the DCO application.
- 6.4.5. The Applicant and the EA have continued to collaborate positively and address modelling concerns throughout the Examination. This work has not resulted in any notable changes to the flood extent and has not affected the conclusions of the FRA. The EA have stated that, in respect of its own functions, they have accepted the modelling in relation to Schemes 1, 2, 3, 4, 5, 7, 8 and 9 of the Project and are content that they would not give rise to an unacceptable risk of fluvial flooding or increase fluvial flood risk elsewhere based on the details submitted to date. Baseline hydraulic modelling for Scheme 6 has also now been agreed between the Applicant and the EA, which is confirmed in the SOCG with the EA submitted at Deadline 8.
- 6.4.6. Notwithstanding the above, the Applicant is aware that the EA has, at Deadline 7, proposed draft wording for a control mechanism in respect of flood risk on Scheme 6. The Applicant agrees in principle with such a mechanism, in order to provide certainty to the Examining Authority and the Secretary of State.
- 6.4.7. Having discussed with the EA the specific drafting around the control mechanism, the Applicant has now agreed with the EA a form of words to secure this. There remains an area of disagreement between the parties as to where that control mechanism should be contained (in the EMP or the DCO), but the main elements of the drafting have been agreed. There will necessarily be minor differences in the wording depending on where it is located, to account for context and applicable definitions.
- 6.4.8. Because the Applicant's view remains that the control mechanism is most appropriately located in the EMP (due to it being legally enforceable and consistent with how all other mitigation has been secured), it has included the agreed form of drafting as a new REAC commitment in the revised draft of the first iteration EMP submitted at Deadline 8. However, the Applicant acknowledges the EA's view is that such wording should be located on the face of the DCO.
- 6.4.9. Should the Secretary of State consider that the control mechanism more appropriately sits in the DCO (contrary to the Applicant's view), the Applicant considers (on a without prejudice basis) that it would best sit in article 54, as new paragraphs (4) onwards, with the following wording:

(4) No part of the authorised development comprised in S06 is to commence until a detailed floodplain compensation scheme for that part has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority and the Environment Agency.

(5) The scheme prepared under paragraph (4) must provide suitable flood storage such that flood risk during construction and operation of S06 to any land or property situated downstream is not increased as a result of flood waters that would be displaced by the Appleby to Brough scheme when compared to the baseline scenario as reported in the baseline hydraulic modelling agreed with the Environment Agency [reference to be included to reflect that included in the EMP] and arise from events with a magnitude up to and including the 1% annual exceedance probability, plus allowance for climate change in line with Environment Agency guidance applicable on the date when this Order was made.

(6) The floodplain compensation scheme approved under paragraph (4) must be implemented and maintained for the lifetime of S06 unless otherwise agreed with the Environment Agency.

(7) In this article “commence” has the same meaning as in article 53(12).

6.4.10. Both parties accept this will be a decision for the Secretary of State, albeit the EA has confirmed that should the Secretary of State agree with the Applicant on this point, the wording now included in the first iteration of the EMP is acceptable to the EA.

6.4.11. As a final point, the DCO seeks to disapply certain existing consenting regimes under the Land Drainage Act 1991 and Environmental Permitting (England & Wales) Regulations 2016 (in the latter case, in respect of flood risk activities). To facilitate this, the Applicant has been discussing protective provisions for inclusion in the DCO with the EA and Lead Local Flood Authorities. Whilst the form of protective provisions had not been agreed by Deadline 8 (aside from with Durham County Council), the Applicant is confident that agreement will be reached with the remaining parties by Deadline 9 and therefore before the end of the Examination.

6.5 Other environmental topics

Air Quality

6.5.1. The air quality assessment is reported in Chapter 5 of the ES. The methodology used in that assessment is further summarised in the ISH1 Note – Response to Agenda Item 2.1 on The Sills.

6.5.2. The relevant policy framework is contained in paragraphs 5.6 to 5.15 of the NNNPS. Compliance with legislation and policy is outlined in the LPCS. Other relevant policies and guidance include the NPPF and local planning policy.

6.5.3. Mitigation is provided for in the EMP, and the ‘Register of environmental actions and commitments’ in Table 3-2 of that document provides that no part of the Project can start until the relevant management plans have been developed in detail and approved following relevant stakeholder consultation. These management plans include plans substantially in accordance with the Air Quality and Dust Management Plan.

- 6.5.4. The effects on air quality of the construction phase and operational phase are both predicted not to be significant. It is predicted that the effects on air quality at human and ecological receptors would not be significant. During the Examination, the Applicant responded in particular to concerns raised about construction dust in its Response to WRs by Affected Persons by noting that the effects from the construction phase are assessed as being temporary and not significant. With the implementation of best practice mitigation measures outlined in the EMP, impacts in relation to construction dust would be negligible.
- 6.5.5. Chapter 5 of the ES sets out that two Air Quality Management Areas ('AQMA's') have been designated by Durham County Council, however both are located over 30km from the A66, outside of the Affected Road Network, and are unlikely to be affected by the Project. Other local authorities affected by the Project have not designated any AQMA's, however paragraph 5.7.6 of chapter 5 refers to Eden District Council considering the potential for a future AQMA to be declared at Castlegate, Penrith. At the time of the application for the Project, and at the current date, no such AQMA had been declared. The prospect of the potential AQMA was queried by the Examining Authority in ExQ1, referring to the 'Castlegate Potential AQMA' at AQ1.1, and in its Responses to Examining Authority's WQs, the Applicant confirmed that the Examining Authority's interpretation of Figure 8.6 of the Transport Assessment, showing a decrease in traffic at Castlegate is correct (i.e. flow reduction of 969 vehicles or 11% AADT Do Something vs Do Minimum). The effect of the reduction in traffic is that there is likely to be a beneficial impact to air quality and no impact is therefore expected on the potential AQMA.
- 6.5.6. Also raised during the Examination is the Applicant's use of DMRB LA105. Natural England's PADSS sets out its view that aspects of it are not Habitats Regulations Assessment ('HRA') compliant. However Natural England goes on to state that changes are not required in respect of the Project specifically and that further discussions are ongoing between Natural England and the Applicant to agree an air quality assessment methodology. The Applicant's position is that there is no HRA issue with the elements of DMRB LA105 that have been applied in conducting the assessment on European designated sites. However, it agrees that discussions are ongoing at a national level with Natural England with a view to making updates to DMRB LA105. The current position is summarised in the SoCG with Natural England.

Noise and Vibration

- 6.5.7. The noise and vibration assessment is reported in Chapter 12 of the ES.
- 6.5.8. The relevant policy framework is contained in paragraphs 5.186-5.200 of the NNNPS, with paragraph 5.195 making clear that nationally significant infrastructure projects need to meet certain aims but within the context of government policy on sustainable development. Other relevant policies and guidance include the NPPF, Noise Policy Statement for England,

Planning Practice Guidance on Noise, relevant local planning documents, DMRB LA 111 and relevant British Standards.

