



The Planning Inspectorate

The Planning Act 2008

## **A66 Northern Trans-Pennine Project**

Examining Authority's Report  
of Findings and Conclusions

and

Recommendation to the Secretary of State for  
Transport

---

### Examining Authority

**Richard Allen** BSc (Hons) PGDip MRTPI, (Lead Member of the ExA)

**Neil Humphrey** BSc (Hons) CEng FICE MTPS

**Marie-Louise Milliken** BA(Hons) MPlan MRTPI

**Stephen Roscoe** BEng (Hons) MSc CEng MICE

7 AUGUST 2023

[This page is intentionally blank]

# OVERVIEW

File Ref: TR010062

The Application, dated 21 June 2022, was made under section (s) 31 of the Planning Act 2008 (PA2008) and was received in full by the Planning Inspectorate on 21 June 2022.

The Applicant is National Highways.

The Application was accepted for examination on 19 July 2022.

The examination of the application began on 29 November 2022 and was completed on 29 May 2023.

The development proposes dualling of all the remaining lengths of single carriageway to create a continuous 70mph dual carriageway (except for a short length of 50mph dualling between M6 Junction 40 and east of Kemplay Bank) across the North Pennines, between the A1(M) and M6 motorways. Improvements to junctions and minor works to the existing dual carriageway lengths of the A66 within the existing highway boundary are also proposed.

Once complete, the Proposed Development will lead to the entire 80 kilometre route having two lanes in both directions with consistent standard signage and road markings across the route. The intention is to ensure that the road provides a coherent user experience, improving safety, reliability, journey times and journey quality for all users.

## **Summary of Recommendation:**

Subject to the Secretary of State being satisfied that:

- Adverse Effect on Integrity to the North Pennine Moors Special Area of Conservation can be excluded and that appropriate agreement has been reached between the Applicant and Natural England; and
- That any mitigation agreed by those parties lies within the scope and assessment in the Environmental Statement and is deemed to be acceptable.

**The Examining Authority recommends that the Secretary of State makes the Order in the form attached.**

However, if Natural England advises the Secretary of State that Adverse Effect on Integrity to the North Pennine Moors Special Area of Conservation cannot be excluded, and no mitigation is offered or agreed, the Examining Authority advises the Secretary of State that they may wish to consider the structure of the Order and the Regulations contained within the Conservation of Habitats and Species Regulations 2017 (as amended).

# REPORT TABLE OF CONTENTS

1.	INTRODUCTION TO THE APPLICATION .....	6
1.1.	EXPLANATION OF THE EXAMINATION AND REPORTING PROCESS .....	6
1.2.	APPOINTMENT OF THE EXAMINING AUTHORITY .....	6
1.3.	THE APPLICATION.....	6
1.4.	APPROACH TO THE CONTROL FRAMEWORK.....	7
1.5.	LOCATION OF THE PROPOSED DEVELOPMENT .....	8
1.6.	NATIONAL INFRASTRUCTURE .....	9
1.7.	ENVIRONMENTAL IMPACT ASSESSMENT .....	10
1.8.	HABITATS REGULATIONS ASSESSMENT .....	10
1.9.	PRE-EXAMINATION .....	10
1.10.	PROCEDURAL DECISIONS.....	12
1.11.	THE EXAMINATION.....	12
1.12.	CHANGES TO THE APPLICATION.....	14
1.13.	UNDERTAKINGS, OBLIGATIONS AND AGREEMENTS .....	15
1.14.	OTHER CONSENTS AND LICENCES .....	15
1.15.	STRUCTURE OF THIS REPORT .....	15
2.	DETERMINING THE PROPOSED DEVELOPMENT.....	17
2.1.	INTRODUCTION .....	17
2.2.	KEY LEGISLATION.....	17
2.3.	NATIONAL POLICY STATEMENT .....	18
2.4.	OTHER RELEVANT NATIONAL POLICIES .....	19
2.5.	REGIONAL AND LOCAL PLAN POLICIES .....	22
2.6.	MADE DEVELOPMENT CONSENT ORDERS.....	22
2.7.	TRANSBOUNDARY EFFECTS.....	22
3.	IDENTIFYING THE PLANNING ISSUES .....	23
3.1.	SUMMARY OF THE SUBSTANTIVE MATTERS RAISED IN RELEVANT REPRESENTATIONS.....	23
3.2.	INITIAL ASSESSMENT OF THE PRINCIPAL ISSUES .....	23
3.3.	ISSUES ARISING IN LOCAL IMPACT REPORTS.....	23
3.4.	ISSUES ARISING IN WRITTEN AND ORAL SUBMISSIONS.....	25
3.5.	CONTROL FRAMEWORK .....	25
3.6.	COMMENTS ON APPLICANT'S ENVIRONMENTAL IMPACT ASSESSMENT ..	25
3.7.	OUTSTANDING MATTERS AT THE CLOSE OF THE EXAMINATION.....	26
4.	ASSESSMENT OF THE PLANNING ISSUES .....	27
4.1.	INTRODUCTION .....	27
4.2.	THE NEED FOR THE PROPOSED DEVELOPMENT.....	27
4.3.	ALTERNATIVES.....	29
4.4.	TRAFFIC AND ACCESS.....	36
4.5.	AIR QUALITY .....	49
4.6.	CARBON EMISSIONS .....	52

4.7.	FLOOD RISK AND WATER ENVIRONMENT .....	64
4.8.	BIODIVERSITY AND WILDLIFE .....	69
4.9.	LANDSCAPE AND VISUAL .....	75
4.10.	HERITAGE ASSETS .....	84
4.11.	POPULATION AND HUMAN HEALTH .....	91
4.12.	NOISE AND VIBRATION .....	104
4.13.	MATERIAL ASSETS AND WASTE .....	106
4.14.	GEOLOGY AND SOILS .....	108
4.15.	CUMULATIVE AND COMBINED EFFECTS .....	110
4.16.	OVERALL SUMMARY .....	111
5.	FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS ASSESSMENT .....	112
5.1.	INTRODUCTION .....	112
5.2.	FINDINGS IN RELATION TO LIKELY SIGNIFICANT EFFECTS ON THE UK NATIONAL SITE NETWORK AND OTHER EUROPEAN SITES.....	114
5.3.	CONSERVATION OBJECTIVES .....	116
5.4.	FINDINGS IN RELATION TO ADVERSE EFFECTS ON THE INTEGRITY (AEoI) .....	117
5.5.	HRA CONCLUSIONS.....	125
6.	CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT .....	127
6.1.	INTRODUCTION .....	127
6.2.	THE PLANNING BALANCE .....	127
6.3.	ASSESSMENT AGAINST S104 OF THE PLANNING ACT 2008.....	132
7.	COMPULSORY ACQUISITION AND RELATED MATTERS .....	135
7.1.	INTRODUCTION .....	135
7.2.	LEGISLATIVE REQUIREMENTS .....	135
7.3.	THE REQUEST FOR CA AND TP POWERS .....	136
7.4.	THE PURPOSES FOR WHICH LAND IS REQUIRED .....	140
7.5.	EXAMINATION OF THE CASE FOR CA AND TP POWERS.....	141
7.6.	THE APPLICANT'S CASE .....	142
7.7.	OBJECTIONS AND THE APPLICANT'S AND EXAMINING AUTHORITY'S RESPONSES .....	147
7.8.	THE ExA's CONSIDERATIONS.....	205
7.9.	CONCLUSIONS .....	213
7.10.	THE ExA's RECOMMENDATIONS ON CA AND TP .....	215
8.	DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS .....	216
8.1.	INTRODUCTION .....	216
8.2.	THE ORDER AS APPLIED FOR.....	216
8.3.	ITERATIONS OF THE DRAFT DCOs.....	217
8.4.	CONTENTIOUS MATTERS IN THE EXAMINATION .....	218
8.5.	ExA's CONSULTATION DRAFT DCO .....	227
8.6.	PROTECTIVE PROVISIONS .....	228
8.7.	OUTSTANDING MATTERS FROM INTERESTED PARTIES .....	229

8.8.	ExA’s RECOMMENDED CHANGES .....	232
8.9.	CONCLUSIONS .....	237
9.	SUMMARY OF FINDINGS AND CONCLUSIONS .....	239
9.1.	FINDINGS.....	239
9.2.	RECOMMENDATION.....	240

APPENDICES .....	I
APPENDIX A: REFERENCE TABLES .....	II
Table A1 – Documents Comprising EMP1 .....	II
Table A2 – Description of Proposed Development by Scheme.....	III
Table A3 – The Environmental Statement.....	VI
Table A4 – PADSS .....	IX
Table A5 – Change Request Documents .....	IX
Table A6 – Summary of Changes.....	X
Table A7 – Summary of Relevant Legislation for the Proposed Development .....	XII
Table A8 – Regional and Local Plans.....	XIII
Table A9 – Made DCOs.....	XV
Table A10 – Summary of Substantive RRs .....	XVI
Table A11 – European sites and features for which LSE could not be excluded by the Applicant .....	XVII
APPENDIX B: LIST OF ABBREVIATIONS.....	XX
APPENDIX C: THE RECOMMENDED DCO.....	XXVII
APPENDIX D: MATTERS FOR THE SECRETARY OF STATE’S FURTHER CONSIDERATION .....	XXVIII
Table D1 – Matters where the Secretary of State is Recommended to Seek Further Information .....	XXVIII
Table D2 - Matters where the Secretary of State May Wish to Seek Further Information .....	XXIX

#### LIST OF FIGURES AND TABLES

Figure 1.1 - Location Plan (Extract from [APP-148]) .....	7
Figure 4.1 – Shortlist Options for Scheme 08 [APP-253] .....	30
Figure 4.2 - Junction Options at Rokeby, Blue Option v Black Option [APP-244].....	31
Figure 4.3 – Shortlist Option for Scheme 06 [APP-253] .....	32
Figure 4.4 – “The Billy Welch Straight Line” [REP4-039] .....	33
Figure 4.5 – Shortlist Options for Scheme 0405 at Kirby Thore [APP-253] .....	34
Figure 4.6 - Shortlist Options for Scheme 0405 at Crakenthorpe [APP-253].....	34
Figure 4.7 - Access routes to Barnard Castle from A66 (Extract from [APP-278]).....	40
Table 4.1 – Barnard Castle - daily two-way traffic flow (vehicles / day) comparison.....	41

Figure 4.8 – Excerpt of the Proposed Trout Beck Viaduct [REP7-119] (purple represents proposed ground levels; green represents existing).....	77
Figure 4.9 – Excerpt of the Proposed Cringle Beck Viaduct [REP8-065] (purple represents proposed ground levels; green represents existing).....	78
Figure 4.10 – Excerpt of the Proposed Moor Beck Viaduct [REP8-065] (purple represents proposed ground levels; green represents existing).....	78
Table 4.2 – Excerpts of the PDP measures for the Designs for the Viaducts [REP8-061] .....	79
Figure 4.11 - Location of Applicant’s proposed mitigation area (Area 7) within the grounds of Skirsgill Hall, together with Landowner’s proposed alternative site (Area 8) (Extract of REP1-058) 81	81
Figure 4.12 - Brough Hill Fair Current and Proposed Site Location (extract from [REP3-045]).....	93
Figure 4.13 – Langrigg Lane general arrangement (Extract of Sheet 5 of 6 [APP-014]) .....	100
Figure 4.14 - Langrigg Lane general arrangement (after Change Request) (Extract of [REP7-003]) .....	101
Table 5.1 – UK National Site Network European sites identified in the Applicant’s Assessment [APP-234] .....	114
Figure 5.1 – Map of Designated and Non-Designated Sites and Proximity to the North Pennine Moors [APP-069].....	121
Table 8.1 – Iterations of the draft DCO Post Submission.....	217
Table 8.2 – Summary of the Applicant’s Response to the ExA’s Consultation Draft DCO and the ExA’s Comments .....	227
Table 8.3 – Recommended Changes to the final draft DCO [REP9-013] .....	232



# The Planning Inspectorate

ERRATA SHEET –A66 Northern Trans-Pennine Project - Ref. TR010062

Examining Authority's Report of Findings and Conclusions and Recommendation to the Secretary of State for Transport dated 7 August 2023.

<b>Page No.</b>	<b>Paragraph</b>	<b>Error</b>	<b>Correction</b>
6	1.3.1	s31	s31 and s37
123	5.4.46 First bullet	critical load levels	critical levels
124	5.4.51	critical load levels	critical levels
124	5.4.53	critical load level	critical level
125	5.4.58	the current critical loads for ammonia and nitrogen deposition	the current critical level for ammonia and critical load for nitrogen deposition



# 1. INTRODUCTION TO THE APPLICATION

## 1.1. EXPLANATION OF THE EXAMINATION AND REPORTING PROCESS

1.1.1. Examination under the Planning Act 2008 (PA2008) is primarily a written process, in which the Examining Authority (ExA) has regard to written material forming the Application and arising from the Examination. All Application documents, along with all comments from Interested Parties (IPs) relating to this Application can be found in the [Examination Library](#) (EL). All documents and representations have a unique reference number e.g. [APP-001] which will be used throughout this report to allow the reader to access the source. The ExA will also refer identify when a document was submitted into the Examination by its Deadline (D) number. For example, a document submitted at Deadline 4 will be referred to as D4.

1.1.2. This Report does not contain extensive summaries of all documents and representations received, although full regard has been had to them and all important and relevant matters arising. Key written sources are set out further below.

## 1.2. APPOINTMENT OF THE EXAMINING AUTHORITY

1.2.1. On 20 July 2022, Richard Allen, Marie-Louise Milliken and Stephen Roscoe were appointed as the ExA for the Application under s61 and s65 of PA2008 [[PD-003](#)]. On 16 September 2022, Neil Humphrey was appointed to the ExA for the application under s68(2) of PA 2008 [[PD-005](#)].

## 1.3. THE APPLICATION

1.3.1. The Application for the A66 Northern Trans-Pennine Project (the Proposed Development) [[APP-003](#)] was submitted by National Highways (the Applicant) to the Planning Inspectorate on 21 June 2022 under s31 of the PA2008 and accepted for Examination under s55 of the PA2008 on 19 July 2022 [[PD-001](#)].

1.3.2. The Proposed Development comprises eight schemes to improve the A66 between the M6 motorway at Junction 40 at Penrith and the A1(M) J53 at Scotch Corner. The Proposed Development would involve improving the junctions on the M6 and A1(M) as well as improving six separate single carriageway lengths of road to dual carriageway standard and making improvements to the junctions within each of those lengths. The nature of the planned improvements includes online widening (adjacent to the existing road) of the carriageway as well as offline construction (new lengths of road following different routes but reconnecting into existing lengths of the A66 that are already dualled).

1.3.3. The eight schemes are:

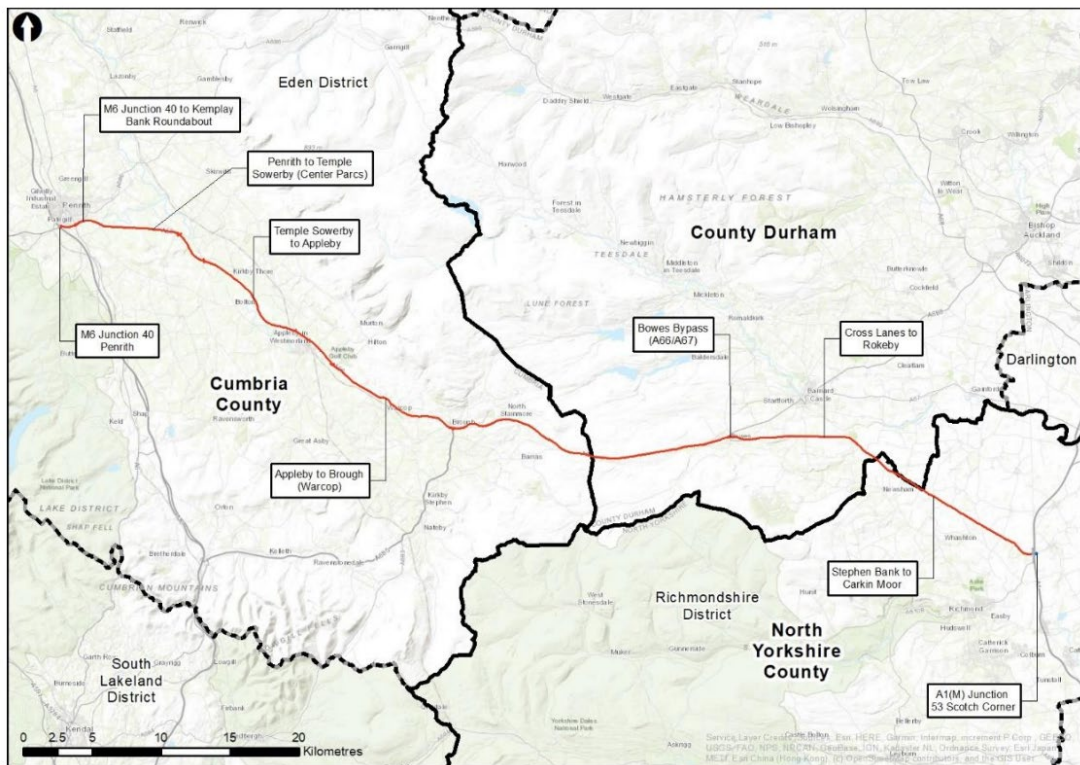
- Scheme 0102 – M6 Junction 40 to Kemplay Bank roundabout;
- Scheme 03 – Penrith to Temple Sowerby;
- Scheme 0405 – Temple Sowerby to Appleby;
- Scheme 06 – Appleby to Brough;
- Scheme 07 – Bowes Bypass;
- Scheme 08 – Cross Lanes to Rokeby;
- Scheme 09 – Stephen Bank to Carkin Moor; and
- Scheme 11 – A1(M) Junction 53 Scotch Corner.

1.3.4. In its written submission for the Pre-Examination Procedural Deadline [\[AS-049\]](#), the Applicant explains why the Scheme numbering is the way it is.

1.3.5. The location of the Proposed Development is shown in Figure 1.1 below, the Location Plan [\[APP-303\]](#) and the final versions of the Land Plans:

- Scheme 0102 [\[REP7-105\]](#);
- Scheme 03 [\[APP-305\]](#);
- Scheme 0405 [\[AS-014\]](#);
- Scheme 06 [\[REP9-027\]](#);
- Scheme 07 [\[REP8-063\]](#);
- Scheme 08 [\[APP-309\]](#);
- Scheme 09 [\[REP8-064\]](#); and
- Scheme 11 [\[APP-311\]](#).

**Figure 1.1 - Location Plan (Extract from [\[APP-148\]](#))**



1.3.6. Further details of the proposal for each Scheme can be found in Table A2 to Appendix A of this Report.

1.3.7. The ExA understands that the Proposed Development was subject to an enhanced pre-application service in which the Applicant, the Planning Inspectorate (but not the ExA), statutory bodies, relevant local authorities and others participated in meetings, discussions and site visits.

## 1.4. APPROACH TO THE CONTROL FRAMEWORK

1.4.1. The Applicant seeks to secure all mitigation through the provision and approval of one comprehensive document, the Environmental Management Plan (EMP) (and its appendices) for each part of the Proposed Development. The EMP is secured by way of an Article (Article 53) in the Recommended Development Consent Order

(Recommended DCO) and replaces Requirements to the DCO to secure individual topic mitigation.

1.4.2. The EMP comprises three iterations:

- The first iteration EMP (EMP1) specifies the intended environmental outcomes that need to be achieved for the Proposed Development. Where specific mitigation must be achieved in a certain way, that is identified within EMP1. A detailed list of the documents and annexes comprising EMP1 is set out in Table A1 of Appendix A to this Report.
- The second iteration EMP (EMP2) would set out how these environmental outcomes would be achieved, with more detail on the specific measures to be implemented. EMP2 may be split on a scheme-by-scheme basis (as opposed to topic by topic, for example) meaning one EMP2 would be produced and submitted for approval for each Scheme, or part of that Scheme, or indeed a combination of different Schemes. EMP2 requires the approval of the Secretary of State should they be minded to make the Order. Article 53 of the Recommended DCO sets out within paragraphs (1) to (9) the powers to approve and amend any part or all of EMP2.
- The third iteration EMP (EMP3) would be effectively an operational EMP, which would set out how the road would be operated to comply with the on-going mitigation required to be implemented. These powers are contained within paragraphs (10) and (11) of the Recommended DCO.

1.4.3. Issues and concerns with this approach are discussed in Section 4 where relevant, and more fully in Section 8 of this Report.

## **1.5. LOCATION OF THE PROPOSED DEVELOPMENT**

1.5.1. Chapter 2 of the Environmental Statement (ES) [[APP-045](#)] provides a detailed description of the surrounding area. In summary:

- The surrounding landscape largely comprises undulating and rolling open countryside, surrounded by gentle valleys characterised by large and regular fields and areas of deciduous woodlands.
- The elevation of the road rises rapidly from approximately 170m above ordnance datum (AOD) at Brough to a high point of approximately 440m AOD as it passes over Bowes Moor, before gradually descending again to an elevation of approximately 150m AOD at Scotch Corner.
- The existing A66 runs through the North Pennines Area of Outstanding Natural Beauty (AONB) between Brough and Bowes.
- The Lake District National Park lies approximately 2 kilometres (km) south-west of Penrith. The Yorkshire Dales National Park lies approximately 3.5km to the south of the A66.
- There are a number of historic features along the route including conservation areas, Scheduled Monuments and a large number of Grade I, II\* and II listed buildings, many of which lie directly adjacent to the A66, including Rokeby Hall and its Registered Park and Garden (RPG).
- The North Pennine Moors Special Protection Area (SPA) and Special Area of Conservation (SAC) are encompassed within the North Pennines AONB. The River Eden SAC and its tributaries which run adjacent to and underneath the A66 are also a key consideration.

- The River Eden (designated a main river) crosses the A66 at Coupland Viaduct and 3km south-east of Appleby-In-Westmorland. Flood Zones 2 and 3 associated with the River Eden, its tributaries and other watercourses are located along the route.

### **Changes to Local Authorities**

- 1.5.2. When the Application was submitted, the host local authorities comprised Cumbria County Council (Cumbria CC) and Eden District Council (Eden DC) in the Cumbria area, Durham County Council (Durham CC), and North Yorkshire County Council and Richmondshire District Council in the Yorkshire area.
- 1.5.3. On Saturday 1 April 2023, Cumbria CC and Eden DC were abolished, with their powers and functions transferred to the newly created unitary Westmorland and Furness Council (Westmorland and Furness C). Similarly, North Yorkshire County Council (North Yorkshire CC) and Richmondshire District Council (Richmondshire DC) were also abolished and replaced by a unitary North Yorkshire Council (North Yorkshire C). Local government arrangements in unitary Durham CC were unaffected.
- 1.5.4. The ExA made a Procedural Decision [[PD-004](#)] requesting that the four previous authorities prepare Joint Engagement Statements (JES) to facilitate a smooth exchange of information given that the examination and decision process was running during the transition period. Cumbria CC and Eden DC's JES was submitted alongside its RR [[RR-123](#)]; North Yorkshire CC and Richmondshire DC's JES was an additional submission [[AS-052](#)].
- 1.5.5. The Proposed Development site is wholly within England and the individual schemes lie within the following administrative areas:
- Schemes 0102, 03, 0405 and 06 Westmorland and Furness C;
  - Schemes 07 and 08 Durham CC; and
  - Schemes 09 and 11 North Yorkshire C.
- 1.5.6. In the following sections of the Report, we refer to the Councils as they were at the end of the Examination for ease of understanding. The only exceptions would be if reference is made to an individual council submission where there were two separate representations from the former councils prior to their amalgamation, so we might distinguish between the representations.

### **Relevant Planning History**

- 1.5.7. The Applicant has undertaken a search of relevant planning history for:
- All development within the Order Limits;
  - All development within 2km of the Order Limits; and
  - Major development within 5km of the Order Limits, including Nationally Significant Infrastructure Projects (NSIP).
- 1.5.8. All of the relevant developments that may be affected by or create cumulative impacts of relevance to the Proposed Development have been considered within Chapter 15 (Cumulative Effects) of the ES [[APP-058](#)].

## **1.6. NATIONAL INFRASTRUCTURE**

- 1.6.1. The Planning Inspectorate agreed with the Applicant's view stated in the Application Form [[APP-003](#)] that the Proposed Development is an NSIP for the following

reasons: The Proposed Development as a whole satisfies s22(1) of the PA2008, in that the highway will (when constructed) be wholly located in England, National Highways as a strategic highways company will be the highway authority for the highway and the area of development is greater than the relevant limit set out in subsection (4), which in this case is 12.5 hectares.

- 1.6.2. The Proposed Development, taken as a single entity, therefore meets the definition of an NSIP set out in s14(1)(h) of PA2008.

## **1.7. ENVIRONMENTAL IMPACT ASSESSMENT**

- 1.7.1. The Proposed Development is development for which an Environmental Impact Assessment (EIA) is required.

- 1.7.2. The Applicant's Scoping Report, submitted on 11 June 2021, can be found here [\[APP-148\]](#). On 23 July 2021 the Planning Inspectorate on behalf of the Secretary of State provided a Scoping Opinion [\[APP-149\]](#). On 7 September 2022 the Applicant provided the Planning Inspectorate with certificates confirming that s56 and s59 of PA2008 and Regulation 13 of the EIA Regulations had been complied with [\[OD-003\]](#) and [\[OD-004\]](#).

- 1.7.3. Table A3 of Appendix A to this Report sets out the documents which comprise the ES. Consideration is given to the adequacy of the ES and matters arising from it in Section 4 of this Report.

## **1.8. HABITATS REGULATIONS ASSESSMENT**

- 1.8.1. The Proposed Development is development for which a Habitats Regulations Assessment (HRA) Report [\[APP-234\]](#) and [\[APP-235\]](#) has been provided.

- 1.8.2. Consideration is given to the adequacy of the HRA Report, associated information and evidence and the matters arising from it in Section 5 of this Report.

## **1.9. PRE-EXAMINATION**

### **The Persons Involved**

- 1.9.1. The persons involved in the Examination were:

- Persons who were entitled to be Interested Parties (IPs) because they had made a relevant representation (RR) or were a statutory party who requested to become an IP; and
- Affected Persons (APs) who were affected by a compulsory acquisition (CA) and/ or temporary possession (TP) proposal made as part of the Application and objected to it at any stage in the Examination.

### **Principal Areas of Disagreement Summary Statements**

- 1.9.2. In our letter of 29 July 2022 [\[PD-004\]](#), the ExA devised (a first for an Examination) and requested local authorities, statutory parties and named IPs to prepare and submit Principal Areas of Disagreement Summary Statements (PADSS), both alongside their respective RRs but also to be updated at various deadlines during the Examination.

- 1.9.3. This enabled the ExA to have a greater understanding at a much earlier period in the process of the substantive matters of concern with the Application. While the



ExA recognises the importance of Statements of Common Ground (SoCG) in the application process, they were prepared by the Applicant and the ExA felt that they detail matters agreed between the parties rather than on the substantive matters of concern and disagreement. The PADSS were a live document throughout the Examination, supplementing the Local Impact Reports (LIR), SoCGs and WRs.

- 1.9.4. The PADSS is a simple table, drawing on the principles of a Scott Schedule<sup>1</sup>, of four columns requesting:
- The topic area in question;
  - A brief description of the concern or matter in dispute;
  - What, in the view of the IP, needs to change/ be amended to overcome that concern/ disputed matter; and
  - The likelihood of the matter being resolved.
- 1.9.5. Table A4 of Appendix A of this Report sets out the list of PADSS received during the Examination.
- 1.9.6. The North Pennines AONB Partnership were invited to submit a PADSS but did not. Westmorland and Furness C (as written by Eden DC and Cumbria CC) decided to list every area of concern rather than limit it to just those principal matters sought by the ExA. Other IPs produced tables entitled PADSS as part of overall representations received, and the ExA has treated them as such.
- 1.9.7. The PADSS were used to assist the ExA in its preparation of the Initial Assessment of Principal Issues (IAP) and throughout the Examination and have been taken fully into account by the ExA in all relevant Sections of this Report.

### **Relevant Representations**

- 1.9.8. RRs totalling 231 were received by the Planning Inspectorate. All persons who made RRs received a letter under Rule 6 [PD-006] of the Infrastructure Planning (Examination Procedure) Rules 2010 (EPR) explaining the opportunity to become involved in the Examination as IPs. All RRs have been fully considered by the ExA. The issues that they raise are considered in the relevant sections of this Report.

### **The Preliminary Meeting**

- 1.9.9. On 17 October 2022, the ExA wrote to all Interested Parties (IPs), Statutory Parties and Other Persons under Rule 6 of the EPR inviting them to the Preliminary Meeting (PM) and other Hearings (see below) [PD-006], outlining:
- The arrangements and agenda for the PM;
  - Notification of hearings to be held in the early stage of the Examination;
  - Agendas for the early hearings;
  - An Initial Assessment of the Principal Issues (IAP);
  - The draft Examination Timetable;
  - Availability of Examination documents; and
  - The ExA's procedural decisions.
- 1.9.10. The PM took place on 29 November 2022 at The Witham, 3 Horse Market, Barnard Castle, County Durham, DL12 8LY. The PM and subsequent Hearings consisted of blended events, meaning they were held in person, with some participants opting to attend online using Microsoft Teams. A recording [EV-007 and EV-008], a transcript

---

<sup>1</sup> [Scott Schedule Note \(justice.gov.uk\)](https://www.justice.gov.uk/consultations/2018/01/18)

[[EV-009](#) and [EV-010](#)] and a note of the PM [[EV-010a](#)] were published on the Planning Inspectorate National Infrastructure website. The Examination Timetable took full account of matters raised at the PM. They were provided in the Rule 8 Letter [[PD-007](#)], dated 08 December 2022.

## **1.10. PROCEDURAL DECISIONS**

1.10.1. The procedural decisions (PDs) taken by the ExA are recorded in the EL referenced [PD-]. They detail the ExA's decisions relating to the procedure of the Examination and did not bear on the ExA's consideration of the planning merits of the Proposed Development. Further, they were generally complied with by the Applicant and relevant IPs. They comprised:

- Letter of 29 July 2022 [[PD-004](#)] requesting various submissions (which are discussed later in this Section);
- Letter of 17 October 2022 [[PD-006](#)] informing IPs of the Preliminary Meeting, Appendix D to that letter setting out the ExA's PDs;
- Letter of 6 January 2023 and 26 January 2023, [[PD-008](#)] and [[PD-009](#)] responding to the Applicant's notification to make changes to the Application;
- Letter of 18 April 2023 [[PD-014](#)] responding to the Applicant's Change Request [[CR1-001](#)] and
- Letter of 19 May 2023 requesting additional information from the Applicant and IPs [[PD-016](#)].

## **1.11. THE EXAMINATION**

1.11.1. The Examination began on 29 November 2022 and concluded on 29 May 2023. The principal components of and events around the Examination are summarised below. No party requested to join or leave the Examination.

### **Written Representations and Other Examination Documents**

1.11.2. The Applicant and IPs were provided with opportunities to:

- Make written representations (WRs);
- Comment on WRs made by the Applicant and other IPs;
- Summarise their oral submissions at hearings in writing;
- Make other written submissions requested or accepted by the ExA; and
- Comment on documents issued for consultation by the ExA including:
  - A Report on Implications for European Sites (RIES) [[PD-013](#)] published on 18 April 2023; and
  - A commentary on the draft Development Consent Order (draft DCO) [[PD-015](#)] published on 18 April 2023.

1.11.3. All WRs and other examination documents have been fully considered by the ExA. The issues that they raise are considered in all relevant Sections of this Report.

### **Local Impact Reports**

1.11.4. LIRs were received by the ExA from the three relevant host local authorities. Section 3 discusses the LIRs in further detail.

## Statements of Common Ground

1.11.5. By the end of the Examination, the following bodies had concluded and signed SoCGs with the Applicant:

- Westmorland and Furness C [\[REP9-007\]](#);
- Durham CC [\[REP8-022\]](#);
- North Yorkshire C [\[REP8-026\]](#);
- Historic England (HE) [\[REP8-024\]](#);
- Natural England (NE) [\[REP9-008\]](#);
- Environment Agency (EA) [\[REP9-009\]](#);
- North Pennines AONB Partnership [\[REP8-019\]](#);
- Defence Infrastructure Organisation [\[REP6-019\]](#); and
- Sport England (SE) [\[REP8-073\]](#).

1.11.6. The SoCG with the Gypsy and Travellers Community (GTC) [\[REP9-010\]](#) remained unsigned at the end of the Examination.

1.11.7. The SoCGs (other than unsigned or incomplete ones referred to above) have been taken fully into account by the ExA in all relevant Sections of this Report.

## Written Questions

1.11.8. The ExA asked two rounds of written questions:

- 60no. Written Questions (WQ) [\[PD-011\]](#), dated 31 January 2023; and
- 15no. Further Written Questions (FWQ) [\[PD-012\]](#) dated 24 March 2023.

1.11.9. Additionally, and to assist ISH2 held on 1 December 2022 [\[EV-003\]](#), the ExA issued a number of Supplementary Agenda Additional Questions [\[EV-004\]](#), which were largely matters of clarification which the Applicant was able to confirm at the event and in writing shortly thereafter [\[REP1-005\]](#).

1.11.10. WQs were published on 31 January 2023, and not alongside the Rule 8 letter as is normal practice. The ExA considered this preferable so as to allow the post hearing notes, LIRs, WRs and the Applicant's response to them to answer any questions the ExA had, and thus potentially reduce the number of written questions needed. We consider the resulting relatively low number of written questions asked demonstrated that this approach did provide more efficient use of Examination time.

1.11.11. In response to the Applicant's Change Request (see Section 1.11 below) the ExA [\[PD-014\]](#) asked a further four questions under Rule 17 of the EPR.

1.11.12. All responses to the ExA's written questions have been fully considered and taken into account in all relevant Chapters of this Report.

## Unaccompanied Site Inspections

1.11.13. The ExA held the following Unaccompanied Site Inspections (USIs):

- USI1, 20 and 21 September 2022 to visit publicly accessible locations along the route to gain an understanding of the site surroundings [\[EV-001\]](#);
- USI2, 28 November 2022 to see the surroundings at three proposed viaducts over the Cringle, Moor and Trout Becks, access arrangements at Cross Lanes and to visit Abbey Lane on the outskirts of Barnard Castle [\[EV-006\]](#).



A site note providing a procedural record of each USI can be found in the EL under the above references.

### **Accompanied Site Inspection**

- 1.11.14. The ExA held an Accompanied Site Inspection (ASI) on 28 February 2023 to visit areas not publicly accessible accompanied by the Applicant and other IPs [[EV-035](#)].
- 1.11.15. The itinerary for the ASI can be found in the Examination Library under the above reference. The ExA has had regard to the information and impressions obtained during its site inspections in all relevant Sections of this Report.

### **Hearings**

- 1.11.16. Issue Specific Hearings (ISH)s were held on:
- ISH1, 30 November 2022 [[EV-002](#)] on alternative route options;
  - ISH2, 01 December 2022 [[EV-003](#)] on environmental matters and the draft DCO; and
  - ISH3, 02 March 2023 [[EV-039](#)] on environmental matters.
- 1.11.17. Compulsory Acquisition Hearings (CAH) were held under s92 of PA2008 on:
- CAH1, 02 December 2022 [[EV-005](#)]; and
  - CAH2, 01 March 2023 [[EV-038](#)]
- 1.11.18. All APs affected by Compulsory Acquisition (CA) and/ or Temporary Possession (TP) proposals were provided with an opportunity to be heard. We also used these hearings to examine the Applicant's case for CA and/ or TP in the round.
- 1.11.19. An Open Floor Hearing (OFH) was held under s93 of PA2008 at The Witham, Barnard Castle on the afternoon of 29 November 2022 [[EV-011](#)]. All IPs were provided with an opportunity to be heard on any relevant subject matter that they wished to raise.

## **1.12. CHANGES TO THE APPLICATION**

- 1.12.1. Changes to the key application documents, including the wording of the draft DCO, were submitted and updated during the Examination. The changes sought to address points raised by IPs and the ExA and to update or provide additional information resulting from changes and discussions that had occurred during the Examination.
- 1.12.2. A list of the updated, revised and/ or additional information is contained within the Application Document Tracker [[REP9-003](#)].

### **Request for Changes**

- 1.12.3. The Applicant submitted a formal Change Request on Friday 24 March 2023. Table A5 in Appendix A of this Report sets out the documents comprising the Change Request. There was a total of 24 changes submitted. A summary of these changes is set out in Table A6 in Appendix A of this Report.
- 1.12.4. On Tuesday 18 April 2023, the ExA issued a PD to accept 22 of these changes [[PD-014](#)], concluding that both individually and cumulatively, they were not so substantial to constitute a materially different project, and they did not change the conclusions of the ES.

1.12.5. Two changes, namely DC-22 and DC-23 were not accepted because the ExA was not satisfied that the Applicant had provided evidence that the potential effects had been established.

## **1.13. UNDERTAKINGS, OBLIGATIONS AND AGREEMENTS**

1.13.1. No agreements or undertakings under s106 of the Town and Country Planning Act were put before the Examination.

1.13.2. Some parties have confirmed that, during the Examination, they have reached, or are reaching agreement on private agreements with the Applicant regarding protection of their assets and/ or interests. These are referred to, where relevant, in subsequent Sections of this Report.

## **1.14. OTHER CONSENTS AND LICENCES**

1.14.1. The Consents and Agreements Position Statement [[APP-287](#)] has identified the following consents that the Proposed Development would, or which may be needed in addition to development consent under PA2008. These are:

- European Protected Species Licences under the Conservation of Habitats and Species Regulations 2017 (the “Habitats Regulations”) or the Wildlife and Countryside Act 1981;
- Discharge to controlled waters as a water discharge activity under the Environmental Permitting (England and Wales) Regulations 2016; and
- Abstraction under section 24 of the Water Resources Act 1991.

1.14.2. In its response at D1 [[REP1-035](#)], NE stated that it is still awaiting submission of draft protected species licence applications for review. NE goes on to state that without draft protected licence applications, they are unable to issue Letters of No Impediment. However, NE expect the draft licence applications to come in once the detailed mitigation and construction work areas are agreed and finalised and will continue to support the selection of appropriate mitigation and compensation in regard to protected species.

1.14.3. In its response at D2 [[REP2-016](#)], the Applicant stated that updated/ pre-construction protected species surveys as required to inform the detailed design stage or where NE mitigation licence maybe required, is secured within REAC Commitment D-BD-08 of the EMP [[REP8-005](#)]. The matter was not discussed further in the Examination.

1.14.4. The ExA has considered the available relevant information and, without prejudice to the exercise of discretion by future decision-makers, has concluded that there are no apparent impediments to the implementation of the Proposed Development, should the Secretary of State grant the Application.

## **1.15. STRUCTURE OF THIS REPORT**

1.15.1. The structure of the remainder of this report is as follows:

- **Section 2** records the policy background in determining the Proposed Development.
- **Section 3** sets out how the planning issues were identified.
- **Section 4** provides a commentary and conclusions in relation to the planning issues.
- **Section 5** sets out the findings and conclusions in relation to the HRA.

- **Section 6** sets out the balance of planning considerations arising from Sections 4 and 5 of the Report and applies the tests of s104 of the Planning Act.
- **Section 7** sets out the ExA's examination of CA and TP proposals.
- **Section 8** considers the implications of the matters arising from the preceding Sections for the Recommended Development Consent Order (DCO).
- **Section 9** summarises all relevant considerations and sets out the ExA's recommendation to the Secretary of State.

1.15.2. This report is supported by the following Appendices:

- **Appendix A** – Reference Tables.
- **Appendix B** – List of Abbreviations.
- **Appendix C** – The Recommended DCO.
- **Appendix D** – Matters for the Secretary of State's Further Consideration.

## **2. DETERMINING THE PROPOSED DEVELOPMENT**

### **2.1. INTRODUCTION**

2.1.1. This Chapter sets out the key and most relevant legal and policy context for the application. A full list of legislation considered relevant to this Application can be found in Table A7 to Appendix A to this Report. In this Section, we outline the legislation and policies we have considered and applied in carrying out the Examination and in making our findings and recommendations to the Secretary of State. Each chapter in the ES contains a section setting out the overarching environmental legislation, policy and guidance for each topic.

2.1.2. The LIRs [[REP1-019](#), [REP1-021](#) and [REP1-042](#)] amongst other things set out the Local Authorities' position on applicable development plan policies and other local strategies.

### **2.2. KEY LEGISLATION**

#### **Planning Act 2008**

2.2.1. The PA2008 provides a different decision-making process for NSIP applications where a relevant National Policy Statement (NPS) has been designated from that where there is no designated NPS. As NPS National Networks (NPSNN) has effect in relation to development that is the subject of this application, the ExA considers that the application is to be assessed against s104 of the PA2008.

2.2.2. S104(2) of the PA2008 sets out the matters to which the Secretary of State must have regard in deciding an application submitted in accordance with the PA2008. In summary, the matters set out in s104(2) include any relevant NPSs, LIRs, matters prescribed in relation to the development, and any other matters the Secretary of State thinks are both important and relevant to the decision.

2.2.3. S104(3) of the PA2008 requires the Secretary of State to decide the application in accordance with any relevant National Policy Statement (NPS) that has effect in relation to this application, subject to the exceptions in subsections 104(4) to (8) as follows:

- Deciding the application in accordance with any relevant NPS would lead to the UK being in breach of any of its international obligations;
- Deciding the application in accordance with any relevant NPS would lead to the Secretary of State being in breach of any duty imposed on her or him by or under any enactment;
- Deciding the application in accordance with any relevant NPS would be unlawful by virtue of any enactment;
- The adverse impact of the Proposed Development would outweigh its benefits; and
- Any condition prescribed for deciding an application otherwise than in accordance with an NPS is met.

2.2.4. S104 of the PA2008 places a statutory sustainable development duty on the Secretary of State. The duty makes specific reference to having regard to the desirability of:

- Mitigating and adapting to climate change; and

- Achieving good design.

2.2.5. This Report sets out our findings, conclusions and recommendations taking these matters into account and applying s104 of the PA2008.

### **Equality Act 2010**

2.2.6. S149 of the Equality Act 2010 (EA2010) establishes a duty (the Public Sector Equality Duty (PSED)) to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not. The PSED is applicable to the ExA in the conduct of this Examination and reporting and to the Secretary of State in decision-making. We had particular regard to the PSED in terms of holding virtual meetings, producing guidance and holding those meetings, ensuring participants were provided with hard copy correspondence, where requested, and in our conduct of site inspections to ensure full appreciation of the potential impacts of the Proposed Development on persons with protected characteristics.

### **Human Rights Act 1998**

2.2.7. The assessment of the planning merits of the Proposed Development and the CA of land can engage various relevant Articles under the Human Rights Act 1998. The ExA has had regard to them in Section 4 of this Report and refers to the Act where necessary. Implications in respect to CA are considered in Section 7 of this Report.

## **2.3. NATIONAL POLICY STATEMENT**

2.3.1. With regard to the purposes of s104(2)(a) of the PA2008, the ExA considers that the NPSNN is relevant to the Application.

2.3.2. The NPSNN was designated on 14 January 2015 and remains in force. It sets out the national policy for highways-related development and is relevant to this Application.

2.3.3. The NPSNN sets out the need for Government's policies to deliver development of NSIPs on the national road network in England. It states that the Government has concluded that at a strategic level there is a compelling need for the development of the national road network. It makes clear that subject to the detailed policies and protections within it, and the legal constraints set out in the PA2008, there is a presumption in favour of granting development consent for national network NSIPs that fall within the need for infrastructure established in the NPSNN. This therefore applies to the application for the A66 improvement works.

2.3.4. The NPSNN also provides planning guidance for such projects and the basis for the Examination by the ExA and decisions by the Secretary of State, covering the following topics:

- EIA – paragraphs 4.15 to 4.21.
- HRA – paragraphs 4.22 to 4.25.
- Good design – paragraphs 4.28 to 4.35.
- Alternatives – paragraphs 4.26 to 4.27.
- Air quality – paragraphs 5.3 to 5.15.
- Carbon emissions – paragraphs 5.16 to 5.19.
- Biodiversity and ecological conservation – paragraphs 5.20 to 5.38.
- Waste management – paragraphs 5.39 to 5.45.
- Civil and military aviation and defence interests – paragraphs 5.46 to 5.66.

- Coastal change – paragraphs 5.67 to 5.80.
- Dust, odour, artificial light smoke, steam – paragraphs 5.81 to 5.89.
- Flood risk – paragraphs 5.90 to 5.115.
- Land instability – paragraphs 5.116 to 5.119.
- The historic environment – paragraphs 5.120 to 5.143.
- Landscape and visual effects – paragraphs 5.143 to 5.161.
- Land use including open space, green infrastructure and Green Belt – paragraphs 5.162 to 5.185.
- Noise and vibration – paragraphs 5.186 to 5.200.
- Impacts on transport networks – paragraphs 5.201 to 5.218.
- Water quality and resources – paragraphs 5.219 to 5.231.

2.3.5. The ExA has considered the NPSNN in full in examining the Application. Where it is relevant to do so, the ExA draws on individual paragraphs contained within the NPSNN within the topics in Sections 4 and 5 of this Report.

2.3.6. At the close of the Examination on 29 May 2023, the Secretary of State was consulting on a revision to the NPSNN. Paragraph 1.16 of the consultation document states that the Secretary of State has decided that for any application accepted for examination before designation of the 2023 amendments, the 2015 NPSNN should have effect in accordance with the terms of that NPS. The 2023 amendments will therefore have effect only in relation to those applications for development consent accepted for examination after the designation of those amendments. The ExA does not believe there are any intended changes which need to be considered in the assessment of the Proposed Development.

2.3.7. Should the Secretary of State wish to understand the Proposed Development’s compliance with the draft NPSNN, the Applicant has provided an Assessment of Conformity with Consultation Draft National Networks National Policy Statement [\[REP7-161\]](#).

## **2.4. OTHER RELEVANT NATIONAL POLICIES**

### **The National Infrastructure Strategy**

2.4.1. The National Infrastructure Strategy (NIS) (Nov 2020) sets out the Government’s plans to transform the UK’s infrastructure networks. It is based around three central objectives:

- Economic recovery;
- Levelling up and strengthening the Union; and
- Meeting the UK’s net zero emissions target by 2050.

2.4.2. Underpinning the strategy is the commitment for infrastructure to support the immediate economic recovery and the Government’s ambition to transform the UK’s infrastructure networks over the coming decades. The NIS states that roads (along with railways) join the nation together. It commits the Government to high levels of investment in the strategic road network (SRN) and to deliver projects such as motorway junctions more quickly.

2.4.3. The A66 is specifically mentioned at several points within the NIS. The Proposed Development is identified as a key project in connecting the regions and nations of the UK as part of the levelling up agenda (pages 11, 27 and 41), and is to benefit from additional funding to halve the construction time from 10 years to five (pages 39 and 81).

- 2.4.4. Along with the NIS, The National Infrastructure Delivery Plan 2016-2021 (May 2016), produced by HM Treasury, commits the Government to spending over £100bn by 2021 in infrastructure projects. Section 3 of the document concerns roads. The A66 is cited in this document as a key project in which the Applicant was to benefit from additional funding to develop the scheme.

### **Road Strategies**

- 2.4.5. The Road Investment Strategy (RIS1) for 2015 – 2020, published in December 2014 and its successor the Road Investment Strategy (RIS2) for the period 2020 – 2025 published in March 2020 by the Department for Transport (DfT) set out the Government's commitment towards, strategic vision and delivery of a five-year funding settlement programme. This will allow National Highways to deliver the necessary scale of development and commits the Government to spend £27.4bn during the 2020 – 2025 period not only on new road capacity, but primarily to improve the quality and reduce the negative impacts of the existing highway network.
- 2.4.6. The need for improvements to the A66 corridor was identified in the Northern Trans-Pennine Routes (NTPR) Strategic Study announced as part of RIS1. The study was one of six national strategic studies. For RIS2, the A66 is described as a highway that ties our nation together, making it the most important route to get from east to west for many of England's northern counties. Because of its position at the heart of the UK, it is the route of choice for many drivers in Scotland, Northern Ireland and the East of England who are looking to make long-distance journeys.
- 2.4.7. RIS2 identifies that the Government first proposed dualling the A66 in 1946. Although piecemeal progress has been made over the intervening decades, through RIS2 the Government formally commits to complete this project. Unlike similar upgrades in the past, RIS2 states that the Government is planning this work as a single coordinated programme, without lengthy gaps between improvements at individual locations.
- 2.4.8. The Highways England (now National Highways) Strategic Business Plan (2020 – 2025) sets out the Applicant's response to the Government's RIS2. It states that the document presents the careful balance between maintaining and operating the strategic highway network safely and providing new capacity where needed.
- 2.4.9. The Highways England Delivery Plan (2020 – 2025) provides the detail of specific funding, activities and projects that Highways England will deliver over the five-year period. Included within the document is the A66 road improvement scheme.
- 2.4.10. The ExA has taken the above into consideration in its assessment of the Proposed Development.

### **Northern Powerhouse**

- 2.4.11. The Northern Powerhouse is the Government's vision for a super-connected, globally competitive northern economy with a flourishing private sector, a highly skilled population, and world-renowned civic and business leadership. Northern Powerhouse covers the area for the Proposed Development.
- 2.4.12. Published at the 2016 Autumn statement, the Northern Powerhouse Strategy explains how the Government will work with local stakeholders to address key barriers to productivity in the region. The Government will invest in transport infrastructure to improve connections between and within the North's towns, cities

and counties; work with local areas to raise education and skills levels across the North; ensure the North is an excellent place to start and grow a business; and ensure the Northern Powerhouse is recognised worldwide as an excellent opportunity for trade and investment.

### **Design Manual for Roads and Bridges**

- 2.4.13. The Design Manual for Roads and Bridges (DMRB), published by National Highways, contains information about its current standards relating to the design, assessment and operation of motorway and all-purpose trunk roads in the United Kingdom.
- 2.4.14. Chapter 4 of the ES [\[APP-047\]](#) sets out the position of DMRB and its role in the Application. It states that guidance published by the Government for the preparation of environmental assessments of proposed road projects is contained in the DMRB, which then sets out both the general process and the methods for assessing individual environmental topics. It goes to state that the methodologies used for the assessments for individual topics in this ES are based on those set out in the EIA Scoping Report (informed by the DMRB and other relevant guidance), having regard to the Scoping Opinion, feedback on the Preliminary Environmental Information Report, and discussions with relevant statutory bodies. These are described in the relevant topic chapters in this ES.
- 2.4.15. The ExA has taken DMRB into consideration in the assessment of the Proposed Development.

### **The National Planning Policy Framework**

- 2.4.16. The National Planning Policy Framework (NPPF) was adopted in July 2021. The NPPF, and the accompanying Planning Practice Guidance (PPG) set out the Government's planning policies for England and how these are expected to be applied. A consultation draft NPPF on proposed changes was issued in December 2022, which closed in March 2023. At the time of writing, no further correspondence from the Secretary of State has been issued.
- 2.4.17. Paragraph 5 of the NPPF states that it does not contain specific policies for NSIPs as these are determined in accordance with the decision-making framework set out in the PA2008 and the relevant NPSs, but the NPPF is a relevant consideration on decision making for this application. Paragraphs 7 and 8 state that the Government's approach to achieving sustainable development means that the planning system has three overarching objectives, these being economic, social and environmental, which are interdependent and need to be pursued in mutually supportive ways.
- 2.4.18. Both the NPPF and the PPG are capable of being important and relevant considerations in decisions on NSIPs, but only to the extent where it is relevant to that project.

### **Net Zero Strategy: Build Back Greener**

- 2.4.19. Published in October 2021 and updated in April 2022, the Net Zero Strategy sets out the Government's aims and ambitions to end the UK's contribution to climate change.



## **Decarbonising Transport: A Better, Greener Britain**

- 2.4.20. Known as the Transport Decarbonisation Plan, this strategy, published in July 2021, sets out the Government's commitments and the actions needed to decarbonise the entire transport system in the UK.

## **2.5. REGIONAL AND LOCAL PLAN POLICIES**

- 2.5.1. The Applicant summarised the Development Plan position in its Legislation and Policy Compliance Statement [[APP-242](#)]. There were no dissenting voices from the respective local authorities and the LIRs do not raise any additional policies or documents. Table A8 to Appendix A of this Report sets out those policies. Individual policies are referred to as required in Section 4 of this Report.

- 2.5.2. The ExA has taken all regional and local policies and precedent development approvals into account in our considerations.

## **2.6. MADE DEVELOPMENT CONSENT ORDERS**

- 2.6.1. The Recommended DCO includes wording derived from other made Development Consent Orders as explained in the Explanatory Memorandum, the latest version of which was submitted at D9 [[REP9-016](#)]. A list of these Orders is set out in Table A9 to Appendix A of this Report.

## **2.7. TRANSBOUNDARY EFFECTS**

- 2.7.1. The project is of local and regional impact. A transboundary screening under Regulation 32 of the 2017 EIA Regulations was undertaken on behalf of the Secretary of State on 11 June 2021 following the Applicant's request for an EIA Scoping Opinion. No significant effects were identified which could impact on another European Economic Area member state in terms of extent, magnitude, probability, duration, frequency or reversibility.
- 2.7.2. A transboundary re-screening was undertaken on 20 April 2023 during the Examination and this also concluded that the Proposed Development is unlikely to have a significant effect either alone or cumulatively on the environment in a European Economic Area member state.
- 2.7.3. The Regulation 32 duty is an ongoing duty, and on that basis, we have considered whether any facts have emerged to change these screening conclusions, up to the point of closure of the Examination. No mechanisms whereby any conceivable transboundary effects could occur emerged.

### **3. IDENTIFYING THE PLANNING ISSUES**

#### **3.1. SUMMARY OF THE SUBSTANTIVE MATTERS RAISED IN RELEVANT REPRESENTATIONS**

3.1.1. Table A10 to Appendix A of this Report sets out the substantive matters received by RRs. The table does not report all of the 231 RRs received where general and non-specific concerns were raised or those that relate specifically to CA. The ExA nevertheless has read all RRs received and will comment on those relevant to the discussion in Sections 4 and 7 of this Report. For the avoidance of doubt, RR references range from 001 to 235, but numbers 010, 018, 071 and 172 are not used.

#### **3.2. INITIAL ASSESSMENT OF THE PRINCIPAL ISSUES**

3.2.1. In accordance with s88(1) of the PA2008, the ExA made an Initial Assessment of the Principal Issues (IAP) in advance of the Preliminary Meeting. The ExA prepared the IAP following its reading of:

- The Application documents;
- The RRs received in respect of the Application;
- The PADSS; and
- Consideration of any other important and relevant matters.

3.2.2. The following six matters were identified as IAP, which are set out in Annex C of the Rule 6 letter [\[PD-006\]](#).

- Alternative Route Options;
- Carbon Emissions;
- Compulsory Acquisition;
- Drainage;
- Environmental Management Plan (EMP); and
- Traffic and Access.

3.2.3. The IAP, alongside matters concerning the GTC and the relocation of the Brough Hill Fair were broadly the main issues discussed in the Examination.

#### **3.3. ISSUES ARISING IN LOCAL IMPACT REPORTS**

3.3.1. Three LIRs were submitted into the Examination, and these were:

- Westmorland and Furness C [\[REP1-019\]](#);
- Durham CC [\[REP1-021\]](#); and
- North Yorkshire C [\[REP1-042\]](#).

##### **Westmorland and Furness Council LIR**

3.3.2. As set out earlier in this Report, on 1 April 2023 Westmorland and Furness C assumed the powers and functions of Cumbria County Council and Eden District Council, including the LIR prepared jointly by them. The relevant sections of the Proposed Development within the council's administrative boundary are Schemes 0102, 03, 0405 and 06.

3.3.3. The Council supports the proposed development and "*see real opportunities for it to support economic growth and levelling up, specifically in Cumbria*". However, it also

set out a number of issues it wished to see addressed through the Examination. In summary it set out seven key tests as the basis for the LIR. These were:

- Clear and effective junction and connectivity strategies;
- Detrunking (and Local Highway Authority responsibilities);
- Active travel (including Appleby Horse Fair);
- Diversions and network resilience;
- Improved facilities for HGVs;
- Maximising socio-economic benefits; and
- Environmental mitigation.

### **Durham County Council LIR**

3.3.4. The relevant sections of the Proposed Development within the council's administrative boundary are Schemes 07 and 08.

3.3.5. The Council "*supports the principle of dualling the remaining single carriageway sections of the A66 between Penrith and Scotch Corner as well as the proposed improvements to key junctions along the route*". The council also set out a number of key issues they wished to see addressed during the Examination. These were:

- Concern over traffic impact on the Sills;
- Detrunking, design standards, diversion routes and other Local Highway Authority responsibilities;
- Impact on the Public Rights of Way network;
- Air quality impacts and mitigation;
- Noise and vibration impacts and mitigation;
- Scheme 08 Cross Lanes to Rokeby, need to ensure all agricultural land is surveyed so impacts and any mitigation required can be developed; and
- Need to ensure Cumulative Impacts consider all relevant planning permissions.

### **North Yorkshire Council LIR**

3.3.6. As set out earlier in this Report, on 1 April 2023 North Yorkshire C assumed the powers and functions of North Yorkshire County Council and Richmondshire District Council, including the LIR prepared jointly by them. The relevant sections of the Proposed Development within the council's administrative boundary are Schemes 09 and 11.

3.3.7. The council "*strongly supports the principle of dualling the remaining single carriageway sections of the A66 between Penrith and Scotch Corner as well as the proposed improvements to key junctions along the route, specifically the improvements to junctions in North Yorkshire at Scotch Corner and between Stephen Bank to Carkin Moor.*" The council also set out a number of key issues it wished to see addressed during the Examination. These were:

- Detrunking, design standards, diversion routes, active travel, HGV facilities, drainage strategy and other Local Highway Authority responsibilities;
- Impact on the Public Rights of Way network;
- Landscape assessment and strategy, including necessary mitigation and ongoing maintenance regime;
- Good design and aesthetics of new significant structures;
- Ongoing involvement in the development of the Landscape and Ecological Mitigation Plan;
- Development of the Historic Environment Mitigation Strategy;

- A minerals assessment to assess the mineral resource to ensure unnecessary sterilisation of the resource does not take place; and
- Ongoing involvement in the development of the Environmental Management Plan.

### **3.4. ISSUES ARISING IN WRITTEN AND ORAL SUBMISSIONS**

3.4.1. The ExA considers that the issues raised by IPs within WRs, PADSS, SoCGs and LIRs were broadly in line with the IAPI, and which were subject to written and oral questioning during the Examination. The ExA has nevertheless had regard to all submissions from IPs. We report on these, where relevant, within each topic of Section 4 of this Report.

### **3.5. CONTROL FRAMEWORK**

3.5.1. We explain in Section 1 the Applicant’s approach to controlling and mitigating the identified effects of the Proposed Development.

3.5.2. As will be discussed in further detail in Section 8 of this Report, a key main issue for the local authorities and statutory parties concerned the provision of the so-called “self-approval” process. This initially involved the Applicant being able to depart from EMP2 and determine for itself whether such a departure was a materially new or materially worse adverse effect to those assessed in the ES.

3.5.3. The “self-approval” process, along with the approach taken by the Applicant on the use of Articles and the absence of Requirements was discussed at some length at ISH2 held on Thursday 1 December 2022 [EV-003] and was subject to WQ [EV-004]. In short, the “self-approval” process was removed during the Examination and in the Recommended DCO, any changes to EMP2 must first be referred to the Secretary of State who will have the power to call-in the change should they wish to determine it themselves. Other issues concerning the content and wording of Article 53 are discussed in further detail in Section 8 of the Report and, where necessary, within the topics in Section 4.

### **3.6. COMMENTS ON APPLICANT’S ENVIRONMENTAL IMPACT ASSESSMENT**

3.6.1. Section 1 of this Report and Table A3 to Appendix A of this Report sets out the documents which comprise the ES. The ES assessment follows a standard EIA methodology, and where possible, is based on legislation, definitive standards and accepted industry criteria. Its objective is to anticipate the changes or impacts that may occur to the receiving environment as a result of the Proposed Development, and to compare the existing environmental conditions (the baseline) and those that would occur in absence of the Proposed Development (future baseline).

3.6.2. The EIA process involved identification of sensitive receptors that may be affected by impacts resulting from the Proposed Development and assesses the extent to which these receptors may experience significant environmental effects as a result. Where significant effects are identified, the ES proposed mitigation measures to avoid, reduce, and offset the significance of the effect, expressed as residual effects after taking account of mitigation.

3.6.3. Schedule 10 of the Recommended DCO sets out the documents proposed to be certified in the ES post examination. The ExA accepts the list to be correct and reflects the documents which comprise the ES. The ES is in our view sufficient to

enable the Secretary of State to take a decision in compliance with the EIA Regulations.

- 3.6.4. The ExA considered that changes to the documentation, comprising the ES during the Examination (See Table A3 to Appendix A of this Report), together with the Change Request (see Table A6 to Appendix A of this Report), did not individually or cumulatively undermine the scope and assessment of the ES. Section 4 of this Report will summarise the environmental effects under each topic section.

### **3.7. OUTSTANDING MATTERS AT THE CLOSE OF THE EXAMINATION**

- 3.7.1. At the close of the Examination, there were a few matters which were either not resolved or where, at the Secretary of State's discretion, updated information may be required. These are discussed further in the relevant sections in Sections 4 and 5 of the Report. On one matter, the Secretary of State is recommended to seek further information from both the Applicant and NE on an HRA issue, and two further matters on matters concerning CA. There are a number of other matters which the Secretary of State may decide they would benefit from an update from the parties involved to assist in the determination of the Proposed Development. Appendix D provides a summary of these outstanding matters.

## **4. ASSESSMENT OF THE PLANNING ISSUES**

### **4.1. INTRODUCTION**

- 4.1.1. This Section sets out our findings and conclusions on the planning issues. We deal with the Proposed Development as a whole and accordingly the structure of this Section is by topic area. There, we will address any discussion points concerning specific issues on a particular Scheme (e.g. Scheme 0405 Temple Sowerby to Appleby). We start with the consideration of need and alternatives as we consider this is the natural starting point in the assessment. However, the remainder of the topics are not prioritised in any specific order of importance or hierarchy.
- 4.1.2. The ExA had has full regard to national and local policies when considering the Application, and thus we do not consider it necessary to recite them in each topic below. We will, however, draw on specific NPSNN paragraphs or other national and local policies where it is necessary and relevant to do so.
- 4.1.3. The ExA does not report on every issue raised by IPs. We instead focus on those matters which were principal concerns for the Examination and specific discussion points of interest. Where the ExA does not discuss a particular concern of an IP, the Secretary of State can be assured the ExA has considered the matter and that we are satisfied with the Applicant's responses given at the appropriate point in the Examination.

### **4.2. THE NEED FOR THE PROPOSED DEVELOPMENT**

#### **Applicant's Submission**

- 4.2.1. Chapter 2 of the ES [\[APP-045\]](#) sets out the Applicant's needs case for the Proposed Development. In summary, it states:
- NPSNN identifies a critical need to improve the national networks.
  - The A66 dualling project is identified in both RIS1 and RIS2.
  - The A66 forms part of the most direct route between the Tees Valley, north, south and west Yorkshire, the East Midlands, eastern England, north Cumbria and the central belt of Scotland and the ferry terminals at Cairnryan.
  - The existing route is a key national and regional strategic transport corridor and link for a range of travel movements. It carries high levels of freight traffic and are an important route for tourism and connectivity for nearby communities. There are no direct rail alternatives for passenger or freight movements along this corridor.
  - Currently only intermittently dualled, the route carries local slow moving agricultural vehicles and other traffic making short journeys. The variable road standards, together with the lack of available diversionary routes when incidents occur affects road safety, reliability, resilience and attractiveness to the route.
- 4.2.2. Of particular importance, the ES [\[APP-045\]](#) states that if the A66 is not improved, it will constrain national and regional connectivity and may threaten the transformational growth envisaged by the Northern Powerhouse initiative and the achievement of the Government's levelling up agenda.

#### **Examination Issues**

- 4.2.3. The ExA concurs with the Applicant that the identified need for road improvements is set out in the NPSNN. The ExA also notes the commentary of the delivery of the A66 as set out in the NIS. RIS2 is also very clear that the A66 is an identified project

for "upgrading the remaining six single carriageway sections...creating a continuous dual carriageway across the Pennines." RIS2 also identifies its importance as "being in the heart of the UK" and "the route choice of many drivers in Scotland, Northern Ireland and the East of England who are looking to make long-distance journeys. For a manufacturer in Belfast, the A66 is the road that takes their goods to China". RIS2 further "commits to delivering the coordinated dualling of the A66...and completing this project".

- 4.2.4. No IPs raised any substantive issue in respect to questioning the need for the Proposed Development, or whether it was supported by national policy. No PADSS submission or any SoCG raised the need for the scheme either as matters under discussion or not agreed.
- 4.2.5. A number of IPs including Friends of the Lake District (FoLD) [[RR-060](#)] and [[REP1-067](#)] questioned whether the Proposed Development represented good value for money by commenting on the benefits to cost ratio (BCR). In summary, they stated that:
- The low BCR, which they say works out at 0.92, is very poor value for money for the public purse and reduces the weight of the case for the project.
  - The Applicant's response to FoLD's RR [[PDL-010](#)] that FoLD have only quantified some but not all of the benefits of the Proposed Development, fails to take into account that there are plenty of environmental and social costs which are not adequately quantified in schemes like this, such as tree loss, which renders this argument a lot less convincing.
  - Despite benefits of faster journey times, reduction in road traffic accidents, wider economic benefits and increased car-based tourism, the BCR is still below 1.
  - The scheme's net benefits do not outweigh its financial costs or the environmental damage that would ensue.
  - Questions need to be asked about whether it should even proceed on the basis that the country is currently in a financial crisis situation.
- 4.2.6. The Applicant responded at D2 [[REP2-017](#)] stating, amongst other things, that:
- BCR is just one component of the overall project business case and should be read alongside other impacts and benefits of the Proposed Development. FoLD are being selective in their assessment of benefits.
  - Only full dualling of the remaining parts of the A66 will address, amongst other things, road safety issues.
  - The Northern Powerhouse Independent Economic Review (2016) identified the critical importance of improving connectivity across the north, and the Northern Trans-Pennine Study identified the A66 as the priority for investment.
- 4.2.7. As the Secretary of State is both the determinator and funder for the Proposed Development, the BCR and issues concerning value for money will be a matter for them should they be minded to make the Order. The ExA thus did not consider this was an examination issue, and we subsequently did not explore the matter further.

## Conclusion

- 4.2.8. The ExA is satisfied that the NPSNN, the NIS, RIS1 and RIS2, and the Highways England Strategic and Delivery Plans indicate a clear need exists for road improvement projects, and indeed this Proposed Development to come forward. Matters concerning the BCR will be a matter for the Secretary of State to be satisfied with. However, the ExA considers the Secretary of State would likely have considered this already when formulating the said national strategies.



- 4.2.9. The ExA concludes that the Proposed Development is fully in accordance with the needs case established by NPSNN and reinforced by other national policies and strategies. Significant positive weight is accordingly attached.

## 4.3. ALTERNATIVES

### Applicant's Submission

- 4.3.1. Chapter 3 of the ES [APP-046] sets out the Applicant's Assessment of Alternatives. It sets out in considerable detail how longlists became shortlists, along with an assessment of key environmental considerations and design alternatives for each Scheme. Annex A to the Consultation Report [APP-253] provides further information on the alternative route options for each Scheme and the Project Development Overview Report and Technical Appraisal Reports [APP-244, APP-245, APP-246, APP-247, APP-248 and APP-249] provide much greater detail of the route short-listing process and consultations undertaken. A very brief summary of an overview of the Applicant's approach is set out below, with the remainder of this section focusing only on those matters of interest in the Examination.

- 4.3.2. In summary, the ES [APP-046] states that the Applicant adopted a four-staged design approach comprising the following:

- Pre-Project – where a problem has been identified, solutions are considered at a regional scale.
- Stage 1 – options identification involves identifying broad route options to be taken to consultation.
- Stage 2 – options selection wherein the options identified as part of Stage 1 go through further assessment in order to determine the preferred route.
- Stage 3 – preliminary design is the stage at which the preferred route is developed, and the supporting assessment and documentation is prepared, culminating in the application for permission.

- 4.3.3. For Stage 1, option routes were rejected where there was, for example, unacceptable impacts on, amongst other things, Sites of Special Scientific Interest (SSSI), AONBs, Scheduled Monuments, Listed Buildings and Registered Parks and Gardens (RPGs). This generated a long list of options, which was then refined in Stage 2 following further field surveys and preliminary flood modelling and engagement with the statutory environmental bodies.

- 4.3.4. At Stage 3, the Proposed Development was divided into Schemes and ongoing design was split out between them. Some of the Schemes were already at preferred route stage, whereas others were developing alternatives where further work had been identified. It should be noted that at Stage 3, only the route options were decided, and the placement of the junctions was not advanced. A short list of options within each Scheme which was then subjected to statutory consultation between September and November 2021. This led to the final route choices being made prior to the Application's submission to the Secretary of State.

### Examination Issues

- 4.3.5. The main issues for the Examination were:

- Scheme 08 (Cross Lanes to Rokeby) and the placement location of the Rokeby junction "the Black Option" as opposed to an alternative location "the Blue Option" in response to traffic and heritage concerns;



- Scheme 06 (Appleby to Brough) and the decision not to align the route through the MoD land, which lies within the North Pennines AONB, to the north (later referred to in the Examination as “The Billy Welch Straight Line”); and
- Scheme 0405 (Temple Sowerby to Appleby) in respect to environmental effects.

### Scheme 08 - Cross Lanes to Rokeby

4.3.6. The Applicant’s Options Consultation and Preferred Route Announcement Materials document, [APP-253] illustrates the shortlisted route choices for Scheme 08 were between the Proposed Development, which is Option K, against an online widening of the existing carriageway Option L. This is illustrated in Figure 4.1 below.

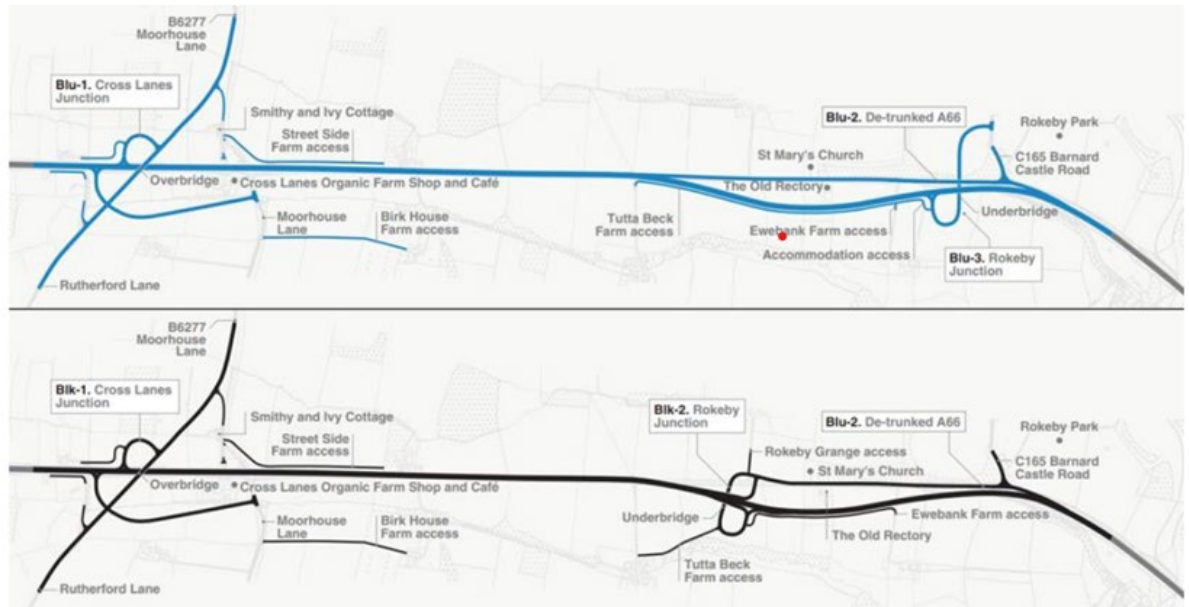
**Figure 4.1 – Shortlist Options for Scheme 08 [APP-253]**



4.3.7. With Option K taken forward, the Applicant began consultation on the preferred placements of the Rokeby junction in this location. Known as “the Black Option”, the proposed junction would sit to the west of St Mary’s Church, a Grade II listed building, and The Old Rectory. The junction would be at grade, with the slip road decreasing in level to underpass the carriageway before inclining to meet the extant, and detrunked A66 road.

4.3.8. A considerable proportion of the RRs concerned with Scheme 08 raised the positioning of the Rokeby junction as an issue, notably from the Cross Lanes to Rokeby Community Liaison Group [RR-051], HGV Action Group [RR-065] and Cllr Richard Bell [RR-203]. IPs expressed a preference for “the Blue Option”, in which the junction would have been located further to the east and much closer to the existing C165 Barnard Castle Road. Figure 4.2 below illustrates the differences, taken from the Project Development Overview [APP-244].

**Figure 4.2 - Junction Options at Rokeby, Blue Option v Black Option [APP-244]**



- 4.3.9. To address these issues and to better understand the concerns raised, the ExA held an ISH1 on Wednesday 30 November 2022 [EV-002] where these matters were discussed at length.
- 4.3.10. The traffic concerns that were expressed about the selection of “the Black Option” mostly relate to the impact on the B6277 the Sills in Startforth. This matter is dealt with in detail in Traffic and Access, at Section 4.4 of this Report.
- 4.3.11. Turning to heritage matters, concerns primarily from Mortham Estates [REP1-094, REP1-095, REP1-096, REP2-041, REP4-044, REP5-073, REP5-074, REP5-075] centred on the setting of the St Mary’s Church, and indeed the wider Rokeby Hall. Here, and at ISH1 held on Wednesday 30 November 2022 [EV-002], Mr Salvin (Mortham Estate’s Representative) considered the proposed junction would sever the views from the west of the Church and the Old Rectory and would be visually unavoidable. The “Blue Option”, as supported by Mr Salvin, would retain the setting of the Church by deviating through a long-severed linked woodland between the Church and Rokeby Hall, known as the Church Plantation, and would better preserve the landscape.
- 4.3.12. Mr Salvin’s view was not shared by HE. At ISH1 [EV-002] and confirmed in writing at D1 [REP1-026, REP1-027], HE confirmed the opposite view that, from a heritage perspective, preservation of the Church Plantation and what would have been the historic grounds and links between Rokeby Hall and the Church was paramount. “The Blue Option”, as HE opined, would erode further the historic landscape.
- 4.3.13. The Applicant confirmed at ISH1 that in assessing alternative route options they undertook a sifting exercise and produced a matrix, which was the primary tool for discounting “the Blue Option”, a summary of which was provided in the Route Development Report [APP-247]. The Applicant also confirmed at the Hearing that, in order to assess potential harm and the difference between “the Black Option” and “the Blue Option”, regard was had to paragraphs 5.131 and 5.132 of the NPSNN in the decision-making process, which relate to impacts to heritage assets.

- 4.3.14. The positions of Mortham Estates, HE and the Applicant remained unchanged. Overall, the ExA is satisfied that “the Blue Option” alternative in relation to Scheme 08 (Cross Lanes to Rokeby) was adequately considered by the Applicant in the preparation of the Application.
- 4.3.15. Durham CC maintained its view throughout the Examination, confirmed in its final PADSS [REP7-175] and in its final SoCG signed with the Applicant [REP8-022] that its preference was for “the Blue Option” owing to its perceived lesser impact to The Sills, which is discussed further in the Traffic and Access section of this Report. HE confirmed in its signed SoCG [REP8-024] that it agreed with the assessment of alternatives in respect to Scheme 08 (Cross Lanes to Rokeby).
- 4.3.16. Notwithstanding, the ExA is satisfied that the Applicant, supported by HE, has adequately justified the need for the Rokeby junction to be placed on the west side of St Mary’s Church, “the Black Option”, as greater weight is applied to the protection of the historic RPG.

### Scheme 06 – Appleby to Brough

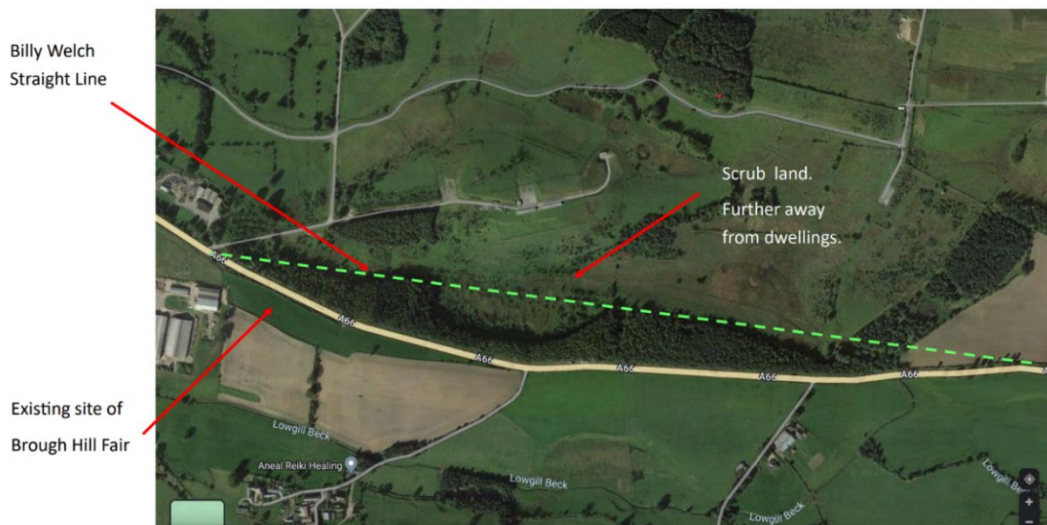
- 4.3.17. The Applicant’s Options Consultation and Preferred Route Announcement Materials document, [APP-253] indicates that only one proposal for Scheme 06 (Appleby to Brough) (Option I) made the shortlist. This is shown in Figure 4.3 below.

**Figure 4.3 – Shortlist Option for Scheme 06 [APP-253]**



- 4.3.18. The main issue for IPs concerned the proposed alignment of the road south of the extant road and closer to the village of Warcop, as opposed to an alternative to the north and through the MoD land. A number of RRs advanced preference for a northerly route including Warcop Parish Council [RR-013]. Mr Welch, the GTC representative suggested an alternative route at D4 [REP4-039] which would have deviated through the MoD land, which became colloquially known during the Examination as “The Billy Welch Straight Line”. Mr Welch considered the straight line to be a far less difficult and more advantageous route to follow. This is illustrated in Figure 4.4 below.

**Figure 4.4 – “The Billy Welch Straight Line”** [\[REP4-039\]](#)



- 4.3.19. The matter was debated at ISH1 [\[EV-002\]](#), where the ExA sought to better understand the concerns of IPs. The Applicant confirmed that the MoD land (and the route for the “Billy Welch Straight Line”) lay within the AONB and was not included in the assessment of alternatives in Chapter 3 of the ES [\[APP-046\]](#). Nevertheless, the Applicant stated that the choice of preferred route was arrived at following an extensive examination of other possible routes, which included an optioneering exercise.
- 4.3.20. Notwithstanding its AONB status, IPs pointed to the fact that the land immediately north of the A66 in this location was in rather an unkempt state, dominated by hardstanding, together with redundant and poor-quality buildings. Thus, IPs argued that aligning the Proposed Development through this part of the MoD site would have no bearing on the character and setting of the AONB and would, instead, take the road away from Warcop and residential properties.
- 4.3.21. While the ExA understands the logic behind IPs views on the alignment of the Proposed Development to the north of the existing road, the ExA accepts the Applicant’s position as voiced at ISH1 held on Wednesday 30 November 2022 [\[EV-002\]](#) and confirmed in writing at D1 [\[REP1-007\]](#) that, being MoD land, delivery of the project north of the A66 could not be guaranteed as the land is Crown land, and thus not subject to CA. Furthermore, In its RR [\[RR-180\]](#), NE welcomed the selected route over any alternative route that would take the road further into the AONB.
- 4.3.22. Notwithstanding the landscape effect and whether aligning the road to the north would have positive or negative effects on the surrounding landscape character, the ExA accepts that the land in question is Crown land and cannot be subject to CA. As the land is operational land, the Applicant cannot guarantee delivery of the Proposed Development and as such the land to the north of the extant A66 cannot be considered as a viable alternative. The ExA thus accepts the proposed route advanced by the Applicant.



### Scheme 0405 – Temple Sowerby to Appleby

- 4.3.23. While a singular scheme for this Application, the Applicant's Options Consultation and Preferred Route Announcement Materials document, [APP-253] separates the Kirkby Thore element of Scheme 0405 from that of Crakenthorpe to the east. For Kirkby Thore, Option E is preferred where the proposed route would deviate northwards around the village, as opposed to Option F, which involved a partial alignment south of the existing A66 and partial online widening, as illustrated in Figure 4.5 below. At Crakenthorpe, the proposed route would follow the existing Roman Road before deviating south and joining up with existing A66. This is Option H and was preferred to Option G, which followed a more southerly route along an abandoned railway line. This is illustrated in Figure 4.6 below.

Figure 4.5 – Shortlist Options for Scheme 0405 at Kirby Thore [APP-253]



Figure 4.6 - Shortlist Options for Scheme 0405 at Crakenthorpe [APP-253]



- 4.3.24. The Secretary of State should be aware that for both Kirkby Thore and Crakenthorpe, in addition to one other location which we return to briefly below, paragraph 1.4.11 of Chapter 3 of the ES [APP-046] confirms that the Preferred Routes Options E and H would have a greater environmental impact than the identified alternatives.
- 4.3.25. For Option E, paragraph 1.4.11 [APP-046] states the greater impact occurs to cultural heritage and population and human health; and goes on to state that

*“Historic England’s preference was to accept a greater impact to the setting of heritage assets to avoid direct impact to archaeology. The Population impacts were considered mitigatable.”*

- 4.3.26. For Option H, the ES states that the Proposed Development would have a greater impact than Option G (this alignment follows the disused Eden Valley railway) on cultural heritage. This is because, for the most part, the Option H alignment would in fact run alongside the Old Roman Road. The ES states that *“it was Historic England’s preference for Option G. However, in further discussion, Natural England and the Environment Agency expressed a preference for Option H as it was further from the River Eden SAC and SSSI. When assessed overall, Option H was taken forward on balance of stakeholder preference and it was considered that Option H would have less of an impact on the residents of Crackenthorpe.”*
- 4.3.27. At ISH1 [\[EV-002\]](#), the ExA sought to better understand HE’s position and whether they concurred with the ES. HE responded orally (as recorded by the Applicant [\[REP1-006\]](#)) and in writing at D1 [\[REP1-026\]](#) that only one Scheduled Monument, the Kirby Thore Roman Fort and Vicus would receive a significant impact from the Proposed Development, Option E. However, the proposed route would then avoid two further Scheduled Monuments at Kirkby Thore, being the Roman Camp 350m east of Redlands Bank and a Roman Fortlet 200m south southeast of Castrigg. HE considered that Option F could potentially disturb archaeological remains and would in its view, have a far greater impact on the Scheduled Monuments than they would be willing to support. In respect to Crakenthorpe, HE appeared to support the Option H alignment stating it would *“enable a continuity of use of the historic route in this area.”*
- 4.3.28. Therefore, notwithstanding the worse environmental effects from the Proposed Development options as identified in the ES [\[APP-046\]](#), HE [\[REP1-026\]](#) considers the level of harm to be moderate and is content that the mitigation of impacts to the historic environment will be adequately secured through EMP1 [\[REP8-005\]](#), the Heritage Mitigation Strategy [\[REP8-009\]](#) and the Schedule Monuments Method Statement [\[REP8-017\]](#), all of which are secured by Article 53 of the Recommended DCO.
- 4.3.29. IP Mrs Nicholson [\[RR-220\]](#) expressed particular concerns regarding the Applicant’s consideration to the “do-minimum” option in providing an upgrade to the existing A66 which she considered was unduly discarded by the Applicant. The Applicant disputed this, stating that “do-minimum” had been constant throughout the process be it a single carriageway solution, an offline solution, safety improvements or smaller scale improvements. However, to satisfy the economic, transport, community and environmental Project Objectives, the Applicant is of the view that these objectives cannot be achieved with such discrete, smaller scale “do-minimum” interventions, and dualling is therefore the “do-minimum” option required to satisfy the objectives. Mrs Nicholson retained her concerns throughout the Examination [\[REP1-065, REP9-060\]](#).
- 4.3.30. In its signed SoCGs with the Applicant, NE [\[REP9-008\]](#) confirmed acceptance of the assessed alternatives in respect to Schemes. No other IPs raised alternatives either in their respective PADSS or signed SoCGs in respect to this or any other Scheme.
- 4.3.31. The ExA is satisfied that the alternatives have been adequately considered by the Applicant and the proposed route choice for Scheme 0405 (Temple Sowerby to Appleby) has been justified.

## Other Matters

- 4.3.32. In respect to Scheme 09 (Stephen Bank to Carkin Moor), paragraph 1.4.11 of Chapter 3 of the ES [\[APP-046\]](#) also identifies Option N (online upgrade between Stephen Bank to Carkin Moor) as having worse environmental effects than the alternatives Option M or Option O. It states, however, that *“Historic England expressed a preference for Option N over the potential impact on undiscovered archaeology in the vicinity as per Option M (online widening with requirement for offline section to the south of Mainsgill Farm Shop). Despite Option N having greater potential impact on priority river habitat than Option M or Option O, it was taken forward on the basis of stakeholder preference and public consultation feedback. Impacts to the river habitat were considered mitigatable.”*
- 4.3.33. At D1, HE [\[REP1-026\]](#) confirmed that in its opinion, the level of harm would be moderate, stating that *“HE supports this [Option N] alignment as it enables continuity of use of the historic Roman route...to reduce land take and therefore impact on the monument to the minimum necessary”*. As with Scheme 0405, HE considers mitigation to be acceptable.

## Conclusion

- 4.3.34. Taking these matters into consideration, the ExA is satisfied that the alternative options for the Proposed Development have been rigorously tested by the Applicant. As will be discussed in the Traffic and Access section below, the ExA is satisfied that the Proposed Development “the Black Option” junction at Rokeby would not be materially worse than “the Blue Option” in respect to traffic or heritage.
- 4.3.35. The ExA understands the concerns of IPs, particularly in regard to Scheme 06 (Appleby to Brough) and what would appear to be an otherwise sensible request that the alignment of the proposed road should be located to the north of the existing A66. However, the ExA accepts that the site, which is currently operational MoD land, cannot be subjected to CA, and the land cannot be obtained. Its inclusion would therefore undermine the delivery of the Proposed Development and cannot be considered by the Applicant. The ExA accepts the reasoning offered by the Applicant in respect to the assessment of alternatives at the Kirkby Thore and Crakenthorpe alignments for Scheme 0405 notwithstanding their worse environmental effects than their respective alternatives.
- 4.3.36. The ExA therefore concludes that the requirements of NPSNN and the EIA Regulations have, in this regard, been met.

## 4.4. TRAFFIC AND ACCESS

### Applicant’s Submission

- 4.4.1. The Applicant’s assessment of traffic and transport matters is primarily contained within the Transport Assessment (TA) [\[REP2-003\]](#). In paragraph 1.2.1 the Applicant states that the purpose of the TA *“is to assess the impact of the Project on the strategic and local highway network, road safety and local sustainable modes of transport.”*
- 4.4.2. The TA is supported by the following reports:
- Combined Modelling and Appraisal Report (CMAR) (including Appendix A) [\[APP-237\]](#);
  - CMAR Appendix B - Transport Data Collection Package [\[APP-238\]](#);

- CMAR Appendix C – Transport Model Package [[APP-239](#)];
- CMAR Appendix D - Stage 3 Transport Forecast Package [[APP-240](#)]; and
- CMAR Appendix E - Stage 3 Economic Appraisal [[APP-241](#)].

4.4.3. The TA provides and assessment of the following:

- The current strategic and local network performance.
- The future strategic and local network performance.
- Road safety.
- Consideration of the effects on sustainable transport, including public transport, walking, cycling and horse riding.
- An assessment of the effects of construction impact.

4.4.4. The TA concludes that:

- Planning policy – The Proposed Development is supported by, and aligns with, national, regional, and local planning and transport policies.
- Road safety – Over the 60-year appraisal period, the Proposed Development saves 281 personal injury accidents, of which 3% are fatal, 21% are serious, and 76% are slight. There is an overall reduction of 530 casualties, of which 3% are fatal, 28% are serious, and 69% are slight.
- Network performance – The Proposed Development is anticipated to have a beneficial impact on journey times. The forecast journey times along the A66 from the M6 Junction 40 to the A1(M) Scotch Corner without the delivery of the Proposed Development will increase by approximately five minutes (9%). This is because the single carriageway sections are near their capacity throughout the assessment period. With the Proposed Development 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. In addition, it is also anticipated it will have a significant positive impact on journey time variability and incident delay.
- Sustainable transport – Where Public Rights of Way (PRoW) are severed by or converge at the upgraded A66 carriageway, then they have been gathered and redirected to the nearest grade-separated crossing facility in order to provide a safe place to cross the dual carriageway. The nearest crossing may be a new grade-separated junction, an accommodation underpass or overbridge, or a designated walking, cycling and horse-riding (WCH) underpass or bridge. All schemes have some level of betterment compared with the provision on the existing single carriageway sections. No Proposed Development impacts are anticipated on bus or rail services.
- Construction impact assessment – Modelling has been undertaken using a number of construction scenarios and the modelling would be used as a diagnostic tool to identify potential issues with diversion routes, so mitigation measures can be put in place to prevent local traffic disruption occurring. The Applicant has also submitted a framework Construction Traffic Management Plan (CTMP) [[APP-033](#)]. The CTMP will be developed by the Principal Contractor (PC) informed by the construction traffic modelling. A more detailed CTMP will form part of the second iteration of the EMP that will be developed as part of the detailed design.

4.4.5. In addition, the Applicant has provided a report setting out the Walking, Cycling and Horse riding (WCH) Proposals [[APP-010](#)]. This report highlights the Proposed Development’s design proposals for the infrastructure features aimed at improving facilities for WCH on the local network around the A66.

4.4.6. The transport case for the Proposed Development is set out in Chapter 4 of the Case for the Project Report [[APP-008](#)]. The Applicant sets out that “*the Project has*



*been identified as the best option to meet the defined need and objectives, including the delivery of a comprehensive set of benefits. It offers an effective and deliverable solution to the key challenges of the A66”.*

4.4.7. The Applicant in Table 1.1 of the TA [\[REP2-003\]](#) outlined the following project objectives with respect to transport:

- Improve road safety, during construction, operation and maintenance for all, including road users, non-motorised users (NMU), road workers, local businesses and local residents.
- Improve journey time reliability for road users.
- Improve and promote the A66 as a strategic connection for all traffic and users.
- Improve the resilience of the route to the impact of events such as incidents, roadworks, and severe weather events.
- Seek to improve NMU provision along the route.

4.4.8. It should be noted in all of the supporting transport information and in this section of the report, the following definitions apply:

- “Do-minimum” – the traffic flow without the additional traffic associated with the Proposed Development but including background traffic growth.
- “Do-something” - the traffic flow including the traffic associated with the Proposed Development.

### **Examination Issues**

4.4.9. At the start of the Examination the ExA considered that the principal issues for the Examination would be the IAPI set out in Annex C of the Rule 6 letter [\[PD-006\]](#). The principal transport issues at that time were the effect of the Proposed Development on:

- Operation of the SRN;
- Local access arrangements;
- Road safety; and
- Non-motorised users.

4.4.10. The ExA did not have any concerns about the modelling that had been undertaken on the operation of the strategic highway network. This view was shared by the local highway authorities (LHA). Westmorland and Furness C however did raise concerns about the traffic modelling in and around Penrith with particular reference to Junction 40 of the M6, the Kemplay Bank roundabout and whether the Proposed Development would worsen congestion issues in Penrith.

4.4.11. Following the submission of the WRs and LIRs, the ExA focused on several specific issues requiring further examination. These were:

- Penrith congestion issues;
- Barnard Castle traffic;
- Road safety;
- Detrunking arrangements;
- Construction diversions;
- PRow's;
- HGV parking; and
- Other traffic matters arising.

## Penrith Congestion Issues

- 4.4.12. In the Westmorland and Furness C LIR [[REP1-019](#)], the Council expressed concern about the potential for the Proposed Development to exacerbate the existing congestion issues in Penrith. This included a concern about access to the Council's Skirsgill depot. Additional congestion would in the Council's opinion create additional access and severance issues for local movements. They asked that *"the modelling must show to the Council's satisfaction that current and forecast traffic demand from the Project can be accommodated without adverse impact arising from congestion or delay."*
- 4.4.13. In response to the concerns expressed by the Council the Applicant [[REP2-018](#)] considered that the TA modelling was accurate. Also, it had undertaken additional traffic counts in September 2022 to update their traffic model. The Applicant then expected to discuss the updated modelling outputs with the Council.
- 4.4.14. At the end of the Examination, Item 3-1.23 of the signed SoCG between the Applicant and Westmorland and Furness C [[REP9-007](#)] records both parties agreed that traffic modelling discussion were at a stage where they were satisfied that agreement could be reached as the detailed design progressed after the end of the Examination.

## Conclusion on Penrith Congestion Issues

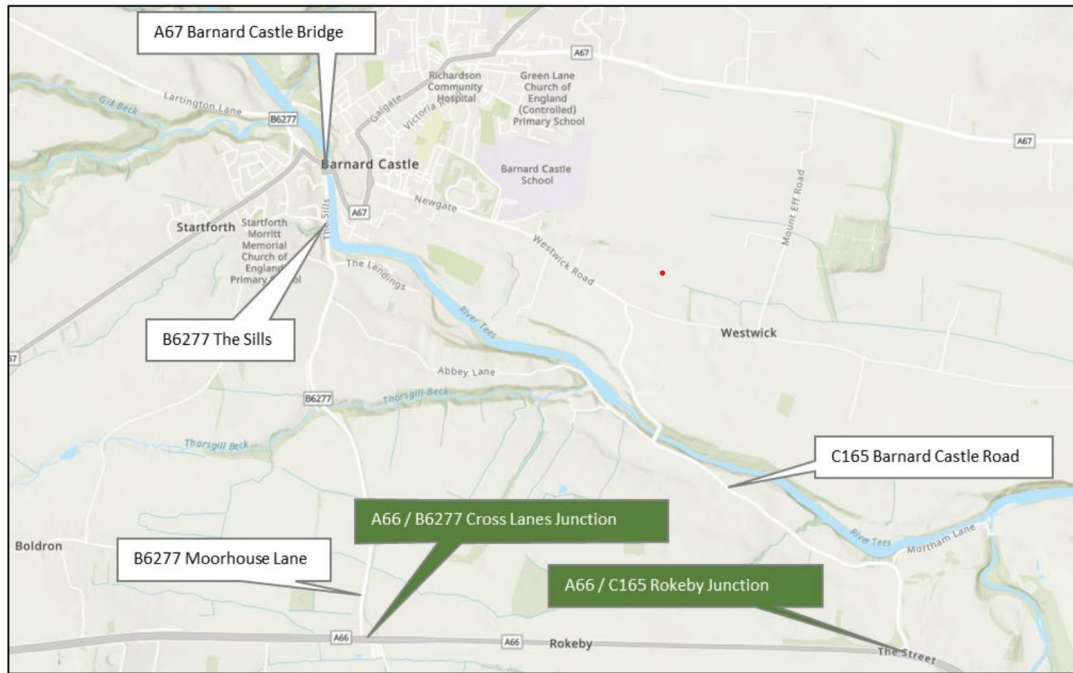
- 4.4.15. At the start of the Examination Westmorland and Furness C expressed the view that the traffic impact of the Proposed Development should not create adverse impact of the congestion issues in Penrith. This matter, including the access to Skirsgill depot, has been under discussion between the Applicant and the Council for most of the Examination. The signed SoCG [[REP9-007](#)] records agreement now has been reached on the basis that any remaining issues would be dealt with as the detailed design progresses after the Examination.

## Barnard Castle Traffic

- 4.4.16. There was a total of 28 RR that expressed concern about additional traffic on the B6277 and in particular the Sills, in Startforth, and the A67 County Bridge as a result of the Proposed Development. These representations included Dehenna Davison MP [[RR-216](#)], Barnard Castle Town Council (Barnard Castle TC) [[RR-215](#)], Hope and Scargill Parish Meeting [[RR-020](#)], Rokeby, Brignall and Egglestone Abbey PC [[RR-206](#)], Romaldkirk PC [[RR-014](#)], Startforth PC [[RR-015](#)], Councillor Richard Bell [[RR-203](#)], HGV Action Group [[RR-065](#)], Cross Lanes to Rokeby Community Action Group [[RR-051](#)] and numerous other individuals.
- 4.4.17. In addition, Barnard Castle TC [[REP1-010](#)] submitted a WR setting out its view of the impact of the proposals in Barnard Castle. Barnard Castle TC were supportive of dualling the A66 albeit with some concerns about the local traffic impacts in Barnard Castle.
- 4.4.18. Many of the representations, including Barnard Castle TC, expressed concerns about:
- Traffic increase predicted along the B6277, the Sills; and
  - The effect of the proposed junction arrangement at Rokeby, when considered against an alternative option discounted by the Applicant.

- 4.4.19. Figure 4.7 below shows the two main access routes to Barnard Castle from the A66. To the south of the town the B6277 connects to the A67 at the west end of the County Bridge. To the east the C165 Barnard Castle Road is the signed HGV route into the town from the A66 due to the weight restrictions in place on the A67 County Bridge, which has a 7.5T weight limit.

**Figure 4.7 - Access routes to Barnard Castle from A66 (Extract from [APP-278])**



- 4.4.20. In Appendix A of the initial SoCG with Durham CC [APP-278] the traffic along the B6277 the Sills was stated to increase by 53% (524 vehicles/ day) as a result of the scheme, when comparing the “do-minimum” and the “do-something” scenarios. The Appendix also makes clear that this figure has changed from earlier iterations of the traffic model. These changes in the traffic modelling may explain why some of the RR reference larger increases in traffic on the Sills.
- 4.4.21. Appendix A also sets out that due to the increased attractiveness of the fully dualled A66 the traffic on the A67 travelling through Barnard Castle over the County Bridge would reduce.
- 4.4.22. In the Alternatives section of this Report, we explain two options for the A66/ C165 Barnard Castle Road and the Applicant’s selection of the junction arrangement. During the optioneering process the proposed junction to the west of the Church of St Mary was known as “the Black Option.” The junction arrangement to the east of the Church of St Mary was known as “the Blue Option.”
- 4.4.23. A number of RRs and WRs expressed concern that the proposed junction arrangement, “the Black Option” could lead to more traffic on the Sills than the more easterly “the Blue Option” junction arrangement at Rokeby. Durham CC [RR-073] stated that they previously objected to “the Black option” junction arrangement due to the traffic increases on the Sills predicted in earlier pre-application modelling. They went on to say modelling had progressed and in the Applicant’s submission the difference in daily traffic flow between the modelled increased traffic flow on the Sills was 127 vehicles/ day.

4.4.24. Durham CC concluded [RR-073] that, “Given the benefits of traffic reduction through Barnard Castle, it is not considered that the additional 127 vehicles per day in the “Black” route scenario vs the “Blue” route scenario, would be sufficient grounds for DCC to maintain an objection to National Highways preference of the “Black” route. However, given the lesser impact of the “Blue” route in relation to increased traffic on the B6277 The Sills, the strong preference of Durham County Council remains for the “Blue” route”.

4.4.25. Given the concerns expressed about traffic increases on the Sills resulting from the two Rokeby junction arrangements and the consequential effects on this street, we asked at ISH1 [EV-002] for:

- Confirmation of traffic levels relating to both options; and
- A “fine grained” environmental assessment of the effects of additional traffic on the Sills. This would complement the work already undertaken and submitted as part of the ES. We asked that the methodology of the “fine grained” assessment should be informed by the Institute of Environmental Assessment’s “Guidelines for the Environmental Assessment of Road Traffic” (1993).

4.4.26. The Applicant [REP1-006] responded providing the predicted traffic increases for both options in Table 4.1 below.

**Table 4.1 – Barnard Castle - daily two-way traffic flow (vehicles / day) comparison**

Location	Baseline traffic flow (Do-minimum)	“Black Option” (proposed)		“Blue Option”	
		Increase	Percentage	Increase	Percentage
B6277, The Sills	993	524	+53%	206	21%
C165, Barnard Castle Rd.	2079	-248	-12%	404	19%
A67, County Bridge	7700	-388	-5%	-678	-9%

4.4.27. The difference in traffic flow on the Sills between the two options would be 318 vehicles per day. This is more than the 127 vehicles assessed to be the difference by Durham CC. It can be seen from Table 4.1 above that the Sills has the lowest daily flow of the three streets considered even taking into account the maximum increase associated with the proposed “the Black Option” junction arrangement. This level of traffic flow would equate to around one additional vehicle every two minutes.

4.4.28. The Applicant [REP1-006] also responded to omitting to undertaking a “fine-grained” assessment of the environmental effects of the traffic increase on the Sills. This assessment [REP3-044], based on the predicted maximum increase of 524 vehicles per day, considered the effects on:

- Night time noise;
- Vibration;
- Driver severance and delay;
- Pedestrian severance and delay;

- Pedestrian amenity; and
- Accidents and safety.

- 4.4.29. This more detailed assessment did not identify any additional effects not already considered in the relevant chapters of the ES.
- 4.4.30. Notwithstanding these findings the Applicant added to the Air Quality and Dust Management plan [REP8-011] to include monitoring on the Sills during construction. This would ensure that should any problems arise remedial action could be taken.
- 4.4.31. In terms of the overall impact as a result of the Proposed Development, both the A67 County Bridge and the C165 Barnard Castle Road are predicted to have modest reductions in traffic levels.
- 4.4.32. Durham CC [REP9-038] in its final position statement reiterated its view that *“it does not object to the proposed junction at Rokeby; however, given the lesser impact of the “Blue” route, referred to in the Statutory Consultation, in relation to increased traffic on the B6277 The Sills, the strong preference of the Council remains for the “Blue” route”*.

#### **Consideration of Barnard Castle Traffic Issues**

- 4.4.33. At the start of the Examination there were a number of concerns about the impact of the Proposed Development on the local traffic environment along the Sills in Barnard Castle. We discussed the concerns at ISH1 [EV-002] and the Applicant clarified the predicted traffic levels and undertook a more detailed analysis of the local environmental effects on the Sills.
- 4.4.34. Given the additional analysis relating to the modest increases in traffic levels, the ExA is satisfied that the Proposed Development would not have any severe likely significant environmental effects on the Sills.

#### **Road Safety**

- 4.4.35. Chapter 9 of the TA [REP2-003] set out the road safety considerations relating to the dualling of the remaining single carriageway sections of the A66 between the A1(M) Scotch Corner to M6 Junction 40 at Penrith. The analysis of the road safety impact of the Proposed Development considered three elements, these were:
- Consideration of existing collision data (for injury accidents only) to understand the current levels of collisions and also identify any areas of particular concern.
  - Use of COBALT (Cost and Benefit to Accidents – DfT software) analysis to assess levels of accident reduction that might be achieved by the Proposed Development.
  - Stage 1 Road Safety Audits (RSA1) reports.

#### **Existing Collision Data**

- 4.4.36. Due to the resultant effects of the Covid 19 pandemic the analysis did not include the years after 2019, but analysis was undertaken for the 7 years from 2013 to 2019.
- 4.4.37. This found that the A66 has a higher-than-average number of accidents in some sections of the route, with a number of accident cluster sites. The accident rate of the single carriageway sections (0.11 accidents per million vehicle kilometres (mvkm)) was 73% higher than that of the dual carriageway sections (0.06 accidents per mvkm).

- 4.4.38. Over the seven-year period there was a total of fourteen fatalities along the entire length of the A66. Accidents which resulted in fatalities increased, with five fatal accidents in 2015, including three which involved head-on collisions at the Warcop bends and at Crackenthorpe. There were also three fatalities in both 2017 and 2018.
- 4.4.39. Although not part of the above analysis the TA also noted in a six-month period after December 2021 there was a total of six fatal accidents on the single carriageway sections of the A66, at the following locations:
- Rokeby.
  - Kirkby Thore (in two separate incidents).
  - Warcop (in three separate incidents).

### **COBALT Analysis**

- 4.4.40. The COBALT appraisal considered a 60-year period and found that fifteen fatalities and 123 serious casualties were forecast to be saved on the new A66 Scheme sections. The saving on the improved sections for fatal and serious accidents is greater than the increase on the non-improved sections, therefore a net saving of 9 fatalities and 83 serious injuries was forecast to occur. The appraisal did however identify that there would be a net increase in slight accidents over the 60-year period of 41.
- 4.4.41. Our question ISH2.TT.06 [\[EV-004\]](#) asked about the reasons for this forecast increase of slight accidents. The Applicant responded [\[REP1-005\]](#) that while accident reduction would on the whole be realised for fatal and serious accidents and casualties. The relative increase in the proportion of slight accidents and personal injury casualties can result in instances where the drop in accident and casualty rate is not large enough along both the existing and proposed dual carriageway lengths to offset the increase in flows along the existing sections of dual carriageway leading to higher numbers of slight accidents on the existing sections.
- 4.4.42. The Applicant does, however, go on to say that the COBALT appraisal takes account only of the effect on the A66. The TA forecasts reduction in traffic flows on other routes, such as the A67, after completion of the Proposed Development. This traffic reduction may reduce accident rates on these other routes, but this has not been taken account of in the COBALT appraisal.

### **Road Safety Audits**

- 4.4.43. The Applicant has undertaken Stage 1 RSA of the initial designs, in accordance with "GG119 Road Safety audit, Highways England Version 2 January 2020". The TA [\[REP2-003\]](#) Table 9.1 records a summary of the issues raised in the Stage 1 RSA process.
- 4.4.44. Recommendations made as to design changes were implemented within the submitted design. Additional changes may be made at detailed design stage as required ahead of the Stage 2 RSA.

### **Consideration on Road Safety**

- 4.4.45. We are satisfied that the Applicant has demonstrated that by dualling the remaining single carriageway sections of the A66 a road safety improvement in terms of the significant reduction in fatal and serious casualties could be achieved.



## Detrunking Arrangements

- 4.4.46. The dualling of the single carriageway sections of the A66 could result in a number of areas where the old A66 single carriageway section is either stopped up or detrunked to be re-purposed as a local highway. These old sections of trunk road could be passed to the LHA, including any associated structures and ancillary infrastructure.
- 4.4.47. Westmorland and Furness C LIR [REP1-019] and their WR [REP1-019.1], Durham CC LIR [REP1-021] and North Yorkshire C LIR [REP1-042] all expressed concerns about the lack of clear information available about the detrunking strategy. Their concerns related to the asset management transfer arrangements, the asset condition and future maintenance requirements that would be transferred to the Councils.
- 4.4.48. At the close of the Examination both Westmorland and Furness C [REP9-050] and North Yorkshire C [REP9-047] set out that the detrunking side agreement had yet to be completed. Durham CC [REP9-038] did not indicate whether the detrunking side agreement had been completed. Although these side agreements do not directly relate to the planning merits of the Proposed Development, the ongoing responsibilities relating to the asset transfer are important. We therefore consider that the Secretary of State may wish to consult with the Applicant and Durham CC, North Yorkshire C and Westmorland and Furness C to establish the status of the outstanding side agreements prior to making any decision.

## Construction Diversions

- 4.4.49. Chapter 11 of the TA examines the construction impact assessment including an explanation of the purpose for the Construction Traffic Management Plan (CTMP) [APP-033] and the Construction Worker Travel and Accommodation Plan (CWTAP) [APP-030].
- 4.4.50. As part of the construction traffic management modelling a number of scheme construction scenarios were considered. This included initial potential diversion routes. These looked at potential redistribution of traffic during construction. In addition, Appendix F of the TA contained a description of the proposed diversion routes that were under discussion with the LHAs.
- 4.4.51. Westmorland and Furness C in their LIR [REP1-019] set out their concerns that unless there was a clear strategy to manage diversions during construction and in operation there could be unacceptable impacts on local communities. Additionally, they produced a Diversion Assessment Report, appended to their LIR. North Yorkshire C expressed similar concerns in their LIR [REP1-042]. Durham CC's LIR [REP1-021] also referred to the need to consider further the impact of local roads due to temporary road closures and diversions.
- 4.4.52. We asked about progress on agreeing construction and operational diversion strategies with the LHAs in our question WQ TA 1.6 [PD-011]. The Applicant responded [REP4-011] stating regular meetings were taking place on this matter. The intention was that detailed CTMPs that will form part of the second iteration EMPs for the schemes and they can be developed in consultation with the LHAs.
- 4.4.53. At the end of the Examination in the final SoCG Westmorland and Furness C [REP9-007], Durham CC [REP8-022] and North Yorkshire C [REP8-026] all expressed some concerns with respect to the impacts of construction diversions. Their concerns related to the need to ensure impacts on local communities were

minimised. The Applicant acknowledged these concerns and highlighted that the diversion routes would be agreed with the Council as the detailed design was progressed.

- 4.4.54. We are satisfied that the controls in place in the EMP, secured by Article 53 of the Recommended DCO, would ensure that any diversion plans are developed in consultation with the Councils.

### **Public Rights of Way (PRoW)**

- 4.4.55. The Applicant set out its WCH proposals in [\[APP-010\]](#). In this document the Applicant set out the proposals to ensure the continuity of the PRoW network and also where possible to respond to feedback from stakeholders to improve the connections along the new sections of the A66.
- 4.4.56. All of the Councils in their LIRs (Westmorland and Furness C [\[REP1-019\]](#), Durham CC [\[REP1-021\]](#) and North Yorkshire C [\[REP1-042\]](#)) asked for more details about the development of the PRoW network and the future designation and management of the new provision. A number of other IPs made comments on a number of areas where the drafting within the DCO [\[APP-285\]](#) needed to be clarified.
- 4.4.57. We asked in question WQ TA 1.5 [\[PD-011\]](#) that the Applicant collated and addressed the various concerns about drafting to ensure that all necessary corrections and modifications were addressed as the Examination progressed. The Applicant [\[REP4-011\]](#) addressed relevant concerns and submitted a schedule of amendments in Appendix D of its responses to our question.

### **Maintenance Responsibilities**

- 4.4.58. A number of IPs, including the Cumbria and Lakes Local Access Forum [\[REP1-014\]](#) sought greater clarity about the overall maintenance responsibilities and in some cases the safety of shared use of PRoW with Private Means of Access (PMA).
- 4.4.59. We asked about the implications of coincident use of PRoW and PMA in question WQ TA 1.3 [\[PD-011\]](#). The Applicant [\[REP4-011\]](#) in response explained the legal status of the shared routes and also setting out the widths of shared routes.
- 4.4.60. Durham CC in their PADSS [\[REP5-041\]](#) raised *“the question of future maintenance; if they are to become public bridleways then our ongoing maintenance responsibility is to a standard suitable for that level of public use, not to a standard for the private vehicular use. In most cases that works fine in practice, but there are concerns that the Applicant may construct very high standard vehicular access which landowners would expect Durham CC to maintain in the future. The ongoing responsibilities need to be clearly communicated to all parties.”* As a result, we asked in question FWQ TA 2.2 [\[PD-012\]](#) both the Applicant and then LHAs about the potential maintenance liabilities relating to shared routes if they were publicly maintained.
- 4.4.61. The Applicant [\[REP6-020\]](#) responded saying discussions were ongoing about how the provisions within the DCO would address this matter. All three LHAs [\[REP6-026\]](#), [\[REP6-030\]](#), [\[REP6-033\]](#) in responses to our question expressed the need for clarity about ongoing maintenance responsibilities for shared routes as the detail design progressed. The Applicant [\[REP7-160\]](#) within Table 2 clarified the maintenance responsibilities for all scenarios involving PMA and PRoW, subject to further engagement in the detailed design process. Durham SoCG [\[REP8-022\]](#) records agreement with the Applicant’s position. The other two Councils’ SoCG and



final statements did not mention this topic, so we have assumed that they are also in agreement with the Applicant's position.

### **Route Continuity**

- 4.4.62. Cycling UK [RR-064], jointly with the British Horse Society [REP7-199] expressed concern that the east west WCH connectivity did not continue across the entire length of the A66 including the sections that were already dual carriageway. The Applicant [REP8-075] stated that *"with respect of connectivity and a continuous east west cycling corridor, the scope for the A66 NTP Project, as set out by Department for Transport is within the corridors of the single carriageway sections of the route. Following statutory consultation, the Applicant made a range of improvements to the WCH provision by working with local authorities and landowners to introduce additional east west connectivity where possible within the single carriageway corridor."* We consider that the Applicant has, in accordance with the requirement of the NPSNN, sought to make improvements where possible and reconnect all severed routes within scope of the project.

### **Countess Pillar Access**

- 4.4.63. The Ramblers Penrith Group [REP1-127] also expressed concern that the existing footpath connecting the Countess Pillar at Brougham to the B6262 was being removed by the Proposed Development. We asked about this at ISH2 [EV-003] and the Applicant responded [REP1-009] saying it had considered the representations made. A subsequent Change Application [CR1-002] submitted on 24 March 2023 included a change (DC-05) which retained pedestrian access to the B6262 and Brougham. The ExA accepted this change [PD-014] and consequently we consider that this has resolved this issue.

### **Brougham – Removal of Access from A66 to Penrith Wastewater Treatment Works**

- 4.4.64. The Change Request [CR1-002] included an accepted [PD-014] change (DC-05), that included amongst other elements removal of the access from the A66 to the Penrith wastewater treatment works. This was required to facilitate the ongoing protection and maintenance of a National Grid gas pipeline. The original submitted design would have required closure of the access to the one residential property and the wastewater treatment works making them inaccessible if maintenance was required on the pipeline. The revised access proposal would use the proposed Brougham accommodation bridge and would be accessed from the B6262.
- 4.4.65. United Utilities Water Limited (the operator of the Penrith Wastewater Treatment Works) [REP7-207] submitted an initial objection to the design change. It set out [REP8-086] that it would require suitable protective provisions and a side agreement to ensure there would be no detriment to its undertaking. The Applicant [REP9-031] responded that negotiations were progressing, and it considered that United Utilities would withdraw its objection shortly after the close of Examination.
- 4.4.66. As a result, the ExA was unable to establish whether this matter had been resolved after the end of Examination. We consequently recommend that the Secretary of State may wish to consult both the Applicant and United Utilities Water Limited to establish the exact position prior to making any decision.
- 4.4.67. Brougham PC [REP7-197], Gordon Rigg [REP7-208] and Peter Ballingall [REP7-209] also raised concern that the increase in HGV traffic associated with this change would create congestion and traffic issues on very minor roads in Brougham

village. The Applicant [REP8-075] responded that it would be working both with United Utilities and Westmorland and Furness C through the detailed design process to explore possible mitigation. This may include signing/ restrictions on the B6262 to discourage any additional HGV through Brougham village. We consider that this would be the most effective way of mitigating against the possibility of any harm in Brougham village.

#### **Warcop – Additional Footpath**

- 4.4.68. Warcop PC [RR-013] in considering the impact of construction and operation of the new road suggested a new footpath to provide safe pedestrian movement around Warcop. The Applicant [PDL-011] initially responded that this was outside the scope of the project. Warcop PC [REP1-137] reiterated their view and the Applicant [REP2-017] responded saying they had submitted a designated funding bid for the Warcop footpath. This funding source is separate from the Proposed Development funding.
- 4.4.69. We asked for an update as to the position with respect to the designated funding bid in question WQ PC1.4 [PD-011]. The Applicant responded [REP4-011] stating the feasibility funding bid had been successful and engagement and development of the detailed scheme for a further funding bid would start soon.
- 4.4.70. We understand that the provision of this footpath is outside the scope of the Proposed Development but are satisfied the Applicant has been proactive in pursuing alternative funding sources and a means of delivering the footpath.

#### **Consideration of PRow Effects**

- 4.4.71. On a linear project of this nature the implications for users of the network can be significant. Some of the issues are still to be worked through as part of the detailed design. The ExA is satisfied that the Applicant has sought both to address any issues of severance created by the Proposed Development and where possible to improve the east west PRow linkages.

#### **HGV Parking**

- 4.4.72. All of the LHAs in their respective LIR's (Westmorland and Furness C [REP1-019], Durham CC [REP1-021] and North Yorkshire C [REP1-042]) outlined their concerns about the current HGV facilities along the A66. We also asked in our Supplementary Question ISH2.TT.17 [EV-004] about the HGV parking and service provision along the route. The Applicant responded [REP1-005] that the laybys on the new section of the route would be designed in accordance with the Applicant's design standards. It also stated that it did not intend introducing any new laybys on the existing dualled sections of the route as this was outside the scope of the Proposed Development.
- 4.4.73. The Applicant also highlighted that running in parallel with the Examination was a separate nation-wide freight study. LHAs would be consulted as part of that study. The aim of the study was to establish what interventions can be undertaken to improve the service the Applicant provides for its freight customers. Parking, facilities, information provision and customer insight fall within the scope of the freight study.
- 4.4.74. We asked in WQ TA1.10 [PD-011] for the Applicant's view of whether any outcomes from the national freight study may require any retrofitted solutions within the Order limits of the Proposed Development. The Applicant responded [REP4-011] stating

based on progress of the national study to date it did not envisage any interventions within the Order limits of the Proposed Development.

- 4.4.75. Based on the submissions from the Applicant the ExA is satisfied that the Proposed Development would provide adequate HGV parking facilities within the Order limits. We also note the separate national freight study being undertaken by and are satisfied that this is unlikely to require any retrofitting of facilities within the Order limits of the Proposed Development.

## **Other Traffic and Transport Issues**

### **Kirkby Stephen Bypass**

- 4.4.76. Anthony Metcalfe [RR-040] [REP1-050] expressed concern that the Applicant's assessment of the value for money exercise done to assess the A685 Kirkby Stephen bypass as part of the strategic route study was flawed. Mr Metcalfe was concerned the Applicant had overestimated the cost of any proposed bypass and thus affected the Applicant's final route choice.
- 4.4.77. The Applicant [REP4-011] responded that they considered the assessment had been correct and stating that "*The cost estimate would have taken into consideration the number and costs of structures needed to span the considerable number of watercourses in the area, including the Eden River. As well as cost implications, consideration was also given to the environmental impacts of the scheme and the encroachment into the Yorkshire Dales National Park which was extended further into Cumbria in 2016*".
- 4.4.78. Given no further comment from Mr. Metcalfe at later deadlines and the Applicant's comments above, we consider that the A685 Kirkby Stephen bypass costing has been correctly accounted for in the route selection process.

### **Lake District National Park Traffic**

- 4.4.79. The Lake District National Park Authority (LDNPA) [RR-055] and William Ferson [RR-187] expressed concerns that the Proposed Development would lead to an increase in vehicle traffic being attracted to the Lake District National Park (LDNP) where there are already visitor traffic and parking issues. The Applicant responded [PDL-010] stating that their modelling predicted that there would be 350 vehicles a day increase in traffic travelling to the LDNP by 2044. It considered this was a relatively minor increase over traffic levels without the Proposed Development.
- 4.4.80. The LDNPA [REP1-028] and the FoLD [REP1-067] considered that the predicted 350 vehicles/ day was too low and underestimates the impact in the LDNP. The FoLD [REP1-069] submitted a report about 'induced' traffic to evidence that upgraded roads can stimulate increased vehicular traffic. The Applicant [REP2-017] in response stated that the traffic modelling did already allow for increased vehicular traffic as a result of the Proposed Development. This is the reason there was a predicted increase of 350 vehicles/ day to the LDNP.
- 4.4.81. There were no further submissions providing evidence to refute the Applicant's modelled increase of traffic to the LDNP. On that basis and given the evidence and explanation provided by the Applicant we are satisfied that the increase in traffic to the LDNP would be small and unlikely to result in any LSE within the LDNP.

## **Appleby Horse Fair – Traffic Management Plan**

- 4.4.82. Westmorland and Furness C in its LIR [\[REP1-019\]](#) expressed concern about the Proposed Development impacting on the traffic arrangements of the Appleby Horse Fair both in construction and operation. They wanted assurance that the CTMP would include any necessary alterations to the Appleby Horse Fair Traffic Management Plan (AHFTMP) to reflect the revised infrastructure. In addition, that consideration should be given to new stopping places on the detrunked sections of the redundant A66.
- 4.4.83. In the signed SoCG [\[REP9-007\]](#) between the Applicant and Westmorland and Furness C, it states that the CTMP would be developed on the understanding that the AHFTMP would be considered so any amendments required to either document could be made. With respect to funding for additional stopping places on the detrunked sections of the old A66, this was said to be outside the scope of the Proposed Development but could be an opportunity for an Applicant's designated Funding bid.

## **Conclusions**

- 4.4.84. The ExA has considered the analysis of the impact of the proposal on traffic and transport. In doing this we have considered all the written and oral submissions, including all those not specifically identified in this Section of the Report. The ExA is satisfied that the Applicant has demonstrated that the Proposed Development would achieve the transport objectives set out in paragraph 4.4.7 of this Report.
- 4.4.85. The Applicant has worked through the transport analysis of the Proposed Development with the LHAs. The acceptability of the traffic and transport proposals during the construction phases is dependent on the implementation of the CTMP. At this stage of the project development, we are additionally satisfied that the LHAs will be fully engaged in developing the detailed CTMP that will accompany the second iteration of the EMP. This is likely to be on a scheme-by-scheme basis so the differing local traffic circumstances can be fully considered in the operation of the CTMP.
- 4.4.86. In this section we have also identified that the Secretary of State may wish to consult with the three LHAs and United Utilities about progress on side agreements prior to making any decision. These are also listed in Appendix D of this Report.
- 4.4.87. The Proposed Development would accord with NPSNN and all legislation and policy requirements. The ExA acknowledges that the resultant changes to some access provisions have given rise to a number of concerns about the local impact of the Proposed Development. We are satisfied that the Applicant has sought to address these concerns and that the Recommended DCO secures the necessary mitigation. In this respect and considering the transport objectives for the Proposed Development taken as a whole, moderate positive weight is attracted in the planning balance.

## **4.5. AIR QUALITY**

### **Applicant's Submission**

- 4.5.1. The Applicant's assessment of traffic air quality is primarily contained within the ES Chapter 5 Air Quality [\[APP-048\]](#). This assesses the likely significant air quality effects of the construction and operation of the Project, following the standards set out in the DMRB LA 105 Air quality (Highways England, 2019).

4.5.2. In addition, the Applicant submitted the following:

- Figure 5.1 Air Quality Study Area and Constraints [APP-065].
- Figure 5.2 Air Quality Baseline [APP-066].
- Figure 5.3 Air Quality Construction Phase Assessment [APP-067].
- Figure 5.4 Air Quality Operational Phase Assessment [APP-068].
- Appendix 5.1 Legislation, Policy, Guidance [APP-150].
- Appendix 5.2 Air Quality Assessment Methodology [APP-151].
- Appendix 5.3 Air Quality Baseline Monitoring [APP-152]. And;
- Appendix 5.4 Air Quality Assessment Results [APP-153].

4.5.3. The Applicant's air quality assessment summarised that:

- No significant effects during construction due to emissions of dust from construction activities are likely following the implementation of mitigation set out in the EMP.
- No significant effects for human health due to traffic emissions during the construction phase are likely following the implementation of mitigation set out in the EMP.
- No significant effects for ecological receptors due to traffic emissions during the construction phase are likely following the implementation of mitigation set out in the EMP.
- No significant effects for human health due to traffic emissions during the operational phase are likely.
- No significant effects for ecological receptors due to traffic emissions during the operational phase are likely.

4.5.4. The Applicant also submitted within the EMP [REP8-005] REAC commitments Table 3.2 (D-AQ-01, 02, MW-AQ-01 to MW-AQ-050) to control air quality and dust throughout the construction process. The Applicant also submitted an outline of an Air Quality and Dust Management Plan (AQDMP) [APP-024] (at the close of Examination Revision 3 [REP8-011]) as an Annex B4 to the EMP. The detailed AQDMP will form part of the second iteration EMP that would be approved following detailed design by the Secretary of State.

### **Examination Issues**

4.5.5. Air quality was not set out in our IAPI set out in Annex C of our Rule 6 letter [PD-006].

4.5.6. As a result of our understanding of both the Applicant's and IPs' submissions we identified the following matters that needed further assessment during the Examination. These were:

- NE's concerns over the use of LA105 and the impact on features of the North Pennine Moors SAC and SPA;
- Penrith – Castlegate potential Air Quality Management Area (AQMA); and
- Durham CC – Validation of the air quality modelling.

### **Appropriateness of LA105**

4.5.7. NE's RRs [RR-180], first PADSS submission [AS-006] and WR [REP1-035] all expressed the view that NE "do not support the use of LA105 as it is not Habitat Regulations Assessment compliant".

4.5.8. DMRB LA105 sets out the requirements for assessing and reporting the effects of highway projects on air quality. NE's view is that the use of LA105 for assessing the



air quality impacts does not comply with the standard of assessment required in carrying out a HRA. The Applicant's view [PDL-013] is that the air quality assessment undertaken in the ES takes account of the NE's approach in advising competent authorities under the Habitats Regulations. This general policy approach is the subject of an ongoing dialogue between NE and the Applicant at a national level about assessing air quality in road schemes.

- 4.5.9. Discussions between the Applicant and NE continued throughout the Examination, and we asked in AQ2.1 FWQ [PD-012] and at ISH2 [EV-003] about progress between the parties.
- 4.5.10. The overall policy position does not specifically relate to the air quality assessment undertaken for the Proposed Development. NE had one outstanding specific concern about the impact on features of the North Pennine Moors SAC and SPA at the end of the Examination. NE's concern was the additional nitrogen and ammonia deposition as result of the Proposed Development would be adding to a current exceedance of critical loads for a feature of the European sites. NE specific concern did not relate to the assessment in Chapter 5 of the ES but the implications for the HRA. This matter is explained in more detail in Section 5 of this Report.
- 4.5.11. The Applicant and NE were still in discussion about the need for mitigation to resolve NE concerns about the HRA implications at the end of the Examination. The Applicant and NE both submitted a joint position statement [REP9-034] and [REP9-046] alongside the signed SoCG [REP9-008]. We note from these that the parties anticipate agreement prior to the Secretary of State reaching a decision on the Proposed Development.

#### **Penrith – Castlegate Potential AQMA**

- 4.5.12. Westmorland and Furness C's LIR [REP1-019] explained that the Applicant's submissions did not provide sufficient evidence that the Proposed Development could compromise its ability to maintain air quality in parts of Penrith. Its particular concern was the potential AQMA it was likely to declare in Castlegate. We asked in ISH2.AQ.02 [EV-004], WQ AQ.1 and 2 [PD-001] for more information about this issue with respect to traffic levels and consequential air quality effects.
- 4.5.13. The Applicant and the Westmorland and Furness C continued engagement throughout the Examination to ascertain further information about the air quality changes in Penrith as a result of the Proposed Development.
- 4.5.14. At the end of the Examination the signed SoCG between the Applicant and Westmorland and Furness C [REP9-007] the parties agreed about the level of detail available on air quality changes and also the agreed amendments to Annex B4 Air Quality and Dust Management (Rev 3) of the EMP [REP8-011]. The detailed AQDMP would form part of the second iteration of the EMP. This would be approved by the Secretary of State, following consultation with the relevant LPA. This process is secured by Article 53 of the Recommended DCO.

#### **Durham County Council – Validation of Air Quality Modelling**

- 4.5.15. The Applicant had been in discussion with Durham CC and its consultant about the findings of the air quality assessment that evidenced the findings of ES Chapter 5 [APP-048]. Durham CC had no fundamental objection to the findings of ES Chapter 5 but was seeking greater clarity on parameters used in the assessment.

- 4.5.16. Durham CC's RR [\[RR-073\]](#) submitted its commentary on the Applicant's air quality assessment and the Applicant [\[PDL-013\]](#) provided an initial response. Dialogue between the parties continued during the Examination. The signed SoCG [\[REP8-022\]](#) records that amendments to the EMP [\[REP8-006\]](#) and Annex B4 Air Quality and Dust Management (Rev 3) [\[REP8-011\]](#) had been agreed.
- 4.5.17. EMP Annex B4 Air Quality and Dust Management [\[REP8-011\]](#) also includes additional air quality monitoring on the B6277 the Sills in Barnard Castle. This was to reflect the concerns about the potential effects about traffic increases along this road outlined in section 4.4 of this Report.
- 4.5.18. The detailed Air Quality and Dust Management Plan would form part of the second iteration of the EMP. This would be approved by the Secretary of State, following consultation with the relevant LPA. This process is secured by Article 53 of the Recommended DCO.

## **Conclusion**

- 4.5.19. The ExA is satisfied that the Applicant has identified, assessed and addressed the LSE on air quality impacts of the Proposed Development. We are also satisfied that the EMP represents an effective means of mitigating impacts.
- 4.5.20. The only outstanding issue relating to air quality remains the disagreement between the Applicant and NE about the implications of the nitrogen and ammonia deposition on features of the North Pennine Moors SAC and SPA. Both parties consider that they should be able to reach agreement prior to the Secretary of State making his decision.
- 4.5.21. Taking these matters into account and on the basis that both parties do reach agreement on the outstanding matter, the ExA considers that the Proposed Development would accord with NPSNN and all legislation and policy requirements and the ExA is satisfied that mitigation is provided for and secured in the Recommended DCO. In this respect we consider that the effects on air quality are neutral in the planning balance of the Proposed Development.
- 4.5.22. Section 6 of this report sets out the ExA recommendation should NE advise AEoI cannot be excluded relating to the increase in nitrogen and ammonia deposition on the North Pennine Moors SAC and SPA. In this event, the ExA consider that this scenario would also mean that the effects on air quality would be very minor negative in the planning balance of the Proposed Development.

## **4.6. CARBON EMISSIONS**

### **Applicant's Submission**

- 4.6.1. The Applicant has provided a climate assessment in Chapter 7 of the ES [\[APP-050\]](#) under the relevant policy framework contained in the NPSNN [\[APP-050\]](#), Table 7-2] and other relevant policy and guidance [\[APP-050\]](#), para 7.3.5 to para 7.3.9]. The methodology for the climate assessment follows the guidance set out within the DMRB LA 114<sup>2</sup>.
- 4.6.2. DMRB LA 114 directs that a climate change assessment shall only report significant effects where increases in greenhouse gas (GHG) emissions would have a material

---

<sup>2</sup> National Highways, 2019. *DMRB LA 114 Climate*.

impact on the Government's ability to meet its carbon targets [REP1-009, Agenda Item 3.4]. This reflects the overarching decision-making approach set out in the NPSNN.

- 4.6.3. Carbon impacts are a consideration in the appraisal of options within the business case for the Proposed Development [APP-244]. The environmental impact assessment of carbon emissions from the Proposed Development concludes that the net carbon emissions would equate to 0.027% of the UK's carbon budget for the 4th Carbon Budget period, 0.03% of the UK's carbon budget for the 5th Carbon Budget period, and 0.019% of the 6th Carbon Budget [REP2-017, Appendix 1, Table 1]. The carbon emissions quoted are in fact carbon equivalent emissions taken from traffic modelling carbon emissions [APP-050, para 7.5.16].
- 4.6.4. The ES reports that the climate assessment shows emissions from the Proposed Development to be low when compared against the relevant carbon budgets [APP-050, para 7.11.24]. The assessment concludes that the Proposed Development's GHG emissions, in isolation, would not have a significant effect on climate or a material impact on the ability of the Government to meet its carbon reduction plan targets and Carbon Budgets. The ES finds no residual LSE in the construction and operation stages of any of the schemes which make up the Proposed Development [AS-010, Table 16-1].
- 4.6.5. In line with DMRB LA 114, the GHG emissions from the Proposed Development have been benchmarked against other recent road scheme projects within the SRN [APP-050, para 7.11.24]. This demonstrates that the GHG emissions from construction of the Proposed Development are comparable to other road schemes, and, on this basis, it is also considered that the carbon footprint of the Proposed Development is not unnecessarily high.
- 4.6.6. The Carbon Strategy regulated by the EMP [REP8-005] and secured by Article 53 of the Recommended DCO would seek to minimise GHG emissions through design and during construction [REP1-009, Agenda Item 3.4 and REP3-043]. This objective would be met by:
- Implementing the Carbon Strategy in accordance with EMP measure MW-CL-01.
  - Undertaking quarterly GHG emission returns during construction.
  - No part of the Proposed Development being able to start until a Carbon Strategy has been developed in detail and has been subject to stakeholder consultation.

### **Examination Issues**

- 4.6.7. The main objections were put forward by Transport Action Network (TAN) and Climate Emergency Planning and Policy (CEPP) [REP1-046 and REP1-013]. Their positions did not materially change during the Examination. At D1, TAN advised that it would like its representations on climate change at Hearings to be made by CEPP [REP1-046]. The Applicant's responses to these objections are summarised in its Closing Submissions [REP8-074, Section 6.3]. The Applicant's references to pages 76 to 84 of its Response to WRs by other IPs [REP2-017] given in the Closing Submissions reflect the unpaginated pages of Appendix 1 to the response document.
- 4.6.8. The ExA considers the main issues in this regard to be:
- Assessment of significance in accordance with the NPSNN and the Climate Change Act 2008 (CCA2008).



- Contextualisation, or the putting of carbon emissions into context, against local, regional and sectoral targets.
- Cumulative impact.
- Proper forum for change.
- Contextualisation, or the putting of carbon emissions into context, against the Carbon Budget Delivery Plan (CBDP).
- Locally committed development.
- Traffic modelling.

4.6.9. The Applicant also provided various documents in support of the application in response to points raised by the ExA and IPs. These include:

- ISH2 Post Hearing Submissions [[REP1-009](#)].
- Response to WRs made by other IPs [[REP2-017](#)].
- Response to D3 and D4 Submissions [[REP5-030](#)].
- Responses to the ExA's WQs [[REP4-011](#)].
- ISH3 Post Hearing Submissions [[REP5-024](#)].
- General Closing Submission [[REP8-074](#)].
- D8 Submission on Climate Matters [[REP8-076](#)].
- D9 Submission on Climate Matters [[REP9-033](#)].

4.6.10. The ExA has considered all the representations received on carbon emissions but has only identified the points considered to be important and relevant when reporting on the representations and the Applicant's responses. CEPP have, however, requested that the ExA record various points it makes [[REP8-087](#), Section 4.2] and requests that the Secretary of State considers them in the decision making. The various points that CEPP make reflect many of the other representations made, which are not individually reported.

#### **Assessment of Significance in Accordance with the NPSNN and the Climate Change Act 2008**

4.6.11. CEPP raised the absence of NPSNN paragraph 4.4 in the ES and that the Applicant fails to follow it [[APP-050](#), Table 7-2, [REP2-024](#), Section 6.2 and [REP9-057](#), Issue 3 and 14].

4.6.12. CEPP stated that the assessment of operational emissions against the 6th Carbon Budget period alone is contrary to the LA 114 Guidance as it should be extended into the 5th Carbon Budget period and that the data in ES Table 7-24 is incorrect [[APP-050](#), para 7.5.22 and Table 7-24, [REP2-024](#), section 3. and [REP9-057](#), Issue 4, 17, 18, 21, 22 and 23]. CEPP and TAN [[REP9-049](#)] also state that the Proposed Development risks the legal requirement to deliver the 5th and 6th Carbon Budgets under the CCA2008 and being in breach of its international obligations.

4.6.13. CEPP stated that the Applicant is incorrect in claiming that the ES 'broadly aligns with the Institute of Environmental Management and Assessment (IEMA) Guide<sup>3</sup> as contextualisation of the GHG assessment has not been done [[APP-050](#), Section 7.4.4, [REP2-024](#), Section 6.1 and 6.2 and [REP9-057](#), Issue 7 and 11].

4.6.14. CEPP stated that the impact of the Proposed Development, when assessed against the IEMA significance scheme in the IEMA Guide, is 'Major Adverse', significant and would have a material impact on the ability of Government to meet its carbon reduction target [[REP9-057](#), Issue 15, 16 and 20]. This is demonstrated by three

---

<sup>3</sup> Institute of Environmental Management and Assessment, 2022. *IEMA Guide: Assessing Greenhouse Gas Emissions and Evaluating their Significance*.

contextualisation methods [REP2-024, Section 7], two of which are based on the Government's Net Zero Strategy (NZS) trajectory [REP8-087, Section 2].

- 4.6.15. CEPP stated that the Applicant is incorrect in claiming that the ES 'broadly aligns with IEMA Guide' [APP-050, Section 7.4.4, REP2-024, Section 6.2 and REP9-057, Issue 10]. This is because the guide says that a comparison against national budgets is only a starting place and a limited method of assessment, but the Applicant only makes such a comparison against national budgets.
- 4.6.16. The Applicant set out its position on the legal and policy context for the assessment of significance [REP2-017, Appendix 1 and APP-242, Section 5.2]. The Applicant wholly refuted CEPP's suggestion that it has failed to engage the correct GHG emission legal and policy tests and CEPP had failed to meaningfully acknowledge Government policy, which would address CEPP's concerns [REP9-033, Section 2.3].
- 4.6.17. The Applicant advised that its GHG assessment has been undertaken in the context of the UK's statutory carbon budgets, and this contextualises GHG emissions against a trajectory that is consistent with the UK's statutory obligation to meet net zero [REP1-009, Agenda Item 3.4 and REP2-017, Appendix 1]. The Applicant noted that this approach accords with the NPSNN, the IEMA Guide and recent DCO determinations made by the Secretary of State. The IEMA Guide is, however, solely guidance, and there is no statutory requirement to take account of or to follow it [REP8-074, para 7.1.17]. Furthermore, the Government's 2050 net zero target, under the CCA2008, is to achieve net zero GHG emissions across the UK as a whole, and the 5-yearly carbon budgets set totals for the economy and industry as a whole [REP9-033, para 2.4.10]. There is no sectoral target for emissions set under the CCA2008 or the five-yearly carbon budgets.
- 4.6.18. In March 2023, the Secretary of State published a draft revised NPSNN for consultation [REP9-033, Section 2.4]. During this consultation, which continues beyond closure of the Examination, the Secretary of State has not suspended the extant NPSNN which remains in force. Notwithstanding this situation, the Applicant confirms that it has assessed and found conformity with the GHG emissions assessment sections of the draft revised NPSNN [REP7-161, pages 30 to 31].
- 4.6.19. In terms of the IEMA Guide, the Applicant believes that CEPP had failed to address the guide's statements that "*The specific context for an individual project and the contribution it makes must be established through the professional judgment of an appropriately qualified practitioner drawing on the available guidance, policy and scientific evidence*"<sup>4</sup> and "*it is down to the practitioner's professional judgement how best to contextualise a projects GHG impact*"<sup>5</sup>. The Applicant's position is that its assessment of GHG emissions has been undertaken in a diligent and robust manner, applying the highly experienced professional judgment of competent and capable practitioners.
- 4.6.20. The Applicant believes that CEPP's view [REP8-087, Section 4] that "*any additional emissions from a proposed transport scheme*" would be 'significant enough to have a material impact on the ability of Government to meet its carbon reduction targets' failed to properly take into account the CCA2008, the Government's net zero 2050

---

<sup>4</sup> IEMA Guide, Section 6.2

<sup>5</sup> IEMA Guide, Section 6.4

target or the 5-yearly carbon budgets. As a consequence, it is the Applicant's position that CEPP's submissions on the NPSNN are incorrect.

- 4.6.21. The Applicant's view is that CEPP's references to 'errors' in the contextualisation of emissions are based on a misinterpretation of the assessment provided within ES [APP-050, REP2-017, Appendix 1 and REP5-030, Section 3].
- 4.6.22. The ExA considers that the Applicant has carried out its GHG assessment in a lawful manner and in accordance with Government policy, particularly the NPSNN, and guidance and other relevant guidance. In this regard, the ExA can see no breach of international obligations in relation to s104 of the PA 2008. The guidance structure extends down to a level of detail in the DMRB which gives the ExA confidence that the mechanism for the assessment is robust and takes account of realistic and tried and tested scenarios in terms of the data used.
- 4.6.23. There is nothing to suggest, particularly in the NPSNN<sup>6</sup> and the CDBP as set out below, that anything but national carbon budgets should be used in the assessment. Indeed, there is much to highlight the practical lack of comparability and uncertainty, including within the CDBP<sup>7</sup>, that could result if any sub-national geographical limits were placed on the assessment on the basis that carbon emissions do not obey geographical limits. All of this leads the ExA to the view that the Applicant's approach is appropriate.
- 4.6.24. The ExA sees a difference between a carbon budget and a carbon budget delivery plan. A budget is set and a delivery plan is an indicator of a route to get to that budget in terms of projections and also to achievement against that particular planned route towards a budget. This is reflected in the CBDP<sup>8</sup> [REP8-076, para 1.2.4]. The ExA also considers that the Applicant's uncertainty in understanding the detail of the sectorial limits in the CBDP supports this view. The ExA therefore considers that the Applicant is correct in its reliance on the five-yearly national carbon budgets in its ES assessment.
- 4.6.25. The ExA considers that the Applicant has contextualised the GHG emissions in line with the IEMA Guide<sup>9</sup>, which is a guidance document only, in a number of ways:
- The comparison with the national five yearly carbon budgets which determine a trajectory towards net zero in the ES. The IEMA Guide<sup>10</sup> sees this as a starting point.
  - The comparison with the CBDP sector projections, which represent latest Government policy resulting from emerging recommendations during the Examination period and compatibility with national climate commitments. The IEMA Guide sees sectoral trajectories as potentially useful and highly specific evidence.
  - The use of national traffic growth projections and assessment technical guidance which take into account future potential emission sources and national emission reduction measures. The IEMA Guide<sup>11</sup> sees the current and future GHG emissions intensity of an activity as a source of contextual information.

---

<sup>6</sup> NPSNN, para 5.16

<sup>7</sup> CDBP, para 19

<sup>8</sup> CDBP, para 19

<sup>9</sup> IEMA Guide, Section 6.2

<sup>10</sup> IEMA Guide, Section 6.4

<sup>11</sup> IEMA Guide, Table 1

- 4.6.26. The ExA also considers that the committed mitigation, including the Carbon Strategy, represents best endeavours to avoid significant adverse effects in line with the IEMA Guide<sup>12</sup>.
- 4.6.27. On the further issues raised by CEPP in relation to assessment of significance, the ExA is satisfied that the Applicant has considered the environmental, safety, social and economic benefits and adverse impacts at national, regional and local levels [APP-008, REP2-003 and REP9-006, page 26]. The ExA is also satisfied that the Applicant's assessment of operational emissions against the sixth carbon budget period alone is not contrary to the LA 114 Guidance on the basis that all construction emissions against both the Fourth and Fifth Carbon Budgets in isolation, in order to account for a reasonable worst case scenario in terms of each budget period [REP2-017 and REP8-076, para 1.2.11 onwards]. Should operation start in the Fifth Budget period, then its emissions would effectively take the place of construction emissions in the Fifth Budget period. It is also relevant that construction emissions would be higher than operation emissions in any carbon budget period.
- 4.6.28. The ExA also agrees with the Applicant that the impacts of the Proposed Development would be fully consistent with applicable existing and recently emerging policy requirements and good practice design standards for projects of this type. The IEMA Guide<sup>13</sup> records that a project with minor adverse effects is fully in line with measures necessary to achieve the UK's trajectory towards net zero. It is also of note that the IEMA Guide<sup>14</sup> records that a project that is compatible with the budget-based trajectory, and which complies with up-to-date policy and 'good practice' reduction measures to achieve that, has a minor adverse effect that is not significant. The project may have residual emissions but is doing enough to align with the relevant transition scenario towards net zero and thereby avoiding significant adverse effects. The ExA considers that the residual emissions from the Proposed Development fall within this scenario and that it therefore would have a minor adverse impact.

#### **Contextualisation Against Local, Regional or Sectoral Targets**

- 4.6.29. CEPP stated that the Applicant is incorrect in claiming that the ES 'broadly aligns with the IEMA Guide' as contextualisation of the GHG assessment against local, regional and sectorial targets has not been done [APP-050, Section 7.4.4 and REP9-057, Issue 12].
- 4.6.30. The Applicant's position on this matter, which it reports has been confirmed by the High Court, is that local carbon budgets have no basis either in law or policy [REP2-017, Appendix 1 and REP4-014, Section 3]. The judgment in the case of Bristol Airport Action Network Coordinating Committee v Secretary of State for Levelling Up, Housing and Communities [2023] England and Wales High Court (EWHC) 171 (Admin) [REP4-014] confirmed that local carbon budgets have no basis in law, and the fact they have no status in policy is significant [REP5-024, Agenda Item 4.1]. This position also accords with the recent A47 Wansford to Sutton DCO determination made by the Secretary of State.

---

<sup>12</sup> IEMA Guide, page 27

<sup>13</sup> IEMA Guide, Box 3

<sup>14</sup> IEMA Guide, page 25

- 4.6.31. The ExA is satisfied that the ES should not consider local or regional targets. This has recently been confirmed by the High Court. The ExA has considered sectoral targets later in this section under contextualisation against the CDBP.

### **Cumulative Impact Appraisal**

- 4.6.32. CEPP's position is that there is categorically no assessment of the impact of cumulative carbon emissions in the ES and that this omission is unlawful with respect to the EIA Regulations<sup>15</sup> (2017 Regulations) [REP2-024, Section 5 and 6.2 and Appendix A and REP9-057, Issue 1, 2 and 13]. CEPP also requested that the ExA consider whether it was necessary to request further information and suspend the Examination if necessary.
- 4.6.33. CEPP also stated that the Applicant is incorrect in stating that IEMA Guide says that a spatial approach to a cumulative assessment for GHG emissions is not appropriate. [APP-050, Section 7.4.4, REP2-024, Section 5.6 and REP9-057, Issue 6].
- 4.6.34. CEPP stated that the Applicant has assessed the impact of the Proposed Development from the difference between the "do-something" and "do-minimum" scenarios. Therefore, the Applicant's assessment of the significance of impact is only based on the emissions from the Proposed Development itself and is not cumulative [REP2-024, Section 5.7 and REP9-057, Issue 8].
- 4.6.35. CEPP stated that the Applicant's claim that the ES achieves a cumulative assessment as the emissions from the Proposed Development are compared against the benchmark of a national carbon budget is illogical [REP2-024, Section 5.7 and REP9-057, Issue 9]. This is because national carbon budgets are being used as a benchmark in the comparison being made and not as an estimate of the Proposed Development's cumulative emissions.
- 4.6.36. The Applicant noted the statutory requirement for cumulative assessment, as set out in the 2017 Regulations<sup>16</sup> is that an ES should include 'a description of the LSE of the development on the environment'. The focus of an ES is therefore on whether the Proposed Development is likely to have a significant effect on the environment of itself and/ or in combination with other existing and/ or approved projects.
- 4.6.37. The Applicant also noted the following extracts from the IEMA Guide 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*".<sup>17</sup>; and "*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*".<sup>18</sup>. Both of these extracts support the Applicant's approach.
- 4.6.38. The Applicant is satisfied that the Proposed Development fully complies with the 2017 Regulations, as well as applicable guidance, including the IEMA Guide, and standards, including the DMRB. Any suggestion that the Proposed Development's cumulative carbon assessment could only have been undertaken in accordance

---

<sup>15</sup> EIA Regulations 2017

<sup>16</sup> 2017 Regulations, Schedule 4

<sup>17</sup> IEMA Guide, Section 5.3, Step 5

<sup>18</sup> IEMA Guide, Section 5.3, Step 5



with a different method would be inconsistent with IEMA Guide<sup>19</sup>, which states that there is not one single agreed method by which to assess a project's carbon budget.

- 4.6.39. In response to the CEPP criticism of the Applicant's methodology for cumulative carbon assessment [[REP1-013](#) and [REP3-068](#) for example], the Applicant advised that its approach to cumulative carbon assessment is the same as that used on previously granted DCOs [[REP2-017](#), Appendix 1 and [REP5-030](#), page 10 to 13]. Similar objections to the Applicant's approach to cumulative carbon assessment were received during the A47 Wansford to Sutton DCO Examination. The Secretary of State addressed and rejected these objections in the decision on the A47 Wansford to Sutton DCO<sup>20</sup>.
- 4.6.40. The Applicant noted that, for the A47 Wansford to Sutton DCO, the ExA agreed that the analysis of the impact on carbon should be based on the difference between the Proposed Development happening and not happening. The ExA also agreed that there is nothing to indicate that if the Proposed Development was not built, the existing road network would not continue to be utilised<sup>21</sup>. The Secretary of State considered that this approach gave 'sufficient information to consider whether any effects, including cumulative effects, are significant and to reach a reasoned conclusion on any significant effects'<sup>22</sup>.
- 4.6.41. Accordingly, the Applicant believes that its approach to cumulative carbon assessment for the Proposed Development is robust, appropriate, in accordance with all applicable policy and guidance including IEMA Guide and is consistent with recently determined DCOs for NSIPs.
- 4.6.42. The ExA is satisfied that cumulative carbon emission assessment is appropriately included in the ES in terms of the national development growth in traffic figures within the ES assessment of the difference between the Proposed Development happening and not happening. The ExA is also satisfied that the Proposed Development fully complies with the 2017 Regulations, as well as applicable guidance, including the IEMA Guide and the DMRB. The ExA considered the CEPP request to seek further information within the ES and potentially suspend the Examination but saw no need to do so. The ExA has already agreed that the ES should not take account of a spatial approach at a sub national level.

#### **Proper Forum for Challenge**

- 4.6.43. CEPP stated that, following publication of the revised NZS, the delivery of the strategy and the UK carbon budgets is not secured, nor has there been an adequate or lawful risk assessment of the policy delivery of the strategy [[REP8-087](#) and [REP9-057](#), Issue 19]. All assumptions that these are secured should therefore be removed from the application. Furthermore, any additional emissions from new infrastructure, such as the construction and operation emissions of the Proposed Development, have a material impact on the ability of the Government to meet its carbon reduction targets which is itself dependent on policy delivery of the NZS [[REP8-087](#) and [REP9-057](#), Issue 20]. Moreover, since the revised NZS and its changes to the transport sector trajectories, the Proposed Development would be totally at odds with the delivery of the NZS [[REP8-087](#), Section 2].

---

<sup>19</sup> IEMA Guide, Section 5

<sup>20</sup> SoST Decision A47 Wansford to Sutton DCO, para 133, 135 and 142

<sup>21</sup> Examination Report A47 Wansford to Sutton DCO, para 10.5.15

<sup>22</sup> SoST Decision A47 Wansford to Sutton DCO, para 135

4.6.44. The Applicant's position is that the consideration of the DCO application for the Proposed Development is not the proper forum in which to make submissions on or challenge the lawfulness of the Government's revised NZS: Powering Up Britain and the CBDP or examine general criticisms of Government policy [REP9-033, Section 2.2]. Any challenges to these new Government policy documents can be made via judicial review, and that is the appropriate forum to do so. In the absence of any Court Order quashing the adoption of a policy, policy which is material to a decision remains lawful and must be taken into account.

4.6.45. The ExA accepts that the Examination is not the proper forum in which to make submissions on or challenge the lawfulness of the Government's revised NZS or examine Government policy.

### **Contextualisation Against the Carbon Budget Delivery Plan**

4.6.46. CEPP submits that the Secretary of State must consider the A66 scheme in the context of the revised NZS comprising 'Powering Up Britain' and the 'Carbon Budget Delivery Plan' [REP8-087, Section 1.3].

4.6.47. The CBDP was issued by the Government on 30 March 2023 as part of the revised NZS. The CBDP<sup>23</sup> sets out projected sectoral residual emissions across the carbon budgets. In addition to contextualisation against national carbon budgets [REP2-017, Appendix 1]. The Applicant reports that it has provided a contextualisation of the Proposed Development's GHG emissions, from the ES [APP-050], against the CBDP 'Domestic Transport' sector [REP8-076, Section 1.2]. This is provided for information only and cannot form the basis for a GHG assessment due to limitations of the CBDP.

4.6.48. The Applicant reported that the contextualisation of GHG emissions against the CBDP concludes that residual emissions would equate to 0.028% of the UK's carbon budget for the 4th Carbon Budget period, 0.038% of the UK's carbon budget for the 5th Carbon Budget period, and 0.022% of the 6th Carbon Budget [REP8-076, Figure 3].

4.6.49. The Applicant is of the view that its contextualised GHG emissions ought to be treated as over-precautionary for the following main reasons. The CBDP is unclear on whether construction and maintenance of the SRN and commercial vehicles such as Heavy Duty Vehicles (HDVs) lie within the 'Domestic Transport' sector. A high proportion of HDVs use the A66, currently comprising an average of 25% on most lengths of the route and estimated to be between 11 to 16% with the Proposed Development in place in 2044.

4.6.50. The Applicant therefore considers that the contextualised GHG emissions incorporate GHG emissions where it may not be the intention of the CBDP to incorporate these within the 'Domestic Transport' sector. The Applicant has also modelled all construction emissions against both the 4th Carbon Budget and the 5th Carbon Budget in isolation and on a precautionary basis, in order to account for a reasonable worst case scenario as done in the ES [REP2-017, Appendix 1]. The Applicant reported that its contextualisation has been provided for information only and does not form an assessment of GHG emissions or alter the assessment of GHG emissions that is provided in the ES.

---

<sup>23</sup> CBDP, para 19 and Table 2



- 4.6.51. The Applicant believes it has provided a properly particularised submission that acknowledges the revised NZS and gives fully supported information regarding this aspect of the CBDP in a manner that is specific to the Proposed Development and this Examination [[REP8-076](#) and [REP9-033](#), Section 2.2]. The Applicant noted that much of CEPP's submission on the revised NZS [[REP8-087](#)] is a generalised commentary on these new Government policy papers that has not been particularised to the Proposed Development.
- 4.6.52. The ExA is satisfied that the Applicant has considered the Proposed Development in the context of the revised NZS, particularly its projected sectoral residual emissions. The ExA also accepts that this consideration should be treated as over-precautionary for the reasons given above.

### **Locally Committed Development**

- 4.6.53. CEPP considered that GHG emissions from local land based and road developments have been underestimated as future schemes that have less than 200 jobs or less than 100 dwellings have been omitted from the GHG assessment [[APP-237](#), Section 5.3 and [REP2-024](#), Section 5.2].
- 4.6.54. The Applicant set out the assessment requirements in the relevant legislation, the EIA Regs, and explained the data and modelling on which the assessment is based [[REP2-017](#), Appendix 1 and [REP5-030](#), page 10 to 13]. The traffic models used to support the assessment include data which takes into account all foreseeable developments which would be likely to have an influence on the Proposed Development [[REP2-017](#), Appendix 1, 8<sup>th</sup> page].
- 4.6.55. The Applicant advised that similar objections were received during the A47 Wansford to Sutton DCO Examination. The Secretary of State addressed and rejected these objections in the decision on the A47 Wansford to Sutton DCO<sup>24</sup>. For the A47 Wansford to Sutton DCO, the ExA considered that the Applicant's approach, as is used on the A66 Proposed Development, was reasonable and proportionate on the basis that it needed to be undertaken in relation to a degree of certainty<sup>25</sup>. The Secretary of State agreed with this approach in similar terms<sup>26</sup>. The Applicant's approach on the A66 Proposed Development, that cumulative assessment ought to embrace plans and projects that are reasonably foreseeable and where there is sufficient certainty as to their existence, is also supported by EWHC 3177<sup>27</sup> and PINS Advice<sup>28</sup>.
- 4.6.56. The Applicant is therefore of the view that its approach to the assessment of carbon emissions, including the consideration of other developments and the cumulative carbon assessment, is proportionate, appropriate, consistent with applicable guidance and in accordance with recent case law and granted NSIPs.
- 4.6.57. The ExA is satisfied that the GHG assessment includes plans and projects that are reasonably foreseeable and that it has been undertaken in a proportionate manner. The ExA notes that locally committed development is included in the traffic modelling to improve spatial detail [[APP-237](#), page 3]. The ExA also notes that the

---

<sup>24</sup> SoST Decision A47 Wansford to Sutton DCO, para 130 and 131.

<sup>25</sup> Examination Report A47 Wansford to Sutton DCO, para 10.5.18.

<sup>26</sup> SoST Decision A47 Wansford to Sutton DCO, para 130.

<sup>27</sup> R (Substation Action Save East Suffolk) v the Secretary of State for Business Energy and Industrial Strategy (2022) EWHC 3177

<sup>28</sup> PINS Planning Advice Note 17

overall level of traffic growth is from the Department for Transport's (DfT) National Trip End Model traffic growth for cars, with sub-national areas, and the national Road Traffic Forecasts<sup>29</sup> for goods vehicle growth.

### Traffic Modelling

- 4.6.58. CEPP's position is that the "do-minimum" baseline for GHGs should be the same at 2019, 2029 and 2044 in order that other schemes promoted by the Applicant and local land based and road developments may be cumulatively assessed [APP-050, Section 7.8.3, REP2-024, Section 2.1 and REP9-057, Issue 5].
- 4.6.59. The Applicant considered that, as the cumulative impacts of GHG emissions are not limited to where emissions take place, it is almost impossible to define a zone of influence at any scale smaller than a national appraisal [REP1-009, Agenda Item 3.4]. The IEMA Guide<sup>30</sup> therefore notes that GHG cumulative assessment is of limited value.
- 4.6.60. The Applicant advised that its GHG emissions assessment is based on traffic modelling [REP1-009, Agenda Item 3.4] and the majority of GHG emissions arise from vehicle usage [APP-050, Table 7-24]. The strategic and future traffic element of this modelling is effectively a cumulative model, as it takes account of other consented projects which would have an impact on the road network. It therefore provides a cumulative assessment.
- 4.6.61. The Applicant also advised that its traffic model is a strategic model that provides an assessment of the change in traffic behaviour due to the Proposed Development across the whole of the north of England and in fact, in lesser detail, the whole of the UK [REP4-011, CE.1.5 and REP5-024, Agenda Item 4.1 and Appendix D and E]. There are two main impacts that the model is designed to capture. The first impact is that the Proposed Development leads people to change the destination, mode or frequency of their trip. This is known as a demand response [APP-237, para 4.11.4 and APP-239]. The second impact is that the Proposed Development leads to a route choice change because the A66 may become quicker compared to the route that they are currently using. This is known as trip reassignment [APP-237 para 4.4.2 and APP-239]. The traffic model covers the widest possible area in order to capture all such demand response generation or trip reassignment.
- 4.6.62. The Applicant also advised that the Traffic Reliability Area (TRA) forms part of the area of the traffic model and has been defined according to DMRB criteria. DMRB LA 114 states that for operational road user GHG emissions, the study area should be consistent with the Affected Road Network (ARN) defined in a project's traffic model. Therefore, the TRA is used within the climate assessment as this is the area of the traffic model considered to provide reliable estimates of traffic when the base traffic model is compared to observed traffic. The TRA can therefore be relied upon to forecast the significant effects of the Proposed Development [REP5-024, Agenda Item 4.1 and Appendix D and E].
- 4.6.63. The Applicant considered that its GHG assessment captures all of the increases in traffic that occur on the A66 from either demand response or trip reassignment as the whole of the A66 is within the TRA. It does, however, only account for reductions on other routes where those other routes fall within the TRA. Therefore, this represents a highly precautionary approach as it captures all increases on the

---

<sup>29</sup> The Department for Transport (DfT), 2018. *Road Traffic Forecasts Scenario 1*.

<sup>30</sup> IEMA Guide Section 6.4

A66 within the TRA from demand response or trip reassignment but not the decreases where those occur outside the TRA [[REP5-024](#), Agenda Item 4.1].

- 4.6.64. At an organisational level, the Applicant noted that it is also obliged to act in accordance with the Transport Decarbonisation Plan<sup>31</sup> [[REP5-024](#), Agenda Item 4.1]. The Applicant also advised that the GHG assessment includes the projected uptake of electric vehicles within the end-user assessment [[APP-050](#), Section 7.4 and [APP-176](#), Table 5]. Emissions are calculated using Emissions Factors Toolkit<sup>32</sup> which provides Government assumptions for energy efficiency adjustments and the transition to low emission vehicles up to 2050. The assessment also uses Transport Analysis Guidance<sup>33</sup> [[REP2-017](#), Page 8 and 10] suggested by the IEMA Guide [[REP1-009](#), Appendix 10, Box 2]. For the above reasons, the assessment is wholly appropriate as it considers the widest verified network and applies assumptions on likely changes to future efficiency and carbon intensity of road vehicles, informed by the Government's modelled projections [[REP9-033](#), Section 2.2].
- 4.6.65. The ExA considers that the strategic and future traffic element of the traffic model provides appropriate data for a cumulative assessment of GHG emissions and allows these emissions to be contextualised. The use of a "do-minimum" and "do-something" comparison, where the baseline changes over time in both scenarios, allows for the inclusion of traffic growth that is forecast to occur in any event. Sources of this future traffic element would not be dependent on the Proposed Development.
- 4.6.66. The ExA considers that, to keep the baseline traffic data constant, would effectively model the imposition of a limit on vehicles allowed to use the existing A66 for the lifetime of the assessment. Such an imposition does not form part of any future scenario that should be reasonably or proportionately considered.
- 4.6.67. The ExA agrees with the Applicant that the main impacts which should be captured by the modelling are demand response and trip reassignment. These represent individual choices on travel which may change as a result of the Proposed Development. The ExA notes that the "do-something" modelling shows an increase in trips across the Pennines as a result of the Proposed Development [[APP-240](#), Section 7.4]. The ExA also agrees that the trip reassignment element of this is highly precautionary as trip decreases some distance away from the Proposed Development are not recorded due to a lower level of modelling detail in these areas.

## Conclusion

- 4.6.68. In summary, the ExA is satisfied that carbon emissions and impacts have been appropriately considered as part of the appraisal of scheme options prior to the submission of the application [[APP-244](#) and [REP9-006](#), page 73] and that a satisfactory assessment of any likely significant climate factors has been undertaken [[APP-050](#)] in accordance with the NPSNN<sup>34</sup>.
- 4.6.69. The ExA is of the view that appropriate mitigation measures would be incorporated in the design and construction of the Proposed Development in accordance with the

---

<sup>31</sup> DfT, 2021. *Transport Decarbonisation Plan*.

<sup>32</sup> The Department for Environment, Food and Rural Affairs (Defra), 2021. *Emissions Factors Toolkit v11*.

<sup>33</sup> DfT. *Transport Analysis Guidance – Data Book v1.20*.

<sup>34</sup> NPSNN, para 5.17

NPSNN<sup>35</sup>. These would be appropriately secured under the Recommended DCO in the EMP [REP8-005] and the Carbon Strategy [REP3-043].

4.6.70. In respect of representations made by CEPP and the considerations that it states must be before the Secretary of State [REP9-056, Section 4.2], the ExA is of the opinion that the Applicant has fully responded to these as reported above.

4.6.71. The ExA considers that the Proposed Development would have a minor adverse and thus a negative effect on carbon emissions. However, this would not be significant or have a material impact on the ability of the Government to meet its carbon reduction targets in accordance with the NPSNN<sup>36</sup>. In this respect, the Proposed Development attracts limited negative weight in the planning balance.

## 4.7. FLOOD RISK AND WATER ENVIRONMENT

### Applicant's Submission

4.7.1. The Applicant provided a Flood Risk Assessment and Outline Drainage Strategy (FRA) [APP-221] under the relevant policy framework contained in the NPSNN [APP-057, Table 14-2] and other relevant policy and guidance [APP-221, Section 14.2.1]. The methodology for the assessment and strategy follows the guidance set out within the DMRB LA 113<sup>37</sup>. The FRA forms part of the ES [APP-057].

4.7.2. The FRA reports that the Proposed Development would result in a significant increase in the impermeable area being discharged to local watercourses [APP-221, Sections 14.2.2 to 14.2.9]. Existing flow rates have been calculated, and proposed flows would be restricted to ensure that there is no increased flood risk as a result of the Proposed Development. Any historic flooding on the existing A66, based on the Highways Agency Drainage Data Management System<sup>38</sup> information, has been considered and would be investigated during detailed design. Water quality mitigation measures have also been incorporated in the Proposed Development. Surface water run-off would be attenuated within the proposed drainage system to mitigate off-site flooding. To mitigate the risk of surface water flooding on the proposed highway, sustainable drainage techniques would be further developed during detailed design.

4.7.3. Additional storage is provided within the new drainage system to allow for the anticipated increase in rainfall intensities due to climate change. The attenuation is designed to manage flows in the 1 in 100 year event plus a 40% climate change uplift. A sensitivity check has also been conducted for Schemes 0102, 03, 0405 and 06 located in Cumbria. This is to include the 1 in 100 year event plus a 50% climate change uplift, which is an expected change to EA's Climate Change Allowances for rainfall within Cumbria. The Proposed Development is considered to be at low risk of flooding from rivers, surface water and groundwater.

4.7.4. The key residual risks associated with flood risk and drainage are:

- Flood events in excess of the design standard, where the capacity of the drainage system would minimise the impact of such events;

---

<sup>35</sup> NPSNN, para 5.19

<sup>36</sup> NPSNN, para 5.18

<sup>37</sup> Highways England, 2020. *DMRB LA 113 Road drainage and the water environment*.

<sup>38</sup> Highways England, 2021. *Highways Agency Drainage Data Management System*.

- Blockages in the drainage system, which would be managed through maintenance; and
  - Flooding from reservoirs, which would be addressed by enforcement of the Reservoirs Act 1975 and through flood warning.
- 4.7.5. On Scheme 0405 (Temple Sowerby to Appleby), the situation is as on other schemes except that areas within the Order limits are located within Flood Zone 3. The EA has provided further information about the flood risk in this area. Additional flood modelling has been undertaken to provide an existing baseline, and fluvial modelling has been conducted to determine potential impacts.
- 4.7.6. On Scheme 06 (Appleby to Brough), the situation is as Scheme 0405 except that risk to Warcop from existing fluvial flood risk and from the scheme has been modelled and compensatory storage developed to mitigate any downstream risk. This would be further developed during detailed design.
- 4.7.7. The Proposed Development is classified as Essential Infrastructure in DMRB LA 113, and it is therefore permitted providing it is located within Flood Zones 1 or 2, with the Exception Test needing to be satisfied if it is located in Flood Zones 3a or 3b. Alternative alignments have been considered to satisfy the Sequential Test [APP-244]. The Exception Test has been considered where it is required in relation to Schemes 0102 and 03, due to flood risk from reservoirs outside of Flood Zones 3a and 3b, and Schemes 0405 and 06, for Flood Zones 3a and 3b.
- 4.7.8. The Applicant stated that the Proposed Development would provide wider sustainability benefits to the community, including safety, connectivity, noise levels, reduced congestion and tourism that would outweigh flood risk, as set out in the Exception Test [APP-008]. It would also be safe for its lifetime, without increasing flood risk elsewhere and where possible reduce flood risk overall [APP-057, para 14.2.2.95 onwards for example].
- 4.7.9. With the implementation of mitigation, the ES concludes that, with one exception, there would be no likely significant adverse effects on the receiving water environment as a result of the Proposed Development. The exception is a significant effect during operation on the Flitholme Fen and Flitholme Woodland groundwater dependent terrestrial ecosystems (GWDTE), in relation to Scheme 06 (Appleby to Brough), due to a loss or degradation of potential supporting habitats [APP-226, para 14.7.4.30 to 14.7.4.35]. This is considered further in the Biodiversity Section of this Report.
- 4.7.10. The Water Framework Directive (WFD) Compliance Assessment [APP-220] concludes there would be no compliance issues remaining following mitigation. Mitigation, including the drainage design parameters, would be secured in the EMP which itself would be secured by Article 53 of the Recommended DCO.

### **Examination Issues**

- 4.7.11. Concerns were raised by the EA and the Lead Local Flood Authorities (LLFAs) as the hydraulic model had not been accepted by the EA at the time of submission of the application [REP1-024, REP1-019.1 and REP1-021]. Following collaboration during the Examination [REP1-009, Item 3.3], and at the end of the Examination, the EA is, apart from Scheme 06, satisfied that the Applicant has demonstrated that any fluvial flood risk associated with the proposed development can be satisfactorily managed [REP7-176, Annex 1]. The EA also considers that the validation of modelling approaches used for schemes other than Scheme 06 (Appleby to Brough)



could be completed in accordance with the EMP and Project Design Principles (PDP) during detailed design.

- 4.7.12. The ExA has considered all the representations received on flood risk and drainage but has only identified the points considered to be important and relevant. Many Affected Persons raised concerns in respect of local flood risk in relation to the CA and TP powers sought over their land where drainage on that land is integral to flood risk on their retained land. Such matters relate to the land powers sought and are therefore considered later in this report under CA and TP.
- 4.7.13. The following LLFAs have a SoCG with the Applicant within which the following matters are agreed:
- Westmorland and Furness C - drainage and flood risk [[REP9-007](#), Issue 3-1.28].
  - North Yorkshire C- all matters agreed [[REP8-026](#)].
  - Durham CC - all drainage matters agreed in principle [[REP8-022](#)].
- 4.7.14. The ExA notes that, during the Examination, all objections by the EA and the LLFAs have been resolved by:
- Direct agreement on the matter in question;
  - An agreed mechanism to resolve the matter during detailed design; or
  - The Secretary of State choosing an option for a pre-commencement approval for flood risk matters on Scheme 06 prior to the making of any Order.
- 4.7.15. On Scheme 06 (Appleby to Brough), it was not possible for the Applicant to reach agreement with the EA on baseline hydraulic modelling, hydraulic modelling of the Proposed Development and compensatory flood storage proposals. This was notwithstanding that the matter had been considered in detail and at length during the Examination with written questions and representations at and following Hearings.
- 4.7.16. At the end of the Examination, each party proposed a mechanism for the post decision approval and regulation of the flood risk matters not agreed. The Applicant favours regulation through the EMP and the EA favours regulation through the DCO itself. The relevant Examination documents, which culminate in the agreed positions for each party in a Joint Position Statement, and on a without prejudice basis, include:

#### Applicant

- Environmental Statement Chapter 14 [[APP-057](#)].
- Flood Risk Assessment and Outline Drainage Strategy [[APP-221](#)].
- Issue Specific Hearing 2 Post Hearing Submissions [[REP1-009](#)].
- Responses to ExA's Written Questions [[REP4-011](#)].
- Issue Specific Hearing 3 Post Hearing Submissions [[REP5-024](#)].
- Responses to ExA's Further Written Questions [[REP6-020](#)].
- Closing Submissions [[REP8-074](#)].
- Statement of Common Ground EA [[REP9-009](#)].
- Applicant's Response to the Examining Authority's Rule 17 Request - Joint Position Statement [[REP9-034](#)].

#### Environment Agency

- Initial PADSS [[AS-004](#)].
- Written Representation [[REP1-024](#)].



- Comments on Written Representation [[REP2-032](#)].
- Responses to ExA's Written Questions [[REP4-029](#)].
- Responses to ExA's Further Written Questions [[REP6-028](#)].
- Final PADSS [[REP7-176](#)].
- Any further information requested by the ExA – Joint Position Statement [[REP9-039](#)].

- 4.7.17. The ExA considers that hydraulic modelling and compensatory flood storage proposals are critical to the acceptability of Scheme 06 (Appleby to Brough) in respect of flood risk, and the positions of the Applicant and the EA put before the Examination have a complex technical background. In terms of the Applicant and the EA, it is the EA who have a statutory responsibility for flood risk and a higher level of in-house expertise. The ExA therefore recommends the EA's suggested mechanism for the approval of hydraulic modelling and compensatory flood storage on Scheme 06 (Appleby to Brough), and the Recommended DCO detail on this matter is considered in the DCO section of this report. The ExA considers that to adopt the Applicant's suggested mechanism could, without intention, result in a lack of clarity on this critical matter due to the different functions of the two organisations involved.
- 4.7.18. Notwithstanding any decision on the above matter, the ExA considers that the Secretary of State can be satisfied that all reasonable steps have been taken by the Applicant and the EA to try to resolve the concerns in line with the NPSNN<sup>39</sup>. The following matters are also relevant to the ExA's recommendation.
- 4.7.19. The Proposed Development would form part of the SRN, and the ExA is satisfied that it would comprise essential transport infrastructure. The ExA has considered the elements of the Proposed Development in detail during the Examination under various subject headings. In particular, the Applicant has considered Flood Risk related alternatives [[APP-221](#), para 14.2.5.74 for example]. The ExA is satisfied that all of the elements of the Proposed Development within Zone 3, and those within the maximum extent of flooding from reservoirs, would be essential infrastructure in their particular location [[APP-221](#), para 14.2.3.64 for example]. Compliance with the Exception Test has been demonstrated wherever necessary in accordance with the NPSNN<sup>40</sup> [[APP-221](#), para 14.2.4.64 for example].
- 4.7.20. The Applicant's FRA is detailed and covers each of the 8 schemes that make up the Proposed Development comprehensively [[APP-221](#)]. The EMP includes details of measures to protect the water environment, including abstractions [[APP-057](#), para 14.8.43 for example], during construction, and so construction issues are not considered in the FRA. The ExA has considered the EMP in detail during the Examination and is content with this approach to construction issues. This approach also has the agreement of the EA [[REP7-176](#) and [REP9-009](#), Issue 3-1.6], which was not the case at the start of the Examination [[AS-004](#), page 3].
- 4.7.21. The ExA is satisfied that the FRA, in accordance with the NPSNN<sup>41</sup>:
- Considers the risk of all forms of flooding arising from the Proposed Development and demonstrates how these risks would be managed, taking climate change into account and, where relevant, mitigated so that the

---

<sup>39</sup> NPSNN, para 5.101

<sup>40</sup> NPSNN, para 5.91 and 5.104

<sup>41</sup> NPSNN, para 5.90, 5.93, 5.98 and 5.99

development would remain safe throughout its lifetime [[APP-221](#), para 14.2.1.24].

- Takes the impacts of climate change into account, clearly stating the development lifetime over which the assessment has been made [[REP4-011](#), FDW 1.5].
- Considers the vulnerability of those using the infrastructure including arrangements for safe access and exit in terms of flood risk [[APP-221](#), para 14.2.1.24 and 14.2.2.102].
- Includes the assessment of the residual risk and demonstrates that this is acceptable for the Proposed Development [[APP-221](#)].
- Provides the evidence for the Secretary of State to apply the Sequential and Exception Tests in accordance with the National Planning Policy Framework [[APP-221](#)].

4.7.22. From all of the above, the ExA is satisfied that the Application, which lies within Flood Zones 1, 2 and 3, is accompanied by an appropriate FRA in accordance with the NPSNN<sup>42</sup>.

4.7.23. The ExA is satisfied that the proposed drainage arrangements would be such that the attenuated volumes and peak flow rates of surface water leaving the site would be no greater than the rates prior to the Proposed Development in accordance with the NPSNN<sup>43</sup> [[APP-221](#), para 14.2.2.16 for example]. This has been evidenced on all schemes, including locations and sizes of the attenuation measures [[REP7-011](#)], and agreed with the EA apart from Scheme 06, which is the subject of the approval mechanism approach previously described. The ExA therefore considers that the Secretary of State can be satisfied that flood risk would not be increased elsewhere beyond the Proposed Development and also that priority would be given to the use of Sustainable Drainage Systems (SuDS) in accordance with the NPSNN<sup>44</sup> [[APP-221](#)].

4.7.24. The ExA considers that the Secretary of State can be satisfied that the proposed drainage system would comply with the National Standards published by Ministers under Paragraph 5(1) of Schedule 3 to the Flood and Water Management Act 2010 in accordance with the NPSNN<sup>45</sup> [[APP-242](#), page 156]. The Recommended DCO also makes provision on for the maintenance of any SuDS by the Applicant, solely or in partnership within the Warcop area, as the most appropriate body. The ExA considers that, due to the critical nature of flood risk in the Warcop area, the partnership approach with Westmorland and Furness C, to manage local drainage and flooding issues, is particularly appropriate [[APP-242](#), para 14.2.1.26].

4.7.25. The ExA considers that the Secretary of State can expect reasonable and secured mitigation measures to be made to ensure that the Proposed Development would remain functional in the event of predicted flooding in accordance with the NPSNN<sup>46</sup> [[APP-177](#), Table 1]. Whilst the ExA has recommended the EA's approach in terms of flood risk related approvals on Scheme 06 (Appleby to Brough), it has no doubt that highway surface water flooding lies clearly within the role and expertise of the Applicant.

---

<sup>42</sup> NPSNN, para 5.92 and 5.98

<sup>43</sup> NPSNN, para 5.113

<sup>44</sup> NPSNN, para 5.99 and 4.38

<sup>45</sup> NPSNN, para 5.100

<sup>46</sup> NPSNN, para 5.104

- 4.7.26. The ExA is satisfied, from the overland flow analysis undertaken, that site layout and surface water drainage systems should cope with events that exceed the design capacity of the system [[APP-221](#), para 14.2.5.53 for example]. The analysis undertaken uses industry standard methods which are tried and tested. The analysis shows that excess water can be safely stored on or conveyed from the site without adverse impacts in accordance with the NPSNN<sup>47</sup>.
- 4.7.27. The ExA is satisfied that the Applicant's WFD Compliance Assessment [[APP-220](#)] has followed relevant guidance and has comprehensively covered the extent and influence of the Proposed Development. The changes introduced into the Examination have also been incorporated by way of revised figures relating to surface water and groundwater bodies [[REP7-073](#) and [REP7-074](#)]. The ExA sees no reason to doubt the positive compliance conclusion from the assessment.

## **Conclusion**

- 4.7.28. In respect flood risk, the ExA considers that the Proposed Development, which is supported by an appropriate FRA, would not give rise to any unacceptable risks in terms of flooding. The FRA addresses both the Sequential and Exception Tests as required by the NPSNN.
- 4.7.29. In respect of water quality and resources, the ExA is satisfied that the Proposed Development would be compliant with the WFD and have no unmanaged adverse effects. On the Flitholme Fen and Flitholme Woodland GWTDE, this matter is addressed in the Biodiversity section of this report below and the ExA considers the Applicant's proposals to be acceptable in this regard.
- 4.7.30. The ExA has considered all the written and oral submissions made in relation to flood risk and the water environment, in addition to those specifically identified in this section of the Report. The ExA is satisfied that they have been appropriately addressed in terms of the application, the additional work carried out by the Applicant, the agreements reached with various statutory bodies, and the Recommended DCO.
- 4.7.31. Accordingly, the ExA is satisfied that the Proposed Development, with the mechanism for the approval of hydraulic modelling and compensatory flood storage on Scheme 06 in the Recommended DCO, would have no likely significant adverse effect on flood risk and the water environment. The Proposed Development would accord with NPSNN and with all legislation and policy requirements and the ExA is satisfied that mitigation is adequately provided for and secured in the Recommended DCO. In this respect, the Proposed Development attracts neutral weight in the planning balance.

## **4.8. BIODIVERSITY AND WILDLIFE**

### **Applicant's Submission**

- 4.8.1. Chapter 6 of the ES [[APP-049](#)] reports on biodiversity matters. The ES is accompanied by figures 6.1 to 6.19 concerning individual species surveys and maps, and mitigation is set out in EMP1 [[REP8-005](#)] and Annex B1 Outline Landscape and Ecology Management Plan [[REP8-008](#)]. The assessment has been based on illustrative designs which could vary but would be within the defined Limits

---

<sup>47</sup> NPSNN, para 5.112

of Deviation (LoD) as prescribed in Article 7 of the Recommended DCO, and thus would not alter the scope and assessment in the ES. It assumes:

- A worst-case scenario that all habitats within the indicative site clearance boundaries [APP-063] would be lost as a result of the construction of the Proposed Development with the exception of watercourses, where the assessment assumes that the habitat would be retained and protected where not required for the construction of the road itself.
- Habitats outside the indicative site clearance boundaries but within the Order limits would be retained and/or enhanced through the proposed environmental mitigation.

4.8.2. The ES [APP-049] outlines the assessment methodology (6.4), assumptions and limitations (6.5), the study area (6.6) and the baseline conditions (6.7), identifying 18 statutory sites, 27 non-statutory designated sites, 16 ancient Woodlands, habitats of ecological interest and multiple protected species.

4.8.3. The ES [APP-049] confirms that permanent likely significant adverse operational effects could occur to barn owl at Scheme 0405 (Temple Sowerby to Appleby) and Scheme 09 (Stephen Bank to Carkin Moor) owing to increasing mortality in areas known to be used for foraging and commuting. Mitigation is proposed through REAC Commitments D-BD-05, D-BD-08, MW-BD-13, MW-BD-17, and MW-BD-21 within EMP1 [REP8-005], which state the following will take place:

- Construction of cuttings or mounds to increase the flight height of barn owls at areas identified as likely crossing points.
- Avoidance of construction activities, where practically possible, during the barn owl breeding season between March and August.
- Submission of a lighting strategy for approval at or near barn owl foraging habitat.
- Prevention of the use of rodenticides or traps/machines.
- Monitoring of barn owl nest boxes.
- Obtaining a Protected Species Licence from NE prior to any works, including the felling of trees that potentially impact barn owls).
- Closure of Occupied Breeding Sites for barn owl to be done by a suitably licenced ecologist.

4.8.4. With the above mitigation, the ES [APP-049] concludes that there is likely to be a neutral effect on the barn owl population and is not considered significant.

4.8.5. Within Chapter 14 of the ES [APP-057] (Drainage), likely permanent significant adverse effects are identified to the Flitholme Spring (Scheme 06 Appleby to Brough) caused by construction activities as a result of risk posed by the design encroaching into it.

4.8.6. The GWTDE Assessment, which is Appendix 14.2 to the ES [APP-226] further explains that the Flitholme Spring feeds into the Flitholme Fen and Flitholme Woodland. For Flitholme Fen, sensitive habitats were identified consisting of an area of wet grassland that is assumed to be fed by the spring in the area and has been indicated by NE to be a highly valuable habitat. In respect to Flitholme Woodland, the habitat is identified as an area of woodland that is precautionarily categorised as moderate dependency due to a known spring in the vicinity but that it has not been established through surveys or detailed groundwater conceptual models. Both the Fen and Woodland are stated as being directly impacted by the Proposed Development footprint, resulting in the direct loss of this habitat.

- 4.8.7. The Applicant states [\[APP-226\]](#) that at detailed design stage, further ecological surveys will be completed to confirm the any presence or absence of GWDTE, and that while mitigation for the Fen and Woodland cannot be guaranteed, REAC Commitments contained within EMP1 [\[REP8-005\]](#) and the creation of new habitat and a commitment to produce the LEMP to maximise opportunities for biodiversity would minimise any negative effects of the Proposed Development. The Commitments are as follows:
- REAC Commitment D-GEN-06 requires the LEMP to be approved by the Secretary of State;
  - REAC Commitment D-RDWE-02 requires no part of the project can start until the detailed operational drainage design has been approved by the Secretary of State; and,
  - REAC Commitment D-BD-05 requires no part of the project can start until an Environmental Mitigation Scheme has been developed in detail and approved, which must include replanting of lost habitats to ensure that where not replaced directly, the type and quality of the habitats replaced is greater than that lost in terms of no net loss and positive gains.
- 4.8.8. Other non LSE effects identified in the ES [\[APP-049\]](#) occur during the construction phase, from:
- Habitat loss permanently or temporarily under the road itself or where it is removed as a result of working area and compounds.
  - Fragmentation of populations and habitats where changes to noise, air quality, hydrological regimes and human presence may change the movement of mobile species.
  - Disturbance to species by changes to noise, light and human activity that may affect the behaviour of sensitive species, particularly breeding or wintering birds.
  - Habitat damage or degradation that might arise from changes to water quality or air quality.
  - Incidental species mortality as a result of construction activities such as vegetation clearance, tree felling, vehicle movements and topsoil stripping.
- 4.8.9. During operation, the ES states [\[APP-049\]](#) impacts would be from:
- Fragmentation of populations and habitats as a result of the east-west alignment of the Project resulting in ongoing severance of north-south movement.
  - Disturbance as a result of changes to operational traffic flows and resulting changes to noise, air quality, light and human disturbance.
  - Habitat damage can occur as a result of changes to hydrological regimes, or long-term changes to nitrogen content affecting plant life.
  - Incidental species mortality due to animals having to cross the road and being hit by vehicles.
- 4.8.10. The ES [\[APP-049\]](#) states that mitigation measures to reduce and manage these non LSE impacts include the implementation of an EMP, supported by a number of method statements, throughout construction which specifies scheme and/or species-specific measures to minimise effects. This will be supported by the requirement for an Ecological Clerk of Works (ECoW) throughout construction whose primary role will be to identify, supervise and monitor key activities and areas that are identified as having a risk to the local biodiversity. Other measures include the provisions of safe crossing points including culverts, underpasses, green bridges, bat houses and the provision of fencing to guide species to said safe crossing points; and the construction of site-specific and/or wider measures such as



extensive habitat creation and enhancement. The EMP is secured by Article 53 of the Recommended DCO.

### Examination Issues

- 4.8.11. The ExA did not consider biodiversity matters were principal issues for the Examination. This is because neither Westmorland and Furness C [AS-001] and [AS-003], Durham CC [AS-002], North Yorkshire C [AS-051], NE [AS-006] nor the EA [AS-004] raised, in our view, any matters of significant concerns in their initial PADSS. The ExA further noted no concerns were raised by any party in respect to the identified LSE to Barn Owl and the subsequent mitigation proposed.
- 4.8.12. No IPs raised any concerns with matters concerning the identified LSE on water habitat and ecosystems at Flitholme Spring, Fen and Woodland. In its SoCG with the Applicant [REP9-008], NE agreed that the REAC Commitments listed above including an invasive and non-native species management plan would adequately manage biodiversity and their habitats particularly concerning habitat fragmentation, Barn Owl and the water environment in respect to water ecosystems and habitats.
- 4.8.13. In the absence of evidence to the contrary, the ExA accepts that the EMP will be capable of identifying and replacing any habitat to be affected or lost by the Proposed Development, which will need to be approved by the Secretary of State as part of EMP2, and which is secured by Article 53 of the Recommended DCO. The Applicant's proposals are in these regards acceptable.
- 4.8.14. Notwithstanding, a number of outstanding issues remain for IPs. Contained within their respective LIRs, final PADSS and signed SoCGs, both Westmorland and Furness C [REP1-019] [REP7-190] and [REP9-007]; and Durham CC's [REP1-021] and [REP7-175] and [REP8-022] maintained that the Proposed Development should achieve biodiversity net gain (BNG) of at least 10%. In its WR, NE [REP1-035] did not quite endorse that position, arguing that the Applicant's first responsibility is to ensure that any habitat loss is first avoided, then mitigated and then compensated. NE did state though that BNG outcomes can be achieved on-site, off-site or through a combination of both, that delivery should create or enhance habitats of equal or higher value, and when delivering net gain, opportunities should be sought to link delivery to relevant plans or strategies.
- 4.8.15. The Applicant's position [REP9-007] is that BNG is not currently a requirement for NSIPs. However, the Applicant goes on to state [REP2-011] that it is committed to maximising biodiversity delivery at the detailed design stage and to ensure it goes beyond No Net Loss (NNL) which is the minimum requirement; this being set out in the ES [APP-049] and EMP1 [REP8-005]. The Applicant is using the BNG Metric methodology as a means to achieve the required environmental mitigation.
- 4.8.16. Following the publication of BNG Metric 3.1, the Applicant stated that it would recalculate the BNG Metric output. During detailed design, the layout or location of the mitigation within the DCO boundary [REP7-011] may need to be altered. Any alterations would be regulated under the EMP [REP8-005] and the PDPs [REP8-061]. The ExA did not question the matter further, having established the parties' positions on this matter early on in the Examination. While Westmorland and Furness C [REP9-007] and Durham CC [REP8-022] maintain their stances on this matter, the Applicant's BNG methodology approach is not a matter of dispute for NE [REP9-008].



- 4.8.17. As is discussed further in the Landscape and Visual section of this Report, the ExA holds concerns on the absence of the detailed designs for the proposed Trout Beck, Cringle Beck and Moor Beck viaducts from a design point of view. However, the Secretary of State should also note that in the early part of the Examination, the EA [REP1-024] and NE [REP1-035] also held concerns particularly on the absence of details of the placements of the supporting pillars. They could not advise on the effect of the Proposed Development on the aquatic environment or find no adverse effect on the integrity on the River Eden SAC, River Eden and Tributaries SSSI, Temple Sowerby Moss SSSI, North Pennine Moors SPA and Bowes Moss SSSI, Asby Complex SAC and Ravensworth Fell SSSI.
- 4.8.18. The ExA noted in the D4 responses from the Applicant [REP4-011], NE [REP4-029] and the EA [REP4-029] that these matters had been resolved through changes and amendments to the REAC in EMP1 [REP8-005] and the PDP [REP8-061]. Nevertheless, for the reasons given in the Landscape and Visual section, the ExA remains of the view that the Secretary of State should approve these designs and be assured that the placements of the pillars would be acceptable in these matters.
- 4.8.19. NE and EA's primary area of concern [AS-006] and [AS-004] at the outset of the Examination was the so-called "self-approvals" process for EMP2 contained within Article 53 of the draft DCO [APP-285]. This is discussed further in Section 8 of this Report but to summarise here, the ExA discussed this matter at length at ISH2 held on Thursday 1 December 2022 [EV-003] and the Applicant introduced a Secretary of State call-in power in the updated version of the DCO [REP2-005], which now forms paragraphs (6) to (9) of Article 53 of the Recommended DCO. Both NE [REP5-060] and the EA [REP7-176] are now content on this matter.
- 4.8.20. Both NE [REP1-035] and the EA [REP1-024] provided a long list of general concerns with the Application and comments on the Applicant's responses to their respective RRs. The concerns largely centred on the quantum of information contained within the EMP1 [APP-019] and the REAC Commitments themselves, as well as the appendices. Lists were displayed as a traffic light system, and in areas of amber or red, NE and the EA largely sought wording changes and updates to the REAC to overcome their respective concerns. These were responded to by the Applicant in its D2 response [REP2-016] and through subsequent changes to the REAC in EMP1 [REP3-004, REP6-003, REP7-008, REP8-005]. NE and the EA confirmed orally at ISH3 held on Thursday 2 March 2023 [EV-039] that those lists had largely been addressed or were about to be.
- 4.8.21. Commitment DV-LV-04 contained within the REAC in EMP1 [REP8-005] states *"tree removal must be kept to a minimum as far as reasonably practicable. Where trees are required to be removed for the purposes of the Project, the trees removed must be replaced, at an appropriate location within the Order limits as close to the original position as is reasonably practicable with the same species (or a species of the same association where climate resilience and/or biosecurity are an issue) in the largest available stock size. Replacement trees shall be in a minimum planting ratio of at least two trees planted for every one tree removed"*.
- 4.8.22. At ISH2 [EV-003], the ExA expressed concerns that the Applicant had not submitted an arboricultural impact assessment into the Examination and accordingly we felt there was insufficient information on tree loss and their locations. While the ExA noted the Applicant's response that this would be a matter for the detailed design stage, the ExA considered the matter could be open to abuse and tree losses could be unquantified and uncontrolled and removed at will at the behest of construction operatives on the ground.

- 4.8.23. At D4, the Applicant submitted a Tree Loss and Compensation Planting Report [\[REP4-012\]](#) in lieu of an arboricultural impact assessment. This confirms that a maximum of 18,255 trees would need to be felled, including four Veteran and Notable trees and five individual protected trees; and that an area covering around 53 hectares (ha) would be felled. Based on Commitment DV-LV-04, the Applicant is committed to replanting trees on an approximately two-for-one basis, amounting to some 35,500 trees within the Order limits. This would comprise 166ha of woodland and 576,000m<sup>2</sup> of woodland edge, representing an increase of 112ha.
- 4.8.24. By the close of the Examination, the EA's SoCG [\[REP9-009\]](#) and final PADSS [\[REP7-180\]](#) confirmed agreement on the scope and assessment within the ES [\[APP-049\]](#) and the mitigation set out in EMP1 [\[REP8-005\]](#). There were subsequently no matters of disagreement or outstanding concern on biodiversity matters. In respect to NE, its signed SoCG [\[REP9-008\]](#) similarly confirms agreement on the scope and acceptance within the ES including mitigation of protected species. NE's final PADSS [\[REP7-180\]](#) and signed SoCG [\[REP9-008\]](#), confirmed that there were, in effect, two outstanding matters, both of which relate to HRA matters and are discussed in Section 5 of this Report
- 4.8.25. In its signed SoCG, Westmorland and Furness C [\[REP9-007\]](#) aside from remaining concerned on matters on BNG which are discussed above, continues to cite concerns on the management of red squirrels. Both parties accept that these matters will be controlled, if required, at EMP2 stage and following the completion of the detailed design.

## Conclusion

- 4.8.26. The ExA is satisfied that the mitigation proposed in the REAC Commitments within the EMP [\[REP8-005\]](#) (and annexes) would ensure the effect on barn owl would be neutral. The ExA is also satisfied, on the evidence before us, that the EMP adequately provides for surveys and mitigation to replace potential habitat lost at Flitholme Fen and Woodland.
- 4.8.27. The ExA's concurs that biodiversity matters have been adequately scoped and assessed in the ES [\[APP-049\]](#). We are satisfied that the Proposed Development would have no LSE on biodiversity or their habitats, and mitigation is adequately secured in the EMP and PDP [\[REP8-061\]](#). We are satisfied that the EMP and the Tree Loss and Compensation Planting Report commits the Applicant to adequately replace lost trees in appropriate locations within the Order limits.
- 4.8.28. The ExA accepts that it is not a requirement for the Applicant to achieve BNG, and that its starting point for mitigation is NNL. Nevertheless, the ExA welcomes the Applicant's approach is to maximise biodiversity and thus going beyond what it is necessary for it to do. The ExA accepts that the use of the BNG Metric methodology is purely to ascertain the required environmental mitigation necessary for the Proposed Development, and thus responding to the requirements set out in the LIRs [\[REP1-019\]](#), [\[REP1-021\]](#) and [\[REP1-042\]](#).
- 4.8.29. The Proposed Development would accord with the NPSNN and all legislation and policy requirements, and the ExA is satisfied that mitigation is adequately provided for and secured by Article 53 of the Recommended DCO, including circumstances where the Applicant would seek to amend the approved EMP2. In this respect, the Proposed Development attracts neutral weight in the planning balance.

- 4.8.30. Matters concerning the habitats and species in designated sites and the HRA are discussed separately in Section 5 of this Report.

## 4.9. LANDSCAPE AND VISUAL

### Applicant's Submission

- 4.9.1. Chapter 10 of the ES [[APP-053](#)] outlines the effects of the Proposed Development in relation to Landscape and Visual matters, together with accompanying figures and appendices, as detailed in Table A3 of Appendix A to this report.
- 4.9.2. Chapter 10 identifies that:
- For Scheme 0102 (the M6 Junction to Kemplay Bank) during construction there would be nine landscape and visual receptors subject to significant effects.
  - For Scheme 03 (Penrith to Temple Sowerby) during construction there would be seven landscape and visual receptors subject to significant effects.
  - For Scheme 0405 (Temple Sowerby to Appleby) during construction there would be 16 landscape and visual receptors subject to significant effects.
  - For Scheme 06 (Appleby to Brough) during construction there would be 10 landscape and visual receptors subject to significant effects.
  - For Scheme 07 (Bowes Bypass) during construction there would be 12 landscape and visual receptors subject to significant effects.
  - For Scheme 08 (Cross Lanes to Rokeby) during construction there would be eight landscape and visual receptors subject to significant effects.
  - For Scheme 09 (Stephen Bank to Carkin Moor) during construction there would be 15 landscape and visual receptors subject to significant effects.
  - For Scheme 11 (Scotch Corner) during construction there would be no significant landscape or visual effects.
- 4.9.3. Chapter 10 also identifies that, for year 1 and year 15, there are predicted to be seven landscape receptors with significant adverse effects and two landscape receptors with significant residual adverse effects, respectively. With regards to visual receptors, for year 1 and 15 there are predicted to be 47 receptors with significant adverse effects and 13 receptors with significant residual adverse effects, respectively.
- 4.9.4. Mitigation is set out in the Landscape Mitigation Schedule and Maps [[APP-203](#), [REP7-011](#)] and an outline Landscape and Ecological Management Plan (LEMP) has been provided by the Applicant [[REP8-008](#)], as an Annex to the Environmental Management Plan (EMP) [[REP8-005](#)], which identifies what the landscape mitigation measures are, how they would be implemented, monitored, maintained and managed, and who would be responsible for ensuring they achieve their stated functions. The EMP also includes commitment references D-LV-01 to D-LV-04, MW-LV-01 and M-LV-01 of the REAC table.
- 4.9.5. ES Chapter 10 [[APP-053](#)] sets out that the landscape planting design would include a range of measures designed to complement the local landscape character using species of local provenance with appropriate consideration of climate change resilient species. Mitigation planting may also function as visual screening when it has become established and reaches a reasonable height. The measures would include features such as woodland and woodland edge planting, linear belts of trees and shrubs, blocks of mixed species native woodland, scattered trees, scrub and hedgerows. A monitoring regime for the proposed planting is also proposed, to support successful establishment of landscape mitigation, allowing it to establish

well and become effective as mitigation during the long-term operation of the new road infrastructure.

### **Examination Issues**

- 4.9.6. While not considered as an IAPI matter in Annex C of the Rule 6 letter [\[PD-006\]](#), the ExA identified, following the submission of WRs and LIRs, the main issues for the Examination were as follows:
- The effect of the Proposed Development on the North Pennines AONB at Scheme 06 (Appleby to Brough);
  - The visual effect caused by the proposed Trout Beck, Cringle Beck and Moor Beck viaducts (including photomontage/visualisation issues) at Schemes 0405 and 06;
  - Woodland Mitigation Planting at Skirsgill Hall at Scheme 08; and
  - Loss of Trees for the Proposed Development.

### **The effect of the Proposed Development on the North Pennines AONB at Scheme 06 (Appleby to Brough)**

- 4.9.7. The issue of the effect of the Proposed Development on the North Pennines AONB, particularly in relation to the Appleby to Brough (Scheme 06) Section of the Proposed Development was raised in RRs by a number of IPs [\[RR-001, RR-006, RR-115, RR-041, RR-191\]](#) and most notably by Warcop PC at D1 [\[REP1-137\]](#). Land north of the A66 at Warcop contains MoD owned land and is designated AONB. Notwithstanding its designation, a number of the parties also considered the land to be in an unkempt state, comprising areas of hardstanding and dilapidated buildings. Whilst the issue of Alternatives is considered earlier in this Section of the Report, Warcop PC and others expressed the view that re-routing the A66 through the MoD land and therefore away from the village would have little effect on the AONB.
- 4.9.8. The ExA recognised the need to seek clarification on the matter and subsequently asked a question at ISH1 [\[EV-002\]](#) and invited discussion on the cited effect of the Proposed Development on the AONB at ISH2 [\[EV-003\]](#).
- 4.9.9. Following the Hearings, the Applicant confirmed its position in writing [\[REP1-007\]](#), stating that the preferred route was arrived at following an optioneering exercise that identified which route would result in limited incursion into the AONB and Ministry of Defence (MoD) land, leading to less of an influence on landscape, character and setting. In their RRs, NE welcomed the selected route over any alternative route that would take the road further into the AONB [\[RR-180\]](#) notwithstanding its current condition.
- 4.9.10. Whilst the ExA notes that by the close of the Examination some IPs still held a preference for an alternative northern route through the AONB, the ExA considers that the Proposed Development routing was arrived at following engagement with statutory bodies and other parties and, in regard to landscape harm, overall, it presents the least direct impact and physical encroachment into the AONB itself. The ExA was also minded that MoD land is Crown land and therefore cannot be subject to compulsory acquisition. In addition, the Proposed Development routing was also deemed to be acceptable by the North Pennines AONB Partnership, as per the signed SoCG with the Applicant [\[REP8-019\]](#).
- 4.9.11. The ExA is satisfied that the landscape mitigation proposed by the Applicant would reduce the impact of the Proposed Development on the AONB to an acceptable

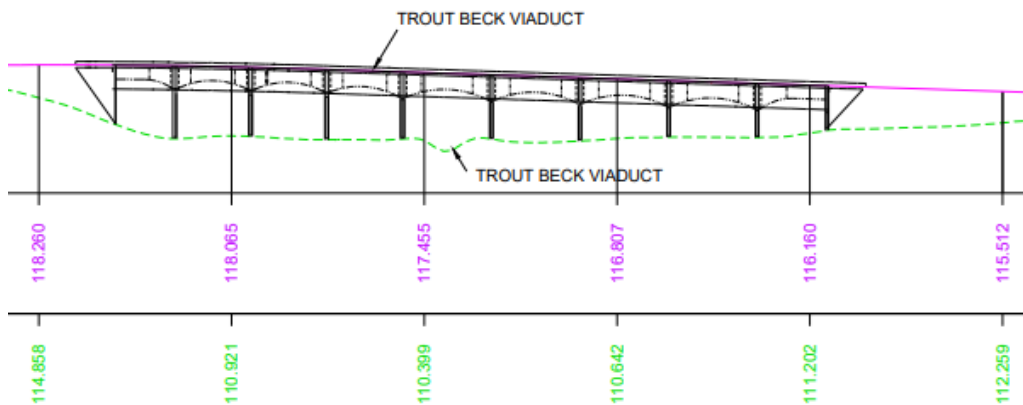
degree. Th ExA's position in this regard was reinforced by the final signed SoCG with NE [\[REP8-027\]](#) and in NE's final PADSS [\[REP7-180\]](#).

**Landscape Impacts of the Trout Beck, Cringle Beck and Moor Beck viaducts (including photomontage/visualisation issues)**

4.9.12.

The ExA, upon reviewing the Application as submitted and following an USI undertaken on 28 November 2022 [\[EV-006\]](#), held significant concerns with the potential visual impacts of three viaduct crossing proposed of Trout Beck, Cringle Beck and Moor Beck, ISH2 [\[EV-003\]](#) and what appeared to be a distinct lack of information before the Examination regarding their design and appearance. The three mentioned viaducts are, by some considerable margin, the largest span structures that are proposed. A brief summary of each structure is provided below.

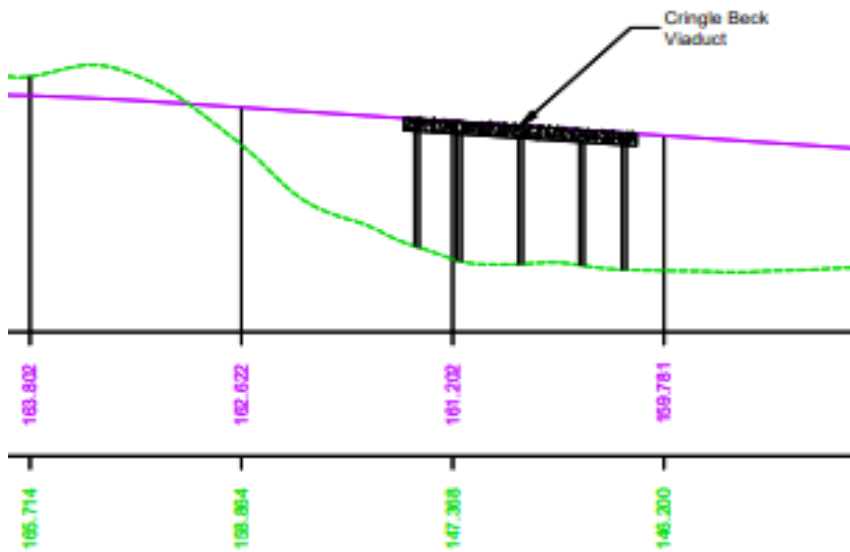
**Figure 4.8 – Excerpt of the Proposed Trout Beck Viaduct [\[REP7-119\]](#) (purple represents proposed ground levels; green represents existing)**



4.9.13.

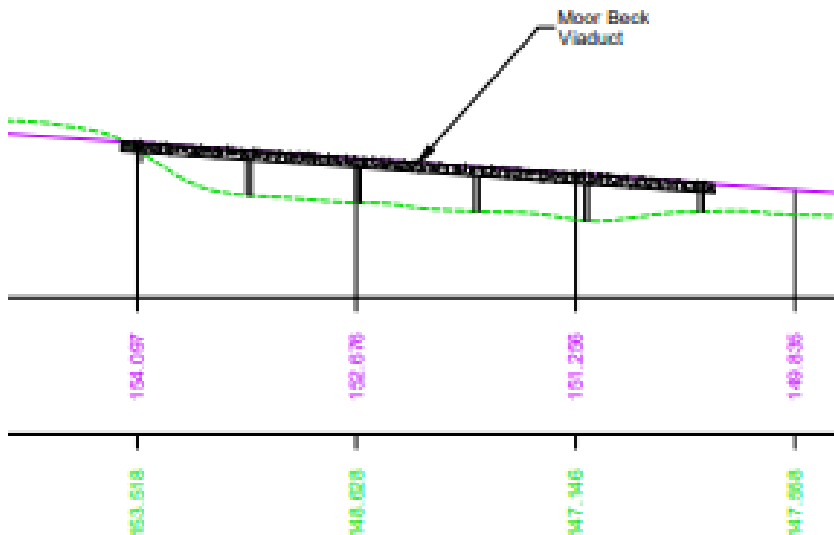
The Trout Beck is a meandering watercourse surrounded by open countryside. The proposed Trout Beck viaduct within Scheme 0405 (Temple Sowerby to Appleby) would span the Trout Beck watercourse itself, together with considerable land take either side, before returning at grade. Mounted on piers, the Engineering Drawings submitted by the Applicant [\[REP7-119\]](#) indicate that the structure would be a maximum height of approximately 7.1m. The General Scheme Outline Plan [\[PDL-004\]](#) indicates that the viaduct would span approximately 400m in length.

**Figure 4.9 – Excerpt of the Proposed Cringle Beck Viaduct [REP8-065] (purple represents proposed ground levels; green represents existing)**



4.9.14. Cringle Beck is a small watercourse located near Warcop. It is surrounded by farmland and comprises attractive undulating open countryside. Cringle Beck viaduct within Scheme 06 (Appleby to Brough) would cross a number of watercourses. Also mounted on piers, the Engineering Drawings [REP8-065] indicate that the structure would be a maximum height of approximately 14m. The General Scheme Outline Plan [REP7-150] indicates that the viaduct would span approximately 110m in length.

**Figure 4.10 – Excerpt of the Proposed Moor Beck Viaduct [REP8-065] (purple represents proposed ground levels; green represents existing)**



4.9.15. The Moor Beck is located a short distance from Cringle Beck and sits within a similar landscape setting. Moor Beck viaduct within Scheme 0405 (Appleby to Brough) would be located a short distance from Cringle Beck, also crossing a number of brooks. Mounted on piers, the Engineering Drawings [REP8-065] indicate that the structure would be a maximum height of approximately 4.1m. The General Scheme Outline Plan [REP7-150] indicates that the viaduct would span approximately 270m in length.



4.9.16. The Applicant’s approach to designing the proposed viaducts is to undertake this at the detailed stage. Such designs would be in accordance with the PDP [REP8-061]. Table 4.2 below is an excerpt of the measures proposed in the PDP for the viaducts.

**Table 4.2 – Excerpts of the PDP measures for the Designs for the Viaducts [REP8-061]**

<b>PDP Ref</b>	<b>Relevant Principles</b>
LI03	The detailed design of structures and alignments of carriageways of new and improved trunk roads, and the associated essential mitigation to integrate them, must have regard to the need to make efficient use of land required for the operation of the Project.
LI04	New structures such as overbridges and viaducts must, where reasonably practicable, be designed to promote an open appearance and maintain the continuity of the associated road earthworks. Where structures are in close proximity to watercourses, they must also be designed to have regard to accommodating geomorphological changes and the need to conserve and maintain the integrity of riverbanks to prevent erosion and maintain habitat connectivity and fluvial geomorphological processes and be able to adapt to increased risks of bank erosion due to climate change and natural geomorphological processes.
LI05	The visual complexity of structures must be minimised, and the overall form of structures is to be designed to minimise visual bulk and obstruction of views to the surrounding landscape where reasonably practicable.
LI06	For overbridges and viaducts, the proportions of deck spans, their thicknesses and substructure heights must be considered as part of the detailed design development, having appropriate regard to the symmetry and line of principal elements of the structures, balanced with structural and operational requirements.
LI07	Bridge piers are to be proportionally elegant and designed with a clean, simple and uncluttered appearance.

4.9.17. The ExA was concerned that the above-listed principles were too general and therefore insufficient in controlling the design of the structures, and that the visual impact of the viaducts would likely be significant. The ExA was also concerned that, if not carefully designed, they could appear as rudimentary or unattractive structures in what is a pleasant landscape.

4.9.18. The ExA communicated at ISH2 [EV-003] that we were not convinced that high quality design of the three viaduct structures could be fully secured through documents including the PDP, and as a result there was some discussion at the Hearing about what mechanism could be put in place to ensure that the structures would be designed to a high standard. The ExA also requested further information from the Applicant, in the form of additional viewpoints and photomontages.

4.9.19. The Applicant responded at D1 outlining that the requested information would be provided at D4 [REP1-009]. A number of LIRs received at D1 [REP1-019, REP1-042] also commented upon the adequacy of the Applicant’s submitted viewpoints and photomontages.

4.9.20. The ExA requested further information regarding the PDPs and the detailed design of the viaducts in our WQs [PD-011], stating that we remained concerned that

statutory bodies were unable to advise as to the full effect of the Proposed Development due to insufficient detail in this regard. Both the EA and NE responded at D4 [REP4-029, REP4-033], stating that they were satisfied with regards to the level of design detail following the Applicant's ongoing updates to the PDPs and EMP.

- 4.9.21. The Applicant submitted a document entitled Overview of Design Process for Trout Beck Bridge, Cringle Beck Viaduct and Moor Beck Viaduct at D3 [REP3-046], in addition to providing additional viaduct visualisations [REP4-015, REP4-016, REP4-017, REP4-018, REP4-019, REP4-020] and revised photomontages [REP4-021] at D4. Notwithstanding the Applicant's description of what would be submitted in terms of additional photomontages in their D1 response [REP1-009], the ExA was extremely disappointed that the photomontages provided were in the form of watercolour visualisations and not traditional photomontages as we had expected.
- 4.9.22. Subsequently, there was further discussion of the issue and the overall design of the structures at ISH3 [EV-039]. At the Hearing, the ExA questioned whether, given their scale, span and sensitive location, the Secretary of State ought to approve the final design of the three viaducts. The Applicant responded stating that they did not consider it to be necessary. However, they provided a summary of the discussions in the form of a post hearing note at D5 [REP5-023], together with some suggested wording for the draft DCO should the ExA be minded to recommend such a provision.
- 4.9.23. The ExA remains of the view that the PDP, as shown in Table 4.2 above, taken with the Applicant's submissions outlined above do not provide the detail or assurance of the Applicant's designs for the three significant new structures in this landscape. Where they were expected to provide reassurance and more detail of the Applicant's approach to design, the ExA consider that the Overview Document [REP3-046] and watercolour visualisations [REP4-015, REP4-016, REP4-017, REP4-018, REP4-019, REP4-020] add little to the PDP, and only emphasise and reinforce the ExA's concerns that the Applicant considers rudimentary and value engineered structures will suffice. The ExA therefore remains unconvinced that the PDP would be capable of delivering well-designed viaduct structures befitting their sensitive landscape context.
- 4.9.24. The ExA therefore strongly considers and recommends to the Secretary of State that they should specifically approve the designs of the three viaducts, in order to ensure beautiful, sensitive and appropriate structures are achieved. To facilitate this, the ExA has added additional wording to Article 54(7) of the Recommended DCO to address the issue. Further details can be found at Section 8 of this report. The ExA proposes that the inclusion would result in greater certainty regarding the appropriate detailed design of the structures, which in turn would serve to assist in providing greater certainty regarding the minimisation of their overall landscape impact.

### **Woodland Mitigation Planting at Skirsgill Hall at Scheme 08**

- 4.9.25. The issue of areas of land required for mitigation within the grounds of Skirsgill Hall was initially raised by Dr Leeming in his RR [RR-033]. Further information was provided at D1, including a Historic Environment and Landscape Appraisal document [REP1-057, REP1-058, REP1-059, REP1-060, REP1-061], which suggested an alternative location for an area of proposed woodland mitigation planting, comprising a triangular piece of land adjacent to the M6 highway, see Figure 4.11 below.

**Figure 4.11 - Location of Applicant's proposed mitigation area (Area 7) within the grounds of Skirsgill Hall, together with Landowner's proposed alternative site (Area 8) (Extract of [REP1-058](#))**



- 4.9.26. The Applicant responded at D2 [\[REP2-015\]](#), stating that discussions between the Applicant and the landowner were ongoing and that in principle they agreed with the suggested change in location of woodland planting, in terms of landscape and visual considerations. The Applicant added however, that they needed to confirm that the proposed area was sufficient for the purposes proposed.
- 4.9.27. The ExA raised the issue in WQs [\[PD-011\]](#), requesting an update from the Applicant regarding the change in location for the woodland mitigation planting. The Applicant subsequently responded at D4 [\[REP4-011\]](#), stating that, following review, the alternative area proposed was too small in size to achieve the requirements of the mitigation. The Applicant added, however, that the Mitigation Maps submitted with the application [\[APP-041\]](#) were indicative and that subject to detailed design the mitigation requirements could change, which would include consultation with the landowner to explore the potential for a planting design which would resolve the woodland habitat mitigation requirement alongside comments made by the landowner.
- 4.9.28. The ExA raised the issue at ISH3 [\[EV-039\]](#). Following discussion of the matter at the hearing, at D5 the Applicant submitted a post-hearing note outlining how the size and location of the proposed mitigation area had been arrived at [\[REP5-027\]](#). Dr Leeming also provided further representations at D5 disputing the Applicant's conclusion regarding the size of the proposed alternative site, asserting that it was in fact larger than stated and questioned the overall case for the use of powers of compulsory purchase [\[REP5-058, REP5-059\]](#).
- 4.9.29. The ExA raised the issue again in their FWQs [\[PD-012\]](#), asking the Applicant to confirm whether any assessment had been undertaken with regards to the direct loss of the current open area as a result of the Applicant's proposed woodland mitigation planting, and the effect on the setting of the Skirsgill Hall, a heritage asset. The Applicant responded at D6 [\[REP6-020\]](#), stating that the suggested mitigation planting area was selected with cultural heritage considerations in mind and that the introduction of the proposed planting would not have a significant impact on the landscape setting associated with Skirsgill Hall. The Applicant also confirmed that meetings and discussions were ongoing with the landowner and that agreement on an alternative solution may be possible.

- 4.9.30. Final representations received from Dr Leeming at D9 [\[REP9-058\]](#) made it clear to the ExA that the matter was still in dispute between the parties. Overall, the ExA considers the proposed mitigation woodland planting to be necessary and, although logical and reasonable to consider alternative locations proposed by the landowner given their ongoing concerns, it is clear to the ExA that the plot proposed by the Applicant would achieve the mitigation requirements fully and would not be unacceptable in either landscape or heritage terms.
- 4.9.31. In conclusion, the ExA considers that the Applicant has struck the correct balance between landscape and biodiversity in relation to the proposed mitigation plot in this location and that it is necessary. It should be noted that the ExA would support the relocation of the mitigation land to the alternative proposed by the landowner but if not finds the proposed location satisfactory. As the parties were still in discussions regarding the matter at the close of the examination, there is the potential that further information may be submitted directly to the Secretary of State in due course regarding the matter.

### **Loss of Trees for the Proposed Development**

- 4.9.32. The issue of tree loss as a result of the Proposed Development was a concern for the ExA and was raised by various parties during the examination, including initial correspondence from a number of the Councils in their LIRs [\[REP1-021\]](#), [\[REP1-042\]](#). The main issue for the ExA was the absence of a detailed Arboricultural Impact Assessment (AIA), which meant that a full understanding of impacts on trees could not be reached.
- 4.9.33. The ExA asked a question on the matter at ISH2 [\[EV-003\]](#), requesting that the Applicant submit a document to the examination to identify areas of tree removal, noting trees to be removed, the maximum number and the approximate location for replacement trees. At the Hearing, the Applicant confirmed that tree removal would be kept to a minimum as far as reasonably practicable. However, they did not propose to provide an AIA at the examination stage but rather to complete one at the detailed design stage. Following discussion of this matter at the Hearing, the Applicant also responded in the form of a post hearing note [\[REP1-009\]](#), stating it would provide additional information D4.
- 4.9.34. A Tree Loss and Compensation Planting Report was subsequently provided by the Applicant [\[REP4-012\]](#), which confirmed:
- That a maximum of 18,255 trees would need to be felled;
  - Includes 4no. Veteran and Notable trees;
  - 5no. Tree Preservation Order (TPO) trees; and
  - 18no. TPO groups.
- 4.9.35. Following review of the document, the ExA was content that the issue of tree loss was adequately addressed by the Applicant and that the total area required to replace tree loss can be achieved within the Order limits. The ExA considers that the Secretary of State will wish to assure themselves that the AIA, when completed and submitted as part of EMP2, broadly aligns with the information contained within the Tree Loss and Compensation Planting Report [\[REP4-012\]](#).
- 4.9.36. Notwithstanding, commitments are included within the LEMP [\[REP8-005\]](#) to ensure that tree removal is kept to a minimum and further surveys are proposed by the Applicant at the detailed design stage, to ensure accordance with British Standard BS5837:2012: Trees in Relation to Design, Demolition and Construction, including the production of an AIA.