- 6.5.9. Construction of the Project has the potential to cause likely significant temporary noise and vibration effects at the closest receptors to the development. The potential for temporary construction noise and vibration impacts is dependent on the construction activities being undertaken. Construction and vibration impacts have been assessed as significant effects when construction is at its busiest and closest to receptors.
- 6.5.10. Mitigation is provided for in the EMP, and the REAC in Table 3-2 of that document provides that no part of the Project can start until the relevant management plans have been developed in detail and approved following relevant stakeholder consultation. These management plans include plans substantially in accordance with the Noise and Vibration Management Plan.
- 6.5.11. CCC and EDC's LIR makes representations on noise and vibration. The Applicant responded to these representations in its Comments on LIR which makes clear that where a likely significant effect has been identified in relation to noise and vibration, an assessment of the viability of providing additional measures to avoid, minimise and mitigate significant adverse impacts on health and quality of life, has been undertaken. Engineering practicality, value for money and other environmental impacts were the considerations for determining if additional mitigation should be implemented.
- 6.5.12. In terms of points raised by the local authorities regarding noise barriers at Kirkby Thore, barriers in the form of earth bunds are provided. These noise barriers minimise, as far as practicable and sustainable, with due consideration to other constraints, the identified adverse impacts for the receptors located in the north of Kirkby Thore at Sanderson Croft and other areas. Further modelling and analysis have been undertaken as requested by Westmorland and Furness Council in CCC and EDC's Principal Issues to be addressed with the ES. A technical note was provided to respond to the request on 20 April 2023, which concluded that the proposed design of the Kirkby Thore earth bunds submitted for DCO is optimised in terms of balancing the needs of the Project as a whole including noise and landscape and visual impacts. A meeting was then held on 21 April 2023 to discuss the outcomes of the technical note. The Council consequently sent further comments via e-mail on 27 April 2023, which were responded to via e-mail on 10 May 2023. Following this, Westmorland and Furness Council and WSP, consultants to Westmorland and Furness Council advised verbally on 15 May 2023 that there are additional opportunities in respect of noise which will be shared with National Highways, and, as set out in the SoCG with Westmorland and Furness Council, the Applicant considers that all noise queries have been effectively responded to and the project provides appropriate noise mitigation measures. Furthermore, the Applicant will continue to work with Westmorland and Furness Council through detailed design.

- 6.5.13. Finally, as part of consideration of the impact of additional traffic on the Sills, including noise impact, ISH1 Note - Response to Agenda Item 2.1 - The Sills, concluded that an adverse significant effect is unlikely to occur at any of the properties along the Sills or the pedestrian walkways, consistent with the aims of the NNNPS.

Biodiversity

- 6.5.14. The biodiversity assessment is reported in Chapter 6 of the ES. The relevant policy framework is contained in the NNNPS, including paragraphs 5.20 and 5.26. A complete table of NNNPS references and where they are accounted for within the Project assessment is provided in Table 6-2 of Chapter 6 of the ES. Other relevant policies and guidance include the NPPF, and various national and local plans and biodiversity action plans.
- 6.5.15. The methodology for the biodiversity assessment follows the guidance set out within DMRB LA 104, DMRB LA 108 and DMRB LD 118 and the CIEEM Guidance for Ecological Impact Assessment.
- 6.5.16. The Applicant's assessment, as presented in Chapter 6 of the ES provides a detailed and robust assessment of ecological impacts and likely significant effects. The Chapter concludes that, for EIA purposes, there are no significant adverse effects at the construction stage; and the only significant adverse effects (which are moderate adverse) experienced at operation will be experienced by Barn Owl at two schemes: (i) Scheme 0405 Temple Sowerby to Appleby; and (ii) Scheme 09 Stephen Bank to Carkin Moor.
- 6.5.17. The SoCG with Natural England confirms agreement by both parties to the methodology and results of the EIA process.
- 6.5.18. During the Examination, several issues on biodiversity matters were raised by Interested Parties and the Examining Authority. The Applicant has addressed those issues, as summarised below.
- 6.5.19. **Environmental mitigation areas:** at ISH3, against agenda item 3.2, the Examining Authority asked the Applicant to explain by reference to examples how environmental mitigation area sizes and locations have been decided upon. In response, the Applicant explained that the principles underlying the proposed mitigation and habitat planting are set out in the Responses to Examining Authority's WQ's, CA.1.2. The primary driver of the environmental mitigation design has been to address significant adverse effects on protected species and designated sites, and that replacement habitats are provided for those lost. In accordance with paragraph 5.33 of the NNNPS, the Applicant has sought opportunities, where practicable, to maximise the enhancement of biodiversity, for instance by providing habitat linkages to increase connectivity.
- 6.5.20. The location and size of environmental mitigation has therefore been designed in accordance with applicable policy and guidance and in

conjunction with other EIA environmental disciplines. A full and detailed explanation of the approach to determining environmental mitigation sizes and location is provided against agenda item 3.2 of the Applicant's ISH3 Note as supported by the Engineering Cross Sections, which form Appendix B to the ISH3 Note, and in the Responses to Examining Authority's WQ's, CA.1.2.

- 6.5.21. **Environmental mitigation areas:** the Examining Authority's written question CA.1.2 asked for the Applicant to clarify the relationship between Biodiversity Net Gain ('**BNG**'), including areas identified for the minimum of the No Net Loss ('**NNL**'), and the areas identified for environmental mitigation. In its Responses to Examining Authority's WQs, the Applicant clarified that there is no numerical relationship between BNG, NNL and the land identified as required for ecological mitigation. All of the land identified as being required for environmental mitigation is required for essential environmental mitigation in order for the Project to mitigate potentially adverse ecological effects. None of it is required solely for the purpose of providing BNG or NNL.
- 6.5.22. In developing the design of the Project's ecological mitigation, the Applicant has, in accordance with best practice and consultee feedback, had regard to the habitat ratios set out in Defra's biodiversity metric tool and accompanying guidance as set out in Chapter 6 of the ES. At the time of its introduction, the Defra Metric tool and guidance established, for the first time, a formalised method to calculate different factors of habitat features and to standardise replacement habitat ratios. A full explanation of the Defra tool and guidance and how they have been utilised in developing the Project's ecological mitigation is provided in response to agenda item 3.2 of the ISH3 Note.
- 6.5.23. **Biodiversity Net Gain ('BNG')** – in response to comments made by Interested Parties within relevant representations, written representations, local impact reports and other submissions and engagement during Examination, the Applicant has explained that BNG is not currently a statutory requirement that is in force for NSIPs (including the Project). BNG was introduced under the Environment Act 2021. The 2021 Act's provisions for NSIPs will only take effect after the Government has published a biodiversity gain statement setting out the objective for biodiversity gain, the minimum percentage of BNG required for NSIPs, and how the objective is to be met including transitional arrangements. The Government has indicated that it intends to bring the biodiversity gain requirements for NSIPs into effect for terrestrial projects no later than November 2025.
- 6.5.24. **No Net Loss ('NNL')** – separate from the assessment of likely significant effects carried out by the Applicant for EIA purposes, the Project has committed to achieving NNL as a Project objective. The Applicant has, accordingly, provided a report of the Project's application-stage design against Defra's biodiversity Metric 3.1. The report identifies the legal and policy context, baseline, assumptions, assessment results and conclusions.