- 4.9.37. Whilst the Applicant has not provided a figure for replacement, based on Commitment DV-LV-04 of the REAC [[REP8-005](#)] the Applicant is committed to replanting approximately 35,500 trees within the Order limits, which would comprise 166ha of woodland and 576,000m<sup>2</sup> of woodland edge, representing an increase of 112ha.
- 4.9.38. At the close of the Examination, there were no outstanding concerns regarding the matter raised by statutory bodies or other parties on this matter.

### **Conclusion**

- 4.9.39. For Schemes 0102 (M6 Junction 40 to Kemplay Bank), 03 (Penrith to Temple Sowerby), 07 (Bowes Bypass), 08 (Cross Lanes to Rokeby), 09 (Stephen Bank to Carkin Moor) and Scheme 11 (Scotch Corner), the ExA is satisfied that, taken with mitigation in the form of planting and landscaping, the overall effect of the Proposed Development for those schemes would be neutral. This is because the Proposed Development would be predominately an online replacement of the existing road and whilst there would be additional infrastructure, the Proposed Development would amount to a relatively small incursion into the overall landscapes in those locations.
- 4.9.40. In relation to Scheme 0405 (Temple Sowerby to Appleby), a large proportion of the Proposed Development would be offline and would therefore amount to new development where land was previously open. The realigned A66 where it would leave the extant road and loop northwards towards the north side of Kirby Thore and south of the British Gypsum site, would be largely in a cutting and would follow the ridge line of surrounding landscapes. For that reason and taking into consideration the proposed landscape mitigation, which is secured by Article 53 of the Recommended DCO, the ExA is satisfied that the incursion would not be significant, and that the overall effect would be minor negative.
- 4.9.41. The part of Scheme 0405 (Temple Sowerby to Appleby) where it would cross Sleastonhow Farm and the Trout Beck, resulting in the need for an approximately 400m long viaduct crossing, would be above ground, and the ExA considers that the presence of the road and viaduct structure would amount to a significant adverse effect on the landscape. This effect would, in the ExA's opinion, be exacerbated if the viaduct structure were to be poorly designed. Mitigation in the form of planting is proposed, and the ExA considers that this, taken with a well-designed, beautiful and sensitive viaduct structure appropriately befitting of its landscape setting (which the ExA recommends be approved by the Secretary of State), would be sufficient to reduce the overall effect of the Proposed Development to moderate negative.
- 4.9.42. With reference to Scheme 06 (Appleby to Brough), the ExA considers that there would be a substantial change to the landform in relation to land north of Warcop, due to the offline section of the Proposed Development, which would amount to a significant adverse effect on the landscape in this location. This section, which would require two further viaduct structures, totalling approximately 380m in length, with the Cringle Beck viaduct extending to approximately 14m in height, would not be effectively mitigated if, again, the viaduct structures were poorly designed. Accordingly, the ExA recommends that the Secretary of State specifically approve their designs for the reasons given above. Good design, taken with the proposed mitigation, would in the opinion of the ExA, be capable of reducing the effect to moderate negative.



- 4.9.43. The ExA finds, taking the Proposed Development as a whole, that there would be unavoidable harm to the landscape, due to the presence of hard structures where, in part, open countryside exists. The ExA accepts, however, that harm to the landscape and the AONB is inevitable for a project such as the Proposed Development, and that in the medium to long term, the harm would reduce as the landscape mitigation proposed establishes. The ExA considers that while the overall design of the Proposed Development is acceptable, safeguarding measures in the Recommended DCO ensure that this would be carried out, particularly in regard to the aforementioned viaduct structures.
- 4.9.44. Overall, the ExA considers that the presence of the new road, together with loss of trees and other vegetation, would have an adverse and thus a negative effect on the landscape, primarily at the Kirkby Thore and Warcop areas. As a result, there would be some conflict with the NPSNN in this regard. However, the mitigation proposed by the Applicant, secured through the LEMP and the REAC within the EMP [\[REP8-005\]](#) would take effect over the longer-term. Together with high quality designs for the three viaduct structures secured via the DCO approval mechanism the ExA considers that a moderate negative weight in the planning balance should be applied to the landscape character, when taken as a whole.

## **4.10. HERITAGE ASSETS**

### **Applicant's Submission**

- 4.10.1. Section 8.4 of Chapter 8 of the ES [\[APP-051\]](#) sets out the assessment methodology, which follows the approach set out within the NPSNN. The methodology includes Geoarchaeological Desk Based Assessment (GDBA) [\[APP-180\]](#), Aerial Photographic and Light Detection and Ranging (LiDAR) survey [\[APP-181\]](#), Geophysical survey [\[APP-182\]](#), Geochemical survey [\[APP-184\]](#), setting impact assessments [\[REP4-008\]](#) and trial trenching [\[APP-183\]](#). Details of these assessments are presented in sections 8.4.19 - 8.4.26 of ES Chapter 8, with consideration of the potential impacts presented in Section 8.7.
- 4.10.2. Section 8.7 of Chapter 8 of the ES [\[APP-051\]](#) sets out that consideration of the potential impacts of the Proposed Development has included those that may occur during both the construction and operational phases. Such impacts include those arising from direct physical changes or indirect impacts to heritage assets and their settings. Mitigation measures are set out at section 8.8 of Chapter 8 of the ES [\[APP-051\]](#). Residual effects of the Proposed Development, taking into account this mitigation, are described at section 8.9.
- 4.10.3. The ES [\[APP-051\]](#) identified 434 heritage resources within the study area and Zone of Visual Influence (ZVI) for the Proposed Development. In total, 221 heritage resources would receive a temporary construction impact and effect because of the Proposed Development, 320 heritage resources would receive a permanent construction impact and effect because of the Proposed Development and 80 heritage resources would receive an operation impact and effect because of the Proposed Development.
- 4.10.4. ES Appendix 8.10 Impact Assessment Table (Rev 2) [\[REP4-008\]](#) identifies that:
- For Scheme 0102 (M6 Junction 40 to Kemplay Bank), a total of 26 heritage resources located within the study area and Zone of Visual Influence ZVI would receive a temporary construction effect. Of these, two would be significant. In addition, a total of 21 heritage resources would receive a permanent



construction effect. Of these, one would be significant. The operational phase of this scheme would not give rise to any further LSE.

- For Scheme 03 (Penrith to Temple Sowerby), a total of 16 heritage resources located within the study area and ZVI would receive a temporary construction effect. Of these, three would be significant. In addition, a total of 40 heritage resources located within the study area and ZVI would receive a permanent construction effect. Of these, four would be significant. For the operational phase, a total of six heritage resources located within the study area and ZVI would receive an effect. Of these, four would be significant.
- For Scheme 0405 (Temple Sowerby to Appleby), a total of 48 heritage resources located within the study area and ZVI would receive a temporary construction effect. Of these, four would be significant. In addition, a total of 86 heritage resources located within the study area and ZVI would receive a permanent construction effect. Of these, two would be significant. The operational phase of this scheme would not give rise to any LSE.
- For Scheme 06 (Appleby to Brough), a total of 41 heritage resources located within the study area and ZVI would receive a temporary construction effect. Of these, one would be significant. In addition, a total of 51 heritage resources located within the study area and ZVI would receive a permanent construction effect. Of these, seven would be significant. The operational phase of this scheme would not give rise to any further LSE.
- For Scheme 07 (Bowes Bypass), a total of 41 heritage resources located within the study area and ZVI would receive a temporary construction effect. Of these, three would be significant. In addition, a total of 32 heritage resources located within the study area and ZVI would receive a permanent construction effect. Of these, three would be significant. For the operational phase, a total of four heritage resources located within the study area and ZVI would receive an effect. Of these, three would be significant.
- For Scheme 08 (Cross Lanes to Rokeby), a total of 29 heritage resources located within the study area and ZVI would receive a temporary construction effect. Of these, none would be significant. In addition, a total of 39 heritage resources located within the study area and ZVI would receive a permanent construction effect. Of these, none would be significant. The operational phase of this scheme would not give rise to any further LSE.
- For Scheme 09 (Stephen Bank to Carkin Moor), a total of 20 heritage resources located within the study area and ZVI would receive a temporary construction effect. Of these, none would be significant. In addition, a total of 50 heritage resources located within the study area and ZVI would receive a permanent construction effect. Of these, two would be significant. The operational phase of this scheme would not give rise to any further LSE.
- For Scheme 11 (Scotch Corner), none of the heritage resources located within the study area or ZVI would receive temporary or permanent construction impacts and effects. The operational phase of this scheme would not give rise to any further LSE.

## **Examination Issues**

- 4.10.5. Aside from the issues outlined below, the ExA heard little evidence of concerns with regard to heritage assets that would be subject to LSE. The ExA was therefore satisfied, and remains of the opinion, that the mitigation proposed by the Applicant in their Outline Heritage Mitigation Strategy (HMS) [\[REP8-009\]](#) which forms part of the Environmental Management Plan (EMP) [\[REP8-005\]](#) is sufficient. This position is supported by HE in the signed Statement of Common Ground (SoCG) with the Applicant [\[REP8-024\]](#).

4.10.6. Following the submission of Written Representations and Local Impact Reports, the ExA focused on several specific issues requiring further examination.

4.10.7. The main issues for the examination were as follows:

- The Applicant's HMS and EMP;
- The impact of the Proposed Development on Rokeby Registered Park and Garden and nearby heritage assets;
- The impact of the Proposed Development on Countess Pillar and the Alms Table; and
- The need for a Heritage Impact Assessment in relation to the Lake District National Park World Heritage Site.

#### **The Applicant's Outline Heritage Mitigation Strategy and Environmental Management Plan**

4.10.8. Questions relating to the first iteration of the HMS, entitled 'Detailed Heritage Mitigation Strategy' [APP-023] were raised by the ExA at ISH2 [EV-003], including its relationship to the overarching EMP approval process, how it would work in practice and how changes would be managed. Similar questions were also raised by HE [RR-171, AS-005] and subsequently by Westmorland and Furness C and North Yorkshire C in their LIRs [REP1-019, REP1-042].

4.10.9. The Applicant provided a response both at the Hearing and subsequently in writing at D1 [REP1-005]. Following the Hearing, the Applicant considered the issue raised by the ExA regarding the 'carving out' of the definition of 'start' in relation to archaeological mitigation works, in the light of when an approved HMS would be in place, and subsequently made the decision at D3 to revise the EMP1 to remove the reference to an approved HMS from the start of works definition [REP3-004].

4.10.10. In response to the question raised by the ExA as to how changes to the HMS would be managed, the Applicant confirmed in writing at D1 that the HMS would be approved as part of EMP2 and therefore the same provisions that apply to changes to the EMP2 would apply to the HMS [REP1-009], and that any changes would require consultation with prescribed bodies.

4.10.11. In regard to how the EMP would be approved going forward and in response to representations such as those raised by HE [RR-171, AS-005], the Applicant confirmed in writing at D1 [REP1-009] that EMP2 would be subject to approval by the Secretary of State. The Applicant further confirmed that the scope of any subsequent self-approval process in practice would be limited to certain operational, 'downstream' matters, including for example, the approval of certain ongoing matters or one-off events, such as those related to contaminated land.

4.10.12. Discussions between statutory bodies and the Applicant continued throughout the Examination, including concerns related to the EMP, over the approval of EMP2 and changes to be subsequently made to it, together with consultation mechanisms. Further details regarding this matter can be found at Section 8 of this report.

4.10.13. A second iteration of the HMS was submitted by the Applicant at D3 [REP3-009], the title of which was amended to 'Outline Heritage Mitigation Strategy' in order to reflect its outline nature and in response to representations received.

4.10.14. The main issue towards the close of the examination for HE concerned how archaeological matters were managed pre-commencement. Notwithstanding the updating of the HMS at D6 [REP6-007] and D7 [REP7-009], a signed SoCG

between the Applicant and HE was provided at D8 [\[REP8-024\]](#) in addition to HE's final PADSS [\[REP8-078\]](#), highlighting issues not yet resolved between the parties.

- 4.10.15. On 19 May 2023, the ExA issued a Rule 17 letter [\[PD-016\]](#) requesting final position statements from the Applicant and HE regarding the matters in dispute. Both the Applicant and HE responded at D9 [\[REP9-034, REP9-040, REP9-041, REP9-042\]](#), with the Applicant stating that the two matters in dispute were regarding post-consent determinations arising under the EMP and archaeological investigations and mitigation works 'carved out' of the definition of "commencement" in article 53 of the DCO. The parties also agreed suitable wording to be inserted into Article 53 of the draft DCO, should the Secretary of State be minded to concur with HE.
- 4.10.16. Although the ExA noted that the Applicant has maintained that the proposed wording is unnecessary and changes to the DCO are not required, the ExA considers that the proposed wording would avoid any ambiguity regarding the issues in question, particularly in the light of HE's ongoing concerns throughout the Examination. The ExA therefore agrees with HE that the proposed wording is necessary to ensure that pre-commencement archaeological investigations are undertaken to an appropriate standard and to provide greater certainty regarding the process for post-consent determinations, which would be subject to Secretary of State approval.
- 4.10.17. The proposed additional Paragraphs (13) and (14) to Article 53 of the Recommended DCO can be found at Table 8.3 of this report, in addition to amendments proposed to the definition of "commencement" in Article 53.

#### **The impact of the Proposed Development on Rokeby RPG and Heritage Assets within the Vicinity**

- 4.10.18. The issue of potential impacts resulting from the Proposed Development on Rokeby Registered Park and Garden (RPG) and nearby heritage assets was raised by parties including Rokeby, Brignall and Egglestone Abbey Parish Council [\[RR-206\]](#) and Mortham Estates [\[RR-121, PDL-045\]](#) at the RR stage.
- 4.10.19. Whilst the issue of Alternatives is considered earlier in this Section of the Report, the ExA recognised the need to ensure that the outcome of the route optioneering exercise undertaken by the Applicant was robust, and, consequently, the effect of the Proposed Development on Rokeby RPG was the subject of lengthy discussion at ISH1 [\[EV-002\]](#).
- 4.10.20. From the outset, Mortham Estates and HE took opposing views regarding the severity of harm caused by "the Black Option" and the principal alternative "the Blue Option", for reasons including the proposed placement of the junction in relation to the Grade II\* Listed St Mary's Church and the severance of an area of linear tree planting known as 'Church Plantation'.
- 4.10.21. During the Hearing, the ExA asked the Applicant to set out the effect of the Proposed Development on the heritage asset for the benefit of those present and invited HE and other interested or affected parties to comment. The Applicant confirmed both orally at the hearing and in writing in a post-hearing note at D1 [\[REP1-006\]](#) that adverse effects which would occur in relation to the setting of the Rokeby Park RPG as a result of the Proposed Development would not significantly affect the value of the asset.

- 4.10.22. HE provided comment orally at the Hearing and subsequently in the form of its WR at D1 [[REP1-026](#), [REP1-027](#)], which outlined their advice to the Applicant, including their preference in terms of route options with regard to Rokeby RPG. Overall, HE considered that the Proposed Development would cause the least amount of harm to the Grade II\* Listed St Mary's Church. Further, they advised that moving the route off-line west of the RPG would maintain the integrity of the Park, avoid physically severing Church Plantation and move much of the current traffic further away from the precious landscape.
- 4.10.23. During the Examination, further representations were made by Mortham Estates in relation to Rokeby RPG and heritage assets within the vicinity [[REP1-094](#), [REP1-095](#), [REP1-096](#), [REP2-041](#), [REP4-044](#), [REP5-073](#), [REP5-074](#), [REP5-075](#), [REP8-085](#)], largely concerning the impact of the Proposed Development on the original setting of the Park and stating a preference for 'the Blue Option', for reasons including allowing St Mary's Church to remain the dominant element in the immediate landscape without distraction from a nearby traffic junction and reducing the volume of traffic exiting the A66 onto the C165, adjacent to the former south west Rokeby Park entrance.
- 4.10.24. The ExA visited Rokeby RPG as part of an ASI on 28 February 2023 [[EV-037](#)]. Having had regard to the documentation provided by all parties and mitigation measures proposed by the Applicant, the ExA considers that the Proposed Development would not impact upon the RPG or nearby heritage assets to an unacceptable degree, the road would be sufficiently distant from the heritage assets and that the overall effects would not be significant. Consequently, the ExA is satisfied that the Proposed Development would not significantly affect the value of the RPG or heritage assets within the vicinity.

#### **The Impact of the Proposed Development on Countess Pillar and the Alms Table**

- 4.10.25. At ISH2 [[EV-003](#)], the ExA asked the Applicant to explain the proposed access arrangements to the Countess Pillar, a Scheduled Monument. The site of the heritage asset also contains the Grade II\* Listed Alms Table. The significance of the assets appears to relate to, in part, their good state of preservation, together with their importance as an established landmark erected by a historical figure.
- 4.10.26. The ExA was particularly concerned about accessibility to the heritage assets from the west, due to a notation on a General Arrangement Drawing [[APP-012](#)] which stated that the existing footpath to Countess Pillar would be made redundant and removed. The ExA considered that this could potentially have an adverse effect on the overall legibility of the assets in the wider historic context of Brougham Roman Fort (Brocvum) and Civil Settlement and Brougham Castle, a Scheduled Monument located to the west of Countess Pillar.
- 4.10.27. The Applicant confirmed orally at the Hearing that a western means of access to the pillar would remain however the details of which would follow in writing. A written response was subsequently provided by the Applicant at D1 in relation to the matter [[REP1-009](#)], which confirmed that an amended drawing would be provided at D3. In this written response, the Applicant also confirmed that although the Proposed Development would not physically encroach upon the heritage assets, construction activities would occur within the setting, including moving plant, lighting and noise, with the possibility of restricted access during the construction phase.

- 4.10.28. The Applicant submitted an amended drawing at D7 [\[REP7-128\]](#) which provided for retained pedestrian accessibility to the Countess Pillar and Alms Table from the west, in addition to the provision of additional parking and access from the east. The updated information was sufficient to overcome the ExA's initial concerns and, as such, the ExA is therefore satisfied that the Proposed Development would not undermine the significance of the heritage assets in this regard.
- 4.10.29. The ExA is also satisfied that the environmental mitigation proposed, including vegetation clearance [\[REP7-011\]](#), would serve to enhance views of the heritage assets from the highway, increasing their visibility, which would help to assist with the long-term viability of the assets. The ExA is content that the mitigation would be secured by Principle 03.02 in section 4.2 of the PDP [\[REP7-104\]](#) and commitment D-LV-02 in the REAC table of the EMP [\[REP8-005\]](#). The ExA's position is supported by HE in their final signed SoCG with the Applicant [\[REP8-024\]](#).

### **The Need for a Heritage Impact Assessment in Relation to the Lake District National Park World Heritage Site**

- 4.10.30. The issue of whether a Heritage Impact Assessment (HIA) was necessary in regard to the Lake District National Park World Heritage Site (WHS) was raised by the Lake District National Park Authority in their RR [\[RR-055\]](#), particularly in respect to the western portion of the Proposed Development being located within the setting of the Lake District World Heritage Site.
- 4.10.31. The Applicant stated at the Pre-Examination Procedural Deadline [\[PDL-011\]](#) that the Lake District World Heritage Site would be situated more than 2km at its closest point to the Proposed Development, when compared to the 1km study area for heritage which was agreed upon with HE as part of the statutory consultation process. The Applicant therefore concluded that the designation lies outside of the scope of study. In addition, the Applicant confirmed that the ES [\[APP-051\]](#) considered that there would not be any significant effects upon the World Heritage Site from a Heritage perspective.
- 4.10.32. The issue was raised orally by FoLD at ISH1, and subsequently in writing at D1. In summary, FoLD [\[REP1-067\]](#), [\[REP1-068\]](#), [\[REP1-069\]](#), [\[REP1-070\]](#), were concerned regarding the potential increase in, and impact of vehicle trips on the WHS as a result of the Proposed Development. HE also provided a D1 submission [\[REP1-026\]](#), stating that the ES did not adequately address the issue of potential impacts to the Lake District World Heritage Site, particularly indirect impacts, and that they would need to be addressed through an appropriate HIA, in line with UNESCO guidance. The ExA had specifically requested clarification in regard to the matter at ISH2 [\[EV-003\]](#), including whether a HIA had been considered. However, an additional discussion was not held during this Hearing in order to avoid repetition.
- 4.10.33. The Applicant responded both orally at the Hearing and reiterated its position in writing at D1 [\[REP1-006\]](#), and D2 [\[REP2-016\]](#), [\[REP2-017\]](#), once again reiterating its position, which remained unchanged from the Procedural Deadline submission [\[PDL-011\]](#) on the absence of harm to the WHS.
- 4.10.34. At D4, HE reiterated that the Applicant needed to explicitly and demonstrably consider the potential impacts and reach an evidenced conclusion by undertaking an appropriate HIA [\[REP4-031\]](#), proportionate to the issue and scale of the potential harm. At D5, the SoCG with HE included commentary from the Applicant stating that supporting technical information was being prepared to clarify their approach in understanding the interaction between the Proposed Development and the



Outstanding Universal Value of the WHS, to be issued to HE in due course [[REP5-008](#)]. The Applicant also reiterated this response at D6 [[REP6-021](#)].

- 4.10.35. The matter was subsequently raised by the ExA at ISH3 [[EV-039](#)], where an update on the matter was sought. The Applicant confirmed orally at the Hearing that discussions were ongoing with HE. An interim updated position was submitted by HE at D7, confirming that final discussions were still ongoing with HE regarding the matter, with a means to submitting a final updated PADSS at D8 [[REP7-177](#), [REP7-178](#)].
- 4.10.36. In the final signed SoCG submitted at D8 [[REP8-024](#)], HE confirmed that the Applicant had since submitted supporting technical information which adequately explained why an HIA is not required and that they were content with the Applicant's approach. This position was reconfirmed by HE at D9 [[REP9-042](#)]. Whilst the technical information in question was not submitted into the Examination, the ExA has no reason to disagree with HE, as the statutory advisor, that an HIA is not required in relation to the Proposed Development and the Applicant's conclusions that significant effects upon the WHS would not occur from a heritage perspective.

### **Conclusion**

- 4.10.37. As required by paragraph 5.129 of NPSNN, the ExA is satisfied that the Proposed Development route has been developed to reduce the impact on historic environment by avoiding known high value heritage assets, where practicable. Where not discussed in this section, the ExA is subsequently satisfied with the Applicant's responses to questions and matters in relation to the historic environment.
- 4.10.38. The Applicant has identified LSE would occur as a result of direct physical disturbance and indirect effects on the settings of heritage assets, the settings of which contribute to their significance. The ExA considers that, of the 392 heritage assets identified by the Applicant as being affected by the Proposed Development, both positively and negatively, a significant number are considered to be sufficiently distant from the road and associated infrastructure, and the ExA is satisfied that the significance of those assets would not be undermined to a tangible degree.
- 4.10.39. Of the 32 heritage assets identified by the Applicant that would receive a potentially significant adverse effect following mitigation, the ExA is satisfied that the Applicant's proposed routing, together with the mitigation measures proposed, would reduce the overall effects as far as practicable. For example, with reference to the Brougham Vicus Roman settlement site, although some of the proposed works would be within previously disturbed areas, works with below ground impacts in previously undisturbed areas would result in the removal of any archaeological remains. As the site is of high value, this would result in a large adverse effect, which would be reduced to a moderate adverse effect following mitigation.
- 4.10.40. In respect to the St Mary's Church, Rokeby RPG and Countess Pillar and the Alms Table heritage assets, the ExA understood and appreciated that the settings of these assets strongly contribute towards their significance. The Proposed Development would be located within close proximity to these assets, particularly to St Mary's Church, and therefore the experiences of these assets would be adversely affected by the Proposed Development. However, these assets are not immune from the presence of highway infrastructure as in all these cases, the extant A66 is also within close proximity. Accordingly, the ExA is satisfied that the



heritage assets would be subject to less than substantial harm from the Proposed Development.

4.10.41. The ExA has considered the effect of the Proposed Development on heritage assets identified by the Applicant in the study area. At the close of the Examination, there were no outstanding comments from IPs that either disagreed or disputed the Applicant's scope of assessment. With regards the WHS outside of the study area, the ExA would ordinarily have liked to have seen at least a summary of the technical information and HE's specific comments on them. However, as the statutory advisor on the historic environment, the ExA accepts HE's confirmation on the absence of need for an HIA.

4.10.42. The ExA considers that the Proposed Development would result in LSE on the historic environment and there would therefore be some conflict with the NPSNN in this regard. The ExA is satisfied that mitigation is adequately provided for and secured in the Recommended DCO to reduce the effect of the significance of the heritage assets. As such, the ExA considers that an overall minor negative weight in the planning balance applies.

## **4.11. POPULATION AND HUMAN HEALTH**

### **Applicant's Submission**

4.11.1. Chapter 13 of the ES [[APP-056](#)] reports the outcome of the Applicant's assessment upon population and human health. This includes the effects upon the following:

- Private property and housing;
- Community land and assets;
- Common land and open access land;
- Development land and businesses;
- Agricultural land holdings;
- Walkers, cyclists and horse riders (WCH); and
- Human health.

4.11.2. The Applicant's assessment of the impact upon agricultural soils is considered within Chapter 9 Geology and Soils of the ES [[APP-052](#)]. That Chapter presents Agricultural Land Classification (ALC) information and considers the effect of the scheme on this soil resource.

4.11.3. Assessments and mitigation of environmental effects undertaken in other Chapters of the ES are relevant to the health assessment. The health assessment is based, in part, on the residual effects identified in the following assessments:

- Chapter 5: Air Quality [[APP-048](#)];
- Chapter 10: Landscape and Visual [[APP-053](#)]; and
- Chapter 12: Noise and Vibration [[APP-055](#)].

4.11.4. The assessment of LSE in Chapter 13 of the ES [[APP-056](#)] was undertaken for both construction and operation. The Applicant acknowledged that the design and associated construction activities has the potential to impact upon population and human health receptors.

4.11.5. During construction, there would be impacts on residential, commercial and community receptors due to the demolition of properties, temporary land take and access restrictions. WCH's would potentially be impacted by temporary land take, closure or diversion of walking/cycling routes and bridleways. Agricultural land

holdings would largely be impacted as a result of temporary land take required for the Proposed Development.

- 4.11.6. Without mitigation, the health and well-being of the local population may potentially be impacted by environmental factors such as noise, dust, visual and lighting and the presence of construction traffic, including HGVs. Accessibility to key facilities and services (including healthcare) may be impacted due to the presence of construction activities.
- 4.11.7. The ES states that the Proposed Development has been designed to minimise disruption to property and land take where possible.
- 4.11.8. Mitigation measures during construction would include temporary diversions and signage to limit the impacts of any temporary closures of WCH routes. The WCH proposals are set out in the Walking, Cycling and Horse-riding Proposals [[APP-010](#)].
- 4.11.9. The ES sets out that access to residential, commercial and community receptors would be maintained where possible.
- 4.11.10. The ES states that detailed plans would be developed to help manage impacts based on the skeleton plans submitted as part of the EMP. These plans include:
- EMP Annex B6 Public Rights of Way Management Plan [[APP-026](#)]; and
  - EMP Annex B12 Skills and Employment Strategy [[APP-032](#)].

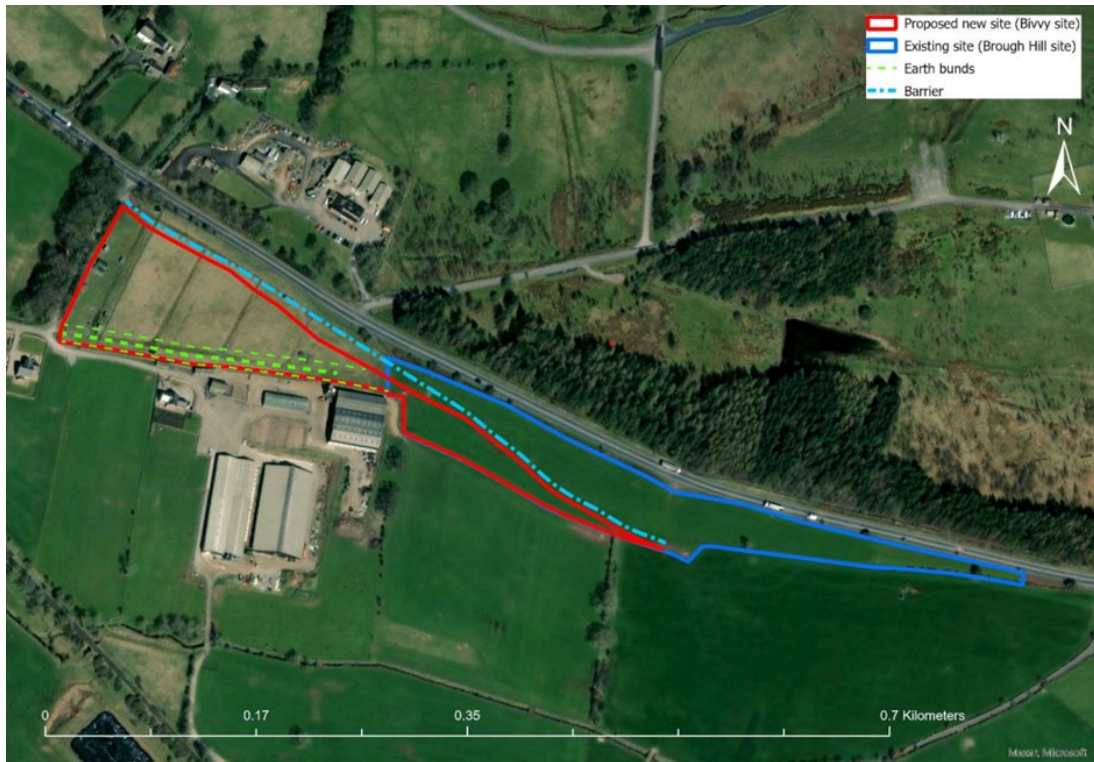
### **Examination Issues**

- 4.11.11. There were no Population and Health matters set out in our IAPI in Annex C of the Rule 6 letter [[PD-006](#)]. Based on the Applicant's application documents, we were satisfied that the Applicant had satisfactorily assessed both the positive and negative population and health impacts in their submission as outlined above.
- 4.11.12. However, following representations, there were some issues that needed to be further considered during the Examination. These were:
- Scheme 06 -Brough Hill Fair relocation;
  - Scheme 06 - Langrigg Lane infrastructure proposals; and
  - Scheme 0102 and 06 – Affected playing fields.

### **Scheme 06 (Appleby to Brough) - Brough Hill Fair Relocation**

- 4.11.13. The Applicant, the GTC and Westmorland and Furness C agree that the Brough Hill Fair (the Fair) is a gypsy and traveller fair that has been long established and takes place over four days near the end of September each year.
- 4.11.14. The route of the Proposed Development would be through a large part of the existing Fair site. Consequently, the Applicant has undertaken an assessment of suitable replacement sites by way of mitigation. Following that consideration, the Applicant proposed the Fair could be relocated to an adjoining site. This site would also incorporate part of the existing site that would not be required for the Proposed Development.
- 4.11.15. The existing and proposed sites are shown in Figure 4.12 below. The site proposed by the Applicant is shown edged red and is comprised of the former MoD bivouac site (the Bivvy site) and the remaining area of the existing Fair site. We undertook a USI [[EV-001](#)] and additionally an ASI [[EV-037](#)] to the existing site and replacement Bivvy site.

**Figure 4.12 - Brough Hill Fair Current and Proposed Site Location (extract from [REP3-045])**



- 4.11.16. The Applicant acknowledged in its Equalities Impact Assessment [APP-243] that the Fair has a history which goes back centuries and is culturally important to the gypsy and traveller community (GTC). A fair was established by a Royal Charter relating to the Manor of Brough in 1330. The Fair has been held almost every year since. Originally it would have been in Brough but is said to have been moved to Brough Hill, north of the A66, in the 1600s. The Fair was moved to its current site in 1947. The Applicant [REP5-029] said they had not been able to establish the original position of the Fair allowed in the 1330 charter. They did provide a plan showing the current site is outside the Manor of Brough as it would have been in 1330.
- 4.11.17. Mr. Billy Welch, a GTC representative attached a PADSS [AS-007] setting out the main concerns relating to the loss of the existing site and the issues around the replacement site.
- 4.11.18. We discussed the issues relating to the relocation of the Fair and the potential for preservation of the rights to hold the Fair at the proposed alternative site at ISH2 [EV-003]. At ISH2 we also asked for a better understanding about the suitability of the proposed site for the Fair and how the concerns expressed by Mr. Welch could be addressed.
- 4.11.19. The Applicant [REP1-009] responded providing:
- Visualisations of the replacement site;
  - A noise assessment technical note;
  - Available documentary evidence of the Brough Hill Fair rights, and
  - Stated it would provide an updated Technical Note taking account of comments from Mr. Welch about safety of horses and children adjacent to the proposed new carriageway.

- 4.11.20. Mr. Bill Lloyd on behalf of Mr. Welch also submitted at D1 the following:
- [\[REP1-103\]](#), his position with respect to the legal status of the Fair;
  - [\[REP1-104\]](#), comments on the transcript of CAH1 [\[EV-034\]](#);
  - [\[REP1-105\]](#), comments on hearings and transfer of rights; and
  - [\[REP1-106\]](#), copy of Freedom of Information request to the MoD for copy of the 1947 conveyance.
- 4.11.21. The Applicant [\[REP2-016\]](#) stated it had already substantially provided a response to the issues raised by Mr. Lloyd [\[REP1-009\]](#). It added that it was seeking only to relocate the Fair rights and not alter their character or status.
- 4.11.22. The Applicant [\[REP3-045\]](#) also submitted an updated Technical Note, setting out more details about the suitability of the site. The revised assessment included the proposed provision of close boarded fencing, potentially with landscape screening, to the northern boundary of the site. This assessment concluded that with close boarded fencing the noise levels on the proposed site would be lower than the existing Fair site.
- 4.11.23. In WQ PC 1.2 [\[PD-011\]](#) we asked about the height of any close boarded fencing and also asked the GTC representative to confirm their view of a suitable height of any close boarded fencing. The GTC representatives [\[REP4-041\]](#) and the Applicant [\[REP4-011\]](#) both agreed on a 2m high fence with the potential for landscape screening and softening to be determined during the detailed design process.
- 4.11.24. Westmorland and Furness C [\[REP2-028\]](#), stated it would be unwilling to take on responsibility for the proposed Fair site. We subsequently asked the Applicant in WQ PC1.3 [\[PD-011\]](#) about who would be responsible for management of the proposed site. The Applicant [\[REP4-011\]](#) responded that site management arrangements would still need to be determined by the Applicant following Crown authority consent from the MoD [\[REP9-035\]](#).
- 4.11.25. Also, at D4 the GTC representatives [\[REP4-040\]](#) set out their concern that the proposal did not properly consider the impact on the intangible cultural heritage connection to the existing site. They additionally stated they had not seen an Equality Impact Assessment of the effect on their culture. Mr Lloyd [\[REP4-048\]](#), [\[REP4-049\]](#), [\[REP4-050\]](#), [\[REP4-051\]](#) and [\[REP4-052\]](#) also submitted further representations about the historic rights to hold the Fair and statements of continuing attendance at the Fair.
- 4.11.26. At the ASI [\[EV-037\]](#) we asked if the Applicant had undertaken a risk assessment of the operation of the access junction to the proposed replacement Fair site. The Applicant [\[REP5-029\]](#) responded stating they would submit an operational risk assessment for the replacement Fair location and also setting out more detail of their site selection considerations.
- 4.11.27. The representative of the Heron Family who own and operate the businesses on the adjacent land also drew our attention on the ASI to a site, which they owned, which they considered to be an alternative to the proposed replacement site. They also confirmed in writing their suggestion of this site [\[REP5-044\]](#)
- 4.11.28. The Applicant [\[REP5-029\]](#) provided details of the sites considered for relocation of the Fair. They also included consideration of the additional site suggested by the Heron family. The Applicant subsequently dismissed this due to the work required to reprofile this steeply sloping site to create what would be a substandard size space



for the Fair. The GTC [\[REP6-036\]](#) agreed with the Applicant's assessment of why this site would not be suitable.

4.11.29. George F White on behalf of the Heron Family [\[REP5-044\]](#) also made a post Hearing submission about the replacement Fair Site. This included their outstanding objections to the proposed relocation of the Fair to the Bivvy site. Their objections were based on the mutual unsuitability of the uses on the two sites and the potential access and safety problems that might occur. They did suggest, however, if ownership of the replacement site was transferred to them, they would be better able to manage the conflicts that existed between the two uses.

4.11.30. The Applicant [\[REP6-023\]](#) submitted a summary statement on the relocation of the Fair. This summarised its consideration of the following:

- The suitability of the replacement Fair site and the consideration of alternative replacement sites;
- The intangible cultural heritage of the Fair, including concerns relating to human rights; and
- The future management and ownership of the replacement Fair site.

4.11.31. The Applicant concluded that it had considered all concerns raised with respect to the selection, suitability and operation of the proposed replacement site.

4.11.32. In terms of the future management of the site, due to rules relating to the disposal of surplus land following a Crown Authority Transfer Agreement process, the Applicant commented that they were not at that stage able to comment on whether the proposed Fair site could be transferred to the Heron family. However, once the Crown Authority Transfer Agreement is completed if the DCO is granted, the Applicant would be responsible for the management and operation of the Fair.

4.11.33. The Applicant also commented that it considered that Article 36 of the Recommended DCO to be sufficient to ensure that rights to hold the Fair are protected on the new site. It also offered *"to fund legal support to the Gypsy Community in order to further understand their concerns around the legal basis for the transfer of rights proposed by Article 36 of the DCO"*.

4.11.34. Michael Hargreaves Planning representing the GTC [\[REP7-195\]](#) and [\[REP7-196\]](#) reasserted the objections to the proposed replacement site. This expressed concerns that the Applicant had not taken account of the cultural importance of Brough Hill Fair and the shortcomings of the replacement site operational risk analysis. The Applicant had been given early sight of these comments so its D7 submission responded by updating its summary statement [\[REP6-023\]](#) on the Fair relocation. This D7 submission [\[REP7-156\]](#) set out the Applicant's view that it had:

- Fully engaged with the GTC on the site selection process;
- Understood the cultural significance of the Fair and had addressed that in the Equalities Impact Assessment [\[APP-243\]](#) and also fulfilled their Public Sector Equality Duty;
- Provided an operational risk assessment in Appendix 1 and provided a commitment to update it as the detailed design progressed;
- Ensured that the same rights to hold the Fair are secured by Article 36 of the DCO; and
- Continued to engage with the GTC and address concerns expressed about any use and ongoing management of the proposed replacement site.

- 4.11.35. George F White on behalf of the Heron Family [REP9-063] restated their disagreement with the Applicant's operational risk assessment. In addition, Tim Farron MP [REP9-062], on behalf of Mr Heron, expressed concerns about the associated operational risks relocating the Fair to the former Bivvy site adjacent to the Heron farm and businesses.
- 4.11.36. In part the IPs' concerns relate to the risks associated with farm operations and the relatively close proximity of public access. It should be noted that there is already public access along footpath 372/020 (Sheet 4 [REP7-129]) along the shared boundary of the replacement site and the Heron's farmyard. The ExA notes the Applicant is not proposing to change that arrangement so public access along the farmyard boundary in close proximity to farming operations is already possible at all times, and the Fair will only be fully operational for four days each year.
- 4.11.37. Michael Hargreaves Planning [REP9-055] submitted final representation suggesting that the GTC would be willing to consider the potential to relocate the Fair to one of the two sites that the Applicant [REP5-029] had discounted for reasons relating to potential flooding. The GTC representatives had earlier [REP6-036] broadly agreed with the Applicant discounting these sites unless there was potential to accommodate flood compensation works elsewhere.
- 4.11.38. In addition, Peter Gibson MP [AS-056] submitted two representations just before the close of the Examination expressing the concerns of the GTC about the proposed replacements site and its selection. He strongly urges "*efforts to be made to secure and identify a much more appropriate and much safer site for the Brough Hill Fair for the gypsy community*".
- 4.11.39. These late submissions in part suggest further consideration of the two sites that the GTC were not consulted on. However, no detailed evidence relating to the availability and suitability of these sites was before us, nor had there been any time in the Examination for the Applicant to respond to the suggested reconsideration of these sites.

#### **ExA Considerations Relating to Brough Hill Fair Relocation**

- 4.11.40. Engagement with the GTC, according to the final unsigned SoCG [REP8-023], started in early 2021 and has been ongoing. We have no submission from the GTC disputing this.
- 4.11.41. The GTC have been fully involved throughout the Examination by written submissions, attendance at two ISH and also on the ASI.
- 4.11.42. In the PADSS from the GTC [AS-007] the concerns expressed were:
- 1) *"The site is an ancient site with cultural, heritage and ancestral significance of great importance to this community;*
  - 2) *Proposed alternative site is too small, being less than half the size of the original site. It is inadequate for the number of caravans and grazing horses;*
  - 3) *The small size of the proposed alternative site means that caravans and horses will be too close to fast moving traffic on the new dual carriageway. The existing site was large enough to allow some distance between caravans, horses and existing single carriageway road;*
  - 4) *The proposed site is too close to a dwelling, being immediately outside of Mr Heron's front door; and*



- 5) *An alternative and shorter route for construction of the new road exists to the north of the A66.*"

### **Consideration of the GTC Concerns.**

#### 1) Cultural Heritage

- 4.11.43. The GTC are concerned that the Applicant has failed to consider the intangible cultural heritage impact of relocating the Fair. The GTC [REP7-196] set out its view expressed at ISH2 [EV-003] that *"We would be willing to leave the hill, provided the charter was transferred from there to another area, but somewhere [that] would be more suitable"*. We conclude from their submission that the cultural heritage aspect relates to the holding of the Fair, its long history and importance in the GTC culture, rather than specifically the location. We consider that the Applicant has demonstrated an understanding of the cultural importance and the proposed site will have all rights transferred to it, which is secured by Article 36 of the Recommended DCO.
- 4.11.44. Additionally, the Applicant proposes that Article 36 of the Recommended DCO would include provision for the proposed site to be ready for use before any works start in the existing site. This would ensure that there would be no interruption to the enjoyment of the Fair rights as construction takes place.

#### 2) Size of Site

- 4.11.45. In response to the GTC concern that the proposed site was too small, the Applicant in the D3 version of the draft SoCG [REP3-036] provided an appended plan showing how the proposed site was the same area as the existing site of 5.4 hectares. However, the ExA notes that the proposed site (see Figure 4.12 above) illustrates a notable pinch point between two parts of the site, and where concerns on access between the two parts, and the ability of the exercising of horses was of concern. The ExA nevertheless considers the width, which we understand measures approximately 7m, is sufficient for both access and manoeuvrability within the overall site.
- 4.11.46. The final draft SoCG [REP9-010] recorded that the replacement site is not agreed. The GTC have not provided any direct rebuttal of the Applicant's plan. The ExA is satisfied on the evidence before us demonstrates that the two sites are comparable in terms of size and usability.

#### 3) and 4) - Operational Matters

- 4.11.47. The proposed site would be closer to the Herron's farm, some residential properties, and the concrete batching plant/ haulage business. The proposed site would be laid out in accordance with Article 36 of the Recommended DCO by the Applicant and access would not be directly from the A66 but an unclassified side road.
- 4.11.48. The GTC [REP6-036] have stated their requirements for replacement sites. The proposed site meets all but one of those criteria. The one exception is, *"f) Not dominated by the structures of a major highway and not requiring a solid fence barrier to reduce noise and to keep horses from escaping onto the highway."* All of the sites considered by the Applicant are near a major highway (A66) as is the existing site. The solid 2.0m close boarded fence on the replacement site would have the advantages of reducing noise and preventing escaping horses. In those terms it is also a reason why the replacement site would be an environmental and safety improvement over the existing site with no noise screening on its boundary with the existing A66 carriageway and post and wire fencing.

- 4.11.49. The ExA considers that there are also some relevant differences between the existing and the proposed replacement site. These are:
- The existing site access is directly from the current A66 trunk road, and the proposed site access is from a quieter side road. The GTC [\[REP6-036\]](#) paragraph 4.5 acknowledged the access difficulties of the existing site directly onto the existing A66. We understand the concerns expressed about the access traffic to the farm and other commercial businesses. Our view is that there would still be significantly less heavy commercial traffic on this road than would be using the A66 trunk road. As a consequence, we consider that access from this side road represents a road safety improvement over the access to the current site;
  - The Applicant has provided evidence that the replacement site with a landscaped close boarded fence boundary along the proposed A66 route would provide an effective barrier to reduce noise levels on the site to below those experienced on the existing site;
  - The proposed boundary treatment would provide a much safer boundary along the A66 for children and horses than the post and wire fence along the existing site; and
  - Regrading the proposed site would also allow a much more consistent and usable site for the Fair.

4.11.50. With respect to the replacement site boundary nearest the Heron's property, the Applicant must ensure that suitable boundary treatments have regard for the amenity of adjacent properties. This is secured by Article 36 (2)(iii) of the Recommended DCO. The Applicant has also suggested that it is happy to continue to discuss issues such as boundary treatment and access with the GTC and the adjacent landowners.

4.11.51. Article 36 of the Recommended DCO provides for the detailed design of the replacement site to be approved by the Secretary of State in consultation with the GTC, adjacent landowners and occupiers, the LPA and LHA. Given this and the Applicant's ongoing commitment to consider boundary treatments, access provision, maintenance and management of facilities also secured in Article 36 we consider that there is scope for the detailed design process to address many of the outstanding operational risk concerns. We acknowledge that the holding of the Fair will have some degree of operational risk on any site. However, for the reasons set out above we consider that any outstanding operational risk relating to the use of the replacement site would be below that relating to use of the existing Fair site.

#### 5) Route alignment

4.11.52. The Applicant's Project Development Overview Report [\[APP-244\]](#) set out how the Proposed Development alternative alignments had been considered and how the proposed route was selected. The need to relocate the Fair to another site follows on from that process as the proposed alignment cuts through the existing Fair site. The consideration as to why the "Billy Welch straight line route" was not progressed is set out in the Alternatives section of this report. We are satisfied considering the matters set out in this section there is no reason to change that view.

#### Other matters - site selection

4.11.53. The Applicant considered a total of four sites in autumn 2021. They discounted two of these sites due to issues relating to flooding making them unsuitable for the Fair. We were satisfied with the Applicant's [\[REP5-029\]](#) explanations in paragraphs 3.3.17 to 3.3.26 for discounting these sites.

- 4.11.54. In spring 2022 the two remaining options were the subject of supplementary consultation. The GTC had concerns about both sites. As the Bivvy site was more than twice the size of the other option, did not have potential flooding problems and was approximately the same size as the current site the Applicant promoted this as the preferred site.
- 4.11.55. The Applicant also considered the site suggested by the Heron family, which was also unsuitable to the GTC.
- 4.11.56. The late suggestion by the GTC representatives that they would potentially consider the two sites they were not consulted on. These sites had been assessed by the Applicant in their Fair replacement site selection process but had been discounted due to flooding related issues. The GTC were not consulted on these sites nor was any further detail submitted to us.

### **Summary of ExA Planning Considerations**

- 4.11.57. We have set out above how the Applicant has sought to address the concerns of the GTC and other IPs with respect to the planning matters relating to the suitability of the replacement site. Our view is that the replacement site would:
- Provide a similar sized site to the existing even accounting for the pinch point;
  - Provide a safe environment for the enjoyment of the Fair especially considering road safety concerns for children and horses;
  - Provide an environment that would have suitable boundary treatments to ensure noise and visual intrusion of nearby traffic on the proposed new road would be reduced when compared to the existing site;
  - Preserve the rights to hold the Fair; and
  - Be laid out in consultation with representatives of the GTC, adjacent landowners, the LPA and the LHA.

### **Public Sector Equality Duty Considerations**

- 4.11.58. The ExA acknowledges that the gypsies and travellers who traditionally attend the Fair are likely to have protected characteristics. S149 of the Equality Act 2010 sets out the Public Sector Equality Duty (PSED) to protect both individual and groups or communities. We have had due regard to the three aims of the PSED and of particular relevance to the Examination is the second aim of advancing equality of opportunity.
- 4.11.59. Throughout the Examination, we sought to explore GTC representatives concerns and how they were being addressed by the Applicant. Mr Welch attended ISH2 [\[EV-003\]](#) and ISH3 [\[EV-039\]](#) with the GTC planning consultant where the issues relating to the Fair were discussed. Mr Welch also attended our ASI [\[EV-037\]](#). Our consideration of the GTC representatives' written submissions and the Applicant's responses are set out above.
- 4.11.60. Furthermore, we have carefully considered the importance of holding the Fair and its intangible cultural heritage. We recognise that loss of the existing Fair site would have an adverse effect on persons who share a protected characteristic and that there is a need for a suitable replacement site to meet the specific cultural needs of the GTC. We also consider that the level of involvement set out in the preceding paragraphs above demonstrate that the ExA has sought to promote the advancement of opportunity for the GTC and the understanding between communities.

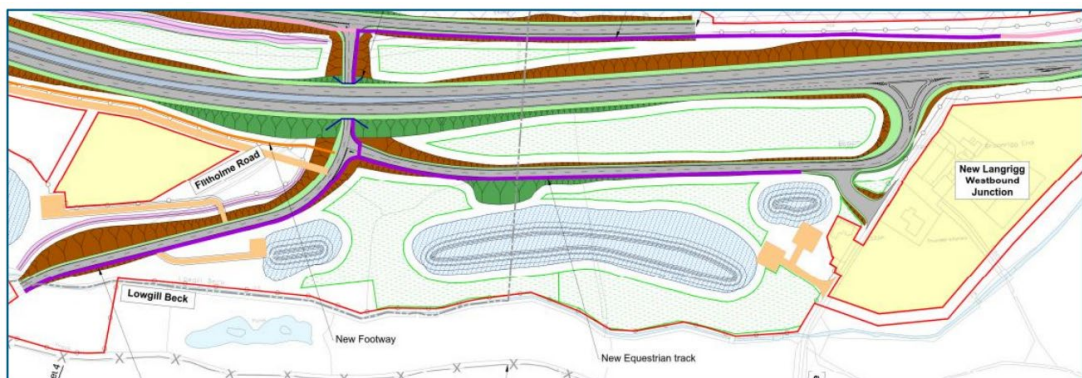
### ExA's Conclusion on Brough Hill Fair

- 4.11.61. In previous Sections of this Report, we have set out our recommendations with respect to the need for the Proposed Development and also the route alignment relating to this site in the Alternatives Section of the report. Consequently, loss of the majority of the existing Fair site necessitates the requirement of a replacement site to mitigate such loss.
- 4.11.62. We also set out our reasoning for being satisfied that the proposed replacement site is suitable mitigation for the loss of use of most of the existing site. We conclude that the Bivvy site is a suitable replacement site for the Fair, and the pinch point would not be a barrier to logistics and manoeuvrability on the site. We acknowledge the cultural importance of the Fair to the GTC but have not seen any persuadable evidence that the relocation to the adjacent site would compromise that cultural significance to the GTC. The historic right to hold an annual fair will be protected and secured in Article 36 of the Recommended DCO.
- 4.11.63. We acknowledge that the GTC [\[REP9-055\]](#) paragraph 9 concludes that the replacement site is unacceptable to them. They go on to invite the ExA to instruct the Applicant urgently review the two sites that the GTC were not consulted on. At that point there was no action we could take before the end of the Examination, nor could the Applicant respond.
- 4.11.64. We are satisfied that with ongoing engagement that the practical concerns that the GTC and the adjacent landowners have in relation to the proposed replacement site can be addressed. We are also satisfied that Article 36 of the Recommended DCO would secure the ongoing engagement in developing any final scheme for the facilities, access and boundary treatments for the site.

### Scheme 06 Langrigg Lane – Infrastructure Proposals

- 4.11.65. Warcop PC [\[RR-013\]](#) stated that the junction at Langrigg is far too complex and too close to properties and an alternative design could be achieved. This view was shared by a number of relatives of the closest affected residents [\[RR-001, RR-173, RR-174, RR-194, RR-222, RR-229 and RR-231\]](#), who submitted representations about the design creating significant effects on the living conditions for their elderly relatives.
- 4.11.66. The initial design for the Langrigg Lane junction and associated infrastructure including access/ link roads, drainage ponds and service hard standings is shown in Figure 4.13 below.

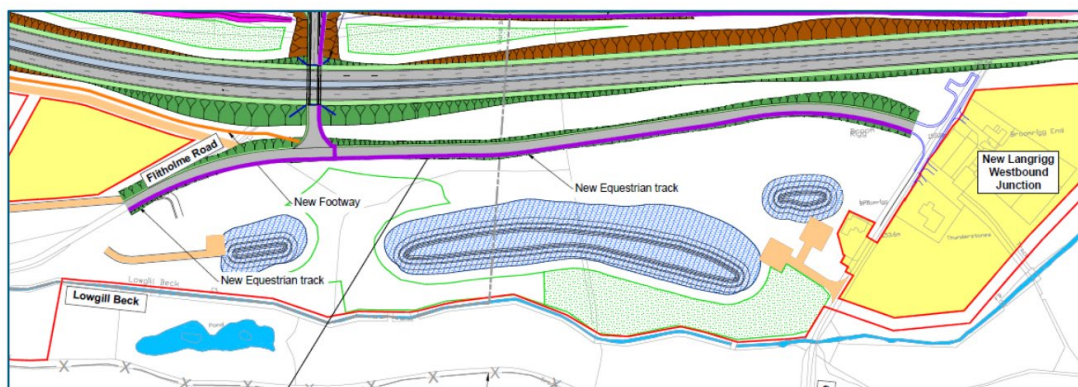
**Figure 4.13 – Langrigg Lane general arrangement (Extract of Sheet 5 of 6 [\[APP-014\]](#))**





- 4.11.67. We also visited Langrigg Lane on both our USI [EV-001] and additionally later on our ASI [EV-037]. From these, our concern was that the design as submitted would have a significant effect on the living conditions of the residents of the most affected property to the west of Langrigg Lane. These concerns were also reflected in the WR from Dr Mary Clare Martin [REP1-089] on behalf of her elderly relatives.
- 4.11.68. We also discussed the design around Langrigg at ISH1 [EV-002] to ascertain the design rationale for the submitted layout and whether any alternative design options had been considered. The Applicant [REP1-006] confirmed that they were considering changes to the design in this location and design changes may form part of a Change Request to be submitted.
- 4.11.69. The Change Request was submitted on 24 March 2023 and most of the changes including the one relating to the Langrigg area (DC-25) was accepted on 18 April 2023 [PD-014]. The changed layout reduced the carriageways in the proximity of the property shaded yellow to the west of Langrigg Lane and the revised layout is shown in Figure 4.14 below.

**Figure 4.14 - Langrigg Lane general arrangement (after Change Request) (Extract of [REP7-003])**



- 4.11.70. It can be seen from Figure 4.14 above that the link road and equestrian track linking Langrigg Lane and Flitholme Road would be moved further away from the property on the western side of Langrigg Lane. It is also apparent from the plan that the drainage ponds and servicing hardstanding would still remain near this property. The Applicant [CR1-002] in paragraph 3.25.23 stated that, “[The Applicant] has proposed to rationalise the pond designs and associated access for maintenance which may involve amendments to pond locations and/or shape to better fit the existing landscape/ field patterns. This will be undertaken in consultation with the drainage authorities and the land interests affected”.
- 4.11.71. To secure the ongoing consideration of the need to change the design further at this location we proposed in our schedule of recommended changes to the draft DCO [PD-015] that the final design of works should be approved by the Secretary of State with consultation with the LPA. The Applicant [REP7-166] responded by suggesting alternative wording. However, we maintain that the potential significant effects on living conditions as a result of the uncertainty of the final design layout warrants final design approval of the works in this area by the Secretary of State. The details of our consideration of the changes required to Article 54 of the Recommended DCO are set out in Chapter 8 of this report.
- 4.11.72. Dr Martin [RR-194], [REP1-089] expressed a concern that the Applicant was potentially infringing both the Equality Act 2010 and the Human Rights Act 1998.

She was concerned that the Applicant's approach had been "*Discrimination against an elderly non-computer literate couple, unable to access information (e.g. DCO documents).*"

- 4.11.73. The Applicant in its closing submission [\[REP8-074\]](#) explains how "*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. 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.*"
- 4.11.74. The ExA acknowledges that age is a protected characteristic. S149 of the Equality Act 2010 sets out the Public Sector Equality Duty (PSED) to protect both individual and groups or communities. We have had due regard to the three aims of the PSED and of particular relevance to the Examination is the second aim of advancing equality of opportunity.
- 4.11.75. Throughout the Examination Dr Martin attended ISHs and at ISH1 [\[EV-002\]](#) her mother was able to attend. Dr Martin made several representations in addition to those mentioned above [\[REP2-038\]](#), [\[REP5-038\]](#), [\[REP7-200\]](#), [\[REP8-022\]](#) and [\[REP9-059\]](#). In addition, we visited Langrigg Lane on our USI and her parents' garden on our ASI [\[EV-037\]](#).
- 4.11.76. From these visits and the submissions, we were able to ensure we obtained a full understanding of the issues of concern. Consequently, we sought changes to the Proposed Development and are recommending that the final design needs to be approved by the Secretary of State at this location.

### **ExA Conclusion on Langrigg Lane Area Design**

- 4.11.77. We consider that the LSE on the living conditions of the closest properties resulting from the infrastructure works around Langrigg Lane warranted more consideration of the submitted design. We are satisfied that the changed layout submitted, and the final design approval secured in Article 54 of our Recommended DCO would provide for the most effective means of reducing the effects on living conditions on nearby properties.

### **Playing Fields Affected**

- 4.11.78. Westmorland and Furness C [\[REP1-019.1\]](#) expressed concern about the impact on Wetheriggs Country Park as a result of land take, removal of trees and potential loss of sports pitches. They asked for the opportunity to work with the Applicant to develop a detailed plan for the park.
- 4.11.79. Sport England (SE) [\[RR-116\]](#) and [\[REP1-043\]](#) set out a number of concerns about the following:
- Scheme 0102 (M6 Junction 40 to Kemplay Bank), Wetheriggs Country Park - loss of part of the playing field;
  - Scheme 0102, Ullswater Community College – Loss of part of playing field and need for ball stop fencing; and



- Scheme 06 (Appleby to Brough), Warcop – replacement football pitch.

### **Scheme 0102, Wetheriggs Country Park**

- 4.11.80. Westmorland and Furness C had concerns about the changes to the public open space in the area. In the signed SoCG [REP9-007] the parties agreed that the Applicant would work with the council to develop a designated funding bid to support development of a masterplan for the country park.
- 4.11.81. SE expressed concern about the loss of 14.7% of the playing fields, which although not part of the marked pitch could have implications for pitch drainage, marking and safety. Discussions with the Applicant continued throughout the Examination. The signed SoCG [REP8-073] set out that the agreed position was “*subject to continued dialogue with Sport England on the quantity and quality of the replacement playing field post DCO.*”

### **Scheme 0102, Ullswater Community College**

- 4.11.82. SE expressed concern that the playing field would be in effect lost to facilitate the construction of a slip road to Kemplay Bank roundabout. In addition, they were concerned about ball strikes given the proximity of the playing field to the Proposed Development. Again, discussion took place during the Examination. The final position set out in the signed SoCG [REP8-073] was that they “*agreed subject to completion of the ball strike assessment, further engagement on the design and implementation of ball stop fencing and continued dialogue with Sport England on the design of the replacement playing field post DCO.*”

### **Scheme 06, Warcop Replacement Football Pitch**

- 4.11.83. SE expressed concern that insufficient details were available about the replacement playing field. Consequently, they considered that compliance with SE “Playing Fields Policy and Guidance, 2018” could not be demonstrated. Here again dialogue between the Applicant and SE took place during the Examination. In the signed SoCG [REP8-073] it was agreed that there would be a “*replacement of the playing field with a new playing field of equivalent or greater quantity; and of equivalent or better quality.*” In addition, that “*National Highways commit to continuing engagement with Sport England on this issue.*”

### **ExA Conclusion on Affected Playing Fields**

- 4.11.84. Based on the submissions made by IPs and continued dialogue throughout the Examination we consider that the Applicant has suitably addressed and proposed mitigation for the adverse impacts on playing fields.

### **Conclusion**

- 4.11.85. We consider that the Applicant in Chapter 11 of the ES has identified the LSE in both the construction and operational phase and suitable means of mitigation for any adverse impacts.
- 4.11.86. During the Examination we explored in detail the issues relating to a number of areas including the relocation of the Brough Hill Fair. We are satisfied that the Applicant has addressed the need to relocate the Fair to a suitable site that retains the historic rights to hold the annual event. We have concluded that the proposed replacement ‘Bivvy’ site provides a suitable replacement site for the Fair taking into account the pinch point. We are also satisfied that the Applicant is committed to address outstanding concerns as part of the ongoing detailed design.

- 4.11.87. In conclusion, we consider that the Proposed Development would accord with the NPSNN, other relevant legislation and policy requirements and the ExA is satisfied that mitigation is adequately provided for and secured in the Recommended DCO. In this respect, the Proposed Development attracts neutral weight in the planning balance.

## **4.12. NOISE AND VIBRATION**

### **Applicant's Submission**

- 4.12.1. Chapter 12 of the ES [\[APP-055\]](#) details the noise and vibration assessment that was undertaken for the Proposed Development, including baseline noise survey, identification of noise sensitive receptors, predicted noise and vibration impacts and proposed mitigation measures to avoid or minimise the potential for significant adverse effects.
- 4.12.2. Mitigation measures proposed in relation to noise and vibration would be secured through REAC Commitments D-NV-01 and D-NV-06 within the EMP [\[REP8-005\]](#).
- 4.12.3. The Applicant's assessment concludes that, following embedded mitigation, a number of residual significant adverse effects have been identified in relation to construction noise, vibration and operational noise. The Applicant proposes that operational significant adverse effects would be minimised as far as practicable and sustainable through scheme design and embedded mitigation, including scheme alignment and the use of lower noise road surface and noise screening. Operational noise modelling would be undertaken based on the final carriageway alignments contained in the detailed design to determine the requirement for further noise mitigation.
- 4.12.4. Where it is practicable and sustainable, the Applicant proposes that further mitigation would be considered to avoid significant effects as set out in the Noise and Vibration Management Plan (NVMP) [\[REP8-013\]](#), following engagement with local authorities and stakeholders. Four residential receptors are also identified as potential qualifiers for noise insulation.
- 4.12.5. For receptors with a predicted operational significant adverse effect, the viability has been assessed of providing a noise barrier in the form of a fence to avoid these significant effects as contained within the EMP [\[REP8-005\]](#), subject to discussion and agreement with relevant stakeholders (including, where appropriate, property owners).
- 4.12.6. The Applicant proposes that as a result of the Proposed Development's alignment and resultant expected decrease in traffic flows on bypassed roads, significant beneficial effects would be likely at 408 residential receptors and 46 non-residential receptors.

### **Examination Issues**

- 4.12.7. While not considered as an IAPI matter in Annex C of the Rule 6 letter [\[PD-006\]](#), the ExA identified, following the submission of WRs and LIRs, the main issues for the Examination were as follows:
- Noise and vibration impact during the construction phase and proposed mitigation; and
  - Traffic noise during the operational phase and proposed mitigation.

## **Noise and Vibration Impacts during the Construction Phase and Proposed Mitigation**

- 4.12.8. The issue of noise during the construction phase was raised in a number of RRs received, including Westmorland and Furness C [\[RR-127\]](#). Further to this, the matter was also raised by the three host local authorities in their LIRs [\[REP1-021, REP1-019, REP1-042\]](#) at D1. They raised concerns over the ability of the Applicant to accurately assess noise impacts across the Proposed Development given that it was still in development, the ability of the Applicant to provide adequate mitigation measures and the fact that future iterations of the NVMP would be approved by the Applicant.
- 4.12.9. At D2 [\[REP2-018\]](#) the Applicant confirmed that the mitigation described within EMP1 would be developed further by the contractor for the Proposed Development and would be included in EMP2, which would be subject to stakeholder consultation with statutory bodies and approved by the Secretary of State.
- 4.12.10. The Applicant also confirmed that the appointed contractor would undertake further assessments based on their intended methods of working, and plant to be used and that the NVMP, as part of the EMP, would be developed for approval in parallel with the design development.
- 4.12.11. Construction noise and vibration would be controlled through the REAC within the EMP [\[REP8-005, REP8-013\]](#), including via commitment D-NV-01 which requires that no part of the Project can start until a NVMP is developed in detail in substantial accordance with the outline plan. The Applicant further confirmed the use, where deemed to be required, of s61 agreements under the Control of Pollution Act 1974 to ensure adherence to construction noise levels agreed in advance with relevant Local Authorities.
- 4.12.12. Following ongoing engagement during the Examination, including updates to the NVMP [\[REP8-013\]](#) and the EMP [\[REP8-005\]](#), and in the absence of evidence to the contrary the ExA was satisfied that by the close of the Examination the noise and vibration matters raised by the Local Authorities were sufficiently dealt with by the Applicant, as noted in the respective signed SoCGs provided [\[REP8-022, REP8-026, REP9-007\]](#). In regard to minor matters outstanding between the parties, including for example concerns regarding the construction impact of the scheme on the local community from rat-running and the suitability of the local road network, the Applicant has committed to continue engagement during the detailed design stage.

## **Traffic Noise During the Operational Phase and Proposed Mitigation**

- 4.12.13. The issue of traffic noise during the operational phase was raised in a number of RRs received, including by NE [\[RR-180\]](#), who identified that the Proposed Development presented an opportunity to improve upon the existing situation with regards to noise and vibration impacts in relation to sensitive areas, including the North Pennines AONB.
- 4.12.14. The issue of operational traffic noise was also raised by the three host Local Authorities in their LIRs at D1 [\[REP1-021, REP1-019, REP1-042\]](#).
- 4.12.15. The signed SoCG between the Applicant and NE [\[REP9-008\]](#) confirmed that the issue of operational traffic noise, including with regard to the AONB, was not a matter in dispute between the parties.

- 4.12.16. The ExA is satisfied that, regarding operational traffic noise, the mitigation measures proposed by the Applicant in relation to noise and vibration [[REP8-005](#), [REP8-013](#)], including further noise modelling based on the final carriageway alignments contained in the detailed design, would avoid significant effects as far as practicable and would be subject to engagement with local authorities and stakeholders.

### **Conclusion**

- 4.12.17. The ExA considers that the Proposed Development would result in an increase in noise and vibration during the construction phase but is satisfied that the impacts would be appropriately mitigated as far as practicable. In regard to operational traffic noise, the ExA is satisfied that the Applicant's proposed mitigation is acceptable and that there is a commitment to minimise effects to an acceptable degree.
- 4.12.18. Overall, the ExA is satisfied that the Proposed Development would accord with the NPSNN, all legislation and policy requirements and that the proposed mitigation is adequately provided for and secured in the Recommended DCO, through the EMP (which includes the NVMP) [[REP8-005](#), [REP8-013](#)]. In this respect, the Proposed Development attracts neutral weight in the planning balance.

## **4.13. MATERIAL ASSETS AND WASTE**

### **Applicant's Submission**

- 4.13.1. Chapter 11 of the ES, Material Assets and Waste [[APP-054](#)] provided an assessment of the likely significant material assets and waste effects of the construction and operation of the Proposed Development, including the design, mitigation and residual effects, taking account of future baseline conditions.
- 4.13.2. As set out in Section 11.7 of Chapter 11, the predicted amount of demolition waste arising from the Proposed Development would be 20,287 tonnes, based on a reasonable worst-case scenario. Prior to demolition of each structure or building, a pre-demolition audit would be carried out to quantify materials and investigate opportunities for reuse and recycling. There would be crushing / screening of non-hazardous demolition arisings for use as recycled aggregate and fill materials, which would be likely to require a registered waste exemption or an environmental permit.
- 4.13.3. The predicted amount of excavation waste would be 1,461,450 tonnes. The predicted amount of construction waste would be 26,146 tonnes. The quantity of excavation and construction waste that would be diverted from landfill via re-use, recycling and recovery is based on a landfill diversion rate of 90%, a commitment secured within the EMP [[REP8-005](#)].
- 4.13.4. With regards to earthworks, the Applicant stated that the aim of the design of each scheme would be to achieve a cut and fill balance within the individual scheme extents, where feasible. Where this would not be possible due to the nature of the scheme, materials would be shared between schemes, with the aim of achieving an overall balance, where possible, and prioritising use at the closest location to source as possible.
- 4.13.5. During the operational phase, the Applicant's assessment concluded a likely significant effect with regards to the potential for the sterilisation of Carboniferous Limestone within the Cross Lanes to Rokeby section of the Proposed Development. Although the Applicant refined the proposed Cross Lanes and Rokeby junctions to

reduce their footprint and encroachment into the Mineral Safeguarding Area, the residual effect would be significant adverse.

- 4.13.6. The Applicant's assessment concluded that the operational phase of the Proposed Development would not give rise to significant effects.

### **Examination Issues**

- 4.13.7. While not considered as an IAPI matter in Annex C of the Rule 6 letter [\[PD-006\]](#), the ExA identified the following required additional questioning and clarification:

- Identification of landfill sites to be used to disposal of material; and
- Safeguarding minerals resources and preventing unnecessary sterilisation

### **Identification of Landfill Sites to be used for Disposal of Material**

- 4.13.8. The issue of identification of landfill sites for the disposal of material was raised by Westmorland and Furness C in their LIR [\[REP1-019\]](#). It requested that the Applicant identified landfills to be used within a future iteration of the Site Waste Management Plan (SWMP) for the Proposed Development, so that capacity for other uses would not be compromised.

- 4.13.9. The Applicant responded at D2 [\[REP2-018\]](#), confirming that the Principal Contractor for the Proposed Development would update the SWMP [\[REP3-007\]](#) to include the landfills that will be used for disposal. At the close of the examination this matter was not in dispute between Westmorland and Furness C and the Applicant [\[REP9-007\]](#).

- 4.13.10. The ExA is therefore satisfied that the issue was adequately dealt with during the Examination by the Applicant.

### **Safeguarding Minerals Resources and Preventing Unnecessary Sterilisation**

- 4.13.11. The issue of safeguarding minerals resources and the prevention of unnecessary sterilisation was raised by parties at the RR stage and by the three host local authorities in their LIRs [\[REP1-021\]](#), [\[REP1-019\]](#), [\[REP1-042\]](#).

- 4.13.12. The Applicant responded at D2 [\[REP2-018\]](#) confirming that the potential impacts of the sterilisation of mineral and peat resources was assessed within the ES and that no unnecessary sterilisation would take place. The Applicant also confirmed that although mineral sterilisation itself was not included in the EMP, the risk was included in the PDPs with a requirement to restrict the further loss of mineral safeguarded sites [\[REP8-061\]](#).

- 4.13.13. At the close of the Examination, the ExA remains satisfied that the Proposed Development would not result in unnecessary sterilisation. The ExA is not aware of any objections in this regard from statutory bodies. At the close of the Examination this matter was not in dispute between the Councils and the Applicant [\[REP9-007\]](#), [\[REP8-026\]](#), [\[REP8-022\]](#).

### **Conclusion**

- 4.13.14. The Proposed Development would result in a residual significant adverse effect with regards to the potential for the sterilisation of Carboniferous Limestone within the Cross Lanes to Rokeby section of the Proposed Development. Overall however, the ExA is satisfied that the Proposed Development as a whole would not result in unnecessary sterilisation.

- 4.13.15. The Proposed Development would therefore accord with the NPSNN and effects in relation to material assets and waste arising from the Proposed Development would be dealt with through provisions set out in the PDP [\[REP8-061\]](#), the SWMP [\[REP3-007\]](#) and the EMP itself [\[REP8-005\]](#), with mitigation secured within the Recommended DCO. In this respect, the Proposed Development attracts neutral weight in the planning balance.

## **4.14. GEOLOGY AND SOILS**

### **Applicant's Submission**

- 4.14.1. Chapter 9 of the ES [\[APP-052\]](#) concerns the assessment of the Proposed Development on geology and soils, together with accompanying figures and appendices, as detailed in Table A3 of Appendix A to this report.
- 4.14.2. The methodology for the assessment in relation to geology and soils for the Proposed Development is set out at Section 9.4 of Chapter 9. As the Proposed Development has the potential to impact upon geology and soil and disturb contaminated soils or groundwater during both construction and operation, the potential effects in relation to bedrock geology and superficial deposits, including geological designations and sensitive/valuable non-designated features, soil resources, including Agricultural Land Classification and Best and Most Versatile (BMV) soils (BMV soils are ALC Grades 1, 2 and 3a), human health, surface water and groundwater arising from the project's interaction with contamination have been considered.
- 4.14.3. The study area for the assessment was a 250m buffer beyond the Order limits. Where sensitive surface water and groundwater receptors such as abstractions were present, these were considered within a 1km buffer of the Order limits.
- 4.14.4. Impacts upon soils and agricultural land would occur during construction. Impacts on soil could occur as a result of the loss of agricultural land through permanent sealing or as a result of degradation to or loss of soils through processes such as compaction, contamination, mixing or erosion. During the construction phase, there would be a temporary loss of approximately 70ha of BMV Grade 2 soil and approximately 43ha of Grade 3a soil.
- 4.14.5. The largest areas of BMV land temporarily impacted would be in Scheme 03 (Penrith to Temple Sowerby) and Scheme 0405 (Temple Sowerby to Appleby) sections of the Proposed Development, with over 34ha and 2.8ha respectively being temporarily impacted. This temporary impact and loss would amount to a significant adverse effect resulting from the Proposed Development.
- 4.14.6. The construction of the Proposed Development would also result in the permanent loss of approximately 80ha of BMV Grade 2 soil and approximately 64ha of Grade 3a soil. The largest area of BMV land permanently lost would be in the Temple Sowerby to Appleby section of the Proposed Development, with over 70ha being impacted. This permanent impact and loss would be a significant adverse effect of the Proposed Development.
- 4.14.7. Approximately 130ha of ALC Grade 3b soil and approximately 30ha ALC Grade 4 soils would be permanently lost as a result of the Proposed Development, which is considered to be a significant adverse effect of the Proposed Development. Approximately 3.5ha of Grade 5 soils would be permanently lost as a result of the Proposed Development, the effect of which would not be significant.



- 4.14.8. LSE of the Proposed Development on receptors are not expected to arise during the operational phase.
- 4.14.9. Mitigation measures proposed in relation to geology and soils would be secured through REAC Commitments D-GS-01 to D-GS-04 and MW-GS-01 to MW-GS-03 within the EMP [\[REP8-005\]](#), in addition to details contained within the Soil Management Plan (SMP) [\[REP3-013\]](#). The mitigation measures also include a Phase 2 targeted ground investigation to provide more detailed information regarding ground conditions.
- 4.14.10. During the operational phase, the design of the Proposed Development includes specific mitigation measures which would contain and control the release of contaminants along the highway and its associated infrastructure. For example, the EMP [\[REP8-005\]](#) sets out how material is to be excavated, segregated and stockpiled to minimise the possibility of run-off and soil quality degradation. Measures are also proposed in the drainage design which would prevent and minimise the risk of discharging pollutants into aquifers via drainage pathways.

### **Examination Issues**

- 4.14.11. While not considered as an IAPI matter in Annex C of the Rule 6 letter [\[PD-006\]](#), the ExA identified the following required additional questioning and clarification:
- Land subject to Agricultural Land Classification survey; and
  - The loss of Best and Most Versatile agricultural land.

### **Land Subject to Agricultural Land Classification Survey**

- 4.14.12. The issue of Agricultural Land Survey, including discrepancies in the Applicant's submitted application regarding areas surveyed, was raised at the RRs stage by parties including NE [\[RR-180\]](#). The Applicant provided a written response at the Pre-Application Procedural Deadline [\[PDL-013\]](#) outlining the broad methodology and rationale for the amount of ALC survey undertaken. However, the ExA sought to achieve further clarity by raising the issue in the form of an additional question at ISH2 [\[EV-004\]](#).
- 4.14.13. The Applicant responded in writing at D1 [\[REP1-005\]](#), confirming that the area of land surveyed for the baseline assessment was based on NE guidance (Page 3 of Natural England (2012) Agricultural Land Classification: Protecting the best and most versatile agricultural land TIN049, 2nd Edition), that both NE and local authorities were consulted as part of the formal Scoping process [\[APP-149\]](#) and that the assessment approach was therefore agreed upon.
- 4.14.14. NE also responded at D1 [\[REP1-035\]](#) stating that they were satisfied that the Applicant had acknowledged discrepancies in the submitted application documents and that it was understood that the issue would be dealt with during the Examination.
- 4.14.15. By the close of the Examination, the ExA considered that the matter has been adequately dealt with by the Applicant, including to the satisfaction of NE [\[REP9-008\]](#).

### **The Loss of Best and Most Versatile Agricultural Land**

- 4.14.16. The loss of BMV agricultural land is a significant impact of the Proposed Development. The ExA, in considering this matter, is minded that such impacts are

often a likely consequence of developments of a significant scale. Nevertheless, the Proposed Development would result in both the temporary loss of BMV soils from construction compounds and alike, as well as a permanent loss caused by the Proposed Development itself. Plans showing the location of BMV soils can be found within the Applicant's Agricultural Land Classification (ALC) Factual Soil Survey Report (Rev 2) [[REP3-027](#)].

- 4.14.17. EMP1 and Annex B9 [[REP8-005](#), [REP3-013](#)] sets out the Applicant's approach to soil management. The Applicant's SMP [[REP3-013](#)] sets out the requirements of the Soil Resource Plan and Soil Handling Strategy, which would form part of EMP2. The SMP commits the Applicant to a project-wide principle that topsoil and subsoils that are permanently displaced for the construction of the Proposed Development should be reused within mitigation areas, verges and batters, as close to their source as feasible. However, the SMP does not commit to full replacement and there would be a loss of BMV soils because of the Proposed Development. The SMP is secured through commitment references D-GS-02 and D-GEN-06 of the REAC within the EMP [[REP8-005](#)].
- 4.14.18. The Soil Handling Strategy to be submitted as part of EMP2 would ensure that working methods on site comply with good practice guidance on the stripping, handling and restoring of soils.
- 4.14.19. No IPs raised any substantial objection to the Applicant's approach in this regard. While the loss of BMV is regrettable, the ExA is satisfied that the Applicant has committed to reuse displaced BMV soils and that disposal would be minimised, and that this approach is adequately secured by Article 53 of the Recommended DCO.

### **Conclusion**

- 4.14.20. The Applicant has considered geology and soils matters, as required by the NPSNN. The ExA considers that the Applicant has adequately scoped and assessed the construction and operation effects of the Proposed Development in relation to Geology and Soils.
- 4.14.21. The Proposed Development would result in a permanent loss of BMV soils by reason of the Proposed Development. This permanent loss would not be wholly replaced. Because of this, there would therefore be some conflict with the NPSNN in this regard and the ExA considers that the Proposed Development would have a significant adverse and thus a negative effect.
- 4.14.22. The Applicant has, however, proposed an outline SMP as part of EMP1 in which mitigation measures are proposed in a broad outline form to address the issue as much as practicable including a commitment to reuse a significant proportion of the BMV soils within the vicinity of the removal, which would be secured through the EMP [[REP8-005](#)] and thus Article 53 of the Recommended DCO. The ExA is satisfied that the permanent loss would therefore be largely mitigated. The ExA consider that this approach accords with the NPSNN, paragraph 5.168. Taking this into consideration, the ExA concludes that the Proposed Development would attract minor negative weight in the planning balance.

## **4.15. CUMULATIVE AND COMBINED EFFECTS**

### **Applicant's Submission**

- 4.15.1. The Applicant's cumulative and combined assessment is primarily contained within Chapter 15 Cumulative Effects of the ES [[APP-058](#)].

- 4.15.2. In paragraph 15.7.3 the Applicant concluded that there are no significant cumulative effects anticipated which would result in any new or materially different significant effects to those identified in each environmental factor chapter of the ES. No mitigation measures further to those set out in the individual environmental factor chapters are required.

### **Examination Issues**

- 4.15.3. We asked in an ISH2 Supplementary Agenda Additional Question ISH2.CE.01 [EV-004] whether the stakeholders considered the assessment undertaken by the Applicant was robust. As a result, Durham CC [REP1-023] had some queries about some planning permissions in its area. The signed SoCG [REP8-022] records no outstanding concerns in this regard.
- 4.15.4. The Applicant in Section 1.5 [REP7-167] also considered the impact of the Change Request submitted and found no new or different LSE as the result of the accepted changes.

### **Conclusion**

- 4.15.5. While undoubtedly the construction of the Proposed Development would, both cumulatively with other developments and in-combination with other schemes, cause some nuisance and disturbance on receptor points, they would be temporary only and limited to a specific time. We conclude that the Applicant has considered the cumulative and combined effects as required by the NPSNN.
- 4.15.6. Accordingly, we are satisfied that the Proposed Development would have no LSE taken cumulatively with all topic matters, or with other known and planned projects. The Proposed Development would accord with the NPSNN, all other legislation and policy requirements and the ExA is satisfied that mitigation is adequately provided for and secured in the Recommended DCO. In this respect, the Proposed Development attracts neutral weight in the planning balance.

## **4.16. OVERALL SUMMARY**

- 4.16.1. The ExA has undertaken a thorough examination of the principal and other issues. We have reached reasoned conclusions on each topic drawn from the evidence before us. The ExA applies the planning balance in Section 6 of this Report following consideration of HRA matters in Section 5 of this Report.

## 5. FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS ASSESSMENT

### 5.1. INTRODUCTION

5.1.1. This Chapter sets out the ExA's analysis and conclusions relevant to the Habitats Regulations Assessment (HRA). This will assist the Secretary of State, as the Competent Authority, in performing their duties under the Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations').

5.1.2. This Chapter is structured as follows:

- Section 5.2: Findings in relation to LSE on the UK National Site Network and other European sites.
- Section 5.3: Conservation Objectives for sites and features.
- Section 5.4: Findings in relation to Adverse Effects on Integrity.
- Section 5.5: HRA conclusions.

5.1.3. In accordance with the precautionary principle embedded in the Habitats Regulations, consent for the Proposed Development may be granted only after having ascertained that it will not adversely affect the integrity of European site(s)<sup>48</sup> and no reasonable scientific doubt remains<sup>49</sup>.

5.1.4. Policy considerations and the legal obligations under the Habitats Regulations are described in Section 3 of this Report.

5.1.5. The ExA has been mindful throughout the Examination of the need to ensure that the Secretary of State has such information as may reasonably be required to carry out their duties as the Competent Authority. We have sought evidence from the Applicant and the relevant Interested Parties (IPs), including NE as the Appropriate Nature Conservation Body (ANCB), through written questions and ISHs.

#### **RIES and Consultation**

5.1.6. The ExA produced a Report on the Implications for European Sites (RIES) [\[PD-013\]](#) which compiled, documented, and signposted HRA-relevant information provided in the DCO application and Examination representations up to D6 (04 April 2023). The RIES was issued to set out the ExA's understanding on HRA-relevant information and the position of the IPs in relation to the effects of the Proposed Development on

---

<sup>48</sup> For the purposes of this chapter, in line with the Habitats Regulations and relevant Government policy, the term "European sites" includes Special Areas of Conservation (SAC), candidate SACs, possible SACs, Special Protection Areas (SPA), potential SPAs, Sites of Community Importance, listed and proposed Ramsar sites and sites identified or required as compensatory measures for adverse effects on any of these sites. For ease of reading, this chapter also collectively uses the term "European site" for 'European sites' defined in the Conservation of Habitats and Species Regulations 2017 and 'European Marine Sites' defined in the Conservation of Offshore Marine Habitats and Species Regulations 2017, unless otherwise stated. "UK National Site Network" refers to SACs and SPAs belonging to the United Kingdom already designated under the Directives and any further sites designated under the Habitats Regulations.

<sup>49</sup> CJEU Case C-127/02 Waddenzee 7 September 2004, Reference for a preliminary ruling from the Raad van State (Netherlands) in the proceedings: Landelijke Vereniging tot Behoud van de Waddenzee and Nederlandse Vereniging tot Bescherming van Vogels v Staatssecretaris van Landbouw, Natuurbeheer en Visserij

European sites at that point in time. Consultation on the RIES took place between (04 April 2023) and (09 May 2023). Comments were received from the Applicant [REP7-158] and NE [REP7-181] at D7 (09 May 2023). These comments have been taken into account in the drafting of this Section.

- 5.1.7. The ExA's recommendation is that the RIES, and consultation on it, may be relied upon as an appropriate body of information to enable the Secretary of State to fulfil their duties of consultation under Regulation 63(3) of the Habitats Regulations, should the Secretary of State wish to do so.

### **Proposed Development Description and HRA Implications**

- 5.1.8. The Proposed Development is described in Section 1 of this Report.
- 5.1.9. The spatial relationship between the Order Limits of the Proposed Development and European sites is shown in Figure 6.1 'Statutory and Non-Statutory Conservation Sites' [APP-069].
- 5.1.10. During the Examination, the Applicant submitted a number of Change Requests as described in Section 1 of this Report. All but two of these changes were accepted by the ExA. The implications for the HRA are discussed in the sections below.
- 5.1.11. The Proposed Development is not directly connected with, or necessary to, the management of a European site (paragraph 1.7.34 of [APP-235]). Therefore, the Secretary of State must make an 'appropriate assessment' (AA) of the implications of the Proposed Development on potentially affected European sites in light of their Conservation Objectives.
- 5.1.12. The Applicant did not identify any LSE on non-UK European sites in European Economic Area (EEA) States in its HRA Report [APP-234]. Only UK European sites are addressed in this Report. No such impacts were raised for discussion by any IPs during the Examination.
- 5.1.13. The Applicant's assessment of effects is presented in the following application document(s):
- A Likely Significant Effects Report (LSER) [APP-234].
  - A Statement to Inform Appropriate Assessment Report (SIAA) [APP-235].
  - Screening Matrices (Appendix B [APP-234]).
  - Integrity Matrices (Appendix A.3 [APP-235]).
  - Environmental Statement – Chapter 5 Air Quality [APP-048].
  - Habitats Regulations Assessment Technical Note [CR1-018]. And
  - Habitats Regulations Assessment Supplementary Note – North Pennine Moors SAC/SPA [REP9-036].
- 5.1.14. Environmental Statement Appendix 1.1 [APP-146] is an Evidence Plan documenting level of agreement with the relevant consultees up to the point of submission.

### **Summary of HRA Matters Considered During the Examination**

- 5.1.15. The main HRA matters raised by the ExA, NE and other IPs and discussed during the Examination include:
- Appropriate methodology for the assessment of air quality impacts on designated sites.

- Whether the delivery of mitigation set out in the Environmental Management Plan (EMP) and SIAA is adequately secured.
- The implications of the Change Requests submitted on 24 March 2023 for effects on European sites.

5.1.16. These matters are discussed in the sections below, as appropriate.

## 5.2. FINDINGS IN RELATION TO LIKELY SIGNIFICANT EFFECTS ON THE UK NATIONAL SITE NETWORK AND OTHER EUROPEAN SITES

5.2.1. Under Regulation 63 of the Habitats Regulations, the Competent Authority must consider whether a development will have LSE on a European site, either alone or in combination with other plans or projects. The purpose of the LSE test is to identify the need for an AA and the activities, sites or plans and projects to be included for further consideration in the AA.

5.2.2. The Applicant identified European sites to include in the screening exercise using the DMRB LA 115 criteria which is listed in paragraph 2.2.3 of the LSER [APP-234]. Five European sites were identified within the UK National Site Network for inclusion within the assessment. These are listed in Appendix B of the LSER and are set out below.

**Table 5.1 – UK National Site Network European sites identified in the Applicant’s Assessment [APP-234]**

Name of European Site	Distance from Proposed Development (km) at the closest point
River Eden SAC	Crosses with M6 Junction 40 to Kemplay Bank. Penrith to Temple Sowerby and Temple Sowerby to Appleby schemes.
Helbeck and Swindale Woods SAC	430m north of Appleby to Brough
Moor House Upper Teesdale SAC	1.4km south of Appleby to Brough
North Pennine Moors SAC	255m south of Bowes Bypass
North Pennine Moors SPA	255m south of Bowes Bypass

5.2.3. The Applicant’s HRA Report sets out the methodology applied to determining what would constitute a ‘significant effect’ within its LSER (paragraphs 2.2.5 to 2.2.7 and image 2-1 of [APP-234]). The criteria used to identify LSE is where an impact is capable of having an effect on a European site on the basis of objective information and is likely to undermine the site’s conservation objectives. This was determined by reviewing the impact risk zones of each site and potential impacts that would interact with these zones.

### LSE from the Proposed Development Alone

5.2.4. The Applicant identified potential impacts of the Proposed Development considered to have the potential to result in LSE alone in section 5 of the HRA Report [APP-234]. The full list of affected sites and their qualifying features and causes of LSE both alone and in-combination can be found in Table A11 to Appendix A of this Report. The European sites in question are:



- River Eden SAC.
- North Pennine Moors SAC.
- North Pennine Moors SPA.

5.2.5. The impacts considered by the Applicant to have the potential to result in LSE during construction and operation are:

- Land take/ resource requirements/ reduction of habitat area;
- Disturbance of mobile species and species fragmentation;
- Species injury and mortality;
- Introduction and/ or spread of invasive non-native species;
- Changes in surface and groundwater quality, quantity and hydrogeology;
- Changes in hydrology and fluvial geomorphological processes;
- Changes in air quality; and
- Reduction of habitat area and reduction of species density (as a result of changes in air quality).

5.2.6. NE [\[RR-180\]](#) queried the omission of Asby Complex SAC in the LSER. The Applicant explained that Asby Complex SAC had not been included in the assessment as the air quality modelling determined that there would be a 6% reduction in nitrogen deposition due to reductions in vehicles movements on M6 south of Penrith (paragraph 5.10.64 of [\[PDL-013\]](#); [\[REP1-035\]](#); [\[APP-048\]](#)) therefore, the effect would be positive and not adverse. NE [\[REP1-035\]](#) confirmed agreement on this matter at D1.

5.2.7. NE [\[RR-180\]](#) initially raised concerns as to whether all factors had been taken into account when screening out air quality effects on Helbeck and Swindale Woods SAC. The Applicant submitted an air quality technical note to NE on 04 April 2023 and to the Examination later at D7 (09 May 2023) [\[REP7-127\]](#). This confirmed that the site was located over 200m from the ARN so there was no pathway for effect. NE confirmed agreement with the conclusions of no LSE on features of Helbeck and Swindale Woods SAC at D7 [\[REP7-181\]](#).

5.2.8. NE also queried at D7 [\[REP7-181\]](#) whether impacts to the qualifying bird features of the North Pennine Moors SPA from disturbance accounted for seasonal variation, explaining that some of these recorded wintering birds may also form part of the breeding bird feature of the SPA.

5.2.9. The Applicant [\[REP9-008\]](#) referenced literature to explain that the majority of wintering UK golden plover flocks consist of birds which move to farmland habitats to forage during the winter. The literature also cites that in general, golden plover wintering in Britain come from populations breeding in Iceland and Scandinavia/western Russia, and fewer are from populations breeding in Britain, Denmark and Germany. ES Appendix 6.14 [\[APP-167\]](#) assesses the potential impact of “habitat loss” and “disturbance” on wintering birds. This concludes that disturbance during construction would be limited to the existing A66 and therefore increases in disturbance would be limited. It concludes that habitat loss would lead to a minor adverse effect due to the abundance of suitable wintering habitat for golden plover, the creation of additional habitat secured through the EMP [\[REP7-008\]](#) and the fact that they are unlikely to be birds using the SPA. The Applicant therefore considered that the conclusion of no LSE on bird features of the North Pennine Moors SPA from disturbance is appropriate. NE agreed with this conclusion in the D9 SoCG [\[REP9-008\]](#).

## **LSE from the Proposed Development In-Combination**

- 5.2.10. The Applicant explained in paragraphs 2.2.9 to 2.2.11 of the LSER [[APP-234](#)] that where potential LSE are identified, in-combination effects are assessed in the SIAA. Any LSE screened out in the LSER are screened out on the basis that there would be no credible effect and therefore there is no potential for in-combination effects, so these are also screened out.

## **LSE Assessment Outcomes**

- 5.2.11. The LSE assessment outcomes are set out in Annex I of the RIES in full [[PD-013](#)].
- 5.2.12. The Applicant's HRA Report concluded no LSE from the Proposed Development alone or in-combination on any of the qualifying features of:
- Helbeck and Swindale Woods SAC; and
  - Moor House Upper Teesdale SAC
- 5.2.13. The Applicant could not exclude LSE for the sites and features listed below in Table A11 of Appendix A of this Report. These sites/features were therefore assessed by the Applicant to determine if adverse effects on integrity (AEoI) would occur, as a result of the Proposed Development alone or in combination with other plans and projects, in view of their conservation objectives
- 5.2.14. The Applicant submitted 24 Change Requests on 24 March 2023 which are discussed in further detail in section 2.5 of the RIES [[PD-013](#)] and in Section 1 of this Report. In 'Change Application: Consultation Report Appendix G – Consultation Responses Received by the Applicant', on 27 February 2023 [[CR1-014](#)], NE identified Change Requests DC-04, DC-05, DC-06, DC-22 and DC-23 had potential to lead to additional LSE on the River Eden SAC.
- 5.2.15. The ExA refused acceptance of proposed changes DC-22 and DC-23 on 18 April 2023 for the reasons set out in its decision letter published 18 April 2023 [[PD-014](#)]. At D7 [[REP7-181](#)], NE confirmed that following review of the HRA Technical Note [[REP7-172](#)] it agreed that no additional LSE on the River Eden SAC would arise as a result of Change Requests DC-04, DC-05 and DC-06.
- 5.2.16. The ExA is satisfied, on the basis of the information provided, that the correct impact-effect pathways on each site have been assessed and is satisfied with the approach to the assessment of alone and in-combination LSE.
- 5.2.17. Taking into account the reasoning set out above, the ExA considers that the Proposed Development is likely to have a significant effect from the impacts identified in paragraph 5.2.5 above on the qualifying features of the European sites identified in Table A11 when considered alone, or in combination with other plans or projects. As described above and in sections 2.6 and 2.7 of the RIES [[PD-013](#)], this was disputed by NE during the Examination but subsequently agreed at Deadlines 1 and 7.

## **5.3. CONSERVATION OBJECTIVES**

- 5.3.1. The conservation objectives for all of the European sites and features where an LSE could not be ruled out identified in Table A11 to Appendix A of this Report, are set out in the following Tables in section 1.3 of the Applicant's SIAA [[APP-235](#)]:
- River Eden SAC – Table 2

- North Pennine Moors SAC – Table 2
- North Pennine Moors SPA – Table 3

## 5.4. FINDINGS IN RELATION TO ADVERSE EFFECTS ON THE INTEGRITY (AEoI)

- 5.4.1. The European sites and qualifying features identified in Table A11 to Appendix A of this Report were further assessed by the Applicant to determine if they could be subject to AEoI from the Proposed Development, either alone or in-combination. The assessment of AEoI was made in light of the conservation objectives for the European sites [APP-235]. The Applicant concluded no AEoI on all sites and features from the identified potential effects either alone or in-combination.
- 5.4.2. Section 3 of the RIES provides a summary of the Applicant’s approach and conclusions in relation to AEoI up to D6. Table 3.1 of the RIES provides a summary of the outstanding matters at that time and includes questions from the ExA to resolve these matters. These matters were:
- Whether the methodology for assessing air quality impacts on the North Pennine Moors SAC, SPA and River Eden SAC both alone and in-combination with other plans and projects is appropriate in terms of assessing impacts from ammonia, NO<sub>x</sub> and nitrogen deposition; and
  - Whether detailed mitigation measures would be agreed for the River Eden SAC and submitted to the Examination.
- 5.4.3. The Applicant’s conclusions on air quality effects were disputed by NE and these matters were not resolved by the close of Examination. These matters are discussed further below.
- 5.4.4. The Applicant’s approach to the in-combination assessment is set out in paragraphs 1.4.31 to 1.4.35 of the SIAA [APP-235]. The developments identified for the in-combination assessment are set out in Table 10 of the SIAA.

### Mitigation

- 5.4.5. Paragraphs 1.4.21 to 1.4.25 of the SIAA [APP-235] describe how the Applicant has applied mitigation where an AEoI is identified using the mitigation hierarchy to reduce/ avoid adverse effects. Mitigation measures are secured through the EMP [REP8-005] and site specific design mitigation is secured through the PDP [REP8-061]. These specific measures are discussed further in the sections below where relevant.
- 5.4.6. Section 1.4 of the EMP [REP8-005] explains that its purpose is to set out the management actions that need to be implemented to mitigate the environmental effects of the project. The EMP is proposed to replace the pre-commencement requirements in the DCO before the Proposed Development can proceed. EMP2 would be produced following a round of consultation and any changes made to the EMP would need to be approved by the Secretary of State.
- 5.4.7. NE [AS-006] and EA [REP4-029] raised concerns that mitigation set out in the EMP was based on draft mitigation measures rather than specific and secured measures. At the beginning of the Examination, the Applicant had in place an approval process whereby if changes were made to the EMP post consent, this could be self-approved. NE [REP5-060; REP7-181] stated that if changes are made post consent, this would undermine its agreement with the Applicant’s HRA conclusions.

- 5.4.8. The ExA [EV-019] requested an amendment to Articles 53 and 54 of the DCO [REP2-005] to require any changes made to the EMP would both need to be consulted on and approved by the Secretary of State. The ExA considers that this provides a regulatory checkpoint to ensure that the EMP is appropriate.
- 5.4.9. Following these changes to the DCO, NE and EA agreed that based on the mitigation secured through the current EMP and PDP there would be no AEol [REP4-033; REP4-029]. NE [REP5-060] and the Applicant [REP5-009] agreed that the detailed design would need to be completed to inform the content of a second iteration EMP, specifically in relation to the design of the Trout Beck viaduct.
- 5.4.10. The ExA is therefore content that the relevant mitigation has been secured appropriately in relation to effects on European sites. Sites for which the Applicant concluded AEol can be excluded.
- 5.4.11. The Applicant's SIAA [APP-235] concluded that the Proposed Development would not result in AEol either alone or in-combination on the following sites which was agreed with NE:
- River Eden SAC (features listed in Table A11 of Appendix A to this Report);
  - North Pennine Moors SPA – breeding birds; and
  - North Pennine Moors SAC – marsh saxifrage.

### **River Eden SAC**

- 5.4.12. The potential impact pathways to the River Eden SAC are listed in paragraphs 1.5.23 to 1.5.45 of the SIAA and are listed in Table A11 to Appendix A of this Report. The Applicant excluded AEol on all the qualifying features of the SAC as described below.

### **Air Quality**

- 5.4.13. The Applicant's assessment considered the effects on the habitat features on the grounds that if these are adversely affected, the features which depend on them (otter, white-clawed crayfish and the fish species) are also likely to be indirectly affected.
- 5.4.14. The Applicant's modelling identified that there would be perceptible changes in air quality at two locations during construction and operation where the Proposed Development interacts with the SAC as presented in Table 8 of the SIAA [APP-235]. However, AEol were ruled out for Watercourses of plain to montane levels with the Ranunculus fluitans and Callitriche-Batrachion vegetation and subsequently all other features reliant on this habitat on the basis that deposition modelling is less applicable to this aquatic habitat type. The Applicant explained in paragraphs 1.5.92 and 1.5.98 of the SIAA [APP-235] that aquatic plants, which are a component of the watercourse vegetation community, are submerged for the majority of the year due to their growth form and consequently they are regularly inundated and flushed during modest flood events. Impacts are therefore considered to be minimal and would not lead to AEol. NE [REP4-033; REP7-181] agreed with this conclusion.

### **Land Take / Resource Requirements / Reduction of Habitat**

- 5.4.15. Impacts on all features are anticipated to result from the shading of the habitat from the Trout Beck viaduct, culvert design and extension and design of the viaduct outfall discharges. Mitigation is proposed through the design of the culverts, extensions and viaduct to minimise the potential for habitat reduction and shading

through sinking infrastructure and maintaining flow velocities through bridges and culverts. These mitigation measures are secured through the PDP [REP8-061]. Following the implementation of mitigation through design, shading is anticipated to impact 0.004% and outfall discharge is anticipated to impact 0.001% of the Watercourses of plain to montane levels with the Ranunculon fluitantis and Callitricho-Batrachion vegetation feature within the SAC. The SIAA concluded that these impacts are very localised and would not therefore lead to AEoI on the SAC. NE [REP7-181] agreed with this conclusion.

### **Introduction and/or Spread of Invasive Non-Native Species (INNS)**

- 5.4.16. The Applicant proposes implementation of an Invasive Non-Native Species Management Plan which is provided in draft in Annex 15 of the EMP [REP8-005]. Following these best practice measures, the Applicant considers there would be limited/no impacts pathway to introduce or spread INNS and no AEoI would arise. NE [REP3-034; REP7-181] agreed with this conclusion.

### **Changes in Surface and Groundwater Quality, Quantity, and Hydrogeology**

- 5.4.17. Paragraph 1.5.151 of the SIAA [APP-235] identified that impacts are anticipated to derive from general road runoff, construction activities and cuttings that intercept the groundwater table which may impact baseflow to surface water features downgradient. This has potential to impact all features of the River Eden SAC.
- 5.4.18. During construction, mitigation is proposed through the implementation of a Ground and Surface Water Management Plan (secured in Annex B7 of the EMP [REP8-005]). This sets out best practice measures for pollution prevention and construction techniques.
- 5.4.19. During operation, road runoff would be treated for zinc, copper and sediment levels via a network of attenuation basins. All attenuation basins have achieved a pass in line with the Highways England Water Risk Assessment Tool (HEWRAT) as demonstrated in Appendix 14.3 Water Quality Assessment [APP-222]. These are secured through Work no 03-1B of the DCO [REP9-013]. The Applicant concluded no AEoI would arise from this effect pathway. NE [REP7-181] agreed with this conclusion.

### **Changes in Hydrology and Fluvial Geomorphological Processes**

- 5.4.20. Paragraphs 1.5.156 to 1.5.200 of the SIAA [APP-235] identified that impacts are anticipated to derive from construction works associated with, and the operation of, the viaduct, culverts and flood attenuation features. The Proposed Development also has potential to lead to alterations in flood flows.
- 5.4.21. The Applicant's SIAA explained that modelling (provided in Geomorphology Modelling Report Appendix 14.9: Detailed Geomorphological Modelling, [APP-228]) was undertaken to inform the design of the viaduct, flood storage areas and culverts to minimise any adverse effects on geomorphology and the risk of fish stranding during extreme flood events. No additional hard structures are proposed to be introduced to the riparian zone (associated with new attenuation basin discharges) into the SAC or functionally linked watercourses; discharge outlets will be open ditches where currently existing natural bank structures enable the free river migration/ geomorphological change to occur. The Applicant states that the modelling data predicts with certainty that fluvial geomorphological processes both within the channel and on the floodplain would not be significantly affected by the

Trout Beck viaduct so no AEoI are anticipated on features of the SAC. NE [\[REP7-181\]](#) agreed with this conclusion.

### **Disturbance of Mobile Species and Species Fragmentation and Species Mortality / Injury**

- 5.4.22. The SIAA [\[APP-235\]](#) identified the potential for disturbance to affect otter, white-clawed crayfish and fish features during construction; water crossings may also introduce obstacles causing habitat fragmentation.
- 5.4.23. The Applicant proposes mitigation through implementation of best practice measures and best practice watercourse crossing design to ensure that species can pass freely through crossings and construction activities will not give rise to disturbance i.e. through excessive noise, working during breeding seasons, lighting design. During construction, an ECoW would be employed for any instream works or dewatering activities where any required translocation would occur before dewatering commences.
- 5.4.24. These measures are secured through the EMP [\[REP8-005\]](#) and the PDP [\[REP8-061\]](#). With these measures in place, the SIAA concludes no AEoI on SAC features. NE [\[REP7-181\]](#) agreed with this conclusion.
- 5.4.25. The ExA is satisfied that with the proposed mitigation in place there would be no AEoI on the River Eden SAC. The mitigation is appropriately secured through the EMP and PDP. The ExA is also satisfied that no mitigation is put forward for air quality impacts and there would be no AEoI on the basis that the nature of the impact upon Watercourses of plain to montane levels with the Ranunculion fluitantis and Callitriche-Batrachion vegetation means air quality impacts would be minimal due to the habitat being predominantly underwater and flushed regularly.

### **In-Combination Effects**

- 5.4.26. The River Eden SAC was identified as the only site requiring a separate in-combination assessment which is provided in paragraphs 1.5.294 to 1.5.318 of the SIAA [\[APP-235\]](#).
- 5.4.27. The projects included in the in-combination assessment are:
- Flakebridge River Restoration, Frith Beck.
  - Appleby Flood Risk Scheme.
  - Carleton Road Housing Development of up to 149 residential dwellings. And;
  - Eden Rivers Trust Trout Beck Restoration.
- 5.4.28. NE did not raise any concerns over the in-combination assessment for the River Eden SAC and confirmed agreement with the River Eden SAC assessment conclusions at D7 [\[REP7-181\]](#).
- 5.4.29. Flakebridge River Restoration was completed in 2020 and there are no residual operational effects reported by the project. Therefore, the Applicant considers that there would be no in-combination effects with this scheme.
- 5.4.30. The ecological report submitted for the Carleton Road Housing Development concluded that there is sufficient distance and barriers to the River Eden SAC such that there is no pathway for effects. The Applicant concluded there no potential for in-combination effects with the Proposed Development.

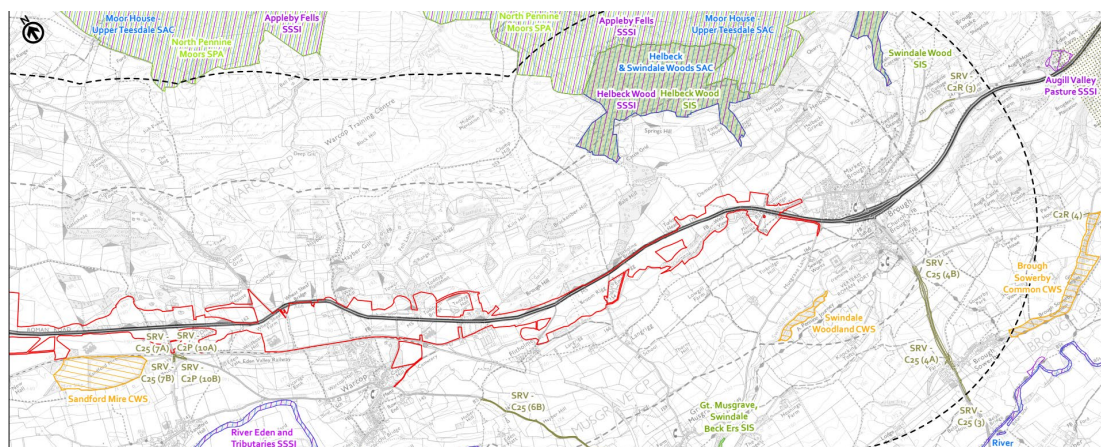


- 5.4.31. The Appleby Flood Risk scheme's appropriate assessment concludes no AEol during construction on the basis that best practice mitigation measures (as described in paragraph 1.5.308 of the SIAA [APP-235]) would mitigate potential effects and no AEol are identified during operation. Construction is anticipated to be completed in 2022 and therefore would not overlap with the construction of the Proposed Development. The Applicant ruled out any potential in-combination effects on the basis that the construction periods would not overlap and the Appleby Flood Risk scheme and in addition, mitigation was in place to deal with the effects of the flood risk scheme.
- 5.4.32. The only project identified in the SIAA that could potentially interact with the A66 is the Eden Rivers Trust Trout Beck Restoration. The project is located within the SAC in the Temple Sowerby to Appleby section of the A66, immediately adjacent to the proposed Trout Beck crossing. The Eden Rivers Trust restoration scheme is assumed by the Applicant to be delivered concurrently with the Proposed Development and that the Eden Rivers Trust restoration scheme will implement standard best practice construction measures. The Applicant explains that much of the Eden River restoration construction work would involve the creation of a secondary channel which would be offline during construction. Residual effects have not been identified during operation for the restoration scheme. On the basis that the secured mitigation measures for the Proposed Development would be in place during construction and operation (as set out in the above section), the Applicant concludes there would be no AEol from in-combination effects.
- 5.4.33. Based on the above reasoning and NE's agreement with the Applicant's conclusion, the ExA is satisfied there would be no in-combination effects on the River Eden SAC.

### North Pennine Moors SPA/SAC

- 5.4.34. Air quality is the only impact pathway identified to have potential LSE as discussed in paragraphs 1.7.1 to 1.7.8 of the SIAA for the North Pennine Moors SPA and paragraphs 1.6.11 to 1.6.13 of the SIAA for the North Pennine Moors SAC. Figure 5.1 below illustrates the relationship and distance between the North Pennine Moors SPA/SAC to the extant A66, which concerns Scheme 06 (Appleby to Brough).

**Figure 5.1 – Map of Designated and Non-Designated Sites and Proximity to the North Pennine Moors [APP-069]**



- 5.4.35. The Applicant excluded AEoI from air quality effects on the following features of the SPA/SAC:
- North Pennine Moors SPA – breeding birds: golden plover, hen harrier, merlin and peregrine;
  - North Pennine Moors SAC – marsh saxifrage and the Annex I habitats listed in Table A11 to Appendix A of this Report.
- 5.4.36. Paragraph 1.7.14 of the SIAA [APP-235] explains that air quality impacts on suitable habitat for breeding and foraging birds has the potential to impact the breeding bird features of the SPA. The conservation objectives and supplementary advice set out that the following habitats are required to support breeding for qualifying bird species:
- Cliffs and crags with low disturbance.
  - Blanket bog.
  - Wet heath.
  - Dry heath.
  - Montane heath.
- 5.4.37. Modelling provided in ES Appendix 2.1 [APP-147] demonstrates that impacts would be negligible beyond 65m from the edge of the ARN. Blanket bog is the only recorded qualifying habitat within the study area (as shown in Appendix E of the SIAA) which may provide suitable breeding habitat for all the SPA bird species, and which is also a qualifying feature of the SAC. Marsh saxifrage was not recorded within the study area so would not be affected by the alterations in air quality.
- 5.4.38. The Applicant stated in paragraph 1.4.34 of the SIAA [APP-235] that the assessment of air quality is inherently cumulative as it considers other plans and projects when determining the future baseline “do-minimum” scenario. The following discussion therefore relates to impacts from both the project alone and in-combination with other projects.
- 5.4.39. NE [RR-180] highlighted concerns that other types of inputs to air quality impacts e.g. agriculture had not been taken into account in the assessment of in-combination impacts to the North Pennine Moors SPA/SAC. However, the Applicant confirmed [REP8-027] that other types of input, including agriculture, had been captured in the baseline in the future data provided by DEFRA. This includes data on emission sources from different sectors but not for specific point source emissions which is in line with DMRB methodology. NE has not responded on this point. NE and the Applicant are still discussing the conclusions of the air quality assessment (including in-combination effects) [REP9-046] and therefore this issue was not resolved at the close of the Examination.
- 5.4.40. In line with DMRB LA115 guidance, the Applicant’s SIAA identifies that an increase of more than 1000 Annual Average Daily Traffic (AADT) has potential for air quality impacts and requires further assessment. An increase of 5941 AADT from the project alone during operation is modelled in ES Appendix 5.4 [APP-153] within 200m of the North Pennine Moors SPA/SAC. As air quality construction impacts are not predicted to be above the threshold which requires more detailed assessment, these impacts are not considered further.
- 5.4.41. As described in 1.7.16 of [APP-235], impacts from air quality have potential to undermine the ‘maintain and restore’ conservation objectives of the SPA and SAC sites which require critical loads are not exceeded. Paragraph 4.1.13 of the Supplementary Note [REP9-036] states that an exceedance of critical loads from

nitrogen deposition has potential to modify the substrate's chemical status which accelerates/damages plant growth and alters vegetation structure and composition. This in turn causes the loss of typical sensitive species associated with blanket bog.

- 5.4.42. The nitrogen critical load for blanket bog is 5-10 kilograms of nitrogen per hectare per year (kgN/ha/yr) however, this critical load is already being exceeded currently, on average, at 19.4kg N/ha/yr. ES Appendix 5.4 [\[APP-153\]](#) identifies modelled points demonstrating an exceedance of 1% critical load (modelling output predicts a maximum of 0.9kg N/ha/yr increase from the project alone) as a result of the Proposed Development up to 60m from the ARN. Beyond this distance air quality impacts are deemed to be negligible as they are beyond the distance for deposition. It is noted that 3.3kg of loading would lead to a loss of one species but this threshold is considered by the Applicant as high and therefore not relied upon to determine whether it would undermine the conservation objectives [\[REP9-036\]](#).
- 5.4.43. The total area of blanket bog only (not recorded as a mosaic with acid/marshy grassland) within 60m of the ARN was 4.01ha which equates to 0.01% of the blanket bog within the whole SPA/SAC.
- 5.4.44. On the basis of the above, the Applicant concludes in the SIAA [\[APP-235\]](#) that the contribution made by the Project in the context of nitrogen sources from air pollution during operation is negligible or 'de minimis' and there is no need for mitigation.
- 5.4.45. NE [\[RR-180\]](#) disputed the methodology applied to the assessment of air quality. During ISH2 [\[EV-028\]](#), the ExA questioned how discussions with NE around their concerns were progressing and the Applicant confirmed they were engaging and that it was confident disagreements would be resolved following a meeting on 09 December 2022. Despite assurances repeated throughout the Examination [\[REP5-060; REP5-009, REP6-020, REP6-029\]](#), no agreement was reached by the close of the Examination.
- 5.4.46. The Ammonia Technical Note was shared with NE in April to which NE responded in Annex 1 of its response to the RIES [\[REP7-181\]](#). This identified the following concerns with the air quality assessment:
- Ammonia and NO<sub>x</sub> have not been assessed against the critical load levels [\[REP9-036\]](#). Both ammonia and NO<sub>x</sub> also have differing impacts to that of nitrogen and therefore should be assessed separately.
  - The area of blanket bog was only identified as a separate habitat and not as part of a mosaic and therefore the amount potentially impacted has been underestimated in the SIAA. NE state around 8ha of blanket bog and mosaic habitat is present in the zone of influence of the Proposed Development.
  - The 'negligible' impact is still an increase in the current exceedance of the critical load and therefore requires mitigation.
  - Species richness should not be used as a measure of change at bog sites because the observed relationship between species richness and nitrogen deposition is not curvi-linear (Natural England Commissioned Report 210). It is not considered an appropriate metric by bog specialists to assess change as there are very few species present in this habitat type.
- 5.4.47. NE consider that air quality impacts would potentially undermine the maintain and restore objectives of the blanket bog qualifying feature for the site. The target for the air quality sub-attribute is 'restore as necessary the site-relevant critical load for blanket bog'.

- 5.4.48. The ExA issued a letter to the Applicant and NE on 19 May 2023 under Rule 17 of the EPR [\[PD-017\]](#) requesting the following:
- *“acceptance of suggested or suitable wording to either to Article 53 of the draft DCO of the level of pre-commencement requirement that is sought by the NE, or within the EMP if it is capable of being controlled there. The ExA requests an agreed position between the parties at the point of submission”.*
- 5.4.49. Proposed draft wording was contained in Annex A of the Rule 17 in relation to an air quality mitigation scheme.
- 5.4.50. NE and the Applicant both provided joint position statements at D9 [\[REP9-034\]](#) and [\[REP9-046\]](#) agreeing that the proposed wording in Annex A of the Rule 17 was not appropriate and acknowledging the disagreement as to whether the Proposed Development would have an AEoI on the North Pennine Moors SPA/SAC from air quality impacts. The Applicant submitted a Habitats Regulation Assessment Supplementary Note for the North Pennine Moors SPA/SAC [\[REP9-036\]](#) (the Supplementary Note) to the Examination at D9 (26 May 2023).
- 5.4.51. In response to NE’s concerns, the Supplementary Note [\[REP9-036\]](#) included an assessment of ammonia and NO<sub>x</sub> against the critical load levels for blanket bog. Paragraphs 2.1.9 to 2.1.19 and Table A3 of the Supplementary Note [\[REP9-036\]](#) assesses impacts from ammonia on lichens, bryophytes and higher plants as part of blanket bog species on a sensitivity test basis using the National Highways tool developed with NE. Predicted concentrations for higher plants as a result of the Proposed Development are well below the critical levels and therefore, the Applicant concluded that there would be no significant effects on higher plants (see Table A3 of [\[REP9-036\]](#)).
- 5.4.52. Species richness was not used in the updated assessment of the implications for the SAC’s conservation objectives. The area of blanket bog assessed was increased to include areas within a mosaic habitat (assessed as 8.28ha in total within 200m of the ARN (paragraph 4.1.22 of [\[REP9-036\]](#)). The remaining point outstanding is that of whether the exceedance impact from the Proposed Development is considered to undermine the conservation objectives of the SPA/SAC and whether mitigation is required.
- 5.4.53. The Supplementary Note [\[REP9-036\]](#) explains that impacts from ammonia and nitrogen deposition are identified to exceed critical levels however, modelling of NO<sub>x</sub> indicates that critical levels for nitrogen oxides will not be exceeded (paragraph 4.1.48 and Table 2 of [\[REP9-036\]](#)). The modelled maximum increase and exceedance of the lower critical load level for ammonia (1 µg/m<sup>3</sup>) on lichens and bryophytes occurred 5m from the ARN as a 13.7% increase. This reduces to an increase relative to the lower critical level of 3.5% at 65m from the edge of the road.
- 5.4.54. Paragraphs 4.1.13 to 4.1.37 of the Supplementary Note [\[REP9-036\]](#) assess nitrogen against the maintain and restore conservation objectives. The critical load is 5-10kgN/ha/yr for blanket bog within the SPA/ SAC with current levels of nitrogen (without the project) already exceeding this on an average of 19.4kgN/ha/yr. The Applicant’s assessment identifies that the Proposed Development would introduce a maximum of 17.6% (0.9kg N/ha/yr) increase in nitrogen deposition relative to the lower critical load for blanket bog (5kg N/ha/yr) 5m from the road edge reducing to 1.1% at 65m.



- 5.4.55. Section 4 of the Supplementary Note sets out the Applicant's discussion of why these exceedances do not undermine the conservation objectives for blanket bog. This explains that twelve of the thirteen qualifying habitats of the SPA/ SAC, remain unaffected by the Project and only 0.021% of blanket bog will be affected within the SAC. The Applicant considers that the coherence of the ecological structure and function is maintained in the remaining 99.98% of the habitat within the SPA/ SAC. This is also set in the context of other inputs in terms of nitrogen for which road transport contributes 6.5% to the total background levels with the largest contributor being livestock at 61.6% total contributions based on APIS data. This data also indicates that removal of all nitrogen input from road transport on a local scale would only reduce the nitrogen deposition from 17.8kg N/ha/yr down to 17.2kg N/ha/y which is still three times the Lower Critical Load. Ammonia and NO<sub>x</sub> are not discussed in this wider context.
- 5.4.56. The Applicant also considers that the Proposed Development would not hinder the restoration of the SPA/SAC and that any restoration of the site would likely focus on the main contributor of pollutants (livestock). This is based on evidence that transport emissions (including ammonia and NO<sub>x</sub>) show a steady reduction over time (demonstrated in DEFRA's emissions factor toolkit version 11) and emissions from road transport will decline more quickly due to policies such as the Transport Decarbonisation Plan (Figure 3 of [\[REP9-036\]](#)). The reduction shown in DEFRA's emissions factor toolkit is considered by the Applicant to be a conservative estimate.
- 5.4.57. In their joint position statements [\[REP9-034\]](#) and [\[REP9-046\]](#) the Applicant and NE agreed the following to ensure agreement is reached:
- To put in place regular meetings (commencing as soon as reasonably practicable after the close of the Examination) for the duration of the ExA's three-month recommendation period to discuss the SIAA's assessment and conclusions in relation to the North Pennine Moors SAC.
  - To jointly report to the Secretary of State, as soon as possible after the ExA's recommendation period has ended or earlier, on progress between the parties on reaching agreement on the issue of the assessment and conclusions of the SIAA in relation to the North Pennine Moors SAC/SPA.
- 5.4.58. In conclusion concerning the North Pennine Moors SPA/SAC, the ExA considers that because the NO<sub>x</sub> deposition rates do not exceed the critical loads for blanket bog, that AEoI can be ruled out from NO<sub>x</sub>. The ExA considers that an additional exceedance of the current critical loads for ammonia and nitrogen deposition at 13.7% and 17.6% respectively at 5m from the road edge is an adverse effect. Although this reduces to 3.5% and 1.1% at 60m from the road, this is still an increase in an already occurring exceedance. The SSSI units which form part of the North Pennine Moors SPA/SAC and which are located within the study area are all in 'unfavourable condition' as described in paragraphs 1.6.17 to 1.6.20 in the SIAA. The ExA considers that as this is a continued exceedance and does not have agreement with NE that it would be a 'de minimis' impact, these exceedances undermine the maintain and restore objectives of the SPA/ SAC.

## 5.5. HRA CONCLUSIONS

- 5.5.1. The ExA's understanding of HRA matters in relation to the Proposed Development is drawn from the information provided in the Application. Aside from the matter below, no new relevant or important HRA issues or concerns were raised during the Examination by any IPs, and NE supported the Applicant's findings.

- 5.5.2. Because of NE's current position as outlined in their final PADSS [REP7-180] and the joint position statement with the Applicant submitted at D9 [REP9-034 and REP9-046], the ExA finds that an AEoI from air quality impacts from the Proposed Development on Scheme 06 cannot be excluded beyond reasonable scientific doubt for blanket bog as an Annex I feature of the North Pennine Moors SPA/SAC either alone or in-combination with other projects.
- 5.5.3. Whilst no agreement is currently in place between NE and the Applicant over the conclusions of no AEoI on the North Pennine Moors SPA/SAC, in the joint position statements submitted to the Examination at D9 [REP9-034 and REP9-046] it is clear that both parties are very hopeful of reaching an agreement and resolution to agree no AEoI to the North Pennine Moors SPA/SAC. This, they say, should occur by the time this Report reaches the Secretary of State.
- 5.5.4. Moreover, NE has at no time in any of its representations expressed any concern that this issue is not capable of being resolved. Indeed the Secretary of State will note that the joint position statement and NE's final PADSS [REP7-180] suggests that this issue is at the very least controllable either through a Requirement (or Article 53) in the Recommended DCO, or through the EMP.
- 5.5.5. Therefore, on the evidence before us, the ExA considers that there is a reasonable expectation this issue will be resolved, and NE will be able to advise the Secretary of State of no AEoI. If and when this occurs, and subject to the Secretary of State being satisfied that any mitigation agreed by those parties lies within the scope and assessment in the ES and is deemed to be acceptable, the ExA advises that the Proposed Development would have no new relevant or important HRA issues or concerns.
- 5.5.6. If NE advises that AEoI cannot be excluded, and no mitigation is offered or agreed, the Examining Authority advises the Secretary of State in Section 6 of the Report the options available to them including consideration of the structure of the Order and the engagement of the Regulations contained within the Conservation of Habitats and Species Regulations 2017 (as amended) CHSR2017.



## **6. CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT**

### **6.1. INTRODUCTION**

- 6.1.1. This Section provides an evaluation of the planning merits of the Proposed Development. It considers the legal and policy context set out in Section 2 and individual applicable legal and policy requirements identified in Sections 4 and 5 above. Whilst HRA has been documented separately in Section 5, relevant facts and issues set out in that Section are taken fully into account.

### **6.2. THE PLANNING BALANCE**

#### **Need**

- 6.2.1. The NPSNN sets the overall needs case for new road infrastructure in the UK. The draft replacement version continues to support this cause. The NIS identifies the A66 dualling project as a scheme which is needed. RIS2 is very clear that the Government will aim to deliver this project because of the identified critical importance of the A66 to users in Scotland, Northern Ireland, north and east of England. The ExA accepts that the current part-dualled, part-single carriageway nature of the A66 is unsatisfactory and the cause of substantial delays.
- 6.2.2. The ExA is satisfied that the Proposed Development has been designed to increase capacity and reduce congestion and delays by dualling the remaining sections of single-tracked road between Scotch Corner and the M6 Junction 40. The Proposed Development would cater for future traffic demands to enable development and economic growth.
- 6.2.3. The ExA accepts that the case for compelling need for the provision of new national network infrastructure is established by NPSNN. The ExA accepts the case advanced by the Applicant that the Proposed Development would contribute to the established need and would relieve current problems with the existing A66 and would accommodate additional demand and avoid traffic. Significant positive weight is attached to the identified need.

#### **Alternatives**

- 6.2.4. The Applicant has demonstrated that it considered alternatives to the Proposed Development at all levels, including options for do-nothing/minimum and locations for the road alignment and placement of junctions. Notwithstanding the concerns raised by IPs primarily in respect to “the Blue Option” preference for Scheme 08 (Cross Lanes to Rokeby), and the alignment of the road north of the extant road within the MoD land at Scheme 06 (Appleby to Brough), the ExA accepts the Applicant’s explanation as to why these alternatives were rejected.
- 6.2.5. The ExA is satisfied that the Applicant has reached a balanced judgement, and the requirements of NPSNN and the EIA Regulations have been met in this regard.

#### **Traffic and Access**

- 6.2.6. The Proposed Development would accord with NPSNN and all legislation and policy requirements. The ExA acknowledges that the resultant changes to some access provisions have given rise to a number of concerns about the local impact of the Proposed Development. We are satisfied that the Applicant has sought to address

these concerns and that the Recommended DCO secures the necessary mitigation. In this respect and considering the transport objectives for the scheme as a whole, the Proposed Development attracts moderate positive weight in the planning balance.

### **Air Quality**

- 6.2.7. The only outstanding issue relating to air quality remains the disagreement between the Applicant and NE about the implications of the nitrogen and ammonia deposition on features of the North Pennine Moors SAC and SPA. Both parties consider that they should be able to reach agreement prior to the Secretary of State making his decision.
- 6.2.8. The ExA sets out below the circumstances should NE advise the Secretary of State that AEoI could not be ruled out relating to the increase in nitrogen and ammonia deposition on the North Pennine Moors SAC and SPA. In this event, the ExA consider that this scenario would also mean that the effects on air quality would be very minor negative in the planning balance of the Proposed Development.
- 6.2.9. The ExA is satisfied that the Applicant has identified and assessed addressed the LSE on air quality impacts of the Proposed Development. We are also satisfied that the EMP represents an effective means of mitigating impacts.
- 6.2.10. Taking these matters into account and on the basis that both parties do reach agreement on the outstanding matter we consider that the Proposed Development accords with NPSNN and attracts neutral weight in the planning balance.

### **Carbon Emissions**

- 6.2.11. The ExA considers that the Proposed Development would have a minor adverse impact on carbon emissions and that this would not be significant or have a material impact on the ability of the Government to meet its carbon reduction targets in accordance with the NPSNN. In this respect, the Proposed Development attracts limited negative weight in the planning balance.

### **Flood Risk and Water Environment**

- 6.2.12. The ExA is satisfied that the Proposed Development, with the mechanism for the approval of hydraulic modelling and compensatory flood storage on Scheme 06 in the Recommended DCO, would have no LSE on flood risk and the water environment. The Proposed Development would accord with all legislation and policy requirements and the ExA is satisfied that mitigation is adequately provided for and secured in the Recommended DCO. In this respect, the Proposed Development accords with NPSNN and attracts neutral weight in the planning balance.

### **Biodiversity and Wildlife**

- 6.2.13. The ExA concludes that whilst the Proposed Development would result in a small increase in loss of habitats within a specific area, this is mitigated and sufficiently compensated for across the Proposed Development. We are satisfied that the loss of trees that would occur is adequately compensated for by replacement tree planting across the Proposed Development in the long term.
- 6.2.14. We are satisfied that the Proposed Development would have no LSE on biodiversity and that mitigation is adequately provided for and secured in the Recommended

DCO. In this respect, the Proposed Development accords with NPSNN and attracts neutral weight in the planning balance.

### **Landscape and Visual**

- 6.2.15. Whilst much of the alignment of the Proposed Development would be an online replacement of the existing A66 or would be adjacent to it, there would be areas where the road would deviate substantially from the extant road. As a result, the Proposed Development would result in unavoidable harm to the landscape due to the presence of hard structures where only open countryside exists. Significant adverse effects to the landscape would occur as the landscape would change and harm would result. The ExA is minded, however, that harm to the landscape and the AONB is an unescapable consequence for a project such as the Proposed Development, and that in the medium to long term the harm would reduce as the landscape mitigation proposed establishes.
- 6.2.16. Given the proximity of the three viaduct structures to the AONB and in light of their overall landscape context, together with their size and span, the ExA considers it necessary for the Secretary of State to approve their designs, to ensure greater certainty regarding high quality design and to minimise their landscape impact. The ExA has added additional to article 54(7) of the Recommended DCO to this effect.
- 6.2.17. Overall, the ExA considers that the presence of the new road, together with loss of trees and other vegetation, would have an adverse and thus a negative effect on the landscape, primarily at the Kirkby Thore and Warcop areas. As a result, there would be some conflict with the NPSNN in this regard. However, the mitigation proposed by the Applicant, secured through the LEMP and the REAC within the EMP would take effect over the longer-term. Together with high quality designs for the three viaduct structures secured via the DCO approval mechanism the ExA considers that a moderate negative weight in the planning balance should be applied to the landscape character, when taken as a whole.

### **Heritage Assets**

- 6.2.18. The ExA has considered the effect of the Proposed Development on the heritage assets identified by the Applicant in the study area. At the close of the Examination, there were no outstanding comments from IPs that either disagreed or disputed the Applicant's scope of assessment.
- 6.2.19. LSE would result from the Proposed Development on heritage assets, including archaeological sites, historic monuments, buildings and areas, in addition to historic landscapes. The ExA has considered the potential for direct physical disturbance and indirect effects on all of the Applicant's identified heritage assets within the study area in terms of the setting of the overall effect and the significance of the predicted effects.
- 6.2.20. As required by paragraph 5.129 of NPSNN, the ExA is satisfied that the route has been developed to reduce the impact on historic environment by avoiding known high value heritage assets, where practicable. Where not discussed, the ExA was subsequently satisfied with the Applicant's responses to questions and matters in relation to the historic environment.
- 6.2.21. The ExA considers that the Proposed Development would result in LSE on the historic environment and there would therefore be some conflict with the NPSNN in this regard. The ExA is satisfied that mitigation is adequately provided for and secured in the Recommended DCO to reduce the effect of the significance of the

heritage assets. As such, the ExA considers that an overall minor negative weight in the planning balance applies.

### **Population and Human Health**

- 6.2.22. During the Examination we explored in detail the issues relating to a number of areas including the relocation of the Brough Hill Fair. We are satisfied that the Applicant has addressed the need to relocate the Fair to a suitable site that retains the historic rights to hold the annual event. We have concluded that the proposed replacement 'Bivvy' site provides a suitable replacement site for the Fair, which would be both accessible and manoeuvrable despite the location of a pinch point within the site. We are also satisfied that the Applicant is committed to address any outstanding concerns as part of the ongoing detailed design.
- 6.2.23. In conclusion, we consider that the Proposed Development would accord with all legislation and policy requirements and the ExA is satisfied that mitigation is adequately provided for and secured in the Recommended DCO. In this respect, the Proposed Development accords with NPSNN and attracts neutral weight in the planning balance.

### **Noise and Vibration**

- 6.2.24. The ExA considers that the Proposed Development would result in an increase in noise and vibration during the construction phase but is satisfied that the impacts would be appropriately mitigated as far as practicable. In regard to operational traffic noise, the ExA is satisfied that the Applicant's proposed mitigation is acceptable and that there is a commitment to minimise effects to an acceptable degree.
- 6.2.25. Overall, the ExA is satisfied that the Proposed Development would accord with all legislation and policy requirements and that the proposed mitigation is adequately provided for and secured in the Recommended DCO, through the EMP (which includes the NVMP). In this respect, the Proposed Development accords with NPSNN and attracts neutral weight in the planning balance.

### **Material Assets and Waste**

- 6.2.26. The Proposed Development would result in a significant adverse effect during the construction phase through the sterilisation of a mineral resource. Overall however, the ExA is satisfied that the Proposed Development would not result in unnecessary sterilisation.
- 6.2.27. Effects in relation to material assets and waste arising from the Proposed Development would be dealt with through provisions set out in the PDP, the SWMP and the EMP itself, with mitigation secured within the Recommended DCO. In this respect, the Proposed Development accords with NPSNN and attracts neutral weight in the planning balance.

### **Geology and Soils**

- 6.2.28. The Applicant has taken into account geology and soils matters, as required by the NPSNN.
- 6.2.29. The ExA acknowledges that would be a temporary loss of approximately 70ha of BMV Grade 2 soil and approximately 43ha of Grade 3a soil. The construction of the Proposed Development would also result in the permanent loss of approximately

80ha of BMV Grade 2 soil and approximately 64ha of Grade 3a soil. This permanent impact and loss would be a significant adverse effect of the Proposed Development.

- 6.2.30. Approximately 130ha of ALC Grade 3b soil and approximately 30ha ALC Grade 4 soils would be permanently lost as a result of the Proposed Development, which is considered to be a significant adverse effect of the Proposed Development. Approximately 3.5ha of Grade 5 soils would be permanently lost as a result of the Proposed Development, the effect of which would not be significant.
- 6.2.31. The Applicant has, however, proposed an outline SMP as part of EMP1 in which mitigation measures are proposed in a broad outline form to address the issue as much as practicable including a commitment to reuse a significant proportion of the BMV soils within the vicinity of the removal, which would be secured through the EMP and thus Article 53 of the Recommended DCO.
- 6.2.32. Therefore, although the Proposed Development would result in significant adverse effects through the loss of BMV soils during construction, the Applicant has proposed suitable mitigation measures to address the issue as much as practicable, which would be secured through the EMP. The ExA consider that this approach would accord with paragraph 5.168 of NPSNN. Overall, however, due to the permanent loss of BMV soils, the ExA concludes that, in this regard, the Proposed Development attracts a minor negative weight in the planning balance.

### **Cumulative Assessment**

- 6.2.33. While undoubtedly the construction of the Proposed Development would, both cumulatively with other developments and in-combination with other schemes, cause some nuisance and disturbance on receptor points, they would be temporary only and limited to a specific time. We conclude that the Applicant has considered the cumulative and combined effects as required by the NPSNN.
- 6.2.34. Accordingly, we are satisfied that the Proposed Development would have no LSE either cumulatively with all topic matters, or with other known and planned projects. The Proposed Development would accord with all legislation and policy requirements and the ExA is satisfied that mitigation is adequately provided for and secured in the Recommended DCO. In this respect, the Proposed Development accords with NPSNN and attracts neutral weight in the planning balance.

### **Habitats Regulations Assessment**

- 6.2.35. By the close of the Examination, NE could not advise of no AEoI from air quality impacts for blanket bog as an Annex I feature of the North Pennine Moors SPA/SAC either alone or in-combination with other projects. This concerns Scheme 06 (Appleby to Brough). Both the Applicant and NE stated that discussions are ongoing and there is a high likelihood that these matters will be resolved and by the time the Secretary of State makes their decision, and that NE will be able to advise of no AEoI.
- 6.2.36. In this situation, and subject to the Secretary of State being satisfied that any mitigation agreed by those parties lies within the scope and assessment in the ES and is deemed to be acceptable, the ExA advises that the proposed development would have no new relevant or important HRA issues or concerns.
- 6.2.37. The section below discusses further the options available to the Secretary of State in the event that NE advises AEoI cannot be excluded.

### **6.3. ASSESSMENT AGAINST S104 OF THE PLANNING ACT 2008**

- 6.3.1. The ExA has been mindful of the legal framework within which the Secretary of State must decide this Application and has sought to explore and seek representations on the operation of s104 of the PA2008 and the planning balance.
- 6.3.2. S104(2) and s104(3) of the PA2008 require the Secretary of State to have regard to, and to decide the application in accordance with any NPS except to the extent that one or more of subsections (4) to (8) apply.
- 6.3.3. The ExA concludes that the NPSNN sets out the need for additional road infrastructure in general and that subject to the detailed policies and protections within it, and the legal constraints set out in the PA2008, there is a presumption in favour of granting development consent for national networks NSIPs that fall within the need for infrastructure established within the NPSNN.
- 6.3.4. The ExA concludes that the Proposed Development meets the need as established in the NPSNN and satisfies the tests of s104(2) and s104(3) of the PA2008 and accordingly should be determined as such.
- 6.3.5. S104(4), s104(5) and s104(6) of the PA2008 require the Secretary of State to have regard to, and to decide the application in accordance with any NPS and having regard to LIRs, unless the Proposed Development breaches any international obligation; any duty imposed on the Secretary of State by or under any enactment; or would be unlawful by any enactment.
- 6.3.6. Westmorland and Furness C, Durham CC and North Yorkshire C identified in their respective LIRs general support for the Proposed Development, with no major outstanding concerns by the close of the Examination. The ExA considers that identified outstanding matters for both Westmorland and Furness C and North Yorkshire C would be resolved through the detailed design process and the submission of EMP2, and Durham CC retain their preference for “the Blue Option” proposal for Scheme 08 (Cross Lanes to Rokeby).
- 6.3.7. As discussed in Section 5 of this Report in respect to HRA matters, the ExA is not in a position to advise of no AEoI on the North Pennine Moors SPA/SAC. However, as set out in their joint position statement submitted at D9, both the Applicant and NE are expected to reach an agreed position by the time this Report is submitted to the Secretary of State and that NE will be able to advise that AEoI can be ruled out. In this circumstance, there would be no conflict against s104(4), s104(5) or s104(6) of the PA2008 in this regard.
- 6.3.8. However, if NE advises the Secretary of State that AEoI to the North Pennine Moors SAC cannot be excluded, and no mitigation is offered or agreed, the Secretary of State may wish to consider the options available to them including consideration of the structure of the Order and the Regulations contained within the Conservation of Habitats and Species Regulations 2017 (as amended). Suggestions include:
- Withholding consent for the Application as a whole on the grounds that AEoI could not be ruled out;
  - Removal Scheme 06 from the Order and grant consent for the Proposed Development as it remains; or
  - Making the Order for the application as a whole, by engaging Regulation 64 of the Conservation of Habitats and Species Regulations 2017 (as amended) (CHSR 2017), which requires the Secretary of State to be satisfied that:



- There are no feasible alternative solutions to the plan and project which are less damaging;
  - There are Imperative Reasons of Overriding Public Interest (IROPI) for the plan or project to proceed; and;
  - Compensatory measures are secured to ensure that the overall coherence of the network of European sites is maintained.
- 6.3.9. Should the Secretary of State determine to engage the CHSR2017, they will need to be satisfied that in doing so, s104(4), s104(5) and s104(6) are not conflicted.
- 6.3.10. As discussed in Section 4 of this Report, both the CEPP and TAN consider that the Proposed Development would be in conflict against 104(4), s104(5) and s104(6) of the PA2008, because:
- There is a shortfall in emission reductions against the Paris Agreement.
  - That there is no evidence that the Secretary of State can have any legal certainty that approving the Proposed Development would not lead to the Secretary of State breaching a statutory duty.
  - That the Proposed Development would further contribute towards exceeding the 5<sup>th</sup> and 6<sup>th</sup> Carbon Budgets.
- 6.3.11. However, for the reasons we set out, the ExA advises the Secretary of State that the Proposed Development, taken by itself or in-combination with other road projects as set out in the RIS2, accords with the overall policy on transport, the Paris Agreement 2015 and the Climate Change Act 2008, and accordingly does not conflict with S104(4), s104(5) and s104(6) of the PA2008.
- 6.3.12. Compensatory measures are secured to ensure that the overall coherence of the network of European sites is maintained.
- 6.3.13. S104(7) of the PA2008 applies if the Secretary of State is satisfied that the adverse impact of the proposed development would outweigh its benefits. We have found that in most topic areas, the Proposed Development would have a neutral planning effect because any negative effect would be offset by adequate mitigation and is secured in the Recommended DCO.
- 6.3.14. For the reasons set out in Section 4 of this Report, the ExA has identified the following where negative weight is attached:
- Landscape character – moderate negative weight because of the alignment of the Proposed Development in open countryside, and from tree loss which could not be restored within the short- and medium-terms.
  - Heritage Assets – minor negative weight because of residual significant adverse effects in relation to heritage assets.
  - Carbon Emissions – limited negative weight because of the minor adverse effect identified but not considered significant to undermine the ability of the Government to meet its carbon reductions targets.
  - Geology and Soils - minor negative weight because of the permanent loss of BMV agricultural land.
- 6.3.15. Also set out in Section 4 of this Report, the ExA has identified the following where positive weight is attached:
- Need for the Proposed Development – significant positive weight consistent with the NPSNN as well as promoting economic benefits for the region.

- Traffic and Access – moderate positive weight for potentially delivering the transport objectives for the scheme taking account of some local access concerns.

- 6.3.16. In all other areas, the ExA has identified that measures proposed within the EMP and PDP to mitigate the effects of the Proposed Development, which are secured by Articles 53 and 54 of the Recommended DCO, are sufficient to have a neutral planning effect.
- 6.3.17. In applying the overall planning balance, the significant weight attached to the compelling need established by NPSNN, taken with the improvements to the road network are considered to be sufficient to outweigh the identified negative effects to landscape, heritage, carbon emissions and geology and soils taken cumulatively. Our conclusions on this balance would not change should negative weight be applied to air quality in the circumstance that NE advise the AEoI cannot be excluded.
- 6.3.18. The ExA concludes that, on the planning merits, the adverse effects do not outweigh the benefits of the development. Accordingly, s104(7) of the PA2008 does not apply. The ExA also considers s104(8) is not applicable. In conclusion therefore, the case for development consent is made out subject to resolution of the HRA issue concerning the North Pennine Moors SAC.

## 7. COMPULSORY ACQUISITION AND RELATED MATTERS

### 7.1. INTRODUCTION

- 7.1.1. This Section sets out the relevant legislative requirements relating to Compulsory Acquisition (CA) and Temporary Possession (TP), describes the request by the Applicant for CA and TP powers, explains the purposes for which land would be required, describes the examination of the CA and TP case and gives the Examining Authority's (ExA's) conclusions and recommendations.
- 7.1.2. As set out in Section 1 of this Report, on Saturday 1 April 2023, Cumbria County Council and Eden District Council were abolished, with their powers and functions, within the area of the Proposed Development, transferred to newly created Westmorland and Furness Council. Similarly, North Yorkshire County Council and Richmondshire District Council were abolished and replaced by North Yorkshire Council. Local government arrangements in Durham were unaffected.
- 7.1.3. The ExA requested [[PD-004](#)] Joint Engagement Statements from the four previous authorities to facilitate a smooth exchange of information given that the Examination was active during the transition period [Cumbria CC and Eden DC, [RR-123](#) and North Yorkshire CC and Richmondshire DC, [AS-052](#)]. Representations made by these previous authorities have been inherited by the replacement councils, and the replacement councils did not bring any materially different positions to the Examination.

### 7.2. LEGISLATIVE REQUIREMENTS

- 7.2.1. CA powers can only be granted if the conditions set out in s122 and s123 of the Planning Act 2008 (PA2008) are met. Section 122(2) requires that the land must be required for the development to which the development consent relates or is required to facilitate or is incidental to the development. In respect of land required for the development, the land to be taken must be no more than is reasonably required and proportionate, as set out in Department for Communities and Local Government Guidance (DCLG Guidance)<sup>50</sup>. A conclusion on this matter is reached later in this Section.
- 7.2.2. Section 122(3) requires that there must be a compelling case in the public interest, which means that the public benefit derived from the CA must outweigh the private loss that would be suffered by those whose land would be affected. In balancing public interest against private loss, CA must be justified in its own right. This does not mean, however, that the CA proposal can be considered in isolation from the wider consideration of the merits of the Proposed Development. There must be a need for the Proposed Development to be carried out and there must be consistency and coherency in the decision-making process. A conclusion on this matter is reached later in this Section.
- 7.2.3. Section 123 requires that one of three conditions must be met by the proposal<sup>51</sup>. The ExA is satisfied that the condition in s123(2) is met because the application for

---

<sup>50</sup> DCLG, 2015. *Guidance on Compulsory Purchase and the Cribchel Down Rules*.

<sup>51</sup> (1) An order granting development consent may include provision authorising the CA of land only if the Secretary of State is satisfied that one of the conditions in subsections (2)

the Development Consent Order (DCO) includes a request for CA of the land to be authorised.

7.2.4. Several general considerations also have to be addressed, either as a result of the CA Guidance<sup>52</sup>, CA Regulations<sup>53</sup> or in accordance with legal duties on decision-makers. These include that:

- all reasonable alternatives to CA must be explored<sup>54</sup>;
- the Applicant must have a clear idea of how it intends to use the land and demonstrate funds are available<sup>55</sup>;
- the decision-maker must be satisfied that the purposes stated for the acquisition are legitimate and sufficiently justify the inevitable interference with the human rights of those affected<sup>56</sup>.

### 7.3. THE REQUEST FOR CA AND TP POWERS

7.3.1. The Proposed Development comprises 8 schemes to improve the A66 between M6 Junction 40 at Penrith and A1(M) J53 at Scotch Corner. It would involve improving the junctions on the M6 and A1 as well as improving six separate single carriageway lengths of road to dual carriageway standard and making improvements to the junctions within each of those lengths.

7.3.2. The 8 schemes are identified as follows:

- Scheme 0102 – M6 Junction 40 to Kemplay Bank [[APP-011](#)]
- Scheme 03 – Penrith to Temple Sowerby [[REP7-006](#)]
- Scheme 0405 – Temple Sowerby to Appleby [[APP-013](#)]
- Scheme 06 – Appleby to Brough [[REP8-004](#)]
- Scheme 07 – Bowes Bypass [[REP7-005](#)]
- Scheme 08 – Cross Lanes to Rokeby [[APP-016](#)]
- Scheme 09 – Stephen Bank to Carkin Moor [[REP7-004](#)]
- Scheme 11 – A1(M) Junction 53 Scotch Corner [[APP-018](#)]

Note: there is no Scheme 10.

7.3.3. The DCO application seeks CA and TP powers in respect of certain land interests [[REP9-026](#), Section 4]. The land subject to the powers comprises approximately 900ha divided into some 2,000 plots. Of this:

- approximately 874ha is proposed to be acquired permanently;
- 2.6ha is proposed to be acquired as replacement land;
- 27ha is proposed for TP; and
- 0.6 ha is proposed for the permanent acquisition of rights.

---

to (4) is met.

(2) The condition is that the application for the order included a request for CA of the land to be authorised.

(3) The condition is that all persons with an interest in the land consent to the inclusion of the provision.

(4) The condition is that the prescribed procedure has been followed in relation to the land.

<sup>52</sup> DCLG, 2013. *Planning Act 2008 - Guidance related to the procedures for the compulsory acquisition of land.*

<sup>53</sup> Infrastructure Planning (Compulsory Acquisition) Regulations 2010.

<sup>54</sup> CA Guidance, para 8

<sup>55</sup> CA Guidance, para 9

<sup>56</sup> CA Guidance, para 9

- 7.3.4. To take advantage of final contractor input to detailed design, the consenting process is based on the preliminary design also called the reference design [[REP9-026](#), Section 3.5]. The Applicant therefore requires a degree of flexibility as to where certain elements of the Proposed Development can be constructed within defined LoD which are provided for in the draft DCO [[REP9-013](#), Article 7, [REP7-113](#), [REP7-110](#), [REP7-112](#), [REP7-114](#), [REP7-111](#), [APP-323](#), [REP7-115](#) and [APP-325](#)].
- 7.3.5. At this stage, all land within the Order limits is considered to be necessary for the Proposed Development. However, under draft DCO Article 19, should it transpire that any is not required, for instance as a result of the detailed design process, the Applicant could only seek to CA that part of the land required. In all events, the Applicant would seek to minimise the effects on land interests.
- 7.3.6. For example, land required for environmental mitigation is proposed for outright CA in the application [[REP7-105](#), [APP-305](#), [AS-014](#), [REP9-027](#), [REP8-063](#), [APP-309](#), [REP8-064](#) and [APP-311](#)]. The Applicant's preference however would be to acquire new rights or impose restrictive covenants through negotiations to enable the mitigation to be delivered and maintained on the land, without the landowner being deprived of land ownership [[REP5-023](#), page 12 and [REP4-011](#), CA 1.2]. If such rights and covenants can be put in place, CA powers would not be exercised.
- 7.3.7. If it was not possible to reach agreement on that basis, then the Applicant could acquire rights over the land by CA to deliver and maintain the mitigation or compulsorily acquire the land outright and grant rights to a third party to enable them to maintain the land. Alternatively, the outright CA of land for mitigation could have benefit as a contingency measure, to ensure that a landowner is not left in a position where the Applicant has acquired rights which then preclude the continued beneficial use of that land by its owner. In this scenario, outright acquisition of the land may be the preferred approach.
- 7.3.8. Similarly, land which is required for the installation or diversion of utilities or Statutory Undertakers' (SUs') apparatus is proposed for outright CA in the application. This would ensure that if the Applicant is required by the SU to grant rights to enable it to install, access and maintain apparatus, the Applicant would be able to grant such rights.
- 7.3.9. The outright CA approach would also apply where the Applicant may be required to grant a right of access for the benefit of land owned by a third party. If however the landowner's preference was to retain ownership of the land but grant the rights directly to the third party on the basis of terms agreed with the Applicant, then the Applicant would not exercise CA powers over the land in question.
- 7.3.10. From all of the above, the Land Plans present a worst case scenario. This approach is however necessary to provide sufficient flexibility to ensure that, in the absence of an agreed solution, the Applicant is able to grant the rights required by SUs or by persons needing rights of access and is still able to deliver the environmental mitigation.
- 7.3.11. A full description of the extent and existing nature of the land required by the Applicant for the construction, operation and maintenance of the Proposed Development is set out in the Statement of Reasons (SoR) [[REP9-026](#), Section 5.3].
- 7.3.12. At the commencement of the Examination, the application was accompanied by:
- a Statement of Reasons [[APP-299](#)];

- a Funding Statement [[APP-289](#)];
- a Book of Reference [[APP-290](#)], split into eight schemes [[APP-291](#) to [APP-298](#)];
- an Explanatory Memorandum [[APP-286](#)];
- Land Plans split into eight schemes [[APP-304](#) to [APP-311](#)];
- Crown Land Plans for the two relevant Schemes 06 and 07 [[APP-312](#) and [APP-313](#)]; and
- Special Category Land Plans for the four relevant Schemes 0102, 0405, 06 and 07 [[APP-314](#) to [APP-317](#)].

7.3.13. Details of the changes made to the CA and TP powers sought by the Applicant were tracked during the Examination process. This was done in the Application Document Tracker [[REP9-003](#)].

7.3.14. The Applicant made 24 Change Requests during the Examination [[CR1-001](#) to [CR1-018](#)] and 22 of these were accepted into the Examination by the ExA [[PD-014](#)]. None of the accepted changes engaged the CA Regulations as the relevant consents from APs were provided with the Change Requests [[CR1-006](#)].

7.3.15. The final Examination versions of the following documents are:

- a Statement of Reasons [[REP9-026](#)];
- a Funding Statement [[APP-289](#)];
- a Book of Reference split into eight schemes:
  - Scheme 0102 [[REP8-033](#)];
  - Scheme 03 [[REP8-036](#)];
  - Scheme 0405 [[REP8-039](#)];
  - Scheme 06 [[REP9-005](#)];
  - Scheme 07 [[REP8-046](#)];
  - Scheme 08 [[REP8-048](#)];
  - Scheme 09 [[REP8-053](#)]; and
  - Scheme 11 [[REP8-054](#)].
- an Explanatory Memorandum [[REP9-016](#)];
- Land Plans split into eight schemes:
  - Scheme 0102 [[REP7-105](#)];
  - Scheme 03 [[APP-305](#)];
  - Scheme 0405 [[AS-014](#)];
  - Scheme 06 [[REP9-027](#)];
  - Scheme 07 [[REP8-063](#)];
  - Scheme 08 [[APP-309](#)];
  - Scheme 09 [[REP8-064](#)]; and
  - Scheme 11 [[APP-311](#)].
- Crown Land Plans for the two relevant schemes:
  - Scheme 06 [[REP9-028](#)]; and
  - Scheme 07 [[APP-313](#)]
- Special Category Land Plans for the four relevant schemes;
  - Scheme 0102 [[REP7-109](#)];
  - Scheme 0405 [[APP-315](#)];
  - Scheme 06 [[REP7-108](#)]; and
  - Scheme 07 [[APP-317](#)].



- 7.3.16. The Book of Reference (BoR), Land Plans, Crown Land Plans and Special Category Land Plans are secured in Article 49 of the draft DCO.
- 7.3.17. The details of the CA powers sought, including interference with third party rights, together with the TP powers and other compulsory powers sought are set out in Parts 2, 3 and 5 of the draft DCO. These powers include:
- Article 19 which allows the undertaker to acquire land outright as described in the BoR that is required for to construct the permanent works and other elements as described in relation to each plot of land in the Compulsory Acquisition and Temporary Possession Schedule [\[REP8-059\]](#).
  - Article 22 which allows the undertaker to acquire rights and restrictive covenants over land described in the BoR to give flexibility in approach and possible reductions in the impact on land interests. These rights are necessary for the purposes of constructing and maintaining the works.
  - Article 23 which provides for the extinguishment of private rights over land from the earlier of the date of acquisition of the land or the date on which the undertaker enters the land. Where new rights are being compulsorily acquired or restrictive covenants are being imposed, any existing private rights or restrictive covenants may be extinguished to the extent that those private rights or restrictive covenants would be inconsistent with the new rights acquired or restrictive covenants imposed. All private rights over land of which TP is taken would be suspended and unenforceable for the period of possession. Any person who suffers loss by extinguishment or suspension would be able to claim compensation.
  - Article 27 which provides that, where the undertaker has powers of CA under Article 19, it may choose to acquire only the subsoil underneath, or airspace over the land. This power is included for flexibility to minimise costs and/ or impact on land interests.
- 7.3.18. The powers sought in relation to the TP of land do not constitute CA and are provided for in separate articles in the draft DCO within Part 3. These powers include:
- Article 29 which allows two categories of land to be temporarily possessed to carry out the authorised development. The first of these is the land specified in columns (1) and (2) of Schedule 6 of the draft DCO for the purposes stated. The second of these is any other Order land where no notice of entry or general vesting declaration has been served. This would enable the undertaker to compulsorily acquire the minimum amount of land where TP could be used in certain areas to construct the Proposed Development. In addition, compensation would be payable to the owners and occupiers of land who suffer loss or damage arising from the exercise of TP.
  - Article 30 which provides for the TP of any land within the Order limits for maintaining the Proposed Development. This power ceases to apply at the end of the maintenance period which is five years from the date on which that part of the Proposed Development is first open for use. The possession of the land under this Article is also restricted for so long as may reasonably be necessary to carry out the maintenance. This would enable the undertaker to compulsorily acquire the minimum amount of land where TP could be used in certain areas to maintain the Proposed Development. Again, compensation would be payable.
- 7.3.19. The draft DCO would give the following additional powers to the undertaker that could interfere with property rights and private interests:
- Article 14 – Protective works to buildings;

- Article 15 – Authority to survey and investigate land; and
- Article 17 – Felling or lopping of trees and hedgerows.

7.3.20. The Explanatory Memorandum [[REP9-016](#)] sets out in more detail the above draft DCO articles together with those that relate to other compulsory powers sought.

## 7.4. THE PURPOSES FOR WHICH LAND IS REQUIRED

7.4.1. The SoR and the Compulsory Acquisition and Temporary Possession Schedule indicate that the Applicant's purpose for seeking CA powers is to secure the land and rights required to construct, operate, maintain and mitigate the Proposed Development [[REP9-026](#), Section 6.3 and [REP8-059](#)]. The powers sought primarily relate to the CA of land and rights over land together with the TP of land. The BoR sets out in detail four classes under which land or rights may be acquired permanently or land possessed temporarily [[REP8-033](#), Section 2.1 for example]. These are identified by the colour of the plot on the Land Plans [[REP7-105](#) for example] and by the wording used in the BoR plot description shown in the bullet points below. They are as follows:

- Pink plots – land to be acquired on an outright and permanent basis under Article 19 'Permanent Acquisition';
- Grey plots – land to be acquired on an outright and permanent basis under Article 19 'Permanent Acquisition' to provide replacement land for special category land;
- Blue plots – new rights to be created and acquired under Article 22 'Permanent acquisition of new rights'; and
- Green plots – land to be temporarily possessed and used under Articles 29 and 30 'Temporary Possession'.

### Crown Land

7.4.2. The Applicant seeks the CA of interests in Crown land, other than the interests of the Crown [[REP9-026](#), Section 8.1 and [REP8-074](#), Section 9.9]. Section 135 of the PA2008 confirms that a DCO 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.

7.4.3. The BoR [[REP9-005](#), Part 4 and [REP8-046](#), Part 4] and the Crown Land Plans [[REP9-028](#) and [APP-313](#)] identify the relevant plots. The Crown land on Scheme 06 is owned by the Secretary of State for Defence and is occupied and used by the Ministry of Defence (MoD) [[RR-228](#)]. The Defence Infrastructure Organisation (DIO) is part of and represents the MoD.

7.4.4. In the application, the Crown land on Scheme 07 is owned by the Public Trustee. The Office of the Public Trustee is an associated office of the Ministry of Justice (MoJ) [[REP9-037](#), Section 7]. The Public Trustee however does not accept that the land it owns is Crown land for the purposes of the PA 2008 [[REP9-037](#), Section 6]. The Applicant has however applied a precautionary approach and sought Crown authority consent in respect of the Public Trustee land [[REP9-037](#), Section 9].

### Special Category Land

7.4.5. Sections 131 and 132 of the PA2008 say that an Order granting development consent that authorises the CA of common land or open space or rights over such

land would be subject to special parliamentary procedure unless the Secretary of State is satisfied that one of the corresponding subsections applies.

- 7.4.6. The Applicant is seeking CA powers over special category land and rights over such land, more specifically classed as common land and open space, on Scheme 0102, 0405, 06, and 07 and considers that s131 and s132 of the PA2008 are engaged [[REP9-026](#), Section 8.2]. The BoRs describe the types of open space [[REP8-033](#), [REP8-039](#), [REP9-005](#) and [REP8-046](#)] in Part 5. The relevant plots of land are included in the BoR and on the Land Plans [[REP7-109](#), [APP-315](#), [REP7-108](#) and [APP-317](#)].

### **Replacement land for Brough Hill Fair**

- 7.4.7. The site of the Brough Hill Fair, held annually and attended by the Gypsy and Traveller Community, would be required for the Proposed Development. Whilst the site is not Special Category land, the Applicant proposes to provide replacement land for the Fair.

### **Statutory Undertakers**

- 7.4.8. If an SU makes a representation about the CA of land or a right over land which has been acquired for the purpose of its undertaking, and this is not withdrawn, s127 of the PA2008 applies. In these circumstances, the DCO can only include a provision authorising the CA of that land or right if the Secretary of State is satisfied that the land or right can be purchased without serious detriment to the carrying on of the undertaking, or that any such detriment can be made good by use of alternative land.
- 7.4.9. Section 138 of the PA2008 applies where an SU has a relevant right or relevant apparatus in land over which CA is sought. In those circumstances, the DCO can only authorise the extinguishment of the right or removal of the apparatus if the Secretary of State is satisfied that this is necessary for the purpose of carrying out the development to which the Order relates.
- 7.4.10. The land affected by the Proposed Development includes interests owned by several SUs [[REP9-026](#), Table 12]. The Applicant has had negotiations with each of these SUs [[REP9-031](#)]. Several SUs also have a right to keep equipment on, in or over the Order land [[REP9-026](#), Table 13]
- 7.4.11. Representations made under s127 of the PA2008 that were not withdrawn during the Examination were made by the following SUs:
- EA
  - Network Rail Infrastructure Limited
  - United Utilities Water Limited

## **7.5. EXAMINATION OF THE CASE FOR CA AND TP POWERS**

- 7.5.1. Prior to the Preliminary Meeting (PM), the ExA carried out a USI [[EV-001](#)] and noted the RRs that were submitted by APs. The ExA held CAH1 between the PM and D1. The primary purpose of CAH1 was to clarify matters relating to CA within the application. The ExA issued an agenda and a supplementary agenda for CAH1 [[PD-006](#), Annex F and [EV-005](#)]. At CAH1, the ExA pursued several matters with the Applicant and some APs who wished to speak, as set out on the agendas and APs' RRs. Post hearing submissions, including written submissions of oral cases, were submitted by the Applicant [[REP1-007](#)] and some APs [[REP1-029](#) for example].

- 7.5.2. The ExA raised first written questions (WQ) [PD-011] between D3 and D4 including questions in relation to CA, TP and other land and rights considerations. The Applicant and APs provided responses to these questions at D4 and D5 [REP4-011, REP4-058 and REP5-067 for example].
- 7.5.3. The ExA undertook a further USI [EV-054] and held an Accompanied Site Inspection (ASI) between D4 and D5 at which the Applicant and various APs who wished to attend were present [EV-035 and EV-055].
- 7.5.4. The ExA held a further CAH (CAH2) between the ASI and D5. The primary purpose was to receive representations from APs who wished to be heard. The ExA issued an agenda and a supplementary agenda for CAH2 [EV-036 and EV-038]. At CAH2, the ExA pursued several matters with the Applicant and the APs who wished to speak, as set out on the agendas and APs' WRs. Post hearing submissions, including written submissions of oral case, were submitted by the Applicant [REP5-023] and APs, which are referred to individually below where relevant.
- 7.5.5. The Applicant submitted requests to make 24 changes to the application after CAH2 at D6 [CR1-001]. Four of these changes included Additional Land under the CA Regulations [CR1-002, Section 6.1]. The Change Requests included evidence of consent from persons with an interest in the Additional Land [CR1-006]. The ExA accepted 22 of these changes into the Examination, including those four which contained Additional Land [PD-014]. In accepting change DC-21, which contained Additional Land, the ExA sought clarification on the exclusion of relevant CA elements of the draft DCO [PD-014, Annex A]. The Applicant's clarification included powers of TP only over an area of Additional Land [REP7-159, CA 3.1]. Representations from APs and Interested Parties (IPs), in relation to the Additional Land sought, were made at D7 [REP7-203 for example].
- 7.5.6. The Applicant generally responded to all previous submissions at the following deadline [REP8-075 for example] with a final response at D9 [REP9-032] and a final Examination draft DCO [REP9-013]. The Examination was closed as timetabled on 29 May 2023 [PD-017].

## 7.6. THE APPLICANT'S CASE

### Introduction

- 7.6.1. In seeking CA and TP powers in the draft DCO [REP9-013], the Applicant explains that it has had regard to s122 of the PA2008 Act and to the tests in the CA Guidance [REP9-026, Section 6.2 and REP8-074, Section 9.1]. The Applicant's Closing Submissions provide a useful summary of its position towards the end of the Examination [REP8-074].

### Need for CA Powers

- 7.6.2. The Applicant is clear that the land which would be subject to CA powers is either needed for the Proposed Development, is needed to facilitate the Proposed Development, is incidental to the Proposed Development or is replacement land [REP8-074, Section 9.2].
- 7.6.3. In the Compulsory Acquisition and Temporary Possession Schedule [REP8-059], the Applicant sets out why compulsory powers are necessary for each parcel of the land. The proposed use of this land and the benefits this would bring to the Proposed Development are set out in the SoR [REP9-026, Section 2.1].

- 7.6.4. The Applicant considers that the land included in the draft DCO is the minimum land-take required to construct, operate, maintain and mitigate the Proposed Development. The land is necessary to achieve its objectives, noting that detailed design has yet to take place. In the event that less land proves to be required following the detailed design, the Applicant would only seek to acquire that part of the land that is required.
- 7.6.5. The CA powers are also required to override any existing rights and interests in the land as well as to grant the right to take TP of land for construction and maintenance purposes. Again, without these rights over the land, the Proposed Development cannot be delivered.
- 7.6.6. The Applicant is of the firm view that the 'reference' design is sufficiently advanced to apply for CA powers and that there has been sufficient engagement with APs [[REP1-007](#) and [REP5-023](#)].
- 7.6.7. The Applicant is therefore satisfied that the land which would be taken is reasonable and proportionate and that the condition in s122(2) of the PA2008 Act is met.

### **Justification for the Use of Powers of CA**

- 7.6.8. The Applicant has summarised the need case for and the benefits of the Proposed Development in the SoR [[REP9-026](#), Section 3.2 and 3.3] and these are set out in detail in other application documents [[APP-008](#), Section 3, 4, 5 and 6, [REP5-024](#), Agenda Item 3.2, [REP1-007](#), [REP5-023](#), [REP4-011](#), [REP6-020](#) and [REP8-074](#), Section 9.2]. In particular, the National Policy Statement for National Networks (NPSNN)<sup>57</sup> identifies a 'critical need' to improve the national networks to address road congestion and provide a network that is capable of stimulating and supporting economic growth, and the strategic objectives of the Proposed Development are aligned with the NPSNN [[APP-008](#), Section 7 and [APP-242](#)].
- 7.6.9. The Applicant is therefore satisfied that the condition set out in section 122(3) of the 2008 Act is met and that there is a compelling case in the public interest for CA powers sought.

### **Consideration of Alternatives**

- 7.6.10. The consideration of alternatives has already been covered in detail earlier in this report. The Applicant has explored alternative route options prior to the original application for the Proposed Development, and this took into account various factors, including views of persons with a land interest. [[REP9-026](#), Section 6.5, [APP-252](#), Section 2 and 3, [APP-046](#) and [APP-008](#), Section 2]. The Applicant has also considered alternatives and modifications to the Proposed Development to minimise the potential land take right up to the application and during the Examination [[APP-244](#), Section 5, [REP1-007](#), Agenda item 2.3 and [REP8-074](#) Section 9.4].
- 7.6.11. Twenty two changes were made to the application, after consultation, during the Examination [[PD-014](#)]. The Applicant reports that these resulted from: requests from APs; stakeholder feedback; and the procurement of Delivery Integration Partners who would be responsible for the detailed design and construction stages of the Proposed Development [[CR1-002](#), Section 1.4].

---

<sup>57</sup> NPSNN, para 2.2



- 7.6.12. In terms of alternatives to the CA powers sought and concerns regarding land-take for environmental mitigation, the Applicant submits that all of the land identified for environmental mitigation is required to mitigate the adverse environmental effects of the Proposed Development [[REP4-011](#), CA 1.2 and [REP5-023](#), page 12]. None of this land-take is required solely for Biodiversity Net Gain (BNG), although the Applicant has sought to maximise such opportunities in accordance with the NPSNN<sup>58</sup>. Examples include providing habitat linkages to tie into existing green infrastructure and locating the mitigation as close as possible to the identified impact. The design of the environmental mitigation is indicative and would be refined alongside the Proposed Development's detailed design. If, following detailed design, the Applicant no longer requires the land or could achieve its purposes by exercising a lesser power, it would do so. However, the Applicant seeks CA powers to ensure that the Proposed Development can deliver the mitigation that has been assessed as being required.
- 7.6.13. The Applicant has considered, and incorporated, many alternatives in terms of the Proposed Development and impacts on land interests. None of the alternatives or modifications considered for the Proposed Development but not subsequently incorporated would obviate the need for the CA and TP powers sought [[REP9-026](#), Section 6.5].
- 7.6.14. The Applicant has also had discussions with land interests to acquire the land needed by agreement [[REP9-026](#), Section 5.9 and [REP9-029](#)], including incentivising early acquisition through its Acquisition Completion Premium (ACP) [[REP8-074](#), para 9.4.6]. The ACP offers APs a 20% premium on the market value of the land for early completions and enables parts of landholdings to be purchased outright and others to be subject to an option arrangement. Furthermore, the CA Guidance<sup>59</sup> recognises that on linear schemes where there are multiple APs, negotiations are likely to proceed in parallel with the DCO process. The Applicant is satisfied that CA and TP powers are required to deliver the Proposed Development in a reasonable timescale and in the event that it does not prove possible to acquire all of the land by agreement.

## Funding

- 7.6.15. The Applicant reports that the Proposed Development has a most-likely estimate of £1,490 million which includes an allowance for CA and TP compensation payments [[APP-289](#), Section 2 and [REP8-074](#), Section 9.7]. There is no separate estimate within this Statement for the allowance which is included in the Proposed Development estimate for compensation payments. This is because the Applicant considers that the provision of the estimate for compensation payments within this Statement may prejudice ongoing negotiations by agreement with land interests.
- 7.6.16. The Applicant is of the view that commitments from the Government and the Applicant demonstrate that the Proposed Development would be fully funded by the Department for Transport (DfT) [[APP-289](#), Section 3]. The Applicant also notes the 9 March 2023 Ministerial Statement which states that Road Investment Strategy 2 schemes, which includes the Proposed Development [[APP-289](#), Appendix E], would continue to progress. The Applicant is therefore content that there is a reasonable prospect of the necessary funds for acquisition and payment of compensation being available [[REP9-026](#), Section 6.5].

---

<sup>58</sup> NPSNN, para 5.33

<sup>59</sup> CA Guidance, para 25



## Human Rights

- 7.6.17. The Applicant has sought to avoid or minimise impacts on residential properties, but residential properties would be affected by the CA powers sought [[REP9-026](#), Section 7.1, [REP5-023](#), Agenda Item 3.1 and [REP8-074](#), Section 9.5]. The Applicant has sought to acquire properties which would be severely affected, and various properties are subject to blight notice purchases and discretionary purchases [[REP5-023](#), Agenda Item 3.1].
- 7.6.18. The Applicant considers that the private loss that could be suffered by the owners of affected properties is outweighed by the substantial public benefits [[REP9-026](#), Section 3.3 and [APP-008](#)]. It is therefore of the view that the use of the CA powers sought to acquire residential properties would be proportionate, lawful, justified and in the public interest.
- 7.6.19. The Applicant notes that any person affected by CA or TP may be entitled to compensation provided for by the existing compensation code and the draft DCO. Any dispute in respect of compensation payable could be referred to the Upper Tribunal (Lands Chamber) [[REP9-026](#), Section 7.4].
- 7.6.20. The Applicant is of the opinion that the compelling case in the public interest for the CA powers has been demonstrated in relation to the European Convention on Human Rights (ECHR) – Article 1 of The First Protocol and Article 8, [[REP9-026](#), Section 6.2 and [APP-008](#)]. The land over which CA powers are sought is the minimum necessary to ensure the delivery of the Proposed Development, and it has been designed to minimise harm whilst achieving its publicly stated objectives. The interference with human rights is therefore proportionate and justified.
- 7.6.21. In relation to Article 6 of the ECHR, the Applicant is content that proper procedures have been followed for consultation on and determination of the CA powers sought. The Applicant has given persons with an interest in the land a full opportunity to comment on the proposals and has endeavoured to engage with land interests. The Applicant has also had regard to land interest feedback in iterative design changes [[APP-252](#)] and the changes made to application and accepted into the Examination [[CR1-001](#)]. Furthermore, if the DCO is made, it may be challenged by judicial review in the High Court.
- 7.6.22. The Applicant also states that it has complied with its duties under s149 of the Equality Act 2010, including an ongoing assessment [[REP9-026](#), Section 7.5, [APP-243](#) and [REP8-074](#), Section 4.6, 7 and 9.6]. The ExA's view on the HR implications are set out below.

## Special Considerations

### Crown Land

- 7.6.23. The Applicant has agreed a SoCG with the DIO [[REP6-019](#)], and all identified issues are agreed with no issues under discussion or not agreed. The MoD has granted Crown authority consent to the inclusion of the MoD Crown land in the Recommended DCO and to CA in respect of all interests in and rights over the MoD Crown land, other than those held by the Secretary of State for Defence [[REP9-035](#)].
- 7.6.24. The Applicant has agreed terms for the purchase of the Public Trustee land with the Public Trustee [[REP9-037](#), Section 8]. An application for a Court Order, necessary

to authorise the sale of the land, is expected to be submitted to the Court after the close of the Examination.

- 7.6.25. The Applicant advises that the Public Trustee does not accept that the land it owns is Crown land for the purposes of the PA 2008 and is not willing to provide any Crown authority consent [[REP9-037](#), Section 6]. The Applicant considers it reasonable to assume that it would be able to acquire the Public Trustee land by agreement and that, if the land was found to be Crown land, it would still be necessary for the Applicant to acquire the land by agreement. The Applicant is also of the view that there are no known third party non-Crown interests in the Public Trustee land which the Applicant would need to acquire compulsorily, so the requirement for Crown authority consent therefore becomes academic [[REP9-037](#), Section 9]. Whilst the Applicant is prepared to accept the view on Crown land put forward by the Public Trustee at the end of the Examination, it has retained the identification of Public Trustee land as Crown land in the application documents.

### **Special Category Land**

- 7.6.26. The Applicant seeks powers of CA for replacement land to be given in exchange for Special Category land under s131 of the PA2008. The basis on which replacement land is required or not has been set out in detail [[REP9-026](#), Section 8.2, [REP8-074](#), Section 9.3, [REP1-007](#), Agenda Item 5.1 and [REP5-023](#)]. The Applicant is satisfied that the condition in s122(2) is met.

### **Replacement Land for Brough Hill Fair**

- 7.6.27. The Applicant has carried out a full appraisal of reasonable alternatives for the Proposed Development as a whole and concluded that all the alternatives assessed, due to the road alignment, would result in a loss of the current Brough Hill Fair site [[APP-243](#), [REP5-029](#), Agenda Item 10, [REP7-156](#) and [REP8-074](#), Section 4.6]. The Proposed Development would include a replacement for the Fair site.

### **Statutory Undertaker Land**

- 7.6.28. The Applicant has had engagement with SUs and operators of electronic communications code networks [[REP9-031](#) and [REP8-074](#), Section 9.8].
- 7.6.29. The Applicant is of the view that the protective provisions in the draft DCO [[REP9-013](#), Schedule 9] ensure that no SU with an objection that has not been withdrawn would suffer a material detriment as a result of the CA of interests in and rights over land.

### **Other Consents**

- 7.6.30. Most of the consents and all the powers required for the Proposed Development have been included, or addressed, within the draft DCO [[APP-287](#), Section 3]. Some discussions between the Applicant and the consenting bodies are however ongoing. The Applicant is confident that the necessary agreements relating to consents would be obtained during the Examination in exchange for the Applicant including in the DCO appropriate protective provisions.
- 7.6.31. Some permits, consents and agreements may need to be sought separately from the DCO [[APP-287](#), Appendix A]. These consents are largely dependent on the finalisation of design and construction details which are not sufficiently developed at this stage and these consents therefore cannot be included within the DCO. From the discussions with the consenting bodies, the Applicant is not aware of any good

reason to believe that any relevant necessary operational pollution control permits, licences or other consents would not subsequently be granted. This accords with the NPSNN<sup>60</sup>. The Applicant also considers that there is no impediment to the implementation of the Proposed Development arising from any other regulatory requirement [[REP8-074](#), Section 9.7].

### **Applicant's Conclusion**

- 7.6.32. The Applicant is satisfied that the conditions in s122 of the 2008 Act are met and that the tests in the CA Guidance are satisfied. All of the land which would be subject to CA and TP powers is necessary to construct, operate, maintain, mitigate and achieve the objectives of the Proposed Development. The extent of the land sought is reasonable and proportionate.
- 7.6.33. There is a compelling case in the public interest to include the CA powers sought in the draft DCO. The CA powers sought are necessary and proportionate to the extent that interference with private land and rights would be required. In the absence of compulsory powers, the Applicant considers that it would not be possible to proceed with the Proposed Development, and its benefits would not be realised.
- 7.6.34. In addition, the Applicant:
- has considered alternatives to CA, but no alternative would deliver the public benefits of the Proposed Development and avoid the requirement for the CA powers sought;
  - has sought to acquire the land it requires for the Proposed Development by negotiation;
  - considers that the protective provisions included in the draft DCO ensure that no SU would suffer a material detriment to their undertaking;
  - considers there to be no reason why, following agreement of a SoCG and the receipt of Crown authority consent, MoD Crown land would not be made available for the Proposed Development;
  - considers there to be no reason why, following agreement of terms for the purchase of the Public Trustee land and the absence of known third party non-Crown interests, Public Trustee land would not be made available for the Proposed Development; and
  - has provided replacement land for special category land through the draft DCO and, where replacement land is not required, has explained why this is the case.
- 7.6.35. For the reasons set out above, the Applicant considers that the provisions in respect of CA and other land use powers are fully justified and the Order should be granted in the terms sought.

## **7.7. OBJECTIONS AND THE APPLICANT'S AND EXAMINING AUTHORITY'S RESPONSES**

### **Introduction**

- 7.7.1. This part of the Section considers representations made by APs and SUs under s127 and s138 of the PA2008, including all representations made at CAHs and Open Floor Hearings. The ExA has only identified the points considered to be

---

<sup>60</sup> NPSNN, para 4.56.

important and relevant when reporting on the representations and the Applicant's responses.

- 7.7.2. The ExA's considerations on each of the individual objections made in relation to specific plots and the rights and powers sought are addressed, and each consideration then goes forward to inform the finding on the general case in respect of all plots.
- 7.7.3. The ExA has considered all the objections received and many of the issues raised by objectors have also been considered in earlier parts of this report when considering the planning issues arising in relation to the Proposed Development. The objections are considered here in the context of the application for the grant of CA and TP powers. Other objections have also been received from APs listed in the BoR. However, these other objections refer to concerns not directly related to CA or TP and are not reported below.
- 7.7.4. The ExA examined CA objections against the tests set out in s122 and s123 of the PA2008, having regard to the CA Guidance. The ExA also considered objections to the application for powers of TP under Articles 29 and 30 of the draft DCO and by those who may be able to make a claim under s10 of the Compulsory Purchase Act 1965 or Part I of the Land Compensation Act 1973. Similarly, the ExA had regard to the Human Rights Act 1998 and the Equality Act 2010 in considering the application for the grant of CA and TP powers.
- 7.7.5. In considering these objections, the ExA took into account the CA Status of Negotiations Schedule provided by the Applicant at the end of the Examination [\[REP9-029\]](#). This identifies the Relevant and Written Representation objections made and the plots concerned [\[REP8-059\]](#). The Applicant's responses are set out in the Applicant's Response to RRs [\[PDL-010, PDL-011, PDL-012, PDL-013 and PDL-013.1\]](#) and Applicant's Response to WRs made by APs [\[REP2-015\]](#). The Applicant's responses to the objectors' further representations are identified in the Applicant's submissions to the Examination at the following Deadline [\[REP4-014, REP5-030, REP6-021, REP7-160, REP8-075, REP9-032\]](#).

### **Affected Persons Within a Group with Shared Issues**

- 7.7.6. Some APs are represented by others and, where this is the case, the representor is identified under the particular objector. Many of the concerns of the APs represented by others are shared, and these shared issues are considered as follows:

#### **Affected Persons Represented by George F White**

##### *Representation*

- 7.7.7. In terms of adequacy of consultation and information, the representations assert that the Applicant has failed to provide sufficient information on the proposals and position statements despite repeated requests [\[REP1-072\]](#) for example]. This has also been raised by many other APs, including local authorities. They go on to assert that the Applicant has therefore failed in its duty to engage and provide adequate detail. From the lack of detail or explanation, it is also unclear whether the Applicant does in fact require all the permanent and temporary land and rights sought. The burden falls on the Applicant to prove that it is entirely necessary to acquire the rights sought, and this has not been demonstrated. The Applicant is also duty bound to engage with APs and negotiate, but no meaningful negotiation has been carried out.

- 7.7.8. The areas for ecological mitigation have been arbitrarily identified without reference to the nature or quality of the land in question [[REP1-074](#) for example]. Large areas of the best agricultural land in the local area have been identified for ecological mitigation with a significant amount of land allocated for species rich grassland which should be relocated.
- 7.7.9. As with the ecological mitigation areas, the Applicant has not considered the relative qualities of agricultural land, or the impact on continuing agricultural businesses when alighting upon the locations for ponds, compounds and soil storage [[REP1-074](#) for example].
- 7.7.10. Section 15 paragraph 174 (a) to (b) of the National Planning Policy Framework (NPPF) stipulates that planning and policy decisions should protect the best and most versatile agricultural land and preserve soil quality. The Application is therefore substantially flawed in failing to properly consider or allocate the environmental mitigation areas and locations for ponds, compounds and soil storage [[REP1-074](#) for example].
- 7.7.11. The representations also consider that the Applicant has failed to provide details as to how it would ensure that land drainage is protected during and after the construction period [[REP1-072](#) for example]. Furthermore, the Applicant has not confirmed that no new liabilities, in respect of new infrastructure, embankments, roads, bridges or ponds, would be imposed on the APs. The Proposed Development would also include numerous areas of land which would not be actively managed. This would invite unauthorised occupation and anti-social behaviour which would impact on the APs and could be avoided by more careful and economical design.
- 7.7.12. The Applicant is not promoting the most appropriate design for the Proposed Development and has not considered the substantial compensation that would result from this design choice [[REP1-074](#) for example]. The Applicant therefore cannot demonstrate that there is sufficient funding available and fails in its fiduciary duty to ensure best value from public funds. Considering the scale of the impact on AP's, the local area and the community, the cost of the Proposed Development could be drastically minimised by moving the route in various places.

*Applicant's response*

- 7.7.13. In terms of adequacy of consultation and information, the Applicant has met with landowners and their agents throughout the preliminary design stage and understands the issues raised in representations [[PDL-012](#), Page 98 onwards and [REP2-015](#), page 34 onwards]. Letters inviting negotiations have been issued as recorded in the Schedule of Negotiations [[REP9-029](#)].
- 7.7.14. On the justification for the CA powers sought, temporary land occupation and the extent of those needs, the draft DCO [[REP9-013](#)] allows the CA of land to be 'rolled back' to land which is proposed to be subject only to the CA of new rights, so that the acquisition of rights can take place as an alternative to the acquisition of land. Furthermore, CA powers can be downgraded to the TP powers, if the Proposed Development can be delivered through the lesser power. CA also remains a last resort, where acquisition by agreement is the preference. With detailed design still to be done, the Land Plans therefore inevitably represent the worst-case scenario.
- 7.7.15. The Proposed Development involves more than a single stage CA process. It is currently at a preliminary design stage [[REP5-023](#), page 25]. Contractors are

appointed and detailed design is underway, but this will not be concluded by the time a decision on the DCO is made. Currently, the Applicant needs to demonstrate that the extent of land over which CA and TP powers are necessary, justified and proportionate, and that there is a compelling case in the public interest, taking into account the stage that the Proposed Development has reached.

- 7.7.16. The draft DCO then imposes a second stage to the application of these tests, in that the power of CA only applies to so much of the Order land as is required for the authorised development or required to facilitate it. Similarly, in relation to TP powers, they can only be used in relation to the construction of the Proposed Development. The Applicant must therefore comply with the second stage of the 'test' before exercising any powers in respect of land and demonstrate that the land in question is required at the detailed design stage to realise the Proposed Development. This approach is necessary because flexibility is needed to accommodate the sequence of developing a preliminary design, applying for consent, and then developing a detailed design [REP2-015, page 30]. As such, the Applicant is not proposing anything unusual in the context of a complex highways scheme. This approach has been reflected in other DCOs such as the A14 Cambridge to Huntingdon Improvement Scheme DCO 2017 and the A417 Missing Link Development Consent Order 2022.
- 7.7.17. Ecological mitigation [REP7-011] on prime agricultural areas has been reduced by as much as possible taking into account the agricultural assessment [REP3-027]. The remaining mitigation is in place where essential ecological or landscape mitigation is considered unavoidable in terms of required mitigation [APP-049 and APP-053]. Across the Proposed Development, a greater amount of Grade 3b, 4 and 5 poorer quality land would be lost compared to Grade 1-3a. The Applicant has therefore sought to use areas of poorer quality land where this has been possible [APP-052, Table 9.2 and Section 9.10 and REP2-015, page 33]. As part of the assessment process, agricultural landowners were consulted in order to understand how their businesses operated and what the effect upon them would likely be. This has been factored into the assessment of LSE [APP-056, para 13.10.21]. The Environmental Management Plan (EMP) includes commitments to minimise impacts to farm businesses, including field drainage, during construction [REP8-005, MW-PH-02 and D-RDWE-11 and PDL-012, page 134 and 151]. Furthermore, the proposed species rich grassland would be a potential reptile receptor and is essential mitigation to replace the ratio of certain grassland habitats [APP-242, para 2.5.2 and REP2-015, page 46].
- 7.7.18. NPSNN<sup>61</sup> is the primary policy document that applies to the Proposed Development. The ExA considers that the Proposed Development would comply with it by taking into consideration the economic and other benefits of the best and most versatile agricultural land [APP-242, page 192 and para 2.6.2].
- 7.7.19. Ponds have been designed to store the additional run-off produced by the Proposed Development and restrict the peak flows to existing green field run off rates. Design development of the ponds would continue in the detailed design stage in consultation with the drainage authorities and land interests [REP2-015, page 36]. The current drainage strategy [APP-221] would provide separate drainage ponds for trunk and local roads with pond outfalls into the nearest available watercourse [PDL-012, page 103].

---

<sup>61</sup> NPSNN, para 5.168.



- 7.7.20. Construction compound locations and indicative construction areas have been identified [[APP-045](#) and [APP-063](#), figure 2.3]. The provision and size of soil storage areas is based on an assumed approach to construction and would be subject to change during detailed design [[REP2-015](#), page 46 and 53]. Soil storage areas would be proposed in areas of large cut and fill volumes or key structures. The Applicant would continue to engage with landowners as the proposals are developed. The EMP [[REP8-005](#)] incorporates construction phase management.
- 7.7.21. The responsibility for the ongoing maintenance of infrastructure provided within the Proposed Development would be discussed with each landowner and would be subject to management agreements and third-party access rights [[REP2-015](#), page 36]. Maintenance of the public roads, road cuttings and embankments, bridges, ponds and highway drainage ditches would be the responsibility of National Highways or the Local Highway Authority and would be developed further at detailed design.
- 7.7.22. The Applicant acknowledges concerns regarding security and anti-social behaviour. Dialogue would continue with land interests throughout detailed design to agree the required accommodation works in relation to security and deterring anti-social behaviour [[REP2-015](#), page 34]. The development of the design so far, including alternative routes considered and the decision-making process, is set out in the Project Development Overview Report [[APP-244](#)].
- 7.7.23. The Proposed Development would be adequately funded through the RIS and therefore there would be no impediment to its delivery or the payment of compensation to persons who would be affected by CA, TP or a blight claim [[APP-289](#), para 1.12, [REP2-015](#), page 22 and [REP5-023](#), Agenda Item 3.1].

*ExA's consideration*

- 7.7.24. In terms of adequacy of consultation and information, there is evidence of consultation and engagement with individual APs during the pre-application period and up to the end of the Examination [[REP9-029](#)]. The Applicant commenced early engagement activities in 2019 in the lead-up to options consultation, and this included meetings with town and parish councils [[APP-252](#), Section 2.1, 2.2 and 3.2]. In the pre-application period, several alternative routes were under consideration. Whilst the selection of the best route amongst competing factors and interests is important, this can lead to some loss of clarity and uncertainty in respect of the information provided. It seems to the ExA that this has occurred in some instances, but the ExA considers that the Applicant's approach to options consultation has been satisfactory. Following the preferred route announcement in 2020, discussions commenced with APs leading to letters of s42 consultation invitation and notice being sent in 2021 and offers of negotiations letters were sent in 2022. The Applicant engaged with some 200 APs between the preferred route announcement and statutory consultation in 2021 and appointed three public liaison officers as the main points of contact for landowners and stakeholders. From all of the above, the ExA is satisfied that the consultation and information undertaken and provided by the Applicant has been satisfactory and in accordance with the CA Guidance<sup>62</sup>.
- 7.7.25. The fact that the CA and TP powers sought are based on a 'reference design' is not unusual in a linear scheme DCO [[REP8-074](#), Section 9.2]. This approach has

---

<sup>62</sup> CA Guidance, para 24

allowed development parameters to be set, an EIA to be undertaken and land requirements identified in a logical and reasoned manner. It is acknowledged that land requirements could be reduced during detailed design, and it is important that such opportunities are taken right up to construction. It is also relevant that the Proposed Development is appropriate and complete as it stands at this stage in the design process, TP could be used before CA [REP9-026, Section 4.4] and the Recommended DCO only provides CA powers where land is required for the Proposed Development [REP8-074, para 9.2.8].

- 7.7.26. The CA and TP powers sought are therefore a 'worst case' and last resort [REP9-026, Section 3.5]. The ExA however considers that it is reasonable to include provisions authorising CA covering all the land required at the outset. To do otherwise could result in a later disruptive stage to seek additional land and have a major impact on the timing of the delivery of the public benefit that the Proposed Development would bring. In all of this, the certainty of the powers in the Recommended DCO is necessary at this stage to allow the pre-construction process to proceed in a timely manner to deliver the public benefit [REP8-074, Section 9.2]. The ExA also considers that the Recommended DCO includes adequate compensation provisions and blight claim opportunities exist which have been taken up in some cases [REP5-023, Agenda Item 3.1]. The ExA therefore considers that the approach sought by the Applicant is a reasonable balance between public benefit and the competing factors and interests that exist in terms of APs. Examples of public benefit include the clear need for the Proposed Development and the need to protect the public purse against consequences of uncertainty.
- 7.7.27. Of particular concern during the Examination has been the loss to agricultural and other land interests due to the proposed environmental mitigation works. The ExA therefore undertook a sampling exercise that allowed it to assess the processes used in the identification of these areas at a level of detail appropriate to the Examination process.
- 7.7.28. The sampling exercise involved the ExA identifying 11 mitigation areas in a supplementary agenda [EV-039] one week before ISH3, with a request that any two of these areas would be selected by the ExA at ISH3 for an oral explanation and questions at ISH3 [REP5-024, Agenda Item 3.2]. The selection of the two areas at ISH3 allowed the ExA to take into account, in its selection, matters raised in CAH2 [EV-038] the previous day. All 11 areas were then the subject of an explanatory post-Hearing note. The ExA considers that this Examination process has allowed it to better understand the mitigation design principles in practice in the context of the objections raised and, in a manner, appropriate to the Examination. The ExA is therefore of the view that the land identified is required for essential mitigation to reduce the impact of the Proposed Development.
- 7.7.29. In terms of the best agricultural land being identified for ecological mitigation, ponds, compounds and soil storage the Applicant has sought landowner feedback [REP5-024, Agenda Item 3.2 and REP9-029] and undertaken an agricultural assessment [REP3-027]. The ES [APP-052, Section 9.10] also includes assessments of Best and Most Versatile land in terms of Agricultural Land Categories [REP3-027]; and soil sealing due to compaction [APP-052, para 9.10.27]. The ExA accepts the Applicant's position on the value of land that would be lost and that the balance between agricultural production and biodiversity would be as sought by the

NPSNN<sup>63</sup>. In this regard, the ExA agrees with the Applicant that the NPSNN is the primary policy document that applies to the Proposed Development not the NPPF. The ES however acknowledges significant permanent adverse effects in respect of to Grade 2 and Grade 3a soils [AS-010, Table 16-1] and the Recommended DCO includes mitigation within the EMP Soil Management Plan [REP8-005] and fair and reasonable compensation in this regard [REP9-026, Section 7.4].

- 7.7.30. In relation to land drainage protection and flood risk, the application includes an appropriate Flood Risk Assessment which includes proposals for the drainage of surface water from the Proposed Development [APP-221, Annex A and PDL-012, page 157] and the EMP secures relevant commitments [REP8-005, page 39]. Surface water run-off from the Proposed Development would be restricted to greenfield rates by the use of attenuation measures [REP2-015, page 36]. Exceedance flow paths have been considered in the design to ensure properties are not at risk of flooding in the event of drainage blockages or storm events in excess of the designed capacity [PDL-012, page 26].
- 7.7.31. Detailed design for any necessary mitigation measures, including flood compensation, would be developed in accordance with the commitments in the EMP. Where flood plains would be affected, flood compensation areas have been designed to ensure the Proposed Development would not increase flows downstream [PDL-012, page 59]. Impacts on field drainage during construction would be minimised by liaison with landowners, during detailed design and construction planning, to understand needs and mitigation to ensure features fulfil their original function and baseline drainage conditions are maintained [REP8-005, MW-PH-02 and D-RDWE-11].
- 7.7.32. The EMP also secures the appointment, by the undertaker, of an Agricultural Liaison Officer (ALO) [REP8-005, page 23]. The officer would be the line of communication, including drainage matters, between agricultural businesses and those involved in design and construction. The officer's duties would include coordinating land drainage surveys and sharing pre- and post-construction land drainage schemes with owners/occupiers in advance of finalisation, for their consideration [PDL-012, page 26]. Again, those impacted outside of the Order limits would be eligible for compensation under the Recommended DCO. The ExA therefore considers that concerns regarding drainage and flood risk have been satisfactorily addressed.
- 7.7.33. The ExA is satisfied that, from the Applicant's position and the Recommended DCO, liabilities in respect of new infrastructure, embankments, roads, bridges or ponds would not be imposed on APs without their consent in terms of management agreements or access rights [REP2-015, page 36 and REP5-023, Agenda Item 4.1].
- 7.7.34. The ExA is also satisfied that sufficient dialogue would continue with land interests in the detailed design stages to agree the required accommodation works in relation to security and deterring anti-social behaviour [REP2-015, page 51]. The ExA considers that role of the ALO would further limit impacts from land not under active management [REP8-005, page 81].
- 7.7.35. The Proposed Development has had to obtain, and keep, funding approvals in various forms over a number of years [APP-289, Section 3]. This process has included efficiency reviews in the RIS setting process to challenge the Applicant's

---

<sup>63</sup> NPSNN, para 5.168.

Strategic Business Plan [APP-289, Appendix A, Step 4]. The ExA considers that this challenging environment, together with Benefit to Cost Ratio considerations [APP-008, Section 5], is sufficient to ensure that value for money was adequately considered at all stages so far. Furthermore, the Proposed Development would be fully funded by the DfT [APP-289, para 3.1.10].

### **Affected Persons Represented by the National Farmers Union**

#### *Representation*

- 7.7.36. The National Farmers Union (NFU) makes a case on behalf of its members, including over 25 who would be directly affected by the draft DCO [REP1-029]. These members have not been identified.
- 7.7.37. There is uncertainty among NFU members on what land would be required on a temporary basis and what may be able to be returned to agriculture. It is not right for the Applicant to compulsorily acquire land, even if that land is returned to landowners at the end of construction as the impact would be greater on landowners from the start and they would not know what land may be returned. If land is only taken under TP from the start of the Proposed Development, all parties are clearer.
- 7.7.38. Members are also concerned about the excessive amount of CA without a clear explanation of need. The Applicant accepts that the application represents a worst case scenario and the NFU believes that not all of this land is necessary. Contractors would say they need all the land in any event, and so how would the restriction on the Applicant to take only the land required be enforced.
- 7.7.39. Is the land needed for habitat mitigation to meet NNL requirements or BNG. Such land could be left in the ownership of landowners with management agreements. The NFU believes that there is no clear justification for this land to be acquired and therefore this DCO application should not be granted.
- 7.7.40. The Applicant is not sufficiently advanced in negotiations with many landowners to acquire land by agreement rather than CA due to a lack of clarity on what land is required for CA and TP. As a result, the ACP offer has not been able to be progressed in many cases.
- 7.7.41. The NFU believes that the DCO application should not be approved until in depth negotiations with landowners have taken place to explore reasonable alternatives to CA and TP, such as voluntary agreements.
- 7.7.42. For the reasons given above, the Applicant cannot say that the land and rights sought are proportionate and necessary.
- 7.7.43. The NFU would also wish to see a three month notice period for taking TP of land as provided for in the Neighbourhood Planning Act 2017 and as in place on HS2 Phase 2a, Birmingham to Crewe, which is similarly a very large scheme. The NFU's experience from other NSIP schemes is that the 14 day notice period in the draft DCO is not enough. If, as stated, there would be prior notification in advance of a statutory notice, the NFU cannot see how increasing the length of the notice period would reduce construction flexibility.
- 7.7.44. In relation to draft DCO Article 15 concerning authority to survey and investigate land, the NFU would wish the draft DCO to include a definition of the term 'adjacent' and Article 15 to include the maximum distance that surveys can be carried out from

the Order limits to give clarity to landowners and occupiers. The NFU also considers that any notice under Article 15 should include: who would be taking entry; the date of entry and for how long; and the type of any equipment to be used.

#### *Applicant's Response*

- 7.7.45. The following matters raised by the NFU have already been addressed: DCO powers, alternatives and necessity; detailed design work which is progressing and which would facilitate further landowner engagement; and the ACP Policy [[REP1-007](#), Agenda Item 2.3].
- 7.7.46. All of the environmental mitigation land identified is required for essential environmental mitigation for potentially adverse ecological effects [[APP-049](#), [REP4-011](#), CA.1.2 and [REP8-074](#), para 6.5.21]. None of it is required solely for the purpose of providing BNG or NNL.
- 7.7.47. Whilst land required for environmental mitigation is proposed for outright CA in the application [[REP7-105](#) for example], the Applicant's preference would be to acquire new rights or impose restrictive covenants through negotiations to enable the mitigation to be delivered and maintained on the land, without the landowner being deprived of land ownership [[REP5-023](#), page 12 and [REP4-011](#), CA 1.2]. The CA powers would then not be exercised.
- 7.7.48. If it was not possible to reach agreement on that basis, then the Applicant could either acquire rights over the land by CA to deliver and maintain the mitigation or compulsorily acquire the land outright and grant rights to a third party to enable them to maintain the land. The outright CA of land for mitigation could have benefit to the landowner as a contingency measure, to ensure that a landowner is not left in a position where the Applicant has acquired rights which then preclude the continued beneficial use of that land by the landowner. In this scenario, outright CA may be the preferred approach.
- 7.7.49. The Applicant will not commit to extending the notice period of notice for taking TP. This is because an extended notice period would reduce the Applicant's flexibility in respect of TP [[REP8-005](#) and [REP1-007](#), Agenda Item 3.12]. The Applicant may then need to make TP decisions on a precautionary basis to avoid programme disruption, leading to land being temporarily possessed earlier than would otherwise be the case. The ALO would also keep APs informed in addition to a 14 day notice period.
- 7.7.50. The Applicant will retain its approach in Article 15 of the draft DCO [[REP1-007](#), Agenda Item 3.16]. Such an approach to surveying power was accepted by the Secretary of State in other DCOs, including the A417 Missing Link DCO 2022, the A57 Link Roads DCO 2022 and the Silvertown Tunnel DCO 2018.

#### *ExA's Consideration*

- 7.7.51. The ExA has nothing to add over that set out previously in respect of the return of CA and TP land to agriculture, the need for the CA powers sought and the Applicant's approach to negotiations. The ExA is satisfied that Article 19 in the Recommended DCO provides CA powers to the undertaker and compliance with the limits on these powers would be the responsibility of the undertaker not contractors.



- 7.7.52. The ExA is satisfied that all of the environmental mitigation land identified is required for essential environmental mitigation, in accordance with the NPSNN<sup>64</sup> as set out by the Applicant in its ES [APP-049], responses to WQs REP4-011, and in its Closing Submission REP8-074, para 6.5.21]. The ExA though accepts that it is necessary for the Applicant to have CA powers at this stage in the design process in order to have a reference design that can be progressed with the corresponding required mitigation that can be secured [REP8-074, Section 9.2].
- 7.7.53. The ExA considers that the 14 day notice period for TP in Recommended DCO Article 29 and Recommended DCO Article 15 concerning surveys, together with the role of the ALO, are an appropriate balance between public benefit in terms of progress on the Proposed Development and landowners' interests [REP8-005, page 23, and REP1-007, Agenda Item 3.12 and 3.16].

### **Affected Persons Represented by Addisons Chartered Surveyors**

#### *Representation*

- 7.7.54. The APs represented by Addisons Chartered Surveyors [REP1-048], who are not identified later in this Section, are:
- Simon and Carolyn Gill (owners of land within Scheme 07);
  - Simon Hare (occupier of land within Scheme 08);
  - George Nixon (owner of land within Scheme 07); and
  - Timothy Arthur Wright (owner of land within Scheme 07).
- 7.7.55. The APs believe that options should be replaced with a period of 6 months from resolution of the exact areas to negotiate the settlement of the land values and transfer the land on the basis that the Applicant's original offer is still available.
- 7.7.56. The Applicant's poor management and uncertainty over definition of the areas sought has led to losses in terms of compensation and difficulty in terms of business planning [REP1-139]. The 'might take' process implied under the current proposals is far from fair or reasonable in terms of future plans to allow sensible mitigation of the costs and replacement of housing for livestock.
- 7.7.57. Addisons Chartered Surveyors have also advised that they are working with the following clients, who did not submit any additional representations and are not identified later in this Section, in respect of the Proposed Development:
- Gordon Holliday Bain (owner of land within Scheme 07);
  - John William Bain (Category 3 person within Scheme 07);
  - Michael John and Elizabeth Constance Blackledge (owner of land within Scheme 09);
  - Christopher William Tunstall (owner of land within Scheme 07);
  - Frank Donald (occupier of land within Scheme 07);
  - Elisabeth Lois Forster and Karen Elaine Bainbridge (owners of land within Scheme 07);
  - Christopher and Shena Michele Hollyoake (owners of land within Scheme 07);
  - John Kenneth, Francis William and George Ernest Tallentire (trading as J.E Tallentire & Sons) (owners of land within Scheme 07);
  - Terence William Jacks (Category 3 person within Scheme 06);
  - Robert William Lambert (owner of land within Scheme 06);

---

<sup>64</sup> NPSNN, para 5.33



- Elizabeth Redfern (owner of land within Scheme 07);
- John Martin and Deborah Jayne Sayer (trading as J.M. & D.J. Sayer) (owners of land within Scheme 07);
- Mark Kenneth Thompson (as trustee of the Kenneth Thompson Discretionary Will Trust) (owner of land within Scheme 08); and
- Suzanne Vaughan (owner of land within Scheme 09).

*Applicant's Response*

- 7.7.58. The Applicant has already addressed the definition of areas sought for CA and TP powers raised by Addison's Chartered Surveyors. The Applicant has put in place two methods to acquire land, by traditional exchange and completion or using option agreements [[REP2-015](#), page 23]. Option agreements give the Applicant certainty and landowners flexibility in terms of retaining access.

*ExA's Consideration*

- 7.7.59. The ExA has nothing to add over that set out previously in respect of definition of areas sought for CA and TP powers. The ExA is satisfied that the two methods to acquire land put forward by the Applicant represent an appropriate balance between the public benefit of progress with the Proposed Development and the landowners' interests. The ExA is also content that all of the above landowners are in communication with the Applicant [[REP9-029](#)].

**Conclusion on Affected Persons within a group with shared issues**

- 7.7.60. In view of all the above ExA considerations, the ExA cannot see anything in these particular points of objection from these groups of APs that would prevent the grant of the CA or TP powers sought.

**Affected Persons**

- 7.7.61. References for Relevant and Written Representations and other representations from each AP and the relevant plots are provided in the Applicant's Compulsory Acquisition Status of Negotiations Schedule [[REP9-029](#)] and the Examination Library. The ExA has considered all the representations received from APs but has only identified the points considered to be important and relevant when reporting on the representations and the Applicant's responses.

**Stanley and Patricia Brogden**

*Representation*

- 7.7.62. The APs are represented by George F White, and own and occupy land within Scheme 07. The APs have concerns in respect of protection measures in relation to an existing spring water supply [[REP1-138](#)].

*Applicant's response*

- 7.7.63. The protection of existing spring water supplies would be undertaken at detailed design and secured by the EMP [[REP2-015](#), page 29].

*ExA's Consideration*

- 7.7.64. The ExA is satisfied that relevant mitigation provisions are secured in the Recommended DCO.

## **Mark Carruthers**

### *Representation*

- 7.7.65. The AP is represented by George F White and owns and occupies Café Sixty Six within Scheme 06. The AP is supportive of Change Request DC-17 but asks that the Applicant revisits the TP in this area to allow the café to continue trading during construction. The AP also urges the Applicant to change the design to allow users of the café to use the underpass and access the property from either direction as at present [[REP1-113](#)]. The Proposed Development places a disproportionate burden on the AP, with the potential for long lasting reductions in trading volume and property value.

### *Applicant's Response*

- 7.7.66. Disruption to land owners and their businesses during construction would be mitigated thorough local traffic management and access plans to be secured through the EMP [[PDL-012](#), page 154]. Alternatives have been considered [[APP-244](#)]. Access to Café 66 would be provided via on and off slips from the eastbound carriageway leading to the car park of the building [[REP2-015](#), page 50].
- 7.7.67. Change Request DC-17 reflects the outcome of the Applicant's engagement with the AP in respect of the CA and TP powers sought local to Café Sixty Six.

### *ExA's Consideration*

- 7.7.68. The ExA is satisfied that the Applicant has considered alternatives in this area. The current westbound access to the café would not appear to be straightforward and use of the proposed underpass for westbound café access would require unjustified enhancement from the proposed private means of access design. The ExA therefore agrees with the Applicant's position on this matter and notes that relevant mitigation and compensation provisions are secured in the Recommended DCO.

## **William Trevor Foster**

### *Representation*

- 7.7.69. The AP is represented by George F White and owns and occupies land within Scheme 07 on which he runs a livestock farming business. The land is to the north and south of the A66, and the maintenance of access and service connections is of paramount importance. The AP relies on Clint Bridge over the A66 for access and stock movement together with the water supply for the land to the north of the A66 [[REP1-116](#) and [REP5-048](#)]. The AP has had no details of the replacement Clint Bridge and is concerned that the replacement may affect his business. The AP's land to the south of the A66 has a natural water supply. An independent hydrologist should be engaged to carry out surveys prior to and following construction.

### *Applicant's response*

- 7.7.70. Clint Lane bridge is to be demolished and replaced with a longer structure on its current alignment with temporary arrangements during construction [[REP2-015](#), page 43]. There is an alternative route that the AP could use, but this would require transporting livestock by vehicle rather than on foot over the bridge [[REP5-023](#), page 17]. An accommodation works strategy would be developed, and the Applicant would continue to engage with the AP on this.

- 7.7.71. Works to protect, divert or provide an alternative water supply over the bridge would be discussed and agreed in the context of accommodation works [[PDL-012](#), page 123 and [REP5-023](#), page 18]. The ALO [[REP8-005](#)] would keep the AP informed on works that would affect private utilities. The EMP includes measures to protect or replace unlicensed abstractions [[REP8-005](#), D-RDWE-09].

*ExA's Consideration*

- 7.7.72. The ExA notes that Clint Lane bridge is public highway but is satisfied that an accommodation works strategy would be developed for the AP and relevant mitigation and compensation provisions, including for water supply and access, are secured in the Recommended DCO.

**Stephen George and Michelle Julie Hammond**

*Representation*

- 7.7.73. The APs are represented by George F White and own and occupy land within Scheme 09. No justification has been provided in respect of the CA powers sought over Plot 09-03-14 [[REP1-072](#)].

*Applicant's Response*

- 7.7.74. Plot 09-03-14 is required for permanent acquisition to provide of a shared equestrian track [[REP8-059](#) and [PDL-012](#), page 141].

*ExA's Consideration*

- 7.7.75. The ExA is satisfied that the AP's land is required for the Proposed Development and that no reasonable alternatives exist and that this is a proportionate interference of rights.

**George Stuart Harrison**

*Representation*

- 7.7.76. The AP is represented by George F White and occupies land within Scheme 08 as a tenant of the Mortham Estate for his farming business. An access drive would be put in from Street Side Farm to the B6277. The AP assumes that the Applicant would be responsible for its maintenance as the AP does not currently have an obligation to maintain a driveway [[REP1-107](#)].

*Applicant's Response*

- 7.7.77. Responsibility for the ongoing maintenance of infrastructure provided, such as a shared private means of access/ Public Right of Way as here, would be discussed with each landowner on a case-by case-basis [[REP2-015](#), page 49].

*ExA's Consideration*

- 7.7.78. The ExA is satisfied that relevant mitigation and compensation provisions secured in the Recommended DCO would secure maintenance following construction with the passing of maintenance responsibilities to any others on terms to be agreed.

## **Stephen William and Ellen Janette Wappat Harrison**

### *Representation*

- 7.7.79. The APs are represented by George F White and own and occupy several farms within Scheme 09 for their farming business. CA powers are sought for bridleways to be diverted through an underpass. This is unnecessary and would lead to issues of general security, bio-security and health and safety to the detriment of their businesses [REP1-115]. This would also reduce the value of their retained land. The underpass would be over sized for a bridleway and an overbridge could be provided at a lower cost.

### *Applicant's Response*

- 7.7.80. The proposed underpass would provide a safer means of crossing the dual carriageway in this location [REP2-015, page 47]. Details of new access provisions have been submitted [REP7-131 and PDL-012, page 139]. It is acknowledged that further dialogue and agreement would be required at detailed design stage to mitigate landowner concerns over accessing retained land post completion [REP8-005, MW-PH-01 and MW-PH-02]. The de-trunked A66 and extension of Warrener Lane would also provide help to separate local and strategic traffic and minimise the need for agricultural traffic on the A66 [PDL-012, page 140].

### *ExA's Consideration*

- 7.7.81. The ExA notes that the Applicant investigated the changing of the underpass to an overbridge during the Examination [CR1-002, Section 2.4, DC-32] but decided not to progress this change. The ExA is satisfied that the Proposed Development provides an appropriate solution in this regard. The ExA also considers that the EMP secures mitigation in respect of access to retained land.

## **David and Christine Mary Hayllar**

### *Representation*

- 7.7.82. The APs are represented by George F White and own and occupy land within Scheme 06 for their dairy farming enterprise. The proposed route would bisect their holding at the expense of the farming enterprise and remove a substantial acreage, around 13% of their total farmed area [REP5-046], comprising the better quality land on the holding [REP1-100]. This would place a disproportionate burden on the APs as the land cannot feasibly be replaced within the immediate area and the APs would not be able to carry on their current agricultural business. The Applicant has not considered the access tracks needed to ensure the farm units along the A66 can continue to be farmed as they currently are. The APs also object to the removal of the underpass at West View Farm from the Proposed Development under accepted Change DC-26 in terms of access to retained land and business losses [REP7-203]. From all of the above, there is no equitable way that the application can proceed. The APs also have concerns on protection measures in relation to an existing spring water supply.

### *Applicant's Response*

- 7.7.83. The Applicant has met with the APs throughout preliminary design and understands their concerns with the CA powers sought [PDL-012, page 117, REP2-015, page 42 and REP5-023, page 15]. The removal of the underpass from the Proposed Development results from other landowner access amendments and improvements

in this area which remove the requirement for the underpass [[CR1-002](#), Section 3.26]. Access arrangements would continue to be developed through engagement with the APs and residents during detailed design [[REP8-075](#), page 37]. On water supplies, the EMP includes measures to protect or replace unlicensed abstractions [[REP8-005](#), D-RDWE-09].

*ExA's Consideration*

- 7.7.84. The ExA considers that, including the accepted change to the application, the EMP secures reasonable mitigation in respect of access to retained land and water supply post completion. The ExA is also mindful that, in appropriate circumstances, the compensation provisions in the Recommended DCO contemplate situations where there may be a total extinguishment of a business.

**Andrew and Maria Jayne Henshaw**

*Representation*

- 7.7.85. The APs are represented by George F White and own and occupy land within Scheme 09. The APs own Mainsgill Farm where they run a farm shop which includes tea rooms, a gift shop and a butchery.
- 7.7.86. The APs have concerns regarding the risk of unauthorised use or anti-social behaviour on the area between the shop and the new A66 and need to have this risk minimised through design of the area [[REP1-102](#)]. It is also critical to understand who would be responsible for the future management of this area and what accountability or obligations they would have. In order to control their 'shop window' between the shop and the new A66, the APs have offered to take ownership and responsibility for any wetlands located on the area. The APs also have concerns regarding access to the farm shop site and consultation on this matter [[REP5-047](#), [REP6-042](#) and [REP7-204](#)].

*Applicant's Response*

- 7.7.87. The Applicant acknowledges the APs' concerns regarding security and anti-social behaviour. The dialogue would continue with the APs during detailed design to agree the required accommodation works and mitigation in relation to security and anti-social behaviour [[PDL-012](#), page 174]. The APs' concerns regarding access relate to an issue which is not part of the application [[REP8-075](#), page 40].

*ExA's Consideration*

- 7.7.88. The ExA is satisfied that any business disruption from CA or TP would be subject to appropriate compensation in the manner set out in the Recommended DCO [[REP9-026](#), Section 7.4]. The ExA considers that the responsibility for the management of the area between the farm shop and the new A66 would be the responsibility of the Applicant is the first instance and any transfer to other parties would be by future agreement. The ExA is satisfied that the APs' concerns regarding access relate to an issue which is not part of the application.

**Mr J Heron, Mrs D and Mr I Heron, Mr J and Mrs M Heron, Mr S and Mrs C Heron and Mr D and Mrs M Heron**

*Representations*

- 7.7.89. The APs are represented by George F White and own and occupy land within Scheme 06. They also own a number of farms and associated properties in and around Warcop. They have submitted multiple representations and have had engagement with the Applicant on land matters [[REP9-029](#), No: 69, 206, 218 and 340]. All those listed above are said to be APs, but not all are identified in the BoR. Those listed above have identified their land ownerships and interests [[REP5-045](#), Appendix 1] and, for completeness, the ExA has considered them all as APs.
- 7.7.90. The APs run dairy and sheep farming enterprises, a concrete batching plant and a haulage business from Eastfield Farm. The APs have various concerns regarding the proximity of the Brough Hill Fair relocation site to land in their ownership and its uses. The APs also have concerns which are covered in the George F White matters shared amongst the APs that George F White represent earlier in this section.

*Applicant's Response*

- 7.7.91. The Applicant has met extensively with the APs throughout preliminary design and understands their concerns [[PDL-012](#), page 164 for example]. The Applicant's responses in the George F White matters shared amongst the APs that George F White represent earlier in this section are relevant.

*ExA's Consideration*

- 7.7.92. Matters relating to the Brough Hill Fair relocation site have been addressed earlier in this report. The APs concerns on the CA and TP powers sought are covered in the George F White matters shared amongst the APs that George F White represent, which are addressed earlier in this section.

**Anthony James Hobson**

*Representation*

- 7.7.93. The AP is represented by George F White and owns and occupies land within Scheme 07 from which he runs a caravan park. The CA power sought comprises 2/3 of the site of the AP's business, which would simply not be able to operate given that the remaining campsite would be surrounded by the Proposed Development and its construction [[REP1-099](#)]. The business would need to close during construction, and it would be likely that the regular customers would find another site, thus threatening the overall viability of the business. Relocation is therefore required due to the Proposed Development.

*Applicant's Response*

- 7.7.94. Negotiations are underway with the AP, and these would continue [[PDL-012](#), page 111]. The District Valuer is in negotiations with the AP and the Applicant is hopeful that appropriate compensation can be agreed on business relocation [[REP2-015](#), page 39]. The Applicant has sought to address the AP's concerns, for example by paying costs associated with site reconfiguration. The Applicant has offered to compensate for the cost of a planning permission application but requires a charge



to be registered against the title which is unacceptable to the AP [REP5-023, page 19].

#### *ExA's Consideration*

- 7.7.95. The ExA is satisfied that, in appropriate circumstances, the compensation provisions in the Recommended DCO contemplate situations where there may be a total extinguishment of a business and that this represents a fair process for the interference of rights.

#### **John Manners**

##### *Representation*

- 7.7.96. The AP is represented by George F White and owns and occupies property within Scheme 07 where he also operates a luxury holiday rental business. The East Bowes accommodation overbridge would have an adverse impact on the AP's property and affect the viability of the holiday business and the value of its cottages [REP1-109]. The AP suggests that this bridge is unnecessary as access for properties to the north of the A66 could be taken from the A67 [REP5-051]. If the bridge is necessary, it should be located further east directly onto High Broats Farm's track to reduce impact on the AP's property.

##### *Applicant's Response*

- 7.7.97. Not all landowners with A66 access also have access to the A67, and therefore the bridge is the most feasible alternative provision for those who would have accesses onto the A66 removed [PDL-012, page 110 and REP2-015, page 37].