- 6.5.25. The report identifies that a net positive biodiversity unit assessment is experienced without additional mitigation for habitat and hedgerow habitat types, and that a negative is experienced for river habitat, but that sufficient river unit mitigation opportunities exist within the Order limits to achieve no net loss for river habitats.
- 6.5.26. The metric results presented in the report are based on the designs submitted as part of the DCO application, assuming a reasonable worst case scenario. It is anticipated that the metric calculation will be re-run at detailed design stage in order to update against the detailed design. Such refinement is expected to result in an additional improvement to the current metric units being delivered by the Project.
- 6.5.27. The obligation to achieve NNL is a commitment by the Project required under the Project Design Principles (BNG01 and BNG02), which are secured under the dDCO in accordance with articles 49 and 54, the latter of which requires that the authorised development must be designed in detail and carried out so that it is in substantial accordance with the design principles (among others). Achieving NNL is therefore an objective that has been secured by the Project.
- 6.5.28. **Red squirrel mitigation** – It is acknowledged by the Applicant that there is a difference in opinion between it and Westmorland and Furness Council as to the proposed use of Animex wildlife bridges and red squirrel habitat connectivity. As set out in the Statement of Common Ground between the parties, the Applicant reiterates that the use of the proposed Animex bridge as part of the mitigation proposals for the Project will act as a pilot scheme to inform further research in this area. It should also be noted that a second iteration EMP will include detailed design information relating to the proposed red squirrel crossings, and there will therefore be an opportunity at that stage for the Council to provide further input as part of the consultation on a second iteration EMP if concerns remain regarding these proposals.

Landscape and Visual

Context/Background

- 6.5.29. The potential landscape and visual impacts of the Project are assessed in Chapter 10 of the ES.
- 6.5.30. The landscape and visual assessment in Chapter 10 of the ES presents the information required by, and undertakes assessment in accordance with, the NNNPS (specifically paragraphs 5.144, 5.145, 5.150 and 5.160).
- 6.5.31. Chapter 10 of the ES follows the methodology set out in the DMRB LA 107 and DMRB LA 104. The assessment is also informed by Guidelines for Landscape and Visual Impact Assessment, Third Edition (GLVIA3) (Landscape Institute and Institute of Environmental Management and Assessment, 2013).

Likely Significant Effects

- 6.5.32. The potential landscape and visual impacts of the Project are assessed in Chapter 10 of the ES. The conclusions of those assessments are that given the context of the existing road corridor, the nature and scale of the effects and the distribution of the receptors which would retain a residual adverse effect, the overall assessment for the Project is minor adverse and therefore not significant.
- 6.5.33. The ES Addendum assesses the potential for certain of the proposed design changes to introduce new or different likely significant effects upon the environment when compared to Chapter 10 of the ES.
- 6.5.34. Overall, there are no new or different significant landscape or visual effects identified other than:
- (a) **DC 03** – a new significant visual effect during operation at year 1 and year 15 for viewpoint 2.5; and
 - (b) **DC21** – there is a change in the effect on the AONB during construction from slight adverse to moderate adverse, which is significant.
- 6.5.35. In respect of **DC28** the magnitude of impact at year 15 for the receptor at VP7.7B is predicted to be moderate rather than minor. This, however, does not alter the residual effect which remains moderate and therefore significant.

North Pennines Area of Outstanding Natural Beauty

- 6.5.36. The AONB coincides with the study area for the Project. Part of the Appleby to Brough scheme is in the AONB. A small section of the accommodation works at the western end of the Bowes Bypass scheme lies within the AONB and the Temple Sowerby to Appleby scheme is within 2.2km of the AONB boundary. Visibility of the Project from the study area for Temple Sowerby to Appleby, Appleby to Brough and Bowes Bypass informed the assessment of effects on the AONB.
- 6.5.37. Chapter 10 of the ES states that the effects upon the North Pennines AONB for both construction and operation have been assessed as slight adverse (not significant). The Project Design Principles include a suite of mitigation measures to be incorporated into the design to minimise impact the Project on the AONB and its setting. These are specifically set out in Table 4-8 of the Project Design Principles.
- 6.5.38. In Natural England's RR, Natural England set out that it considered the AONB should be rated as very high as opposed to 'high' for all assessments and that the assessments of significance of effects should be reviewed and adjusted accordingly. In its Response to RRs the Applicant noted that DMRB LA107 states that sensitivity is a combination of both the value of the receptor and assessing the receptor's susceptibility to change. The Applicant set out that as the A66 already

exists within the baseline environment of the AONB it is considered to have a high susceptibility to change, as opposed to very high, which would apply in instances where no highway was currently present. The Applicant went on to explain that the landscape assessment acknowledges and has set out the special qualities of the AONB and the assessment considers that in term of wildness, tranquillity and remoteness, these particular special qualities are not present due to the presence of the existing A66. In Natural England's WR, Natural England confirmed that it has accepted that the AONB should be allocated a 'high' rather than 'very high' sensitivity rating in these circumstances.

Viewpoints and Visualisations

- 6.5.39. At ISH2 the Examining Authority requested additional visual material to understand the form and visual appearance of the Trout Beck Viaduct; Cringle Beck Viaduct; and Moor Beck Viaduct.
- 6.5.40. The Applicant explained that the viewpoints used in the Environmental Statement were selected in accordance with established practice and guidance set out in the DMRB, with particular reference made to paragraphs 3.32, 3.33 and 3.34.1 of DMRB LA 107. The Applicant confirmed that the proposed viewpoints were tabled at regular focus group meetings with stakeholders, including the local planning authorities, and additional viewpoints were added based on the input received from those stakeholders.
- 6.5.41. In its ISH2 Note the Applicant confirmed it would provide visualisations in the form of artist's impressions to show the position, mass and scale of the structures and how these could look and be experienced in context. The Applicant submitted the Viaduct Visualisations at Deadline 4, with the justification for providing visualisations rather than traditional photomontages being discussed at ISH3 and recorded in the ISH3 Note.

Trees

- 6.5.42. In response to a request made by the Examining Authority at ISH2 in respect of trees, the Applicant submitted a Tree Loss and Compensation Report Deadline 4.
- 6.5.43. The report provided the overall number of trees lost to be approximately 18,225, with the total area of loss approximately 53 hectares. The replacement planting ratio of 2:1 was presented as common good industry practice. The report confirmed that the total area required to replace the tree losses can be achieved within the Order limits.

Wetheriggs Country Park

- 6.5.44. The Applicant is aware that Westmorland and Furness Council have outstanding comments in relation to Wetheriggs Country Park Masterplan. These comments, together with the Applicant's position on them are as set out in the SoCG with Westmorland and Furness Council.

Design approval for structures

- 6.5.45. During the Examination, there has been a particular focus on the design of three structures comprised in the Project, namely the crossings of Trout Beck, Moor Beck and Cringle Beck. Whilst the Examining Authority has suggested that the design of these structures should be subject to approval by the Secretary of State, the Applicant has explained in various submissions why this is not considered proportionate or necessary. Whilst the Applicant has provided additional drafting for article 54 of the dDCO on a without prejudice basis that could be used to secure a design approval mechanism, the Applicant remains of the view that the existing controls within article 54 and, for example, the Project Design Principles, are sufficient to secure an appropriate design of these structures. The most recent response from the Applicant on this issue, which summarises the submissions on this to date, is contained in the Response to Examining Authority's Schedule of DCO Comments and Changes.