#### *ExA's Consideration*

- 7.7.98. The ExA is satisfied that any business disruption would be subject to appropriate compensation in the manner set out in the Recommended DCO [REP9-026, Section 7.4]. The Applicant has had discussions with the AP regarding the overbridge [REP9-029, No: 163], and the ExA is of the view that the Proposed Development is appropriate in terms of the locality.

#### **Peter Moss**

##### *Representation*

- 7.7.99. The AP is represented by George F White and occupies land within Scheme 08. The AP occupies some 152 acres of land as a tenant of the Mortham Estate with this land forming the basis of his farm business. The substantial acreage of land on which CA powers are sought, around 38% of his tenancy [REP5-052], including that for drainage ponds, ecological measures and a construction compound, would bisect the existing holding and remove the better quality land on the holding [REP1-098]. This land could not feasibly be replaced within the local area, and the AP would not be able to carry on his current agricultural business.
- 7.7.100. To reduce impact, the drainage pond on the eastern part of Plot 08-03-01 could be located to the north of the A66 and drain into the River Tees. The pond on the western part of Plot 08-03-01 could also be located between the existing and proposed A66 thereby avoiding severance of the AP's land holding. The isolation of the pond between the roads would also reduce the risks of unauthorised occupation and anti-social behaviour.

- 7.7.101. The proposed access to Ewebank Farm should be amended to minimise the loss of productive land helping to offset losses elsewhere. Agricultural machinery would not need to use the public highway and the new access could be gated to improve farm security.

*Applicant's Response*

- 7.7.102. The suggested location for an alternative access track is in proximity to the Jack Wood Plantation ancient woodland site [REP8-005, APP-146, Table 2, Reference EclA 13 and REP2-015, page 45]. The compound area is required for laydown and material storage associated with the construction of the Rokeby Junction underpass [REP2-015, page 46].

- 7.7.103. It is not feasible to provide an underpass to amend access as suggested, due to the impact this would have on the Rokeby Park Registered Park and Gardens [REP2-015, page 47].

*ExA's Consideration*

- 7.7.104. The ExA is satisfied that the access identified is needed to the attenuation pond, Tack Room Cottage, The Grove and by cycletrack to Greta Bridge. The ExA considers that the Proposed Development represents an appropriate balance between areas and locations for ecological mitigation, ponds, compounds and soil storage and landowner interests, as addressed under the George F White shared concerns. The ExA notes that attenuation ponds would be subject to review at detailed design. Their locations are however constrained by low points on the proposed carriageway, the availability of an existing watercourse for discharge, access from a local road for maintenance and the avoidance of over land flow paths [REP5-023, page 17]. The ExA has already considered the Applicant's approach to attenuation pond locations and considers it to be appropriate. The ExA is also of the view that, in appropriate circumstances, the compensation provisions in the Recommended DCO contemplate situations where there may be a total extinguishment of a business.

**W Austen Richardson Ltd**

*Representation*

- 7.7.105. The AP is represented by George F White and owns and occupies land within Scheme 09. The representations are said to also be on behalf of a Mr J Richardson, but such a name does not appear within the relevant BoR [REP8-053].
- 7.7.106. The areas for ecological mitigation appear to have been arbitrarily identified without reference to the nature or quality of the land in question [REP1-136]. An example is a proposed new hedgerow, near to Plot 09-01-19, for environmental benefit which would centrally split a productive agricultural field into two and create a unfarmable piece of land. This proposed hedgerow should be located further north on the field boundary to reduce impact.
- 7.7.107. The CA powers sought include a slurry store used by the AP. The provision of a replacement site, with sufficient space to store slurry and allow tractors and trailers to tip and turn, has not been confirmed. The proposed site therefore needs extending to the west, which is also necessary for Public Rights of Way (PRoW) separation to avoid health and safety risks. The AP has also not seen details of the access that would replace the former A66 to the north of its current carriageway and

is concerned that the proposed accommodation underpass includes sufficient security measures.

*Applicant's Response*

- 7.7.108. The proposed hedgerow shown on the plan provided alongside the AP's representation lies outside of the Order limits [REP2-015, page 64]. It is possible that this hedgerow may have been required on an earlier iteration of the design, but it is not now [REP7-011]. The replacement slurry site area has been sized on providing a like for like area of slurry tank with additional space for vehicle turning [REP2-015, page 64].
- 7.7.109. The 'old A66' used to retain access to the AP's land is still within the Applicant's ownership. It is intended that access to the fields would be along a new access track from the de-trunked A66 via the new accommodation underpass [REP2-015, page 65].

*ExA's Consideration*

- 7.7.110. The ExA is satisfied, from the additional work and explanation provided by the Applicant, that the replacement slurry site is of sufficient size to provide for its operation [REP4-011, CA 1.9]. The ExA also considers that the proposed access, including the accommodation underpass which could be gated, would be acceptable.

**The United Charities of Romaldkirk Trustee Limited and The Hutchinson's Endowed School**

*Representation*

- 7.7.111. The APs are represented by George F White who refers to them as 'the Bowes and Romaldkirk Charity Estates including the Hutchinson Endowed School Charity' notwithstanding the title above in the BoR for Scheme 07 [REP8-046]. The APs own land and property within Scheme 07. The relevant plot numbers for Romaldkirk in the APs' WR and the BoR are the same and the Hutchinson's Endowed School (Bowes C of E School) is identified as a Category 3 person in the BoR for Scheme 07.
- 7.7.112. Any loss of land would reduce the income received by the Romaldkirk charity and impact its work [REP1-056]. An overbridge and embankment on the APs' land is unnecessary as there are lower cost alternatives that have not been considered. This is because the service road to serve the properties to the east of Stonefield is located on the current layby adjoining the existing A66, and access to the properties to the north of the A66 could be taken from the A67 thereby negating the need for a bridge. The APs also understand that each property which the proposed East Bowes Accommodation overbridge would serve already has an access from the A67. The proposed access to East Lowfield Farm should also be as close to the A66 as possible to avoid unnecessary land-take.

*Applicant's Response*

- 7.7.113. Not all landowners with A66 access also have access to the A67, and therefore the bridge is considered to be the most feasible access proposal [REP2-015, page 51]. Access to property or land from a trunk road layby would conflict with Design Manual for Road and Bridgeworks guidance. As well as providing landowner access north and south of the A66, the bridge provides a safe crossing of the A66 for users

of the existing public right of way at Bowes Cross Farm that currently cross the A66 at grade without any formal crossing facilities.

- 7.7.114. The access track to Bowes Cross Farm has been positioned so that any excess earthworks material could be bunded between the A66 dual carriageway and the access track. This would have an added benefit of screening the A66 from the south and providing a physical separation to minimise headlight glare. If during detailed design, there is no requirement to store excess material, then options to reduce land take would be considered, along with other options for minimising headlight glare.

*ExA's Consideration*

- 7.7.115. The ExA is satisfied, from the above, that the bridge would be the most feasible access proposal for this area. The ExA also understands and accepts the reasoning for the positioning of the access track and notes that some flexibility could exist at detailed design to reduce the level of CA freehold land required particularly for plot 07-03-20.

**Katherine and David Stead**

*Representation*

- 7.7.116. The APs are represented by George F White, and they own and occupy Helbeck Hall. The APs question whether the pond to the north of West View is required [REP1-122]. If it is, and to reduce the land take area, the pond should be relocated in line with the nearby field boundary with access taken directly from the local access road. In a similar manner, the topsoil storage area should be relocated to follow field boundaries.

*Applicant's Response*

- 7.7.117. The attenuation pond has been located to correspond generally to low points in the proposed road and, as the detailed design progresses, the appointed contractors would review and reassess the size and scale of the ponds within the Order land [PDL-012, page 437]. In a similar manner, the proposed soil storage area corresponds to the balance of earthworks on the Proposed Development and would be subject to detailed design.

*ExA's Consideration*

- 7.7.118. The ExA is satisfied, from the processes followed, that the envisaged sizes, scales and locations of the pond and soil storage areas are appropriate.

**Alison Jane and Trevor Taylor**

*Representation*

- 7.7.119. The APs are represented by George F White, and they own and occupy land within Scheme 0405 where they run a livestock enterprise. The representations are said to also be on behalf of an R Taylor, but such a name does not appear within the relevant BoR [REP8-039].

- 7.7.120. The APs are concerned that the proposed Long Marton Road junction would split one of their fields making both parts less useful for production together with the CA powers sought for the new link road itself [REP1-123 and REP5-054]. This land is good quality and close to the AP's steading, and their business would be particularly

impacted. It would be more appropriate to move the proposed junction to the current line of Long Marton Road with a design to minimise the loss of valuable agricultural land and reduce the risk of anti-social behaviour.

- 7.7.121. The size of the proposed compound area to the west of the junction has not been justified and the APs would lose a substantial amount of silage that they rely upon for winter feed. The years needed for ground recovery would affect output for a considerable period of time. Compensation should be available but care is needed in terms of location and period of occupation. Also, the settlement pond opposite Powis Cottages should be amalgamated with other ponds nearby and rights of way consolidated to reduce the impact on landowners [[REP6-039](#)].

#### *Applicant's Response*

- 7.7.122. The proposed alignment of the Long Marton Junction is compliant with highway design standards to provide a safe junction near the existing Long Marton and Bolton junctions [[APP-244](#), [REP2-015](#), page 33 and [REP5-023](#), page 16]. This was driven by public consultation feedback highlighting the need for the junction here and the safest solution to provide a junction.
- 7.7.123. Site compound locations have been determined based on an assessment of the construction methodology and programme, and during detailed design, contractors would review and reassess the size and scale of the compounds required [[PDL-012](#), page 432].
- 7.7.124. The pond would be located at a low point on the alignment, adjacent to an existing watercourse for discharge, with access from a local road for maintenance and away from over land flow paths [[REP5-023](#), page 17]. The location of the drainage pond is also high enough to outfall to the watercourse, but low enough to drain the road.

#### *ExA's Consideration*

- 7.7.125. The ExA is satisfied, from the processes followed, that the proposed alignment of the Long Marton Junction is the most appropriate and acceptable solution for access to the Proposed Development in this area. The ExA acknowledges the loss of productive land [[AS-010](#), Table 16-1] and notes that the Recommended DCO includes fair and reasonable compensation in this regard [[REP9-026](#), Section 7.4]. The ExA also understands and accepts the reasoning for the positioning of the site compound and drainage pond and notes that some flexibility could exist at detailed design, and hence that the interference in rights is proportionate.

#### **Philip White**

##### *Representation*

- 7.7.126. The AP is represented by George F White and owns and occupies land within Scheme 07. Part of the land which would be subject to the CA powers sought would be used for a drainage balancing pond. Given the size of the proposed pond to the north, which is somewhat lower, the AP questions the necessity of the southern pond.
- 7.7.127. The AP is concerned that the proposed southern pond would not mitigate the flooding on the existing A66, as it would be sited on a raised piece of in filled ground within which the presence of hazardous material cannot be ruled out [[REP1-114](#)]. Given the presence of in-fill, the AP considers that a drainage restoration plan is necessary.

- 7.7.128. The AP's water supply is fed from a private spring. An independent hydrologist, with a duty of care to the AP, should be appointed to carry out surveys to prior to any works, during construction and following completion

*Applicant's Response*

- 7.7.129. Further surveys of existing spring water supplies would be undertaken at detailed design with mitigation agreed with landowners and secured by the EMP [REP8-005, D-RDWE-09].

*ExA's Consideration*

- 7.7.130. The ExA is satisfied that the location and need for the southern pond is justified bearing in mind: low points on the proposed carriageway, the availability of an existing watercourse for discharge, access from a local road for maintenance and the avoidance of over land flow paths [REP5-023, page 17]. The appointed contractors would also review the detail of the ponds within the Order land [PDL-012, page 437] with communication for the AP through the ALO [REP8-005, page 23]. The ExA also notes that the EMP includes measures to protect or replace water abstractions and supplies where necessary [REP8-005, D-RDWE-09].

**Karen McSkimming** (owns and occupies property within Scheme 06) [REP1-091]

**The Kenneth Thompson Discretionary Will Trust** (owns land within Scheme 08) [REP1-126 and REP5-055]

**James Richmond** (owns and occupies land within Scheme 09) [REP1-111]

**Richard Charles and Julie Elizabeth Watson** (own subsoil within Scheme 09) [RR-166]

*Representations*

- 7.7.131. These APs are represented by George F White, and their concerns are covered in the George F White matters shared amongst the APs that George F White represent, which are addressed earlier in this Section of this report.

**John Richard Lane, James Hare, Alan Moore Bowe and Sarah Crane**

*Representation*

- 7.7.132. These APs are the Trustees of the Winderwath 1989 Settlement Trust and are represented by H&H Land & Estates Ltd. The Winderwath Estate owns land and rights over land within Scheme 03.
- 7.7.133. The APs do not object to the Proposed Development in principle. There has however been a lack of proper consultation, and this is evidenced by the need for late changes to the Proposed Development [REP1-129]. The extent of the CA and TP powers sought is excessive, and there has been a lack of engagement on measures to acquire land by agreement.
- 7.7.134. In terms of mitigation, the CA powers sought over productive agricultural land are excessive in area and go beyond the present statutory requirements applicable to DCO applications [REP5-071 and REP5-072]. They should be local to the impact being mitigated and proportional to the land area being acquired from any particular landowner. The Applicant has also used the out-of-date Biodiversity Metric 2.0 not



the current 3.1. The APs have particular concerns in respect of the justification for the proposed environmental mitigation on Plot 03-04-04 in terms of locality.

- 7.7.135. The recently planted Adrian's Wood should be accounted for as mitigation. This would remove the need for any of the proposed environmental mitigation elsewhere on the Estate and particularly on Plots 03-04-04, 13-04-12 and 03-04-14. The woodland was planted to directly mitigate the impact of the Proposed Development.
- 7.7.136. An alternative to the Adrian's Wood mitigation could take place along the north side of the Proposed Development, which would also provide screening to the Estate properties to the north, and alternative areas have been suggested. The Applicant could also take rights, impose positive and negative covenants or conservation covenants under the Environment Act 2021. From all of the above, the Applicant has not shown a compelling case for the CA of the identified land for mitigation purposes. Mitigation planting also should take place on the less productive areas of the Estate, in accordance with the NPPF.
- 7.7.137. The current proposals for mitigation planting would have severe negative impacts on the Estate's shoot management, which would be avoided by the suggested alternatives [REP6-044]. Released birds are currently discouraged from moving towards the A66 by the lack of cover on open arable areas. This would not be the case with the proposed mitigation, which would also have a substantial negative effect on the commercial operation of the shoot.
- 7.7.138. The CA powers sought over land for environmental mitigation are unnecessary as the APs would offer rights and enter into restrictive and enforceable positive covenants to plant and manage these areas. There is similarly no compelling case for the CA powers sought over the access route to the mitigation area as the acquisition of rights only would suffice. The APs also object to the taking of any land where there would be no coherent 15 year management plan consistent with the uses of the adjoining Estate.
- 7.7.139. In terms of PRoWs, the APs object to the route of the proposed private and public access tracks around attenuation ponds rather than adjacent to the highway, which would reduce the acquisition of valuable agricultural land. The APs also require details of the third-party rights that would be granted along the access tracks. The APs also have issues on future maintenance of and liability for, private and public accesses. The APs object to the creation of any bridleways across their retained land as the Proposed Development cannot satisfy the requirement of a compelling case for CA.
- 7.7.140. In terms of landform, the APs believe that lower road levels, particularly around the Centre Parcs Junction, would result in a less obvious structure in the landscape and reduce the amount of agricultural land required.
- 7.7.141. In terms of attenuation ponds, the number should be rationalised into the least necessary thus reducing access and outfall drainage issues and, in some areas, there are two ponds in close proximity. The APs also question the size of ponds and there is no management plan for these ponds and the associated ditches. There would be extensive and unnecessary car parking for each pond which would take up valuable agricultural land. There is no compelling case for the CA powers sought over land for drainage corridors from the ponds as the acquisition of rights only would suffice. The APs also do not see the necessity for various private means of access, and CA powers over valuable agricultural land should not be sought for this purpose.

- 7.7.142. In terms of miscellaneous design and related matters, there is no detail on drainage schemes or their impact on the APs' retained land. The land required for contractors' compounds is also excessive and CA powers should not be sought if it would only be required temporarily.
- 7.7.143. In summary, there cannot be a compelling case in the public interest<sup>65</sup> to acquire land due to the circumstances outlined above and where rights could be granted in place of permanent acquisition this power does not appear to have been considered. The APs wish to reach an agreement with the Applicant on the above matters, but there would need to be flexibility and agile thinking in respect of the Applicant's approach to these matters if a solution is to be found to suit both parties [REP6-045].

#### *Applicant's Response*

- 7.7.144. Public consultation and engagement have been a critical part of the preparation of the DCO application and has been underpinned by the Government's Consultation Principles [APP-252 and PDL-012, page 367].
- 7.7.145. The size of the areas proposed for mitigation is based upon the land required to effectively mitigate the species impacts, landscape and visual effects and habitat impacts and loss of the Proposed Development and would be essential to its delivery. This is based on the assessment of the preliminary engineering design. As such, it is not considered excessive, and it is not always possible to be proportional to landowner impact for mitigation.
- 7.7.146. The need for mitigation being on prime agricultural areas is minimised by taking into account the agricultural assessment. The remaining mitigation is in place where essential ecological or landscape mitigation is considered unavoidable in terms of required mitigation outlined within the ES [APP-049 and APP-053]. It should be noted that the NPPF is not the primary policy document that applies to the Proposed Development, that is the NPSNN. The Legislation and Policy Compliance Statement gives a commentary on compliance with those documents [APP-242 and REP9-006].
- 7.7.147. The Applicant has applied the principle of NNL to the Proposed Development. Nevertheless, the Applicant's approach is to maximise biodiversity and thus going beyond what it is necessary for it to do. This is discussed further in Section 4 of this Report.
- 7.7.148. Regarding Adrian's Wood, the environmental mitigation proposed at this location has been developed, in part, for the purpose of habitat connectivity connecting two areas of existing woodland. Adrian's Wood would not fulfil this purpose [REP2-015, page 9]. The alternatives suggested along the north side of the Proposed Development are isolated and would not adequately mitigate the loss of woodland around Scheme 03 including impacts on red squirrel, bats and barn owl which require connective planting. The proposed mitigation on Plot 03-04-04 would provide a north to south connection which would not be achieved using Adrian's Wood [REP8-008]. The proposed mitigation on Plot 03-04-14 would also provide a reptile and amphibian site, provide habitat to achieve NNL and be connected to

---

<sup>65</sup> Compulsory purchase process and the Crichel Down Rules (updated July 2019), para 12 and 13

existing populations of great crested newts and common lizard. Adrian's' Wood is not known to have connections for these species.

- 7.7.149. The proposed connectivity in this area is essential mitigation for potential adverse impacts identified as part of the assessment undertaken [[APP-049](#)]. The Applicant would seek to continue to engage with the APs to minimise impact on the retained lands. The APs could use compensation monies to undertake works to try and ensure that the integrity of the shoot is maintained. Coupled with this engagement the Applicant would also pay monies where losses are evidenced as a consequence of the works and land acquisition, as part of the overall compensation package for any financial losses and diminution of value to the shoot itself. The Applicant acknowledges that should a party meet the criteria for injurious affections claims, they would be entitled to compensation under the statutory scheme.
- 7.7.150. The Applicant is committed to working with landowners to avoid the use of CA powers if appropriate agreements could be entered into. Such agreements could include management agreements or agreements under section 253 of the Highways Act 1980. However, not all types of mitigation are suited to those types of contractual arrangements given the long duration of the Proposed Development and the need to maintain certain mitigation over the long term. As such, the Applicant must retain the ability to acquire such land in order to safeguard the delivery of the Proposed Development.
- 7.7.151. The land over which the Applicant seeks CA powers could also be only subject to the acquisition of new rights, including the imposition of restrictive covenants, or to powers of TP. This flexibility would be deployed where possible with the aim of achieving a proportionate balance between delivering the Proposed Development and accommodating a landowner's preferred approach, once the detailed design requirements become available.
- 7.7.152. In relation to conservation covenants, these are novel instruments that may be entered into between a 'responsible body' and a landowner [[REP2-015](#), page 17]. An organisation is required to apply to become designated by the Secretary of State as a "responsible body' under section 119 of the Environment Act 2021. At the time of the DCO application, the Government has yet to publish guidance on applications. Given the novelty of the conservation covenant provisions combined with the importance of CA powers to the delivery of the Proposed Development, the Applicant does not consider the use of conservation covenants to be a reasonable alternative to seeking the authorisation of compulsory acquisition at this stage of this Proposed Development.
- 7.7.153. The proposed access routes and drainage corridors are essential to the delivery of the Proposed Development and CA powers are required for the reasons given above. Tracks and turning areas would be provided for all ponds to ensure they can be accessed by suitable equipment to undertake periodic maintenance [[PDL-012](#), page 374]. The Applicant also has a legal obligation to try and replace any severed bridleways.
- 7.7.154. The current drainage strategy is to provide separate drainage ponds for trunk and local road drainage systems [[PDL-012](#), page 377] and to outfall each of these ponds into the nearest watercourse. The Applicant and the local authorities recognise there may be efficiencies in combining the ponds, but this would be subject to legal agreements. Detailed design stage may involve amendments to pond locations and or shape to better fit the existing landscape or field patterns, in consultation with the drainage authorities.

- 7.7.155. Management of the ponds and highway drainage ditches would be the responsibility of the drainage system owner, the Applicant or the Local Highway Authority, and would be developed during detailed design. Land drainage ditches would generally be the responsibility of the landowner, further details of these and any modification to existing ditches would be developed during detailed design.

*ExA's Consideration*

- 7.7.156. The ExA spent time at the ASI [\[EV-037\]](#) with one of the APs at many of the locations which are the subject of the representations and found this very helpful in terms of understanding the issues identified.
- 7.7.157. The ExA has already considered the Applicant's approach to consultation, engagement, loss of productive agricultural land including the NPPF not being the primary policy document that applies to the Proposed Development, the extent of the CA powers sought including a compelling case, drainage and contractors' compounds under matters relating to the shared issues of APs represented by George F White and considers them to have been appropriate. The ExA can see no reason to depart from this position.
- 7.7.158. In terms of mitigation being local to the impact, the ExA is satisfied with the Applicant's approach to locate the mitigation as close as possible to the identified impact [\[REP5-023\]](#), Agenda Item 3.1]. Where this is not possible, an alternative location is selected within the scheme where the impact is anticipated and where the mitigation would contribute to biodiversity enhancement. In a small number of circumstances, it is not possible to locate the mitigation within the scheme itself due to other environmental constraints. As a last resort, alternative locations are then sought within other schemes where the primary function of the mitigation could still be achieved.
- 7.7.159. From the many factors that are involved in the selection of the most effective mitigation locations, the ExA can understand why a landowner based proportional approach is not always possible. Indeed, the ExA considers that to use a more landowner based proportional approach than has been used could be unrealistic and inefficient in terms of the land take required and mitigation delivery and outcome.
- 7.7.160. The ExA is satisfied, for reasons explained in Section 4 of this Report, that the case for the quantum of land needed for CA for the purposes of environmental mitigation is the minimum required to mitigate the Proposed Development, and therefore has been adequately justified.
- 7.7.161. The ExA has already recorded, under matters relating to the shared issues of APs represented by George F White, that it is satisfied with the Applicant's approach in identifying land required for essential environmental mitigation. In coming to this view, one of the Plots that the ExA particularly investigated was Plot 03-04-04 [\[REP5-027\]](#), Section 4], and the ExA therefore considers that the need for this plot for essential mitigation is justified.
- 7.7.162. In terms of Adrian's Wood and its mitigation status, the ExA can understand, from the Applicant's explanation in respect of Plot 03-04-04, why it does not meet the required criteria. Similarly, the ExA's position is the same for other mitigation areas along the north side of the Proposed Development. The ExA is therefore satisfied that they would not provide appropriate alternatives to the proposed mitigation.

- 7.7.163. The ExA can see the impact that the proposed mitigation would be likely to have on the shooting aspect of the operation of the Estate and the potential for commercial consequences. This impact must however be balanced against the clear and substantial need for the Proposed Development, that has already been considered in this report, and its necessary mitigation. The ExA has considered this balance and is of the view that: any commercial impact on the operation could be compensated in a fair and reasonable manner under the Recommended DCO [REP9-026, Section 7.4]; opportunities may exist to mitigate the impact on the operation; and, should the mitigation be relocated elsewhere, its effectiveness would be reduced and there is nothing before the Examination to show, in terms of biodiversity, that this reduction could be made up elsewhere. The proposed mitigation is therefore critical to the ability of the Proposed Development to proceed, and the need for this mitigation clearly outweighs the impact that it would have on the Estate.
- 7.7.164. The ExA agrees with the Applicant that conservation covenants are novel instruments, and it appears to the ExA that relevant advice has not yet been published. The ExA therefore considers that they would not be appropriate to include in any Order or negotiations with APs at the present time. This is not to say however that they may represent a solution acceptable to relevant parties in the future when land take is more clearly defined.
- 7.7.165. The ExA considers that access routes would be an integral part of the proposed mitigation and that CA powers sought should be consistent with those in the planting areas. The ExA also considers that mitigation would be likely to require a 15 year management plan under the EMP [REP8-005]. The ExA agrees that the Applicant has an obligation to try and replace any severed bridleways and indeed other PRoWs and that this is a circumstance that can justify the CA powers sought. The ExA is satisfied that the routes are necessary. The ExA notes that the Centre Park junction levels have been reduced as part of Change DC-08 [CR1-002] and this has led to a potential reduction in land take.
- 7.7.166. The ExA notes the Applicant's position on the rationalisation of attenuation ponds, their size, future maintenance arrangements and means of access. At this stage of the design of the Proposed Development, the ExA is satisfied that the attenuation arrangements represent an appropriate solution based on the reference design within the application [REP9-026, Section 3.5]. This supports the compelling case for the CA powers sought and drainage arrangements can be further developed during detailed design in consultation with landowners through the ALO [REP8-005, MW-PH-02 and D-RDWE-11]. The other matters raised relating to drainage detail and the impact on the APs' retained land have been addressed earlier in this section under matters relating to the shared issues of APs represented by George F White. The ExA can see no reason to change its position as a result of the APs' representations here.
- 7.7.167. The ExA is satisfied that, including within the references given, the Applicant has adequately responded to and addressed the APs' concerns.

### **Taylor and Braithwaite**

#### *Representation*

- 7.7.168. The AP is represented by H&H Land and Estates and owns and occupies land within Scheme 06. The AP does not object to the Proposed Development in principle but has concerns over the initial draft land take on a temporary and



proposed permanent basis at its premises along with revision required to the mitigation plan [[RR-114](#)].

7.7.169. The loss of part of a yard used by Taylor & Braithwaite Drilling and the encroachment onto the business premises could have significant impacts on the business. The Order limits are excessive, and it is not understood whether the entirety of the Order land is to be permanently acquired or rights are to be sought on a temporary basis.

7.7.170. The CA powers over land for the environmental mitigation may be unnecessary as rights and covenants to manage these highly productive agricultural areas could be sought. Mitigation is also based on the out of date Biodiversity Metric 2.0 not 3.1. Several private water mains, electricity and fibre connections and sections of drainage systems would be severed by the CA powers sought, which could have serious impacts on domestic and agricultural purposes.

*Applicant's Response*

7.7.171. The Applicant has met with the AP during preliminary design and understands its concerns [[PDL-012](#), page 52]. The land within the red line boundary is required for the Proposed Development, including land for construction and environmental mitigation. The Applicant would continue to negotiate with the AP to acquire land or uses of the land that it requires to deliver the Proposed Development.

*ExA's Consideration*

7.7.172. The ExA is satisfied that the CA and TP powers sought at this stage are necessary to deliver the Proposed Development and that alternatives to outright CA would be considered following detailed design. The ExA is satisfied that any business disruption would be subject to appropriate compensation in the manner set out in the Recommended DCO [[REP9-026](#), Section 7.4].

7.7.173. The ExA has already addressed matters relating to the BNG Metric in paragraph 7.7.161 above, the use of rights and covenants and drainage and considers that the Applicant's approach is appropriate. Severed private service connections would be a matter for potential replacement and compensation under the Recommended DCO.

**Alison Elaine Noble**

*Representation*

7.7.174. The AP is represented by H&H Land and Estates and occupies land within Scheme 0102. The AP does not object to the Proposed Development in principle, but the CA powers sought would result in the AP being unable to continue operating several businesses from this location, including Happy Hooves which is an equestrian unit. The AP would be put into serious hardship being unable to generate an income for her family [[RR-094](#)], and the AP wishes to continue running her businesses. The Applicant has been requested to purchase the property and land which would allow her to relocate the business.

*Applicant's Response*

7.7.175. The Applicant has met with the AP during preliminary design and understands the concerns raised in respect of the sensitivities of the AP's equestrian business [[PDL-012](#), page 387].



7.7.176. The land required from the AP is primarily for a drainage attenuation pond. Land is also required temporarily for excavation and deposition of material, and this area would be reprofiled and, if agreed, returned to the landowner. The pond and associated maintenance tracks would be used infrequently for landscape maintenance and visual inspections. The most likely disturbance to the AP's business would be from de-silting of the pond which is typically done once every 10 years.

7.7.177. The Applicant has had regard to its Public Sector Equality Duty (PSED) under the Equality Act 2010, and the potential for disproportionate adverse impacts to the young and to disabled persons are recognised in the Equalities Impact Assessment [APP-243, Table 11]. Mitigating action would include: ongoing discussion with the AP on potential impacts on activities at the stables; measures contained in the EMP; and the Applicant's facilitation of relocation to an appropriate extent should the business be minded to do so. The Applicant would continue to engage with the AP and Heads of Terms are agreed with completion anticipated mid-July 2023 [REP9-029, No: 4].

#### *ExA's Consideration*

7.7.178. The ExA is satisfied that the Applicant has appropriately engaged with the AP and that the need for CA powers on the AP's land has been adequately justified. The ExA is also satisfied that any business disruption would be subject to appropriate compensation in the manner set out in the Recommended DCO [REP9-026, Section 7.4] and that, in appropriate circumstances, the compensation provisions contemplate situations where there may be a total extinguishment of a business.

7.7.179. The ExA is of the view that there is no evidence to suggest that the Proposed Development would have any specific impact in relation to persons who share a protected characteristic as compared to persons who do not or that there has been any lack of regard to the needs identified in the PSED. The ExA considers that: the Applicant's due regard set out above would continue if the powers of the Recommended DCO were exercised; there is a comprehensive record of matters relating to the PSED which have been addressed with rigour and an open mind; and clear, reasonable and proportionate mitigation would be provided in the Recommended DCO. The ExA also considers that the Examination has been conducted having due regard to the needs identified in the PSED.

#### **John Michael Addison, Sylvia Mary Addison and Andrew Michael Addison**

#### *Representation*

7.7.180. The APs are represented by H&H Land and Estates and own and occupy land within Scheme 0405. The APs do not object to the Proposed Development in principle but have the following concerns and object to the extent of CA sought [RR-117, RR-118 and RR-119]. The seeking of rights as an alternative also has not been considered. There is no need for CA powers over a main access into the farm which comprises part of the old A66 carriageway and rights of access should be reserved.

7.7.181. There was a lack of proper pre-application consultation due to very little detailed information. To date, the APs have had no details to consider on design such as on the underpass, boundary treatments, drainage and services. The consultation documentation also did not provide specific detail on how the impact of the Proposed Development has been considered and would be mitigated in terms of

agricultural operations and the business. This needs to be addressed at farm level about impacts through construction and on its completion.

- 7.7.182. Substantial areas including a yard, farm buildings, an access track and a slurry lagoon would be subject to the CA powers sought. This is unnecessary and would cause significant impact on the current dairy operations when much of these areas could be subject to TP with managed access for operations. The CA powers sought would also restrict future building use and expansion.
- 7.7.183. The CA powers sought also include the earth bank of a slurry store. No assurances have been given that the works would not affect the structural integrity of this slurry store, and the CA powers should be minimised in this area. The CA powers sought also include one of the two vehicle accesses to the store, and a second replacement would be required.
- 7.7.184. CA powers are sought for a compound and ecological mitigation on pasture where cows graze throughout the summer on a daily basis. A track would be needed to access the remainder of the field. The compound and ecological mitigation would be better located on severed, uneconomic and misshaped areas of retained land. The CA for contractors' compounds is also excessive and only subject to TP.
- 7.7.185. The CA powers sought for environmental mitigation are excessive in area. The land is Grade 2/3 agricultural land and highly productive, and its loss for the production of agricultural products and livestock is a relevant consideration that must outweigh any environmental mitigation consideration. There is no explanation as to how mitigation areas have been calculated and how locations have been determined and land taken for mitigation areas should be proportional to the land area being acquired from any particular landowner.
- 7.7.186. A number of new and existing hedgerows are identified to be acquired. There are no management prescriptions for these hedges, which could be managed under agreements. The APs are also prepared to offer other land as wetland if this would reduce mitigation elsewhere on their holding, and there is therefore no compelling case in the public interest for these CA powers. Furthermore, there is no agreement on proposed walls, fences, hedges, gates, cattle grids, access tracks and service supplies.
- 7.7.187. Finally, there is no detail of drainage schemes and their impact on retained land. Discharges in certain directions would result in flooding of retained land and affect the use and viability of the land.

#### *Applicant's Response*

- 7.7.188. The Applicant has met regularly with the APs since 2020, including meetings at an alternative's session in summer 2021 and with the Applicant's ecology team in autumn 2021, and understands their issues [[PDL-012](#), page 61 onwards]. The ES records a moderate adverse effect on the AP's land, and mitigation on this land would be principally for nature conservation and biodiversity. The Applicant requires areas of the AP's yard, farm buildings, an access track and a slurry lagoon for essential carriageway and junction works, and the need for this land take was a key consideration during preliminary design.
- 7.7.189. The Applicant acknowledges the request for a change in relation to an access track and ecological mitigation on grazing land [[PDL-012](#), page 78]. This change, if appropriate and feasible, could be undertaken within the Order land as there is

flexibility built into the application for this type of change. If feasible and appropriate, the change would be secured through commitments in formal agreements between the Applicant and the APs.

- 7.7.190. Ponds and drainage systems have been designed to store additional run-off from the Proposed Development and restrict peak flows to existing green field run off rates. This would minimise the risk of increasing flooding in the area. Further details would be developed during detailed design alongside a Ground and Surface Water Management Plan under the EMP.

*ExA's Consideration*

- 7.7.191. The ExA has already considered the Applicant's approach to consultation, engagement, the extent of CA powers sought including a compelling case, loss of productive agricultural land, environmental mitigation, drainage, flood risk and contractors' compounds under matters relating to the shared issues of APs represented by George F White and considers them to have been appropriate. The ExA can see no reason to depart from this position. The ExA considers that the CA powers sought over the main access to the farm, yard, buildings and lagoon are because of the route chosen for the Proposed Development and has already considered this to be fully justified earlier in this report. The ExA notes however that access would be maintained and some flexibility exists within the Order land in terms of ecological mitigation on the AP's land.
- 7.7.192. The ExA is satisfied that the CA and TP powers sought at this stage are necessary to deliver the Proposed Development and that alternatives to outright CA would be considered following detailed design. The ExA is satisfied that any business disruption would be subject to appropriate compensation in the manner set out in the Recommended DCO [[REP9-026](#), Section 7.4].
- 7.7.193. The ExA has already addressed matters relating to the use of rights and covenants and considers the Applicant's approach to be appropriate. Severed private service connections would be a matter for potential replacement and compensation under the Recommended DCO.

**Barbara Lynn and Peter Harrison Ivinson** (own and occupy land within Scheme 0405) [[RR-097](#), [RR-099](#) and [PDL-012](#), page 270 and 388]

**Christine Margaret and Norman Cowin** (own and occupy land within Scheme 0405) [[RR-106](#), [RR-107](#) and [PDL-012](#), page 33 and 272]

**Christopher James, Geoffrey and Janet Elizabeth Bell (all trading as G & JE Bell)** (own and occupy land within Scheme 0405) [[RR-109](#), [RR-110](#), [RR-111](#) and [PDL-012](#), page 41 and 272]

**John Gordon Slee** (owns and occupies land within Scheme 0405) [[RR-089](#) and [PDL-012](#), page 269 and 401]

**John Harvey Slack** (owns and occupies land within Scheme 03) [[RR-090](#) and [PDL-012](#), page 8 and 269]

**Judith Olive and John Steadman Dodd** (own and occupy land within Scheme 0405) [[RR-104](#) [RR-105](#) and [PDL-012](#), page 29 and 269]

**Martyn George Farrell** (owns and occupies land within Scheme 0405) [[RR-100](#) and [PDL-012](#), page 18 and 269]

**Nigel Teasdale** (occupies land within Scheme 0405) [[RR-113](#) and [PDL-012](#), page 41 and 270]

**Richard John Mackey** (owns and occupies land within Scheme 0102) [[RR-096](#) and [PDL-012](#), page 16 and 269]

**Thomas Chappelhow** (owns and occupies land within Scheme 0405) [[RR-108](#) and [PDL-012](#), page 37 and 270]

**William Edward Patterson** (owns and occupies land within Scheme 06) [[RR-092](#)]

**William and Claire Patterson** (own and occupy land within Scheme 06) [[RR-091](#), [RR-093](#) and [PDL-012](#), page 14 and 269]

**Colin Thomas and Yvonne Julie Dent** (own and occupy land within Scheme 0405) [[RR-102](#), [RR-103](#) and [PDL-012](#), page 271 and 400]

### *Representations*

- 7.7.194. The APs are represented by H&H Land and Estates and do not object to the Proposed Development in principle but have the following concerns and object to the extent of the CA and TP powers sought where further clarity is required.
- 7.7.195. The extent of the CA powers sought for environmental mitigation are excessive and do not take into account future losses to agricultural businesses which must outweigh any environmental mitigation considerations. Most of the environmental mitigation would be on the APs' highly productive agricultural land. If appropriate consultation had occurred, the APs could have identified alternative mitigation areas on less productive land. The habitat types and conditions in relation to environmental mitigation design have been based on the Biodiversity Metric 2.0, not the up to date 3.1. The outright CA of the APs' land for environmental mitigation may also be unnecessary as the APs may wish to offer rights and enter into restrictive and enforceable positive covenants to manage these areas in an agreed manner.
- 7.7.196. Most of the APs' agricultural land that would be affected by the CA powers sought is highly productive. Any severance or damage to drainage could have a serious impact on land use and the farming business. Drainage and flood risk can also be a major problem for many years post construction, and no assurance has been given on how this would be managed. There is also a concern on how attenuation ponds would outfall into existing drainage networks.
- 7.7.197. Several private water mains together with electricity and fibre connections would be affected by the CA powers sought. If these are severed or damaged during construction, this could have serious negative impacts on domestic and agricultural users.
- 7.7.198. In respect of the APs Barbara Lynn and Peter Harrison Ivinson, Christopher James, Geoffrey and Janet Elizabeth Bell, Judith Olive and John Steadman Dodd, William Edward Patterson and William and Claire Patterson, access points and tracks to retained land would be necessary for the normal running of the farming businesses.
- 7.7.199. In respect of the APs Christine Margaret and Norman Cowin, the CA powers sought include the only barn on this site, which is required all year to house sheep, for lambing and for crop storage. The building cannot be dismantled and relocated, and the APs would have limited retained land for a replacement building. Discussions with adjacent landowners have been unsuccessful, and the Applicant should erect a

replacement building before construction commences. Most of the APs' agricultural land on which CA and TP powers are sought is also highly productive. The CA and TP powers sought would therefore cause severe hardship to the farming business.

- 7.7.200. In respect of the APs Christine Margaret and Norman Cowin and Christopher James, Geoffrey and Janet Elizabeth Bell, the CA powers sought include existing drainage culverts, which are assumed would be outfalls for attenuation ponds. During heavy rainfall, these culverts flood onto the APs' land. The proposed outfalls would increase flows in these culverts and have a detrimental impact on the farming businesses.
- 7.7.201. In respect of the APs John Gordon Slee, John Harvey Slack, Nigel Teasdale and Colin Thomas and Yvonne Julie Dent, dual balancing ponds should be rationalised into the least number necessary to reduce access and outfall issues.
- 7.7.202. In respect of the APs Judith Olive and John Steadman Dodd, the CA and TP powers sought include the only agricultural building on this site, a yard and pens. The building is required all year to house sheep, for lambing and for crop storage and the Applicant should erect a replacement building before construction commences with security closed circuit television and lights due to the proximity of a construction compound. The APs also require an extended area to the north and east of the compound for the storage of farm machinery, crop, bales, dog pens and portacabins for chemicals and spray.
- 7.7.203. In respect of the AP Martyn George Farrell, the CA powers sought for the private means of access between the old A66 and Priest Lane comprise excessive agricultural land which is vital to the sustainability of our client's farming enterprise. The design should be amended to move the access to the east so that it would border two separate landowners and leave farmable sized blocks of land.
- 7.7.204. In respect of the AP Thomas Chappelhow, a private means of access would be required for the AP's retained land on the north and south sides of the proposed Roger Head Farm Bridge. Cattle handling pens should also be provided on either side of the bridge to allow for farming activities to continue on the retained land. Other cattle pens would be affected by the CA powers sought for environmental mitigation and would need relocation and normal field access.

#### *Applicant's Response*

- 7.7.205. The Applicant has met regularly prior to the application and understands the APs' issues. The Applicant has a two stage approach to the CA process, as explained earlier in this Section of this report, together with alternative means of land control should agreement be reached between the parties involved [[PDL-012](#), page 390 and 35]. The Applicant has explained its approach to the selection of environmental mitigation areas and its use of the BNG Metric as set out earlier in this Section of this report. Accommodation works to protect, divert or provide alternative utility supplies would be agreed [[PDL-012](#), page 275]. The ALO would keep the APs informed on the timing of any works that would affect private utilities.
- 7.7.206. The Applicant has considered impacts on existing ditches and drains [[APP-221](#)] and attenuation ponds have been designed to store the additional run-off from the Proposed Development and restrict peak flow rates to no greater than the existing green field run off rates. Existing land drainage systems impacted by the Proposed Development would be diverted to ensure minimal change in performance [[REP8-005](#), D-BD-06]. The Applicant has explained its approach to attenuation ponds and



their outfalls earlier in this Section of this report. Highway drainage would be the responsibility of the Applicant or the Local Highway Authority [PDL-012, page 270].

#### *ExA's Consideration*

- 7.7.207. The ExA has already considered the Applicant's approach to consultation, engagement, the extent of CA powers sought including alternatives to CA, loss of productive agricultural land, environmental mitigation, drainage and attenuation ponds under matters relating to the shared issues of APs represented by George F White and considers them to have been appropriate. The ExA can see no reason to depart from this position. The ExA has also previously considered, and been satisfied with, the Applicant's use of the BNG Metric.
- 7.7.208. Severed private service connections would be a matter for potential replacement and compensation under the Recommended DCO. The ExA is also satisfied that any business disruption, including matters relating to access to retained land, would be subject to appropriate mitigation and compensation in the manner set out in the Recommended DCO [REP9-026, Section 7.4].
- 7.7.209. In respect of the APs Christine Margaret and Norman Cowin and Judith Olive and John Steadman Dodd, the ExA considers that the CA powers sought over the only barn and building on the APs' sites are because of the route chosen for the Proposed Development. The ExA has already considered the chosen route to be fully justified earlier in this report.

#### **Mortham Estates (Trustees) Limited and Womble Bond Dickinson (Trust Corporation) Limited**

##### *Representation*

- 7.7.210. The APs are represented by Mr Salvin and Womble Bond Dickinson (Trust Corporation) Ltd make representations as Trustees of the Sir Robert Andrew Frank Morrilt 1962 Marriage Settlement and Trustees of the Rokeby 1991 Settlement. The APs own and occupy land within Scheme 08. The APs do not consider that a compelling case has been made in respect of the CA powers sought [RR-121].
- 7.7.211. The accesses to Ewebank and Tutta Beck Farms should be located along the northern fringe of Jack Wood, where there is an existing route, instead of along the southern edge of the proposed A66. This would reduce land take and provide better connectivity between the farms.
- 7.7.212. No Farm Impact Assessments have been undertaken by the Applicant [REP8-085]. The impact of the CA powers sought for carriageways, balancing ponds and environmental mitigation would be considerable. It would render the two farms uneconomic through the loss of critical mass, access, character and connectivity with the adjacent farms on the Estate. In particular, the balancing ponds have been located without thought on the impact upon the farm businesses involved. The majority of the proposed balancing ponds would discharge into Tutta Beck which has known flood risk issues at Tutta Bridge Cottages, Greta Bridge.
- 7.7.213. The APs do not consider the CA powers sought for woodland planting on Plot 08-01-16 to be necessary, justified or proportionate [REP5-075]. The APs cannot identify any corresponding woodland loss in Schemes 7 or 8. Mitigation should follow the Applicant's criteria by locating it within the scheme concerned as woodland within Scheme 7 is rarer and of more landscape and environmental value than that in Scheme 8. The APs offer an alternative site [REP5-074] where a



temporary licence could be granted for woodland planting and establishment. The site would not adversely impact sporting or deer management, have a better fit within the landscape and not: compromise the setting of St Mary's Church; sterilise identified mineral deposits [\[REP5-073\]](#); or impact farm businesses.

#### *Applicant's Response*

- 7.7.214. The assessment on agricultural land and farm holdings [\[APP-056\]](#) includes data gathered on the type, location, scale and number of agricultural holdings affected by the Proposed Development through the loss of land and access routes and the level of impact upon future viability of each holding. It also includes information on the level of existing accessibility and frequency of use of agricultural holdings within the study area. The assessment describes its focus as including the loss of or damage to key characteristics, features or elements of the agricultural holding and the potential effect of this change on viability, such as from the substantial amendment to access or acquisition of land. The dialogue would continue with the APs during detailed design to minimise and mitigate impacts as far as practicable.
- 7.7.215. The balancing ponds have been designed with consideration of: the proposed highway design; the existing topography; engineering challenges; construction; future maintenance and access; cost; land take; and stakeholder impacts [\[PDL-012\]](#), page 91]. The Applicant has sought to locate the ponds close to the A66 to limit land take, which would improve maintenance access and avoid long access tracks across additional land. Further refinement would be undertaken at detailed design, and this may result in the relocation or resizing of some ponds. Discussions are ongoing with local authorities about combining ponds where currently there are separate ponds for local authority and the Applicant's ownership.
- 7.7.216. There are proposed drainage connections to Tutta Beck. Ponds and drainage systems have however been designed to store the additional run-off produced by the Proposed Development and restrict the peak flow rate to no greater than the existing run off rates. This would minimise the risk of increasing flooding in the area [\[APP-221\]](#). Further details would be developed during the detailed design stage and through a Ground and Surface Water Management Plan under the EMP [\[REP8-005\]](#).
- 7.7.217. The Applicant has justified the need for the CA powers sought over Plot 08-01-16 for woodland planting [\[REP5-027\]](#) and [\[REP5-028\]](#). The woodland loss in Scheme 07 would be plantation woodland and there are no woodlands of value along the road corridor due to the open nature of the area [\[REP6-021\]](#), page 97]. Woodland loss in Scheme 08 would be of more value and affect species reliant on this habitat in the vicinity. The site offered by the APs is much further from the Proposed Development than the proposed mitigation and would not maximise opportunities for biodiversity in the vicinity of the scheme.

#### *ExA's Consideration*

- 7.7.218. The ExA is satisfied that accesses within the APs' land have been appropriately addressed and that opportunities may exist to improve the current proposals during detailed design. Indeed, the ExA is of the view that general connectivity in the area, when considering the existing heavy traffic loadings and junction arrangements on the A66, may be improved because of the Proposed Development.
- 7.7.219. The ExA has already recorded, under matters relating to the issues of APs represented by H&H Land & Estates Ltd and shared issues of APs represented by

George F White, that it is satisfied with the Applicant's approach to attenuation ponds, drainage, flood risk and environmental mitigation. The ExA can see no reason to change its position as a result of the APs' representations here and accepts the Applicant's justification in respect of Plot 08-01-16.

- 7.7.220. The ExA is also satisfied that any business disruption would be subject to appropriate compensation in the manner set out in the Recommended DCO [[REP9-026](#), Section 7.4] and that, in appropriate circumstances, the compensation provisions contemplate situations where there may be a total extinguishment of a business.

**Mr John Arthur and Mrs Virgilia Heath**

*Representation*

- 7.7.221. The APs are represented by Walton Goodland Ltd and own and occupy land within Scheme 0102. The APs consider that there has been inadequate application consultation [[REP1-078](#) [REP1-079](#), [REP1-080](#) and [REP1-081](#)]. Plots 0102-02-24 and 25 are required for a site compound. Permanent acquisition is therefore not required, and a temporary licence only should be taken.

*Applicant's Response*

- 7.7.222. The APs land is primarily required for essential mitigation of the adverse effects of Scheme 0102 in relation to landscape integration, nature conservation and biodiversity [[PDL-012](#), page 355]. The Applicant is committed to working with landowners to avoid the need to exercise CA powers if appropriate agreements can be entered into.

*ExA's Consideration*

- 7.7.223. The ExA has already recorded, under matters relating to the shared issues of APs represented by George F White, that I satisfied with the Applicant's approach to consultation. The ExA has also already recorded, under matters relating to APs represented by H&H Land & Estates Ltd, that it is satisfied with the Applicant's approach to alternatives to CA such as by the use of licences. The ExA can see no reason to change its position as a result of the AP's representations here.

**Dr Anthony Richard Leeming and Lady Elizabeth Mary Cecilia Leeming (as trustee of the AR Leeming Voluntary Arrangement)**

*Representation*

- 7.7.224. The APs are represented by Walton Goodland Ltd and own and occupy land within Scheme 0102. At the close of the Examination, the following two points remained unresolved [[REP9-058](#)]. The APs however support the Proposed Development as a whole.

- 7.7.225. The first point is the absence of adequate justification for the taking of land for mitigation planting. The APs state that no detailed calculation, factual evidence or reasoned methodology has been provided to show that Plot 0102-01-34 is required for, and is essential to, the Proposed Development. The Applicant's bio-diversity tool spread sheet does not provide detail of the woodland loss in Scheme 0102 for which Plot 0102-02-34 is required in mitigation but assumes that all woodland within the Order land would be felled which is not the case. In absence of such detail, the

CA powers over this land cannot be identified when weighed against the heritage and landscape loss in planting up this area of historic parkland.

- 7.7.226. The second point is the absence of adequate justification for the taking of Plot 0102-01-34 where an alternative has been offered. The APs are prepared to offer other areas of equivalent size within their ownership in the surrounding area for biodiversity and mitigation planting, and accordingly the CA powers over Plot 0102-01-34 are unnecessary. In particular, a triangular area to the northeast of this plot has been offered with a strip of land fronting the River Eamont which would also improve visual screening from the M6. The APs also state that it is unnecessary to seek CA powers for mitigation planting or to limit planting to native species only when they are prepared to enter into covenants to achieve any necessary planting and retain existing planting.
- 7.7.227. The APs consider that they are close to agreeing alternative land for mitigation, but the Applicant is not able to enter into a binding agreement until detailed design. The APs find this unacceptable; if an alternative mitigation site is acceptable in principle to the Applicant, then the Applicant cannot just justify the CA powers over Plot 0102-01-34.
- 7.7.228. The CA powers over Plot 0102-01-34 are also unnecessary because they are excessive in area, where TP would be more appropriate. Mitigation planting could also be achieved by the taking of rights only over Plot 0102-01-34 and its access route. As the APs have offered to enter into rights and to provide other land for mitigation planting, there cannot be a compelling case in the public interest to acquire land in such circumstances. From all of the above, the APs seek a recommendation that Plot 0102-01-34 is omitted from the Recommended DCO.

#### *Applicant's Response*

- 7.7.229. The Applicant has set out a justification for the need, location and size of Plot 0102-01-34 and considered the alternatives proposed [REP5-027, Section 2]. Moving the woodland planting in Plot 0102-01-34 to the two plots proposed would reduce riparian habitat enhancement and would not offer the same opportunity to maximise biodiversity enhancement, in accordance with the NPSNN<sup>66</sup>.
- 7.7.230. The Applicant seeks CA, as a last resort, for the land that is required to safeguard the delivery of the Proposed Development. The CA powers can be 'rolled back' to a lesser power, such as the acquisition of rights, if that is only what is required [REP1-007, Agenda Item 2.2].

#### *ExA's Consideration*

- 7.7.231. The ExA is satisfied that the need, location and size of Plot 0102-01-34 has been justified in the context of the alternatives proposed. The land and mitigation plans reflect a 'worst case' scenario [REP9-026, Section 3.5] which would be reassessed in the second stage of the two stage CA process [REP5-023, page 25].
- 7.7.232. The Applicant has also explained its approach to the location of mitigation where, in some cases, this has to be sought away from the harm that is to be mitigated [REP5-023, Agenda Item 3.1]. The ExA has already considered this approach under matters relating to APs represented by H&H Land & Estates Ltd and considers it to be appropriate. The ExA can see no reason to depart from this position and notes

---

<sup>66</sup> NPSNN, para 5.33

that, as a last resort, alternative locations are sought within other schemes where the primary function of the mitigation could still be achieved. Notwithstanding that the APs consider they are close to agreement with the Applicant on alternative mitigation areas, the Applicant has continued to put Plot 0102-01-34 into the Examination at its close, and it is this position, together with that of the APs, which the ExA has considered.

- 7.7.233. The ExA has also already considered the Applicant's approach in respect of the CA and TP powers sought being a 'worst case' and last resort, in terms of lesser interests that could be sought, under matters relating to the shared issues of APs represented by George F White. The ExA considers the approach to be appropriate and can see no reason to depart from this position.

**Emma Nicholson, Tim Nicholson and Felicity Nicholson (all trading as RK & GF Nicholson)**

*Representation*

- 7.7.234. The Applicant has identified the above APs [[REP1-007](#), Agenda Item 3.16] who own and occupy land within Scheme 0405. Representations in the name of Cactus Tree Guards Ltd. Have also been submitted to the Examination and have been taken into account alongside those of these APs.
- 7.7.235. The APs' 300 acre farm has the farmyard and house at its centre [[REP5-067](#)]. The Proposed Development would have an unacceptable impact on farming operations by severing the best block of land on the farm [[REP1-066](#)]. It would dissect all the south facing free draining sandy loam fields, and those remaining would be unusable for arable crops due to the awkward field shapes [[REP5-066](#)].
- 7.7.236. The one arable field not affected by the CA powers sought, to the south of the farmyard, would need access arrangements suitable for a combine harvester, and similar access arrangements would be required for other fields nearby. Access arrangements would need to avoid steep banks due to the use of large machinery and loaded trailers.
- 7.7.237. The APs land is being farmed regeneratively with a focus on building soil health. The rich floodplain land is no longer viable for arable rotation due to more frequent flooding. This only leaves 100 acres of land to the south and west of the farm, and most of that land would be destroyed or damaged by siting large compounds on it. The loss this of high quality agricultural land would be devastating to the farm, and it is hard to see how the farm could continue to be an economic unit.
- 7.7.238. The Proposed Development would introduce over 2 km of additional fencing, with a similar length of hedgerows along the dual carriageway, and the AP would incur unreasonable future maintenance costs. Similarly, the two outfall ditches from the pollution prevention ponds, which would drain directly into the SSSI/ SAC river, may need to be fenced. Any such ditches would almost certainly need double fencing and maintenance for livestock safety.
- 7.7.239. The CA powers sought would impact on the APs' water main and private borehole supplies. The Proposed Development would cut the water main supply and could cause contamination of the borehole supply. Trout Beck viaduct piling may also damage and pollute the aquifer around the borehole.
- 7.7.240. Construction would inevitably interrupt the power supply to the farm. Any interruption of the 3-phase supply is business critical in terms of wood processing

machines. Interruption would also impact on power fed into the grid from the APs' 54kwp solar panels.

- 7.7.241. Construction compounds would damage underlying soils, sub-soils and land drains due to the impact of heavy plant and storage of materials. Soils rarely recover from such long-term damage, and any land returned to agriculture after construction would be of poorer quality.
- 7.7.242. The re-alignment of Sleastonhow Lane would require excessive land which would destroy good sandy loam soils. A longer span of bridge, to keep the current alignment, would require less land. The APs have also not had any assurances that the bridge, their only access, would have the required a capacity of 45 tonnes. The APs are also concerned that any disruption to this access, due to CA and TP for construction, would have a severe impact on the regular farm events on regenerative agriculture and the AP's annual two day conference.
- 7.7.243. The CA powers sought would lead to a loss of sporting rights on the farm. The CA powers would include the APs' riverbank, which would prevent use of the APs' sporting fishing rights. The proposed A66 would also prevent any shooting rights from being exercised in the vicinity of the road.
- 7.7.244. The APs state that the Applicant has refused to disclose the cost of Scheme 0405, which is predicted to be the most expensive scheme given the number of structures required, and also its Benefit to Cost Ratio (BCR) [REP1-065]. The APs say the Applicant advised that a BCR calculation had only been conducted for the overall Proposed Development. The APs consider that this a fundamental flaw and reflects the mismanagement of public funds on a gross scale.
- 7.7.245. Justification for the Proposed Development is diminishing due to there being no economic gain, as a BCR of less than 1 shows the benefit would never outweigh costs, and major obstacles are emerging. A cumulative carbon assessment outcome for the Proposed Development would be Major Adverse and the Proposed Development would fail the NPSNN<sup>67</sup> test. The test for CA powers to achieve public benefit is therefore not met.
- 7.7.246. The design of the Proposed Development is incomplete. This has led to there being no certainty about the extent of land required for CA and TP, and saying you have consulted is not the same as doing so with full information. The application shows all the APs' Order land as being permanent land take, but this is clearly not the case. Examples are the Trout Beck viaduct spans and the linear strips for power lines which the Applicant would not wish to own. In respect of TP, there is: no binding commitment to return land; no indication as to when the land would be returned; and no clarity on the condition of the land that may be returned. Despite this uncertainty, the Applicant continues to pressurise owners to enter into contracts and options early. This is creating huge amounts of stress in an already stressful process.
- 7.7.247. The design is also not sufficiently advanced to demonstrate a compelling case for the CA powers sought or a rationale for the TP powers sought. The Proposed Development is therefore not ready for DCO consent, and the AP urges the ExA not to recommend consent for the Proposed Development, or at least the worst planned sections of it. Scheme 0405 is by far the worst thought through section on the

---

<sup>67</sup> NPSNN, para 5.18



Proposed Development from the route selection and design process through to the submitted application together with its future impacts.

*Applicant's Response*

- 7.7.248. The Applicant has met with the APs throughout the preliminary design and understands their concerns [REP2-015, page 189]. There has also been wide ranging consultation and engagement on the Proposed Development [APP-252, Table 6.2, APP-264, APP-271 and PDL-012, page 190].
- 7.7.249. Dialogue would take place with the APs during detailed design in order to minimise and mitigate farming impacts as far as practicable [REP2-015, page 92]. Sleastonhow Lane bridge would accommodate vehicles of up to 80 tonnes [PDL-012, page 265]. Change Request DC-14 [CR1-002], which was accepted into the Examination by the ExA [PD-014], may potentially lead to a reduction in land take around the bridge, and this would be determined during detailed design.
- 7.7.250. Works to protect, divert or provide alternative electricity and water supplies would be discussed and agreed as accommodation works [PDL-012, page 255]. The ALO would be responsible for keeping the APs informed on the timing of any works that would affect private utilities [REP8-005]. Pre and post construction surveys would ensure that borehole water quality and feed would be preserved, and a method statement would protect the borehole during construction [PDL-012, page 264 and REP2-015, page 92]. Piling works would also include a method statement with a site-specific risk assessment. The application includes a Soil Handling Strategy [REP8-005], and an assessment of the potential effects on soils and subsoils has been undertaken [APP-052 and PDL-012, page 255].
- 7.7.251. Route options were considered against a number of criteria, including agricultural land quality, in accordance with the NPSNN<sup>68</sup> [PDL-012, page 264]. The potential loss of such land was therefore taken into account but was not a clear differentiating factor between options. The Applicant has however sought to use areas of poorer quality land where this has been possible in lieu of higher quality land [REP2-015, page 92].
- 7.7.252. The Applicant has updated the cost estimate of the Proposed Development throughout its lifecycle and has in turn updated the BCR for the Proposed Development throughout [REP2-015, page 75]. The Proposed Development is considered as a whole to realise efficiencies in delivery rather than delivering on a scheme by scheme basis. While each scheme contributes to the Project Objectives [APP-008, Section 1], they are achieved on a route wide basis with the principal strategic benefits of the Proposed Development being derived from the dualling of the entire length of the A66 [APP-244]. The application is therefore for the whole Proposed Development, and the economic benefits have been measured collectively rather than on a scheme by scheme basis [APP-008, Section 5 and 6].
- 7.7.253. Non-monetised benefits, such as journey quality, have been assessed qualitatively [APP-008, Table 5-10] and Scheme 0405 supports and contributes to the Project Objectives [APP-008, Section 6.4 and Table 6-3]. Non-monetised benefits are excluded from the BCR calculations; however they are an important consideration in the case and need for the overall Proposed Development.

---

<sup>68</sup> NPSNN, para 5.168



7.7.254. In relation to the comments regarding Trout Beck viaduct, the Applicant seeks CA, as a last resort, for the land that is required to safeguard the delivery of the Proposed Development. The CA powers can also be 'rolled back' to a lesser power, such as the acquisition of rights, if that is what is required [REP1-007, Agenda Item 2.2]. In relation to the return of surplus land, the Applicant would follow the Criche! Down Rules which make provision for surplus land to be offered back to its previous owner in the first instance and provision for land that has been altered as a consequence [REP1-007, Agenda Item 2.4].

7.7.255. The Applicant believes that it has set out a compelling case in the public interest for the CA powers sought [REP2-015, page 82 and REP9-026, Section 6.4].

#### *ExA's Consideration*

7.7.256. The ExA is satisfied that any business disruption, including matters relating to access to and the use of retained land and the farm itself together with sporting rights, would be subject to appropriate mitigation and compensation in the manner set out in the Recommended DCO [REP9-026, Section 7.4]. Furthermore, in appropriate circumstances, the compensation provisions contemplate situations where there may be a total extinguishment of a business.

7.7.257. The ExA considers that mitigation, under the EMP, and compensation, in respect of CA and TP, relating to the use of retained land would include the safe exit of stock from fields during flood events. The ExA has already considered the impact of the Proposed Development in terms of flood events earlier in this report and considers the management of any impacts to be appropriate. The Applicant is responsible for maintaining trunk roads, including that element of the Proposed Development, and would have to take such care in terms of maintenance, under Article 9 of the Recommended DCO, as was reasonably required in the circumstances to secure that the road was not dangerous for traffic [REP9-016, para 7.20]. The Recommended DCO also provides for a five year maintenance period following the completion of construction [REP1-007, Agenda Item 3.5]. Further discussions around accommodation works such as fencing would also take place during detailed design and be agreed with each AP [PDL-012, Page 148]. The ExA is therefore satisfied that the maintenance of infrastructure, including fencing, would be secured [REP5-023, page 27].

7.7.258. The ExA considers that the EMP secures adequate mitigation in respect of measures to protect or replace groundwater abstractions [REP8-005, D-RDWE-09]. The ExA notes that the EMP includes, in its Register of Environmental Actions and Commitments, commitments to minimise severance of access to private assets and impacts to farm businesses during construction [PDL-012, Page 148 and REP8-005, MW-PH-01 and MW-PH-02]. The ExA is therefore satisfied that severed service connections, including internal infrastructure, would be a matter for appropriate protection, replacement and compensation under the Recommended DCO.

7.7.259. The ExA has already considered the Applicant's approach to consultation and information, agricultural land loss, soil sealing due to compaction and value for money under matters relating to the shared issues of APs represented by George F White. The ExA still considers these approaches to be appropriate. The ExA is also satisfied that the amended Sleastonhow Lane bridge would move towards the APs concerns in respect of land take and is appropriate.

- 7.7.260. The ExA has already considered the Applicant's approach to the extent of the CA powers sought under matters relating to the shared issues of APs represented by George F White, and the ExA still considers it to be appropriate. This includes that the Recommended DCO only allows land to be subject to CA or TP where it is required after detailed design. The ExA can see no reason to depart from this position on the Applicant's approach, and the ExA is therefore satisfied that a compelling case has been made in respect of the CA powers sought over the APs' land.

### **Elisabeth Joy Fausitt Thompson**

#### *Representation*

- 7.7.261. The AP is primarily represented by Dr Mary Clare Martin [[RR-194](#), [REP1-089](#)] and Louise Taylor-Kenyon [[RR-001](#), [REP1-087](#)]. The AP is their elderly parent and owns subsoil and is a Category 2 person in respect of access within Scheme 06. The AP's concerns outside of the CA and TP powers sought, including inequalities on grounds of age and disability, have been addressed earlier in this report. The AP is generally concerned about the proximity of construction works and the Proposed Development to her residential property in terms of living conditions and loss in value [[REP1-117](#)]. The AP would wish to see a northern route used for the Proposed Development through MoD land. The AP is also concerned about the poor quality of consultation and information.

#### *Applicant's Response*

- 7.7.262. The Applicant has met with the AP's family throughout preliminary design and understands their concerns [[PDL-012](#), page 236]. As well as statutory consultation, supplementary consultation has been undertaken in respect of proposed design changes to specific parts of the route [[APP-252](#), Table 7.1 and [REP2-015](#)]. The supplementary consultation targeted those parties affected by the design changes, and the Applicant also held additional drop-in sessions at local venues to explain changes at Long Marton and Appleby. The supplementary consultations were also conducted in line with the PA2008 and the Statement of Community Consultation [[APP-259](#)].

#### *ExA's Consideration*

- 7.7.263. The AP's concerns outside of the CA and TP powers sought, including inequalities on grounds of age and disability, have been addressed earlier in this report and, to some extent, by the Applicant's Change Request DC-25 [[CR1-002](#)] which was accepted into the Examination by the ExA [[PD-014](#)]. The ExA spent time with the AP and viewed the AP's property and the surrounding area at the ASI [[EV-037](#)]. The ExA has also addressed alternatives earlier in the report and is satisfied that nothing in the AP's representations changes its position on the acceptability and need for the route within the application. In respect of consultation, the ExA has already considered the Applicant's approach under matters relating to the shared issues of APs represented by George F White, and the ExA considers it to be appropriate.

### **Penrith Properties Limited**

#### *Representation*

- 7.7.264. The AP is represented by Town Centre Regeneration and owns land within Scheme 0102. Prior to the Examination, no approach was made directly to the AP or those acting on its behalf [[REP1-120](#)]. In particular, no PA2008 s42 consultation invitation

and notice was received by the AP [REP5-070]. In addition, the final BoR for Scheme 0102 [REP8-033] fails to show the correct address and contact details for the AP, maintaining a risk that future notices would be incorrectly served.

- 7.7.265. The AP is of the view that no part of Plot 0102-01-20 is required to enable additional planting to take place in the context of the Applicant's road safety standards that require a distance between planting and the proposed road [REP9-061]. Any additional necessary planting can take place on the Applicant's land in proximity to plot 0102-01-20. Also, no part of Plot 0102-01-20 is required to maintain a safe distance between planting and the proposed road [REP3-071]. There is therefore no compelling reason for the land to be acquired for landscaping and reprofiling, and the AP has incurred expenditure in defending against the CA powers sought over land that is not required for the Proposed Development [REP6-043].

#### *Applicant's Response*

- 7.7.266. The Applicant's view is that it undertook diligent inquiry to identify persons with interests in the land affected by the Proposed Development. The AP has suffered no prejudice as a result of the contact referencing difficulties it has identified and has been able to fully engage with the Examination [REP2-015, page 25 and REP5-023, page 32].
- 7.7.267. The current preliminary design indicates that land is required beyond the existing highway boundary [PDL-012, page 403, REP4-011, CA 1.4 and REP7-160, page 29], and the cross sections requested by the AP have been provided [REP7-160, Appendix A]. The preliminary design on which the DCO application is based used a LIDAR<sup>69</sup> remote sensing survey which is standard practice for a project of this scale. During detailed design, more accurate topographical survey data would be used to refine the preliminary design.
- 7.7.268. The Order limits reflect the information available at this stage of the design process, making a reasonable allowance to ensure the Proposed Development could be constructed within the Order limits. The Applicant requires a reasonable degree of flexibility within which to deliver the Proposed Development in this area. The Applicant also believes it has carried out surveys commensurate with this stage of the Proposed Development.

#### *ExA's Consideration*

- 7.7.269. From the Applicant's actions in respect of diligent enquiry [REP2-015, page 25] and subsequent engagement to correct matters, the ExA is satisfied that the relevant sections of the PA2008 have been followed, and the AP has not been prejudiced.
- 7.7.270. The ExA is however of the view that the final BoR entry for Plot 0102-01-20 appears to be incorrect. Notices have already been incorrectly served, and the BoR should therefore be corrected. The ExA therefore considers that the Secretary of State for Transport may wish to seek confirmation from the Applicant that the final BoR entry for Plot 0102-01-20 is correct prior to determination of the application.
- 7.7.271. The Applicant's Section BB [REP7-160, Appendix A] shows that the Order land would not extend into the existing embankment. From the ExA's USI [EV-054], this

---

<sup>69</sup> Light Detection and Ranging

would not appear to be the case, and the ExA is of the opinion that Plot 0102-01-20 would occupy most, if not all, of the tree covered embankment at this location.

- 7.7.272. The ExA is satisfied that, at the preliminary design stage, the works shown on Section BB, including an observation platform for statutory bodies, would be necessary as an integral part of the Proposed Development. These works would appear to extend into the existing embankment as they would lie outside of the existing highway boundary.
- 7.7.273. The existing roundabout forms part of Junction 40 of the M6 and, at the ExA's ASI and USIs appeared to be heavily trafficked. The works shown on Section BB would need to be carried out in the context of this heavy traffic and the need to address any conflict between the works and the existing embankment. The ExA notes that the Applicant states that it has made a reasonable allowance to ensure the Proposed Development could be constructed within the Order limits and that a reasonable degree of flexibility within which to deliver the Proposed Development in this area is required. The ExA considers that the envisaged interference with the existing embankment and the difference in level between the proposed highway and existing development on the AP's land could not be reasonably contemplated without most, if not all, of the embankment at this location being within the Order limits.
- 7.7.274. The ExA has already considered the Applicant's approach to the extent of the CA powers sought under matters relating to the shared issues of APs represented by George F White, and the ExA considers it to be appropriate. This includes that the Recommended DCO only allows land to be subject to CA or TP where it is required after detailed design. The ExA can see no reason to depart from this position on the Applicant's approach.
- 7.7.275. Whilst the ExA is of the view that the Applicant has not responded well to the AP's representations in terms of the need for its land, the ExA can, from all of the above, see a need and justification for the Order land in this area. The ExA therefore considers that a compelling case for the CA powers sought on the AP's land has been made.

### **Susan Jane Irving**

#### *Representation*

- 7.7.276. The AP is represented by Ian Ritchie Land Agents Ltd and owns and occupies land within Scheme 0102. The AP is concerned that retained areas of land may have their access points reduced in width [[REP1-077](#)].

#### *Applicant's Response*

- 7.7.277. Dialogue would continue with the AP during detailed design of the Proposed Development where accommodation works details would be finalised [[REP2-015](#), page 7].

#### *ExA's Consideration*

- 7.7.278. The ExA is satisfied that the provisions in the Recommended DCO would protect the AP's interests.

## **Sheila Strong**

### *Representation*

- 7.7.279. The AP is represented by Ian Ritchie Land Agents Ltd and owns and occupies land within Scheme 06. The CA powers sought would cut the farm into two sections and take 10% of the farm [REP1-118]. This is excessive and would bring the future viability of the farm into question. The AP is also concerned that the Proposed Development would increase the risk of flooding.

### *Applicant's Response*

The Applicant has submitted a Flood Risk Assessment and Outline Drainage Strategy [APP-221]. The EMP also contains other measures that would reduce the adverse effects of the Proposed Development on the AP by including mitigation or reinstatement in any works that disturb drainage features to ensure that the features fulfil their original function and the baseline drainage conditions are maintained [REP8-005, MW-PH-02 and D-RDWE-10]. In addition, an ALO would be appointed whose duties would include coordinating land drainage surveys and sharing pre- and post-construction land drainage schemes with owners/occupiers in advance of finalisation, for their consideration. On future viability, should there be a case for compensation due to the effect of the Proposed Development, this would be reviewed under the usual compensation procedures and legislation.

### *ExA's Consideration*

- 7.7.280. The ExA is satisfied that the Applicant has appropriately engaged with the AP and that the need for the CA powers on the AP's land has been adequately justified. The ExA is also satisfied that any business disruption would be subject to appropriate compensation in the manner set out in the Recommended DCO [REP9-026, Section 7.4] and that, in appropriate circumstances, the compensation provisions contemplate situations where there may be a total extinguishment of a business.
- 7.7.281. The ExA has already considered the Applicant's approach to drainage and flood risk under matters relating to the shared issues of APs represented by George F White and previously in this report. The ExA considers them to be appropriate and can see no reason to depart from this position.

## **Martin and Margaret Tyson**

### *Representation*

- 7.7.282. The APs are represented by Ian Ritchie Land Agents Ltd and occupy land within Scheme 06. The land which would be subject to the CA powers is more than 50% of the current land holding and is excessive [REP1-128]. No details of CA and TP have been forthcoming. Discussions have been held on whether an overbridge could be moved away from the property to the east which would reduce the amount of land take.

### *Applicant's Response*

- 7.7.283. The CA powers sought and the Land Plans reflect a worst-case scenario, with detailed design still to be completed [REP2-015, page 96]. The Recommended DCO allows 'land to be acquired on an outright basis' to be rolled back to 'land on which new rights can be created and acquired' as an alternative to the CA of land outright. Furthermore, the outright CA of land or the creation of new rights could be

downgraded to the power of TP, if the Proposed Development could be delivered through the lesser power. CA thus remains a last resort, and acquisition by agreement is preferred. The CA powers sought are however necessary in order to ensure the deliverability of the Proposed Development. Similarly, the Order limits represent the full extent of land, but if all of this land is not needed, it would not all be acquired.

7.7.284. The approach is necessary because flexibility is needed to accommodate the sequence of developing a preliminary or reference design, applying for consent, and then developing a detailed design. Ultimately, the Applicant only seeks to acquire land needed for the Proposed Development, which is mirrored within the specific wording of Article 19 of the Recommended DCO. The drafting is specific, in that it permits the Applicant to only acquire compulsorily so much of the Order land as is required for the authorised development. This analysis would be done at a later stage, once detailed design is completed.

7.7.285. The Applicant has proposed a change to the DCO application, DC-26, which the ExA accepted into the Examination, that would move the overbridge to the south east further away from farm buildings and adjacent properties [[CR1-002](#), Section 3.26]. This change responds directly to requests by a landowner and would result in less land take.

#### *ExA's Consideration*

7.7.286. The ExA has already considered the Applicant's approach to the extent of the CA powers sought under matters relating to the shared issues of APs represented by George F White. The ExA considers it to be appropriate and can see no reason to depart from this position. The ExA also considers that the Applicant has been responsive to representations made concerning the overbridge and has reasonably mitigated the identified impacts.

7.7.287. The ExA is also satisfied that any business disruption would be subject to appropriate compensation in the manner set out in the Recommended DCO [[REP9-026](#), Section 7.4] and that, in appropriate circumstances, the compensation provisions contemplate situations where there may be a total extinguishment of a business.

#### **Allan Wilson Jenkinson**

#### *Representation*

7.7.288. The AP is represented by Rebecca Mallinson and owns and occupies land within Scheme 03, part of which lies within the Winderwath Estate [[RR-124](#)]. The AP has concerns regarding consultation [[REP1-047](#)]. The CA powers sought for mitigation planting on the AP's land within the Estate would adversely affect the AP's business and are unnecessary because of the extensive adjoining woodland planting completed at the Estate's expense specifically for mitigation purposes. The AP is also concerned about increased land take due to the doubling of the number of attenuation ponds because of separate local authority and highways requirements.

#### *Applicant's Response*

7.7.289. The Estate's woodland planting has been considered by the Applicant but, due to its location, it was not considered sufficient for mitigation with regard to potential effects reported in the ES [[PDL-012](#), page 97].



- 7.7.290. The Applicant and local authorities recognise there may be efficiencies in combining the ponds but this would be subject to legal agreements. Detailed design may involve amendments to pond locations and/ or shapes to better fit the existing landscape and field patterns, in consultation with the drainage authorities and the AP.

*ExA's Consideration*

- 7.7.291. The ExA has already considered the Applicant's approach to consultation under matters relating to the shared issues of APs represented by George F White and the ExA considers it to be appropriate. The ExA has already considered the Applicant's approach to mitigation on the Winderwath Estate together with the doubling of attenuation ponds and the ExA considers them to be appropriate. The ExA can see no reason to depart from its positions on these matters. The ExA is also satisfied that any business disruption would be subject to appropriate compensation in the manner set out in the Recommended DCO [[REP9-026](#), Section 7.4].

**Patricia Rogers**

*Representation*

- 7.7.292. The AP is a Category 2 person in respect of an interest in land in respect of access within Scheme 06 and has concerns regarding the CA powers sought over this access [[RR-045](#)].

*Applicant's Response*

- 7.7.293. It is proposed that the existing farm access would be retained and would link directly onto the existing A66 which would provide local connectivity [[PDL-012](#), page 284].

*ExA's Consideration*

- 7.7.294. The ExA notes that the Applicant intends to retain the existing farm access and is satisfied that, if this should not be the case, fair and reasonable compensation would be available under Article 22 of the Recommended DCO.

**Michael Raymond Metcalf**

*Representation*

- 7.7.295. The AP is represented by Edwin Thompson LLP, who refer to the Metcalf Family, and owns and occupies land within Scheme 0405. The Proposed Development would have a significant impact upon the farming business [[RR-198](#)]. The land which would be affected is used mainly for summer dairy grazing. This land must be close to the farm for milking and cannot just be replaced. In addition, the loss of land would result in the need to erect additional slurry storage facilities. The loss of land would result in a large additional cost to the business having to purchase additional feed year-round and the additional cost of managing slurry. The land take would represent 40% of the total land holding.
- 7.7.296. The Proposed Development would destroy the successful dairy business. Much of the investment in the farm, including sheds, drainage works to fields, cow tracks and a lagoon in the centre of the holding, would not be able to be used to its full potential which would result in these being wasted investments. The option to reduce livestock numbers is not realistic as the business has built up the livestock numbers after years of breeding. In addition, reducing cow numbers would disadvantage the

farming business in terms of a penalty from its milk buyer and the increased price of feedstuffs and consumables.

- 7.7.297. The Proposed Development would include a pond on the AP's land, and the AP suggests an alternative location which is naturally low lying. The Proposed Development also includes a construction compound and environmental mitigation area. The AP has no objection to a temporary construction compound but suggests an alternative location for the environmental mitigation to avoid a significant impact upon the business.
- 7.7.298. When areas taken on a temporarily basis are returned, soil management is needed in respect of topsoil and subsoil stripping and storage together with measures put in place to ensure that soil is not mixed between landowners. The AP is also concerned that the farm's borehole water supply could be impacted upon due to the deep cuttings which would be created nearby. Any impact on this supply would have a huge impact on the business as it relies on this supply to provide water for the farm. The borehole was installed several years ago to reduce costs. The CA powers sought would also sever a high pressure slurry pipe feeding the slurry lagoon which would need diversion.

#### *Applicant's Response*

- 7.7.299. Meetings have been held with the district valuer to determine disruption compensation as well as to facilitate the purchase of the land required by the Proposed Development [PDL-012, page 306]. The Applicant is working closely with the AP to facilitate retention of the business and minimise impact on the farming operation.
- 7.7.300. The EMP [REP8-005, MW-PH-02] includes the following measures that would reduce adverse effects on farm businesses: the accommodation of harvesting periods in the construction programme; maintenance and early reinstatement of access points; advance warning of works; field drainage liaison to minimise impacts.

#### *ExA's Consideration*

- 7.7.301. The ExA notes the engagement that has already occurred with AP and is satisfied that the appointment of an ALO should allow this to continue. The ExA is also satisfied that any business disruption would be subject to appropriate compensation in the manner set out in the Recommended DCO [REP9-026, Section 7.4] and that, in appropriate circumstances, the compensation provisions contemplate situations where there may be a total extinguishment of a business.
- 7.7.302. The ExA notes that attenuation ponds would be subject to review at detailed design. Their locations are however constrained by low points on the proposed carriageway, the availability of an existing watercourse for discharge, access from a local road for maintenance and the avoidance of over land flow paths [REP5-023, page 17]. The ExA has already considered the Applicant's approach to attenuation pond locations and considers it to be appropriate.
- 7.7.303. The ExA is also satisfied that soil management matters would be sufficiently regulated by the Soil Management Plan [REP3-013] within the EMP. The ExA considers that the EMP secures adequate mitigation in respect of measures to protect or replace groundwater abstractions [REP8-005, D-RDWE-09]. Severed private service connections, including internal infrastructure, would be a matter for appropriate replacement and compensation under the Recommended DCO.

## **Stephen Ian Reay**

### *Representation*

- 7.7.304. The AP is represented by Edwin Thompson LLP and owns and occupies land within Scheme 0405. The AP is concerned that there has been little communication in respect of the CA and TP powers sought [\[RR-199\]](#). The area of land is the only access to woodland from which the AP has plans to extract timber his business using the land as the extraction route. The loss of this route would significantly depreciate the value of the wood and restrict woodland management. The majority of the AP's land is required for grassland, but this land is already grassland and the AP is unsure of the need for this area as it is not needed to facilitate the construction of the Proposed Development.
- 7.7.305. The seeking of CA powers may be inappropriate as the detailed design has not yet been carried out yet and the design keeps changing. There is also no need for the CA powers over all areas for environmental mitigation as landowners could retain ownership in return for taking on maintenance, subject to reasonable terms being agreed to ensure the mitigation is maintained. If, after CA, land is left unused for long period of time and weeds are allowed to grow, the condition of the land deteriorates. The Applicant should be required to ensure that all land is maintained correctly.

### *Applicant's Response*

- 7.7.306. The Applicant's Public Liaison Officer for this area has been in regular contact with the AP, but the AP has not responded to offers of negotiations [\[REP9-029, No: 284\]](#).
- 7.7.307. The Applicant is considering access arrangements across the Proposed Development and from the proposed footway/ cycleway and B6542 together with how this would best accommodate the AP. The Applicant acknowledges this request for a change in relation to the access to the woodland. This change, if appropriate and feasible, could most likely be undertaken within the Order land as there is sufficient flexibility to allow for this type of change. If feasible and appropriate, the change would be secured through a legal agreement between the Applicant and the AP.

### *ExA's Consideration*

- 7.7.308. The ExA has already considered the Applicant's approach to consultation, engagement, environmental mitigation areas, the extent of the CA powers sought, alternatives to CA and the need for active land management under matters relating to the shared issues of APs represented by George F White and the ExA considers them to be appropriate. The ExA notes the Applicant's approach to accesses in this area and is also satisfied that any business disruption would be subject to appropriate compensation in the manner set out in the Recommended DCO [\[REP9-026, Section 7.4\]](#).

## **Geoffrey Wilson**

### *Representation*

- 7.7.309. The AP is represented by Edwin Thompson LLP and owns and occupies land within Scheme 06 (Appleby to Brough). The Proposed Development would have a significant impact upon the farming business as the land which would be affected is heavily relied upon [\[RR-170\]](#). The option to reduce livestock numbers is not an

option as livestock numbers are at the current level after years of breeding. In addition, reducing numbers would disadvantage in terms of a penalty from the AP's milk buyer and increased feedstuffs and consumables costs.

- 7.7.310. The AP has requested that an attenuation pond is relocated to the bottom of a hill which would avoid access disturbance to the business and increased costs. Land would also be taken for wetland habitat which is very dry and sandy when there is other more suitable land which would not have a large impact on the business. The AP requests that an ALO is employed.
- 7.7.311. Further details, prior to commencement on site, together with a condition is needed in respect of top and sub soil stripping, storage methods and measures to ensure that soil is not mixed between landowners when it is returned. A method statement on bio security issues is also required. The AP wants to review and comment on these details and method statement. The construction and operation of the Proposed Development would cause significant disturbance to the business with trespassing and litter. There are no detailed drainage proposals, and there are springs which drain and provide a water supply which would need investigation.
- 7.7.312. The seeking of CA powers may be inappropriate as the detailed design has not yet been carried out yet and the design keeps changing. There is also no need for the CA powers over all areas for environmental mitigation as landowners could retain ownership in return for taking on maintenance, subject to reasonable terms being agreed to ensure the mitigation is maintained. If, after CA, land is left unused for long periods of time and weeds are allowed to grow, the condition of the land deteriorates. The Applicant should be required to ensure that all land is maintained correctly.
- 7.7.313. The Order land also excludes small parts of fields which leaves land unsuitable for agricultural use. A common form of compensation is the cost of removing hedges and fences to reshape fields. The removal of a hedge longer than 20m requires planning consent<sup>70</sup>. This adds time, cost and uncertainty to farming business. The Applicant should have a management plan to ensure water supplies are not impacted during the construction and operation of the Proposed Development. Construction is likely to have a big impact on land drainage. A full scheme of land drainage should be designed by a third party expert and then implemented.

#### *Applicant's Response*

- 7.7.314. The Applicant has met with the AP a number of times during the preliminary design stage and understands the concerns [[PDL-012](#), page 285]. The Applicant responds to the concerns in a similar manner to other APs represented by Edwin Thompson LLP. In summary, the Applicant has stated that the concerns of Mr Wilson are matters which will be resolved at the detailed design stage and as part of the submission and approval of EMP2.

#### *ExA's Consideration*

- 7.7.315. The ExA has already considered the Applicant's approach to the concerns raised above under matters relating to the issues of APs represented by Edwin Thompson LLP and the ExA considers them to be appropriate. The ExA is also satisfied that

---

<sup>70</sup> Hedgerows Regulations 1997

any business disruption would be subject to appropriate compensation in the manner set out in the Recommended DCO [[REP9-026](#), Section 7.4].

### **David and Andrew Richardson**

#### *Representation*

- 7.7.316. The APs are represented by Edwin Thompson LLP and own and occupy land within Scheme 06. The APs are concerned that the proposed access arrangements would introduce contact between the APs' closed 'High Health Herd' and others and that the AP would lose its corresponding premium payment [[RR-197](#)].
- 7.7.317. The Proposed Development would have significant impact upon the farming business. There is no alternative suitable land available to rent or buy in the immediate area to make up for the land lost. The land which would be affected is currently under strict management for grazing and to make crop for the winter months. This land has taken many years to improve and establish and is not easily replaced. Any replacement land must also be in walking distance for livestock. In addition, the grazing land requires applications of slurry post grazing to replace nutrients lost. Therefore, the loss of the land would adversely affect the grazing routine and require new slurry storage to hold the excess slurry normally spread on the land. The dairy cows would also have to be housed over a longer period with more spending on feedstuffs. 23% of the land holding would be lost under the CA and TP powers sought, and this would have a detrimental impact on the business. The APs have already had to reduce their current herd to facilitate archaeological works. Reducing cow numbers would also instigate a penalty from the APs' milk buyer.
- 7.7.318. The APs object to the amount of land taken for heathland planting and whether the APs would be expected to take responsibility for its management. There is other suitable land locally for heathland without using this good quality agricultural land for mitigation. The APs land is not regarded as heathland, and it would be unsightly vegetation at the entrance to a dairy farm which prides itself on well-maintained grassland.
- 7.7.319. The APs object to the loss of some of the farm's best silage ground to accommodate attenuation ponds (in terms of their location, the need for two, maintenance and farm access) and species rich grassland. Maintenance requirements and species for the grassland have not been identified, and the grassland would extend over an access track and leave the APs with small unviable parts of the field.
- 7.7.320. CA powers are sought on a large area of land to the north of A66 which does not appear to be essential for the Proposed Development. This land is classed as the dry land of the holding which enables the out-wintering of young stock. The APs would be required to house the young stock which would require additional shed space, feedstuffs and bedding.
- 7.7.321. The seeking of CA powers may be inappropriate as the detailed design has not yet been carried out, there is a lack of detail, and the design keeps changing [[REP5-053](#)]. There is also no need for the CA powers over all areas for environmental mitigation as landowners could retain ownership in return for taking on maintenance, subject to reasonable terms being agreed to ensure the mitigation is maintained. If, after CA, land is left unused for long periods of time and weeds are

allowed to grow, the condition of the land deteriorates. The Applicant should be required to ensure that all land is maintained correctly.

7.7.322. The Order land also excludes small parts of fields which leaves land unsuitable for agricultural use. A common form of compensation is the cost of removing hedges and fences to reshape fields. The removal of a hedge longer than 20m requires planning consent. This adds time, cost and uncertainty to farming business. The Applicant should also have a management plan to ensure water supplies are not impacted during the construction and operation of the Proposed Development. Construction is likely to have a big impact on land drainage. A full scheme of land drainage should be designed by a third party expert and then implemented.

7.7.323. The APs have had several meetings with the Applicant. During these meetings it has been promised that things would be changed and that further meetings would be arranged but, to date, the APs have not been able to arrange these meetings.

*Applicant's Response*

7.7.324. The Applicant has met with the AP a number of times during preliminary design and understands the concerns [[PDL-012](#), page 205]. The Applicant responds to the concerns in a similar manner to other APs represented by Edwin Thompson LLP.

*ExA's Consideration*

7.7.325. The ExA has already considered the Applicant's approach to the concerns raised above under matters relating to the issues of APs represented by Edwin Thompson LLP and the ExA considers them to be appropriate. The ExA is also satisfied that any business disruption would be subject to appropriate compensation in the manner set out in the Recommended DCO [[REP9-026](#), Section 7.4].

**John Peter Bainbridge**

*Representation*

7.7.326. The AP is represented by GSC Grays and owns and occupies land within Scheme 09. The AP's land is managed as a commercial farm together with residential, holiday and business use lettings [[RR-077](#)]. Balance ponds should be located on the northern side of the proposed A66, not on the AP's land so that drainage would flow to the Tees rather than the Swale which is prone to flooding. There should also be a right of access to the AP's retained land to the west.

*Applicant's Response*

7.7.327. The Applicant has considered locating the ponds to the north of the proposed A66 but the Tees/ Swale catchment boundary is some way north of the proposed A66 alignment and there is no local tributary of the Tees that could be used for an outfall [[PDL-012](#), page 361]. The area of the CA powers sought for the ponds has been minimised since statutory consultation. Reasonable accommodation works for the AP to access retained land would be provided and progressed through ongoing engagement and design.

*ExA's Consideration*

7.7.328. The ExA is satisfied that the locations of the attenuation ponds would be appropriate and justified and that accommodation works would retain access where reasonable. The ExA is also satisfied that any business disruption would be subject to



appropriate compensation in the manner set out in the Recommended DCO [[REP9-026](#), Section 7.4].

### **Trustees of Morbaine Ltd Directors Pension Scheme**

#### *Representation*

- 7.7.329. The APs are represented by Morbaine Limited and own land within Scheme 0102. The APs have no objection to the Proposed Development in principle but are concerned with the environmental mitigation which would have an impact on their land and the future business operation of their tenants [[RR-135](#)]. The CA powers sought for the planting of trees would obscure any view of a drive-thru unit from the Kemplay Bank roundabout, impacting on the tenant's ability to attract passing trade. The APs have no issue with their land being used for low level planting so long as there is no impact on the visibility of the drive-thru unit.

#### *Applicant's Response*

- 7.7.330. The ES notes that there would be temporary adverse effects to the APs units during construction only [[APP-056](#)]. Dialogue with the APs would continue throughout detailed design to minimise and mitigate impacts as far as practicable [[PDL-012](#), page 295]. The Applicant acknowledges the request for a change in relation to the tree planting. This change, if appropriate and feasible, could most likely be undertaken within the Order land as there is sufficient flexibility to allow for this type of change. If appropriate and feasible, the change would be secured through a legal agreement between the Applicant and the APs.

#### *ExA's Consideration*

- 7.7.331. The ExA notes the Applicant's approach to flexibility in terms of tree planting on the APs' land and is also satisfied that any business disruption from CA or TP would be subject to appropriate compensation in the manner set out in the Recommended DCO [[REP9-026](#), Section 7.4].

### **Westmorland and Furness Council**

#### *Representation*

- 7.7.332. The AP strongly supports the Proposed Development which it sees as a vital investment in infrastructure in the North of England, and which would bring considerable benefits to the area [[REP9-050](#)]. The AP has agreed a SoCG with the Applicant [[REP9-007](#), Issue 3-1.20 and 3-1.24] within which all matters relating to land take are agreed subject to the completion of a legal side agreement. This agreement should include an assurance that the Applicant would not permanently acquire land at Skirsgill depot and that access to the depot would always remain unfettered, as this is critical for the Council's performance of its statutory duty to manage highways safely. Whilst most issues within the draft agreement have been agreed, there are some detailed matters that will take some weeks beyond the end of the Examination to conclude. The AP was also represented by Walton Goodland Ltd at CAH2.

#### *Applicant's Response*

- 7.7.333. The Applicant has agreed to enter into a side agreement with the AP to reflect the position agreed that CA and TP would not affect the AP's operational land at its Skirsgill depot and the AP's land elsewhere [[REP9-007](#), Issue 3-1.20 and 3-1.24].

### *ExA's Consideration*

7.7.334. The AP's land at its Skirsgill depot was the subject of extensive consideration during the Examination, and the ExA inspected the site with both parties at the ASI [[EV-037](#)]. The side agreement between the parties, being progressed during the Examination, was not though completed by its close. From the positions of the AP and the Applicant at the close of the Examination, the ExA however cannot see anything to suggest that the CA and TP powers sought, subject to the side agreement being completed by the parties, would be unacceptable. The ExA accepts that the unfettered operation of the AP's Skirsgill depot is critical to highway safety in this area. The ExA also notes the difference between the AP's use of the term 'land' and the Applicant's use of the term 'operational land' in their DL9 submissions. The ExA therefore recommends that the Secretary of State for Transport seeks confirmation from both parties that the side agreement being progressed has been completed before making any Order that includes CA and TP powers over the AP's land at the Skirsgill depot.

7.7.335. If, subject to the Secretary of State for Transport being content with the remainder of the Recommended DCO, the side agreement has not been completed before the Secretary of State for Transport is in a position to make the Order, the ExA considers that there is a further option to allow the Order to be made. This option is for the Secretary of State for Transport to arrange for the amendment of the Recommended DCO and associated certified documents to remove the power of CA and TP over the plots related to the Skirsgill depot and therefore the need for the side agreement. This option would also be available to the Secretary of State for Transport at any time during the decision period. The ExA is satisfied that such an option exists from the AP's and Applicant's positions on the CA and TP powers sought at the close of the Examination.

### **Durham County Council**

#### *Representation*

7.7.336. The AP initially had concerns in respect of what would happen to any land no longer required after construction, such as temporary compounds. The AP has however agreed a SoCG with the Applicant [REP8-022] and provided a final position statement [[REP9-038](#)] within both of which there are no references to any concerns relating to the CA or TP powers sought.

#### *Applicant's Response*

7.7.337. The Applicant has agreed a SoCG with the AP [[REP8-022](#)].

#### *ExA's Consideration*

7.7.338. The ExA notes that CA powers remain in the Order and we are satisfied that there are no outstanding matters on the CA or TP powers sought in relation to the AP.

### **Bowes Parish Council**

#### *Representation*

7.7.339. The AP is represented by Jonathan Wallis Chartered Surveyor and owns land within Scheme 07. Some of the CA powers sought over the AP's land would be for an access road to a drainage pond, but this land would be unsuitable and the CA powers unnecessary as the land is not level and has rocky outcrops [[RR-066](#)].

### *Applicant's Response*

- 7.7.340. The CA powers sought over the AP's land would be required to provide access to a drainage pond and environmental mitigation and to provide land in exchange for part of a common [\[PDL-012, page 5\]](#). The proposed access would be the least impactful in terms of minimising earthworks and the gradient of the access would lie within the relevant standards. The AP has accepted an offer from the Applicant for the permanent acquisition of its land, Heads of Terms have been agreed and solicitors instructed [\[REP9-029, No: 35\]](#).

### *ExA's Consideration*

- 7.7.341. The ExA is satisfied that there are no outstanding matters in relation to the AP.

### **Representations withdrawn**

- 7.7.342. After having submitted RRs, the following APs have advised that they no longer wished to make/ submit a representation.

- George Arthur and Elizabeth Mary Atkinson (owners of land within Scheme 06, represented by Ian Ritchie Land Agents Ltd) [\[RR-200, REP1-125\]](#); and
- Keith Thomas Steadman (owner of land within Scheme 06, represented by Ian Ritchie Land Agents Ltd) [\[RR-204 and REP1-112\]](#).

### **ExA's Conclusion on Objections Listed Above**

- 7.7.343. In view of all the above ExA considerations, the ExA cannot see anything in these objections from APs that would prevent the grant of the CA or TP powers sought. The ExA is therefore satisfied that the land which is the subject of these objections is required and proportionate for the Proposed Development and that there is a compelling case for the corresponding CA powers sought and that the related TP powers are justified. This is subject to the matters relating to Westmorland and Furness Council's Skirsgill depot. The ExA addresses matters relating to all land that would be subject to powers of CA or TP later in this section.

## **Statutory Undertakers**

### **Environment Agency**

#### *Representation*

- 7.7.344. At D3, the EA was unable to confirm that there were no objections to the CA of any land in which it has an interest [\[REP3-061, page 2\]](#). The EA subsequently signed a SoCG with the Applicant confirming that matters relating to the BoR and continuing engagement on voluntary acquisition are agreed [\[REP9-009, Issue 3-2.73\]](#). The EA has not however withdrawn its s127 representation.

### *Applicant's Response*

- 7.7.345. Agreed protective provisions are included in the Recommended DCO [\[REP9-031, No:19\]](#) and are considered later in this report.

### *ExA's Consideration*

- 7.7.346. In view of the signed SoCG and agreed protective provisions, the ExA is satisfied that the CA powers sought would not result in serious detriment to the carrying on of the EA's undertaking under s127 of the PA2008.

## **National Grid Electricity Transmission PLC and National Gas Transmission PLC**

### *Representations*

- 7.7.347. The SUs are represented by Bryan Cave Leighton Paisner LLP and are Category 2 persons in respect of easements within Scheme 03 and 0405. The SUs object to the Proposed Development being carried out in close proximity to its apparatus unless suitable protective provisions have been secured and any CA or TP powers being invoked which would affect its interests unless suitable protective provisions have been agreed [[REP1-031](#) and [REP1-032](#)]. The SUs have agreed all matters relating to their objections with the Applicant and are entering into a formal agreement on these matters [[REP9-043](#) and [REP9-044](#)]. The SUs have not withdrawn their s138 representations.

### *Applicant's Responses*

- 7.7.348. Engrossments for side agreements have been issued for signature, and agreed protective provisions are included in the draft DCO [[REP9-031](#), No: 2 and No: 1 and [REP9-013](#)]. The Applicant anticipates that SUs' representations would be withdrawn shortly after the close of the Examination.

### *ExA's Consideration*

- 7.7.349. In view of the progress made towards side agreements with the SUs and agreed protective provisions, the ExA is satisfied that the extinguishment and removal or relocation of apparatus under the Recommended DCO would be necessary for the purpose of carrying out the development to which the Order relates under s138 of the PA2008.

## **Network Rail Infrastructure Limited**

### *Representation*

- 7.7.350. The SU objects to the CA of operational railway land and the CA of permanent and temporary rights over operational railway land where that would compromise its ability to perform its statutory undertaking [[REP1-036](#)]. The SU also objects to the seeking of powers to carry out works on, over or under the operational railway without first securing appropriate protections for the SU. The SU requests a framework agreement to address the application of its standard form of Protective Provisions within the draft DCO and other matters relating to the DCO. The SU has not withdrawn its s127 representation.

### *Applicant's Response*

- 7.7.351. Engrossments for a framework agreement have been issued for signature, and agreed protective provisions are included in the draft DCO [[REP9-031](#), No:3 and [REP9-013](#)]. The Applicant anticipates that the SU's representations would be withdrawn shortly after the close of the Examination.

### *ExA's Consideration*

- 7.7.352. In view of the progress made on a framework agreement and agreed protective provisions, the ExA is satisfied that the CA powers sought would not result in serious detriment to the carrying on of the undertaking under s127 of the PA2008.

## **United Utilities Water Limited**

### *Representation*

- 7.7.353. The SU requests further correspondence to identify any potential issues and find appropriate resolutions. The Examination discussions should include: a Statement of Common Ground; protective provisions; and a formal side agreement (if required) to protect the SU's assets [RR-120]. The SU owns and occupies land on Scheme 03 including a private road leading from the existing A66 to the Whinfell Holme Sewage Works otherwise known as the Penrith Wastewater Treatment Works. Part of this private road would be subject to the CA powers sought, and the SU objects to the proposed changes to this access in terms of uncertainty and inadequacy [REP8-086]. The SU has not withdrawn its s127 representation.

### *Applicant's Response*

- 7.7.354. Negotiations continue between the Applicant and the SU in respect of a side agreement to expand on protective provisions in relation to access to Penrith Wastewater Treatment Works [REP9-031, No:6]. The Applicant's position is that any rights of access belonging to United Utilities that are being extinguished as a result of the Proposed Development would be adequately replaced and access would be provided throughout the construction period. Protective provisions for the SU are included in the draft DCO [REP9-013], and the Applicant is confident that there would not be any serious detriment to SU's undertaking as a result of the Proposed Development. The Applicant anticipates that the SU's representation will be withdrawn shortly after the close of the Examination.

### *ExA's Consideration*

- 7.7.355. In view of the progress made on a side agreement and the protective provisions in the Recommended DCO, the ExA is satisfied that the CA powers sought would not result in serious detriment to the carrying on of the undertaking under s127 of the PA2008.

## **Northern Powergrid (Yorkshire) PLC**

### *Representation*

- 7.7.356. The SU is represented by Weightmans LLP [RR-158]. The SU is, in principle, supportive of the Proposed Development but has concerns regarding the impacts it would have on existing assets and their pending improvement works. The SU has reached agreement with the Applicant on its concerns and is entering into a protection agreement with the Applicant in relation to affected apparatus [REP9-048]. At the close of the Examination, agreement engrossments are in circulation. Once the agreement is completed, the SU advises that its objection is withdrawn.

### *Applicant's Response*

- 7.7.357. The protection agreement is in an agreed form with agreement engrossments issued for signature [REP9-031, No:4]. Protective provisions for the SU are included in the draft DCO [REP9-013], and the Applicant is confident that there would not be any serious detriment to SU's undertaking as a result of the Proposed Development. The Applicant anticipates that the SU's representation will be withdrawn shortly after the close of the Examination.

### *ExA's Consideration*

- 7.7.358. In view of the progress made towards the side agreement with the SU and the protective provisions in the Recommended DCO, the ExA is satisfied that the extinguishment and removal or relocation of apparatus under the Recommended DCO would be necessary for the purpose of carrying out the development to which the Order relates under s138 of the PA2008.

### **ExA's Conclusion on Statutory Undertakers**

- 7.7.359. In view of all the above ExA considerations, the ExA cannot see anything relating to SUs that would prevent the grant of the CA powers sought.

### **Other Matters**

#### **The Brough Hill Fair Gypsy and Traveller Community**

##### *Representation*

- 7.7.360. These parties are not identified as an AP in the BoR [\[REP9-005\]](#). They do however claim rights over Brough Hill Fair site by a Charter of 1330 [\[REP1-103\]](#), which was incorporated in a 1947 conveyance [\[REP1-006\]](#), Appendix 8]. These matters have been addressed earlier in this report where the ExA has recorded that it is satisfied that the concerns that the IPs have in relation to the proposed replacement site could be satisfactorily addressed. The ExA is also satisfied that the Recommended DCO would secure the ongoing engagement in relation to the replacement site.

##### *ExA's Consideration*

- 7.7.361. The ExA is satisfied that these parties are not APs and has addressed their concerns earlier in this section of the Report.

**Mr M and Mrs L Reay, Maple Bridge Corporation Limited** [\[RR-169\]](#)

**Mr P Tavener** [\[RR-161\]](#)

**Mr C Tipping** [\[RR-132\]](#)

**Mr A Watson** [\[RR-209\]](#)

##### *Representations*

- 7.7.362. These IPs are represented by George F White. The IPs' concerns are covered in the George F White matters shared amongst the APs.

##### *Applicant's Response*

- 7.7.363. The IPs are not directly impacted by the Proposed Development and do not have any interest in land within the Order limits [\[REP5-023\]](#), page 45 and 46 and [PDL-012](#), page 104].

##### *ExA's Consideration*

- 7.7.364. The ExA is satisfied that these parties are not APs and has addressed their concerns earlier in this section of the report.
- 7.7.365. The ExA does not consider there to be any other matters reported above that would prevent the grant of the CA powers sought.



## 7.8. THE ExA's CONSIDERATIONS

### General Case

#### ExA's Approach

- 7.8.1. The ExA's approach to the question of whether and what CA powers it should recommend the Secretary of State for Transport to grant has been to seek to apply:
- the relevant sections of the PA2008, notably s122 and s123;
  - the CA Guidance;
  - the Human Rights Act 1998; and
  - the Equality Act 2010.
- 7.8.2. In light of the representations received and the evidence submitted, the ExA's approach has also been to consider whether a compelling case has been made in the public interest, balancing the public interest against private loss.
- 7.8.3. There are representations from SUs that have not been withdrawn, as set out previously in this section of the report, and therefore s127 of the PA2008 is engaged in the consideration of the application. There are also relevant SU rights and apparatus on land that is the subject of CA of new rights under the Recommended DCO. Section 138 of the PA2008 is therefore also engaged, and the ExA has considered the application and representations accordingly.
- 7.8.4. The draft DCO deals with the Proposed Development itself and CA powers. The case for CA powers cannot properly be considered unless and until the ExA has formed a view on the case for the Proposed Development overall, and the consideration of the CA issues must be consistent with that view.
- 7.8.5. The ExA has shown in the conclusions to the preceding section of this report that, on the planning merits, it has reached the view that development consent should be granted. Therefore, the question that the ExA addresses here is the extent to which, in the light of the factors set out above, the case is made for the CA and TP powers sought to enable the Proposed Development to proceed.
- 7.8.6. In these considerations, a number of general matters relating to the Applicant's case for CA and TP powers, which are also pertinent to points raised by a number of objectors, need to be addressed, including the tests set out in s122(2) and s122(3) of the PA2008. These general matters are: Associated Development; public benefit; private loss; alternatives; and TP. The ExA then goes on to address SUs' apparatus, Crown land, special category land, human rights issues, the Equality Act and funding.
- 7.8.7. The ExA has already considered:
- the cases for objectors and has found that none of them would give any reason to override a general conclusion on the Applicant's case for CA and TP powers.
  - SUs' land and found that, where representations have not been withdrawn, there would be no serious detriment to the carrying on of the undertaking.
- 7.8.8. Although the ExA has specifically referred to objections raised by APs, it appreciates that this represents only a proportion of the many or so parcels of land that would be affected. Even though a specific objection may not have been raised in relation to a particular plot of land, the ExA has nevertheless applied the relevant tests to the whole of the land that would be subject to CA or TP powers in reaching its overall conclusions.

## **Associated Development**

- 7.8.9. Section 122(2) of the PA2008 sets out the purposes for which CA may be authorised. The CA Guidance explains that, in the light of s122, applicants must be prepared to justify their proposals for the CA of any land to the satisfaction of the relevant Secretary of State.
- 7.8.10. Section 115 of the PA2008 provides that, in addition to the development for which development consent is required under Part 3 of the PA2008 (the principal development), consent may also be granted for Associated Development. The PA2008 defines Associated Development as development which is associated with the principal development.
- 7.8.11. The ExA is of the view that the Associated Development in Schedule 1 of the Recommended DCO accords with DCLG Guidance on associated development<sup>71</sup>. The land required for this Associated Development can therefore, in principle, be compulsorily acquired pursuant to s122(2)(a) of the PA2008. Later in this Section, the ExA considers whether all of the land in respect of which CA and TP powers are sought is required for the development.

## **Public Benefit**

- 7.8.12. The ExA considers that the Applicant has adequately set out the need case for the Proposed Development. The need case has had to be justified at various points over a period of time prior to the DCO application being submitted, and the ExA considers that this strengthens the case for the Proposed Development. Furthermore, there has been little opposition to the principle of the Proposed Development during the Examination. The ExA agrees with the Applicant that the Proposed Development aligns with NPSNN<sup>72</sup> and the 'critical need' to improve the national road networks.
- 7.8.13. The ExA has already concluded, earlier in this report, that there is a clear and significant need for the Proposed Development and has also concluded that the benefits, including this need, outweigh any harm to such an extent, in terms of the planning merits, that development consent should be granted. In terms of the CA powers sought, the ExA relies on this conclusion and precondition that development consent should be granted.
- 7.8.14. From what the ExA has concluded in relation to the Proposed Development, it also considers that there is sufficient certainty regarding the identified need and justification for the extent of the CA powers sought. The ExA also agrees with the Applicant's outright CA approach and is satisfied that the measures put in place in Recommended DCO Article 19 would minimise impact from CA. Article 19, which authorises the CA of Order land, grants the power to acquire only such land as is required for the Proposed Development.
- 7.8.15. All of these matters lead the ExA to the view that there is considerable public benefit to be weighed in the balance concerning the compelling case for the CA powers sought.

---

<sup>71</sup> DCLG, 2013. *Planning Act 2008 - Guidance on associated development applications for major infrastructure projects.*

<sup>72</sup> NPSNN, para 2.2

## Private Loss

- 7.8.16. It is agreed that there is private loss over the length of the Proposed Development. The Applicant has however taken steps to limit the exercise of CA powers in respect of each plot and each individual AP. These include:
- Keeping the areas of land affected by the CA powers to a minimum, commensurate with the implementation of the Proposed Development, including changes to the application during the Examination;
  - Seeking wherever possible to rely on TP as an alternative to CA;
  - Engaging with persons with an interest in affected land with a view to reaching an alternative voluntary agreement, including an ACP; and
  - Only seeking that part of the land that is required if less of the Order land proves to be required following detailed design.
- 7.8.17. The extent of the CA powers sought has been justified to the ExA's satisfaction over the length of the route in terms of need in relation to works and mitigation. Furthermore, the Applicant's use of TP powers wherever possible would serve to mitigate the extent of any private loss through the use of CA powers only after the detailed design has been completed. This would inherently reduce the extent of the private loss experienced by those affected by CA.
- 7.8.18. The Change Requests which included Additional Land [[CR1-002](#), Section 6] were accompanied by Consent Confirmation Slips [[CR1-006](#)] which resulted in the CA Regulations not being engaged. Change request DC-21 [[CR1-002](#), Section 6.5] comprised Additional Land in the form of MoD Crown land. Whilst the Recommended DCO does not include the CA of Crown land, the MoD provided a Consent Confirmation Slip in relation to the inclusion of the Additional Land in the Recommended DCO [[CR1-006](#), Item 8].
- 7.8.19. The Applicant had also advised, in the change request, that it had no intention to seek CA powers over a grazing licence on this land [[CR1-002](#), para 6.5.10] for which there was no Consent Confirmation Slip. The ExA sought clarification on how the Applicant would reflect this intention in the post change request draft DCO [[PD-014](#), Annex A, CA 3.1]. The Applicant responded that this land would be subject to TP and not CA powers [[REP7-159](#), Section 2, CA 3.1], and the ExA remains content that this change does not engage the CA Regulations in any way.
- 7.8.20. All of the above matters lead the ExA to the view that, whilst the CA powers sought would be likely to result in wide ranging private loss, this has been reasonably mitigated by the Applicant and remaining loss would be subject to fair and reasonable compensation.

## Alternatives

- 7.8.21. The ExA has already considered the assessment of alternative routes undertaken by the Applicant earlier in this report. The ExA has concluded that the assessment was rigorous and can see no reason to disagree with the outcome of it.
- 7.8.22. The ExA also finds that the use of TP as an access alternative to CA at the start of construction, rights instead of outright CA, ACP and voluntary acquisition, discretionary acquisition and side agreements could reduce the need for CA in some instances.
- 7.8.23. Whilst the Applicant's attitude to alternatives and changes post application has required careful management by the ExA during the Examination, it has allowed

changes to be introduced as alternatives to CA and these changes examined. The ExA considers that no party has been disadvantaged in this regard.

- 7.8.24. The ExA therefore considers that the Applicant has sufficiently considered alternatives to CA.

### **Temporary Possession**

- 7.8.25. TP powers are sought to facilitate some construction and maintenance activities and, in some instances, as an alternative to reduce the extent of CA. The ExA considers that the TP powers sought would be appropriate to support the delivery of the Proposed Development in respect of all plots identified for TP in the Land Plans and BoR [[REP8-033](#) and [REP7-105](#) as examples].
- 7.8.26. These powers are not CA powers, and accordingly the tests under s122 and s123 of the PA2008 are not applicable. However, the request for the TP powers to enable the Proposed Development to be implemented and maintained must be justified. Moreover, their inevitable interference with human rights must be justified, and there must be adequate compensation provisions in place for those whose land is affected.
- 7.8.27. The ExA has considered the objections raised by those persons affected by the application for the permanent acquisition of land and the permanent acquisition of rights in land where they may be preceded by TP. The ExA has also taken all relevant objections into account in reaching conclusions on the application for TP powers on plots where they are sought alone, in the same way as for permanent acquisition.
- 7.8.28. The ExA is satisfied that the TP powers sought would be needed to facilitate implementation of the Proposed Development and that they are justified, including their period of operation. Adequate compensation provisions are in place in the Recommended DCO.

### **Conclusion on the General Case**

- 7.8.29. From all of the above, the ExA concludes that the Applicant has made a case sufficient to justify its general request for CA and related powers.
- 7.8.30. The ExA now moves on to consider whether there are specific matters relating to objections, SUs, Crown land, special category land, the Human Rights Act 1998, the Equality Act 2010 and funding and delivery that could outweigh the finding on the general case in any regard.

### **Objections**

- 7.8.31. The ExA has considered all of the objections received and those set out earlier in this Section of the report. None of these objections leads the ExA to the view that its conclusion in relation to the Applicant's general case in relation to CA and TP powers should be changed in any way. The ExA therefore recommends the grant of CA and TP powers in each individual case as set out above subject to the matters relating to Westmorland and Furness Council's Skirsgill depot and Plot 0102-01-20.

### **Statutory Undertakers**

- 7.8.32. The ExA has, as set out earlier in this section of the report, considered all representations associated with s127 of the PA2008, the subsequent negotiations

that the Applicant has had with the SUs concerned and ongoing matters where the objection has not been withdrawn [REP9-031]. In each case, the ExA finds that the CA powers sought would not result in serious detriment to the carrying on of the undertaking concerned. In relation to s138 of the PA2008, the ExA is satisfied that the extinguishment and the removal or relocation of apparatus under the Recommended DCO would be necessary for the purpose of carrying out the Proposed Development.

### **Crown Land**

- 7.8.33. The Order land includes MoD Crown land [REP9-028]. The Applicant has agreed a SoCG with the DIO [REP6-019], and all identified issues are agreed with no issues under discussion or not agreed. The DIO have also confirmed that the Applicant would be permitted to use the MoD Crown land to carry out works authorised by the Recommended DCO subject to certain matters [REP9-035]. From the SoCG and its record of engagement, the ExA cannot see anything that would suggest that the Applicant would not be able to acquire the necessary MoD land by agreement. The Applicant has also submitted the necessary s135 consent from the MoD in respect of making an Order authorising the CA of the interests in MoD Crown land as set out in the BoR [REP9-005]. The ExA therefore considers that the Recommended DCO accords with the PA2008 in respect of MoD Crown land.
- 7.8.34. At the end of the Examination, the Applicant identified Public Trustee Crown land within the Order limits [APP-313 and REP8-046]. The Public Trustee however does not accept that this is Crown land and therefore will not provide Crown authority consent under s135 of the PA2008 [REP9-037, Section 6]. Terms for the purchase of the Public Trustee land by the Applicant have however been agreed, and the ExA cannot see anything that would suggest that the Applicant would not be able to acquire the necessary Public Trustee land by agreement.
- 7.8.35. The single plot of Public Trustee Crown land, within the Order limits of Scheme 07, comprises verge and trees adjoining the public highway with overhead cables and a pylon [REP8-046, Plot 07-02-45]. The final BoR identifies that Northern Powergrid (Yorkshire) PLC have an interest in the land in respect of overhead cables, underground cables and the pylon. The SU has objected to the Proposed Development under s138 of the PA2008. It has however reached agreement with the Applicant and is entering into a protection agreement with the Applicant in relation to affected apparatus [REP9-048].
- 7.8.36. The Public Trustee Crown land is required for construction of the westbound carriageway of the Proposed Development, landscaping, reprofiling and the diversion of third party apparatus [REP8-059, Table 1]. The ExA therefore considers that the plot is integral to the delivery of Scheme 07.
- 7.8.37. Whilst the Applicant is prepared to accept the view of the Public Trustee [REP9-037, Section 9], the ExA is not satisfied that the Public Trustee land cannot be considered to be Crown land under the PA2008. This is because the Office of the Public Trustee is said to be an associated office of the MoJ [REP9-037, Section 7] and the Applicant itself has included the Public Trustee land as Crown land in its final draft DCO [REP9-013] to safeguard the delivery of the Proposed Development. Moreover, the ExA does not consider that the absence of known third party non-Crown interests in this Public Trustee Crown land negates the need for Crown authority consent, as suggested by the Applicant. Indeed, the Public Trustee suggested that there were grazing rights on the land [REP1-007, Agenda Item 6.1].

- 7.8.38. The ExA therefore recommends that the Secretary of State for Transport seeks further advice from the MoJ on whether the Public Trustee land within the Order limits is Crown land and, if so, from whom the relevant Crown authority consent should be sought. The Secretary of State for Transport may then be in a position to make the Order either with a Crown authority consent or an amendment to the Recommended DCO and associated certified documents to remove references to Public Trustee Crown land.
- 7.8.39. If, subject to the Secretary of State for Transport being content with the remainder of the Recommended DCO, this matter cannot be resolved before the Secretary of State for Transport is in a position to make the Order, the ExA considers that there is a further option to allow the Order to be made. This option is for the Secretary of State for Transport to amend the Recommended DCO and associated certified documents to remove the power of CA of interests over the relevant plot [[APP-313](#), Plot 07-02-45] and therefore the need for any Crown authority consent. This option would also be available to the Secretary of State for Transport at any time during the decision period. The ExA is satisfied that such an option exists from the Applicant's position of agreed terms with the Public Trustee and Northern Powergrid (Yorkshire) PLC. The Applicant would however then need to carry a risk of unknown third party interests that could affect the delivery of Scheme 07 [[REP9-037](#), Section 8 and 9].

### **Special Category Land**

- 7.8.40. The Order land includes special category land on Scheme 0102, 0405, 06 and 07, more specifically classed as common land and open space, so s132 of the PA2008 is engaged. The relevant plots of land are included in the BoR and on the Land Plans [[REP8-033](#), [REP8-039](#), [REP9-005](#) and [REP8-046](#) (BoR) and [REP7-109](#), [APP-315](#), [REP7-108](#) and [APP-317](#) (Land Plans)]. The ExA considers that the Recommended DCO provides adequate replacement land where required [[REP9-026](#), Section 8.2].
- 7.8.41. The Applicant's SoCG with Westmorland and Furness C records that the Council has concerns in relation to the impact of the CA and TP sought on public open space at Wetheriggs Country Park [[REP9-007](#), Issue 3-2.7]. The impact identified is on the users of the park and the ability of the residual area to support the park's formal sports pitches. The ExA viewed the park, particularly the areas within the Order land, and the replacement land at one of its USIs [[EV-054](#)]. The ExA considers that area of the park within the Order limits is of little public use and the proposed replacement land would provide the same, if not more, opportunities for public use. The ExA also agrees with the Applicant that the existing football pitch at the park is not within the area over which CA is sought.
- 7.8.42. Sport England made submissions to the Examination including a Statutory Objection concerning the loss of and mitigation for playing field sites [[RR-116](#) and [REP1-043](#)]. Some of these sites comprise open space. The Applicant and Sport England have agreed a SoCG [[REP8-073](#)]. The SoCG records various discussions and, whilst the agreement on a number of matters is subject to continuing dialogue and engagement with Sport England, there are no matters which are not agreed. The ExA cannot see anything in these submissions that would change its view on the adequacy of the replacement land proposed.
- 7.8.43. The ExA therefore considers that the tests of s132 of the PA2008 in relation to special category land are satisfied.



## Human Rights

- 7.8.44. In assessing whether there is a compelling case in the public interest for the land to be acquired compulsorily, it is necessary to consider the interference with human rights which would occur if CA and TP powers were granted. The ExA agrees with the Applicant that the Recommended DCO would engage Article 1 of the First Protocol and Article 8 of the ECHR and is satisfied that the ECHR is incorporated into UK law.
- 7.8.45. Article 1 provides a right to the protection of property, which can include the peaceful enjoyment of property or possessions or any effect of development on property values. Article 8 provides a right to respect for private and family life, which can include interference with home life through disturbance. However, these rights are qualified and can be interfered with in certain circumstances, such as if it is necessary to protect the legitimate interests of the wider community.
- 7.8.46. In this case, the ExA has attributed significant positive weight to the clear need described earlier in this report. This is a legitimate interest of the wider community. In this context, it is also relevant that those affected would be entitled to fair compensation, and the Applicant has demonstrated that the resources to pay such compensation are available. Moreover, the Applicant has taken steps to ensure its approach to land acquisition is proportionate and would not give rise to interference with private rights beyond what is absolutely necessary.
- 7.8.47. The Applicant has varied the Order limits during the Examination to ensure that the land affected has been kept to a minimum, and the detailed route choice has avoided key infrastructure and development. Also, under the Recommended DCO, the power for CA within the Order limits can only be exercised where required for the Proposed Development meaning that any areas not required following detailed design could not be subject to CA. Reliance has also been placed on TP wherever possible, rather than CA. The Applicant has also sought to reach voluntary agreements with persons with an interest in the land affected.
- 7.8.48. The Applicant advises that ten residential properties would be affected by the CA powers sought [[REP9-026](#), Section 7.1]. At three of these, only a small part of the external premises and no buildings would lie within the Order land subject to the CA powers sought. The remaining seven properties would be more substantially affected and, at D9, three of them were the subject of valid blight claims.
- 7.8.49. The situation in respect of blight notice purchases and discretionary purchases of residential dwellings which would be severely affected by the Proposed Development has progressed during the Examination. This includes the acquisition of several properties where the owners have been successfully moved and rehoused. At CAH2, details were provided of ten residential dwellings which were, at that time, subject to blight notice and discretionary purchases and purchase negotiations [[REP5-023](#), Agenda Item 3.1]. At D9, the Applicant set out the status of all continuing negotiations with APs [[REP9-029](#)].
- 7.8.50. From all of the above, the ExA is satisfied that the Applicant has approached the acquisition of residential properties in a sensitive and appropriate manner and that this has been a fair process with APs allowed full rights including written and oral representations and appropriate compensation where there is loss or interference compatible with Article 1 of the First Protocol and Article 8 of the ECHR.

- 7.8.51. The ExA is therefore satisfied that the powers sought would be no more than is required to secure the interests of the wider community. The ExA is also satisfied that, due in part to the fair compensation available, they would not be likely to place an excessive burden on those whose human rights could be affected. The ExA therefore considers that there would be no violation of Articles 1 and 8.
- 7.8.52. The ExA also agrees with the Applicant that the Recommended DCO engages Article 6 of the ECHR (as incorporated in the Human Rights Act), which relates to the need for a fair hearing. The application and its Examination procedurally accord with the PA2008 and related guidance. The ExA is satisfied that APs have had a reasonable chance to put their cases, all of which have been taken into consideration in reaching our recommendation. In so doing, the ExA is satisfied that no AP has been put at a substantial disadvantage in relation to other parties. The ExA therefore considers that there has been no violation of Article 6.
- 7.8.53. Finally, in terms of the overarching aims of the Human Rights Act 1998, the CA Guidance and the required balancing exercise, the ExA is satisfied that the public benefit from the Proposed Development would clearly outweigh any interference with the human rights of those with an interest in the land affected.
- 7.8.54. The ExA therefore considers that any interference with human rights would be for legitimate purposes, proportionate and justified in the public interest.

### **Equality Act**

- 7.8.55. Section 149 of the Equality Act 2010 requires a public authority, in the exercise of its functions, to have due regard to the need to:
- eliminate discrimination harassment and victimisation and any other conduct prohibited by or under the Act;
  - advance equality of opportunity between persons who share a relevant protected characteristic (age, sex, gender reassignment, disability, pregnancy and maternity, religion and belief and race) and persons who do not share it; and
  - foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 7.8.56. The ExA is of the view that there is no evidence in the Applicant's Equalities Impact Assessment [[APP-243](#)] to suggest that the Proposed Development would have any specific impact in relation to persons who share a protected characteristic as compared to persons who do not, or that there has been any lack of regard to the duties identified in the PSED. In respect of matters raised during the Examination, particularly in relation to the Brough Hill Fair site, Langrigg Lane and the Happy Hooves equestrian unit previously considered in this report, the ExA considers due regard has been paid to the needs identified in the PSED by the Applicant and the ExA.
- 7.8.57. The ExA therefore considers that the public authorities involved in the application and Examination, in the exercise of their functions, have had due regard to the needs identified in the PSED.

### **Funding and Delivery**

- 7.8.58. The Funding Statement indicates that the most-likely estimated total capital cost of the Proposed Development is £1,490m [[APP-289](#)]. The ExA, after consideration in CAH2 [[REP5-023](#), Agenda Item 5.1], can see no reason to doubt the validity of this

estimate. The ExA can also understand, in view of the need to provide fair compensation while protecting the public purse, why the Applicant has not provided a separate estimate within this estimate for compensation on the basis that this could prejudice ongoing negotiations. This approach is somewhat unusual but, in this particular case, the ExA relies on the security of the funding commitments for the Proposed Development as a whole from the Government and the Applicant, as a statutory body, to accept the approach.

7.8.59. In terms of these funding commitments from the Government and the Applicant, the ExA has not seen anything to suggest that the necessary funds would not be available to finance the Proposed Development. The ExA therefore considers that there is a reasonable prospect of funds for CA becoming available.

7.8.60. The ExA is also satisfied that there is nothing to suggest that any consents, permits and licences that may be necessary for the Proposed Development and which are not included in the Recommended DCO, would not be forthcoming [REP8-074, Section 9.7].

## **7.9. CONCLUSIONS**

### **Section 122(2) – the Purpose for Which CA is Sought**

7.9.1. The ExA is satisfied that the CA powers sought in all the plots of land included in the final BoR and shown on the final Land Plans would be required and are proportionate for, to facilitate, or to be incidental to the Proposed Development. Both the principal development and the Associated Development would be needed for that purpose. The final BoR includes Additional Land, the CA powers over which are required for certain Change Requests submitted during the Examination. The ExA therefore concludes that the requirements of s122(2)(a) and (b) of the PA2008 are met. The ExA is also satisfied that the Applicant has met the relevant parts of the CA Regulations and the DCLG Guidance.

### **Section 122(3) – Whether there is a Compelling Case in the Public Interest**

7.9.2. The ExA has had regard to all the objections raised by APs. Notwithstanding the objections, the ExA concludes that the public benefits associated with the Proposed Development would strongly outweigh the private loss which would be suffered by those whose land would be affected by the CA powers sought.

7.9.3. The ExA has also taken into account the particular points made by objectors in relation to alternatives. The ExA is, however, satisfied that the Applicant has explored all reasonable alternatives to CA, including modifications to the Proposed Development. The objections raised do not dissuade the ExA from the conclusion that there are no alternatives to the CA powers sought which would be preferred.

7.9.4. The Applicant has demonstrated a clear idea of how it intends to use the land and it has shown that there is a reasonable prospect of the requisite funds, both for CA and implementing the Proposed Development, becoming available.

7.9.5. The ExA considers that:

- the development for which the land is sought would be in accordance with national policy as set out in the relevant NPS and development consent should be granted;

- the NPSNN identifies a ‘critical need’ to improve the national networks to address road congestion and provide a network that is capable of stimulating and supporting economic growth, and the strategic objectives of the Proposed Development are aligned with the NPSNN;
- the need to secure the land and to construct the Proposed Development within a reasonable timeframe represents a significant public benefit to weigh in the balance;
- the private loss to those affected has been mitigated through the selection of the application land and the extent of the land, and the private loss would be outweighed by the public benefit derived from the CA powers sought;
- the Applicant has explored all reasonable alternatives to CA, and there are no alternatives which ought to be preferred; and
- there is a reasonable prospect that adequate and secure funding would be available to enable the CA within the statutory period following the Order being made.

7.9.6. Taking these various factors together, the ExA concludes that there is a compelling case in the public interest for the CA powers sought in respect of the CA land shown on the final Land Plans, subject to the matters relating to Westmorland and Furness Council’s Skirsgill depot. The proposal would thus comply with s122(3) of the PA2008.

### **Sections 120(5)(a) and 126 – the Incorporation of Other Statutory Powers**

7.9.7. In a number of instances, the Recommended DCO seeks to apply s120(5)(a) of the PA2008 and apply, modify or exclude a statutory provision. Since the Recommended DCO is in the form of a Statutory Instrument, the ExA concludes that it would comply with s117(4) of the PA2008. Furthermore, no provision would contravene the provisions of s126 of the PA2008 which relates to the modification or exclusion of a compensation provision.

### **Sections 127 and 138**

7.9.8. Section 127 representations have been made and not withdrawn. These have been considered as set out above. In the case of each s127 representation, the ExA concludes that the Secretary of State for Transport can be satisfied that there would be no serious detriment caused to the carrying on of the undertaking of the SU in question should the CA powers sought be granted. In the case of s138, the ExA is satisfied that the extinguishment of the relevant rights, or the removal or relocation of the relevant apparatus, would be necessary for the purpose of carrying out the Proposed Development.

### **Section 135 – Crown Land**

7.9.9. The ExA is satisfied that the Secretary of State for Transport has the necessary s135 consent from the MoD in respect of making an Order authorising the CA of the interests in MoD Crown land as set out in the BoR.

7.9.10. The ExA is not satisfied that the Public Trustee land cannot be considered Crown land. The ExA therefore recommends that the Secretary of State for Transport awaits confirmation of the status of this land and acts accordingly in terms of the deletion of the CA of other interests, apart from those of the Crown, from the Recommended DCO and associated certified documents.

## **Temporary Possession**

- 7.9.11. The ExA is satisfied that the TP powers sought are necessary to implement and maintain the Proposed Development and that adequate compensation provisions are in place in the Recommended DCO.

## **Human Rights Act 1998 and the Equality Act 2010**

- 7.9.12. The ExA is satisfied that, in relation to the inclusion of CA and TP powers in the Recommended DCO, any interference with human rights would be for legitimate purposes, proportionate and justified in the public interest. The ExA is also satisfied that there is no evidence that the Proposed Development would not accord with s149 of the Equality Act 2010 and that due regard has been paid to the needs identified in the PSED during the Examination.

## **Funding and Delivery**

- 7.9.13. The identified sources of funding do not provide the ExA with any cause for concern or reason to doubt that the Proposed Development could be implemented if granted consent. The ExA is satisfied that, at the close of the Examination, there is a reasonable prospect of funding becoming available for CA, that any potential impediments to funding have been properly managed and that there is no potential impediment to the implementation of the Proposed Development arising from any other regulatory requirement.

## **7.10. THE ExA's RECOMMENDATIONS ON CA AND TP**

- 7.10.1. Should the Secretary of State for Transport be minded to grant development consent for the Proposed Development, the ExA recommends that:
- the CA powers included in the Recommended DCO be granted, subject to the matters as set out below in relation to Crown land, Skirsgill depot and Plot 0102-01-20;
  - the TP powers included in the Recommended DCO be granted;
  - the Secretary of State for Transport seeks advice from the MoJ on whether the Public Trustee land within the Order limits is Crown land, and the CA powers sought in respect of Public Trustee Crown land should not be granted until any necessary Crown consent has been obtained or the Recommended DCO and associated certified documents have been amended;
  - the Secretary of State for Transport seeks confirmation from Westmorland and Furness Council and the Applicant that a side agreement has been completed before making any Order that includes CA and TP powers over the Council's land at its Skirsgill depot or the Recommended DCO and associated certified documents should be amended;
  - the Secretary of State for Transport may wish to seek confirmation from the Applicant that the final BoR entry for Plot 0102-01-20 is correct prior to determination of the application;
  - the powers authorising the CA of SUs' land and rights over land included in the Recommended DCO be granted;
  - the powers authorising the extinguishment of rights and removal of apparatus of SUs included in the Recommended DCO be granted; and
  - the powers included in the Recommended DCO to apply, modify or exclude a statutory provision be granted.

## **8. DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS**

### **8.1. INTRODUCTION**

- 8.1.1. The application draft DCO [\[APP-285\]](#) and the Explanatory Memorandum (EM) [\[APP-286\]](#) were submitted by the Applicant as part of the application for development consent.
- 8.1.2. The application draft DCO [\[APP-285\]](#) was broadly based on the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009; but departed from those clauses to draw upon drafting used in made Orders for similar development under the PA2008, the Transport and Works Act 1992 and other Acts authorising development. Although there has been a change of approach to the use of Model Provisions since the Localism Act 2011, they remain a starting point for the consideration of the DCO. Precedent cases have also been considered where appropriate. The draft DCO and subsequent iterations are in the form of a Statutory Instrument as required by s117(4) of the PA2008 in view of proposed modifications to statutory provisions.
- 8.1.3. This Section provides a summary of the main changes made to the draft DCO during the Examination, between the application draft DCO and a final draft DCO submitted by the Applicant at D9 [\[REP9-013\]](#).
- 8.1.4. The ExA reports on the main discussion points and the contentious matters. We do not report on every change made in the updated versions. This is because many amendments were made as a result of typographical or referencing errors; slight revisions of the wording following either discussion between the Applicant and relevant IPs or from their WRs, or as a result of minor changes following WQs [\[PD-011\]](#) and FWQs [\[PD-012\]](#). The Recommended DCO in Appendix C of this Report incorporates these minor changes.

### **8.2. THE ORDER AS APPLIED FOR**

- 8.2.1. The Recommended DCO is structured as follows:
- Part 1, Articles 1, 2 and 3 deal with preliminary matters including how the Order may be cited and when it comes into force, the meaning of various terms used in the Order and the disapplication of other legislation.
  - Part 2, Articles 4 to 18 convey works provisions including provide for the Undertaker to be able to carry out works to and within streets, alter layouts, to create or improve accesses, to permanently close streets, and to undertake agreements with street authorities, discharge of water, authority to survey land and protective works to buildings; and the provision of powers in relation to trees which need to be removed or lopped in relation to the Proposed Development and any protective works to buildings. Article 7 deals with LoD.
  - Part 3, Articles 19 to 39 provide for the Undertaker to be able to compulsorily acquire the Order land and rights over/ within it, and to be able to temporarily use parts of the Order land for the construction or maintenance of the Proposed Development. The provisions provide for compensation to be payable to Affected Persons in respect of these powers, where that is not already secured elsewhere. These articles also provide for powers in relation to land and equipment of SUs.



- Part 4, Articles 40 to 42 are concerned with operational provisions in respect to the classification of roads, clearways and traffic regulation measures.
- Part 5, Articles 43 to 55 are concerned with miscellaneous and other general matters including the disapplication of other legislative provisions; operational land in respect of the TCPA1990; service of notices; and arbitration. Of particular note is Article 53 which secures the EMP, and Article 54 on detailed design, both of which are normally Requirements in other made DCOs.

8.2.2. There are 10 Schedules to the Order. They are:

- Schedule 1 is the description of the Authorised Development.
- Schedule 2 lists the streets subject to street works; permanent and temporary alterations to the layout; access maintenance; and PRowWs that would be temporarily and permanently stopped up.
- Schedule 3 lists those trees to be removed which are subject to TPOs.
- Schedule 4 list the plots as shown on the Land Plans [\[REP9-003\]](#) which would be subject to CA of new rights.
- Schedule 5 sets out compensation enactments in relation to CA.
- Schedule 6 lists the plots as shown on the Land Plans [\[REP9-003\]](#) which would be subject to TP.
- Schedule 7 lists the classification of roads in each Scheme.
- Schedule 8 lists the traffic regulation measures for each Scheme.
- Schedule 9 lists the provisions protecting SUs and their apparatus.
- Schedule 10 lists the certified documents.

8.2.3. The ExA asked eight WQs [\[PD-011\]](#) and two FWQs [\[PD-012\]](#) in relation to matters concerning the Order. The Applicant responded [\[REP4-011\]](#) and [\[REP6-020\]](#) clarifying matters that we had sought; with suggested changes either accepted or rejected by the Applicant. In addition, the Applicant had also been in discussions with various IPs such that, at each Deadline, updated draft DCOs were submitted into the Examination. In addition, the ExA had a number of supplementary technical or clarification questions which we asked as part of ISH2 held on Thursday 1 December 2022 [\[EV-004\]](#), which were satisfactorily addressed by the Applicant at D1 [\[REP1-005\]](#).

### 8.3. ITERATIONS OF THE DRAFT DCOs

8.3.1. Table 8.1 below sets out the iterations of the draft DCO post submissions with a summary of the alterations that were made.

**Table 8.1 – Iterations of the draft DCO Post Submission**

Deadline No.	EL Ref	ExA's Commentary on Notable Changes Made
2	<a href="#">REP2-005</a>	Article 34 on special category land; Article 36 on Brough Hill Fair; Article 53 on the EMP.  Updated protective provisions: Part 3 (NGET); Part 4 (NGT insertion of); Part 6 (Network Rail insertion of); Part 7 (Drainage Authorities insertion of).

Deadline No.	EL Ref	ExA's Commentary on Notable Changes Made
5	<a href="#">REP5-012</a>	Definition of "cycle track", minor alterations to Article 7 LoD, Article 36 on Brough Hill Fair; Article 53 on the EMP.
7	<a href="#">REP7-092</a>	Various changes following the ExA's decision to accept the Applicant's Change Request [PD-014] including significant changes to Article 7 LoD Article 36 on Brough Hill Fair; Article 53 on the EMP, changes to Work Nos in Schedule 1.
8	<a href="#">REP8-028</a>	Minor alterations to Article 54. Updates to Schedules 7, 9 and 10.
9 (Final)	<a href="#">REP9-013</a>	Insertion of new Schedule 9 Part 5 (Protective Provisions for the EA) and updated wording to Schedule 9, Part 7 replacing "Drainage Authorities" with "Durham County Council", minor alterations to Article 3, Schedule 1 and Schedule 9 generally.

8.3.2. No IPs raised any concern with the description of the Authorised Development during the Examination, or with the description of the works or the documents to be certified.

8.3.3. The EM describes the purpose of the draft DCO as originally submitted, with each of its Articles and Schedules. The EM was updated four times as follows:

- D2 [REP2-007](#)
- D7 [REP7-093](#)
- D8 [REP8-031](#)
- D9 [REP9-016](#)

## 8.4. CONTENTIOUS MATTERS IN THE EXAMINATION

8.4.1. The main issues for the Examination were:

- The appropriateness of using an article instead of Requirements, and the approach to, the powers contained therein, and the wording and content of Article 53 of the Recommended DCO concerning the EMP;
- The powers contained therein, and the wording and content of Article 54 of the Recommended DCO concerning the detailed design; and
- The powers contained therein, and the wording and content of Article 36 of the Recommended DCO concerning the protections for the Brough Hill Fair.

### Background

8.4.2. Article 53 (along with Article 54) is the control mechanism for submissions of documents within the Recommended DCO. This is a departure from the

conventional and previous NSIPs, where such controls would normally take the form of individual Requirements usually found within Schedule 2 of those Orders.

8.4.3. Instead of a series of individual topic matters such as archaeology, landscaping, and construction traffic management being needing to be discharged separately, the Applicant here proposes one overall encompassing document, the EMP together with its appendices (listed in Table A1 to Appendix A of this Report), which house all the environmental actions and commitments, together with detailed documents (such as the LEMP) on how they will be carried out. The Applicant refers to the approach as “a single source of truth” [REP1-009] for controls for the Proposed Development.

8.4.4. As set out in Section 1 of this Report, the EMP comprises the following:

- EMP1 (the first iteration EMP) specifies the intended environmental outcomes that need to be achieved for the Proposed Development. Where specific mitigation must be achieved in a certain way, that is identified within EMP1. A detailed list of the documents and annexes comprising EMP1 are set out in Table A1 to Appendix A of this Report.
- EMP2 (the second iteration EMP) would set out how these environmental outcomes would be achieved, with more detail on the specific measures to be implemented. EMP2 may be split on a scheme-by-scheme basis (as opposed to topic by topic, for example) meaning one EMP2 would be produced and submitted for approval for each Scheme, or part of that Scheme, or indeed a combination of different Schemes. EMP2 would require the approval of the Secretary of State should they be minded to make the Order, as set out within paragraphs (1) to (5) to Article 53 of the Recommended DCO. The process for amending EMP2 is discussed in more detail below.
- EMP3 would effectively an operational EMP, which would set out how the road would be operated to comply with the on-going mitigation required to be implemented. These powers are contained within paragraphs (10) and (11) to Article 53 of the Recommended DCO.

### **Article 53 – the Environmental Management Plan**

8.4.5. The main issues were:

- The legality and appropriateness of using an article to secure measures normally housed within a Requirement.
- Whether the Secretary of State is required to consult relevant authorities and statutory parties (and others) as part of their consideration and determination of EMP2, and whether the Recommended DCO ought to be amended.
- The so-called “self-approval” process regarding amendments to EMP2.

### **Legality and Appropriateness**

8.4.6. The ExA wanted to test the legality and appropriateness of this approach. At ISH2 held on Thursday 1 December 2022 [EV-003], the ExA questioned whether the use of Articles to discharge what are in effect Requirements, having regard to the provisions of s120 of the Planning Act, was the correct approach. In its response, confirmed in its written submission at D1 [REP1-009], the Applicant stated the following as justification for the approach:

- The Applicant considered ways in which project delivery could be streamlined and made easier for all parties and participants in the process, including in respect of post-consent determinations.
- Whilst this approach is different in its form, the substance remains the same.
- Ultimately, where in a DCO compliance with the EMP, or indeed any other matter is secured, has no bearing from a legal, and therefore enforceability, perspective.
- Whilst the approach might 'look and feel' different, the result is the same, in that the whole of a DCO is enforceable in the same way.
- The use of Requirements, which leads to separate documents and separate consents, can inevitably be difficult for participants in the process (promoters, consultees and contractors) to navigate through the suite of documents that set the project controls, therefore hampering timely delivery of vital projects (and therefore their public benefits).
- The approach accords with the *Office of the Parliamentary Counsel Drafting Guidance* (June 2020) which states that, in relation to Bills (but the principle of which applies to DCOs as Statutory Instruments, too): “Schedules can assist clarity by providing a home for material that would otherwise interrupt and distract from the main story you are trying to tell” but “relegating text to the end of the Bill may not always help the reader. It may break up the story you are telling; or make the structure of the Bill more complicated than it needs to be. So don’t dispatch material to Schedules without good reason...”

8.4.7. In summary, the Applicant stated [REP1-009] that there was merit in modifying the approach/framework for securing mitigation, whilst in no way altering the substance of the robustness of the measures and how they are secured. The Applicant further stated that, in its own words, EMP1 was the “single source of truth” for all controls for the Project, in effect “a mitigation bible”. The Applicant considers that the approach ‘standardises’ the time taken to consult and determine EMP2, and other matters to take place after the DCO has been granted, whilst in no way diluting the effectiveness of the mitigation secured.

8.4.8. The Applicant thus submits that there is no good reason in this case, for the reasons mentioned above, why an article cannot or should not be used to secure mitigation for the Proposed Development.

8.4.9. No IPs raised any substantive concerns with the legality or otherwise of the use of an article to secure the EMP, or with the Applicant’s responses to our questions. The ExA, while acknowledging that we were in somewhat uncharted territory, were satisfied with the Applicant’s response in this regard. We did not need to examine the legality or appropriateness matter further.

### **Process for Approving EMP2**

8.4.10. Paragraphs 1.4.9 to 1.4.52 of EMP1 [REP8-005] set out the criteria for the approvals process for EMP2. Contained within these paragraphs are measures to consult the relevant authorities and statutory bodies, known in the Recommended DCO as the Consultation and Determination Provisions.

8.4.11. As confirmed by the Applicant in writing at D1 [REP1-009], in its response to WQ DCO 1.4 [REP4-011] and in its response to the ExA’s Schedule of Changes to the draft DCO [REP7-166], the Consultation and Determination Provisions only apply prior to the submission of the EMP2 to the Secretary of State. Because EMP1 will be a certified document, the Applicant stated that it is obligated to consult widely in two rounds of consultation with relevant authorities and statutory bodies before submitting EMP2 to the Secretary of State. Thus, the Applicant’s intention is for the

Secretary of State to consider and determine EMP2 without the need for additional consultations. The ExA had concerns with this approach and Westmorland and Furness C summarised its position at D3 [REP3-055] that the EMP process should not disadvantage the Council in any way or limit their input and influence over the matters contained within each iteration of the EMP.

- 8.4.12. At ISH2 held on Thursday 1 December 2022 [EV-003], the ExA questioned why consultation with local authorities and statutory bodies had seemingly been omitted from Article 53 of the draft DCO. The Applicant responded orally, and in writing at D1 [REP1-009] and at D7 [REP7-166] stating that the measures proposed would ensure that adequate consultation would occur. As a result, there would be no need for the Secretary of State to undertake what would in effect be a third round of consultations, which would be counterproductive and would only delay the consenting time further. In any event, the Applicant stated that the Secretary of State is also able to consult with any relevant parties before making a determination, at their discretion. This remains the Applicant's position.
- 8.4.13. Having considered all written responses from the Applicant on this matter alone, the ExA disagrees. The ExA considers that, if left as per the final draft DCO [REP9-013], the Undertaker would be at liberty to make further changes to the EMP2 prior to the submission to the Secretary of State. Given the volume of information likely to form part of any EMP2, the Secretary of State will need to be satisfied that no substantive changes have occurred, which may require a considerable level of checking. The ExA does not consider the Secretary of State should be burdened in this way.
- 8.4.14. However, even if the Secretary of State were satisfied that the consultation EMP2 version and EMP2 as submitted were aligned, the Secretary of State in discharging EMP2 for that part, would have to do so without satisfying themselves that they have received direct communication from the relevant authorities and statutory parties involved on the environmental information, and mitigation proposed that would be before them. The Secretary of State would be solely reliant on third hand responses to form their views. Moreover, the relevant authorities and statutory parties would have no legal avenue to communicate with the Secretary of State directly. The ExA also considers that the Applicant's approach in this way contrasts sharply with the normal functions of any determinative body, who will consult on material before them, and satisfy themselves of the views of parties prior to making any decision.
- 8.4.15. The ExA considers that the Secretary of State should satisfy themselves that, given the importance of the EMP2, they have heard directly from relevant authorities and statutory parties regarding the environmental submissions and mitigation proposed or that they have provided the opportunity to do so. The Secretary of State should not, in contrast, rely on pre-submission consultation responses.
- 8.4.16. As will be set out below, the ExA recommended [PD-015] a new paragraph (2) be inserted into the draft DCO [REP5-012] to require the Secretary of State to consult relevant authorities and statutory parties. We suggested a 30-day period which the ExA does not consider overly burdening on the Undertaker or lead to significant and unnecessary delays to the delivery of the Proposed Development. In its responses at D7, the EA [REP7-176], North Yorkshire C [REP7-182], and Westmorland and Furness C all confirmed they supported the ExA's suggested amendment.
- 8.4.17. Therefore, and for the reasons given above, the ExA recommends additional wording be inserted into the Recommended DCO in the manner prescribed below.

However, should the Secretary of State disagree, they should remove new paragraph (2) to Article 53 of the Recommended DCO, although the consequences would be that the Secretary of State would be approving EMP2 without direct responses from IPs.

- 8.4.18. The only other substantive change to the Article 53 during the Examination came at D2 [\[REP5-005\]](#). Following the ExA's concerns, the Applicant updated Article 53 by inserting new paragraphs (2) and (3) to ensure that the Proposed Development was constructed, operated and maintained in accordance with EMP2, as no such compliance requirement existed. Aside from the matter discussed above, no IPs raised any substantive concerns with procedure for the Secretary of State to approve EMP2 as per the powers contained within paragraphs (1) to (5) of the Recommended DCO.

### **Process for Amending the Approved EMP2**

- 8.4.19. The Applicant's so-called "self-approval" process was a major area of concern for IPs, as set out in the PADSS submitted by Westmorland and Furness C [\[AS-001\]](#) and [\[AS-003\]](#), the EA [\[AS-004\]](#), HE [\[AS-005\]](#) and NE [\[AS-006\]](#). As originally scripted in paragraphs (3) to (6) of the draft DCO as submitted with the Application [\[APP-285\]](#), the powers conveyed to the Applicant would enable them to make any amendments to EMP2 and to decide for themselves whether to seek the Secretary of State's approval.
- 8.4.20. The ExA raised concerns with this approach at ISH2 [\[EV-003\]](#). The ExA's principal concern was whether the Undertaker, in using its "self-approval" powers to make amendments to EMP2, could undermine the scope and assessment in the ES both individually and cumulatively and moreover, the findings within the HRA. This in turn could undermine the Secretary of State's AA, none of which would be subject to any form of regulatory check. The ExA put it to the Applicant that the Secretary of State's decision on the Application could be put at risk.
- 8.4.21. In response [\[REP1-009\]](#), the Applicant agreed to look at additional wording but maintained it wished to retain flexibility to amend EMP2 rather than conversely seeking approval for every single change, however small that may be. The draft DCO submitted with the Application [\[APP-285\]](#) already contained powers to ensure that to amend any part or all of EMP2, the Undertaker must be satisfied that it remains substantially in accordance with the approved version and would not give rise to materially new or different environmental effects. The Applicant, however, made two key concessions at the next iteration of the draft DCO submitted at D2 [\[REP2-005\]](#), which in the view of the ExA, resolved the concerns. They were:
- That the undertaker must have completed the Consultation and Determination Provisions in relation to the proposed amendments to EMP2; and
  - That the undertaker must submit a copy of the amendments to the Secretary of State in which they will have a call-in power to determine the amendments themselves.
- 8.4.22. The ExA considers that the latter addition provides the necessary procedural check on any amendments sought by the undertaker to EMP2. As amended, the Secretary of State will have a 14-day period from submission to decide for themselves whether they wish to call-in the amendments for their own determination. In its responses at D7, the EA [\[REP7-176\]](#), North Yorkshire C [\[REP7-182\]](#), and Westmorland and Furness C [\[REP7-189\]](#) all confirmed they supported the amendment.



- 8.4.23. In its PADSS submission for D3 [REP3-061], the EA (along with NE and HE) were content with the addition, but felt greater clarity and amendments were needed to the REAC commitments contained within the EMP1 [APP-019], which were set out in greater detail in the EA's [REP1-024] and NE's [REP1-035] WRs. At the same deadline, the Applicant submitted an updated EMP1 [REP3-004] to reflect the changes so that by D7, the EA [REP7-176], NE [REP7-180] and Westmorland and Furness C [REP7-190] no longer considered the matter a principal area of concern.
- 8.4.24. Following additional concerns raised by the ExA at ISH3 [EV-039] additional powers were added to paragraph (8)(b) in the draft DCO at D5 [REP5-012] which allow the Secretary of State to take a longer time-period than 14-days in considering an amendment to EMP2 if they so wish.

#### **Other Article 53 Matters**

- 8.4.25. As originally drafted, Article 53 of the draft DCO [APP-285] contained compliance wording such as “*substantially based on*” and “*in comparison with*” which the ExA considered imprecise and unacceptable. At ISH2 [EV-003], the Applicant stated that in its view, such wording was acceptable. However, it nevertheless took the steer from the ExA and replaced such wording to “*substantially in accordance*” at D2 [REP2-005] with further changes made at D5 [REP5-012].
- 8.4.26. The ExA notes that the Secretary of State has accepted similar wording in other made Orders (e.g. the M25 Junction 28 Development Consent Order 2022). The ExA is satisfied that the term “*substantially in accordance*” provides for the guarantee that documents must adhere to its Examination counterpart but allows for any minor variances and flexibility the Applicant seeks.
- 8.4.27. In a similar way, Article 53 of the draft DCO [APP-285] also contained the term “*would not give rise to materially new or materially worse adverse environmental effects*” in respect to the undertaker’s preparation of EMP2 and its tests to amend it. At ISH2 [EV-003], and in WQ DCO 1.5 [PD-011] and FWQ DCO 2.1 [PD-012], the ExA voiced its concerns that the words “*worse adverse*” was imprecise as it would be open to interpretation as to whether a departure from EMP1 or a change to EMP2 could include anything other than a substantial worsening of the identified effect. It was also open to interpretation how a “*materially new or worse*” change differed from something which was just “*new or worse*”.
- 8.4.28. In its initial response at D1 [REP1-009] and to WQ DCO 1.5 [REP4-011], the Applicant stated that the term, although not evidenced as having been used in previous made Orders, was required to allow flexibility so that change could be made which resulted in a betterment of the environmental effects. This did not, however, address the ExA’s central point of concern. In response to FWQ DCO 2.1 [PD-012] and updated in the draft DCO submitted at D7 [REP7-092], the Applicant changed this wording to “*materially new or materially different*”, wording of which the ExA had requested in the first instance at ISH2 [EV-003].

#### **ExA’s Conclusion on EMP Secured by an Article**

- 8.4.29. The ExA is not entirely convinced, from the evidence submitted during the Examination, that the Applicant’s novel approach for mitigation to be secured by way of an article has the obvious benefits espoused by the Applicant over the conventional way of listing them in Requirements. That said, the ExA heard little evidence that the approach was in anyway unlawful or unethical and had no reason not to accept the Applicant’s approach to mitigation control.

- 8.4.30. EMP1 (and its appendices) (see Table A1 to Appendix A of this Report), which also contains the REAC and the Consultation and Determination Provisions, is a Certified Document in Schedule 10 of the Recommended DCO. Article 53(1) requires an EMP2 for the part to which it relates to be approved by the Secretary of State before the development commences, and Article 53(3) requires the authorised development to be constructed “in accordance” with it. Article 53(5) requires EMP2 to be “substantially in accordance” with EMP1 to allow the Applicant flexibility at the detailed design stage. Our suggested Article 53(2) also requires the Secretary of State to consult with the relevant authorities and statutory bodies so that the Secretary of State can be assured they have the direct responses prior to the Secretary of State’s determination.
- 8.4.31. In seeking to amend any part, or all, of EMP2, Article 53(9) ensures that the Secretary of State will have a call-in power should they wish to determine such a change themselves; thereby providing the regulatory check necessary to ensure such changes do not undermine the scope and assessment in the ES or the findings in the HRA. Article 53(11) ensures EMP3 is produced to demonstrate on-going compliance with the approved mitigation in EMP2.
- 8.4.32. By the close of the Examination, no IP held any substantive concerns over EMP1 in terms of the mitigation proposed, or the control and execution measures contained within in EMP1 and its Appendices. The ExA is satisfied that Article 53 contains the necessary and required controls as those which would be found in equivalent Requirements. We consider that, notwithstanding the unconventional approach proposed by the Applicant, the Proposed Development would be adequately mitigated, and sufficient controls are in place to ensure development is carried out in accordance with the approved details.
- 8.4.33. The Secretary of State will note that Article 55 of the Recommended DCO requires the development must not begin later than the expiry of five years from the date of the Order, meaning such approved details must be undertaken in a timely manner.

#### **Article 54 – Detailed design**

- 8.4.34. The ExA’s principal issue concerning Article 54 concerned the three viaducts at Trout Beck for Scheme 0405 (Temple Sowerby to Appleby), and Cringle Beck and Moor Beck for Scheme 06 (Appleby to Brough). As has been discussed in much greater detail in the Landscape and Visual topic in Section 4, the ExA has held significant concerns that the PDP [REP8-061], alongside the Works plans for Scheme 0405 [REP7-112] and Scheme 06 [REP7-114] and Engineering Cross Section Drawings for Scheme 0405 [REP7-119 and REP7-122] for Scheme 06 [REP7-116 and REP7-124] (the Article 54(1) documents) are not sufficiently detailed for such important structures to be designed to a high architectural standard befitting of their sensitive landscape setting.
- 8.4.35. The ExA first tabled concerns over the absence of any specific designs for the three viaduct structures at ISH2 [EV-003]. In an attempt to allay the ExA’s concerns, the Applicant produced a document at D3 entitled “Overview of the Design Process for Trout Beck, Cringle Beck and Moor Beck viaducts” [REP3-046]. At D4 and in response to the ExA’s requests for photomontages of the viaducts, the Applicant produced a series of watercolour visualisations alongside a technical note [REP4-015, REP4-016, REP4-017, REP4-018, REP4-019 and REP4-020]. Neither have allayed the ExA’s concerns for reasons set out in Section 4 of this Report.

- 8.4.36. The ExA considers that there is insufficient details and controls contained within the Article 54(1) documents to demonstrate and ensure that the three viaducts will be designed to be beautiful and to sit well within the landscape. Accordingly, and as is set out in the table below, the ExA recommended to the Applicant [PD-015] that an additional paragraph be added to Article 54 seeking design approval of the viaducts.
- 8.4.37. The Applicant's position, taken in its response at D7 [REP7-166] rejects the need for such a change, stating that *"the Applicant remains of the view that it, as the strategic highway company responsible for setting the design standards for England's strategic road network, is the appropriate body to be responsible for the detailed design of the Project. The Applicant maintains its view that the provisions of Article 54, including the Design Principles, Works Plans and Engineering Section Drawings: Plan and Profiles and Cross Sections are sufficient to secure good design"*.
- 8.4.38. The ExA maintains the view that an additional paragraph is required to Article 54 and has set out those recommended changes below. As discussed in Section 4, the EA and NE's initial concerns with the absence of detailed designs for the viaducts in relation to habitat matters was addressed in response to our WQ BHR 1.1 [REP4-011, REP4-029 and REP4-033].
- 8.4.39. In respect to the Langrigg junction within Scheme 06, this is discussed in much further detail in Section 4 of this Report. In summary, the Secretary of State will be aware that the Applicant sought a change to the design of this part of the scheme in its Change Request submissions [CR1-002].
- 8.4.40. At ISH2 [EV-003], the ExA expressed concerns at the apparent over-engineered design solution and the potential significant adverse effects to the living conditions of residents within close proximity of the realigned A66 and drainage ponds and access roads. In seeking the change (DC-25), the Applicant stated that *"many of the other issues raised at consultation, such as those relating to drainage and land, will be addressed through further engagement and through provisions of the EMP. For example, [The Applicant] proposed to rationalise the pond designs and associated access for maintenance which may involve amendments to pond locations and/or shape to better fit the existing landscape/ field patterns. This will be undertaken in consultation with the drainage authorities and the land interests affected."*
- 8.4.41. Because of the uncertainties, and having regard to the sensitive nature of the site and the fact that the most affected residents are elderly, the ExA recommended [PD-015] that an additional paragraph be added to Article 54 to ensure the design of this part of the Scheme including the location of the ponds be approved by the Secretary of State, so as to allow the local community and the local authority prior sight of the proposal and to inform the Secretary of State of any concerns they may have.
- 8.4.42. In its response at D7 [REP7-166], the Applicant did not consider such a controlling paragraph was necessary, but proposed the following change to be inserted into the PDP [REP6-015] for the D8:
- *"Construction of Work No. 06-7 must not start until the relevant planning authority has been consulted (in accordance with the provisions of Chapter 1 of the EMP) on:*

- *the proposed final alignments of any highway comprised in that work (where the lateral or vertical limits of deviation are proposed to be utilised in accordance with article 7 of the DCO); and*
- *the proposed final positioning of any attenuation pond required for that work”.*

8.4.43. While the ExA thanks the Applicant for its suggested wording, the ExA remains of the view that because the detailed design of this part of the development is at its infancy, the Applicant must seek approval of the design in this location. The ExA considers that the proposed wording in the PDP [REP8-061] would be unfair to local residents who live close to the Proposed Development. The ExA remains of the view that the Works relevant to this section only should be specifically approved by the Secretary of State. Because the PDP document cannot be amended, the ExA maintains the Article 54 be amended, and has set out those recommended changes below.

### **Article 36 – Brough Hill Fair**

8.4.44. The Secretary of State will note from Section 4 of this Report that the GTC played a considerable role in the Examination. Currently, the GTC enjoy the use of a site adjacent to the existing A66 for the Brough Hill Fair, which takes place annually every September. Scheme 06 (Appleby to Brough) of the Proposed Development would result in the dualled section of the road being aligned south of the existing road and as such would consume most of the current Brough Hill Fair site. The GTC have been offered the adjacent site by the Applicant, known locally as “the Bivvy site” on land adjacent to but not affected by the Proposed Development. This is discussed in much further detail in the Population and Human Health topic in Section 4 of this Report, alongside our assessment against the Equality Act and PSED.

8.4.45. The Applicant, in drafting Article 36 of the application draft DCO [APP-285] acknowledged in the EM [APP-286] that such Articles did not have specific precedent in the Model Provisions. At ISH2 [EV-003] the Applicant acknowledged that the drafting was in effect, a first attempt given that it is bespoke for this project and accepted that it was open to amendments. The ExA wished to better understand the legal provisions and rights for the Brough Hill Fair including the Royal Charter, and the drafting in general. Particularly, the ExA was concerned whether the draft Order had any powers to suspend the Royal Charter (as originally drafted) and whether the wording gave sufficient security to the GTC in both securing the alternative site and in consultations.

8.4.46. Article 36 was substantially re-drafted at D2 [REP2-005] with additional and tougher provisions. Specifically, the Article now prohibits the undertaker from taking exclusive possession of the extant site until the provision of the replacement site had been approved by the Secretary of State. At D5 [REP5-012] and amongst other things, additional provisions were added to paragraph (2)(a) in defining what the scheme for provision for the replacement Brough Hill Fair site means. At D7 [REP7-092] a further provision was added requiring that the replacement land, alongside being prepared and implemented by the Undertaker, must also be suitable and available for use.

8.4.47. The ExA is satisfied that the wording in Article 36 of the Recommended DCO provides the adequate protection for the GTC to ensure the replacement site is approved, provided and made available before the extant site is taken for the Proposed Development. In so doing, the ExA is satisfied that it has discharged its duties under PSED.

## 8.5. ExA’s CONSULTATION DRAFT DCO

8.5.1. The ExA issued its consultation draft DCO on Tuesday 18 April 2023 [PD-015]. The ExA recommended six changes be made to the draft DCO [REP5-012]. Two of these changes simply affirmed the Applicant’s confirmation at D6 [REP6-020] that it would substitute “*materially worse adverse*” with “*materially different*” in Article 53, which as discussed above was a repeated concern for the ExA in the Examination, and to substitute “*in comparison with*” with “*substantially in accordance*” in Article 54.

8.5.2. Table 8.2 therefore sets out the remaining four recommended suggested changes, the Applicant’s response to that change and, if required, the ExA’s decision to accept or reject the response. Both North Yorkshire C [REP7-182] and Westmorland and Furness C [REP7-189] stated they supported all of the ExA’s recommended changes above.

**Table 8.2 – Summary of the Applicant’s Response to the ExA’s Consultation Draft DCO and the ExA’s Comments**

Provision in draft DCO [REP5-012]	Requested Change	Applicant’s Response Summary [REP7-166]	ExA Accepts/Rejects Response
Part 5, Article 53(2) <i>EMP</i>	Insertion of new paragraph (2) to legislate the consultation to be undertaken by the Secretary of State and the time period for responses to be received.	Unnecessary change which would be detrimental if included. The changes are clearly set out in EMP1 paragraphs 1.4.9 to 1.4.52 and EMP1 would be a certified document.  The Applicant would engage in two rounds of consultation with the relevant authorities before seeking the Secretary of State’s approval for the EMP2 for that part. To subject it to a further period of 30-days (a third round of consultation) is unnecessary.	Reject – see below.
Part 5 Article 54(4)	Insertion of new paragraph (4) to require the detailed designs of the Trout	Applicant is appropriate body for the detailed design of the Project.	Reject – see below.

Provision in draft DCO [REP5-012]	Requested Change	Applicant's Response Summary [REP7-166]	ExA Accepts/Rejects Response
<i>Detailed design</i>	Beck, Cringle Beck and Moor Beck viaducts to be approved by the Secretary of State.	There is sufficient documentation in the Examination to secure good design. The provision is therefore unnecessary.	
Part 5 Article 54(5) <i>Detailed design</i>	Insertion of new paragraph (5) to require the detailed designs of the Langrigg works contained within Scheme 06 to be approved by the Secretary of State.	Applicant is appropriate body for the detailed design of the Project.  However, the Applicant is committed to consulting the relevant authority and suggests a form of wording.	Reject – see below.
Schedule 1, Ancillary Works	To remove the word “kerb” from the paragraph.	Change made.	Accept – no further response.

8.5.3. The ExA has, in the above paragraphs, set out its reasoning as to why additional paragraphs are required. The ExA has therefore amended the final draft DCO [REP9-013] to include new paragraph Article 53(2). We also include the two changes to Article 54 but because of matters discussed in Section 8.7 below, they now form Articles (54)(8) and 54(9).

## 8.6. PROTECTIVE PROVISIONS

8.6.1. The following submissions were received by Statutory Undertakers specifically on the matter of Protective Provisions:

- NGET – [RR-053, REP1-031, REP9-044].
- NGT – [RR-130, REP1-032, REP9-043].
- Network Rail – [RR-063, REP1-036, REP1-037].
- United Utilities – [RR-120 REP6-046, REP7-207, REP8-086].
- Northern Powergrid Yorkshire PLC – [RR-158, REP9-048].
- EA – [RR-160, REP1-024, REP6-027, REP7-176].

8.6.2. All SUs above expressed in RRs and WRs that they wished to see appropriate protection for retained apparatus including compliance with relevant standards for works proposed within proximity of their apparatus, and that further discussions were required on the impact to their apparatus and rights. In its D1 response, Network Rail [REP1-037] advanced a copy of its Protective Provisions it wished to see inserted into the draft DCO [APP-285].



- 8.6.3. At D2, the Applicant updated the draft DCO [REP2-005] where it made substantial changes to the Schedule 9 Protective Provisions. These included making a separate provision for NGT and replacing the text for Network Rail with its preferred wording [REP1-037]. Network Rail made no further representations during the Examination. The ExA concludes therefore that these said parties are content with their respective Protective Provisions.
- 8.6.4. In its D8 response [REP8-086], United Utilities stated it retained its objection to the Proposed Development. United Utilities' principal issue concerns their facility at Penrith and Scheme 0405 (Temple Sowerby to Appleby), especially around the detailed design of the Scheme and extant access arrangements. United Utilities stated that an objection to the Proposed Development remains, but that it could be removed *"if the Applicant enters into a separate Side Agreement, expanding on the Protective Provisions. The Side Agreement will need to address concerns...that the detailed design must consider, with approval of United Utilities throughout the iterative design process."*
- 8.6.5. By the close of the Examination, the matter had not been fully resolved. However, United Utilities is seeking a Side Agreement to resolve its concerns, indeed there is no suggestion that it is not content with the Protective Provisions wording in the final draft DCO [REP9-013] and it has not advanced suggested changes whether or not a Side Agreement is reached with the Applicant. Nevertheless, the ExA recommends the Secretary of State seeks an update from the parties on the position of the Side Agreement prior to making their decision.
- 8.6.6. At D9, Northern Powergrid [REP9-048], NGET [REP9-044] and NGT [REP9-043] stated that it would remove initial objections on completion of a forthcoming Side Agreement, which were all close to completion. The Secretary of State may also therefore wish to request an update from the parties prior to them making a decision.
- 8.6.7. At ISH3 [EV-039], the EA informed the ExA that it was preparing a new draft of its Protective Provisions. At D6 [REP6-027], the EA advanced a copy of the Protective Provisions it wished to see inserted into the draft DCO [REP5-012]. The Applicant's response at D7 [REP7-160] confirmed that it had agreed to most of the wording but had a handful of points it needed to clarify with the EA, and that discussions were ongoing.
- 8.6.8. The final draft DCO [REP9-013] included revised wording to Schedule 9, Part 5. The wording contained therein is largely identical to the EA's suggested Protective Provisions [REP6-027] save for two small additions to paragraphs 59(3) and (4) with the words *"subject to paragraph 60"*, and what appears to be a separation of the EA's suggested paragraph (11)(1)(a) into two separate sub-paragraphs 61(1)(a) and (b). The EA made no final comments on these minor changes, and the ExA concludes that the matter is resolved.
- 8.6.9. The ExA is therefore satisfied with the wording of Schedule 9, that adequate protection is provided to SUs such that there would be no serious detriment to the carrying out their respective roles and functions.

## 8.7. OUTSTANDING MATTERS FROM INTERESTED PARTIES

- 8.7.1. Throughout the Examination and as reported in their respective SoCGs, the Applicant and NE [REP9-008], the EA [REP9-009] and HE [REP8-024] have held ongoing discussions on outstanding areas of disagreement. At ISH3 [EV-039], the

ExA pressed the parties for a resolution to these matters and asked the parties on the ramifications for the Report and for the Secretary of State if these matters were not agreed by the close of the Examination. We noted the responses in the hope that such matters would be resolved.

- 8.7.2. At D7, the EA [REP7-016] stated that it remained concerned regarding the hydraulic modelling for Scheme 06 (Appleby to Brough), a matter that was repeatedly raised in its PADSS including its final version [REP7-176]. The EA required additional controls in the form of a Requirement within the (then) draft DCO [REP5-012], and did not accept the Applicant's proposed solution which was to control the matter via way of EMP1 REAC Commitment D-RDWE-15 [REP8-005].
- 8.7.3. In its D9 submission and in response to our R17 letter [PD-016], the Applicant [REP9-034] and the EA [REP9-039] issued a joint statement that fundamental disagreement existed as to the appropriate way drainage matters ought to be controlled. However, both parties agreed that the EMP1 would retain the Commitment as drafted, but that suitable wording could be added to Article 54 the draft DCO [REP9-013] as new paragraphs (4), (5), (6) and (7) if the Secretary of State were minded to concur with the EA. This agreed wording supersedes the suggested wording by the ExA in our R17 letter of 19 May 2023 [PD-016] in which wording would be added to Article 53.
- 8.7.4. As is discussed in greater detail in Section 4 of this Report, the ExA places considerable importance on this issue. Because EMP2 is able to depart from EMP1 albeit not substantially, the ExA places significant weight to the EA's position and recommends to the Secretary of State that the agreed wording be inserted into Article 54 of the Recommended DCO. However, the ExA acknowledges that the Applicant considers the EMP1 [REP8-005] to hold adequate protection in this matter and invites the Secretary of State not to insert the wording as set out below.
- 8.7.5. NE in its D7 submission [REP7-180] stated that it too had an outstanding matter of concern regarding ammonia and nitrogen surveys and the Applicant's conclusion that the Proposed Development would not give rise to an Adverse Effect on the Integrity (AEol) of the North Pennine Moors SAC. Because this matter is not agreed, NE cannot conclude no AEol. A Supplementary Note was submitted [REP9-036] to provide additional explanations. This matter is discussed in detail as part of HRA in Section 5 of this Report.
- 8.7.6. In its D9 submission, the Applicant [REP9-034] and NE [REP9-046] issued a joint position statement (at the request of the ExA [PD-016]) that both parties were continuing to work on this matter and were hopeful of a resolution before the end of the ExA's reporting period and the submission of our Report to the Secretary of State. To that extent, the ExA's suggested alteration [PD-016] to the draft DCO [REP8-028] to insert suitable wording to control this matter was not accepted by both the Applicant and NE as it would "*not be effective or appropriate in the proposed form*".
- 8.7.7. Critically, NE considers that the matter can be controlled through the Order (as opposed to advising the Secretary of State to withhold consent for the Order), because it states within its final PADSS that "*...therefore it is likely that the mitigation will have to be secured through a pre-commencement requirement*". However, neither NE nor the Applicant have advised the ExA or the Secretary of State on how this should be achieved, and where in the Recommended DCO such mitigation should be inserted.

- 8.7.8. Because of this, we consider that we cannot recommend changes to the final draft DCO [REP9-013] as suggested in our R17 letter of 19 May 2023 [PD-016]. As is discussed in more detail in Section 5 and set out in Appendix D of this Report, the Secretary of State will need an update from the Applicant and NE prior to determining the Application, to include the implications for the Recommended DCO and the possible application of Article 6(4) of the Habitats Regulations if AEol is advised by NE.
- 8.7.9. Within its final PADSS submitted at D8, HE [REP8-078] stated that it remained of the view that amendments to the DCO and EMP were necessary to ensure pre-commencement archaeological works are carried out in accordance with professional standards. At D9, the Applicant stated [REP9-034] that discussion had been positive and had that only two matters of disagreement remained. Those being:
- Whether any external oversight of the Applicant's internal handling arrangements for post-consent determinations arising under the EMP is required; and
  - The standard to which archaeological investigations and mitigation works “carved out” of the definition of “commencement” in Article 53 of the DCO are carried out and supervised.
- 8.7.10. Similar to the EA, the Applicant and HE have agreed on suitable wording to be inserted into Article 53 of the draft DCO [REP9-013] as new paragraphs (12) and (13) should the Secretary of State be minded to concur with HE that matters concerning pre-commencement archaeological works ought to be controlled within the Order.
- 8.7.11. As is discussed in more detail in Section 4 of this Report, because of the importance of this issue, the ExA places considerable weight on HE's position and recommends that the agreed wording be inserted into Article 53 of the Recommended DCO as suggested, albeit that the recommend changes are set out as new paragraphs (13) and (14) because of our recommendation for a new paragraph (2) which is discussed above. However, the ExA acknowledges that the Applicant considers such wording is not necessary and invites the Secretary of State not to insert the wording as set out below.
- 8.7.12. Both signed SoCGs between the Applicant and the EA [REP9-009] and HE [REP8-024] state agreement exists on all other matters concerning the Recommended DCO. While the Statement of Commonality of SoCGs [REP9-011] indicates matters concerning the DCO remain not agreed between the Applicant and Westmorland and Furness C, all outstanding issues will either be resolved through the submission of EMP2 or the detailed design, or through a separate Side Agreement.
- 8.7.13. Aside from those matters discussed above, no other IPs raised any matters of substance concerning the powers contained therein, or the wording of the Articles and Schedules of the Recommended DCO. By the close of the Examination, there were no circumstances of IPs seeking amendments to the final draft DCO [REP9-013] which the ExA is not recommending. Accordingly, the totality of recommended changes to the final draft DCO are from the ExA and are set out below.

## 8.8. ExA’s RECOMMENDED CHANGES

8.8.1. The ExA recommends 13 changes to the final draft DCO as submitted by the Applicant at D9 [\[REP9-013\]](#). Table 8.3 sets out all suggested changes. Explanations for the substantive changes are provided above. The bullet list below contains explanations for the suggested minor changes:

- Change No.1 would provide greater certainty that the actual arrangements for maintenance and management of the site would be secured if the word “intended” was removed. The ExA has not discussed this with the Applicant. However, because the ExA does not consider its removal would change the intention of the Article such that it would require consultation, the ExA advises the Secretary of State that such a change can be made without needing to consult the Applicant.
- Change No.3 as the definition of “*the consultation and determination provisions*” contained within Article 53 already refers to EMP1, the said words are unnecessary.
- As a consequence of recommended change No.2 in Table 8.3 below, existing paragraphs (2) to (11) in the final draft DCO are renumbered paragraphs (3) to (12), and the referenced paragraph numbers contained in Articles (6), (7), (8) and (10) are also accordingly amended.
- Because of new Article 54 paragraphs (4), (7) and (8), Article 54(1) is amended to ensure, in addition to the named documents, that the development is substantially in accordance with those matters approved specifically by the Secretary of State.

**Table 8.3 – Recommended Changes to the final draft DCO [\[REP9-013\]](#)**

No	Article	Wording in final draft DCO <a href="#">[REP9-013]</a>	ExA Recommended Change
1	Part 3, Article 36(2)(a)(iv) <i>Brough Hill Fair</i>	<i>“(iv) setting out the intended arrangements for the maintenance and management of the facilities, access and boundaries mentioned in paragraphs (i) to (iii) above, having regard in particular to safety and security considerations; and”</i>	<i>“(iv) setting out the <del>intended</del> arrangements for the maintenance and management of the facilities, access and boundaries mentioned in paragraphs (i) to (iii) above, having regard in particular to safety and security considerations; and”</i>
2	Part 5, Article 53 (2) <i>EMPs</i>	None	<b>INSERT NEW PARAGRAPH (2)</b> <i>“(2) The Secretary of State must consult the relevant statutory environmental bodies, local authorities and highway authorities, allowing each party a period not exceeding 30 days to respond unless otherwise</i>

No	Article	Wording in final draft DCO [REP9-013]	ExA Recommended Change
			<i>agreed to in writing by the Secretary of State</i>
3	Part 5, Article 53 (8)(b) <i>EMPs</i>	<i>“(b) the undertaker has completed the consultation and determination provisions contained in the first iteration EMP in relation to the proposed amendments.”</i>	<i>“(b) the undertaker has completed the consultation and determination provisions. <del>contained in the first iteration EMP in relation to the proposed amendments.</del>”</i>
4	Part 5, Article 53 (13) <i>EMPs</i>	None	<b>INSERT NEW PARAGRAPH (13)</b> <i>“(13) The undertaker must not make a determination under –  (a) a second iteration EMP approved under paragraph (1);  (b) paragraph (7); or  (c) paragraph 10  until the arrangements for the undertaker to make such a determination (including details on how the matters contained in paragraph 1.4.48 of the first iteration EMP are to be addressed) have been submitted to and approved in writing by the Secretary of State, following such consultation as the Secretary of State considers to be appropriate.”</i>
5	Part 5, Article 53 (14) <i>EMPs</i>	None	<b>INSERT NEW PARAGRAPH (14)</b> <i>“(14) The undertaker must make any determination under the provisions listed in paragraph (13) in accordance with the arrangements approved under that paragraph unless the Secretary of State subsequently approves alternative arrangements in</i>

No	Article	Wording in final draft DCO [REP9-013]	ExA Recommended Change
			<i>writing, following such consultation as the Secretary of State considers to be appropriate.”</i>
6	Part 5, Article 53 (15)  <i>EMP</i>	<i>(12) In this article- “commence” means beginning to carry out any material operation (as defined in section 56(4) of the 1990 Act) forming part of the authorised development other than operations consisting of archaeological investigations and mitigation works, ecological surveys and mitigation works, investigations for the purpose of assessing and monitoring ground conditions and levels, remedial work in respect of any contamination or other adverse ground conditions, erection of any temporary means of enclosure, receipt and erection of construction plant and equipment and the temporary display of site notices or advertisements, and “commencement” is to be construed accordingly;</i>	<i><del>(12)</del>(15) In this article- commence” means beginning to carry out any material operation (as defined in section 56(4) of the 1990 Act) forming part of the authorised development other than operations consisting of archaeological investigations and mitigation works, <b><u>(but only to the extent undertaken in accordance with the guidance documents specified in paragraph B3.3.4 of Annex B3 of the first iteration EMP)</u></b>, ecological surveys and mitigation works, investigations for the purpose of assessing and monitoring ground conditions and levels, remedial work in respect of any contamination or other adverse ground conditions, erection of any temporary means of enclosure, receipt and erection of construction plant and equipment and the temporary display of site notices or advertisements, and “commencement” is to be construed accordingly;</i>
7	Part 5, Article 54 (1)  <i>Detailed design</i>	<i>(1) Subject to article 7 (limits of deviation) and the provisions of this article, the authorised development must be designed in detail and carried out so that it is substantially in accordance with—</i>	<i>(1) Subject to article 7 (limits of deviation) and the provisions of this article, the authorised development must be designed in detail and carried out so that it is substantially in accordance with—</i>



No	Article	Wording in final draft DCO [REP9-013]	ExA Recommended Change
		<p>(a) <i>the design principles;</i></p> <p>(b) <i>the works plans; and</i></p> <p>(c) <i>the engineering section drawings: plan and profiles and the engineering section drawings: cross sections</i></p>	<p>(a) <i>the design principles;</i></p> <p>(b) <i>the works plans; <del>and</del></i></p> <p>(c) <i>the engineering section drawings; plan and profiles and the engineering section drawings; cross sections; <u>and</u></i></p> <p>(d) <b><u>the matters approved by the Secretary of State under paragraphs (4), (7) and (8).</u></b></p>
8	Part 5, Article 54 (4) <i>Detailed design</i>	None	<p><b>INSERT NEW PARAGRAPH (4)</b></p> <p><i>“(4) No part of the authorised development comprised in Scheme 06 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.”</i></p>
9	Part 5, Article 54 (5) <i>Detailed design</i>	None	<p><b>INSERT NEW PARAGRAPH (5)</b></p> <p><i>“(5) The scheme prepared under paragraph (4) must provide suitable flood storage such that flood risk during construction and operation of Scheme 06 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 (in</i></p>

No	Article	Wording in final draft DCO [REP9-013]	ExA Recommended Change
			<i>document HE565627-JBAU-XX-06-RP-HM-S3-P05-0001-Scheme6_Modelling_Report accepted on 15<sup>th</sup> May 2023) and arise from events with a magnitude up to an including the 1% annual exceedance probability, plus allowance for climate change in line with the Environment Agency guidance applicable on the date when this Order was made.”</i>
10	Part 5, Article 54 (6) <i>Detailed design</i>	None	<b>INSERT NEW PARAGRAPH (6)</b>  <i>“(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.”</i>
11	Part 5, Article 54 (7) <i>Detailed design</i>	None	<b>INSERT NEW PARAGRAPH (7)</b>  <i>(7) “The undertaker must not commence construction of each of the viaducts comprised in Work Nos. 0405-1A(xii), 0405- 2A(x), 06-1C(vi) and 06-1C(x) until details of the design and external appearance of the viaducts have been submitted to and approved in writing by the Secretary of State following consultation with the relevant planning authority.”</i>
12	Part 5, Article 54 (8) <i>Detailed design</i>	None	<b>INSERT NEW PARAGRAPH (8)</b>  <i>(8) “The undertaker must not commence the construction of Work No. 06-7 until the detailed designs for this Work</i>

No	Article	Wording in final draft DCO [REP9-013]	ExA Recommended Change
			<i>including the locations of any drainage ponds and access roads and the associated ancillary works have been submitted to approved in writing by the Secretary of State following consultation with the relevant planning authority.”</i>
13	Part 5, Article 54 (9)  <i>Detailed design</i>	None	<b>INSERT NEW PARAGRAPH (9)</b>  <i>“(9) In this article “commence” has the same meaning as in article 53(15).”</i>

### Should the Secretary of State Disagree

8.8.2. All suggested changes are as a result of the ExA’s conclusion that additional regulation is required, for the reasons set out in this Report. However, the following should occur if the Secretary of State disagrees with some or all of the recommended changes:

- Delete suggested Article 53(2) if the Secretary of State does not consider consultation with the relevant authorities and statutory parties is necessary before approval of EMP2 for that part of the Proposed Development.
- Delete suggested Articles 53(13), (14) and the additional wording to (15) if the Secretary of State does not accept HE and the ExA’s concerns regarding pre-construction archaeological monitoring or consider additional controls in the Article are necessary.
- Delete suggested Articles 54(4), (5) and (6) if the Secretary of State considers matters concerning hydraulic modelling for Scheme 06 are adequately secured and controlled in EMP1 and accordingly, does not agree with the EA and the ExA that they should be secured in the Article.
- Delete suggested Article 54(7) if the Secretary of State does not agree that the Trout Beck, Cringle Beck and Moor Beck viaducts designs need to be approved prior to their construction.
- Delete suggested Article 54(8) if the Secretary of State does not agree that the Langrigg junction should be approved prior to construction.
- Modify suggested amendment to Article 54(1) accordingly dependent on the Secretary of State decisions on suggested Article 54(4), (7) and (8).

## 8.9. CONCLUSIONS

8.9.1. The Secretary of State can be satisfied that the ExA has considered all iterations of the draft DCO as provided by the Applicant and is satisfied that it has addressed outstanding matters. The Recommended DCO in Appendix C of this Report reflects

the final draft DCO submitted by the Applicant with the addition of those changes listed above.

- 8.9.2. The ExA therefore recommends that the Secretary of State should make this Order, with the recommended changes, if they are satisfied the Proposed Development should be consented.

## **9. SUMMARY OF FINDINGS AND CONCLUSIONS**

### **9.1. FINDINGS**

- 9.1.1. This is an application where a National Policy Statement has effect and accordingly falls to be determined under s104 PA2008. As required by s104(2), in making this recommendation, the ExA has had full regard to the relevant NPS, in this case the NNNPS, to all LIRs produced by the relevant planning authorities listed in Section 3 of this Report, the development plans when taken as a whole, and other relevant policies. The ExA notes that Westmorland and Furness C, Durham CC and North Yorkshire C identified in their respective LIRs general support for the Proposed Development, with no major outstanding concerns by the close of the Examination. The ExA considers that identified outstanding matters for both Westmorland and Furness C and North Yorkshire C would be resolved through the detailed design process and the submission of EMP2, and Durham CC retain their preference for “the Blue Option” proposal for Scheme 08 (Cross Lanes to Rokeby).
- 9.1.2. The Secretary of State is the Competent Authority under the Habitats Regulations and will need to determine whether an AA is required. The ExA is not able to advise that AEoI to the North Pennine Moors SAC can be ruled out owing to the lack of agreement reached between NE and the Applicant. The ExA recommends to the Secretary of State that they seek further information from NE and the Applicant on their latest positions in this regard before making a determination on this Application. If NE advises AEoI can be ruled out as is the likely outcome, the ExA considers that Proposed Development would not adversely affect European sites, species or habitats, and that s104(4), s104(5) and s104(6) would not apply. If AEoI cannot be excluded, the Secretary of State will have options open to them, which are set out further below.
- 9.1.3. The ExA concludes that the weight to be attached to the compelling need for the Proposed Development, as set out in NPSNN, outweighs the identified negative effects caused to the landscape and visual effects, from carbon emission and on geology and soils, and air quality should NE advise the Secretary of State that AEoI to the North Pennine Moors SAC cannot be excluded. Accordingly, the ExA considers that the Proposed Development would have no adverse effects that would outweigh its benefits and as such s104(7) of the PA2008 does not apply.
- 9.1.4. As assessed in Section 4 and summarised in Section 6 of this Report, the ExA concludes that the Proposed Development accords with the policies in the designated NPSNN. Consequently, there is nothing to indicate that the application should be decided other than in accordance with the relevant NPSNN, and s104(3) is therefore satisfied.
- 9.1.5. In relation to the application for CA and TP powers within the Recommended DCO, the ExA concludes that the Proposed Development for which the land and rights are sought would be in accordance with national policy, as set out in the NPSNN, which identifies a national need for road improvement schemes.
- 9.1.6. The need to secure the land and rights required, and to construct the Proposed Development within a reasonable commercial timeframe, represent a significant public benefit. The private loss to those affected is mitigated through the fact that the construction period would be limited, and the Applicant is seeking to acquire the

minimum possible rights and interests that they would need to construct and maintain the Proposed Development.

- 9.1.7. The Applicant has explored all reasonable alternatives to the CA of land, rights and interests sought and there are no alternatives that ought to be preferred. We are satisfied that adequate and secure funding would be available to enable CA within the statutory period following the Order being made.
- 9.1.8. As discussed further in Section 7 of this Report, the exception to the above concerns land at Skirsgill Depot. Westmorland and Furness C are currently seeking a Side Agreement with the Applicant to ensure the identified plots for CA to do not interfere or impede current operations. If no Side Agreement is forthcoming, the ExA recommends the removal of the said plots from the Order.
- 9.1.9. The proposed interference with the human rights of individuals would be for legitimate purposes that would justify such interference in the public interest and to a proportionate degree. Furthermore, the ExA understands that there may be impacts on communities or persons likely to have protected characteristics. S149 of the Equality Act 2010 sets out the Public Sector Equality Duty (PSED) to protect both individual and groups or communities.
- 9.1.10. We have had due regard to the three aims of the PSED and of particular relevance to the Examination was the second aim of advancing equality of opportunity. In Section 4.11 of this report, we have set out how we have considered the potential impacts on people likely to have protected characteristics. We also set out how we promoted their opportunity of involvement in the Examination. Additionally, in Section 7.8 of this report we set out that we are satisfied that both the Applicant and the ExA has had due regard for its PSED duty in respect to the CA and TP considerations relating to the Proposed Development.
- 9.1.11. Considering all of the above factors together, there is a compelling case in the public interest for the CA and TP powers sought in respect of the plots listed in the BoR [[APP-290](#), [REP8-033](#) (Scheme 0102), [REP8-036](#) (Scheme 03), [REP8-039](#) (Scheme 0405), [REP9-005](#) (Scheme 06), [REP8-046](#) (Scheme 07), [REP8-048](#) (Scheme 08), [REP8-053](#) (Scheme 09), [REP8-054](#) (Scheme 11)]. The ExA concludes that the Proposed Development would comply with s122(2) and s122(3) of PA2008.
- 9.1.12. The ExA concludes that the Order be made subject to the changes as prescribed in the Recommended DCO, which would overcome any final concerns with the Proposed Development. In making the DCO, the Secretary of State would be fulfilling their duty under the relevant EU Directives as transposed into UK law by regulation, as well as the biodiversity duty under the Natural Environment and Rural Communities Act 2006.

## **9.2. RECOMMENDATION**

- 9.2.1. Before deciding this Application, the Secretary of State is recommended to obtain further information from NE (and the Applicant) to ascertain whether AEoI on the North Pennine Moors SAC can be excluded in relation to Scheme 06 (Appleby to Brough).
- 9.2.2. The ExA also recommends that the Secretary of State seeks further information in relation to CA, which is summarised further in Table D1 to Appendix D of this Report, from:



- Westmorland and Furness C (and the Applicant) as to the progress of, and completion of a Side Agreement between the parties in relation to CA of identified plots at Skirsgill Depot; and
- The MoJ and the Public Trustee in relation to Crown land interest concerning one plot.

9.2.3. Subject to NE advising of no AEoI; Westmorland and Furness C confirming the completion of the said Side Agreement; and the MoJ and the Public Trustee confirming no Crown land interest, the ExA concludes for all of the above reasons and in the light of our findings and conclusions on important and relevant matters set out in the Report, **that the Secretary of State for Transport makes the A66 Northern Trans-Pennine Project Order in the form recommended at Appendix C to this Report.**

9.2.4. However, if NE advises the Secretary of State that AEoI to the North Pennine Moors SAC cannot be excluded, and no mitigation is offered or agreed, the Secretary of State may wish to consider the options available to them including consideration of the structure of the Order and the Regulations contained within the Conservation of Habitats and Species Regulations 2017 (as amended). The ExA suggests this could include withholding consent for the Application as a whole, on the grounds that AEoI could not be ruled out; removal of Scheme 06 (Appleby to Brough) from the Order and grant consent for the Proposed Development; or make the Order for the Application as a whole, by engaging the CHSR 2017, notably Regulation 64 in respect to IROPI.

9.2.5. In respect to the case for CA, if Westmorland and Furness C do not confirm the completion of the said Side Agreement, or that the MoJ and Public Trustee confirm Crown land interest in the identified plot, or that the correct entry for Plot 0102-01-20 cannot be confirmed, the ExA recommends that the Order be made but the said plots are removed from the Order.

9.2.6. Not all issues had been fully resolved by the close of the Examination. Table D2 to Appendix D of this Report sets out six matters where the Secretary of State, should they deem it necessary, may wish consult on progress of those matters with the relevant IPs prior to a decision being made on the Proposed Development.

## APPENDICES

APPENDIX A: REFERENCE TABLES .....	II
APPENDIX B: LIST OF ABBREVIATIONS .....	XX
APPENDIX C: THE RECOMMENDED DCO.....	XXVII
APPENDIX D: MATTERS FOR THE SECRETARY OF STATE'S FURTHER CONSIDERATION.....	XXVIII

## APPENDIX A: REFERENCE TABLES

**Table A1 – Documents Comprising EMP1**

Document	Versions in the Examination
Environmental Management Plan	<a href="#">APP-019</a> , <a href="#">REP3-004</a> , <a href="#">REP6-003</a> , <a href="#">REP7-008</a> , <a href="#">REP8-005</a>
Annex A – Constraints Plan	<a href="#">APP-020</a>
Annex B1 – Outline Landscape and Ecology Management Plan	<a href="#">APP-021</a> , <a href="#">REP3-003</a> , <a href="#">REP6-005</a> , <a href="#">REP8-008</a>
Annex B2 – Outline Site Waste Management Plan	<a href="#">APP-022</a> , <a href="#">REP3-007</a>
Annex B3 – Heritage Mitigation Strategy	<a href="#">APP-023</a> , <a href="#">REP3-009</a> , <a href="#">REP6-007</a> , <a href="#">REP7-009</a> , <a href="#">REP8-009</a>
Annex B4 – Air Quality and Dust Management Plan	<a href="#">APP-024</a> , <a href="#">REP6-009</a> , <a href="#">REP8-011</a>
Annex B5 – Noise and Vibration Management Plan	<a href="#">APP-025</a> , <a href="#">REP6-011</a> , <a href="#">REP8-013</a>
Annex B6 – Public Rights of Way Management Plan	<a href="#">APP-026</a>
Annex B7 – Ground and Surface Water Management	<a href="#">APP-027</a> , <a href="#">REP3-011</a>
Annex B8 – Materials Management Plan	<a href="#">APP-028</a>
Annex B9 – Soil Management Plan	<a href="#">APP-029</a> , <a href="#">REP3-013</a>
B10 – Construction Worker Travel and Accommodation Plan	<a href="#">APP-030</a>
B11 – Community Engagement Plan	<a href="#">APP-031</a> , <a href="#">REP3-015</a>
B12 – Skills and Employment Strategy	<a href="#">APP-032</a>
B13 – Construction Traffic Management Plan	<a href="#">APP-033</a> , <a href="#">REP8-015</a>
B14 – Site Establishment Plan	<a href="#">APP-034</a>

Document	Versions in the Examination
B15 – Invasive Non-Native Species	<a href="#">APP-035</a>
C1 – Working in and near SAC Method Statement	<a href="#">APP-036</a> , <a href="#">REP3-019</a>
C2 – Working in Watercourse Method Statement	<a href="#">APP-037</a> , <a href="#">REP3-021</a>
Annex C3 – Scheduled Monuments Method Statement	<a href="#">APP-038</a> , <a href="#">REP4-004</a> , <a href="#">REP6-013</a> , <a href="#">REP8-017</a>
Annex C4 – Piling Method Statement	<a href="#">APP-039</a>
Annex D – Emergency Procedures	<a href="#">APP-040</a> , <a href="#">REP3-023</a>
Environmental Mitigation Schedule	<a href="#">APP-042</a> , <a href="#">REP1-003</a> , <a href="#">REP3-025</a> , <a href="#">REP7-012</a>
Environmental Mitigation Maps	<a href="#">APP-041</a> , <a href="#">REP7-011</a>

**Table A2 – Description of Proposed Development by Scheme**

Scheme No	Detailed List
Scheme 0102 M6 Junction 40 to Kemplay Bank roundabout,	<ul style="list-style-type: none"> <li>▪ Revised circulatory carriageways and slip roads at M6 Junction 40;</li> <li>▪ Construction of grade separated junction and associated slip road alterations at Kemplay Bank roundabout;</li> <li>▪ Construction of Kemplay Bank East and West bridges;</li> <li>▪ New and improved pedestrian and cycle routes;</li> <li>▪ Relocation of access to Skirsgill depot on A66 about 95m to the east of the current access;</li> <li>▪ Speed limit between M6 Junction 40 and Kemplay Bank roundabout to be reduced to 50mph;</li> <li>▪ Extension to existing Carleton Hall underpass;</li> <li>▪ Provision of three ponds for the purpose of drainage of the road network; and</li> <li>▪ Necessary enabling utility works.</li> </ul>
Scheme 03	<ul style="list-style-type: none"> <li>▪ Construction to provide a new all-purpose dual carriageway along an existing 5.2km length of single carriageway;</li> <li>▪ Construction of new grade separated junction to replace the existing Centre Parcs junction;</li> </ul>

Scheme No	Detailed List
Penrith to Temple Sowerby	<ul style="list-style-type: none"> <li>▪ New left in/ left out junctions to the B6262, St Ninian's church and Whinfell Holme treatment plant;</li> <li>▪ Provision of new footpath connection from the east to the Countess Pillar;</li> <li>▪ Construction of the Brougham Accommodation overbridge;</li> <li>▪ Construction of the Whinfell Forest underbridge;</li> <li>▪ Construction of Whinfell Park underpass;</li> <li>▪ Construction of new eastbound and westbound laybys;</li> <li>▪ Alterations or improvements to affected public rights of way network;</li> <li>▪ Alterations to private means of access;</li> <li>▪ Provision of seven ponds for the purpose of drainage of the road network; and</li> <li>▪ Necessary enabling utility works.</li> </ul>
Scheme 0405 Temple Sowerby to Appleby	<ul style="list-style-type: none"> <li>▪ Construction of a new all-purpose dual carriageway, including a new offline bypass of Kirby Thore;</li> <li>▪ Detrunking of 8.6km of existing A66;</li> <li>▪ Construction of new Fell Lane and Long Marton grade separated junctions;</li> <li>▪ Construction of the Cross Street, Green Lane, Fell Lane, Sleastonhow Lane, and Roger Head Farm overbridges;</li> <li>▪ Construction of new Trout Beck viaduct;</li> <li>▪ Construction of Powis House underbridge;</li> <li>▪ Construction of new Spitals Farm, Priest Lane, Long Martin and Crackenthorpe underpasses;</li> <li>▪ Construction of new eastbound and westbound laybys;</li> <li>▪ Improvements and amendments to affected link and access roads, including construction of the new Morland Road roundabout;</li> <li>▪ Alterations or improvements to affected public rights of way network;</li> <li>▪ Alterations to private means of access;</li> <li>▪ Provision of fifteen ponds for the purpose of drainage of the road network; and</li> <li>▪ Necessary enabling utility works.</li> </ul>
Scheme 06 Appleby to Brough	<ul style="list-style-type: none"> <li>▪ Construction to provide a new all-purpose dual carriageway along an existing 8.3km length of single carriageway;</li> <li>▪ Improvement to left in/ left out access to Café 66;</li> <li>▪ Construction of B6259 Sandford and Warcop grade separated junctions;</li> <li>▪ Construction of New Hall Farm, Warcop Eastbound, Langrigg Westbound, West View Farm left in / left out junctions;</li> <li>▪ Construction of new Cringle Beck and Moor Beck viaducts;</li> <li>▪ Construction of Warcop Village and West View Farm overbridges;</li> </ul>

Scheme No	Detailed List
	<ul style="list-style-type: none"> <li>▪ Construction of Sandford, Warcop junction east and west, East Field Sike, Flitholme Road and West View Farm underbridges;</li> <li>▪ Construction of Far Bank End and Walk Mill underpasses;</li> <li>▪ Construction of Bullstone bridge extension;</li> <li>▪ Construction of new eastbound and westbound laybys;</li> <li>▪ Construction and laying out of replacement facilities for the Ministry of Defence;</li> <li>▪ Provision of facilities for the replacement Brough Hill Fair site</li> <li>▪ Alterations to private means of access;</li> <li>▪ Improvements and amendments to affected local access roads;</li> <li>▪ Alterations or improvements to existing public rights of way network;</li> <li>▪ Provision of eighteen ponds for the purpose of drainage of the road network; and</li> <li>▪ Necessary enabling utility works.</li> </ul>
<p>Scheme 07 Bowes Bypass</p>	<ul style="list-style-type: none"> <li>▪ Construction to provide a new all-purpose dual carriageway along an existing 3km length of single carriageway;</li> <li>▪ Construction of replacement Clint Lane overbridge;</li> <li>▪ Construction of East Bowes Accommodation overbridge;</li> <li>▪ Construction of eastbound A66 underbridge;</li> <li>▪ Construction of extension to Lyndale Farm and Blacklodge Farm underpasses;</li> <li>▪ Construction of eastbound and westbound laybys;</li> <li>▪ Improvements and amendments to affected local access roads;</li> <li>▪ Alterations to Hulands Quarry access;</li> <li>▪ Alterations to private means of access;</li> <li>▪ Alterations or improvements to existing public rights of way network;</li> <li>▪ Provision of six ponds for the purpose of drainage of the road network; and</li> <li>▪ Necessary enabling utility works.</li> </ul>
<p>Scheme 08 Cross Lanes to Rokeby</p>	<ul style="list-style-type: none"> <li>▪ Construction to provide a new all-purpose dual carriageway along an existing 4.4km length of single carriageway;</li> <li>▪ Construction of new B6277 Cross Lanes and Rokeby grade separated junctions;</li> <li>▪ Construction of Cross Lanes overbridge;</li> <li>▪ Construction of Rokeby underbridge;</li> <li>▪ Construction of eastbound and westbound laybys;</li> <li>▪ Detrunking of existing A66 running between St. Mary's Church and the Old Rectory;</li> <li>▪ Construction of a new roundabout on de-trunked A66 and C165 junction;</li> </ul>



Scheme No	Detailed List
	<ul style="list-style-type: none"> <li>▪ Construction of a new eastbound merge slip road from new roundabout on C165;</li> <li>▪ Improvements and amendments to affected local access roads;</li> <li>▪ Alterations to private means of access;</li> <li>▪ Alterations or improvements to existing public rights of way network;</li> <li>▪ Provision of six ponds for the purpose of drainage of the road network; and</li> <li>▪ Necessary enabling utility works.</li> </ul>
Scheme 09 Stephen Bank to Carkin Moor	<ul style="list-style-type: none"> <li>▪ Construction of a new 5km length of all-purpose dual carriageway to the north of the existing carriageway;</li> <li>▪ Detrunking of existing single carriageway section of A66;</li> <li>▪ Construction of new Mains Gill grade separated junction;</li> <li>▪ Construction of Collier Lane overbridge;</li> <li>▪ Construction of Mains Gill underbridge;</li> <li>▪ Construction of Dick Scot Lane and bridleway 20.30/8/1 underpasses;</li> <li>▪ Construction of eastbound and westbound laybys;</li> <li>▪ Construction of pedestrian/ equestrian crossings;</li> <li>▪ Improvements and amendments to affected local access roads;</li> <li>▪ Alterations or improvements to existing access roads and associated junctions;</li> <li>▪ Provision of nine ponds for the purpose of drainage of the road network; and</li> <li>▪ Necessary enabling utility works.</li> </ul>
Scheme 11 A1(M) Junction 53 Scotch Corner	<ul style="list-style-type: none"> <li>▪ Construction and amendment of changes to circulatory carriageway of roundabout; and</li> <li>▪ Construction and improvement of widened Middleton Tyas Lane.</li> </ul>

**Table A3 – The Environmental Statement**

ES Chapter/Figs/Appendix	EL Reference
ES Non-Technical Summary	<a href="#">APP-043</a>
Chapter 1 Introduction	<a href="#">APP-044</a>
Figure	<a href="#">APP-060</a>
Appendix	<a href="#">APP-146</a>
Chapter 2 The Project	<a href="#">APP-045</a>

<b>ES Chapter/Figs/Appendix</b>	<b>EL Reference</b>
Figures	<a href="#">APP-061</a> , <a href="#">REP7-015</a> , <a href="#">APP-063</a> , <a href="#">REP7-016</a>
Appendix	<a href="#">APP-147</a>
Chapter 3 Assessment of Alternatives	<a href="#">APP-046</a>
Chapter 4 EIA Methodology	<a href="#">APP-047</a>
Appendices	<a href="#">APP-148</a> , <a href="#">APP-149</a>
Chapter 5 Air Quality	<a href="#">APP-048</a>
Figures	<a href="#">REP7-017</a> , <a href="#">REP7-018</a> , <a href="#">REP7-019</a> , <a href="#">REP7-020</a>
Appendices	<a href="#">APP-150</a> , <a href="#">APP-151</a> , <a href="#">APP-152</a> , <a href="#">REP4-006</a>
Chapter 6 Biodiversity	<a href="#">APP-049</a>
Figures	<a href="#">REP7-021</a> , <a href="#">REP7-022</a> , <a href="#">REP7-023</a> , <a href="#">REP7-024</a> , <a href="#">REP7-025</a> , <a href="#">REP7-026</a> , <a href="#">REP7-027</a> , <a href="#">REP7-028</a> , <a href="#">REP7-029</a> , <a href="#">REP7-030</a> , <a href="#">REP7-031</a> , <a href="#">REP7-032</a> , <a href="#">REP7-033</a> , <a href="#">REP7-034</a> , <a href="#">REP7-035</a> , <a href="#">REP7-036</a> , <a href="#">REP7-037</a> , <a href="#">REP7-038</a> , <a href="#">REP7-039</a>
Appendices	<a href="#">APP-154</a> , <a href="#">APP-155</a> , <a href="#">APP-156</a> , <a href="#">APP-157</a> , <a href="#">APP-158</a> , <a href="#">APP-159</a> , <a href="#">APP-160</a> , <a href="#">APP-161</a> , <a href="#">APP-162</a> , <a href="#">APP-163</a> , <a href="#">APP-164</a> , <a href="#">APP-165</a> , <a href="#">APP-166</a> , <a href="#">APP-167</a> , <a href="#">APP-168</a> , <a href="#">APP-169</a> , <a href="#">APP-170</a> , <a href="#">APP-171</a> , <a href="#">APP-172</a> , <a href="#">APP-173</a> , <a href="#">APP-174</a> , <a href="#">APP-175</a>
Chapter 7 Climate	<a href="#">APP-050</a>
Appendices	<a href="#">APP-176</a> , <a href="#">APP-177</a>
Chapter 8 Cultural Heritage	<a href="#">APP-051</a>
Figures	<a href="#">REP7-040</a> , <a href="#">REP7-041</a> , <a href="#">REP7-042</a> , <a href="#">REP7-043</a> , <a href="#">APP-092</a> , <a href="#">REP7-044</a> , <a href="#">REP7-045</a> , <a href="#">REP7-046</a>
Appendices	<a href="#">APP-178</a> , <a href="#">APP-179</a> , <a href="#">APP-180</a> , <a href="#">APP-181</a> , <a href="#">APP-182</a> , <a href="#">APP-183</a> , <a href="#">APP-184</a> , <a href="#">APP-185</a> , <a href="#">APP-186</a> , <a href="#">REP4-008</a>
Chapter 9 Geology and Soils	<a href="#">APP-052</a>

<b>ES Chapter/Figs/Appendix</b>	<b>EL Reference</b>
Figures	<a href="#">REP7-047</a> , <a href="#">REP7-048</a> , <a href="#">REP7-049</a> , <a href="#">REP7-050</a> , <a href="#">REP7-051</a> , <a href="#">REP7-052</a>
Appendices	<a href="#">APP-188</a> , <a href="#">APP-189</a> , <a href="#">APP-190</a> , <a href="#">APP-191</a> , <a href="#">APP-192</a> , <a href="#">APP-193</a> , <a href="#">APP-194</a> , <a href="#">APP-195</a> , <a href="#">REP3-027</a>
Chapter 10 Landscape and Visual	<a href="#">APP-053</a>
Figures	<a href="#">REP7-053</a> , <a href="#">REP7-054</a> , <a href="#">REP7-055</a> , <a href="#">REP7-056</a> , <a href="#">REP7-057</a> , <a href="#">REP7-058</a> , <a href="#">REP7-059</a> , <a href="#">APP-109</a> , <a href="#">APP-110</a>
Appendices	<a href="#">APP-197</a> , <a href="#">APP-198</a> , <a href="#">APP-199</a> , <a href="#">APP-200</a> , <a href="#">APP-201</a> , <a href="#">REP4-009</a> , <a href="#">APP-203</a> , <a href="#">APP-204</a> , <a href="#">APP-205</a>
Chapter 11 Materials and Waste	<a href="#">APP-054</a>
Figure	<a href="#">APP-111</a>
Appendices	<a href="#">APP-206</a> , <a href="#">APP-207</a> , <a href="#">APP-208</a> , <a href="#">APP-209</a> , <a href="#">APP-210</a>
Chapter 12 Noise and Vibration	<a href="#">APP-055</a>
Figures	<a href="#">REP7-060</a> , <a href="#">APP-113</a> , <a href="#">REP7-061</a> , <a href="#">REP7-062</a> , <a href="#">APP-116</a> , <a href="#">REP7-063</a> , <a href="#">REP7-064</a> , <a href="#">REP7-065</a> , <a href="#">APP-120</a>
Appendices	<a href="#">APP-211</a> , <a href="#">APP-212</a> , <a href="#">APP-213</a> , <a href="#">APP-214</a> , <a href="#">APP-215</a> , <a href="#">APP-216</a>
Chapter 13 Population and Human Health	<a href="#">APP-056</a>
Figures	<a href="#">REP7-066</a> , <a href="#">REP7-067</a> , <a href="#">REP7-068</a> , <a href="#">REP7-069</a> , <a href="#">REP7-070</a>
Appendices	<a href="#">APP-217</a> , <a href="#">REP3-029</a> , <a href="#">APP-219</a>
Chapter 14 Road Drainage and the Water Environment	<a href="#">APP-057</a>
Figures	<a href="#">REP7-071</a> , <a href="#">REP7-072</a> , <a href="#">REP7-073</a> , <a href="#">REP7-074</a> , <a href="#">REP7-075</a> , <a href="#">REP7-076</a> , <a href="#">REP7-077</a> , <a href="#">REP7-078</a> , <a href="#">REP7-079</a> , <a href="#">REP7-080</a> , <a href="#">REP7-081</a> , <a href="#">REP7-082</a> , <a href="#">REP7-083</a> , <a href="#">REP7-084</a> , <a href="#">REP7-085</a> , <a href="#">REP7-086</a> , <a href="#">REP7-087</a> , <a href="#">REP7-088</a>

ES Chapter/Figs/Appendix	EL Reference
Appendices	<a href="#">APP-220</a> , <a href="#">APP-221</a> , <a href="#">APP-222</a> , <a href="#">APP-223</a> , <a href="#">APP-224</a> , <a href="#">APP-225</a> , <a href="#">APP-226</a> , <a href="#">APP-227</a> , <a href="#">APP-228</a> , <a href="#">APP-229</a> , <a href="#">APP-230</a>
Chapter 15 Cumulative Effects	<a href="#">APP-058</a>
Figures	<a href="#">REP7-089</a> , <a href="#">REP7-090</a>
Appendices	<a href="#">APP-231</a> , <a href="#">APP-232</a> , <a href="#">APP-233</a>
Chapter 16 Summary	<a href="#">APP-059</a>

**Table A4 – PADSS**

Interested Party	EL References
Westmorland and Furness C	<a href="#">AS-001</a> , <a href="#">AS-003</a> , <a href="#">REP3-054</a> , <a href="#">REP3-060</a> , <a href="#">REP5-037</a> (as Cumbria CC and Eden DC)  <a href="#">REP7-190</a>
Durham CC	<a href="#">AS-002</a> , <a href="#">REP3-059</a> , <a href="#">REP5-041</a> , <a href="#">REP7-175</a>
North Yorkshire C	<a href="#">AS-051</a> , <a href="#">REP3-066</a> , <a href="#">REP5-061</a> (as North Yorkshire CC and Richmondshire DC)  <a href="#">REP7-183</a>
Natural England	<a href="#">AS-006</a> , <a href="#">REP3-063</a> , <a href="#">REP5-060</a> , <a href="#">REP7-180</a>
Environment Agency	<a href="#">AS-004</a> , <a href="#">REP3-061</a> , <a href="#">REP5-065</a> , <a href="#">REP7-176</a>
Historic England	<a href="#">AS-005</a> , <a href="#">REP3-062</a> , <a href="#">REP5-056</a> , <a href="#">REP8-078</a>
Gypsy and Travellers Representative	<a href="#">AS-007</a>

**Table A5 – Change Request Documents**

Document	EL Reference
Change Application Cover Letter	<a href="#">CR1-001</a>

Document	EL Reference
Application Report	<a href="#">CR1-002</a>
Appendix A Schedule of Consequentially Amended Application Documents	<a href="#">CR1-003</a>
Appendix Bi Draft DCO Tracked	<a href="#">CR1-004</a>
Appendix Bii Draft DCO Clean	<a href="#">CR1-005</a>
Appendix C Agreement from Persons with an Interested in the Land	<a href="#">CR1-006</a>
Consultation Report	<a href="#">CR1-007</a>
Appendix A List of Persons Consulted	<a href="#">CR1-008</a>
Appendix B Press Notices	<a href="#">CR1-009</a>
Appendix C Notices and Covering Letter to Consultees	<a href="#">CR1-010</a>
Appendix D Site Notices etc	<a href="#">CR1-011</a>
Appendix E Website Promotion of Changes	<a href="#">CR1-012</a>
Appendix F Social Media Promotion of Changes	<a href="#">CR1-013</a>
Appendix G Consultation Responses	<a href="#">CR1-014</a>
Appendix H Changes Brochure	<a href="#">CR1-015</a>
ES Addendum Volume I	<a href="#">CR1-016</a>
ES Addendum Volume II	<a href="#">CR1-017</a>
HRA Technical Note	<a href="#">CR1-018</a>

**Table A6 – Summary of Changes**

Scheme No	Change Requested
Scheme 0102 M6 Junction 40 to Kemplay Bank roundabout,	<ul style="list-style-type: none"> <li>▪ Reorientation of Kemplay Bank roundabout; and</li> <li>▪ Change in speed limit at M6 junction 40.</li> </ul>
Scheme 03	<ul style="list-style-type: none"> <li>▪ Separation of public rights of way from private access tracks;</li> <li>▪ Removal of access to sewage treatment works;</li> </ul>

Scheme No	Change Requested
Penrith to Temple Sowerby	<ul style="list-style-type: none"> <li>▪ Inversion of mainline alignment at Centre Parcs junction;</li> <li>▪ Increase vertical LoD for Shell pipeline; and</li> <li>▪ Change to vertical LoD for reuse of existing A66 carriageway.</li> </ul>
Scheme 0405 Temple Sowerby to Appleby	<ul style="list-style-type: none"> <li>▪ Earlier tie-in of Cross Street to existing road;</li> <li>▪ Realignment of Main Street;</li> <li>▪ Realignment of Sleastonhow Lane; and</li> <li>▪ Realignment of Crackenthorpe underpass.</li> </ul>
Scheme 06 Appleby to Brough	<ul style="list-style-type: none"> <li>▪ Café Sixty-Six, revision to land plans;</li> <li>▪ Realignment of cycleway, Cringle and Moor Beck;</li> <li>▪ Connector road west of Hayber Lane, relaxed vertical LoD;</li> <li>▪ Ministry of Defence land, amendments to Order Limits;</li> <li>▪ Realignment of westbound Warcop junction;</li> <li>▪ Realignment of de-trunked A66 closer to new road at Warcop;</li> <li>▪ Reuse of existing A66 north of Flitholme;</li> <li>▪ Removal Langrigg junction and realignment of Langrigg Lane;</li> <li>▪ West View Farm amendment to accommodation bridge and removal of underpass; and</li> <li>▪ Construction of noise barrier south of Brough.</li> </ul>
Scheme 07 Bowes Bypass	<ul style="list-style-type: none"> <li>▪ Realignment of local access road to be closer to new road.</li> </ul>
Scheme 08 Cross Lanes to Rokeby	No changes
Scheme 09 Stephen Bank to Carkin Moor	<ul style="list-style-type: none"> <li>▪ Realignment of footpath adjacent to Waitlands Lane; and</li> <li>▪ Realignment of Warriner Lane.</li> </ul>
Scheme 11 A1(M) Junction 53 Scotch Corner	No changes