Cultural Heritage

- 6.5.46. The Cultural Heritage assessment is reported in Chapter 8 of the ES. The relevant policy framework is contained in the NNNPS, including paragraphs 5.122 and 5.124. A complete table of NNNPS references and where they are accounted for within the Project assessment is provided in Table 8-2 of Chapter 8 of the ES. Other relevant legislation, policy and guidance includes the Ancient Monuments and Archaeological Areas Act 1979, and the local or development plans of each Council, as well as various Historic England and professional body guidance documents.
- 6.5.47. The methodology for the cultural heritage assessment follows the guidance set out within DMBR LA 106 as well as the Chartered Institute for Historic Environment Desk-Based Assessment Guidance.
- 6.5.48. The Applicant's assessment, as presented in Chapter 8 of the ES provides a detailed, thorough and robust assessment of heritage impacts and likely significant effects. The Chapter concludes that there are temporary and permanent Construction – stage moderate adverse effects across all Schemes other than at Scheme 08 Cross Lanes to Rokeby and at Scheme 11 A1(M) Junction 53 Scotch Corner, where there will be no significant effects. At operation stage, there will be permanent moderate beneficial effects within Scheme 03 Penrith to Temple Sowerby and permanent moderate adverse effects at Scheme 07 Bowes Bypass.
- 6.5.49. The SoCG with Historic England confirms agreement by both parties to the methodology and results of the EIA process. The latest SoCGs with Durham County Council, North Yorkshire County Council and with Westmorland and Furness District Council confirm that there are no heritage grounds outstanding, other than Durham County Council's preference for an alternative route at one scheme.
- 6.5.50. The Applicant's Comments on LIR pages 53, 84 and 127 respond to the Council's comments. The sections outline the full extent of surveys undertaken, explanation of how the Written Schemes of Investigation

(‘**WSIs**’) and the EMP will operate and comments on the strategy for risk ratings against heritage assets in response to Council queries. The Applicant has had full regard to the local impact reports.

- 6.5.51. During the Examination, several issues on cultural heritage matters were raised by Interested Parties and the Examining Authority. The Applicant has addressed those issues, as summarised below:
- 6.5.52. **Assessment against the impacts of the Project on the Lake District World Heritage Site:** The Applicant provided detailed comments at pages 36 to 47 of the Response to WRs by Interested Parties and addressed this matter under agenda item 7 of ISH3, as summarised in the ISH3 Note. The A66 Project will give rise to no physical or setting effects to heritage resources within or the outstanding universal value (‘**OUV**’) of the World Heritage Site, including from any increased levels of traffic. The Applicant’s consideration of this issue has utilised relevant UNESCO and HE guidance and demonstrates that the A66 Project would have no negative impact on the OUV of the World Heritage Site.
- 6.5.53. **The Heritage Mitigation Strategy and ongoing discussions with Historic England:** the Applicant has been engaging with Historic England throughout the examination process as well as addressing the issue under agenda item 7 of ISH3. In response to comments received from Historic England direct to the Applicant, the updated EMP at Deadline 8 incorporates a number of edits and amendments aimed at clarifying the process through which the heritage mitigation will be refined, determined and ultimately consulted upon and approved.
- 6.5.54. **Skirsgill Hall and Park:** in the Response to Examining Authority’s Further WQs item HE 2.2, the Applicant addressed a question regarding the Skirsgill Park Appraisal. The Applicant noted the limitations of the Skirsgill Park Appraisal, as outlined in that report, which relates to an area of proposed ecology mitigation planting located in plot 0102-01-34. The Applicant’s response to question HE 2.2 explained that in the Applicant’s view, informed by professional judgement and experience, the introduction of the proposed ecology planting would not have a significant impact on the landscape setting associated with Skirsgill House, as it would be barely perceptibly from Skirsgill House frontage owing to it being seen as part of the existing woodland.

HRA

- 6.5.55. The Applicant has provided a comprehensive HRA Stage 1 Report and HRA Stage 2 Assessment for the purposes of the HRA regime.
- 6.5.56. The HRA Stage 1 Report concluded that likely significant effects could not be screened out in respect of impact pathways connected with the following designated sites:
- (a) River Eden SAC;
 - (b) North Pennine Moors SAC; and

(c) North Pennine Moors SPA.

- 6.5.57. Accordingly, these sites were taken forward to Stage 2 of the HRA process.
- 6.5.58. Subsequent to the full and proportionate HRA Stage 2 Assessment, and in view of the relevant site conservation objectives, the potential for any adverse effect on the integrity of the River Eden SAC, North Pennine Moor SAC and North Pennine Moor SPA was ruled out. The HRA Stage 2 Assessment has concluded the project will not adversely affect the integrity of any European Site, alone or in combination with other plans or projects. Therefore, the HRA was concluded at Stage 2: Appropriate Assessment, and there was no requirement to move to HRA Stages 3 and 4 for the purposes of compliance with the Conservation of Habitats and Species Regulations 2017 (as amended).
- 6.5.59. Accordingly, as adverse effects on the integrity of the National Site Network sites assessed have been ruled out, there is no requirement for monitoring and reporting specific to HRA matters. The EMP and Project Design Principles do however commit to measures connected to HRA mitigation, including design measures in relation to watercourse crossings and the Invasive Non-Native Species Management Plan and the Ground and Surface Water Management Plan.
- 6.5.60. The Applicant has continued to engage on the HRA with Natural England during the Examination to address various residual outstanding comments.
- 6.5.61. On 18 April 2023, the Examining Authority issued the RIES, in which it addressed a number of questions on the HRA to both the Applicant and Natural England. Both parties issued responses to those questions at Deadline 7.
- 6.5.62. Natural England in its responses to the RIES and as part of the SoCG with Natural England have confirmed that they are, with one exception, content with the conclusions of the HRA and how the required mitigation is secured through both the EMP and Project Design Principles.
- 6.5.63. However, as at Deadline 8, there remains one outstanding issue between the parties in respect of the North Pennines Moors SAC whereby Natural England are seeking further information before they can agree to the conclusions in the HRA Stage 2 Assessment in respect of that European site.
- 6.5.64. As such, the Applicant continues to engage with Natural England on this point and intends to submit information to verify the conclusions in the HRA Stage 2 Assessment with a view to reaching agreement before the end of the Examination, as the Applicant retains confidence in the work it has done to date on the HRA. An update will be provided at Deadline 9.

6.6 Other environmental considerations

Geology and Soils

- 6.6.1. In relation to Geology and Soils, the Applicant followed the assessment methodology set out in the DMRB LA 109 and the EA Land Contamination: Risk Management guidance (2020) and any other relevant guidance. As reported in Chapter 9 of the ES, the Applicant has identified the significant effects on geology and soils arising from the construction and operation of the Project. The Applicant has also identified measures to minimise and mitigate impacts on soil quality in the Soil Management Plan, which has been updated throughout the Examination.

Material Assets and Waste

- 6.6.2. The Material Assets and Waste assessment is reported in Chapter 11 of the ES. The relevant policy framework is contained in the NNNPS, including paragraphs 5.39, 5.42 and 5.43. A complete table of NNNPS references and where they are accounted for within the Project assessment is provided in Table 11-2 of Chapter 6 of the ES. Various statutory regimes are also relevant to this topic, in addition to the EIA Regs, including the Environmental Protection Act 1990, the Hazardous Waste (England and Wales) Regulations 2005, the Waste (England and Wales) Regulations 2011, the WEEE Regulation 2013 and the Environmental Permitting (England and Wales) Regulations 2016. The Applicant has also had regard to various national and local plans and policies, as set out in paragraph Table 11-3 of Chapter 11.
- 6.6.3. The methodology for the Material Assets and Waste assessment follows the guidance set out within DMBR LA 110 and DMRB LA 104. The assessment methodology compares the estimated recycling rate of waste and materials with national targets and also compares the proportion of recycled aggregate that would be used with national and regional targets. Consultations were held with the Councils and the EA to agree this approach.
- 6.6.4. The Applicant's assessment, as presented in Chapter 11 of the ES provides a detailed, thorough and robust assessment of Material Assets and Waste impacts and likely significant effects. The Chapter concludes that, for EIA purposes, there are no significant adverse effects at the operation stage; and the only significant adverse effects at construction will be experienced via sterilisation of mineral safeguarding sites and/or peat resources route-wide and a sterilisation of carboniferous limestone mineral safeguarding sites at Scheme 08 Cross Lanes to Rokeby.
- 6.6.5. The Applicant's Comments on LIR pages 62 and 130 respond to the Council's comments. The sections respond on topics including aggregates assessment data and outlining the position taken for assessment of minerals safeguarding sites. The Applicant has had full regard to the local impact reports.

- 6.6.6. The Applicant has committed to mitigation measures for Material Assets and Waste including within the EMP as well as a Site Waste Management Plan and a Materials Management Plan.

Population and Human Health

- 6.6.7. In relation to Population and Human Health, the Applicant followed the assessment methodology set out in DMRB LA 112 and complied with all applicable legislation and policy (as set out in the LPCS).
- 6.6.8. As reported in Chapter 13 of the ES, the Applicant has identified the significant effects on population and human health arising from the construction and operation of the Project. The Applicant has also identified measures to minimise and mitigate impacts on population and human health in the EMP and the outline CTMP.
- 6.6.9. In response to UKHSA's RR, the Applicant has completed the Human Health Effects Significance Statement for the health effects reported in Chapter 13 of the ES.
- 6.6.10. In the ISH3 Note, the Applicant noted that Chapter 13 of the ES was used as one of the evidence sources for identifying potential impacts for the EqlA, with the EqlA assessing potentially disproportionate or differential effects on protected characteristic groups at the community / population level. In addition, the same chapter assesses the impact of the Project on the Gypsy Community.

7. EQUALITIES IMPACT ASSESSMENT

- 7.1.1. The Applicant has set out the equality-related considerations in respect of the Gypsy Community in section 4.6 above.
- 7.1.2. The Applicant has also noted the concerns of Dr Mary Clare Martin in relation to human rights and the EqlA throughout the Examination.
- 7.1.3. In summary, Dr Martin has raised concerns throughout the Examination about potential infringements of the Equality Act 2010 and the Human Rights Act 1998 in relation to her elderly parents relying on several key points:
- (a) Criticism of the proposals at the location of her parents' house at Langrigg, alongside suggesting that the dDCO breaches human rights and is discriminatory against the protected characteristic of age;
 - (b) Infringement of equalities legislation, on the grounds of age and disability, with this discrimination being exacerbated by 'Project Speed', amongst other issues such as lack of consultation and consideration of suitable alternatives; and

- (c) Her position is that the Applicant has had no regard for health problems and anxiety issues of people living nearby the A66 Project.
- 7.1.4. In addition, Dr Martin has raised concerns about the stresses and impacts on wellbeing upon her parents arising from the consenting process and procedure, such as the pre-application process, the appearance at hearings and pressures of the Examination, the ongoing engagement with her parents and the continuing uncertainty across a significant period of time.
- 7.1.5. The Applicant has provided detailed responses to these concerns throughout the Examination and these can be found in the ISH1 Note (page 17), the Response to RRs (page 74), the Response to WRs by Affected Persons (page 66), the CAH2 Note (pages 36-39), the ISH3 Note (page 34) and the Response to D5 Submissions (page 50).
- 7.1.6. The Change Application also related to Langrigg Junction (DC-25) and involved the removal of the original westbound junction proposals at Langrigg, meaning that traffic would no longer be able to leave and join the new A66 mainline at this location.
- 7.1.7. As a result of the removal of the westbound junction proposal on the A66 mainline, the Langrigg Road link would be moved northwards, to lie principally adjacent to the westbound carriageway of the A66 mainline dual carriageway. The Langrigg Road link would extend westwards, staying in close proximity to the A66 mainline, to connect to Flitholme Road at the earliest opportunity in order to retain as much of the existing Flitholme Road as possible.
- 7.1.8. The connection from the Langrigg Road Link to Langrigg Road would be through a simple T-junction. Associated infrastructure, such as the balancing ponds, could be reduced in size and could be moved northwards (in comparison to the original proposal in the preliminary design), away from the identified fen habitat and houses.
- 7.1.9. The Change Application has been accepted by the Examining Authority and is a key consideration in relation to Dr Martin's concerns.
- 7.1.10. In addition, the Applicant notes that Dr Martin has raised concerns about the adequacy of the Environmental Statement by reference to mental health impact assessment ('MHA'), including in the context of IEMA Guidance.
- 7.1.11. Regulation 21(1) of the EIA Regs sets out the Secretary of State's duty when deciding whether to make an order granting development consent for EIA development to (amongst other things): (a) examine the environmental information; and (b):

“reach a reasoned conclusion on the significant effects of the proposed development on the environment, taking into account the examination

referred to in sub-paragraph (a) and, where appropriate, any supplementary examination considered necessary.”

- 7.1.12. Regulation 5(2) of the EIA Regs requires an EIA to “*assess in an appropriate manner*” the likely significant effects of the development proposed. Whether an assessment has been conducted in an appropriate manner is a matter of judgement for the decision-maker.
- 7.1.13. Further, there is no requirement in the EIA Regs to assess effects which are not significant. This latter point is reinforced by Regulation 14(2) of the EIA Regs which sets out the requirement that an Environmental Statement must include “*a description of the likely significant effects of the proposed development on the environment*”.
- 7.1.14. The factors that must be assessed as likely to be significantly affected by the development include population and human health (Regulation 5(2)(a)) which, it is accepted, embrace mental health. Thus, if a proposed NSIP would be likely to have significant effects upon mental health, an assessment of these would have to be included in an Environmental Statement.
- 7.1.15. The Environmental Statement has been drafted by experts in health impact assessment and assesses and reports upon the likely significant impact of the Project. It does not assess likely significant impacts upon health (mental health or otherwise) at the individual level, but rather at the community level. That is because the health data of particular individuals is confidential and not available to the Applicant and in any event is not reasonably required in order to identify likely significant impacts.
- 7.1.16. It cannot be reasonable to require an applicant to assess health impacts at an individual level when the data necessary to accomplish this is unavailable. An assessment at an individual level is then not ‘reasonably required’ and so does not have to be included in an Environmental Statement: *R. (Khan) v London Borough of Sutton [2014] EWHC 3663 (Admin) and Preston New Road Action Group v Secretary of State for Communities and Local Government [2018] Env. L.R. 18*).
- 7.1.17. It is accepted that the IEMA Guidance is not mentioned in Chapter 13 of the ES. However, it is solely guidance. There is no statutory requirement to necessarily take account or to follow it.
- 7.1.18. The Applicant has complied with the requirements of the EIA Regs, DMRB LA 112, the Scoping Opinion and the NNNPS, alongside industry good practice, by taking into account the baseline data relating to mental health reporting at the community level in Chapter 13 of the ES. Therefore, mental health considerations have been embedded within the Applicant’s wider assessment of population and human health. The Applicant submits that its assessment approach is in any event consistent with the approach set out in the IEMA Guidance.
- 7.1.19. Further and in any event, Dr Martin has not explained what assessment methodology she considers should have been applied in the alternative.

She has not explained what information an alternative MHA should have contained nor how this would differ from the assessment presented in the Environmental Statement and Examination documents. Crucially, she has not explained whether such an alternative MHA would necessarily conclude that the Project would give rise to a likely significant effect. In the absence of evidence to demonstrate that the Project would give rise to likely significant effects which have not been assessed, there is no evidential basis for an assertion that there has been a failure to comply with the EIA Regs.