**Table A7 – Summary of Relevant Legislation for the Proposed Development**

<b>Relevant Legislation</b>
<ul style="list-style-type: none"><li>▪ Water Resources Act 1991</li><li>▪ The Environment Act 1995</li><li>▪ The Water Resources (Abstraction and Impounding) Regulations 2006</li><li>▪ Environmental Permitting (England and Wales) Regulations 2016</li><li>▪ Pollution Prevention and Control Act 1999</li><li>▪ Land Drainage Act 1991</li><li>▪ Water Industry Act 1991</li><li>▪ Environmental Protection Act 1990 s79(1)(d)</li><li>▪ Part IV of the Environment Act 1995</li><li>▪ Air Quality (England) Regulations 2000</li><li>▪ Air Quality Standards Regulations 2010, as amended</li><li>▪ Air Quality (Amendment of Domestic Regulations) (EU Exit) Regulations 2019</li><li>▪ Environment (Miscellaneous Amendments) (EU Exit) Regulations 2020</li><li>▪ Conservation of Habitats and Species Regulations 2017 (the ‘Habitat Regulations 2017’) as amended</li><li>▪ Wildlife and Countryside Act (WCA) 1981 (as amended)</li><li>▪ Natural Environment and Rural Communities (NERC) Act 2006</li><li>▪ Environment Act 2021</li><li>▪ Hedgerow Regulations 1997</li><li>▪ Protection of Badgers Act 1992 (as amended)</li><li>▪ Salmon and Freshwater Fisheries Act 1975 (as amended)</li><li>▪ Water Framework Directive (2000/60/EC) (as amended)</li><li>▪ Eels (England and Wales) Regulations 2009</li><li>▪ The Kyoto Protocol</li><li>▪ The Paris Agreement</li><li>▪ Climate Change Act 2008</li><li>▪ Climate Change Act 2008 (2050 Target Amendment) Order</li><li>▪ Carbon Budget Order 2009</li><li>▪ Carbon Budget Order 2011</li><li>▪ Carbon Budget Order 2016</li><li>▪ Carbon Budget Order 2021</li><li>▪ Climate Change Act 2008 (Credit Limit) Order 2021</li><li>▪ Ancient Monuments and Archaeological Areas Act 1979</li><li>▪ Planning (Listed Buildings and Conservation Areas) Act 1990</li><li>▪ Wildlife and Countryside Act 1981 (as amended)</li><li>▪ National Parks and Access to the Countryside Act 1949 (as amended)</li><li>▪ Contaminated Land (England) (Amendment) Regulations 2012 (‘Contaminated Land Regulations’)</li><li>▪ Environmental Protection Act 1990 (as amended by the Environmental Act 1995 Part 2A)</li><li>▪ Water Resources Act 1991 (WRA 1991) (as amended)</li><li>▪ Town and Country Planning Act 1990 (as amended)</li><li>▪ Building Act 1984 and the Building Regulations 2010 (as amended)</li><li>▪ Water Act 2003 (as amended) Environmental Permitting (England and Wales) (Amendment) Regulations 2016/1154</li><li>▪ Highways Act 1980 Section 105A</li><li>▪ Water Framework Directive (2000/60/EC) (as amended)</li><li>▪ Water Environment (Water Framework Directive) (England and Wales) Regulations 2017</li><li>▪ European Landscape Convention (ELC) (Council of Europe, 2016)</li><li>▪ Waste Framework Directive (2000/60/EC (as amended)</li></ul>

### Relevant Legislation

- European Commission Circular Economy Package Environmental Protection Act 1990
- Hazardous Waste (England and Wales) Regulations 2005 (as amended)
- Waste (England and Wales) Regulations 2011 (as amended)
- Waste Electrical and Electronic Equipment ('WEEE') Regulations 2013
- Environmental Permitting Regulations 2016
- Environmental Noise (England) Regulations 2006 (as amended)
- Control of Pollution Act 1974 (as amended)
- Noise Insulation Regulations 1975
- Environmental Protection Act 1990 (as amended)
- Localism Act 2011
- The Commons Registration Act 1965
- The Countryside and Rights of Way Act 2000
- The National Parks and Access to the Countryside Act 2000
- The Health and Social Care Act 2012
- Environmental Permitting (England and Wales) (Amendment) (EU Exit) Regulations 2019
- Environment Act 2021
- Environment (Amendment etc.) (EU Exit) Regulations 2019
- Environmental Protection Act 1990
- Environment Act 1995
- Environmental Permitting (England and Wales) Regulations 2016
- Water Resources Act 1991
- Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 (WFD)
- Land Drainage Act 1991
- Water Act 2014
- Water Resources (Abstraction and Impounding) Regulations 2006
- Water Abstraction and Impounding (Exemptions) Regulations 2017
- Flood Risk Regulations 2009
- Water Supply (Water Quality) Regulations 2018
- Flood and Water Management Act 2010 Environmental Damage (Prevention and Remediation) (England) Regulations 2015
- Water Framework Directive (Standards and Classification) Directions (England and Wales) 2015
- Groundwater (Water Framework Directive) (England) Direction 2016

**Table A8 – Regional and Local Plans**

Local Authority	Identified Documents and/or Relevant Policies
Regional Level	<ul style="list-style-type: none"> <li>▪ Transport for the North ('TfN') Strategic Transport Plan 2019;</li> <li>▪ Tees Valley Strategic Economic Plan: The Industrial Strategy for Tees Valley 2016-2026;</li> <li>▪ Tees Valley Combined Authority Tees Valley Strategic Transport Plan 2020-2030;</li> <li>▪ Cumbria Strategic Economic Plan 2014-2024;</li> <li>▪ Cumbria LEP Infrastructure Plan (2016);</li> </ul>

Local Authority	Identified Documents and/or Relevant Policies
	<ul style="list-style-type: none"> <li>▪ The North East Local Enterprise Partnership North East Strategic Economic Plan (2019);</li> <li>▪ The North East Local Enterprise Partnership North East Transport Plan 2021-2035.</li> </ul>
Westmorland and Furness Council	<ul style="list-style-type: none"> <li>▪ Cumbria Transport Plan Strategy (2011-2026)</li> <li>▪ Cumbria Minerals and Waste Local Plan 2015-2030</li> <li>▪ Eden Local Plan 2014 – 2032 (2018) <ul style="list-style-type: none"> <li>○ Objectives: Development Principles (3)</li> <li>○ Development Principles (4)</li> <li>○ Development Principles (5)</li> <li>○ A Rich Environment (11)</li> <li>○ A Rich Environment (12)</li> <li>○ A Rich Environment (14)</li> <li>○ Policy AP1 A Town Plan for Appleby</li> <li>○ Policy DEV1 General Approach to New Development</li> <li>○ Policy DEV2 Water Management and Flood Risk</li> <li>○ Policy DEV3 Transport, Accessibility and Rights of Way</li> <li>○ Policy ENV1 Protection and Enhancement of the Natural Environment Biodiversity and Geodiversity</li> <li>○ Policy ENV2 Protection and Enhancement of Landscape and Trees</li> <li>○ Policy ENV3 The North Pennines Area of Outstanding Natural Beauty</li> <li>○ Policy ENV4 Green Infrastructure Networks</li> <li>○ Policy ENV7 Air Pollution</li> <li>○ Policy ENV9 Other Forms of Pollution</li> <li>○ Policy ENV10 Historic Environment</li> <li>○ Policy COM2 Protection of Open Space, Sport, Leisure and Recreation Facilities</li> </ul> </li> <li>▪ Cumbria County Council Landscape Character Guidance and Toolkit</li> <li>▪ North Pennines AONB Planning Guidelines SPD and Management Plan</li> </ul>
Durham County Council	<ul style="list-style-type: none"> <li>▪ County Durham Plan (2020) <ul style="list-style-type: none"> <li>○ Policy 10 Development in the countryside</li> <li>○ Policy 14 Best and Most Versatile Agricultural Land and Soil Resources</li> <li>○ Policy 21 Delivering Sustainable Transport</li> <li>○ Policy 24 Provision of Transport Infrastructure</li> <li>○ Policy 26 Green Infrastructure</li> <li>○ Policy 28 Safeguarded Areas</li> <li>○ Policy 29 Sustainable Design</li> <li>○ Policy 31 Amenity and Pollution</li> <li>○ Policy 35 Water Management</li> <li>○ Policy 38 North Pennines Area of Outstanding Natural Beauty</li> </ul> </li> </ul>

Local Authority	Identified Documents and/or Relevant Policies
	<ul style="list-style-type: none"> <li>○ Policy 39 Landscape</li> <li>○ Policy 40 Trees, Woodlands and Hedges</li> <li>○ Policy 41 Biodiversity and Geodiversity</li> <li>○ Policy 42 Internationally Designated Sites</li> <li>○ Policy 43 Protected Species and Nationally and Locally Protected Sites</li> <li>○ Policy 44 Historic Environment</li> <li>○ Policy 56 Safeguarding Mineral Resources</li> <li>▪ Whorlton Village Neighbourhood Plan 2015- 2025 (2017) <ul style="list-style-type: none"> <li>○ Policy WP5 Protection of the Historic Environment</li> </ul> </li> <li>▪ County Durham Landscape Character Assessment (2008)</li> </ul>
North Yorkshire Council	<ul style="list-style-type: none"> <li>▪ Joint Minerals and Waste Joint Plan (adopted February 2022)</li> <li>▪ A Strategic Transport Prospectus for North Yorkshire</li> <li>▪ North Yorkshire County Council Plan for Economic Growth</li> <li>▪ Richmondshire Local Plan 2012 – 2028 (2014) <ul style="list-style-type: none"> <li>○ North Richmondshire Spatial Strategy</li> <li>○ Spatial Principle SP5</li> <li>○ Core Policy CP1 Planning Positively</li> <li>○ Core Policy CP2 Responding to Climate Change</li> <li>○ Core Policy 3 Achieving Sustainable Development</li> <li>○ Core Policy CP7 Promoting a Sustainable Economy</li> <li>○ Core Policy CP12 Conserving and Enhancing Environmental and Historic Assets</li> <li>○ Core Policy CP13 Promoting High Quality Design</li> <li>○ Core Policy CP14 Providing and Delivering Infrastructure</li> </ul> </li> <li>▪ Richmondshire District Economic Action Plan <ul style="list-style-type: none"> <li>○ Priority Three – Improved Connectivity</li> </ul> </li> </ul>

**Table A9 – Made DCOs**

<b>Other Made DCOs Identified by the Applicant [REP9-016]</b>
<ul style="list-style-type: none"> <li>▪ A57 Link Roads Development Consent Order 2022</li> <li>▪ M25 Junction 28 Development Consent Order 2022</li> <li>▪ A417 Missing Link Development Consent Order 2022</li> <li>▪ Portishead Branch Line (MetroWest Phase 1) Order 2022</li> <li>▪ The Manston Airport Development Consent Order 2022</li> <li>▪ M54 to M6 Link Road Development Consent Order 2022</li> <li>▪ The A428 Black Cat to Caxton Gibbet Development Consent Order 2022</li> <li>▪ M25 Junction 10/A3 Wisley Interchange Development Consent Order 2022</li> </ul>

### Other Made DCOs Identified by the Applicant [REP9-016]

- A1 Birtley to Coal House Development Consent Order 2021
- A303 Sparkford to Ilchester Dualling Development Consent Order 2021
- A303 (Amesbury to Berwick Down) Development Consent Order 2020
- Great Yarmouth Third River Crossing Development Consent Order 2020.
- The A63 (Castle Street Improvement, Hull) Development Consent Order 2020.
- A585 Windy Harbour to Skippool Highway Development Consent Order 2020.
- M42 Junction 6 Development Consent Order 2020.
- A30 Chiverton to Carland Cross Development Consent Order 2020.
- A19/A184 Testo's Junction Alteration Development Consent Order 2018
- M20 Junction 10a Development Consent Order 2017
- National Grid (Richborough Connection Project) Development Consent Order 2017.
- A19/A1058 Coast Road (Junction Improvement) Development Consent Order 2016
- A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016
- A19/A1058 Coast Road (Junction Improvement) Development Consent Order 2016
- Northumberland County Council (A1- South East Northumberland Link Road (Morpeth Northern Bypass)) Development Consent Order 2015
- Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014
- A556 (Knutsford to Bowdon Improvement) Development Consent Order 2014.
- Rookery South (Resource Recovery Facility) Order 2011

**Table A10 – Summary of Substantive RRs**

RR No.	Issue
<a href="#">004</a> , <a href="#">007</a> , <a href="#">008</a> , <a href="#">014</a> , <a href="#">015</a> , <a href="#">017</a> , <a href="#">020</a> , <a href="#">028</a> , <a href="#">029</a> , <a href="#">031</a> , <a href="#">034</a> , <a href="#">037</a> , <a href="#">038</a> , <a href="#">049</a> , <a href="#">051</a> , <a href="#">056</a> , <a href="#">057</a> , <a href="#">058</a> , <a href="#">059</a> , <a href="#">065</a> , <a href="#">067</a> , <a href="#">068</a> , <a href="#">070</a> , <a href="#">072</a> , <a href="#">121</a> , <a href="#">203</a> , <a href="#">206</a> , <a href="#">215</a> , <a href="#">216</a> , <a href="#">221</a>	<u>Scheme 08 – Cross Lanes to Rokeby</u> Positioning of the Rokeby Junction, preferring “the Blue Option” over the Proposed Development “the Black Option” and the effects on traffic at Barnard Castle and on heritage matters.
<a href="#">001</a> , <a href="#">006</a> , <a href="#">011</a> , <a href="#">022</a> , <a href="#">041</a> , <a href="#">047</a> , <a href="#">074</a> , <a href="#">075</a> , <a href="#">091</a> , <a href="#">092</a> , <a href="#">093</a> , <a href="#">114</a> , <a href="#">177</a> , <a href="#">183</a> , <a href="#">188</a> , <a href="#">191</a> , <a href="#">194</a> , <a href="#">195</a> , <a href="#">197</a> , <a href="#">205</a> , <a href="#">222</a> , <a href="#">224</a> , <a href="#">225</a> , <a href="#">229</a> , <a href="#">230</a> , <a href="#">231</a>	<u>Scheme 06 – Appleby to Brough</u> Alignment of the Proposed Development south of existing A66, effects to the Brough Hill Fair site and on living conditions. General comments on agriculture and traffic.
<a href="#">089</a> , <a href="#">097</a> , <a href="#">099</a> , <a href="#">100</a> , <a href="#">102</a> , <a href="#">103</a> , <a href="#">104</a> , <a href="#">105</a> , <a href="#">106</a> , <a href="#">107</a> , <a href="#">108</a> , <a href="#">109</a> , <a href="#">110</a> , <a href="#">111</a> , <a href="#">113</a> , <a href="#">117</a> , <a href="#">118</a> , <a href="#">119</a> , <a href="#">178</a> , <a href="#">184</a> , <a href="#">186</a> , <a href="#">189</a> , <a href="#">192</a> , <a href="#">193</a> , <a href="#">198</a> , <a href="#">207</a> , <a href="#">208</a> , <a href="#">210</a> , <a href="#">211</a> , <a href="#">213</a> , <a href="#">217</a> , <a href="#">218</a> , <a href="#">220</a> , <a href="#">223</a> , <a href="#">226</a> , <a href="#">232</a> , <a href="#">234</a>	<u>Scheme 0405 – Temple Sowerby to Brough</u> Alignment of the Proposed Development. General comments on Agriculture, water quality, the AONB, climate and biodiversity

RR No.	Issue
<a href="#">002</a> , <a href="#">003</a> , <a href="#">030</a> , <a href="#">039</a> , <a href="#">075</a> , <a href="#">076</a> , <a href="#">125</a> , <a href="#">094</a> , <a href="#">133</a> , <a href="#">135</a>	<u>Scheme 0102 – M6 Junction 40 to Kemplay Bank Roundabout</u>  General concerns on landscape effects and tree loss and Skirsgill House and Park and land interests.
<a href="#">044</a> , <a href="#">061</a> , <a href="#">062</a> , <a href="#">077</a> , <a href="#">078</a> , <a href="#">080</a> , <a href="#">081</a> , <a href="#">122</a>	<u>Scheme 09 – Stephen Bank to Carkin Moor</u>  Access to property, positioning of Moor Lane junction
<a href="#">005</a> , <a href="#">012</a> , <a href="#">019</a> , <a href="#">027</a> , <a href="#">035</a> , <a href="#">040</a> , <a href="#">050</a> , <a href="#">054</a> , <a href="#">055</a> , <a href="#">060</a> , <a href="#">064</a> , <a href="#">073</a> , <a href="#">083</a> , <a href="#">116</a> , <a href="#">126</a> , <a href="#">171</a> , <a href="#">180</a> , <a href="#">214</a> , <a href="#">219</a> , <a href="#">227</a> , <a href="#">233</a> , <a href="#">235</a>	Proposed Development as a whole and concerns in respect to agriculture, climate effects, wildlife, horses, traffic and access including cycleways, AONB, sport provision and cost benefits.
<a href="#">053</a> , <a href="#">063</a> , <a href="#">120</a> , <a href="#">130</a> , <a href="#">158</a> , <a href="#">228</a>	Statutory Undertakers land, CA, and general property concerns
<a href="#">013</a> , <a href="#">043</a> , <a href="#">046</a> , <a href="#">048</a>	Generally supports application

**Table A11 – European sites and features for which LSE could not be excluded by the Applicant**

European site(s)	Qualifying Feature(s)	LSE Alone from:	LSE in-combination from:
River Eden SAC	Watercourses of plain to montane levels with the Ranunculus fluitantis and Callitriche-Batrachion vegetation	Land take /resource requirements / reduction of habitat  Introduction and/or spread of invasive non-native species  Changes in surface and groundwater quality, quantity and hydrogeology  Changes in hydrology and geomorphological processes  Changes in air quality	Where LSE were identified these were taken forward to be assessed both alone and in-combination at the assessment of effects on integrity stage



European site(s)	Qualifying Feature(s)	LSE Alone from:	LSE in-combination from:
	<p>Atlantic salmon            Brook lamprey            Bullhead            River lamprey            Sea lamprey</p>	<p>Land take /resource requirements / reduction of habitat            Disturbance of mobile species and species fragmentation            Species injury and mortality            Introduction and/or spread of invasive non-native species            Changes in surface and groundwater quality, quantity and hydrogeology            Changes in hydrology and geomorphological processes</p>	
	<p>Otter</p>	<p>Land take /resource requirements / reduction of habitat            Disturbance of mobile species and species fragmentation            Introduction and/or spread of invasive non-native species            Changes in surface and groundwater quality, quantity and hydrogeology            Changes in hydrology and geomorphological processes</p>	
<p>North Pennine Moors SAC</p>	<p>Annex I habitats:            Juniperus communis formations on heaths or calcareous grasslands            Blanket bogs</p>	<p>Changes in air quality            Reduction in habitat area and reduction of species density as a result of changes in air quality</p>	

European site(s)	Qualifying Feature(s)	LSE Alone from:	LSE in-combination from:
	<p>Petrifying springs with tufa formation (Cratoneurion)</p> <p>Siliceous rocky slopes with chasmophytic vegetation</p> <p>Old sessile oak woods with Ilex and Blechnum in the British Isles</p> <p>Northern Atlantic wet heaths with Erica tetralix</p> <p>Calaminarian grasslands of the <i>Violetalia calaminariae</i></p> <p>Siliceous alpine and boreal grasslands</p> <p>Semi-natural dry grasslands and scrubland facies on calcareous substrates <i>Festuco Brometalia</i> (*important orchid sites)</p> <p>Alkaline fens</p> <p>Siliceous scree of the montane to snow levels <i>Androsacetalia alpinae</i> and <i>Galeopsietalia ladani</i></p> <p>Calcareous rocky with slopes with chasmophytic vegetation</p> <p>Marsh saxifrage</p>		
North Pennine Moors SPA	Breeding birds – merlin, golden plover, hen harrier and peregrine	Changes in air quality  Reduction in habitat area and reduction of species density as a result of changes in air quality	As above

## APPENDIX B: LIST OF ABBREVIATIONS

Abbreviation/Usage	Reference
A1	The A1 trunk road
A1(M)	The A1 motorway
A66	The A66 trunk road
AA	Appropriate Assessment
AADT	Annual Average Daily Traffic
ACP	Acquisition Completion Premium
AHFTMP	Appleby Horse Fair Traffic Management Plan
AIA	Arboricultural Impact Assessment
ALC	Agricultural Land Classification
ALO	Agricultural Liaison Officer
AEoI	Adverse Effects on Integrity
ANCB	Appropriate Nature Conservation Body
AOD	Above Ordnance Datum
AONB	Area of Outstanding Natural Beauty
AP	Affected Person
AQS	Air Quality Standards
AQDMP	Air Quality and Dust Management Plan
AQMA	Air Quality Management Areas
ARN	Affected Road Network
ASI	Accompanied Site Inspection
Barnard Castle TC	Barnard Castle Town Council
BCR	Benefit to Cost Ratio
BMV	Best and Most Versatile
BNG	Biodiversity Net Gain
BoR	Book of Reference
CA	Compulsory Acquisition
CA Guidance	Planning Act 2008 – Guidance related to Procedures for the Compulsory Acquisition of Land, DCLG September 2013 (the former Department for Communities and Local Government)
CAH	Compulsory Acquisition Hearing

Abbreviation/Usage	Reference
CA Regulations	Infrastructure Planning (Compulsory Acquisition) Regulations 2010
CBDP	Carbon Budget Delivery Plan
CC	County Council
CCA2008	Climate Change Act 2008
CEPP	Climate Emergency Planning and Policy
CHSR2017	The Conservation of Habitats and Species Regulations 2017 (as amended)
COBALT	Cost and Benefit to Accidents – Light Touch (Department for Transport 2021)
CoPA	Control of Pollution Act 1974
Cumbria CC	Cumbria County Council (defunct)
CR	Change Request
CTMP	Construction Traffic Management Plan
D	Deadline
DC-	Design Change reference in Change Request document [CR1-002]
DCLG Guidance	Guidance on Compulsory Purchase and the Crichel Down Rules, DCLG 2015 (the former Department for Communities and Local Government)
DCO	Development Consent Order
DEFRA	Department for Environment, Food and Rural Affairs
DfT	Department for Transport
DIO	Defence Infrastructure Organisation
DMRB	Design Manual for Roads and Bridges
Durham CC	Durham County Council
EA	Environment Agency
ECHR	European Convention on Human Rights
EEA	European Economic Area
EA2010	Equality Act 2010
ECoW	Ecological Clerk of Works
Eden DC	Eden District Council (defunct)
ECHR	European Convention on Human Rights
EIA	Environmental Impact Assessment

Abbreviation/Usage	Reference
EL	Examination Library
EM	Explanatory Memorandum
EMP	Environmental Management Plan
EMP1	First Iteration of the Environmental Management Plan
EMP2	Second Iteration of the Environmental Management Plan
EMP3	Third Iteration of the Environmental Management Plan
END	Environmental Noise Directive
EPR	Infrastructure Planning (Examination Procedure) Rules 2010
ES	Environmental Statement
EWHC	England and Wales High Court
ExA	Examining Authority
FoLD	Friends of the Lake District
FRA	Flood Risk Assessment and Outline Drainage Strategy
FWQ	Further Written Questions
GDBA	Geoarchaeological Desk Based Assessment
GHG	Greenhouse Gas
GIR	Ground Investigation Report
GTC	Gypsy and Travellers Community
GWDTE	Groundwater Dependent Terrestrial Ecosystems
Ha	Hectares
HDV	Heavy Duty Vehicle
HE	Historic England
HGV	Heavy Goods Vehicle
HIA	Heritage Impact Assessment
HMS	Heritage Mitigation Strategy
HRA	Habitats Regulations Assessment
Human Rights Act	Human Rights Act 1998
HRAR	Habitats Regulations Assessment Report
IAN	Interim Advice Note
IAPI	Initial Assessment of Principal Issues
IEMA	Institute of Environmental Management and Assessment

<b>Abbreviation/Usage</b>	<b>Reference</b>
IP(s)	Interested Party(ies)
IROPI	Imperative Reasons of Overriding Public Interest
ISH	Issue Specific Hearing
ISMP	Invasive Species Management
JES	Joint Engagement Statements
JNCC	Joint Nature Conservation Committee
kgN/ha/yr	Kilograms of Nitrogen per Hectare per Year
km	Kilometre(s)
LBCA Act	Planning (Listed Buildings and Conservation Areas) Act 1990
LDF	Local Development Framework
LEMP	Landscape Ecological Management Plan
LDNP	Lake District National Park
LDNPA	Lake District National Park Authority
LHA	Local Highway Authorities
LiDAR	Aerial Photographic and Light Detection and Ranging
LIR	Local Impact Report
LLFA	Lead Local Flood Authority
LOAEL	Lowest Observable Adverse Effect Level
LoD	Limits of Deviation
LPA	Local Planning Authority
LSE	Likely Significant Effects
LSER	Likely Significant Effects Report
m	Metre(s)
MoD	Ministry of Defence
MoJ	Ministry of Justice
mvkm	million vehicle kilometres
M6	The M6 Motorway
NE	Natural England
NERC	Natural Environment and Rural Communities Act 2006
NFU	National Farmers Union
NGET	National Grid Electricity Transmission



<b>Abbreviation/Usage</b>	<b>Reference</b>
NGT	National Gas Transmission
NIS	National Infrastructure Strategy
NMU	Non-motorised User
NN	National Networks
NNL	No Net Loss
North Yorkshire C	North Yorkshire Council
North Yorkshire CC	North Yorkshire County Council (defunct)
NPA2017	Neighbourhood Planning Act 2017
NPPF	National Planning Policy Framework
NPS	National Policy Statement
NPSNN	National Policy Statement for National Networks
NRSA1991	New Roads and Street Works Act 1991
NSER	No Significant Effects Report
NSIP	Nationally Significant Infrastructure Project
NVMP	Noise and Vibration Management Plan
NZS	Net Zero Strategy
OFH	Open Floor Hearing
PA2008	Planning Act 2008
PADSS	Principal Areas of Disagreement Summary Statement
PC	Parish Council
PD	Procedural Decision
PDP	Project Design Principles
PM	Preliminary Meeting
PM10 and PM2.5	Particulate matter
PMA	Private Means of Access
PP	Protective Provision
PPG	Planning Practice Guidance
PRoW	Public Rights of Way
PSED	Public Sector Equality Duty
REAC	Register of Environmental Actions and Commitments
Richmondshire DC	Richmondshire District Council (defunct)

<b>Abbreviation/Usage</b>	<b>Reference</b>
RIES	Report on the Implications for European Sites
RIS1	Road Investment Strategy 2015 – 2020
RIS2	Road Investment Strategy 2020 – 2025
RP	Road project
RPA	Root Protection Area
RPG	Registered Park and Garden
RR	Relevant Representation
RSA	Road Safety Audit
Rule 6	Rule 6 letter of the Infrastructure Planning (Examination Procedure) Rules 2010
Rule 8	Rule 8 of the Infrastructure Planning (Examination Procedure) Rules 2010
s()	Section of an Act
SAC	Special Areas of Conservation
SE	Sport England
pSAC	Potential Special Areas of Conservation
SIAA	Statement to Inform Appropriate Assessment
SoCG	Statement of Common Ground
SoR	Statement of Reasons
SoS	Secretary of State
SoST	Secretary of State for Transport
SP	Statutory Party
SPA	Special Protection Areas
SPP	Special Parliamentary Procedure
SRN	Strategic Road Network
SSSI	Site of Special Scientific Interest
Statement of Commonality	Statement of Commonality for Statements of Common Ground
SU	Statutory Undertaker
SuDS	Sustainable Drainage Systems
SuWMP	Surface Water Management Plan
SWMP	Site Waste Management Plan
TA	Transport Assessment

<b>Abbreviation/Usage</b>	<b>Reference</b>
TAN	Transport Action Network
TASIR	Transport Assessment Supplementary Information Report
TC	Town Council
TCPA1990	Town and Country Planning Act 1990
The Fair	Brough Hill Fair
The Inspectorate	The Planning Inspectorate
TMP	Traffic Management Plan
TP	Temporary Possession
TRA	Traffic Reliability Area
TPO	Tree Preservation Order
UK	United Kingdom
USI	Unaccompanied Site Inspection
W&CA	Wildlife and Countryside Act 1981 (as amended)
Westmorland and Furness C	Westmorland and Furness Council
WFD	Establishing a Framework for the Community Action in the Field Water Policy (200/60/EC) (the Water Framework Directive)
WHS	World Heritage Site
WQ	Written Questions
WR	Written Representation
ZVI	Zone of Visual Influence

## **APPENDIX C: THE RECOMMENDED DCO**

**202[\*] No.**

**INFRASTRUCTURE PLANNING**

**The A66 Northern Trans-Pennine Development Consent Order  
202[\*]**

*Made* - - - - 202\*

*Coming into force* - - 202\*

**CONTENTS**

**PART 1**

**PRELIMINARY**

1. Citation and commencement
2. Interpretation
3. Disapplication of legislative provisions

**PART 2**

**WORKS PROVISIONS**

Principal Powers

4. Development consent, etc. granted by the Order
5. Maintenance of the authorised development
6. Planning permission
7. Limits of deviation
8. Application of the 1991 Act
9. Construction and maintenance of new, altered or diverted streets and other structures
10. Permanent stopping up of streets and private means of access
11. Temporary prohibition, restriction or regulation of use or alteration or diversion of streets
12. Access to works
13. Discharge of water
14. Protective works to buildings
15. Authority to survey and investigate land
16. Removal of human remains
17. Felling or lopping of trees and hedgerows
18. Maintenance of drainage works

PART 3  
POWERS OF ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

19. Compulsory acquisition of land
20. Compulsory acquisition of land – incorporation of the minerals code
21. Time limit for exercise of powers to possess land temporarily or to acquire land compulsorily
22. Compulsory acquisition of rights and restrictive covenants
23. Private rights over land
24. Power to override easements and other rights
25. Modification of Part 1 of the 1965 Act
26. Application of the 1981 Act
27. Acquisition of subsoil, etc., only
28. Rights over or under streets

Temporary possession of land

29. Temporary use of land for constructing the authorised development
30. Temporary use of land for maintaining the authorised development

Supplementary

31. Statutory undertakers
32. Apparatus and rights of statutory undertakers in stopped up streets
33. Recovery of costs of new connection
34. Special category land
35. Crown rights
36. Relocation of Brough Hill Fair

Compensation

37. Disregard of certain interests and improvements
38. Set-off for enhancement in value of retained land
39. No double recovery

PART 4  
OPERATIONAL PROVISIONS

40. Classification of roads, etc.
41. Clearways
42. Traffic regulation measures

PART 5  
MISCELLANEOUS AND GENERAL

43. Benefit of the Order
44. Consent to transfer benefit of Order
45. Application of landlord and tenant law
46. Operational land for the purposes of the 1990 Act
47. Defence to proceedings in respect of statutory nuisance
48. Protective provisions
49. Certification of plans, etc.
50. Service of notices
51. Arbitration
52. Consents, agreements and approvals
53. Environmental Management Plans



- 54. Detailed design
- 55. Time limit for when development must begin

---

## SCHEDULES

- SCHEDULE 1 — AUTHORISED DEVELOPMENT
  - PART 1 — SCHEME 0102 – M6 J40 TO KEMPLAY BANK
  - PART 2 — SCHEME 03 – PENRITH TO TEMPLE SOWERBY
  - PART 3 — SCHEME 0405 – TEMPLE SOWERBY TO APPLEBY
  - PART 4 — SCHEME 06 – APPLEBY TO BROUGH
  - PART 5 — SCHEME 07 – BOWES BYPASS
  - PART 6 — SCHEME 08 – CROSS LANES TO ROKEBY
  - PART 7 — SCHEME 09 – STEPHEN BANK TO CARKIN MOOR
  - PART 8 — SCHEME 11 – A1(M) J53 SCOTCH CORNER
- SCHEDULE 2 — PERMANENT STOPPING UP OF HIGHWAYS AND PRIVATE MEANS OF ACCESS AND PROVISION OF NEW HIGHWAYS AND PRIVATE MEANS OF ACCESS
  - PART 1 — HIGHWAYS TO BE STOPPED UP FOR WHICH A SUBSTITUTE IS TO BE PROVIDED AND NEW HIGHWAYS WHICH ARE OTHERWISE TO BE PROVIDED
  - PART 2 — HIGHWAYS TO BE STOPPED UP FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED
  - PART 3 — PRIVATE MEANS OF ACCESS TO BE STOPPED UP FOR WHICH A SUBSTITUTE IS TO BE PROVIDED AND NEW PRIVATE MEANS OF ACCESS WHICH ARE OTHERWISE TO BE PROVIDED
  - PART 4 — PRIVATE MEANS OF ACCESS TO BE STOPPED UP FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED
- SCHEDULE 3 — TREES SUBJECT TO TREE PRESERVATION ORDERS
- SCHEDULE 4 — LAND IN WHICH ONLY NEW RIGHTS ETC., MAY BE ACQUIRED
- SCHEDULE 5 — MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR THE CREATION OF NEW RIGHTS AND RESTRICTIVE COVENANTS
- SCHEDULE 6 — LAND OF WHICH ONLY TEMPORARY POSSESSION MAY BE TAKEN
- SCHEDULE 7 — CLASSIFICATION OF ROADS, ETC.
  - PART 1 — SCHEME 0102 – M6 J40 TO KEMPLAY BANK
  - PART 2 — SCHEME 03 – PENRITH TO TEMPLE SOWERBY
  - PART 3 — SCHEME 0405 – TEMPLE SOWERBY TO APPLEBY
  - PART 4 — SCHEME 06 – APPLEBY TO BROUGH
  - PART 5 — SCHEME 07 – BOWES BYPASS
  - PART 6 — SCHEME 08 – CROSS LANES TO ROKEBY
  - PART 7 — SCHEME 09 – STEPHEN BANK TO CARKIN MOOR
- SCHEDULE 8 — TRAFFIC REGULATION MEASURES ETC.
  - PART 1 — SCHEME 0102 – M6 J40 TO KEMPLAY BANK
  - PART 2 — SCHEME 03 – PENRITH TO TEMPLE SOWERBY
  - PART 3 — SCHEME 0405 – TEMPLE SOWERBY TO APPLEBY

- PART 4 — SCHEME 06 – APPLEBY TO BROUGH
- PART 5 — SCHEME 07 – BOWES BYPASS
- PART 6 — SCHEME 08 – CROSS LANES TO ROKEBY
- PART 7 — SCHEME 09 – STEPHEN BANK TO CARKIN MOOR
- SCHEDULE 9 — PROTECTIVE PROVISIONS
  - PART 1 — FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS
  - PART 2 — FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS
  - PART 3 — FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY TRANSMISSION PLC AS ELECTRICITY UNDERTAKER
  - PART 4 — FOR THE PROTECTION OF NATIONAL GAS TRANSMISSION PLC AS GAS UNDERTAKER
  - PART 5 — FOR THE PROTECTION OF THE ENVIRONMENT AGENCY
  - PART 6 — FOR THE PROTECTION OF NETWORK RAIL INFRASTRUCTURE LIMITED
  - PART 7 — FOR THE PROTECTION OF DURHAM COUNTY COUNCIL
- SCHEDULE 10 — DOCUMENTS TO BE CERTIFIED

An application has been made to the Secretary of State, under section 37 of the Planning Act 2008(a) (“the 2008 Act”) in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(b) for an Order granting development consent.

The application was examined by a Panel of four members (“the Panel”) pursuant to Chapter 2 of Part 6 of the 2008 Act and carried out in accordance with Chapter 4 of Part 6 of the 2008 Act, and the Infrastructure Planning (Examination Procedure) Rules 2010(c).

The Panel, having examined the application with the documents that accompanied the application, and the representations made and not withdrawn, has, in accordance with section 74(2) of the 2008 Act, made a report and recommendation to the Secretary of State.

The Secretary of State, having considered the representations made and not withdrawn, and the report of the Panel, has decided to make an Order granting development consent for the development described in the application with modifications which in the opinion of the Secretary of State do not make any substantial changes to the proposals comprised in the application.

The Secretary of State is satisfied that replacement land has been or will be given in exchange for the special category land (as defined in article 34 (special category land) of this Order), and the replacement land (as defined in that article) has been or will be vested in the prospective seller and subject to the same rights, trusts and incidents as attach to the special category land, and that, accordingly, section 131(4) of the 2008 Act applies. In accordance with section 132(3) of the 2008 Act, the Secretary of State is satisfied, having considered the report and recommendation of the Panel, that the parcels of land comprised in the special category (rights) land (as defined in article 34 of this Order) when burdened with a new right created under this Order, will be no less advantageous than they were before the making of this Order to the following person: (a) the persons in whom they are vested; (b) other persons, if any, entitled to rights of common or other rights; and (c) the public.

---

(a) Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c. 20).  
 (b) Amended by S.I. 2010/439, S.I. 2010/602, S.I.2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522, S.I. 2013/755, S.I. 2014/469, S.I. 2014/2381, S.I. 2015/377, S.I.2015/1682, S.I..2017/524, S.I.2017/572, S.I. 2018/378 and S.I. 2019/734.  
 (c) Amended by S.I. 2012/635.

The Secretary of State, in exercise of the powers conferred by sections 114, 115, 117, 120, 122 and 123 of, and paragraphs 1 to 4, 10 to 17, 19 to 23, 26, 33, 36 and 37 of Part 1 of Schedule 5 to, the 2008 Act, makes the following Order—

## PART 1

### PRELIMINARY

#### **Citation and commencement**

1. This Order may be cited as the A66 Northern Trans-Pennine Development Consent Order 202[\*] and comes into force on [X] 202[\*].

#### **Interpretation**

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(a);

“the 1965 Act” means the Compulsory Purchase Act 1965(b);

“the 1980 Act” means the Highways Act 1980(c);

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(d);

“the 1984 Act” means the Road Traffic Regulation Act 1984(e);

“the 1990 Act” means the Town and Country Planning Act 1990(f);

“the 1991 Act” means the New Roads and Street Works Act 1991(g);

“the 2008 Act” means the Planning Act 2008(h);

“address” includes any number or address for the purpose of electronic transmission;

“affected person” has the same meaning as in section 59 (notice of persons interested in land to which compulsory acquisition request relates)(i) of the 2008 Act;

“apparatus” has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act;

“authorised development” means the development and associated development described in Schedule 1 (authorised development) or any part of it and any other development authorised by this Order, which is development within the meaning of section 32 (meaning of “development”) of the 2008 Act;

“book of reference” means the document listed in Schedule 10 (documents to be certified) certified by the Secretary of State under article 49 (certification of plans, etc.) as the book of reference for the purposes of this Order;

“bridleway” has the same meaning as in the 1980 Act and, in relation to the authorised development, includes the right provided by section 30 (riding of pedal bicycles on bridleways) of the Countryside Act 1968(j);

“building” includes any structure or erection or any part of a building, structure or erection;

“byway open to all traffic” has the same meaning as in section 66(1) (interpretation of Part 3) of the Wildlife and Countryside Act 1981;

---

(a) 1961 c. 33.

(b) 1965 c. 56.

(c) 1980 c. 66.

(d) 1981 c. 66.

(e) 1984 c. 27.

(f) 1990 c. 8.

(g) 1991 c. 22.

(h) 2008 c. 29.

(i) Section 59 was amended by section 240(2) of, and paragraph 16 of Schedule 13 to the Localism Act 2011 (c. 20).

(j) 1968 c. 41.

“carriageway” has the same meaning as in the 1980 Act;

“classification of roads plans” means the plans listed in Schedule 10 certified by the Secretary of State under article 49 as the classification of roads plans for the purposes of this Order;

“construct” includes execute, place, alter, replace, relay and remove and “construction” is to be construed accordingly;

“cycle track” means a way constituting a highway, being a way over which the public have the following, but no other, rights of way, that is to say, a right of way on pedal cycles (other than pedal cycles which are motor vehicles with the meaning of the Road Traffic Act 1988) with a right of way on foot;

“cycleway” means a way comprised in a highway, being a way over which the public have the following, but no other, rights of way, that is to say, a right of way on pedal cycles (other than pedal cycles which are motor vehicles within the meaning of the Road Traffic Act 1988) with a right of way on foot;

“Crown land plans” means the plans listed in Schedule 10 certified by the Secretary of State under article 49 as the Crown land plans for the purposes of this Order;

“design principles” means the project design principles document listed in Schedule 10 certified by the Secretary of State under article 49 as the design principles for the purposes of this Order;

“de-trunking plans” means the plans listed in Schedule 10 certified by the Secretary of State under article 49 as the de-trunking plans for the purposes of this Order;

“earthworks” means any embankment or cutting slope required to raise or lower a road from existing ground levels;

“electronic transmission” means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means but while in electronic form,

and in this definition “electronic communications network” has the same meaning as in section 32(1) (meaning of electronic communications networks and services” of the Communications Act 2003(a);

“engineering section drawings: cross sections” means the drawings listed in Schedule 10 certified by the Secretary of State under article 49 as the engineering section drawings: cross sections for the purposes of this Order;

“engineering section drawings: plan and profiles” means the drawings listed in Schedule 10 certified by the Secretary of State under article 49 as the engineering section drawings: plan and profiles for the purposes of this Order;

“environmental statement” means the document listed in Schedule 10 certified by the Secretary of State under article 49 as the environmental statement for the purposes of this Order;

“equestrian track” means a way comprised in a highway, being a way over which the public have the following, but no other rights of way, that is to say a right of way on horseback or leading a horse, a right of way on pedal cycles (other than pedal cycles which are motor vehicles within the meaning of the Road Traffic Act 1988(b) and a right of way on foot;

“flood risk activity” has the same meaning as in regulation 2 (interpretation: general) of the Environmental Permitting (England and Wales) Regulations 2016;

“footpath” and “footway” have the same meaning as in the 1980 Act;

“highway”, “highway authority” and “local highway authority” have the same meaning as in the 1980 Act;

“land plans” means the plans listed in Schedule 10 certified by the Secretary of State under article 49 as the land plans for the purposes of this Order;

“limits of deviation” means limits of deviation referred to in article 7 (limits of deviation);

---

(a) Section 32(1) was amended by S.I. 2011/1210.

(b) 1988 c. 52.

“maintain” includes inspect, repair, adjust, alter, remove, replace or reconstruct, provided such works do not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement, and any derivative of “maintain” is to be construed accordingly;

“Order land” means the land shown coloured pink and the land shown coloured blue on the land plans, and which is described in the book of reference;

“Order limits” means the limits of land to be acquired permanently or used temporarily as shown on the land plans, and the limits of land within which the authorised development, as shown on the works plans, may be carried out;

“owner”, in relation to land, has the same meaning as in section 7 (interpretation) of the Acquisition of Land Act 1981(a);

“relevant planning authority” means the local planning authority for the area in which the land to which the relevant provision of this Order applies is situated;

“rights of way and access plans” means the plans listed in Schedule 10 certified by the Secretary of State under article 49 as the rights of way and access plans for the purposes of this Order;

“S0102” means M6 Junction 40 to Kemplay Bank;

“S03” means Penrith to Temple Sowerby;

“S0405” means Temple Sowerby to Appleby;

“S06” means Appleby to Brough;

“S07” means Bowes Bypass;

“S08” means Cross Lanes to Rokeby;

“S09” means Stephen Bank to Carkin Moor;

“S11” means A1(M) Junction 53 Scotch Corner;

“special category land plans” means the plans listed in Schedule 10 certified by the Secretary of State under article 49 as the special category land plans for the purposes of this Order;

“special road” means a highway which is a special road in accordance with section 16 (general provisions as to special roads)(b) of the 1980 Act or by virtue of an order granting development consent;

“statutory undertaker” means any statutory undertaker for the purposes of section 127(8) (statutory undertakers’ land) of the 2008 Act;

“street” means a street within the meaning of section 48 (streets, street works and undertakers)(c) of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act;

“traffic authority” has the same meaning as in section 121A (traffic authorities) of the 1984 Act;

“traffic officer” means an individual designated under section 2 (designation of traffic officers) of the Traffic Management Act 2004;

“traffic regulation measures (clearways and prohibitions) plans” means the plans listed in Schedule 10 certified by the Secretary of State under article 49 as the traffic regulation measures (clearways and prohibitions) plans for the purposes of this Order;

“traffic regulation measures (speed limits) plans” means the plans listed in Schedule 10 certified by the Secretary of State under article 49 as the traffic regulation measures (speed limits) plans for the purposes of this Order;

- 
- (a) The definition of “owner” was amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34). There are other amendments to section 7 which are not relevant to this Order.
- (b) Section 16 was amended by section 36 of, and paragraph 24 of Schedule 2 to the 2008 Act and section 57(1) of, and paragraph 13(2) to (4) of Schedule 1 to, the Infrastructure Act 2015 (c. 7).
- (c) Section 48 was amended by section 124(1) and (2) of the Local Transport Act 2008 (c. 26).

“tree preservation order trees location plans” means the plans listed in Schedule 10 certified by the Secretary of State under article 49 as the tree preservation order trees location plans for the purposes of this Order;

“tribunal” means the Lands Chamber of the Upper Tribunal;

“trunk road” means a highway which is a trunk road by virtue of—

- (a) section 10 (general provision as to trunk roads)(a) or 19(1) (certain special roads and other highways to become trunk roads)(b) of the 1980 Act;
- (b) an order made or direction given under section 10 of that Act;
- (c) an order granting development consent; or
- (d) any other enactment;

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain;

“undertaker” means National Highways Limited (company number 09346363) whose registered office is at Bridge House, 1 Walnut Tree Close, Guildford, Surrey, GU1 4LZ; and

“works plans” means the plans listed in Schedule 10 certified by the Secretary of State under article 49 as the works plans for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do or to place and maintain, anything in, on or under land or in the airspace above its surface and references in this Order to the imposition of restrictive covenants are references to the creation of rights over land which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or is otherwise comprised in the Order land.

(3) All distances, directions, areas and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised development are taken to be measured along that work.

(4) For the purposes of this Order, all areas described in square metres in the book of reference are approximate.

(5) References in this Order to points identified by letters or numbers are to be construed as references to points so lettered or numbered on the plan to which the reference relates.

(6) References in this Order to numbered works are references to the works as numbered in Schedule 1 (authorised development).

(7) In this Order, references to materially new or materially different environmental effects in comparison with those reported in the environmental statement are not to be construed so as to include the avoidance, removal or reduction of an assessed adverse environmental effect or a positive environmental effect, or the increase of an assessed positive environmental effect.

### **Disapplication of legislative provisions**

3.—(1) Subject to paragraph (5) the following provisions do not apply in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction, operation or maintenance of the authorised development—

- (a) sections 28E (duties in relation to sites of scientific interest) and 28H (statutory undertakers, etc.: duty in relation to carrying out operations) of the Wildlife and Countryside Act 1981(c);
- (b) section 80 (notice to local authority of demolition) of the Building Act 1984(d);

---

(a) Section 10 was amended by section 22(2) of the 1991 Act, by section 36 of, and paragraph 22 of Schedule 2 to, the 2008 Act and by section 1(6) of, and paragraph 10 of Schedule 1 to, the Infrastructure Act 2015 (c. 7).

(b) Section 19(1) was amended by section 1(6) of, and paragraph 15 of Schedule 1 to, the Infrastructure Act 2015 (c. 7).

(c) Section 28E was inserted by section 75(1) of, and paragraph 1 of Schedule 9 to, the Countryside and Rights of Way Act 2000 (c. 37). It was amended by section 105(1) of, and paragraph 79 of Schedule 11 to, the Natural Environment and Rural Communities Act 2006 (c. 16). There are other amendments which are not relevant to this Order.

(d) 1984 c. 55.



- (c) section 23 (prohibition of obstructions, etc. in watercourses) of the Land Drainage Act 1991(a);
- (d) section 32 (variation of awards) of the Land Drainage Act 1991;
- (e) the provisions of any byelaws made under section 66 (powers to make byelaws)(b) of the Land Drainage Act 1991;
- (f) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6, or 6A of Schedule 25 (byelaw-making powers of the Appropriate Authority) to the Water Resources Act 1991(c);
- (g) regulation 12 (requirement for an environmental permit) of the Environmental Permitting (England & Wales) Regulations 2016(d) in respect of a flood risk activity only; and
- (h) the provisions of the Neighbourhood Planning Act 2017 in so far as they relate to temporary possession of land under articles 29 (temporary use of land for constructing the authorised development) and 30 (temporary use of land for maintaining the authorised development) of this Order.

(2) Despite the provisions of section 208 (liability) of the 2008 Act, for the purposes of regulation 6 (meaning of “development”) of the Community Infrastructure Levy Regulations 2010(e) any building comprised in the authorised development is deemed to be—

- (a) a building into which people do not normally go; or
- (b) a building into which people go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery.

(3) For the purposes of section 9 (requirement of licence for felling) of the Forestry Act 1967(f), any felling comprised in the carrying out of any work or operation required for the purposes of, or in connection with, the construction of the authorised development is deemed to be immediately required for the purpose of carrying out development authorised by planning permission granted under the 1990 Act.

(4) The provisions of the following enactments do not apply in so far as those provisions still in force are incompatible with the exercise by the undertaker of the functions conferred by this Order—

- (a) The Eden Valley Railway Act 1858;
- (b) The Eden Valley Railway Act 1862; and
- (c) The Midland Railway (Settle to Carlisle) Act 1866.

(5) The provisions referred to in paragraphs (1)(c) and (1)(e) are disapplied only in relation to the carrying out of any operation required for the purpose of, or in connection with, the construction, operation or maintenance of any part of the authorised development situated within the district of Durham County Council (in relation to which see Part 7 of Schedule 9 to this Order which contains provisions for the protection of Durham County Council) .

---

(a) Section 23 was amended by section 120 of, and paragraphs 192(1) and (2) of Schedule 22 to, the Environment Act 1995 (c. 25) and by sections 31 of, and paragraph 32 of Schedule 2 to, the Flood and Water Management Act 2010 (c. 29). There are other amendments to section 23 which are not relevant to this Order.

(b) Section 66 was amended by section 31 of, and paragraph 38 of Schedule 2 to, the Flood and Water Management Act 2010 (c. 29) and section 86(3) of the Water Act 2014 (c. 21).

(c) Paragraph 5 was amended by section 100 of the Natural Environment and Rural Communities Act 2006 (c. 16), section 84(2) of, and paragraph 3 of Schedule 11 to, the Marine and Coastal Access Act 2009 (c. 23), paragraph 49 of Schedule 2 to the Flood and Water Management Act 2010 (c. 29) and S.I. 2013/755. Paragraph 6 was amended by paragraph 26 of Schedule 15 to the Environment Act 1995 (c. 25) and section 224 of, and paragraph 24 of Schedule 16 and Part 5 of Schedule 22 to, the Marine and Coastal Access Act 2009 (c. 23). Paragraph 6A was inserted by section 103(3) of the Environment Act 1995 (c. 25).

(d) Amended by S.I. 2018/110.

(e) Amended by S.I. 2011/987.

(f) Section 9 was amended by section 4 of, and paragraph 14 of, Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c. 11) and S.I. 2013/755. There are other amendments to section 9 that are not relevant to this Order.

**PART 2**  
**WORKS PROVISIONS**

*Principal Powers*

**Development consent, etc. granted by the Order**

4.—(1) Subject to the provisions of this Order the undertaker is granted development consent for the authorised development.

(2) Any enactment applying to land within or adjacent to the Order limits has effect subject to the provisions of this Order.

**Maintenance of the authorised development**

5. The undertaker may at any time maintain the authorised development, except to the extent that this Order, or an agreement made under this Order, provides otherwise.

**Planning permission**

6.—(1) It does not constitute a breach of the terms of this Order, if, following the coming into force of this Order, any development is carried out or used within the Order limits in accordance with any planning permission granted under the powers conferred by the 1990 Act.

(2) Subject to article 8 (application of the 1991 Act), nothing in this Order is to prejudice the operation of, and the powers and duties of the undertaker under, the 1980 Act, the 1991 Act and the Town and Country Planning (General Permitted Development) (England) Order 2015.

**Limits of deviation**

7.—(1) The following provisions of this article have effect subject to the requirement that the undertaker must, save for any works or operations authorised under article 14 (protective works to buildings) or 15 (authority to survey and investigate land), construct the authorised development within the Order limits.

(2) In constructing and maintaining the non-linear works comprised in the authorised development, the undertaker may deviate laterally within the limits of deviation for those works shown on the works plans.

(3) Subject to paragraph (4), in constructing or maintaining the linear works comprised in the authorised development the undertaker may deviate laterally from the lines or situations shown on the works plans, within the Order limits, save that—

- (a) in constructing or maintaining any linear work other than those referred to in column (1) of the table below, in deviating laterally from the centrelines shown on the works plans, the situation of the centreline may be varied up to a maximum of 3 metres either side of the centreline of that work as shown on the works plans; and
- (b) in relation to the linear works referred to in column (1) of the table below, the centreline of that work may be—
  - (i) situated on the north side of the centreline of that work shown on the works plans, by a distance not exceeding the permitted limit for each such part, set out in the corresponding entry in column (2) of the table below; and
  - (ii) situated on the south side of the centreline of that work shown on the works plans, by a distance not exceeding the permitted limit for each such part, set out in the corresponding entry in column (3) of the table below.

**Table referred to in paragraph (3)**

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
------------	------------	------------

<i>Part of authorised development</i>	<i>Lateral limit of deviation of the centre line numbered work to the north side of the centre line shown on the works plans</i>	<i>Lateral limit of deviation of the centre line of the numbered work to the south side of the centre line shown on the works plans</i>
Work No. 0102-1D	10 metres	10 metres
Work No. 0102-7B	To the extent of the corresponding fine dashed green line shown on the works plans	To the extent of the corresponding fine dashed green line shown on the works plans
Work No. 0102-8	To the extent of the corresponding fine dashed green line shown on the works plans	3 metres
Work No. 03-6	To the outer extent of the earthworks on the south side of Work No. 03-1B (being the A66 mainline)	3 metres
Work No. 03-7B	To the extent of the Order limits	To the outer extent of the earthworks on the north side of Work No. 03-1B (A66 mainline)
Work No. 03-8	To the extent of the Order limits	To the outer extent of the earthworks on the north side of Work No.03-1B (A66 mainline)
Work No. 0405-4B	To the extent of the Order limits	To the extent of the Order limits
Work No. 0405-6C	To the extent of the corresponding fine dashed green line shown on the works plans	3 metres
Work No. 0405-8	3 metres	To the extent of the corresponding fine dashed green line shown on the works plans
Work No. 0405-12B	3 metres	To the extent of the corresponding fine dashed green line shown on the works plans
Work No. 0405-18	To the extent of the Order limits	To the extent of the Order limits
Work No. 0405-19	To the extent of the Order limits	To the extent of the Order limits
Work No. 06-4B	3 metres	To the extent of the corresponding fine dashed green line shown on the works plans
Work No. 06-4D	3 metres	To the extent of the corresponding fine dashed green line shown on the works plans
Work No. 06-7A	To the outer extent of the earthworks on the south side of Work No. 06-1D (A66 mainline)	3 metres
Work No. 09-1B	5 metres	5 metres
Work No. 09-1D	To the extent of the Order limits	3 metres
Work No. 09-3B	To the extent of the corresponding fine dashed green line shown on the works plans	3 metres
Work No. 09-3E	To the extent of the corresponding fine dashed green line shown on the works plans	3 metres
Work No. 09-3F	0 metres	5 metres

(4) In constructing or maintaining the linear works referred to in column (1) of the table below, the undertaker may deviate laterally within the Order limits so that the centreline of that work shown on the works plans may be—

- (a) situated on the west side of the centreline of that work shown on the works plans, by a distance not exceeding the permitted limit for each such part, set out in the corresponding entry in column (2) of the table below; and
- (b) situated on the east side of the centreline of that work shown on the works plans, by a distance not exceeding the permitted limit for each such part, set out in the corresponding entry in column (3) of the table below.

**Table referred to in paragraph (4)**

<i>(1)</i> <i>Part of the authorised development</i>	<i>(2)</i> <i>Lateral limit of deviation of the centre line of the numbered work to the west side of the centre line shown on the works plans</i>	<i>(3)</i> <i>Lateral limit of deviation of the centre line of the numbered work to the east side of the centre line shown on the works plans</i>
Work No. 0102-7B	To the extent of the corresponding fine dashed green line shown on the works plans	To the extent of the corresponding fine dashed green line shown on the works plans
Work No. 0405-7	To the extent of the corresponding fine dashed green line shown on the works plans	3 metres
Work No. 0405-13	To the extent of the corresponding fine dashed green line shown on the works plans or where there is no fine dashed green line, 3 metres	To the extent of the corresponding fine dashed green line shown on the works plans or, where there is no fine dashed green line, 3 metres
Work No. 0405-20B	To the extent of the corresponding fine dashed green line shown on the works plans	3 metres
Work No. 0405-20C	3 metres	To the extent of the corresponding fine dashed green line shown on the works plans
Work No. 06-2B	To the extent of the corresponding fine dashed green line shown on the works plans	3 metres

(5) In constructing or maintaining the authorised development, the undertaker may deviate vertically from the levels shown on the engineering section drawings: plan and profiles and the engineering section drawings: cross sections—

- (a) upwards to any extent not exceeding 1 metre, or, in relation to the parts of the authorised development referred to in column (1) of the table below, not exceeding the permitted limit for each such part, set out in the corresponding entry in column (2) of that table;
- (b) downwards to any extent not exceeding 1 metre, or, in relation to the parts of the authorised development referred to in column (1) of the table below, not exceeding the permitted limit for each such part, set out in the corresponding entry in column (3) of that table; and
- (c) except that—

- (i) in the case of Work Nos. 03-1A and 03-1B, the upwards and downwards vertical limits set out in paragraphs (a) and (b) will not apply where their application would preclude the undertaker from retaining the existing levels of the A66 carriageway along the lengths of those numbered works; and
- (ii) in the case of Work No. 07-8, the upwards and downwards vertical limits set out in paragraphs (a) and (b) will not apply to the levels shown eastwards of chainage reference point 650,000 on Sheet 9 of the engineering section drawings: plan and profiles for scheme 07 where their application would preclude the undertaker from tying Work No. 07-8 into the existing ground levels at Bowes Cross Farm.

**Table referred to in paragraph (5)**

<i>(1)</i> <i>Part of authorised development</i>	<i>(2)</i> <i>Upwards vertical limit of deviation</i>	<i>(3)</i> <i>Downwards vertical limit of deviation</i>
Work No. 0102-1D	3 metres	3 metres
Work No. 0102-7A	2 metres	2 metres
Work No. 0102-7B	2 metres	2 metres
Work No. 0102-7C	2 metres	2 metres
Work No. 0102-8	1.5 metres	0 metres
Work No. 03-6	To any extent the undertaker considers to be necessary	To any extent the undertaker considers to be necessary
Work No. 03-7B	To any extent the undertaker considers to be necessary	To any extent the undertaker considers to be necessary
Work No. 03-8	To any extent the undertaker considers to be necessary	To any extent the undertaker considers to be necessary
Work No. 0405-1A	3 metres	3 metres
Work No. 0405-2A	3 metres	3 metres
Work No. 0405-5	1 metre	2 metres
Work No. 0405-6B	2 metres	To any extent the undertaker considers to be necessary
Work No. 0405-6C	2 metres	To any extent the undertaker considers to be necessary to tie in with Work No. 0405-7
Work No. 0405-7	1 metre	To any extent the undertaker considers to be necessary
Work No. 0405-8	To any extent the undertaker considers to be necessary to tie in with Work No. 0405-07	To any extent the undertaker considers to be necessary to tie in with Work No. 0405-7
Work No. 0405-12A	1 metre	To any extent the undertaker considers to be necessary to use existing ground levels
Work No. 0405-12B	1 metre	To any extent the undertaker considers to be necessary to use existing ground levels
Work No. 0405-13	3 metres	To any extent the undertaker considers to be necessary to use existing ground levels
Work No. 0405-20B	1 metre	To any extent the undertaker considers to be necessary to pass beneath Work Nos. 0405-1B and 0405-2B
Work No. 0405-20C	1 metre	To any extent the undertaker considers to be necessary to tie in with Work No. 0405-20B

Work No. 0405-18	1 metre	0 metres
Work No. 06-1B	1 metre	0 metres
Work No. 06-1C	0 metres	To any extent the undertaker considers to be necessary
Work No. 06-2A	2 metres	2 metres
Work No. 06-2B	2 metres	2 metres
Work No. 06-3	0 metres	To any extent the undertaker considers to be necessary
Work No. 06-4B	1 metre	To any extent the undertaker considers to be necessary
Work No. 06-7A	To any extent the undertaker considers to be necessary as a consequence of any horizontal movement northwards	2 metres
Work No. 07-1B	1 metre	1.5 metres
Work No. 07-2B	1 metre	1.5 metres
Work No. 07-7B	2 metres	2 metres
Work No. 08-1B	1 metre	2 metres
Work No. 08-4A	1 metre	2 metres
Work No. 08-4B	1 metre	2 metres
Work No. 09-1B	1 metre	3 metres
Work No. 09-1D	1 metre	4 metres
Work No. 09-3B	1 metre	To any extent the undertaker considers to be necessary
Work No. 09-5	1 metre	3 metres

(6) The maximum vertical limits of deviation referred to in paragraph (5) do not apply where it is demonstrated by the undertaker to the Secretary of State's satisfaction and the Secretary of State certifies accordingly, following consultation with the relevant planning authority, that a deviation in excess of these limits would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

(7) Without limitation on the scope of paragraphs (2) to (5), in constructing or maintaining the authorised development the undertaker may deviate by up to 3 metres from the points of commencement and termination of any linear works shown on the works plans.

(8) In this article, references to—

“linear works” are references to any works shown on the works plans by way of a centreline; and

“non-linear works” are references to any other works shown on the works plans.

### **Application of the 1991 Act**

**8.**—(1) Works constructed or maintained under this Order in relation to a highway which consists of or includes a carriageway are to be treated for the purposes of Part 3 (street works in England and Wales) of the 1991 Act as major highway works if—

- (a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) (highway authorities, highways and related matters) of that Act; or
- (b) they are works which, had they been executed by the highway authority, might have been carried out in exercise of the powers conferred by section 64 (dual carriageways and



roundabouts)(a) of the 1980 Act or section 184 (vehicle crossings over footways and verges)(b) of that Act.

(2) In Part 3 of the 1991 Act in relation to works which are major highway works by virtue of paragraph (1), references to the highway authority concerned are to be construed as references to the undertaker.

(3) The following provisions of the 1991 Act do not apply in relation to any works executed under the powers conferred by this Order—

- section 56 (power to give directions as to timing of street works)(c);
- section 56A (power to give directions as to placing of apparatus)(d);
- section 58 (restriction on works following substantial road works)(e);
- section 58A (restriction on works following substantial street works)(f);
- section 73A (power to require undertaker to re-surface street)(g);
- section 73B (power to specify timing etc. of re-surfacing)(h);
- section 73C (materials, workmanship and standard of re-surfacing)(i);
- section 78A (contributions to costs of re-surfacing by undertaker)(j); and
- Schedule 3A (restriction on works following substantial street works)(k).

(4) The provisions of the 1991 Act mentioned in paragraph (5) (which, together with other provisions of that Act, apply in relation to the execution of street works) and any regulations made, or code of practice issued or approved under, those provisions apply (with the necessary modifications) in relation to any prohibition, restriction, regulation, alteration or diversion of a street of a temporary nature by the undertaker under the powers conferred by article 11 (temporary prohibition, restriction or regulation of use or alteration or diversion of streets) whether or not the prohibition, restriction, regulation, alteration or diversion constitutes street works within the meaning of that Act.

(5) The provisions of the 1991 Act(l) referred to in paragraph (4) are—

- section 54 (advance notice of certain works), subject to paragraph (6)(m);
- section 55 (notice of starting date of works), subject to paragraph (6)(n);
- section 57 (notice of emergency works)(o);
- section 59 (general duty of street authority to co-ordinate works)(p);
- section 60 (general duty of undertakers to co-operate);
- section 68 (facilities to be afforded to street authority);
- section 69 (works likely to affect other apparatus in the street);
- section 75 (inspection fees);
- section 76 (liability for cost of temporary traffic regulation); and

- 
- (a) Section 64 was amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51) and section 168(2) of, and Schedule 9 to, the 1991 Act.
  - (b) Section 184 was amended by sections 35 and 46 of the Criminal Justice Act 1982 (c. 48); by section 4 of, and paragraph 45 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11); and section 168 of, and paragraph 9 of Schedule 8 and Schedule 9 to, the 1991 Act.
  - (c) Section 56 was amended by sections 40 and 43 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).
  - (d) Section 56A was inserted by section 44 of the Traffic Management Act 2004.
  - (e) Section 58 was amended by sections 40 and 51 of, and Schedule 1 to, the Traffic Management Act 2004.
  - (f) Section 58A was inserted by section 52 of the Traffic Management Act 2004.
  - (g) Section 73A was inserted by section 55 of the Traffic Management Act 2004.
  - (h) Section 73B was inserted by section 55 of the Traffic Management Act 2004.
  - (i) Section 73C was inserted by section 55 of the Traffic Management Act 2004.
  - (j) Section 78A was inserted by section 57 of the Traffic Management Act 2004.
  - (k) Schedule 3A was inserted by section 52(2) of, and Schedule 4 to, the Traffic Management Act 2004.
  - (l) Sections 54, 55, 57, 60, 68 and 69 were amended by section 40(1) and (2) of, and Schedule 1 to, the Traffic Management Act 2004.
  - (m) Section 54 was amended by section 49(1) of the Traffic Management Act 2004.
  - (n) Section 55 was amended by section 49(2) and 51(9) of the Traffic Management Act 2004.
  - (o) Section 57 was amended by section 52(3) of the Traffic Management Act 2004.
  - (p) Section 59 was amended by section 42 of the Traffic Management Act 2004.

section 77 (liability for cost of use of alternative route),

and all such other provisions as apply for the purposes of the provisions mentioned above.

(6) Sections 54 and 55 of the 1991 Act as applied by paragraph (4) have effect as if references in section 57 of that Act to emergency works were a reference to a prohibition, restriction, regulation, alteration or diversion (as the case may be) required in a case of emergency.

(7) Nothing in article 9 (construction and maintenance of new, altered or diverted streets and other structures)—

(a) affects the operation of section 87 (prospectively maintainable highways) of the 1991 Act, and the undertaker is not by reason of any duty under that article to maintain a street or to be taken to be the street authority in relation to that street for the purposes of Part 3 of that Act; or

(b) has effect in relation to street works to which the provisions of Part 3 of the 1991 Act apply.

### **Construction and maintenance of new, altered or diverted streets and other structures**

9.—(1) Subject to paragraphs (6), (7) and (8), any highway (other than a trunk road or special road) to be constructed under this Order must be completed to the reasonable satisfaction of the local highway authority in whose area the highway lies and, unless otherwise agreed in writing with the local highway authority, the highway, including any culverts or other structures laid under it, must be maintained by and at the expense of the local highway authority from its completion.

(2) Subject to paragraphs (3), (6), (7) and (8), where a highway (other than a trunk road or special road) is altered or diverted under this Order, the altered or diverted part of the highway must be completed to the reasonable satisfaction of the local highway authority and, unless otherwise agreed in writing with the local highway authority, that part of the highway, including any culverts or other structures laid under it, must be maintained by and at the expense of the local highway authority from its completion.

(3) Subject to paragraphs (6), (7) and (8), where a footpath, bridleway or byway open to all traffic is altered or diverted under this Order along a vehicular private means of access, the altered or diverted part of the highway must, when completed to the reasonable satisfaction of the highway authority and unless otherwise agreed in writing, be maintained (including any culverts or other structures laid under that part of the highway) by and at the expense of the person or persons with the benefit of the vehicular private means of access.

(4) Where a street which is not, and is not intended to be, a public highway is constructed, altered or diverted under this Order, the street (or part of the street as the case may be) must, when completed to the reasonable satisfaction of the street authority, unless otherwise agreed in writing, be maintained by and at the expense of the undertaker for a period of 12 months from its completion and at the expiry of that period by and at the expense of the street authority.

(5) Subject to paragraphs (6), (7) and (8), where a highway is de-trunked under this Order—

(a) section 265 (transfer of property and liabilities upon a highway becoming or ceasing to be a trunk road)(a) of the 1980 Act applies in respect of that highway; and

(b) any alterations to that highway undertaken under powers conferred by this Order prior to and in connection with that de-trunking must, unless otherwise agreed in writing with the local highway authority, be maintained by and at the expense of the local highway authority from the date of de-trunking.

(6) In the case of any bridge constructed under this Order to carry a highway other than a trunk road or special road over a trunk road or special road, the highway surface must from its completion be maintained by and at the expense of the local highway authority and the structure of the bridge must be maintained by and at the expense of the undertaker.

(7) In the case of any bridge constructed under this Order to carry a highway (other than a trunk road or special road) over another highway which is not a trunk road or a special road, both the

---

(a) Section 265 was amended by section 146 of, and paragraph 45 of Schedule 3 to, the 1984 Act and section 57 of and paragraph 52 of Schedule 1 to, the Infrastructure Act 2015 (c. 7).

highway surface and structure of the bridge must be maintained by and at the expense of the local highway authority from their completion.

(8) In the case of a bridge constructed under this Order to carry a private right of way (whether or not it also carries a footpath or bridleway), the surface of the street and the structure of the bridge must be maintained by and at the expense of the undertaker.

(9) In any action against the undertaker in respect of loss or damage resulting from any failure by the undertaker to maintain a street under this article, it is a defence (without affecting any other defence or the application of the law relating to contributory negligence) to prove that the undertaker had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(10) For the purposes of a defence under paragraph (9), the court must in particular have regard to the following matters—

- (a) the character of the street and the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the street;
- (d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street; and
- (e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant to prove that the undertaker had arranged for a competent person to carry out or supervise the maintenance of the part of the street to which the action relates unless it is also proved that the undertaker had given the competent person proper instructions with regard to the maintenance of the street and that the competent person had carried out those instructions.

### **Permanent stopping up of streets and private means of access**

**10.**—(1) Subject to the provisions of this article, the undertaker may, in connection with the construction of the authorised development, stop up each of the streets and private means of access shown on the rights of way and access plans and specified in columns (1) and (2) of Parts 1, 2, 3 and 4 of Schedule 2 (permanent stopping up of highways and private means of access and provision of new highways and private means of access) to the extent specified and described in column (3) of those Parts of that Schedule.

(2) No street or private means of access specified in columns (1) and (2) of Parts 1 and 3 of Schedule 2 (being a street or private means of access to be stopped up for which a substitute is to be provided) is to be wholly or partly stopped up under this article unless—

- (a) the new street or private means of access to be constructed and substituted for it, which is specified in column (4) of those Parts of that Schedule, has been completed to the reasonable satisfaction of the street authority and is open for use; or
- (b) a temporary alternative route for the passage of such traffic as could have used the street or private means of access to be stopped up is first provided and subsequently maintained by the undertaker, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the street or private means of access until the completion and opening of the new street or private means of access in accordance with sub-paragraph (a).

(3) No street or private means of access specified in columns (1) and (2) of Parts 2 and 4 of Schedule 2 (being a street or private means of access to be stopped up for which no substitute is to be provided) is to be wholly or partly stopped up under this article unless the condition specified in paragraph (4) is satisfied in relation to all of the land which abuts on either side of the street or private means of access to be stopped up.

- (4) The condition referred to in paragraph (3) is that—
- (a) the undertaker is in possession of the land; or
  - (b) there is no right of access to the land from the street or private means of access concerned; or
  - (c) there is a reasonably convenient access to the land otherwise than from the street or private means of access concerned; or
  - (d) the owners and occupiers of the land have agreed to the stopping up.

- (5) Where a street or private means of access has been stopped up under this article—
- (a) all rights of way over or along the street or private means of access so stopped up are extinguished; and
  - (b) the undertaker may appropriate and use for the purposes of the authorised development so much of the site of the street or private means of access as is bounded on both sides by land owned by the undertaker.

(6) Any person who suffers loss by the suspension or extinguishment of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(7) Following the opening for public use of a public right of way that has been constructed, permanently altered or permanently diverted under the powers conferred by this article the undertaker must supply the surveying authority with plans showing that public right of way as constructed, permanently altered or permanently diverted together with a statement of the modifications required to the definitive statement.

(8) The plans and statement of modifications to the definitive statement referred to in paragraph (7) are deemed to be an order modifying the definitive map and statement made under section 53(3)(a)(a) of the Wildlife and Countryside Act 1981.

(9) This article is subject to article 32 (apparatus and rights of statutory undertakers in stopped up streets).

(10) In this article “surveying authority” has the meaning given to it by section 66(1) (interpretation of Part III)(b) of the Wildlife and Countryside Act 1981.

### **Temporary prohibition, restriction or regulation of use or alteration or diversion of streets**

**11.—**(1) The undertaker may, during and for the purposes of constructing the authorised development, temporarily prohibit, restrict or regulate the use of, or temporarily alter or divert any street and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (3), prevent all persons from passing along the street.

(2) Without limitation on the scope of paragraph (1), the undertaker may use any street temporarily prohibited, restricted, regulated, altered or diverted under the powers conferred by this article and within the Order limits as a temporary working site.

(3) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary prohibition, restriction, regulation, alteration or diversion of a street under this article if there would otherwise be no such access.

(4) The undertaker must not temporarily prohibit, restrict or regulate the use of or alter or divert any street for which it is not the street authority without the consent of the street authority, which may attach reasonable conditions to any consent, but its consent must not be unreasonably withheld or delayed.

---

(a) Section 53 was amended by Schedule 5 to the Countryside and Rights of Way Act 2000 (c. 37) and by section 70(1) of the Natural Environment and Rural Communities Act 2006 (c. 16).

(b) Section 66 was amended by sections 1, 2 and 7 of, and paragraph 7(6) of Schedule 3 to, the Local Government Act 1985. There are other amendments to this section that are not relevant to this Order.

(5) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

### **Access to works**

12. The undertaker may form and lay out means of access, or improve existing means of access at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

### **Discharge of water**

13.—(1) Subject to paragraphs (3) and (4), the undertaker may use any watercourse, public sewer or drain for the drainage of water in connection with the construction or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker under paragraph (1) is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991(a).

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose.

(4) The undertaker must not make any opening into any public sewer or drain except—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under the powers conferred by this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(6) Nothing in this article overrides the requirement for an environmental permit under regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(b).

(7) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to Homes England, the Environment Agency, an internal drainage board, a joint planning board, a local authority, a sewerage undertaker or an urban development corporation; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991, have the same meanings as in that Act.

### **Protective works to buildings**

14.—(1) Subject to the following provisions of this article, the undertaker may at the undertaker’s own expense carry out such protective works to any building lying within the Order limits or which may be affected by the authorised development as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

- (a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised development; or

---

(a) Section 106 was amended by section 35(1) and (8) of, and Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c. 43), sections 36(2) and 99 of the Water Act 2003 (c. 37) and section 32 of, and paragraph 16(1) of Schedule 3 to, the Flood and Water Management Act 2010 (c. 29).

(b) Amended by S.I.2018/110.

(b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised development is first opened for use.

(3) Subject to paragraph (5), for the purpose of determining how the functions under this article are to be exercised the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage.

(4) For the purpose of carrying out protective works to a building under this article the undertaker may (subject to paragraphs (5) and (6))—

- (a) enter the building and any land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (whether or not such adjacent land is inside or outside the Order limits) but not any building erected on it,

and if it reasonably requires, the undertaker may take possession, or exclusive possession, of the building and any land or part thereof for the purpose of carrying out the protective works.

(5) Before exercising—

- (a) a right under paragraph (1) to carry out protective works to a building;
- (b) a right under paragraph (3) to enter a building and land within its curtilage;
- (c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a right under paragraph (4)(b) to enter land,

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise that right and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (5)(c) or (5)(d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question of whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 51 (arbitration).

(7) The undertaker must compensate the owners and occupiers of any building or land in relation to which rights under this article have been exercised for any loss or damage arising to them by reason of the exercise of those rights.

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of 5 years beginning with the day on which the part of the authorised development carried out in the vicinity of the building is first opened for use it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised development,

the undertaker must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Subject to article 39 (no double recovery) nothing in this article relieves the undertaker from any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance)(a) of the 2008 Act.

(10) Section 13 (refusal to give possession to acquiring authority)(b) of the 1965 Act applies to the entry onto land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions)(c) of the 2008 Act.

(11) Any compensation payable under paragraph (7) or (8) is to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

---

(a) Section 152 was amended by S.I.2009/1307.

(b) Section 13 was amended by sections 62(3) and 139(4) to (9) of, and paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(c) Section 125 was amended by section 190 of, and paragraph 17 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22).

(12) In this article “protective works” in relation to a building means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the construction, maintenance or use of the authorised development; and
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the carrying out, maintenance or use of the authorised development.

#### **Authority to survey and investigate land**

**15.—(1)** The undertaker may for the purposes of the construction, operation or maintenance of the authorised development enter on—

- (a) any land shown within the Order limits; and
- (b) where reasonably necessary, any land which is adjacent to, but outside the Order limits

and—

- (i) survey or investigate the land (including any watercourses, groundwater, static water bodies or vegetation on the land);
- (ii) without limitation on the scope of sub-paragraph (i), make any excavations or trial holes and boreholes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer, subsoil and groundwater and remove soil and water samples and discharge water from sampling operations on to the land;
- (iii) without limitation on the scope of sub-paragraph (i), carry out ecological or archaeological investigations on such land, including making any excavations or trial holes on the land for such purposes; and
- (iv) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes and boreholes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days’ notice has been served on every owner and occupier of the land.

(3) The notice required under paragraph (2) must indicate the nature of the survey or investigation that the undertaker intends to carry out.

(4) Any person entering land under this article on behalf of the undertaker—

- (a) must, if so required, before or after entering the land, produce written evidence of authority to do so; and
- (b) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes and boreholes.

(5) No trial holes or boreholes are to be made under this article—

- (a) in land located within the highway boundary without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority.

(6) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the powers conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(7) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

#### **Removal of human remains**

**16.—(1)** In this article—



“the burial authority” means the burial authority for the specified land from which the relevant human remains are to be removed, being Westmorland and Furness Council or the North Yorkshire Council, or any successor to their functions

“the specified land” means any land within the Order limits.

(2) Before the undertaker carries out any development or works which will or may disturb any human remains in the specified land it must remove those human remains from the specified land, or cause them to be removed, in accordance with the following provisions of this article.

(3) Subject to paragraph (12), before any such remains are removed from the specified land the undertaker must give notice of the intended removal, describing the specified land and stating the general effect of the following provisions of this article, by—

- (a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the specified land; and
- (b) displaying a notice in a conspicuous place on or near to the specified land.

(4) As soon as reasonably practicable after the first publication of a notice under paragraph (3), the undertaker must send a copy of the notice to the burial authority.

(5) At any time within 56 days after the first publication of a notice under paragraph (3), any person who is a personal representative or relative of any deceased person whose remains are interred in the specified land may give notice in writing to the undertaker of that person’s intention to undertake the removal of the remains.

(6) Where a person has given notice under paragraph (5), and the remains in question can be identified, that person may cause such remains to be—

- (a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or
- (b) removed to, and cremated in, any crematorium,

and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (11).

(7) If the undertaker is not satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question is to be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who is to remove the remains and as to the payment of the costs of the application.

(8) The undertaker must pay the reasonable expenses of removing and re-interring or cremating the remains of any deceased person under this article.

(9) If—

- (a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land;
- (b) such notice is given and no application is made under paragraph (7) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days;
- (c) within 56 days after any order is made by the county court under paragraph (7) any person, other than the undertaker, specified in the order fails to remove the remains; or
- (d) it is determined that the remains to which any such notice relates cannot be identified,

subject to paragraph (10), the undertaker must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose and, so far as possible, remains from individual graves must be re-interred in individual containers which must be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(10) If the undertaker is satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any

reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

(11) On the re-interment or cremation of any remains under this article—

- (a) a certificate of re-interment or cremation must be sent to the Registrar General by the undertaker giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and
- (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (9) must be sent by the undertaker to the burial authority.

(12) No notice is required under paragraph (3) before the removal of any human remains where the undertaker is satisfied—

- (a) that the remains were interred more than 100 years ago; and
- (b) that no relative or personal representative of the deceased is likely to object to the remains being removed in accordance with this article.

(13) In the case of remains in relation to which paragraph (12) applies, the undertaker—

- (a) may remove the remains;
- (b) must apply for direction from the Secretary of State under paragraph (15) as to their subsequent treatment; and
- (c) must deal with the remains in such manner, and subject to such conditions, as the Secretary of State directs.

(14) In this article—

- (a) references to a relative of the deceased are to a person who—
  - (i) is a husband, wife, civil partner, parent, grandparent, child or grandchild of the deceased; or
  - (ii) is, or is a child of, a brother, sister, uncle or aunt of the deceased; and
- (b) references to a personal representative of the deceased are to a person or persons who—
  - (i) is the lawful executor of the estate of the deceased; or
  - (ii) is the lawful administrator of the estate of the deceased.

(15) The removal and subsequent treatment of the remains of any deceased person under this article must be carried out in accordance with any directions which may be given by the Secretary of State.

(16) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.

(17) Section 25 (offence of removal of body from burial ground)(a) of the Burial Act 1857 is not applied to a removal carried out in accordance with this article.

(18) Section 239 (use and development of burial grounds) of the 1990 Act applies—

- (a) in relation to land, other than a right over land, acquired for the purposes of the authorised development (whether or not by agreement), so as to permit use by the undertaker in accordance with the provisions of this Order; and
- (b) in relation to a right over land so acquired (whether or not by agreement), or the temporary use of land pursuant to articles 29 (temporary use of land for constructing the authorised development) or 30 (temporary use of land for maintaining the authorised development), so as to permit the exercise of that right or the temporary use of land by the undertaker in accordance with the provisions of this Order,

and in section 240(1) (provisions supplemental to ss.238 and 239) of the 1990 Act reference to “regulations made for the purposes of sections 238(3) and (4) and 239(2)” means, so far as applicable to land or a right over land acquired under this Order, paragraphs (2) to (16) of this article

---

(a) Section 25 was substituted by section 2 of the Church of England (Miscellaneous Provisions) Measure 2014 (No. 1).

and section 240(3) of the 1990 Act reference to a “statutory undertaker” includes the undertaker and reference to “any other enactment” includes this Order.

(19) The Town and Country Planning (Churches, Places of Religious Worship and Burial Grounds) Regulations 1950 do not apply to the authorised development.

### **Felling or lopping of trees and hedgerows**

**17.—**(1) The undertaker may fell or lop any tree or shrub, including a tree subject to a tree preservation order within or overhanging land within the Order limits, or cut back its roots, if the undertaker reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
- (b) from constituting a danger to persons using the authorised development.

(2) Without prejudice to the generality of paragraph (1) the undertaker may, for the purposes of the construction of the authorised development, in relation to the trees identified in columns (1), (2) and (3) of Schedule 3 (trees subject to tree preservation orders) carry out the corresponding works described in column (4).

(3) In carrying out any activity authorised by paragraph (1) or (2) the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(4) Where works to a tree are authorised by paragraph (1) or (2) and a tree preservation order is in force in relation to that tree—

- (a) written consent for the works is deemed to have been granted by a local planning authority having functions under the tree preservation order; and
- (b) the duty imposed by section 206(1) (replacement of trees)(a) of the 1990 Act does not apply.

(5) Any dispute as to a person’s entitlement to compensation under paragraph (3), or as to the amount of compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) The undertaker may, for the purposes of constructing, maintaining or operating the authorised development but subject to paragraph (3), remove any hedgerow within the Order limits that is required to be removed.

(7) In this article “hedgerow” includes a hedgerow to which the Hedgerow Regulations 1997 apply and includes important hedgerows.

### **Maintenance of drainage works**

**18.—**(1) Nothing in this Order, or the construction, maintenance or operation of the authorised development under it, affects any responsibility for the maintenance of any works connected with the drainage of land, whether that responsibility is imposed or allocated by or under any enactment, or otherwise, unless otherwise agreed in writing between the undertaker and the person responsible.

(2) In this article “drainage” has the same meaning as in section 72 (interpretation) of the Land Drainage Act 1991(b).

---

(a) Section 206(1) was amended by paragraph 11 of Schedule 8 to the 2008 Act.  
(b) The definition was substituted by section 100(2) of the Environment Act 1995 (c. 25).

**PART 3**  
**POWERS OF ACQUISITION AND POSSESSION OF LAND**

*Powers of acquisition*

**Compulsory acquisition of land**

**19.**—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development, or to facilitate it, or as is incidental to it.

(2) This article is subject to article 22 (compulsory acquisition of rights and restrictive covenants), article 27 (acquisition of subsoil, etc., only) and article 29 (temporary use of land for constructing the authorised development).

**Compulsory acquisition of land – incorporation of the minerals code**

**20.** Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981 are incorporated into this Order subject to the modifications that—

- (a) paragraph 8(3) is not incorporated; and
- (b) for “the acquiring authority” substitute “the undertaker”.

**Time limit for exercise of powers to possess land temporarily or to acquire land compulsorily**

**21.**—(1) After the end of the period of five years beginning with the day on which this Order comes into force—

- (a) no notice to treat is to be served under Part 1 (compulsory purchase under Acquisition of Land Act of 1946) of the 1965 Act as modified by article 25 (modification of Part 1 of the 1965 Act); and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 26 (application of the 1981 Act),

in relation to any part of the Order land.

(2) The authority conferred by article 29 (temporary use of land for constructing the authorised development) ceases at the end of the period referred to in paragraph (1) except that nothing in this paragraph prevents the undertaker from remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

**Compulsory acquisition of rights and restrictive covenants**

**22.**—(1) Subject to the following paragraphs of this article, the undertaker may acquire such rights over the Order land or impose such restrictive covenants affecting the Order land as may be required for any purpose for which that land may be acquired under article 19 (compulsory acquisition of land), by creating them as well as acquiring rights already in existence.

(2) In the case of the Order land specified in columns (1) and (2) of Schedule 4 (land in which only new rights etc., may be acquired) the undertaker’s powers of compulsory acquisition under paragraph (1) are limited to the acquisition of such wayleaves, easements, new rights over the land or the imposition of such restrictive covenants as the undertaker may require for or in connection with the authorised development for the purposes specified in column (3) of Schedule 4 in relation to that land.

(3) Subject to section 8 (other provisions as to divided land)(a) of, and Schedule 2A (counter-notice requiring purchase of land not in notice to treat)(b) to, the 1965 Act (as substituted by paragraph 5(8) of Schedule 5 (modification of compensation and compulsory purchase enactments for the creation of new rights and restrictive covenants)), where the undertaker acquires a right over

---

(a) Section 8 was amended by paragraphs 1 and 2 of Schedule 17 to, the Housing and Planning Act 2016 (c. 22) and S.I. 2009/1307.

(b) Schedule 2A was inserted by paragraphs 1 and 3 of Schedule 17 to the Housing and Planning Act 2016.

land or the benefit of a restrictive covenant, the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 5 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant.

### **Private rights over land**

**23.**—(1) Subject to the provisions of this article, all private rights over land subject to compulsory acquisition under this Order are extinguished—

- (a) from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry onto the land by the undertaker under section 11(1) (powers of entry)(a) of the 1965 Act,

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under this Order are extinguished in so far as their continuance would be inconsistent with the exercise of the right or burden of the restrictive covenant—

- (a) from the date of the acquisition of the right or the benefit of the restrictive covenant by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry onto the land by the undertaker under section 11(1) of the 1965 Act, or
- (c) on commencement of any activity authorised by the Order which interferes with or breaches those rights,

whichever is the earlier.

(3) Subject to the provisions of this article, all private rights over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

(4) Any person who suffers loss by the extinguishment or suspension of any private right or by the imposition of any restrictive covenant under this article is entitled to compensation in accordance with the terms of section 152 (compensation in case where no right to claim in nuisance)(b) of the 2008 Act to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(5) This article does not apply in relation to any right to which section 138 (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.)(c) of the 2008 Act or article 31 (statutory undertakers) applies.

(6) Paragraphs (1) to (3) have effect subject to—

- (a) any notice given by the undertaker before—
  - (i) the completion of the acquisition of the land or the acquisition of the rights or the imposition of restrictive covenants over or affecting the land;
  - (ii) the undertaker's appropriation of it;
  - (iii) the undertaker's entry onto it; or
  - (iv) the undertaker's taking temporary possession of it,that any or all of those paragraphs do not apply to any right specified in the notice; and
- (b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

---

(a) Section 11(1) was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No. 1), and sections 186(1) and (2), 187 and 188 of the Housing and Planning Act 2016 (c. 22) S.I. 2009/1307.

(b) Section 152 was amended by S.I. 2009/1307.

(c) Section 138 was amended by section 23(1) and (4) of the Growth and Infrastructure Act 2013 (c. 27) and S.I. 2017/1285.

- (7) If any such agreement as is referred to in paragraph (6)(b)—
- (a) is made with a person in or to whom the right is vested or belongs; and
  - (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(8) References in this article to private rights over land include any right of way, trust, incident, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect.

### **Power to override easements and other rights**

**24.**—(1) Any authorised activity which takes place on land within the Order limits (whether the activity is undertaken by the undertaker or by any person deriving title from the undertaker or by any contractors, servants or agents of the undertaker) is authorised by this Order if it is done in accordance with the terms of this Order, notwithstanding that it involves—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to the user of land arising by virtue of a contract.

(2) The interests and rights to which this article applies include any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by the virtue of a contract.

(3) Where an interest, right or restriction is overridden by paragraph (1) compensation—

- (a) is payable under section 7 (measure of compensation in case of severance) or section 10 (further provision as to compensation for injurious affection) of the 1965 Act; and
- (b) is to be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections where—
  - (i) the compensation is to be estimated in connection with a purchase under that Act; or
  - (ii) the injury arises from the execution of works on or use of land acquired under that Act.

(4) Where a person deriving title under the undertaker by whom the land in question was acquired—

- (a) is liable to pay compensation by virtue of paragraph (3); and
- (b) fails to discharge that liability,

the liability is enforceable against the undertaker.

(5) Nothing in this article is to be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than such an interference or breach as is mentioned in paragraph (1) of this article.

(6) In this article “authorised activity” means—

- (a) the erection, construction or maintenance of any part of the authorised development;
- (b) the exercise of any power authorised by this Order; or
- (c) the use of any land (including the temporary use of land).

### **Modification of Part 1 of the 1965 Act**

**25.**—(1) Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act, as applied to this Order by section 125 (application of compulsory acquisition provisions)(a) of the 2008 Act, is modified as follows.

---

(a) Section 125 was amended by section 190 of, and paragraph 17 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22).

(2) In section 4A(1) (extension of time limit during challenge)(a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 4” substitute “section 118 (legal challenges relating to applications for orders granting development consent)(b) of the Planning Act 2008, the 5 year period mentioned in article 21 (time limit for exercise of powers to possess land temporarily or to acquire land compulsorily) of the [A66 Northern Trans-Pennine Development Consent Order 202[\*]]”.

(3) In section 11A (powers of entry: further notice of entry)(c)—

(a) in subsection (1)(a), after “land” insert “under that provision”; and

(b) in subsection (2), after “land” insert “under that provision”.

(4) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 21 (time limit for exercise of powers to possess land temporarily or to acquire land compulsorily) of the A66 Northern Trans-Pennine Development Consent Order 202[\*]”.

(5) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat)(d)—

(a) for paragraphs 1(2) and 14(2) substitute—

“(2) But see article 27(4) (acquisition of subsoil, etc., only) of the A66 Northern Trans-Pennine Development Consent Order 202[\*], which excludes the acquisition of subsoil or airspace only from this Schedule.”; and

(b) after paragraph 29, insert—

## “PART 4

### INTERPRETATION

**30.** In this Schedule, references to entering on and taking possession of land do not include doing so under articles 14 (protective works to buildings), 15 (authority to survey and investigate land), 29 (temporary use of land for constructing the authorised development) or 30 (temporary use of land for maintaining the authorised development) of the A66 Northern Trans-Pennine Development Consent Order 202[\*].”.

### **Application of the 1981 Act**

**26.—**(1) The 1981 Act applies as if this Order were a compulsory purchase order.

(2) The 1981 Act, as applied by paragraph (1) has effect with the following modifications.

(3) In section 1 (application of Act) for subsection (2), substitute—

“(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.”.

(4) In section 5 (earliest date for execution of declaration)(e), in subsection (2), omit the words from “, and this subsection” to the end.

(5) Omit section 5A (time limit for general vesting declaration)(f).

(6) In section 5B (extension of time limit during challenge)(g) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 5A” substitute “section 118 (legal challenges relating to

---

(a) Section 4A was inserted by section 202(1) of the Housing and Planning Act 2016 (c. 22).

(b) Section 118 was amended by paragraphs 1 and 59 of Schedule 13, and Part 20 of Schedule 25 to, the Localism Act 2011 (c. 20) and section 92(4) of the Criminal Justice and Courts Act 2015 (c. 2).

(c) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016.

(d) Schedule 2A was inserted by section 199(1) of, and paragraphs 1 and 3 of Schedule 17 to, the Housing and Planning Act 2016 (c. 22).

(e) Section 5 was amended by section 183 of, and paragraphs 4 and 6 of Schedule 15 to, the Housing and Planning Act 2016 (c. 22).

(f) Section 5A was inserted by section 182(2) of the Housing and Planning Act 2016 (c. 22).

(g) Section 5B was inserted by section 202(2) of the Housing and Planning Act 2016 (c. 22).



applications for orders granting development consent)(a) of the Planning Act 2008, the 5 year period mentioned in article 21 (time limit for exercise of powers to possess land temporarily or to acquire land compulsorily) of the A66 Northern Trans-Pennine Development Consent Order 202[\*]”.

(7) In section 6 (notices after execution of declaration)(b), in subsection (1)(b), for “section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “section 134 (notice of authorisation of compulsory acquisition)(c) of the Planning Act 2008”.

(8) In section 7 (constructive notice to treat)(d), in subsection (1)(a), omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.

(9) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration)(e), for paragraph 1(2) substitute—

“(2) But see article 27(4) (acquisition of subsoil, etc., only) of the A66 Northern Trans-Pennine Development Consent Order 202[\*], which excludes the acquisition of subsoil or airspace only from this Schedule.”.

(10) References to the 1965 Act in the 1981 Act are to be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and as modified by article 25 (modification of Part 1 of the 1965 Act)) to the compulsory acquisition of land under this Order.

### **Acquisition of subsoil, etc., only**

27.—(1) The undertaker may acquire compulsorily so much of, or such rights over, the subsoil of and airspace over the land referred to in paragraph (1) of article 19 (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights over, the subsoil or surface of or airspace over land referred to in paragraph (1), the undertaker is not required to acquire an interest in any other part of the land.

(3) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil or airspace only—

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act;
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
- (c) section 153(4A) (blighted land: proposed acquisition of part interest; material detriment test)(f) of the 1990 Act.

(4) Paragraphs (2) and (3) are to be disregarded where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory or airspace above a house, building or manufactory.

### **Rights over or under streets**

28.—(1) The undertaker may enter on, appropriate and use so much of the subsoil of, or airspace over, any street within the Order limits as may be required for the purposes of the authorised development or for any other purpose ancillary to the authorised development.

- 
- (a) Section 118 was amended by paragraphs 1 and 59 of Schedule 13, and Part 20 of Schedule 25, to the Localism Act 2011 (c. 20) and section 92(4) of the Criminal Justice and Courts Act 2015 (c. 2).
  - (b) Section 6 was amended by section 4 of, and paragraph 52(2) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and paragraph 7 of Schedule 15 to the Housing and Planning Act 2016 (c. 22).
  - (c) Section 134 was amended by section 142 of, and Part 21 of Schedule 25 to, the Localism Act 2011 (c. 20) and S.I. 2017/16.
  - (d) Section 7 was substituted by paragraphs 1 and 3 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).
  - (e) Schedule A1 was inserted by paragraphs 1 and 6 of Part 1 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).
  - (f) Subsection (4A) of section 153 was inserted by section 200(1) and (2) of the Housing and Planning Act 2016 (c. 22).

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person's interest in land, and who suffers loss as a result, is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 (sharing cost of necessary measures) of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

#### *Temporary possession of land*

### **Temporary use of land for constructing the authorised development**

**29.**—(1) The undertaker may, in connection with the construction of the authorised development but subject to article 21 (time limit for exercise of powers to possess land temporarily or to acquire land compulsorily)—

(a) enter on and take temporary possession of—

- (i) the land specified in columns (1) and (2) of Schedule 6 (land of which only temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised development specified in column (4) of that Schedule; and
- (ii) any of the Order land in respect of which no notice of entry has been served under section 11 (powers of entry)(a) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 (execution of declaration)(b) of the 1981 Act;

(b) remove any buildings and vegetation from that land referred to in sub-paragraph (a);

(c) construct temporary works (including the provision of means of access) and buildings on the land referred to in sub-paragraph (a); and

(d) construct any works on the land referred to in sub-paragraph (a) as are mentioned in Schedule 1 (authorised development).

(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land and explain the purpose for which entry is proposed to be taken in respect of land specified under paragraph (1)(a)(ii).

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article—

- (a) in the case of any land specified in paragraph (1)(a)(i), after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (4) of Schedule 6; or

---

(a) Section 11 was amended by section 34(1) of, and Schedule 4 of, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), sections 186(2), 187(2) and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22), and S.I. 2009/1307.

(b) Section 4 was amended by section 184 and 185 of, and paragraphs 1 and 2 of Schedule 18 to, the Housing and Planning Act 2016.

- (b) in the case of any land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the work, use of facilities, or other purpose, for which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry under section 11 (powers of entry) of the 1965 Act or made a declaration under section 4 (execution of declaration) of the 1981 Act in relation to that land.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land or return the land in such condition as is agreed with the owner of the land; but the undertaker is not required to—

- (a) replace a building removed under this article;
- (b) restore the land on which any permanent works have been constructed under paragraph (1)(d);
- (c) remove any ground strengthening works which have been placed on the land to facilitate construction of the authorised development; or
- (d) remove any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development.

(5) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(7) Subject to article 39 (no double recovery), nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (5).

(8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i).

(9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(10) Section 13 (refusal to give possession to acquiring authority)(a) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

### **Temporary use of land for maintaining the authorised development**

**30.—**(1) Subject to paragraph (3), at any time during the maintenance period relating to any of the authorised development, the undertaker may—

- (a) enter upon and take temporary possession of any land within the Order limits if possession is reasonably required for the purpose of maintaining the authorised development;
- (b) enter on any land within the Order limits for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised development; and
- (c) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

---

(a) Section 13 was amended by sections 62(3) and 139 of, and paragraph 27 and 28 of Schedule 13, and Part 3 of Schedule 23, to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(3) Not less than 28 days before entering upon and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land and that notice must state the purpose for which the undertaker intends to take possession of the land including the particulars of the part of the authorised development for which possession is to be taken.

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the undertaker takes possession of land under this article, it is not required to acquire the land or any interest in it.

(10) Section 13 (refusal to give possession to the acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(11) In this article "the maintenance period", in relation to any part of the authorised development, means the period of 5 years beginning with the date on which—

- (a) that part of the authorised development is first opened for public use (where that part of the authorised development is intended to be used by the public); or
- (b) in respect of any other part of the authorised development, that part is first brought into operational use by the undertaker.

### *Supplementary*

#### **Statutory undertakers**

**31.**—(1) Subject to the provisions of article 22(2) (compulsory acquisition of rights and restrictive covenants), Schedule 9 (protective provisions) and paragraph (2), the undertaker may—

- (a) exercise the powers conferred by article 19 (compulsory acquisition of land) and article 22 (compulsory acquisition of rights and restrictive covenants) in relation to so much of the Order land belonging to statutory undertakers; and
- (b) extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers over or within the Order land.

(2) Paragraph (1)(b) has no effect in relation to apparatus in respect of which the following provisions apply—

- (a) Part 3 (street works in England and Wales) of the 1991 Act; or
- (b) article 32 (apparatus and rights of statutory undertakers in stopped up streets).

## **Apparatus and rights of statutory undertakers in stopped up streets**

32.—(1) Where a street is stopped up under article 10 (permanent stopping up of streets and private means of access), any statutory utility whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not been made.

(2) Where a street is stopped up under article 10 any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker must—

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it; or
- (b) provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).

(3) Subject to the following provisions of this article, the undertaker must pay to any statutory utility an amount equal to the cost reasonably incurred by the utility in or in connection with—

- (a) the execution of the relocation works required in consequence of the stopping up of the street; and
- (b) the doing of any other work or thing rendered necessary by the execution of the relocation works.

(4) If in the course of the execution of relocation works under paragraph (2)—

- (a) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which, apart from this paragraph, would be payable to the statutory utility by virtue of paragraph (3) is to be reduced by the amount of that excess.

(5) For the purposes of paragraph (4)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(6) An amount which, apart from this paragraph, would be payable to a statutory utility in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4)) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(7) Paragraphs (3) to (6) do not apply where the authorised development constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 (street works in England and Wales) of the 1991 Act, but instead—

- (a) the allowable costs of the relocation works are to be determined in accordance with section 85 (sharing of cost of necessary measures) of that Act and any regulations for the time being having effect under that section; and
- (b) the allowable costs are to be borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.

(8) In this article—

“relocation works” means work executed, or apparatus provided, under paragraph (2); and

“statutory utility” means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in section 151(1) (interpretation of chapter 1) of the Communications Act 2003.

### **Recovery of costs of new connection**

**33.—**(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 31 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such sewer is removed under article 31, any person who is—

(a) the owner or occupier of premises the drains of which communicated with that sewer; or

(b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which article 32 (apparatus and rights of statutory undertakers in stopped up streets) or Part 3 (street works in England and Wales) of the 1991 Act applies.

(4) In this article—

“public communications provider” has the same meaning as in section 151(1) (interpretation) of the Communications Act 2003; and

“public utility undertaker” means a gas, water, electricity or sewerage undertaker.

### **Special category land**

**34.—**(1) On the exercise by the undertaker of the relevant Order powers, the special category land is not to vest in the undertaker until the undertaker has acquired the replacement land, the Secretary of State (in consultation with the relevant planning authority) has approved a scheme for the provision of the replacement land and the relevant planning authority has certified that the scheme has been implemented to its satisfaction.

(2) On the requirements of paragraph (1) being satisfied—

(a) the special category land is to vest in the undertaker and be discharged from all rights, trusts and incidents to which it was previously subject; and

(b) the replacement land is to vest, subject to the same rights, trusts and incidents as attached to the special category land, as follows—

(i) in relation to the S0102 special category, in any person in whom the special category land was vested immediately before it was vested in the undertaker; and

(ii) in relation to the S06 special category land and the S07 special category land, in the relevant planning authority.

(3) In this article—

“the relevant Order powers” means the powers exercisable over the special category land by the undertaker under article 19 (compulsory acquisition of land) or article 22 (compulsory acquisition of rights and restrictive covenants);

“the special category land” means—

- (i) the land within the Order limits for S0102 identified as comprising open space and being numbered 0102-01-32, 0102-01-47, 0102-02-01, 0102-02-08 and 0102-02-22 in the book of reference for S0102 and shown on the special category land plans for S0102 (“the S0102 special category land”);
- (ii) the land within the Order limits for S06 identified as comprising common land and being numbered 06-01-04, 06-01-05, 06-01-10, 06-01-44, 06-01-45 and 06-01-46 in the book of reference for S06 and shown on the special category land plans for S96 (“the S06 special category land”); and
- (iii) the land within the Order limits for S07 identified as comprising common land and being numbered 07-01-48, 07-01-51, 07-01-53, 07-01-61, 07-01-63, 07-01-64, 07-01-75, 07-01-76, 07-01-86, 07-01-87, 07-01-89 and 07-01-94 in the book of reference for S07 and on the special category land plans for S07 (“the S07 special category land”); and

“the replacement land” means—

- (i) for the S0102 special category land, the land identified as replacement land and numbered 0102-02-20 in the book of reference for S0102 and shown on the special category land plans for S0102;
- (ii) for the S06 special category land (common land), the land identified as replacement land and numbered 06-01-39 in the book of reference for S06 and shown on the special category land plans for S06; and
- (iii) for the S07 special category land, the land identified as replacement land and numbered 07-01-25 in the book of reference for S07 and shown on the special category land plans for S07.

### **Crown rights**

**35.**—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker to take, use, enter upon or in any manner interfere with any land or rights of any description (including any river, channel, creek, bay or estuary)—

- (a) belonging to His Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners;
- (b) belonging to His Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the government department having the management of that land; or
- (c) belonging to a government department or held in trust for His Majesty for the purposes of a government department without the consent in writing of that government department.

(2) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions and is deemed to have been given in writing where it is sent electronically.

### **Relocation of Brough Hill Fair**

**36.**—(1) Subject to paragraph (5), the undertaker must not take exclusive possession of any part of the existing Brough Hill Fair site for the purposes of constructing the authorised development until the Secretary of State has—

- (a) approved a scheme prepared by the undertaker for the provision of the replacement Brough Hill Fair site; and
- (b) certified that—
  - (i) the approved scheme has been satisfactorily implemented by or on behalf of the undertaker; and
  - (ii) the replacement Brough Hill Fair site is suitable and available for use by the persons who enjoy the Brough Hill Fair rights.



(2) The scheme for the provision of the replacement Brough Hill Fair site mentioned in paragraph (1) must—

- (a) provide for the replacement Brough Hill Fair site to be laid out such that it is a suitable replacement for the existing Brough Hill Fair site, in terms of—
  - (i) including facilities that are at least as equivalent to those of the existing Brough Hill Fair site at the time this Order came into force;
  - (ii) making appropriate provision for safe access to and from the replacement Brough Hill Fair site for vehicles, horses and persons;
  - (iii) making appropriate provision for the treatment of the boundaries of the replacement Brough Hill Fair site, to secure the safe use and enjoyment of the site and having regard to the use and amenity of adjacent land; and
  - (iv) setting out the arrangements for maintenance and management of the facilities, access and boundaries mentioned in paragraphs (i) to (iii) above, having regard in particular to safety and security considerations; and
- (b) be prepared by the undertaker following consultation with—
  - (i) such persons as the undertaker reasonably considers represents the interests of the persons who enjoy the Brough Hill Fair rights;
  - (ii) the owners and occupiers of land adjacent to the replacement Brough Hill Fair site;
  - (iii) the relevant planning authority; and
  - (iv) the local highway authority.

(3) Immediately on taking exclusive possession of the existing Brough Hill Fair site for the purposes of constructing the authorised development—

- (a) the Brough Hill Fair rights vest in the replacement Brough Hill Fair site; and
- (b) the existing Brough Hill Fair site is released from the Brough Hill Fair rights.

(4) As soon as is reasonably practicable after taking exclusive possession of the existing Brough Hill Fair site for the purposes of constructing the authorised development, the undertaker must—

- (a) publish in a locally circulating newspaper a notice confirming the date on which the Brough Hill Fair rights vested in the replacement Brough Hill Fair site and the existing Brough Hill Fair site was released from the Brough Hill Fair rights; and
- (b) notify such persons as the undertaker reasonably considers represent the interests of the persons who enjoy the Brough Hill Fair rights.

(5) Nothing in paragraph (1) prohibits the undertaker from taking exclusive possession of any part of the existing Brough Hill Fair site for the purposes of implementing a scheme approved under that paragraph.

(6) The scheme approved by the Secretary of State under paragraph (1)(a) may be modified by the undertaker before it has been implemented in full, and if it is then paragraphs (1) and (2) apply to the preparation, approval and implementation of the modified scheme.

(7) The transfer of the Brough Hill Fair rights to the replacement Brough Hill Fair site by virtue of paragraph (3) is not to be regarded, in any claim or legal proceedings relating to the nature and extent of the Brough Hill Fair rights, as resulting in any interruption to the enjoyment of those rights.

(8) In this article—

“the Brough Hill Fair rights” means any and all customary rights, prescriptive rights, rights derived from royal charter and public rights, that relate to the event known as the Brough Hill Fair that do or may subsist immediately before the Brough Hill Fair rights are transferred to the replacement Brough Hill Fair site in accordance with the provisions of this article;

“the existing Brough Hill Fair site” means the land described in the book of reference for S06 and shown on the land plans for S06 that is numbered 06-04-43 and 06-05-06; and

“the replacement Brough Hill Fair site” means the land in the book of reference for S06 and shown on the land plans for S06 that is—

- (a) numbered 06-04-32 and 06-04-33; and
- (b) numbered 06-04-43 but only so much of it (approximately 4,000 square metres) as is included in the scheme certified under paragraph (1)(b).

### *Compensation*

#### **Disregard of certain interests and improvements**

**37.**—(1) In assessing the compensation payable to any person on the acquisition from that person of any land or right over any land under this Order, the tribunal must not take into account—

- (a) any interest in land; or
- (b) any enhancement of the value of any interest in land by reason of any building erected, works carried out or improvement or alteration made on the relevant land,

if the tribunal is satisfied that the creation of the interest, the erection of the building, the carrying out of the works or the making of the improvement or alteration as part of the authorised development was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

(2) In paragraph (1) “relevant land” means the land acquired from the person concerned or any other land with which that person is, or was at the time when the building was erected, the works constructed or the improvement or alteration made as part of the authorised development, directly or indirectly concerned.

#### **Set-off for enhancement in value of retained land**

**38.**—(1) In assessing the compensation payable to any person in respect of the acquisition from that person under this Order of any land (including the subsoil) the tribunal must set off against the value of the land so acquired any increase in value of any contiguous or adjacent land belonging to that person in the same capacity which will accrue to that person by reason of the construction of the authorised development.