- 7.1.20. Dr Martin has also raised additional concerns about the stresses and impacts on wellbeing arising from the consenting process and procedure. It is submitted that these impacts do not arise as a result of the grant of a DCO, however, and as such they do not have to be included in an EIA. As explained above, as a matter of law, an Environmental Statement has to assess the likely significant effects of the proposed development, i.e. the effects if the DCO is granted and the Project proceeds. The concerns raised by Dr Martin about the consenting process would arise even if the DCO Project were not granted.
- 7.1.21. The Applicant has sought throughout to be sensitive to the needs of those potentially affected by the consenting process and has taken a number of steps to offer support, including making adjustments during the public examination process to allow participation including conducting meetings in accessible locations or having them in private residences to save travel requirements.
- 7.1.22. Throughout the consenting process the Applicant has also posted and emailed information at key points to avoid the need for parties to travel to public buildings to collect brochures or other information made available to the general public. All consultation events were held in locations accessible for all members of the public, with venues chosen to ensure they had suitable access points and space for attendees to sit down if required.
- 7.1.23. Taken together, it is submitted that the assessments presented by the Applicant in its Environmental Statement and EqlA undertake the assessment of the likely significant effects of the Project upon health (including mental health) in an “*appropriate manner*”. There is no evidence that the Project would have any likely significant effects upon mental health which are to be weighed in the balance against the grant of the DCO.

8. GOOD DESIGN

- 8.1.1. The NNNPS sets out the criteria for “*good design*” for national network infrastructure. This requires applicants to include design as an “*integral consideration*” from the outset and to take into account, as far as possible, both functionality and aesthetics. It recommends the use of professional independent advice on the design aspects of a proposal.

The draft NNNPS builds upon and further emphasises the importance of “*good design*”.

- 8.1.2. The Project Design Report sets out the context of the Project, the vision and design principles, how the design process was conducted and evolved taking into account an independent design review and consultation feedback. It then goes on to summarise the key elements of the design of each Scheme and the key principles underpinning the design. The Project Design Report explains how ‘good’ design is integrated in the development of the design of the Project up to the submission of the application for development consent.
- 8.1.3. However, ‘good design’ does not end at the submission of the DCO Application. Further design work is required to refine the design for which development consent is sought to a detailed design that would be implemented if development consent is granted.
- 8.1.4. To guide that detailed design process and to ensure that ‘good design’ remains an integral element of the Project, the Applicant has also prepared a series of Project-wide design principles, contained in the Project Design Principles, which are focussed on four themes:
- (a) Theme A: designs that are integrated in context and express character and a sense of place;
 - (b) Theme B: designs to enhance experience for all users and serve the local community;
 - (c) Theme C: designs to restore and enhance habitats and ecological connectivity; and
 - (d) Theme D: designs that are climate resilient and resource efficient.
- 8.1.5. In addition to the Project-wide design principles, the Project Design Principles contain a series of Scheme-specific design principles that address the particular requirements of ‘good design’ for those Schemes. Article 54 of the dDCO requires the detailed design of the Project to be in substantial accordance with Project Design Principles.
- 8.1.6. The Applicant considers that, taken together, the Project meets the requirements of the NNNPS relating to ‘good design’ and is wholly consistent with policy emerging in the draft NNNPS. There are no reasons on design grounds to withhold development consent.

9. COMPULSORY ACQUISITION AND TEMPORARY POSSESSION

9.1 Legal tests

9.1.1. The tests for compulsory acquisition of land (including the creation and acquisition of new rights over land) are set out in section 122 of the PA 2008, and further explained in the Guidance related to procedures for the compulsory acquisition of land (DCLG, 2013) (the ‘**CA Guidance**’). In the Statement of Reasons, the Applicant has set out its case in full for the authorisation of compulsory acquisition (including the acquisition of rights) and temporary possession of land.

9.1.2. Section 122 provides that an order granting development consent may include powers of compulsory acquisition only if the Secretary of State is satisfied that the conditions in subsections (2) and (3) are met. Subsection (2) provides that the land must be: (a) required for the development; (b) required to facilitate or is incidental to the development; or (c) replacement land which is to be given under sections 131 or 132 of the PA 2008.

9.2 Requirement for the land – section 122(2)(a) and (b) of the PA 2008

9.2.1. Many of the objections raised to the Applicant’s compulsory acquisition proposals seek to assert that the design is not sufficiently advanced or that there has been a lack of engagement or effort on the part of the Applicant to acquire by agreement the interests in and rights over land that it requires for the Project. The Applicant explained at compulsory acquisition hearing 1 (‘**CAH1**’) and compulsory acquisition hearing 2 (‘**CAH2**’) and in its subsequent written submissions (CAH1 Note and CAH2 Note) its firm view that such objections are without foundation.

9.2.2. In common with other major highway schemes going through the process of applying for development consent under the PA 2008, the Applicant has prepared a “reference” design - a design of sufficient detail to enable it to set the parameters of the development, to carry out an EIA and to identify land required to deliver the Project.

9.2.3. This approach is entirely consistent with the level of detail presented in all other nationally significant highway infrastructure projects promoted, and granted development consent, under the PA 2008. This is the case whether those projects are promoted by National Highways as the strategic highway company (see for example and picking the most recent, the A417 Missing Link Development Consent Order 2022) or by local authorities (see for example the Lake Lothing (Lowestoft) Third Crossing Order 2020).

9.2.4. There are good reasons for this approach. The detailed design of NSIPs is a complex business. A proportionate degree of flexibility is required when developing such projects to facilitate engineering solutions to

unforeseen problems. It is also an expensive task and it would be unduly burdensome on the public purse to require a detailed design before the grant of development consent and the authorisation of compulsory acquisition.

- 9.2.5. Where this Project differs from other projects promoted by National Highways is that, in order to support the Project Speed initiative, the detailed design work has commenced earlier than would normally be the case. However, it remains the case that such work is ongoing and, as such, the requirement for a proportionate degree of flexibility remains. The Applicant's Land Acquisition Summary Statement explains the approach in more detail.
- 9.2.6. The Applicant has demonstrated that it has a clear justification and intended use for all of the land within the Order limits that is proposed to be subject to powers of compulsory acquisition and temporary possession. It has set this out on a plot-by-plot basis in its CA and TP Schedule. The Examining Authority and affected persons have tested the Applicant's requirement for the land throughout the Examination, see for example, the ISH3 Note – Response to Agenda Item 3.2 on Environmental Mitigation, the CAH2 Note, the CAH1 Note, the Responses to Examining Authority's WQs and the Responses to Examining Authority's Further WQs. The Applicant has demonstrated that it requires all of the land within the Order limits to deliver the Project and has included no more land than is required so to do.
- 9.2.7. As the detailed design of each scheme is progressed, the Applicant will refine its understanding of what land is required and may conclude in the light of that detailed design that it need not compulsorily acquire all of the land that it has currently proposed as being subject to powers of compulsory acquisition. This may be because it has concluded negotiations to acquire by agreement and without compulsion the interests in land it requires, or because the refinement of the detailed design permits a reduction to the amount of land required to deliver the Project.
- 9.2.8. Where this is the case, the provisions of the draft DCO provide an additional safeguard. Article 19(1) of the dDCO only enables the compulsory acquisition of "*so much of the Order land as is required for the authorised development, or to facilitate it, or as is incidental to it*". This requires the Applicant to consider at the point of exercising powers of compulsory acquisition whether or not that land is required for the authorised development, further respecting the human rights of affected persons.
- 9.2.9. There are therefore clear safeguards that ensure that only the land required for the Project is compulsorily acquired. The Applicant is therefore satisfied that the conditions in section 122(2)(a) and (b) of the PA 2008 are met.

9.3 Replacement land – section 122(2)(c) of the PA 2008

- 9.3.1. In relation to section 122(2)(c), the Applicant does seek authorisation for powers of compulsory acquisition in respect of “*replacement land*” to be given in exchange for Order land under section 131. The basis on which replacement land is required is set out in Section 7.2 of the Statement of Reasons. Article 34 of the dDCO provides the mechanism that ensures that the replacement land is provided.
- 9.3.2. The issue of special category land was discussed at CAH1 and the Applicant’s submissions are recorded under agenda item 5.1 of its CAH1 Note where the Applicant also explained the reasons why it considered the provision of replacement land to be unnecessary in connection with its proposals to increase the height by which the existing electricity line crosses above the Kirkby Thore School playing field (Scheme 0405), and in connection with its proposals to provide environmental mitigation in the form of woodland planting on land at Thacka Beck (Scheme 0102).
- 9.3.3. Consequently, the Applicant is satisfied that the condition in section 122(2)(c) is met.

9.4 Compelling case in the public interest – section 122(3) of the PA 2008

- 9.4.1. Section 122(3) of the PA 2008 requires a compelling case in the public interest for the authorisation of the compulsory acquisition of land.
- 9.4.2. The compelling case for the Project is not in question and the benefits of the Project are summarised in section 3 of this document. The NNNPS, at paragraph 2.2, identifies a “*critical need*” to improve road congestion to provide safe, expeditious and resilient networks that better support social and economic activity. Chapter 2 of the Statement of Reasons outlines the need for the Project. The Applicant’s Case for the Project sets out that need case in detail. It also summarises the Project’s conformity with the NNNPS, which is assessed in detail in the LPCS.
- 9.4.3. The Applicant has considered carefully the potential adverse effects associated with the changes of land use that would flow from the Project if development consent were to be granted. Chapter 13 of the ES (among other matters) identifies the Project-wide and Scheme-specific likely significant effects of the Project on private property and housing, community land and assets and agricultural land holdings. Even with mitigation some significant adverse residual effects will remain, but these have been minimised where practicable.
- 9.4.4. However, in the Applicant’s view, collectively, the public benefits that the Project, if granted development consent, would deliver would outweigh the private losses that would be sustained by those whose land is required for or affected by the Project, and hence there is a compelling case in the public interest for the compulsory acquisition of land, and rights over land, required to deliver the Project.

- 9.4.5. As summarised in section 4 of this document, the Applicant has explored alternative options for the Project and as the Project comprises eight Schemes, alternative options were considered for each Scheme prior to the announcement of a preferred route for each Scheme. None of the alternatives or modifications considered for any of the Schemes comprising the Project would obviate the need for the compulsory acquisition and temporary possession of land. In designing the Project and determining the land proposed to be subject to compulsory acquisition and temporary possession powers, the Applicant has considered alternatives and modifications to the Project to minimise the potential land take to deliver the Project. The Applicant summarised its consideration of alternatives to compulsory acquisition in CAH1 and also set it out subsequently in its CAH1 Note (see the submissions under agenda item 2.3).
- 9.4.6. The Applicant has made, and is continuing to make, extensive and genuine efforts to acquire by agreement the interests in land it requires for the Project, as an alternative to compulsory acquisition. An integral part of the Applicant's approach to seeking acquisition by agreement has been to incentivise early acquisition through its Acquisition Completion Premium ('ACP') policy. The ACP policy offers affected persons a 20% premium on the market value of the land for early completions and adopts a "mix and match" approach that would enable parts of landholdings to be purchased outright and others to be subject to an option arrangement. The offer remains open subject to negotiations being concluded by 20 July 2023. A detailed explanation of how the ACP policy works is set out in Section 1.4 of the Applicant's Land Acquisition Summary Statement.
- 9.4.7. In respect of negotiations with landowners, the CA Guidance recognises (at paragraph 25) that for linear schemes where multiple landowners are affected, negotiations are likely to proceed in parallel with the DCO process. In that respect, there has been substantial engagement with landowners. Whilst in several cases agreement has not been reached, substantial progress has been made, as is shown in the Applicant's CA Schedule of Negotiations (updated for Deadline 8).

9.5 Human Rights Act 1998

- 9.5.1. The Applicant's approach to compulsory acquisition is consistent with the relevant duties in the Human Rights Act 1998 and the Equality Act 2010. The Applicant has also set out its obligations in detail in Section 6 of the Statement of Reasons and during CAH2 (as recorded under agenda item 3.1 of its CAH2 Note).
- 9.5.2. As to Article 8 of the European Convention on Human Rights, which protects the right of the individual to respect for their private and family life, their home and their correspondence, the Applicant acknowledges that the Project does affect some residential dwellings and that the Applicant has sought to acquire, as early as possible, properties which would be severely affected and impacted by the proposals. This includes

the acquisition of several properties located on the proposed route of the Project whose owners chose to serve blight notices or apply under the Applicant's discretionary purchase policy. The Applicant provided an update on the status of the acquisition of dwellings pursuant to blight notices and discretionary purchases in its CAH2 Note, under agenda item 3.1. This confirmed the completion of four purchases, two purchases where the conveyancing process had begun and three further instances where negotiations were ongoing.

- 9.5.3. As to Article 1 of the First Protocol, it has been demonstrated that the acquisition is necessary and proportionate to the public interest in the Project, and owners will be compensated for the land acquired. As to Article 6, landowners have been able to challenge the acquisition through the Examination process, including testing the necessity of the extent of land required.

9.6 Equality Act 2010

- 9.6.1. As summarised in more detail in section 7 of this document, an EqIA was prepared by the Applicant and there is an ongoing process of assessment, consistent with the duties on the Applicant.

- 9.6.2. The EqIA outlines how key equality receptors were identified and engaged with throughout the development of the project. Key potential equalities receptors were identified along the route of the Project and engaged with throughout the development of the Project. In relation to land acquisition, the EqIA identified potential effects on these receptors which are:

- (a) A temporary adverse impact on Kirkby Thore Primary School as a result of temporary land use required to facilitate works to an existing overhead cable, affecting outdoor space.
- (b) Adverse impacts on the Riding for the Disabled facilities and Changing Lives services at Happy Hooves with lack of certainty over the availability of alternative facilities.
- (c) Direct loss of the current BHF site used by the Gypsy Community, the loss of which will be mitigated with a replacement site to the immediate west of the existing site.
- (d) Potential positive impacts on the Gypsy Community as result of the relocation of the BHF site. The proposed replacement site offers opportunities to provide greater separation from the A66 by the provision of appropriate boundary treatment, as well as safer access, being from local roads rather than directly from the A66.

9.7 Funding and delivery

- 9.7.1. The Applicant has prepared and submitted a Funding Statement.

- 9.7.2. The Funding Statement confirms that the Project has a capital cost estimate of £1,490m including allowances for risk and inflation. This estimate includes all costs to deliver the project from options appraisal stages through to opening for traffic. The Funding Statement has been prepared in accordance with the Applicant's procedures and, in combination with the approved budget, provides sufficient cost certainty to enable the Applicant to confirm the viability of the Project.
- 9.7.3. In addition, the Applicant notes the Ministerial Statement on 9 March 2023 which states that "*in terms of major road investments, Road Investment Strategy (RIS) 2 schemes will continue to progress*". One of the "*major commitments to schemes for delivery*" in RIS2 is "*dualling the A66 between the A1(M) and the M6*" – see Appendix E of the Funding Statement.
- 9.7.4. The Government's and the Applicant's commitments demonstrate that the Project will be fully funded by the Department for Transport. The Project is not dependant on funding contributions from other parties.
- 9.7.5. The Applicant also considers that there is no impediment to the implementation of the Project arising from any other regulatory requirement. As is set out in the CAPS, the Applicant is not aware of any reason why any consents, permits and licences that may be necessary for the Project and which are not included in the dDCO, would not be forthcoming.

9.8 Statutory undertakers' land – section 127 of the PA 2008

- 9.8.1. There has been extensive engagement with a total of 21 statutory undertakers and operators of electronic communications code networks. The latest position on negotiations is set out in the SU Negotiations Schedule submitted at Deadline 8. As negotiations are ongoing, or agreements are in the processing of being signed with a number of statutory undertakers, a further update will be provided at Deadline 9.
- 9.8.2. In respect of the remaining statutory undertakers where discussions in relation to protective provisions and side agreements are not yet concluded and objections have not been withdrawn, section 127(2) and (5) of the PA 2008 confirm that the Secretary of State may nonetheless authorise the compulsory acquisition of such land or rights over such land provided the Secretary of State is satisfied that the tests in section 172(3) (in respect of the acquisition of land) and 172(6) (in respect of the acquisition of rights over land) have been met. In summary, those tests will be met if the acquisition of the land, or the right over the land, would not lead to a material detriment to the carrying on of the statutory undertaker's undertaking or if any detriment can be made good by the use of other land.
- 9.8.3. The Applicant has included in Schedule 9 to its dDCO protective provisions for the benefit of the relevant statutory undertakers, whether they are specifically named or fall under the general protective provisions

contained in Parts 1 and 2 of Schedule 9. The Applicant is of the firm view that the protective provisions ensure that no statutory undertaker with an objection that has not been withdrawn will suffer a material detriment as a result of the authorisation of compulsory acquisition of interests in and rights over land.

9.9 Crown land – section 135 of the PA 2008

- 9.9.1. The Project seeks the authorisation of the compulsory acquisition of interests in Crown land, other than the interests of the Crown. Section 135 of the PA 2008 confirms that a development consent order may authorise the acquisition of interests in Crown land only if those interests are not owned by or on behalf of the Crown and if the appropriate Crown authority consents. Crown consent is therefore required in relation to those other interests.
- 9.9.2. There is Crown land on Schemes 06 and 07 of the Project. On Scheme 06 all of the Crown land is in the ownership of the Secretary of State for Defence; on Scheme 07 there is a single plot of Crown land (plot 07-02-45) and this is owned by the Public Trustee which operates within the Ministry of Justice.
- 9.9.3. As recorded in the SoCG with the DIO there is in principle agreement between the parties in relation to the Applicant's proposals now that change reference DC-21 has been accepted into the Examination. Change DC-21 sought modifications to the Applicant's proposals to further avoid compromising the operational requirements of the MoD. National Highways is working with the DIO on the form of Crown authority consent to be granted by the MoD, as the appropriate Crown authority, and the Applicant considers there to be no reason to consider that formal Crown authority consent for the Crown land on Scheme 06 will not be forthcoming prior to the close of the Examination.
- 9.9.4. In relation to the Public Trustee Crown land, the Applicant explained at CAH2 (as recorded under agenda item 5.2 in its CAH2 Note) that the principle of the grant of Crown authority consent is agreed. However, the Applicant understands (as explained in its CAH2 Note) that the Public Trustee considers it necessary to obtain an order of the Court, to authorise the grant of the Crown authority consent, before such consent can be granted. The Applicant understands that the Public Trustee has made, or is imminently making, the relevant application to the Court. Given the requirement for the Court to process such an application, it is unlikely that Crown authority consent will be available prior to the close of the Examination and consequently, the Applicant envisages supplying the Crown authority consent to the Secretary of State during the period for determining the Applicant's application for development consent.
- 9.9.5. In the interim, the Applicant has been working with the Public Trustee to agree the form of a Letter of Comfort to confirm the position that, other than the requirement for a Court order, there is no in-principle impediment to the grant of Crown authority consent. It is anticipated that

the Letter of Comfort will be provided by the Public Trustee before the close of the Examination.

Summary of the Applicant's position regarding compulsory acquisition and temporary possession

9.9.6. In summary:

- (a) There is a compelling case in the public interest for the authorisation of the compulsory acquisition of land, rights over land and the temporary possession of land;
- (b) The Applicant seeks authorisation to exercise powers to acquire land, and to create and acquire rights over land, compulsorily, over only so much of the land as is required to deliver the Project and its wider public benefits;
- (c) The Applicant has weighed the public benefits the Project would deliver against the private loss that would arise from compulsory acquisition and considers that the wider public benefits would outweigh those private losses;
- (d) Alternatives to compulsory acquisition have been considered, but no alternative would deliver the public benefits of the Project and avoid the requirement for compulsory acquisition of land;
- (e) The Applicant has made extensive efforts to acquire the land it requires for the Project by negotiation and has instituted a policy to pay a 20% premium to incentivise early acquisition by agreement (in advance of any powers of compulsory acquisition becoming available to it);
- (f) In relation to statutory undertakers, the Applicant has made significant progress in removing objections and in any event considers that the protective provisions included in Part 9 of the dDCO ensure that no statutory undertaker would suffer a material detriment to their undertaking;
- (g) The Applicant considers there to be no reasons why Crown authority consent will not be granted on behalf of the Secretary of State for Defence prior to the close of the Examination. In relation to the Public Trustee, the consent is agreed in principle subject to the grant of the Court order the Public Trustee requires; and
- (h) In relation to special category land, where replacement land is required, it is provided through the mechanism of article 34 of the dDCO. Where replacement land is not required the Applicant has explained why this is the case in its Statement of Reasons and in its CAH2 Note.

- 9.9.7. For the reasons set out above, the provisions in respect of compulsory acquisition and other land use powers are fully justified and the Order should be granted in the terms sought.

10. CONCLUSION

- 10.1.1. The Project successfully delivers the Project objectives – it facilitates improved and safer vehicle movements to the A66 route network, improves strategic, regional and national connectivity, makes the local road network more efficient, reduces the impact of the route on severance for local communities and minimises adverse impacts on the environment, amongst others.
- 10.1.2. The Project is of national significance and aligns with Government policy. In particular, the PA 2008 requires that the DCO is determined in accordance with the relevant NPS. In this case, the NNNPS is the primary basis for decision-making – the Applicant has carefully considered the legal obligations set out in the NNNPS and has ensured complete compliance with these.
- 10.1.3. The Applicant has demonstrated how the careful selection of the Project from an assessment of feasible alternatives, and the design work of the chosen option undertaken, will minimise adverse impacts.
- 10.1.4. The Project has been identified as one of the ‘vital infrastructure projects’ subject to Project Speed, which aims to ensure the delivery of the ‘right things, better and faster than before’.
- 10.1.5. On the basis set out throughout this document, the Applicant invites (1) the Examining Authority to recommend that the DCO be made; and (2) the Secretary of State to so make it, in the form submitted by the Applicant at Deadline 8 as that is updated at Deadline 9 following remaining but ongoing discussions with some statutory undertakers and statutory bodies.