(2) In assessing the compensation payable to any person in respect of the acquisition from that person of any new rights over land (including the subsoil) under article 22 (compulsory acquisition of rights and restrictive covenants), the tribunal must set off against the value of the rights so acquired—

- (a) any increase in the value of the land over which the new rights are required; and
- (b) any increase in value of any contiguous or adjacent land belonging to that person in the same capacity,

which will accrue to that person by reason of the construction of the authorised development.

(3) The 1961 Act has effect, subject to paragraphs (1) and (2) as if this Order were a local enactment for the purposes of that Act.

#### **No double recovery**

**39.** Compensation is not payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law, or under two or more different provisions of this Order.

## PART 4

### OPERATIONAL PROVISIONS

#### Classification of roads, etc.

**40.**—(1) On the date on which the roads described in the paragraphs of Schedule 7 (classification of roads, etc.) listed in column (1) of the table below are completed and open for traffic, those roads with the corresponding classification in column (2) of that table that are described as—

- (a) special roads, are to become special roads as if they had become so by virtue of an order made under section 16(3) (general provision as to special roads) of the 1980 Act specifying the date on which they were to become special roads;
- (b) trunk roads, are to become trunk roads as if they had become so by virtue of an order made under section 10(2) (general provision as to trunk roads)(a) of the 1980 Act specifying that date as the date on which they were to become trunk roads;
- (c) classified roads, are to be classified as set out in that Part and are to be a classified road for the purpose of any enactment or instrument which refers to highways classed as classified roads, as if such classification had been made under section 12(3) (general provision as to principal and classified roads) of the 1980 Act;
- (d) unclassified roads, are to be unclassified; and
- (e) a quiet lane, is to become a quiet lane as if it had been designated as a quiet lane by virtue of section 268(1) (quiet lanes and home zones)(b) of the Transport Act 2000.

**Table referred to in paragraph (1)**

<i>(1)</i> <i>Paragraphs of Schedule 7 in which the road to be classified in accordance with the provisions of this article is described</i>	<i>(2)</i> <i>Classification of roads</i>
2, 3, 4 and 5	Special roads
1, 7, 8, 9, 10, 16, 17, 18, 19, 24, 25, 26, 27, 28, 29, 30, 50, 51, 53, 62, 63, 64, 65, 66, 67, 72, 73, 74, 79, 80, 81, 83, 88, 89, 92 and 93	Trunk roads
6, 11, 12, 13, 14, 20, 31, 32, 33, 34, 35, 36, 37, 38, 52, 54, 55, 56, 58, 75, 82, 90 and 91	Classified roads
21, 22, 39, 40, 41, 42, 43, 44, 45, 46, 47, 57, 59, 68, 69, 70, 76, 77, 78 and 94	Unclassified roads
48	Quiet lane

(2) Subject to paragraphs (3) and (4), the undertaker may vary the classification or designation of the roads, or any part of those roads, provided for in paragraph (1) and such variation may provide for any trunk road comprised in the authorised development and referred to in paragraph (1)(a) to be classified as a special road.

(3) The undertaker must not exercise the powers conferred by paragraph (2) unless the undertaker has—

- (a) given not less than 4 weeks' notice in writing of the undertaker's intention so to do to the chief officer of police and to the local highway authority in whose area the road is situated; and
- (b) published a notice, declaring the date on which that road or part of it is to be classified not less than 7 days before that date, in at least one local newspaper circulating in the area in

(a) Section 10(2) was amended by section 22(2)(a) of the 1991 Act and by section 1(6) of, and paragraphs 1 and 10(1) and (2) of Schedule 1 to, the Infrastructure Act 2015 (c. 7).

(b) (c. 38) 2000.

which the road, or as the case may be, the relevant part of it is situated and in the London Gazette.

(4) Before exercising the powers conferred by paragraph (2), the undertaker must consult such persons as the undertaker considers necessary and appropriate and must take into consideration any representations made to the undertaker by any such person.

(5) Any roads classified as a special road in accordance with paragraph (1) are to be—

- (a) classified as special roads for the purpose of any enactment or instrument which refers to highways classified as special roads; and
- (b) provided for the use of traffic of Classes I and II of the classes of traffic set out in Schedule 4 (classes of traffic for purposes of special roads) to the 1980 Act.

(6) On any such days as the undertaker may determine, unless otherwise agreed in writing with the local highway authority, the roads described in paragraphs 15, 23, 49, 60, 61, 71, 84, 85, 86, 87, 95 and 96 of Schedule 7 are to cease to be trunk roads as if they had ceased to be trunk roads by virtue of an order made under section 10(2) of the 1980 Act specifying that date as the date on which they were to cease to be trunk roads.

(7) The application of paragraphs (1) to (6) may be varied or revoked by any instrument made under any enactment which provides for the variation or revocation of such matters.

### Clearways

**41.**—(1) From such day as the undertaker may determine, except as provided in paragraph (2) below, no person is to cause or permit any vehicle to wait on any part of the lengths of road described in column (2) of Part 2 (prohibitions) of Schedule 8 (traffic regulation measures etc.) where it is identified that such lengths of road are to become a clearway in the corresponding row of column (3) of that Part, except upon the direction of, or with the permission of, a uniformed constable or uniformed traffic officer.

(2) Nothing in paragraph (1) applies—

- (a) to render it unlawful to cause or permit a vehicle to wait on any part of a road, for so long as may be necessary to enable that vehicle to be used in connection with—
  - (i) the removal of any obstruction to traffic;
  - (ii) the maintenance, improvement, reconstruction or operation of the road;
  - (iii) the laying, erection, inspection, maintenance, alteration, repair, renewal or removal in or near the road of any sewer, main pipe, conduit, wire, cable or other apparatus for the supply of gas, water, electricity or any electronic communications apparatus as defined in Schedule 3A (the electronic communications code) to the Communications Act 2003(a); or
  - (iv) any building operation or demolition;
- (b) in relation to a vehicle being used—
  - (i) for police, ambulance, fire and rescue authority or traffic officer purposes;
  - (ii) in the service of a local authority, safety camera partnership or Driver and Vehicle Standards Agency in pursuance of statutory powers or duties;
  - (iii) in the service of a water or sewerage undertaker within the meaning of the Water Industry Act 1991; or
  - (iv) by a universal service provider for the purposes of providing a universal postal service as defined by the Postal Service Act 2000; or
- (c) in relation to a vehicle waiting when the person in control of it is—
  - (i) required by law to stop;
  - (ii) obliged to stop in order to avoid an accident; or

---

(a) Schedule 3A was inserted by section 4(2) of, and Schedule 1 to, the Digital Economy Act 2017 (c. 30).

(iii) prevented from proceeding by circumstances outside the person's control.

(3) No person is to cause or permit any vehicle to wait on any part of the roads described in paragraph (1) for the purposes of selling, or dispensing of, goods from that vehicle, unless the goods are immediately delivered at, or taken into, premises adjacent to the land on which the vehicle stood when the goods were sold or dispensed.

(4) Paragraphs (1), (2) and (3) have effect as if made by order under the 1984 Act, and their application may be varied or revoked by an order made under that Act or any other enactment which provides for the variation or revocation of such orders.

(5) In this article, "traffic officer" means an individual designated under section 2 (designation of traffic officers) of the Traffic Management Act 2004.

### **Traffic regulation measures**

**42.**—(1) Subject to the provisions of this article, and from any such days as the undertaker may determine—

- (a) no person is to drive any motor vehicle at a speed exceeding the limit in miles per hour specified in column (3) of Part 1 (speed limits) of Schedule 8 (traffic regulation measures etc.) along the lengths of road identified in the corresponding row of column (2) of that Part;
- (b) subject to paragraph (2) and article 41 (clearways), the restriction specified in column (3) of Part 2 (clearways and prohibitions) of Schedule 8 is to apply to the length of road identified in the corresponding row of column (2) of that Part; and
- (c) the orders specified in column (3) of Part 3 (revocations and variations of existing traffic regulation orders) of Schedule 8 are to be varied or revoked as specified in the corresponding row of column (4) of that Part in respect of the lengths of roads specified in the corresponding row of column (2) of that Part.

(2) No speed limit imposed by or under this Order applies to vehicles falling within regulation 3(4) of the Road Traffic Exemptions (Special Forces) (Variation and Amendment) Regulations 2011 when used in accordance with regulation 3(5) of those regulations.

(3) Without limiting the scope of the specific powers conferred by paragraph (1) but subject to the provisions of this article and consent of the traffic authority in whose area the road concerned is situated, which consent must not be unreasonably withheld, the undertaker may, in so far as necessary or expedient for the purposes of, in connection with, or in consequence of the construction, maintenance and operation of the authorised development—

- (a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;
- (b) permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles on any road;
- (c) authorise the use as a parking place of any road;
- (d) make provision as to the direction or priority of vehicular traffic on any road; and
- (e) permit or prohibit vehicular access to any road,

either at all times or at times, on days or during such periods as may be specified by the undertaker.

(4) The power conferred by paragraph (3) may be exercised at any time prior to the expiry of 24 months from the opening of the authorised development for public use, but subject to paragraph (8), any prohibition, restriction or other provision made under paragraph (3) may have effect both before and after the expiry of that period.

(5) The undertaker must not exercise the powers conferred by paragraph (3), unless the undertaker has—

- (a) given not less than—
  - (i) 12 weeks' notice in writing of the undertaker's intention so to do in the case of a prohibition, restriction or other provision intended to have effect permanently; or

- (ii) 4 weeks' notice in writing of the undertaker's intention so to do in the case of a prohibition, restriction or other provision intended to have effect temporarily, to the chief officer of police and to the traffic authority in whose area the road is situated; and
  - (b) advertised the undertaker's intention in such manner as the traffic authority may specify in writing within 28 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(i), or within 7 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(ii).
- (6) Any prohibition, restriction or other provision made by the undertaker under paragraph (1) or (3)—
- (a) has effect as if duly made by, as the case may be—
    - (i) the traffic authority in whose area the road is situated, as a traffic regulation order under the 1984 Act; or
    - (ii) the local authority in whose area the road is situated, as an order under section 32 (power of local authorities to provide parking places)(a) of the 1984 Act, and the instrument by which it is effected may specify savings and exemptions to which the prohibition, restriction or other provision is subject; and
  - (b) is deemed to be a traffic order for the purposes of Schedule 7 (road traffic contraventions subject to civil enforcement) to the Traffic Management Act 2004.
- (7) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers conferred by paragraph (1) or (3) within a period of 24 months from the opening of the authorised development.
- (8) Before exercising the powers conferred by paragraph (1) or (3) the undertaker must consult such persons as the undertaker considers necessary and appropriate and must take into consideration any representations made to the undertaker by any such person.
- (9) Expressions used in this article and in the 1984 Act have the same meaning in this article as in that Act.

## PART 5

### MISCELLANEOUS AND GENERAL

#### **Benefit of the Order**

43.—(1) Subject to article 44 (consent to transfer benefit of Order) and paragraph (2), the provisions of this Order conferring functions on the undertaker have effect solely for the benefit of the undertaker.

(2) Paragraph (1) does not apply to the works for which the consent is granted by this Order for the express benefit or accommodation of owners and occupiers of land, statutory undertakers and other persons affected by the authorised development.

#### **Consent to transfer benefit of Order**

44.—(1) The undertaker may, regardless of any provision in any enactment, with the consent of the Secretary of State—

- (a) transfer to another person (“the transferee”) any or all of the benefits of the provisions of this Order that apply to the undertaker and such statutory rights as may be agreed between the undertaker and the transferee; or

---

(a) Section 32 was amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51) and section 168(1) of, and paragraph 39 of Schedule 8 to, the 1991 Act.

- (b) grant to another person (“the grantee”) for a period agreed between the undertaker and the grantee any or all of the benefit of the provisions of this Order that apply to the undertaker and such related statutory rights as may be so agreed.

(2) Where an agreement has been made in accordance with paragraph (1), references in the provisions of this Order and any document certified under it that apply to the undertaker are to be read as references to the transferee or the grantee, or any other person who may exercise, enjoy or be responsible for any functions of the undertaker pursuant to that agreement, as the case may be.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

### **Application of landlord and tenant law**

**45.**—(1) This article applies to any agreement entered into by the undertaker under article 44 (consent to transfer benefit of Order) so far as it relates to the terms on which any land is subject to a lease granted by or under that agreement.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants prejudices the operation of any agreement to which this article applies.

(3) No enactment or rule of law to which paragraph (2) applies is to apply in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

### **Operational land for the purposes of the 1990 Act**

**46.** Development consent granted by this Order for development on Order land is to be treated as specific planning permission for the purposes of section 264(3)(a) (cases in which land is to be treated as not being operational land for the purposes of that Act) of the 1990 Act.

### **Defence to proceedings in respect of statutory nuisance**

**47.**—(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisances) of the Environmental Protection Act 1990(**a**) in relation to a nuisance falling within paragraph (g) of section 79(1) (noise emitted from premises so as to be prejudicial to health or a nuisance) of that Act no order is to be made, and no fine may be imposed, under section 82(2) (summary proceedings by persons aggrieved by statutory nuisances)(**b**) of that Act if—

- (a) the defendant shows that the nuisance—
  - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the construction or maintenance of the authorised development in accordance with a notice served under section 60 (control of noise on construction

---

(a) There are amendments to section 82(1) which are not relevant to this Order.

(b) Section 82(2) was amended by section 5(2) of the Noise and Statutory Nuisance Act 1993 (c. 40). There are other amendments to section 82(2) that are not relevant to this Order.



sites), or a consent given under section 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974(a); or

(ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or

(b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974, does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

### **Protective provisions**

48. Schedule 9 (protective provisions) has effect.

### **Certification of plans, etc.**

49.—(1) As soon as practicable after the making of this Order, the undertaker must submit copies of each of the plans and documents referred to in Schedule 10 (documents to be certified) to the Secretary of State for certification as true copies of those plans and documents.

(2) Where any plan or document referred to in Schedule 10 requires to be amended to reflect the terms of the Secretary of State's decision to make this Order, that plan or document in the form amended to the Secretary of State's satisfaction is the version of the plan or document required to be certified under paragraph (1).

(3) A plan or document so certified is admissible in any proceedings as evidence of the contents of the plan or document of which it is a copy.

(4) The undertaker must, following certification of the plans or documents in accordance with paragraph (1), make those plans or documents available in electronic form for inspection by members of the public.

### **Service of notices**

50.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

(a) by post;

(b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or

(c) with the consent of the recipient and subject to paragraphs (6) to (9) by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978 as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

(a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and

(b) in any other case, the last known address of that person at the time of service.

---

(a) Sections 61(9) was amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990 (c. 43). There are other amendments to section 61 which are not relevant to this Order.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) the notice or document is in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

(10) In this article “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

## **Arbitration**

**51.** Except where otherwise expressly provided for in this Order and unless otherwise agreed in writing between the parties, any difference under any provision of this Order (other than a difference which falls to be determined by the tribunal) must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.

## **Consents, agreements and approvals**

**52.—**(1) Where any application is made to a relevant authority, the consent, agreement or approval concerned must, if given, be given in writing and is not to be unreasonably withheld or delayed.

(2) If a relevant authority which has received an application fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was received, the relevant authority is deemed to have given its consent, agreement or approval as the case may be.

(3) Any application to which this article applies must include a written statement that the provisions of paragraph (2) apply to that application.

(4) In this article—

“application” means an application or request for any consent, agreement or approval required or contemplated by articles 9 (construction and maintenance of new, altered or diverted streets and other structures), 11 (temporary prohibition, restriction or regulation of use of streets), 13 (discharge of water), 15 (authority to survey and investigate land) and 42 (traffic regulation measures); and

“relevant authority” means a relevant planning authority, a traffic authority, a highway authority, a street authority or an owner of a public sewer or drain as defined in article 13(7)(a).

### **Environmental Management Plans**

**53.**—(1) The undertaker must not commence any part of the authorised development until a second iteration EMP for that part has been submitted to and approved in writing by the Secretary of State.

(2) The Secretary of State must consult the relevant statutory environmental bodies, local authorities and highway authorities allowing each party a period not exceeding 30 days to respond unless otherwise agreed to in writing by the Secretary of State.

(3) Each part of the authorised development must be constructed in accordance with the relevant second iteration EMP applying to that part.

(4) Each part of the authorised development must be operated and maintained in accordance with the relevant third iteration EMP applying to that part.

(5) A second iteration EMP must—

(a) be substantially in accordance with the first iteration EMP insofar as it relates to the relevant part of the authorised development, unless the Secretary of State is satisfied that any part of the second iteration EMP that is not substantially in accordance with the first iteration EMP would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement; and

(b) be prepared in accordance with the consultation and determination provisions.

(6) Without prejudice to the power conferred on the undertaker to amend a second iteration EMP in accordance with paragraph (7), the undertaker may request the Secretary of State’s approval in writing of amendments to all or any part of a second iteration EMP and paragraph (5) applies to the approval of any such amendments.

(7) Subject to paragraphs, (8), (9) and (10) following the Secretary of State’s approval of a second iteration EMP under paragraph (1), the undertaker may determine to amend that second iteration EMP, or any part of it.

(8) The undertaker may only determine to amend a second iteration EMP or any part of it under paragraph (6) if—

(a) the undertaker is satisfied that those amendments—

(i) are substantially in accordance with the relevant second iteration EMP that has been approved by the Secretary of State under paragraph (1) or paragraph (6), as the case may be; and

(ii) would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement; and

(b) the undertaker has completed the consultation and determination provisions.

(9) The undertaker must not determine to amend a second iteration EMP (or any part of it) under paragraph (6) unless—

(a) the undertaker has sent to the Secretary of State—

(i) a copy of the submission;

(ii) a copy of the summary report; and

(iii) a statement of the determination the undertaker proposes to make; and

(b) either—

- (i) a period of 14 days has elapsed beginning with the date the Secretary of State received the information referred to in sub-paragraph (a) without the Secretary of State notifying the undertaker in accordance with sub-paragraph (ii) below or giving the undertaker a direction in accordance with paragraph (9) below (in relation to which the Secretary of State may notify the undertaker in writing, before the period of 14 days has elapsed, that the Secretary of State requires longer than this period to notify the undertaker in accordance with sub-paragraph (ii) below or to give the undertaker a direction in accordance with paragraph (9) below, specifying the longer period required, in which case that longer period will apply for the purposes of this paragraph); or
- (ii) the Secretary of State has notified the undertaker in writing that the Secretary of State is content for the undertaker to make the proposed determination.

(10) In relation to any determination proposed to be made by the undertaker to amend a second iteration EMP (or any part of it) under paragraph (7), the Secretary of State may direct that—

- (a) the undertaker must not make the proposed determination; and
- (b) the proposed determination is instead to be made by the Secretary of State as though it were in response to a request for the Secretary of State's approval of amendments to all or any part of the second iteration EMP made by the undertaker under paragraph (6).

(11) On completion of the construction of each part of the authorised development the undertaker must prepare, and determine whether to approve in accordance with the consultation and determination provisions, a third iteration EMP for that part, which must substantially accord with the measures relevant to the operation and maintenance of the authorised development contained in the relevant second iteration EMP approved (either initially, or as subsequently amended) for that part in accordance with the provisions of this article and the undertaker may at any time subsequently determine to approve amendments to a previously approved third iteration EMP in accordance with the provisions of this paragraph.

(12) If before the coming into force of this Order the undertaker or any other person has taken any steps that were intended to be steps towards compliance with the provisions of this article, those steps may be taken into account for the purposes of determining compliance with this article if they would have been valid steps for that purpose had they been taken after this Order came into force.

(13) The undertaker must not make a determination under-

- (a) a second iteration EMP approved under paragraph (1);
- (b) paragraph (7); or
- (c) paragraph (10)

until the arrangements for the undertaker to make such a determination (including details on how the matters contained in paragraph 1.4.48 of the first iteration EMP are to be addressed) have been submitted to and approved in writing by the Secretary of State, following such consultation as the Secretary of State considers to be appropriate.

(14) The undertaker must make any determination under the provisions listed in paragraph (13) in accordance with the arrangements approved under that paragraph unless the Secretary of State subsequently approved alternative arrangements in writing, following such consultation as the Secretary of State considers to be appropriate.

(15) In this article—

“commence” means beginning to carry out any material operation (as defined in section 56(4) of the 1990 Act) forming part of the authorised development other than operations consisting of archaeological investigations and mitigation works (but only to the extent undertaken in accordance with the guidance documents specified in paragraph B3.3.4 of Annex B3 of the first iteration EMP), ecological surveys and mitigation works, investigations for the purpose of assessing and monitoring ground conditions and levels, remedial work in respect of any contamination or other adverse ground conditions, erection of any temporary means of

enclosure, receipt and erection of construction plant and equipment and the temporary display of site notices or advertisements, and “commencement” is to be construed accordingly;

“the consultation and determination provisions” means the provisions contained in paragraphs 1.4.9 to 1.4.52 of the first iteration EMP that set out the matters on which consultation is required and the procedures that apply to the conduct of that consultation and which require the undertaker to maintain functional separation when making determinations under this article;

“the first iteration EMP” means the document certified by the Secretary of State under article 49 (certification of plans, etc.) as being the first iteration EMP (Environmental Management Plan) for the purposes of this Order;

“the second iteration EMP” means, in relation to any part of the authorised development, the development of the first iteration EMP in its application to that part of the authorised development, following the grant of development consent and in advance of its construction, as approved or subsequently amended in accordance with this article;

“submission” has the meaning given to it in paragraph 1.4.17 of the first iteration EMP;

“summary report” has the meaning given to it in paragraph 1.4.17 of the first iteration EMP; and

“the third iteration EMP” means, in relation to any part of the authorised development, the development of the second iteration EMP in its application to that part of the authorised development, to support its future management and operation following completion of its construction, as approved or subsequently amended in accordance with this article.

### **Detailed design**

**54.—**(1) Subject to article 7 (limits of deviation) and the provisions of this article, the authorised development must be designed in detail and carried out so that it is substantially in accordance with—

- (a) the design principles;
- (b) the works plans;
- (c) the engineering section drawings: plan and profiles and the engineering section drawings: cross sections; and
- (d) the matters approved by the Secretary of State under paragraphs (4), (7) and (8)

(2) The Secretary of State may approve a detailed design that departs from paragraph (1), following consultation with the relevant planning authority, the Environment Agency, Historic England and Natural England (on matters related to their statutory functions), provided that the Secretary of State is satisfied that any amendments to the design principles, the works plans, the engineering section drawings: plan and profiles and the engineering section drawings: cross sections would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

(3) Where amended details are approved by the Secretary of State under paragraph (2), those details are deemed to be substituted for the corresponding design principles, works plans, engineering section drawings: plan and profiles and engineering section drawings: cross sections as the case may be and the undertaker must make those amended details available in electronic form for inspection by members of the public.

(4) No part of the authorised development comprised in Scheme 06 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 Scheme 06 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 (in document HE565627-JBAU-XX-06-RP-HM-S3-P05-0001-Scheme6\_Modelling\_Report accepted on 15 May 2023) and arise from events with a magnitude up

to and including the 1% annual exceedance probability, plus allowance for the climate change in line with the 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 Scheme 06 unless otherwise agreed with the Environment Agency.

(7) The undertaker must not commence construction of each of the viaducts comprised in Work Nos. 0405-1A(xii), 0405-2A(x), 06-1C(vi) and 06-1C(x) until details of the design and external appearance of the viaducts have been submitted to approved in writing by the Secretary of State following consultation with the relevant planning authority.

(8) The undertaker must not commence the construction of Work No. 06-7 until detailed designs for these Works including the locations of any draining ponds and access roads and the associated ancillary works have been submitted to and approved in writing by the Secretary of State following consultation with the relevant planning authority.

(9) In this article—

“commence” has the same meaning as in article 53(15).

**Time limit for when development must begin**

**55.**—(1) The authorised development must not begin later than the expiration of 5 years beginning with the date on which this Order comes into force.

(2) Section 155 (when development begins) of the 2008 Act applies to this article.

Signed by the authority of the Secretary of State for Transport

Address  
Date

*Name*  
Title  
Department for Transport

# SCHEDULES

## SCHEDULE 1

Articles 2 and 4

### AUTHORISED DEVELOPMENT

#### PART 1

##### SCHEME 0102 – M6 J40 TO KEMPLAY BANK

###### **In the administrative area of Westmorland and Furness Council**

The authorised development is situated in the administrative area of Westmorland and Furness Council.

A nationally significant infrastructure project as defined in sections 14 (nationally significant infrastructure projects: general) and 22 (highways) of the 2008 Act, and associated development within the meaning of section 115(2) (development for which development consent may be granted) of the 2008 Act, comprising—

**Work No. 0102-1**— as shown on sheets 1 to 2 of the works plans for scheme 0102 and being the construction of a new all-purpose dual carriageway (“the new A66”) and improvements to the existing A66 trunk road (“the improved A66”) between its western approach to and its junction with the M6 motorway (M6 Junction 40) and its eastern approach to the Kemplay Bank Roundabout, to include—

- (a) **Work No. 0102-1A**— as shown on sheet 1 of the works plans for scheme 0102 and being the construction of additional carriageway and improvements to the existing A66 on the western approach to M6 Junction 40, to include—
  - (i) the improvement of the existing A66 eastbound and westbound dual lane carriageway;
  - (ii) the construction of an additional auxiliary lane to both eastbound and westbound carriageways on approach to M6 Junction 40; and
  - (iii) the improvement of existing cycleways alongside both the eastbound and westbound carriageways;
- (b) **Work No. 0102-1B**— as shown on sheet 1 of the works plans for scheme 0102 and being the improvement of the existing A66 circulatory carriageway at M6 Junction 40 to include—
  - (i) the improvement of the existing circulatory carriageway;
  - (ii) the improvement of existing cycleways located at the junction;
  - (iii) the construction and installation of a new CCTV mast;
  - (iv) the construction of a new maintenance layby; and
  - (v) the relocation of an existing police observation platform;
- (c) **Work No. 0102-1C**— as shown on sheets 1 to 2 of the works plans for scheme 0102 and being the construction of additional carriageway and improvements to sections of the existing A66, to include—
  - (i) the improvement of a length of the existing A66 eastbound and westbound dual carriageway to the east of M6 Junction 40 and the west of the new Kemplay Bank Junction;
  - (ii) the construction of additional carriageway to widen and improve both the existing eastbound and westbound carriageways;
  - (iii) the construction of a replacement private means of access off the westbound carriageway to “Skirsgill Depot”, as shown illustratively on sheet 1 of the rights of



way and access plans for scheme 0102, and the construction of new and replacement private means of access as shown illustratively on sheets 1 and 2 of the rights of way and access plans for scheme 0102; and

- (iv) the improvement of the cycleway along the north side of the A66, adjacent to the A66 eastbound carriageway;
- (d) **Work No. 0102-1D**— as shown on sheet 2 of the works plans for scheme 0102 and being the construction of additional carriageway and improvements to sections of the existing A66, to include—
  - (i) the improvement of the existing A66 eastbound and westbound dual carriageway;
  - (ii) the construction of a new bridge “Kemplay Bank West Bridge” to carry the improved A6 (Work No. 0102-7) over the improved A66, and forming part of the new Kemplay Bank Junction;
  - (iii) the construction of a new bridge “Kemplay Bank East Bridge” to carry the circulatory carriageway of the A6 (Work No. 0102-7B) over the improved A66, and forming part of the new Kemplay Bank Junction;
  - (iv) the construction of an extension to the existing “Carleton Hall Underpass” and all associated works; and
  - (v) the construction of a new eastbound and westbound merge and diverge slip roads for a new grade separated junction (the new Kemplay Bank Junction) between the improved A66 and the improved A6 (Work No. 0102-7);
- (e) **Work No. 0102-1E**— as shown on sheet 2 of the works plans for scheme 0102 and being the construction of additional carriageway and improvements to sections of the existing A66, to include—
  - (i) the improvement of the existing A66 eastbound and westbound dual carriageway to the east of the new Kemplay Bank Junction; and
  - (ii) the construction of new private means of access to attenuation pond as shown on sheet 2 of the rights of way and access plans for scheme 0102.

**Work No. 0102-2**— as shown on sheet 1 of the works plans for scheme 0102 and comprising—

- (a) the improvement of the existing M6 northbound merge slip road from the M6 Junction 40 roundabout; and
- (b) the construction of an additional auxiliary lane at the M6 Junction 40.

**Work No. 0102-3**— as shown on sheet 1 of the works plans for scheme 0102 and comprising—

- (a) the improvement of the existing M6 southbound diverge slip road to the M6 Junction 40 roundabout; and
- (b) the construction of an additional auxiliary lane at the M6 Junction 40.

**Work No. 0102-4**— as shown on sheet 1 of the works plans for scheme 0102 and being the improvement of the existing A592, to include—

- (a) the improvement of the existing A592 northbound and southbound dual lane carriageway;
- (b) the construction of an additional auxiliary lane at the M6 Junction 40; and
- (c) improvements to the existing cycleway along both sides of the A592.

**Work No. 0102-5**— as shown on sheet 1 of the works plans for scheme 0102 and comprising—

- (a) the improvement of the existing M6 southbound merge slip road;
- (b) the construction of an additional auxiliary lane at the M6 Junction 40; and
- (c) the construction of a proposed cycleway along the north side of the southbound merge slip road.

**Work No. 0102-6**— as shown on sheets 1 of the works plans for scheme 0102 and comprising—

- (a) the improvement of the existing M6 northbound diverge slip road to the M6 Junction 40 roundabout;
- (b) the construction of an additional auxiliary lane at the M6 Junction 40; and
- (c) the relocation of an existing police observation platform.

**Work No. 0102-7**— as shown on sheet 2 of the works plans for scheme 0102 and being the improvement of the existing Kemplay Bank Roundabout, to comprise a new grade separated Junction (“the new Kemplay Bank Junction”), and the construction of additional carriageway and improvements to sections of the existing A6, to include—

- (a) **Work No. 0102-7A**— as shown on sheet 2 of the works plans for scheme 0102 and being the improvement of a length of the existing A6 and the construction of additional A6 carriageway, to include—
  - (i) the improvement of the existing A6 southbound approach to Kemplay Bank Roundabout; and
  - (ii) the relocation and improvement of existing cycleways;
- (b) **Work No. 0102-7B**— as shown on sheet 2 of the works plans for scheme 0102 and comprising—
  - (i) the construction of the new Kemplay Bank Junction circulatory carriageway;
  - (ii) the relocation and improvement of existing cycleways;
  - (iii) the relocation of an existing variable message sign; and
  - (iv) the construction and installation of a new CCTV mast;
- (c) **Work No. 0102-7C**— as shown on sheet 2 of the works plans for scheme 0102 and being the improvement of a length of the existing A6 and the construction of additional A6 carriageway, to include—
  - (i) the improvement of the existing A6 northbound approach to Kemplay Bank Roundabout; and
  - (ii) the relocation and improvement of existing cycleways.

**Work No. 0102-8**— as shown on sheet 2 of the works plans for scheme 0102 and being the construction of additional carriageway and improvements to sections of the existing A686, to include—

- (a) the improvement of the existing A686 northbound and southbound carriageways;
- (b) the realignment of the A686 carriageway to connect to the new Kemplay Bank Junction;
- (c) works to effect the stopping up of part of the existing A686 on its approach to the existing Kemplay Bank Roundabout;
- (d) the improvement of existing cycleways on both sides of the A686;
- (e) the construction of a new maintenance layby; and
- (f) the construction of replacement private means of access as shown illustratively on sheet 2 of the rights of way and access plans for scheme 0102.

## PART 2

### SCHEME 03 – PENRITH TO TEMPLE SOWERBY

#### **In the administrative area of Westmorland and Furness Council**

The authorised development is situated in the administrative area of Westmorland and Furness Council.

A nationally significant infrastructure project as defined in sections 14 (nationally significant infrastructure projects: general) and 22 (highways) of the 2008 Act, and associated development

within the meaning of section 115(2) (development for which development consent may be granted) of the 2008 Act, comprising—

**Work No. 03-1**— as shown on sheets 1 to 4 of the works plans for scheme 03 and being the construction of a new all-purpose dual carriageway (“the new A66”) and of improvements to the existing A66 (“the improved A66”) between Penrith and Temple Sowerby to include—

- (a) **Work No.03-1A**— as shown on sheet 1 of the works plans for scheme 03 and comprising—
  - (i) the improvement of the existing A66 eastbound and westbound single lane carriageway;
  - (ii) the construction of an additional carriageway to upgrade the eastbound and westbound single carriageway to a dual carriageway;
  - (iii) the improvement of the junction between the realigned B6262 (Work No. 03-2) and the A66 westbound carriageway; and
  - (iv) the construction of a new bridge, “Brougham Accommodation Bridge”, to carry a cycle track and private means of access (Work No, 03-7A) over the improved A66, as shown illustratively on sheet 1 of the rights of way and access plans for scheme 03;
- (b) **Work No. 03-1AA**— as shown on sheet 1 of the works plans for scheme 03 and comprising—
  - (i) The improvement of the existing A66 eastbound and westbound single lane carriageway;
  - (ii) The construction of an additional carriageway to upgrade the eastbound and westbound single carriageway to a dual carriageway;
  - (iii) the construction of a replacement private means of access to the site of the former “Llama Karma Kafe” on the south side of the A66 as shown illustratively on sheet 1 of the rights of way and access plans for scheme 03; and
  - (iv) works to effect the stopping up of private means of access as shown on sheet 1 of the rights of way and access plans for scheme 03;
- (c) **Work No. 03-1B**— as shown on sheets 1, 2, 3 and 4 of the works plans for scheme 03 and comprising—
  - (i) the improvement of the existing A66 eastbound and westbound single lane carriageway;
  - (ii) the construction of an additional carriageway to upgrade the eastbound and westbound single carriageway to a dual carriageway;
  - (iii) the construction of a replacement private means of access off the westbound carriageway of the A66 at “Lightwater Cottages”, as shown illustratively on sheet 1 of the rights of way and access plans for scheme 03;
  - (iv) the construction of an improved junction off the eastbound carriageway of the A66 to provide a realigned link (Work No. 03-3) with an existing byway open to all traffic (BOAT 311/013);
  - (v) the construction of a replacement private means of access off the westbound carriageway of the A66 to “Whinfell Park Farm”, as shown illustratively on sheet 2 of the rights of way and access plans for scheme 03;
  - (vi) the construction of a new bridge to carry the improved A66 over a private means of access (“Whinfell Park Accommodation Underpass”), as shown illustratively on sheet 2 of the rights of way and access plans for scheme 03;
  - (vii) the construction of new eastbound and westbound merge and diverge tapers for a new compact grade-separated junction (“Junction at Center Parcs”) between the improved A66 and a new connector road (forming part of the Work No 03-4);
  - (viii) the construction of new and replacement private means of access (including access to attenuation ponds) as shown on sheets 2, 3 and 4 of the rights of way and access plans for scheme 03;

- (ix) works to effect the stopping up of existing private means of access as shown on sheets 1, 2, 3 and 4 of the rights of way and access plans for scheme 03;
- (x) works to effect the stopping up of existing cycleways on the north and south sides of the existing A66; and
- (xi) the construction of new laybys adjacent to the eastbound and westbound carriageways of the improved A66.

**Work No. 03-2**— as shown on sheet 1 of the works plans for scheme 03 and being the improvement of the existing B6262, to include—

- (a) the construction of an improved junction off the improved A66 westbound carriageway to the existing B6262;
- (b) works to effect the stopping up of part of the existing B6262 where it joins the existing A66; and
- (c) improvements to the existing B6262 carriageway.

**Work No. 03-3**— as shown on sheet 2 of the works plans for scheme 03 and comprising—

- (a) the improvement of the junction of an existing byway open to all traffic (BOAT 311/013) with the eastbound carriageway of the improved A66 (Work No. 03-1B);
- (b) the construction of a new road to connect the improved A66 with an existing byway open to all traffic (BOAT 311/013) providing access to “St. Ninian’s Church”;
- (c) works to effect the stopping up of part of the existing byway open to all traffic (BOAT 311/013) where it joins the existing A66; and
- (d) the construction of replacement parking facilities.

**Work No. 03-4**— as shown on sheet 3 of the works plans for scheme 03 and comprising—

- (a) **Work No. 03-4A**— as shown on sheet 3 of the works plans and forming part of the new “Junction at Center Parcs”, to include—
  - (i) the construction of a new connector road from the A66 eastbound carriageway to the new connector road on the south side of the improved A66 (Work No 03-4B) as part of a new compact grade-separated junction (“Junction at Center Parcs”);
  - (ii) the construction of a new bridge (“Whinfell Forest Bridge”) to carry the new connector road (Work No. 03-4) over the improved A66 (Work No. 03-1B); and
  - (iii) the construction of a new cycleway alongside part of the connector road;
- (b) **Work No. 03-4B**— as shown on sheet 3 of the works plans for scheme 03 and forming part of the new “Junction at Center Parcs”, to include—
  - (i) the improvement of the existing junction on the westbound carriageway of the improved A66 (Work No 03-1B);
  - (ii) the construction of a new road to connect between the westbound carriageway of the improved A66, the new connector road (Work No. 4A) and an existing private means of access to “Center Parcs” as shown illustratively on sheet 3 of the rights of way and access plans for scheme 03;
  - (iii) the construction and installation of a new variable message sign and associated maintenance layby; and
  - (iv) the construction of a new cycleway alongside part of the connector road.

**Work No. 03-5**— as shown on sheet 3 of the works plans for scheme 03 and forming part of the new “Junction at Center Parcs”, to include—

- (a) the construction of a realigned section of unclassified road (known as “Roman Road”) between its existing junction with Lane End and its new junction with the new connector road forming part of the new compact grade separated junction at Center Parcs (Work No. 03-4A);

- (b) the construction of a new junction connecting the realigned unclassified road (Roman Road) to the new connector road forming part of the new compact grade separated junction at Center Parcs (Work No. 03-4A); and
- (c) the construction of a new cycleway alongside part of the unclassified road.

**Work No. 03-6**— as shown on sheet 3 of the works plans for scheme 03 and being—

- (a) the construction of a new footpath on the south side of the improved A66, connecting to an existing footpath (311/004) as shown illustratively on sheet 3 of the rights of way and access plans for scheme 03;
- (b) the construction of a new private means of access to land on the south side of the improved A66, as shown illustratively on sheets 3 and 4 of the rights of way and access plans for scheme 03; and
- (c) works to effect the stopping up of a length of the existing footpath 311/004.

**Work No. 03-7**— as shown on sheets 1 to 3 of the works plans for scheme 03 and being a new cycle track and private means of access, comprising—

- (a) **Work No. 03-7A**— as shown on sheet 1 of the works plans for scheme 03 and being—
  - (i) the construction of a new cycle track and new and replacement private means of access to land and premises (including the Whinfell Holme Sewage Works) commencing at a point 90 metres to the south-west of the junction of the B6262 with the improved A66 and continuing on the south side and then on the north side of the improved A66 as shown illustratively on sheet 1 of the rights of way and access plans for scheme 03; and
  - (ii) works to effect the stopping up of a length of existing footpath between the B6262 and the Countess Pillar, as shown illustratively on the rights of way and access plans for scheme 03;
- (b) **Work No. 03-7B**— as shown on sheets 1, 2 and 3 of the works plans for scheme 03 and being the construction of a new cycle track and new private means of access on the north side of the improved A66 as shown illustratively on sheets 1, 2 and 3 of the rights of way and access plans for scheme 03.

**Work No. 03-8**— as shown on sheets 3 and 4 of the works plans for scheme 03 and being the construction of a new cycle track and private means of access on the north side of the improved A66 as shown illustratively on sheets 3 and 4 of the rights of way and access plans for scheme 03.

**Work No. 03-9**— as shown on sheet 1 of the works plans for scheme 03 and being—

- (a) **Work No. 03-9A**— as shown sheet 1 of the works plans for scheme 03 and comprising—
  - (i) the construction of a new cycle track connecting to the site of the Countess Pillar; and
  - (ii) the construction of new private means of access to land on the south side of the improved A66;
- (b) **Work No. 03-9B**— as shown on sheet 1 of the works plans for scheme 03 and comprising—
  - (i) the construction of a new footpath connecting to the site of the Countess Pillar; and
  - (ii) the construction of new private means of access to land on the south side of the improved A66.

## PART 3

### SCHEME 0405 – TEMPLE SOWERBY TO APPLEBY

#### **In the administrative area of Westmorland and Furness Council**

The authorised development is situated in the administrative area of Westmorland and Furness Council.

A nationally significant infrastructure project as defined in sections 14 (nationally significant infrastructure projects: general) and 22 (highways) of the 2008 Act, and associated development within the meaning of section 115(2) (development for which development consent may be granted) of the 2008 Act, comprising—

**Work No. 0405-1**— as shown on sheets 1 to 7 of the works plans for scheme 0405 and being the construction of a new all-purpose dual carriageway (“the new A66”) and of improvements to the existing A66 (“the improved A66”) between Temple Sowerby and Appleby, to include—

- (a) **Work No. 0405-1A**— as shown on sheets 1 to 5 of the works plans for scheme 0405 and being the construction of the new A66 eastbound and improvements to sections of the existing A66 eastbound, to include—
- (i) the improvement of the existing A66 eastbound single and dual lane carriageways to provide a continuous dual lane eastbound carriageway;
  - (ii) the improvement of the existing Priest Lane to support its designation as a Quiet Lane;
  - (iii) works to support the de-trunking and reclassification of a length of the existing A66 as a local road (Work Nos. 0405-4A; 0405-4B and 0405-18) between the Spitals Farm Underpass and Powis House);
  - (iv) works to support the provision of a replacement private means of access (via the Spitals Farm Underpass) as shown illustratively on sheet 1 of the rights of way and access plans for scheme 0405;
  - (v) the construction of a new underpass (Priest Lane Underpass) to allow a new right of way and new private means of access (Work No. 0405-5) to pass under the new A66;
  - (vi) the construction of new and replacement private means of access, as shown illustratively on sheets 1 to 5 of the rights of way and access plans for scheme 0405;
  - (vii) the construction of a new bridge (Cross Street Bridge) to carry the re-aligned Cross Street (forming part of Work No. 0405-7) over the new A66;
  - (viii) the construction of a new bridge (Green Lane Bridge) to carry a new right of way and new private means of access (forming part of Work No. 0405-9) over the new A66;
  - (ix) the construction of new eastbound diverge and merge tapers for a new compact grade-separated junction (Work No. 0405-10A) linking the new A66 with the realigned Fell Lane (Work No. 0405-11A);
  - (x) the construction of a new bridge (Fell Lane Bridge) to carry the re-aligned Fell Lane (forming part of Work No. 0405-11A) over the new A66;
  - (xi) the construction of a new bridge (Sleastonhow Lane Bridge) to carry the re-aligned Sleastonhow Lane (forming part of Work No. 0405-13) over the new A66;
  - (xii) the construction of a new viaduct (Trout Beck Viaduct) crossing the Trout Beck, to carry the new A66 over the Trout Beck; and
  - (xiii) the construction of a replacement private means of access (the trout beck bridge north shore farm track), passing under the new viaduct, as shown illustratively on sheet 4 of the rights of way and access plans for scheme 0405;
- (b) **Work No. 0405-1B**— as shown on sheets 5 to 7 of the works plans for scheme 0405 and being the construction of the new A66 eastbound and improvements to sections of the existing A66 eastbound, to include—
- (i) the improvement of the existing A66 eastbound single and dual lane carriageways to provide a continuous dual lane eastbound carriageway;
  - (ii) works to support the de-trunking and reclassification of a length of the existing A66 as a local road (Work Nos. 0405-18; 0405-19A; 0405-19B and 0405-19C) between Powis House and the B6542;
  - (iii) the construction of new and replacement private means of access, as shown on sheets 4 and 5 of the rights of way and access plans for scheme 0405;

- (iv) works to effect the stopping up of part of existing Footpath 341/017 and of private means of access;
- (v) works to effect the stopping up of part of existing Footpaths 317/006 and 317/009;
- (vi) the construction of a new bridge (Proposed Powis House Bridge) to carry the new A66 over the realigned Long Marton (Work No. 0405-16);
- (vii) the construction of new eastbound diverge and merge tapers for a new compact grade-separated junction (Work No. 0405-17A) (to link the proposed A66 with the realigned Long Marton (Work No. 0405-16));
- (viii) the construction of a new underpass (Crackenthorpe Underpass) to allow a new bridleway and new private means of access to pass under the new A66 as shown illustratively on sheet 6 of the rights of way and access plans for scheme 0405; and
- (ix) the construction of a new bridge (Roger Head Farm Bridge) to carry a new bridleway and new private means of access over the new A66, as shown illustratively on sheet 7 of the rights of way and access plans for scheme 0405.

**Work No. 0405-2**— as shown on sheets 1 to 7 of the works plans for scheme 0405 and being the construction of a new all-purpose dual carriageway (“the new A66”) and of improvements to the existing A66 (“the improved A66”) between Temple Sowerby and Appleby, to include—

- (a) **Work No. 0405-2A**— as shown on sheets 1 to 5 of the works plans for scheme 0405 and being the construction of the new A66 westbound and improvements to sections of the existing A66 westbound, to include—
  - (i) the improvement of the existing A66 westbound single and dual lane carriageways to provide a continuous dual lane eastbound carriageway;
  - (ii) the construction of new and replacement private means of access, as shown illustratively on sheets 1 to 5 of the rights of way and access plans for scheme 0405;
  - (iii) works to support the provision of a replacement private means of access (via the Spitals Farm Underpass) as shown illustratively on sheet 1 of the rights of way and access plans for scheme 0405;
  - (iv) the construction of a new underpass (Priest Lane Underpass) to allow a new right of way and new private means of access (Work No. 0405-5) to pass under the new A66;
  - (v) the construction of a new bridge (Cross Street Bridge) to carry the re-aligned Cross Street (forming part of Work No. 0405-7) over the new A66;
  - (vi) the construction of a new bridge (Green Lane Bridge) to carry a new right of way and new private means of access (forming part of Work No. 0405-09) over the new A66;
  - (vii) the construction of new westbound diverge and merge tapers for a new compact grade-separated junction (Work No. 0405-10B) linking the Proposed A66 with the realigned Fell Lane (Work No. 0405-11A);
  - (viii) the construction of a new bridge (Fell Lane Bridge) to carry the re-aligned Fell Lane (forming part of Work No. 0405-11A) over the new A66;
  - (ix) the construction of a new bridge (Sleastonhow Lane Bridge) to carry the re-aligned Sleastonhow Lane (forming part of Work No. 0405-13) over the new A66;
  - (x) the construction of a new viaduct (Trout Beck Viaduct) crossing the Trout Beck, to carry the new A66 over the Trout Beck;
  - (xi) the construction of a replacement private means of access (the trout beck bridge north shore farm track), passing under the new viaduct, as shown illustratively on sheet 4 of the rights of way and access plans for scheme 0405; and
  - (xii) works to effect the stopping up part of existing Bridleway 341/001 and of private means of access (to Powis House);
- (b) **Work No. 0405-2B**— as shown on sheets 5 to 7 of the works plans for scheme 0405 and being the construction of the new A66 westbound and improvements to sections of the existing A66 westbound, to include—



- (i) the improvement of the existing A66 westbound single and dual lane carriageways to provide a continuous dual lane westbound carriageway;
- (ii) the construction of new and replacement private means of access as shown on sheets 5 to 7 of the rights of way and access plans for scheme 0405;
- (iii) works to effect the stopping up of part of existing Footpath 341/017 and of private means of access;
- (iv) works to effect the stopping up of part of existing Footpaths 317/006 and 317/009;
- (v) the construction of a new bridge (Proposed Powis House Bridge) to carry the new A66 over the realigned Long Marton (Work No. 0405-16);
- (vi) the construction of new westbound diverge and merge tapers new compact grade-separated junction (Work No. 0405-17B) linking the proposed A66 with the realigned Long Marton (Work No. 0405-16);
- (vii) the construction of a new underpass (Crackenthorpe Underpass) to allow a new bridleway and new private means of access to pass under the new A66 as shown illustratively on sheet 6 of the rights of way and access plans for scheme 0405; and
- (viii) the construction of a new bridge (Roger Head Farm Bridge) to carry a new bridleway and new private means of access over the new A66, as shown illustratively on sheet 7 of the rights of way and access plans for scheme 0405.

**Work No. 0405-3**— as shown on sheet 1 of the works plans for scheme 0405 and being improvements to the existing Roman Road and Morland road, comprising—

- (a) **Work No. 0405-3A**— as shown on sheet 1 of the works plans for scheme 0405 and comprising—
  - (i) improvements to the existing Roman Road between Priest Lane and Temple Sowerby;
  - (ii) improvements to the existing Morland Road between the existing A66 and Roman Road; and
  - (iii) the construction of a new cycleway on the existing Morland Road and the existing Roman Road;
- (b) **Work No. 0405-3B**— as shown on sheet 1 of the works plans for scheme 0405 and being the improvement of the existing Morland Road comprising—
  - (i) improvements to and the realignment of the existing Morland Road, south of the existing A66;
  - (ii) the improvement of the existing grade-separated connector road from its junction with Morland Road;
  - (iii) the construction of a new roundabout (the Proposed Roundabout), on Morland Road at its junction with the existing grade-separated connector road; and
  - (iv) the construction of a new cycleway on the existing Morland Road south of the existing A66.

**Work No. 0405-4A**— as shown on sheet 1 of the works plans for scheme 0405 and being the construction of a new local road between Temple Sowerby and Low Moor Caravan Park, comprising—

- (a) the construction of a new single carriageway two-way link road (including new cycleway) commencing from its junction with the new roundabout on Morland Road (Work No. 0405-3B) and continuing in parallel with the existing A66 until connecting into Work No. 0405-4B at Low Moor Caravan Park);
- (b) the construction of new and replacement private means of access, as shown illustratively on sheet 1 of the rights of way and access plans; and
- (c) works to effect the removal of an existing cycleway on the south side of the existing A66 from its junction with the existing Morland Road.

**Work No. 0405-4B**— as shown on sheets 1, 2, 4 and 5 of the works plans for scheme 0405 and being the improvement of the existing A66, once de-trunked, together with Work Nos. 0405-14 (part); and 0405-18 between the Low Moor Caravan Park and Powis House, comprising—

- (a) improvements to the existing A66 between Low Moor Caravan Park and Powis House;
- (b) the construction of new and replacement private means of access, as shown illustratively on sheets 1, 2, 4 and 5 of the rights of way and access plans;
- (c) the construction of a new cycleway alongside the carriageway of the existing A66 between the existing Spitals Farm Underpass and the Filling Station as part of improvements to the existing A66; and
- (d) the construction of a new cycleway between the Filling Station and the Dismantled Railway (and also along Roman Road and adjacent to the Old Station Yard).

**Work No. 0405-5**— as shown on sheets 1 and 2 of the works plans for scheme 0405 and being the construction of a new bridleway and private means of access linking the old A66 to the realigned Priest Lane and comprising—

- (a) the construction of a new bridleway linking the old A66 to the re-aligned Priest Lane (south of the new A66 westbound carriageway);
- (b) the provision of new private means of access (on the same alignment as the new bridleway) as shown illustratively on sheets 1 and 2 of the rights of way and access plans for scheme 0405;
- (c) the construction of a new underpass (Priest Lane Underpass) to allow the new private means of access and new bridleway, to pass under the new A66 (forming part of Work No. 0405-1A and Work No. 0405-2A);
- (d) works to effect the stopping up of existing private means of access west of the new Priest Lane Underpass; and
- (e) works to effect the stopping up of part of the existing Priest Lane, to accommodate its new alignment.

**Work No. 0405-6**— as shown on sheets 1 and 2 of the works plans for scheme 0405 and being the re-alignment of part of the existing Priest Lane and improvements to the existing Priest Lane, along its length to its new junction with the re-aligned Station Road (Work No. 0405-7), comprising—

- (a) **Work No. 0405-6A**— as shown on sheets 1 and 2 of the works plans for scheme 0405 and comprising—
  - (i) the re-alignment of part of the existing Priest Lane (north of the new A66 eastbound carriageway);
  - (ii) works to effect the designation of the re-aligned Priest Lane as a quiet lane;
  - (iii) works to effect the conversion of the existing Priest Lane into a designated quiet lane;
  - (iv) works to effect the stopping up of part of the existing Priest Lane, to accommodate its new alignment; and
  - (v) the construction of new and replacement private means of access to land adjacent to the re-aligned Priest Lane, as shown illustratively on sheet 2 of the rights of way and access plans for scheme 0405;
- (b) **Work No. 0405-6B**— as shown sheet 2 of the works plans for scheme 0405 and comprising—
  - (i) the re-alignment of part of the existing Priest Lane (north of the new A66 eastbound carriageway);
  - (ii) works to effect the designation of the re-aligned Priest Lane as a quiet lane;
  - (iii) works to effect the conversion of the existing Priest Lane into a designated quiet lane;
  - (iv) works to effect the stopping up of part of the existing Priest Lane, to accommodate its new alignment; and

- (v) the construction of new and replacement private means of access to land adjacent to the re-aligned Priest Lane, as shown illustratively on sheet 2 of the rights of way and access plans for scheme 0405;
- (c) **Work No. 0405-6C— as shown on sheet 2 of the works plans for scheme 0405 and comprising—**
  - (i) the re-alignment of part of the existing Priest Lane to its new junction with the re-aligned Station Road (Work No. 0405-7) (north of the new A66 eastbound carriageway);
  - (ii) works to effect the designation of the re-aligned Priest Lane as a quiet lane;
  - (iii) works to effect the conversion of the existing Priest Lane into a designated quiet lane;
  - (iv) works to effect the stopping up of part of the existing Priest Lane, to accommodate its new alignment; and
  - (v) the construction of new and replacement private means of access to land adjacent to the re-aligned Priest Lane, as shown illustratively on sheet 2 of the rights of way and access plans for scheme 0405.

**Work No. 0405-7—** as shown on sheet 2 of the works plans for scheme 0405 and being the improvement and re-alignment of the existing Cross Street and Station Road, comprising—

- (a) the re-alignment of Cross Street from its junction with Priest Lane in a north-westerly direction;
- (b) works to effect the stopping up of Cross Street and Station Road, over a length between Halefield Farm and Priest Lane;
- (c) the construction of a new bridge (Cross Street Bridge) to carry the re-aligned Cross Street over the new A66 (forming part of Work Nos. 0405-1A and 0405-2A);
- (d) the construction of new and replacement private means of access to land adjacent to the re-aligned Station Road (north of Cross Street Bridge), as shown illustratively on sheet 2 of the rights of way and access plans; and
- (e) works to effect the stopping up of an existing shared use private means of access and part of existing Bridleway 336/018.

**Work No. 0405-8—** as shown on sheet 2 of the works plans for scheme 0405 and comprising—

- (a) the construction of a length of new bridleway between the re-aligned Cross Street and the existing Bridleway 336/018;
- (b) the construction of a length of new footpath, between the existing Bridleway 336/018 and the existing Footpath 336/017; and
- (c) the provision of new private means of access (on the same alignment as the new bridleway and the new footpath) as shown illustratively on sheet 2 of the rights of way and access plans for scheme 0405.

**Work No. 0405-9—** as shown on sheets 2 and 3 of the works plans for scheme 0405 and comprising—

- (a) the construction of a length of new footpath, between the re-aligned Cross Street (Work No. 0405-07) on the south side of the new A66, and the realigned Fell Lane (and access to the existing British Gypsum site) (Work No. 0405-11) on the north side of the new A66, crossing over the new A66 via the new Green Lane Bridge, and linking into existing Footpaths 336/017 and 336/013 on the north side of the new A66, and existing Footpath 336/011 on the south side of the A66;
- (b) the provision of new private means of access (on the same alignment as the new footpath) as shown illustratively on sheets 2 and 3 of the rights of way and access plans for scheme 0405; and
- (c) works to effect the stopping up of a length of existing Footpath 336/017 and of existing private means of access.

**Work No. 0405-10**— as shown on sheet 3 of the works plans for scheme 0405 and being a new compact grade-separated junction between the new A66 and the realigned Fell Lane, comprising—

- (a) **Work No. 0405-10A**— as shown on sheet 3 of the works plans for scheme 0405 and comprising the construction of a new compact connector road, connecting the new A66 eastbound carriageway, via diverge and merge tapers (forming part of Work No. 0405-1A) with the re-aligned Fell Lane (Work No. 0405-11A); and
- (b) **Work No. 0405-10B**— as shown on sheet 3 of the works plans for scheme 0405 and comprising the construction of a new compact connector road, connecting the new A66 westbound carriageway, via diverge and merge tapers (forming part of Work No. 0405-2A) with the realigned Fell Lane (Work No. 005-11A).

**Work No. 0405-11**— as shown on sheet 3 of the works plans for scheme 0405 and being the improvement and re-alignment of the existing Fell Lane comprising—

- (a) **Work No. 0405-11A**— as shown on sheet 3 of the works plans for scheme 0405 and being—
  - (i) the realignment of the existing Fell Lane between Main Street and the British Gypsum Mine;
  - (ii) improvements to the existing Fell Lane including the construction of new cycleway along the improved length of Fell Lane;
  - (iii) works to effect the stopping up of existing private means of access; and
  - (iv) the construction of new and replacement private means of access, as shown illustratively on sheet 3 of the rights of way and access plans for scheme 0405;
- (b) **Work No. 0405-11B**— as shown on sheet 3 of the works plans for scheme 0405 and comprising works to improve the connectivity of existing Footpath 336/013 (adjacent to the existing British Gypsum access road) with existing Footpath 366/014.

**Work No. 0405-12**— as shown on sheet 3 of the works plans for scheme 0405 and being the construction of a new road connecting the re-aligned Fell Lane with the re-aligned Main Street, and comprising—

- (a) **Work No. 0405-12A**— as shown on sheet 3 of the works plans for scheme 0405 and comprising—
  - (i) the construction of a new single carriageway two-way link road and tie-in from the re-aligned Fell Lane (forming Work No. 0405-11) on the north side of the new A66; and
  - (ii) the construction of new private means of access, as shown illustratively on sheet 3 of the rights of way and access plans for scheme 0405;
- (b) **Work No. 0405-12B**— as shown on sheet 3 of the works plans for scheme 0405 and comprising—
  - (i) the construction of a new single carriageway two-way link road and tie-in from the re-aligned Fell Lane (forming Work No. 0405-11) to the existing Main Street on the north side of the new A66;
  - (ii) works to effect the stopping up of an existing length of Main Street;
  - (iii) the construction of new private means of access, as shown illustratively on sheet 3 of the rights of way and access plans for scheme 0405; and
  - (iv) works to effect the stopping up of existing private means of access.

**Work No. 0405-13**— as shown on sheets 3 and 4 of the works plans for scheme 0405 and being the improvement and re-alignment of the existing Sleastonhow Lane, comprising—

- (a) the re-alignment of a length of Sleastonhow Lane to the south of Kirkby Thore;
- (b) works to effect the stopping up of parts of the existing Sleastonhow Lane;
- (c) the construction of new private means of access linking the re-aligned Sleastonhow Lane to the existing A66, via an existing farm track to the south as shown illustratively on sheets 3 and 4 of the rights of way and access plans for scheme 0405;

- (d) the construction of new private means of access, as shown illustratively on sheets 3 and 4 of the rights of way and access plans for scheme 0405; and
- (e) works to effect the stopping up of existing private means of access south of the realigned Sleastonhow Lane.

**Work No. 0405-14**— as shown on sheets 4 and 5 of the works plans for scheme 0405 and comprising the provision of new footpaths and private means of access between the existing A66 and the existing Long Marton (road), comprising—

- (a) the construction of a new cycleway and private means of access between the existing A66 and the existing Roman Road, as shown illustratively on sheets 4 and 5 of the rights of way and access plans for scheme 0405;
- (b) the construction of a new footpath and private means of access (the trout beck bridge south shore maintenance track) between the existing A66 and the proposed A66, as shown illustratively on sheets 4 and 5 of the rights of way and access plans for scheme 0405;
- (c) the construction of a new footpath passing beneath the Trout Beck viaduct (part of Work No. 0405-1A and 0405-2A) and connecting to the existing Footpath 341/017; and
- (d) the construction of a new footpath and private means of access between the existing Long Marton (road) and Footpath 341/017, as shown illustratively on sheet 5 of the rights of way and access plans for scheme 0405.

**Work No. 0405-15**— as shown on sheet 5 of the works plans for scheme 0405 and comprising—

- (a) the construction of a length of new bridleway between the existing Long Marton (road) and the new compact grade-separated junction (Work No. 0405-17) linking the realigned Long Marton with the new A66;
- (b) the construction of new and replacement private means of access as shown illustratively on sheet 5 of the rights of way and access plans;
- (c) works to effect the stopping up of part of existing Bridleway 341/001;
- (d) works to effect the stopping up of private means of access;
- (e) the construction of a new underpass (Long Marton Underpass) to allow a new bridleway and new private means of access to pass under the new Long Marton eastbound connector road (Work No. 0405-17A); and
- (f) the construction of a length of new cycleway from the new side road to the existing Roman Road.

**Work No. 0405-16**— as shown on sheet 5 of the works plans for scheme 0405 and being the construction of realigned Long Marton, comprising—

- (a) the construction of a new single carriageway two-way local road, including new cycleway, from its junction with the existing A66, over the new A66 (Work Nos. 0405-1A and 0405-2A) via the Proposed Powis House Bridge, to its eastern and western tie-ins with the existing Long Marton on the north side of the new A66;
- (b) the construction of a local road junction connecting to the north side of the existing A66 (forming part of Work No. 0405-19);
- (c) the construction of a local road junction connecting the realigned Long Marton with the existing Long Marton (east and west);
- (d) works to effect the stopping up of existing private means of access; and
- (e) the construction of new private means of access, as shown on sheet 5 of the rights of way and access plans for scheme 0405.

**Work No. 0405-17**— as shown on sheet 5 of the works plans for scheme 0405 and being the construction of new connector roads (Proposed Long Marton Eastbound and Westbound compact connector roads) comprising—

- (a) **Work No. 0405-17A**— as shown on sheet 5 of the works plans for scheme 0405 and comprising—

- (i) the construction of a new connector road (Proposed Long Marton eastbound compact connector road), connecting the new A66 eastbound carriageway (via diverge and merge tapers forming part of Work No. 0405-1B)), with the new Realigned Long Marton (forming part of Work No.0405-16); and
  - (ii) the construction of new private means of access adjacent to the Proposed Long Marton eastbound compact connector road as shown illustratively on sheet 5 of the rights of way and access plans for scheme 0405;
- (b) **Work No. 0405-17B**— as shown on sheet 5 of the works plans for scheme 0405 and comprising the construction of a new connector road (Proposed Long Marton westbound compact connector road), connecting the new A66 westbound carriageway (forming part of Work No. 0405-2B) via diverge and merge tapers (forming part of Work No. 0405-2B) with the new Realigned Long Marton (Work No. 0405-16).

**Work No. 0405-18**— as shown on sheet 5 of the works plans for scheme 0405 and comprising—

- (a) the improvement of a length of the existing A66 (to be de-trunked) to the south-west of Powis House;
- (b) works to effect the stopping up of part of existing Footpath 317/009; and
- (c) the construction of a new cycleway alongside the carriageway as part of improvements to the existing A66.

**Work No. 0405-19**— as shown on sheets 5, 6 and 7 of the works plans for scheme 0405 and being the improvement of the existing A66 and existing B6542 comprising—

- (a) **Work No. 0405-19A**— as shown on sheet 5 of the works plans for scheme 0405 and comprising—
  - (i) the improvement of a length of the existing A66 (to be de-trunked) to the south of Powis House; and
  - (ii) the construction of a new cycleway alongside the carriageway as part of improvements to the existing A66;
- (b) **Work No. 0405-19B**— as shown on sheet 5 of the works plans for scheme 0405 and comprising—
  - (i) the improvement of a length of the existing A66 (to be de-trunked) to the south of Powis House; and
  - (ii) the construction of a new cycleway alongside the carriageway as part of improvements to the existing A66;
- (c) **Work No. 0405-19C**— as shown on sheets 5, 6 and 7 of the works plans for scheme 0405 and comprising—
  - (i) the improvement of a length of the existing A66 (to be de-trunked) between Powis House and Roger Head Farm; and
  - (ii) the construction of a new cycleway alongside the carriageway as part of improvements to the existing A66;
- (d) **Work No. 0405-19D**— as shown on sheet 7 of the works plans for scheme 0405 and comprising—
  - (i) the improvement of a length of the existing A66 (to be de-trunked) to the south of Roger Head Farm;
  - (ii) the construction of a new cycleway alongside the carriageway as part of improvements to the existing A66;
  - (iii) the improvement and re-alignment of the existing B6542;
  - (iv) the construction of a new cycleway adjacent to the carriageway of the improved B6542;
  - (v) improvements to a private road junction connecting to the improved B6542; and

- (vi) the construction of new and replacement private means of access, as shown on sheet 7 of the rights of way and access plans;
- (e) **Work No. 0405-19E**— as shown on sheet 7 of the works plans for scheme 0405 and comprising the construction of a new cycleway alongside the carriageway of the existing B6542.

**Work No. 0405-20**— as shown on sheet 6 of the works plans for scheme 0405 and being the construction of new bridleway linking Crackenthorpe to the existing Roman Road, comprising—

- (a) **Work No. 0405-20A**— as shown sheet 6 of the works plans for scheme 0405 and comprising—
  - (i) works to effect the stopping up of part of existing Footpath 317/006;
  - (ii) the construction of a length of new bridleway from Crackenthorpe extending in a generally easterly direction towards the new A66; and
  - (iii) the construction of new private means of access (in part on the same alignment as the new bridleway) as shown on sheet 6 of the rights of way and access plans for scheme 0405;
- (b) **Work No. 0405-20B**— as shown on sheet 6 of the works plans for scheme 0405 and comprising—
  - (i) the construction of a length of new bridleway between Crackenthorpe and the new A66;
  - (ii) works to effect the stopping up of part of existing Bridleway 317/012; and
  - (iii) the construction of new private means of access (in part on the same alignment as the new bridleway as shown on sheet 6 of the rights of way and access plans for scheme 0405;
- (c) **Work No. 0405-20C**— as shown on sheet 6 of the works plans for scheme 0405 and comprising—
  - (i) the construction of a length of new bridleway between the new A66 and the existing Roman Road;
  - (ii) works to effect the stopping up of part of existing Bridleway 317/012; and
  - (iii) the construction of new private means of access (in part on the same alignment as the new bridleway) as shown on sheet 6 of the rights of way and access plans for scheme 0405.

**Work No. 0405-21**— as shown on sheet 7 of the works plans for scheme 0405 and comprising—

- (a) the construction of a new bridleway crossing the new A66 via a new bridge (Proposed Roger Head Farm Bridge) (part of Work Nos. 0405-2A and 0405-2B);
- (b) works to effect the stopping up of part of the existing Footpath 317/004 and private means of access north of the Proposed Roger Head Farm Bridge; and
- (c) the construction of new private means of access between Roger Head Farm and Roger Head Farm Bridge as shown illustratively on sheet 7 of the rights of way and access plans for scheme 0405.

## PART 4

### SCHEME 06 – APPLEBY TO BROUGH

#### **In the administrative area of Westmorland and Furness Council**

The authorised development is situated in the administrative area of Westmorland and Furness Council;

A nationally significant infrastructure project as defined in sections 14 (nationally significant infrastructure projects: general) and 22 (highways) of the 2008 Act, and associated development



within the meaning of section 115(2) (development for which development consent may be granted) of the 2008 Act, comprising—

**Work No. 06-1**— as shown on sheets 1 to 6 of the works plans for scheme 06 and being the construction of a new all-purpose dual carriageway (“the new A66”) and improvements to the existing A66 (“the improved A66”) between Appleby in Westmorland and Brough, to include—

- (a) **Work No. 06-1A**— as shown on sheets 1 and 2 of the works plans for scheme 06 and comprising—
- (i) the improvement of the existing A66 eastbound and westbound single lane carriageway;
  - (ii) the construction of an additional carriageway to upgrade the A66 eastbound and westbound single carriageway to a dual carriageway;
  - (iii) the construction of a new, replacement one-way private means of access road diverging from the eastbound carriageway of the new A66, passing between Café Sixty Six, and then merging back onto the eastbound carriageway of the new A66, as shown illustratively on sheet 1 of the rights of way and access plans for scheme 06;
  - (iv) the construction of a connection from Café Sixty Six private means of access to a new replacement private means of access to properties at Far Bank End and New Hall Farm, as shown illustratively on sheet 1 of the rights of way and access plans for scheme 06;
  - (v) the improvement of an existing underpass (“Far Bank End Underpass”) to facilitate the passage beneath the improved A66 of a replacement private means of access, a new equestrian track (to link with existing bridleway 372.024) and a new footway (to link with existing Footpath 372/028), and to carry the improved A66 over the private means of access, equestrian track and footway, as shown illustratively on sheet 1 of the rights of way and access plans for scheme 06;
  - (vi) the construction of a new cycleway on the north side of the A66, between the westernmost extent of the scheme and the Far Bank End Underpass, providing a connection to existing Footpath 372/028;
  - (vii) the construction of replacement private means of access to Far Bank End and New Hall Farm, as shown illustratively on sheet 1 of the rights of way and access plans for scheme 06;
  - (viii) the construction of part of a new cycleway between the Far Bank End Underpass and the junction of the realigned B6259 with the improved A66 (“new Sandford Junction”);
  - (ix) works to effect the stopping up of parts of Footpaths 372/028, 372/027 and 372/022, and of part of Bridleway 372/024, and of private means of access;
  - (x) the construction of new private means of access from the new Sandford Junction, following part of the route of the new cycleway, to land on the north side of the improved A66, as shown illustratively on sheets 1 and 2 of the rights of way and access plans for scheme 06;
  - (xi) the construction of a new underbridge (“Sandford Underbridge”) beneath the improved A66 at the new Sandford Junction, to carry the new A66 link road (Work No. 06-2A) over the improved A66 (Work No.06-1A);
  - (xii) the construction of new private means of access to land on the north side of the new A66, following part of the route of a new cycleway, as shown on sheet 2 of the rights of way and access plans for scheme 06;
  - (xiii) the construction of new westbound diverge and merge tapers to connect the new realigned B6259 (Work No. 06-2C) to the new A66;
  - (xiv) the construction of new eastbound diverge and merge tapers to connect the new A66 (connector road) Work No. 06-2B to the realigned B6259 (Work No. 06-2C); and

- (xv) the construction of part of a new cycleway between the new Sandford Junction and Warcop;
- (b) **Work No. 06-1B**— as shown on sheets 2 and 3 of the works plans for scheme 06 and being—
  - (i) the improvement of the existing A66 eastbound and westbound single lane carriageway;
  - (ii) the construction of an additional carriageway to upgrade the A66 eastbound and westbound single carriageway to a dual carriageway;
  - (iii) works to effect the stopping up of Footpath 372/013;
  - (iv) the provision of new footway to connect the existing footpath 372/013, and passing beneath the new viaduct (“Cringle Beck Viaduct”) on the south side of the new A66, as shown on sheets 2 and 3 of the rights of way and access plans for scheme 06;
  - (v) the construction of part of a new cycleway between Sandford (B6259) junction and Warcop, as shown on sheets 2 and 3 of the rights of way and access plans for scheme 06; and
  - (vi) the construction of private means of access as shown on sheets 2 and 3 of the rights of way and access plans for scheme 06;
- (c) **Work No. 06-1C**— as shown on sheets 3 and 4 of the works plans for scheme 06 and being—
  - (i) the improvement of the existing A66 eastbound and westbound single lane carriageway;
  - (ii) the construction of an additional carriageway to upgrade the A66 eastbound and westbound single carriageway to a dual carriageway;
  - (iii) the construction of part of a new cycleway between the new Sandford Junction (Work No. 06-02) and Warcop;
  - (iv) works to effect the stopping up parts of the existing Roman Road, and of parts of Footpaths 372/014 and 372/021, and of private means of access;
  - (v) the provision of new footway to connect with existing footpath 372/013, and extending along the south side of the new A66 before passing beneath the new Cringle Beck Viaduct;
  - (vi) the construction of the new Cringle Beck Viaduct, crossing the Cringle Beck and flood plain, to carry the new A66 over the Cringle Beck, and over private means of access and footways shown illustratively on sheet 3 of the rights of way and access plans for scheme 06;
  - (vii) the construction of private means of access, as shown illustratively on sheets 3 and 4 of the rights of way and access plans for scheme 06;
  - (viii) the construction of the new eastbound diverge and merge tapers for a new junction (“Warcop Eastbound Junction”) (Work No. 06-3) between the new A66 and the de-trunked A66;
  - (ix) the construction of a new underpass (“Walk Mill Underpass”) to carry a length of new footway (to connect with existing footpath (372/021)) under the new A66;
  - (x) the construction of a new viaduct (“Moor Beck Viaduct”) crossing the Moor Beck and flood plain, to carry the new A66 over the Moor Beck;
  - (xi) the provision of new footway via the Walk Mill Underpass, to connect with existing footpath 372/021 on the south side of the new A66;
  - (xii) the construction of the new westbound diverge and merge tapers for a new junction (“Warcop Westbound Junction”) between the new A66, the de-trunked A66 (Work No 06-4) and an existing local village access road into Warcop (forming part of Work No. 06-5);

- (xiii) the construction of a new overbridge (“Warcop Village Overbridge”) crossing the new A66, to carry the realigned local village access road (forming part of Work No. 06-5) over the new A66 (part of Work No. 06-1C) and the new local access road (Work No. 06-4); and
  - (xiv) the construction of a new underbridge (“East Field Sike Underbridge”) crossing the East Field Sike, to carry the new A66 over the East Field Sike;
- (d) **Work No. 06-1CA**— as shown on sheet 3 of the works plans for scheme 06 and comprising—
- (i) the provision of a new cycleway along part of the de-trunked A66, between the junction of the existing A66 with Moorhouse Lane and the new Warcop Eastbound Junction; and
  - (ii) works to support the de-trunking and reclassification of a length of the existing A66 as a local access road, between its existing junction with Moorhouse Lane and the new Warcop Eastbound Junction;
- (e) **Work No. 06-1D**— as shown on sheets 4, 5 and 6 of the works plans for scheme 06 and being—
- (i) the improvement of the existing A66 eastbound and westbound single lane carriageway;
  - (ii) the construction of an additional carriageway to upgrade the A66 eastbound and westbound single carriageway to a dual carriageway;
  - (iii) the provision of water supply and hardstanding for the benefit of the Gypsy and Traveller Community on the relocated Brough Hill Fair site on the south side of the new A66;
  - (iv) the provision of new footway (to connect with existing footpath 372/020) on the south side of the new A66, and passing under a new underbridge (“Flitholme Road Underbridge”);
  - (v) the construction of the new Flitholme Road Underbridge, to carry the new A66 over a realigned length of Flitholme Road and over new footway (forming part of Work No. 06-6);
  - (vi) the construction of part of a new cycleway between Flitholme and Brough, as shown illustratively on sheets 5 and 6 of the rights of way and access plans for scheme 06;
  - (vii) the construction and installation of a new variable message sign;
  - (viii) the construction of a new overbridge (“West View Farm Overbridge”) crossing the A66 and the new local road (forming part of Work No. 06-8), carrying new private means of access and new footway (to connect with existing Footpath 329/001) over the new A66 and new local road;
  - (ix) the construction of a new extension to Bullistone Bridge;
  - (x) works to effect the stopping up of part of Footpath 372/020 and of private means of access; and
  - (xi) the construction of new and replacement private means of access, as shown illustratively on sheet 6 of the rights of way and access plans for scheme 06.

**Work No. 06-2**— as shown on sheet 2 of the works plans for scheme 06 and being the construction of a new compact grade-separated junction connecting the new A66 eastbound and westbound carriageways with the realigned B6259, to include—

- (a) **Work No. 06-2A**— as shown on sheet 2 of the works plans and being—
- (i) the construction of part of a new junction link road (including new footway to connect with existing Footpath 372/022) (comprised of Work Nos. 06-2A and 06-2B) connecting the new A66 westbound carriageway (forming part of Work No. 06-1A) with the new realigned B6259 (Work No. 06-2C); and

- (ii) the construction of new private means of access as shown on sheet 2 of the rights of way and access plans for scheme 06;
- (b) **Work No. 06-2B**— as shown on sheet 2 of the works plans and being—
  - (i) the construction of part of a new junction link road (including new cycleway) (comprised of Work Nos. 06-2A and 06-2B) connecting the new A66 eastbound carriageway via diverge and merge tapers (forming part of Work No. 06-1A) with the realigned B6259 (forming part of Work No. 06-2C); and
  - (ii) the construction of new private means of access (including via part of the route of a new cycleway) to land on the north side of the new A66, as shown illustratively on sheets 1 and 2 of the rights of way and access plans for scheme 06;
- (c) **Work No. 06-2C**— as shown on sheet 2 of the works plans for scheme 06 and being—
  - (i) the improvement and realignment of the existing B6259 road and the construction of a new connection to the new A66 westbound carriageway via diverge and merge tapers (forming part of Work No. 06-1A);
  - (ii) works to effect the stopping up of a length of the existing B6259); and
  - (iii) the construction of new private means of access off of the B6259, as shown illustratively on sheet 2 of the rights of way and access plans for scheme 06;
- (d) **Work No. 06-2D**— as shown on sheet 2 of the works plans for scheme 06 and being the construction of a length of new footpath to provide the connectivity between Footpath 372/022 and the new realigned B6259 (Work No. 06-2C) (including footway) and thereafter to the new Sandford Underbridge crossing beneath the A66 (forming part of Work No. 06-1A).

**Work No. 06-3**— as shown on sheet 3 of the works plans for scheme 06 and being the construction of a new single carriageway road linking the new A66 with the old de-trunked A66, to include—

- (a) the construction of a new single carriageway road linking the new A66 eastbound (forming part of Work No. 06-1C) with the existing de-trunked A66 (forming part of Work No. 06-4), via diverge and merge tapers (forming part of Work No. 06-1C) and comprising the new Warcop Eastbound Junction on the new A66 and;
- (b) the construction of new cycleway on the north side of the new link road (forming part of the new cycleway between the new Sandford Junction (Work No. 06-2) and Warcop);
- (c) the construction of new footway (to provide a connection from the existing Footpath 372/021), via the new Walk Mill Underpass to the existing A66.

**Work No. 06-4**— as shown on sheets 3, 4 and 5 of the works plans for scheme 06 and being the construction of a new single carriageway local road between Hayber Lane and Flitholme Road; to include—

- (a) **Work No. 06-4A**— as shown on sheets 3 and 4 of the works plans for scheme 06 and being—
  - (i) the construction of part of a new single carriageway road between Hayber Lane and Flitholme Road replacing the existing A66;
  - (ii) the construction of part of a new cycleway and equestrian track between Hayber Lane and Flitholme Road, as shown on sheets 3 and 4 of the rights of way and access plans for scheme 06; and
  - (iii) the construction of a new local road junction to carry a new local village access road over the new A66 at Warcop (forming part of Work No. 06-5 — the new “Warcop Westbound Junction”);
- (b) **Work No. 06-4B**— as shown on sheets 4 and 5 of the works plans for scheme 06 and being—
  - (i) the construction of part of a new single carriageway road between Hayber Lane and Flitholme Road, replacing the existing A66;

- (ii) the construction of part of a new local road junction connecting to Flitholme Road (forming part of Work No. 06-6); and
- (iii) the construction of part of a new cycleway and equestrian track between Hayber Lane and Flitholme Road, as shown on sheets 4 and 5 of the rights of way and access plans for scheme 06.

**Work No. 06-5**— as shown on sheets 3 and 4 of the works plans for scheme 06 and being the construction of a new junction on the new A66 (“Warcop Westbound Junction”) linking the new A66 with the new local village access road and the de-trunked A66 (forming part of Work No. 06-4), to include—

- (a) the construction of a new single carriageway local village access road linking the new A66 westbound carriageway (forming part of Work No. 06-1C) with the existing de-trunked A66 (forming part of Work No. 06-4), via new westbound diverge and merge tapers and comprising the new Warcop Westbound Junction on the new A66;
- (b) the construction of two new underbridges (“Warcop Junction West Underbridge”) and “Warcop Junction East Underbridge”) crossing the Moor Beck, to carry the new local village access road over the Moor Beck;
- (c) works to effect the stopping up of a length of the existing Warcop Road;
- (d) works to effect the stopping up of a length of the existing Station Road;
- (e) the construction of new single carriageway local village access road running into Warcop from its connection with the new Warcop Westbound Junction); and
- (f) the construction of a new local road connection to Station Road.

**Work No. 06-6**— as shown on sheets 4 and 5 of the works plans for scheme 06 and being the construction of the new single carriageway road (“Flitholme Road Underbridge”) linking the re-aligned Flitholme Road with the existing A66, to include—

- (a) the construction of a new single carriageway road (to link into the new “Flitholme – Langgrig Link” – Work No. 06-7A) between the re-aligned length of Flitholme Road (Work No. 06-7A) and the existing A66 (forming part of Work No. 06-04);
- (b) works to effect the stopping up of a length of the existing Flitholme Road;
- (c) the provision of new footway (to connect with existing footpath 372/020) beneath the new Flitholme Road Underbridge, to connect to new cycleway (forming part of Work Nos. 06-1D and 06-4);
- (d) the construction of new private means of access, as shown illustratively on sheet 5 of the rights of way and access plans for scheme 06; and
- (e) the construction of a new equestrian track (from the connection of the new Flitholme Road with the existing Flitholme Road through the new Flitholme Road Underbridge) to connect to new cycleway and equestrian track (forming part of Work Nos. 06-1D and 06-4).

**Work No. 06-7**— as shown on sheet 5 of the works plans for scheme 06 and being the construction of a new re-aligned single carriageway road (“Flitholme – Langrigg Link”) connecting into Flitholme Road via a new junction on the existing Langrigg Lane (forming part of Work No. 06-7B), to include—

- (a) **Work No. 06-7A**— as shown on sheet 5 of the works plans for scheme 06 and being—
  - (i) the construction of part of a new single carriageway re-aligned road (“Flitholme – Langrigg Link”) linking Flitholme with the new junction on the existing Langrigg Lane (forming part of Work 06-7B); and
  - (ii) the construction of a length of new equestrian track connecting to Flitholme Road (forming part of Work No. 06-6) and, via Flitholme Road, connecting to new cycleway (forming part of Work Nos. 06-1D and 06-4);
- (b) **Work No. 06-7B**— as shown on sheet 5 of the works plans for scheme 06 and being—
  - (i) the construction of a new length of Langrigg Lane (forming part of Work No. 06-7A); and

- (ii) works to effect the stopping up of a length of Langrigg Lane (including its junction with the westbound carriageway of the existing A66) and provision of a new turning head to the south of the existing A66.

**Work No. 06-8**— as shown on sheet 6 of the works plans for scheme 06 and being the construction of the new single carriageway local access road connecting the existing de-trunked A66 into Main Street, Brough, to include—

- (a) the construction of a new single carriageway local access road connecting the existing de-trunked A66 with Main Street, Brough on the north side of the new A66 (forming part of Work No. 06-1D);
- (b) the construction of new private means of access, as shown illustratively on sheet 6 of the rights of way and access plans for scheme 06;
- (c) the construction of a new cycleway between the existing de-trunked A66 and Main Street, Brough; and
- (d) the construction of a new noise barrier.

**Work No. 06-9**— as shown on sheet 4 of the works plans for scheme 06 and being the provision of facilities for use by and the benefit of the Ministry of Defence (MoD), to include—

- (a) the provision of a replacement compound including buildings, associated amenities, storage areas, loading and unloading areas, a filling station, hard-standings, and private means of access; and
- (b) an area laid out for use as a playing field or sports pitch, together with associated facilities, including pavilion, storage shed, parking area, hard-standing, and private means of access (including the provision of passing places) via Castlehill.

## PART 5

### SCHEME 07 – BOWES BYPASS

#### **In the administrative area of Durham County Council**

The authorised development is situated in the administrative area of Durham County Council.

A nationally significant infrastructure project as defined in sections 14 (nationally significant infrastructure projects: general) and 22 (highways) of the 2008 Act, and associated development within the meaning of section 115(2) (development for which development consent may be granted) of the 2008 Act, comprising—

**Work No. 07-1**— as shown on sheets 1, 2 and 3 of the works plans for scheme 07 and being the construction of the eastbound carriageway of a new all-purpose dual carriageway (“the new A66”) and improvements to the existing A66 (“the improved A66”) at Bowes, to include—

- (a) **Work No. 07-1A**— as shown on sheets 1, 2 and 3 of the works plans for scheme 07 and being the construction of the new eastbound all-purpose dual carriageway, to include—
  - (i) the improvement of the existing A66 eastbound dual lane carriageway;
  - (ii) the construction of a new layby on the north side of the A66;
  - (iii) the construction and installation of a new variable message sign;
  - (iv) construction of a new eastbound diverge slip road to connect the eastbound A66 to A67 (Work No. 07-5) at Bowes Junction;
  - (v) construction of a new bus layby on the north side of the A66 eastbound diverge slip road;
  - (vi) improvements to and extension of the existing Lyndale Farm underpass which carries an existing private means of access under the A66, including the improvement of the private means of access track;
  - (vii) the construction of a new bridge to carry the new A66 and the A67 (Work No. 07-5);

- (viii) works to effect the stopping up of existing private means of access and underpass at Bowes Hall;
  - (ix) works to effect the stopping up of existing private means of access into agricultural land on the north side of the A66 at Bowes Hall and to the east of Bowes Hall;
  - (x) the construction of a new A66 eastbound merge slip road connecting the A67 (Work No. 07-5) to the eastbound carriageway of the A66;
  - (xi) works to effect the stopping up of existing private means of access accessed via the eastbound carriageway of the A66 into agricultural land; and
  - (xii) the construction of new private means of access as shown on sheets 1 and 2 of the rights of way and access plans for scheme 07;
- (b) **Work No. 07-1B**— as shown on sheet 3 of the works plans for scheme 07 and being the construction of the new eastbound all-purpose dual carriageway, to include—
- (i) the improvement of the existing A66 eastbound dual lane carriageway;
  - (ii) works to effect the stopping up of private means of access onto the existing A66 from Low Broats Farm and from High Broats Farm;
  - (iii) the construction of new private means of access as shown on sheet 3 of the rights of way and access plans for scheme 07; and
  - (iv) the construction of a new footway on the north side of the A66 for the realignment of Bowes Footpath 12; and
- (c) **Work No. 07-1C**— as shown on sheet 3 of the works plans for scheme 07 and being the construction of the new eastbound all-purpose dual carriageway, to include—
- (i) the improvement of the existing A66 eastbound dual lane carriageway;
  - (ii) works to effect the closure of existing gaps in the central reserve of the A66 at the access to Hulands Quarry;
  - (iii) works to effect the closure of an existing gap in the central reserve of the A66 at the access to Bowes Cross Farm;
  - (iv) the construction of new private means of access as shown on sheet 3 of the rights of way and access plans for scheme 07; and
  - (v) the construction of a new footway on the north side of the A66 for the realignment of Bowes Footpath 12.

**Work No. 07-2**— as shown on sheets 1, 2 and 3 of the works plans for scheme 07 and being the construction of the westbound carriageway of a new all-purpose dual carriageway (“the new A66”) and improvements to the existing A66 (“the improved A66”) at Bowes, to include—

- (a) **Work No. 07-2A**— as shown on sheets 1, 2 and 3 of the works plans for scheme 07 and being the construction of the new westbound all-purpose dual carriageway road, to include—
- (i) the improvement of the existing A66 westbound dual lane carriageway;
  - (ii) the construction and installation of a new variable message sign;
  - (iii) the construction of a retaining wall on the south side of the A66 and associated works;
  - (iv) the construction of new private means of access, west of Clint Lane Overbridge, as shown illustratively on sheet 1 of the rights of way and access plans for scheme 07;
  - (v) the construction of a new A66 westbound merge slip road connecting the A67 (Work No. 07-5) to the westbound carriageway of the A66 at Bowes Junction;
  - (vi) the construction of new private means of access to agricultural land and premises, and to attenuation ponds, as shown illustratively on sheet 2 of the rights of way and access plans for scheme 07;
  - (vii) construction of a new westbound diverge slip road from the westbound carriageway of the A66 to the improved unnamed side road (forming part of Work No. 07-5);



- (viii) works to effect the stopping up of private means of access from the western carriageway of the A66 and from the unnamed side road (Work No. 07-5) as shown on sheet 2 of the rights of way and access plans for scheme 07); and
- (ix) works to stop up the existing junction between the existing A66 and The Street;
- (b) **Work No. 07-2B**— as shown on sheet 3 of the works plans for scheme 07 and being the construction of the new westbound all-purpose dual carriageway, to include—
  - (i) the improvement of the existing A66 westbound dual lane carriageway;
  - (ii) works to effect the stopping up of private means of access to Mid Lowfield from the existing A66;
  - (iii) the construction of new private means of access as shown on sheet 3 of the rights of way and access plans for scheme 07; and
  - (iv) the construction of a new layby on the south side of the A66, east of the existing Mid Lowfields Farm access;
- (c) **Work No. 07-2C**— as shown on sheet 3 of the works plans for scheme 07 and being the construction of the new westbound all-purpose dual carriageway, to include—
  - (i) the improvement of the existing A66 westbound dual lane carriageway;
  - (ii) works to effect the stopping up of private means of access from the A66 to the East Lowfield Farm and to Bowes Cross Farm;
  - (iii) the construction of new private means of access as shown on sheet 3 of the rights of way and access plans for scheme 07; and
  - (iv) works to effect the closure of the existing gap in the central reserve of the A66 at the access to East Lowfield Farm.

**Work No. 07-3**— as shown on sheet 1 of the works plans for scheme 07 and being the works to effect the stopping up of part of the existing Bowes Footpath 18 and the construction of a length of new public footpath (around the north side of an attenuation pond).

**Work No. 07-4**— as shown on sheet 1 of the works plans for scheme 07 and comprising—

- (a) the improvement of existing private means of access to agricultural land adjoining Clint Lane, as shown illustratively on sheet 1 of the rights of way and access plans for scheme 07;
- (b) works to effect the stopping up of a length of Clint Lane and the associated removal of the existing Clint Lane Overbridge;
- (c) the construction of a new replacement overbridge to carry the improved Clint Lane over the new A66; and
- (d) the improvement of part of the existing Clint Lane.

**Work No. 07-5**— as shown on sheet 2 of the works plans for scheme 07 and comprising—

- (a) the improvement of the existing A67;
- (b) works to effect the stopping up of a length of the existing A67; and
- (c) the construction of new private means of access, as shown illustratively on sheets 1 and 2 of the rights of way and access plans for scheme 07.

**Work No. 07-6**— as shown on sheet 2 of the works plans for scheme 07 and comprising—

- (a) the improvement of the existing Blacklodge Farm Underpass and the improvement of existing private means of access, as shown illustratively on sheet 2 of the rights of way and access plans for scheme 07;
- (b) the construction of a length of new footpath (linking into existing Bowes Footpath 6) on the north side and then on the south side of the new A66, passing under the A66 via the Blacklodge Farm underpass;

- (c) on the north side of the new A66 and passing under the new A66 via the Blacklodge Farm underpass, a new private means of access on the same alignment as part of the new footpath, as shown illustratively on sheet 2 of the rights of way and access plans for scheme 07;
- (d) works to effect the stopping up of part of the existing public right of way, Bowes Footpath 6; and
- (e) the construction of new private means of access as shown illustratively on sheet 2 of the rights of way and access plans for scheme 07.

**Work No. 07-7**— as shown on sheets 2 and 3 of the works plans for scheme 07 and being the construction of a length of new highway, from The Street on the south side of the existing A66, and passing over the A66 to its north side, comprising—

- (a) **Work No. 07-7A**— as shown on sheets 2 and 3 of the works plans for scheme 07 and comprising—
  - (i) the construction of a length of new highway from The Street on the south side of the existing A66, linking to the East Bowes Accommodation Overbridge (Work No. 07-7B); and
  - (ii) works to effect the stopping up of a length of The Street / Low Road;
- (b) **Work No. 07-7B**— as shown on sheet 3 of the works plans for scheme 07 and comprising—
  - (i) the construction of a length of new highway on the south side of the A66 (linking with Work No. 07-7A) and passing over the new A66 (via the East Bowes Accommodation Overbridge) to the north side of the new A66;
  - (ii) the construction of a new accommodation access bridge (East Bowes Accommodation Overbridge) carrying the new highway over the new A66;
  - (iii) the construction of a new footway along the route of the new highway (part of Work No. 07-7B); and
  - (iv) the construction of private means of access as shown illustratively on sheet 3 of the rights of way and access plans for scheme 07.

**Work No. 07-8**— as shown on sheet 3 of the works plans for scheme 07 and being the construction of a length of new footpath (linking with the new highway (Work No. 07-7)) on the south side of the new A66, to include—

- (a) the construction of a length of new footpath running from its junction with the new highway (Work No. 07-7) on the south side of the new A66; and
- (b) the construction of new private means of access (including to Mid Lowfield Farm, East Lowfield Farm and Bowes Cross Farm), partially sharing the same alignment as the length of new footpath, as shown illustratively on sheet 2 of the rights of way and access plans for scheme 07.

**Work No. 07-9**— as shown on sheet 3 of the works plans for scheme 07 and being the construction of a length of new footpath (linking with the new highway (Work No. 07-7B)) on the north side of the new A66, to include—

- (a) the construction of new private means of access (including to Low Broats Farm and High Broats Farm), on the same alignment as the length of new footpath, as shown illustratively on sheet 3 of the rights of way and access plans for scheme 07; and
- (b) the construction of a new footpath for the realignment of Bowes Footpath 12.

**Work No. 07-10**— as shown on sheet 3 of the works plans for scheme 07 and comprising—

- (a) the improvement of the existing access to Hulands Quarry; and
- (b) the construction of footpath to connect existing Bowes Footpath 6 at Hulands Quarry to the realigned Bowes Footpath 12 constructed as part of work no. 07-9.

## PART 6

### SCHEME 08 – CROSS LANES TO ROKEBY

#### **In the administrative area of Durham County Council**

The authorised development is situated in the administrative area of Durham County Council.

A nationally significant infrastructure project as defined in sections 14 (nationally significant infrastructure projects: general) and 22 (highways) of the 2008 Act, and associated development within the meaning of section 115(2) (development for which development consent may be granted) of the 2008 Act, comprising—

**Work No. 08-1**— as shown on sheets 1, 2 and 3 of the works plans for scheme 08 and being the construction of a new all-purpose dual carriageway (“the new A66”) and improvements to the existing A66 (“the improved A66”) between Cross Lanes and Rokeby, to include—

- (a) **Work No. 08-1A**— as shown on sheet 1 of the works plans for scheme 08 and being the construction of a new all-purpose dual carriageway and improvements to the existing A66, to include—
  - (i) the improvement of the existing A66 eastbound and westbound dual lane carriageway;
  - (ii) works to effect the stopping up of the existing junction of Rutherford Lane with the A66;
  - (iii) works to effect the stopping up of existing private means of access to property at Pounder Gill and associated construction of new private means of access via Rutherford Lane, as shown illustratively on sheet 1 of the rights of way and access plans for scheme 08;
  - (iv) works to effect the stopping up of existing private means of access at North Bitts;
  - (v) works to effect the stopping up of a length of Bowes Footpath 1 and Rokeby Footpath 7;
  - (vi) the construction of new private means of access, as shown illustratively on sheet 1 of the rights of way and access plans for scheme 08; and
  - (vii) works to effect the removal of the existing observation platform at North Bitts;
- (b) **Work No. 08-1B**— as shown on sheet 1 of the works plans for scheme 08 and being the construction of the new all-purpose dual carriageway and improvements to the existing A66, to include—
  - (i) the construction of new eastbound diverge and merge tapers for a new compact grade-separated junction (Work No. 08-4A) linking the proposed A66 with the realigned Moorhouse Lane link road (Work No. 08-5);
  - (ii) the construction of new westbound diverge and merge tapers for a new compact grade-separated junction (Work No. 08-4B) linking the proposed A66 with the realigned Moorhouse Lane link road (Work No. 08-5);
  - (iii) the construction of a new Cross Lanes Junction bridge to carry the new realigned B6277 (forming part of Work No. 08-5) over the new A66;
  - (iv) works to effect the stopping up of the existing junction of the B6277 with the westbound carriageway of the A66;
  - (v) works to effect the stopping up of private means of access to property from the A66 mainline;
  - (vi) the construction of new private means of access, as shown illustratively on sheet 1 of the rights of way and access plans for scheme 08; and
  - (vii) works to effect the stopping up of the existing junction of Moorhouse Lane with the eastbound carriageway of the A66;

- (c) **Work No. 08-1C**— as shown on sheets 1, 2 and 3 of the works plans and being the construction of the new all-purpose dual carriageway and improvements to the existing A66, to include —
- (i) the construction and installation of new variable message sign on the south side of the new A66;
  - (ii) the construction of new laybys and observation platforms on both sides of the new A66;
  - (iii) works to effect the stopping up of private means of access to Street Side Farm from the existing A66, with new private means of access provided as part of Work No. 08-5;
  - (iv) works to effect the stopping up of private means of access to Birk House Farm from the existing A66, with new private means of access provided as part of Work No. 08-6;
  - (v) works to effect the stopping up of existing private means of access to the fields east of Streetside Farm;
  - (vi) works to effect the stopping up of private means of access to Tutta Beck Farm and Cottages from the existing A66, and the construction of new replacement private means of access, as shown illustratively on sheet 2 of the rights of way and access plans for scheme 08;
  - (vii) the construction of a new eastbound diverge taper for a new compact grade-separated junction (Work Nos. 08-8A and 08-8B) linking the new A66 with the de-trunked A66 (now C108) (Work No. 08-8C);
  - (viii) the construction of new westbound diverge and merge tapers for a new compact grade-separated junction (Work Nos. 08-8A and 08-8B) linking the proposed A66 with the de-trunked A66 (now C108) (Work No. 08-8C);
  - (ix) works to effect the stopping up of private means of access (including to Ewebank Farm and Tack Room Cottage), and the construction of new private means of access, as shown illustratively on sheet 3 of the rights of way and access plans for scheme 08;
  - (x) works to effect the stopping up of a length of Rokeby Footpath 6;
  - (xi) the construction of new private means of access, as shown illustratively on sheets 2 and 3 of the rights of way and access plans for scheme 08; and
  - (xii) the construction of a new eastbound merge slip road connecting the new C165 Barnard Castle roundabout (part of Work No. 08-8C) with the eastbound carriageway of the new A66.

**Work No. 08-2**— as shown on sheet 1 of the works plans for scheme 08 and being the construction of a new footpath and private means of access, comprising—

- (a) the construction of a length of new footway, linking Bowes Footpath 1 with Rokeby Footpath 7;
- (b) the construction of new private means of access, as shown illustratively on sheet 1 of the rights of way and access plans for scheme 08; and
- (c) works to effect the stopping up of Bowes Footpath 1 and Rokeby Footpath 7.

**Work No. 08-3**— as shown on sheet 1 of the works plans for scheme 08 and being the construction of a length of new footpath to connect the existing Rokeby Footpath 7 with the existing Rokeby Footpath 8.

**Work No. 08-4**— as shown on sheet 1 of the works plans for scheme 08 and being the construction of the compact connector roads, connecting the improved A66 to the new realigned B6277 (forming part of Work No. 08-5), comprising—

- (a) **Work No. 08-4A**— as shown on sheet 1 of the works plans for scheme 08 and being—

- (i) the construction of a new Cross Lanes junction eastbound connector road linking the new A66 eastbound carriageway to the new B6277 Moorhouse Lane (Work No. 08-5); and
  - (ii) the construction of new private means of access for North Bitts via the eastbound compact connector road, as shown illustratively on sheet 1 of the rights of way and access plans for scheme 08;
- (b) **Work No. 08-4B**— as shown on sheet 1 of the works plans for scheme 08 and being the construction of a new Cross Lanes Junction westbound connector road linking the new A66 westbound carriageway to the new B6277 Moorhouse Lane (Work No. 08-5).

**Work No. 08-5**— as shown on sheet 1 of the works plans for scheme 08 and being the construction of the new B6277 Moorhouse Lane link road, comprising—

- (a) the construction of a new link road and bridge over the new A66 (Work No. 08-1B) connecting the B6277 Moorhouse Lane (to the north of the A66) with Rutherford Lane (to the south of the A66);
- (b) the construction of new and improved lengths of carriageway, connecting Rutherford Lane with the new link road;
- (c) works to effect the stopping up of Rutherford Lane between the new realigned link road and the realigned Rutherford Lane;
- (d) the construction of new private means of access, as shown illustratively on sheet 2 of the rights of way and access plans for scheme 08;
- (e) works to effect the stopping up of a short length of Rokeby Footpath 8;
- (f) the construction of a length of new road to connect the new link road (north of Ivy Cottage) to the existing B6277 Moorhouse Lane North;
- (g) improvements to the existing Moorhouse Lane (North) carriageway; and
- (h) works to effect the stopping up of a length of Moorhouse Lane between the new link road and the new carriageway on Moorhouse Lane (North).

**Work No. 08-6**— as shown on sheet 1 of the works plans for scheme 08 and being the construction of a new side road around the north of the Cross Lane Farm Shop, comprising—

- (a) the construction of a length of new road connecting the existing Moorhouse Lane on the south side of the A66 with the new link road (Work No. 08-5);
- (b) works to alter the existing access to Cross Lanes Farm Shop and Café to facilitate entry and exit;
- (c) works to effect the stopping up of the existing exit from the Cross Lanes Farm Shop Café; and
- (d) the construction of new private means of access, as shown illustratively on sheets 1 and 2 of the rights of way and access plans for scheme 08.

**Work No. 08-7**— as shown on sheets 1 and 2 of the works plans for scheme 08 and being—

- (a) the construction of a length of new cycle track extending eastwards from its junction with the existing Moorhouse Lane (North) (Work No. 08-5) to the new Rokeby Junction (Work No. 08), where it links with the de-trunked A66 (Work No. 08-8C); and
- (b) the construction of new private means of access (off Moorhouse Lane) as shown illustratively on sheets 1 and 2 of the rights of way and access plans for scheme 08.

**Work No. 08-8**— as shown on sheets 2 and 3 of the works plans for scheme 08 and being the construction of the new Rokeby Junction and improvement of the existing A66, comprising—

- (a) **Work No. 08-8A**— as shown on sheet 2 of the works plans for scheme 08, to include—
  - (i) the construction of new connector road comprising part of a new compact grade-separated junction (“new Rokeby Junction”), connecting the new A66 to a de-trunked length of the existing A66;

- (ii) the construction of a new underbridge, forming part of the new Rokeby Junction, and carrying the new connector road under the new A66;
  - (iii) the construction of new cycleway from the existing public footpath west of St. Mary's Church (Rokeby Footpath 5), following the new junction and connecting with the new cycle track on the south side of the A66 (forming part of Work No. 08-9); and
  - (iv) the construction of new private means of access to Rokeby Grange, connecting the existing access to the connector road for the new Rokeby Junction, as shown illustratively on sheet 2 of the rights of way and access plans for scheme 08;
- (b) **Work No. 08-8B**— as shown on sheet 2 of the works plans for scheme 08 and being the construction of new eastbound connector road at the new Rokeby Junction, connecting the eastbound carriageway of the new A66 to a de-trunked length of the existing A66; and
- (c) **Work No. 08-8C**— as shown on sheet 3 of the works plans for scheme 08 and being the improvement of a de-trunked length of the existing A66, to include—
- (i) the construction of a new roundabout at the existing junction of the A66 with the C165 Barnard Castle Road; and
  - (ii) the construction of a length of new realigned C165 Barnard Castle Road connecting the existing C165 Barnard Castle Road to the new roundabout.

**Work No. 08-9**— as shown on sheet 2 and 3 of the works plans for scheme 08 and being the construction of a public right of way, comprising—

- (a) construction of a length of new cycle track from the new Rokeby Junction, eastwards towards Greta Bridge, and linking into existing cycleway provision which extends north-westwards out of Greta Bridge;
- (b) the construction of new private means of access to Tutta Beck Farm and Cottages as shown illustratively on sheet 2 of the rights of way and access plans for scheme 08;
- (c) the construction of new private means of access, on the same alignment as the new cycle track ((a) above), to land and premises (including Ewebank Farm, attenuation pond, and Tack Room Cottages), as shown illustratively on sheet 3 of the rights of way and access plans for scheme 08; and
- (d) works to effect the stopping up of a length of Rokeby Footpath 6.

## PART 7

### SCHEME 09 – STEPHEN BANK TO CARKIN MOOR

#### **In the administrative area of the North Yorkshire Council**

The authorised development is situated in the administrative area of the North Yorkshire Council.

A nationally significant infrastructure project as defined in sections 14 (nationally significant infrastructure projects: general) and 22 (highways) of the 2008 Act, and associated development within the meaning of section 115(2) (development for which development consent may be granted of the 2008 Act, comprising—

**Work No. 09-1**— as shown on sheets 1, 2, 3 and 4 of the works plans for scheme 09 and being the construction of a new all-purpose dual carriageway (“the new A66”) and improvements to the existing A66 (“the improved A66”) between Stephen Bank and Carkin Moor, to include—

- (a) **Work No. 09-1A**— as shown on sheets 1 and 2 of the works plans for scheme 09 and being the construction of new carriageways of the A66 from a point 676 metres to the west of the junction of the A66 with the access to Browson Bank and continuing in an easterly direction, to include—
  - (i) the improvement of the existing A66 eastbound carriageway;
  - (ii) works to effect the stopping up of private means of access to the A66 from Browson Bank Farm;

- (iii) works to effect the closure of the central reserve on the A66 opposite the private means of access to Browson Bank Farm;
- (iv) the construction of new carriageway connecting the existing A66 to the westbound carriageway of the new A66 dual carriageway; and
- (v) the construction of a layby and observation platform on the westbound carriageway including the provision of a footway at the rear of the layby;
- (b) **Work No. 09-1B**— as shown on sheets 2 and 3 of the works plans for scheme 09 and being—
  - (i) the construction of new carriageways of the A66; and
  - (ii) the construction of a layby and observation platform on the eastbound carriageway, including the provision of a footway at the rear of the layby;
- (c) **Work No. 09-1C**— as shown on sheets 3 and 4 of the works plans for scheme 09 and being the construction of new carriageways of the A66, to include—
  - (i) the construction of new eastbound diverge and merge tapers for a new compact grade-separated junction (Work No. 09-8A) linking the proposed A66 with de-trunked A66 (Work No. 09-3D); and
  - (ii) the construction of new westbound diverge and merge tapers for a new compact grade-separated junction (Work No. 09-8B) linking the proposed A66 with de-trunked A66 (Work No. 09-3D);
- (d) **Work No. 09-1D**— as shown on sheet 4 of the works plans for scheme 09 and being—
  - (i) the construction of new carriageways of the A66; and
  - (ii) the construction of a new retaining wall and associated works on the south side of the A66 dual carriageway;
- (e) **Work No. 09-1E**— as shown on sheet 4 of the works plans for scheme 09, to include—
  - (i) the construction of new westbound carriageway of the A66; and
  - (ii) works to effect the closure of the central reserve on the A66 opposite the access to Warrener Lane;
- (f) **Work No. 09-1F**— as shown on sheet 4 of the works plans for scheme 09 and being the construction of new eastbound carriageway of the A66;
- (g) **Work No. 09-1G**— as shown on sheet 4 of the works plans for scheme 09 and being the improvement of the existing A66 westbound carriageway; and
- (h) **Work No. 09-1H**— as shown on sheet 4 of the works plans for scheme 09 and being the improvement of the existing A66 eastbound carriageway.

**Work No. 09-2**— as shown on sheets 1 and 2 of the works plans for scheme 09 and comprising the construction of a new bridleway on the north side of the new A66, to include—

- (a) works to effect the stopping up of a length of existing Bridleway Hutton Magna 12 southwards, for the remainder of its length, from the point where it meets the new private means of access, as shown on sheet 1 of the rights of way and access plans for scheme 09;
- (b) the construction of new bridleway, from the stopped-up Bridleway Hutton Magna 12 in an easterly direction, passing beneath the A66 via an accommodation underpass ((e) below), to connect with the realigned de-trunked A66 (on the south side of the new A66);
- (c) the construction of new private means of access on the north side of the A66, running parallel to the A66, and through the accommodation underpass ((e) below), facilitating access to agricultural land on the north of the new A66 and access to the de-trunked A66 on the south, as shown illustratively on sheets 1 and 2 of the rights of way and access plans for scheme 09;
- (d) the construction of new private means of access to agricultural land to the north and to the east and west of the new bridleway and private means of access, as shown illustratively on sheets 1 and 2 of the rights of way and access plans for scheme 09; and



- (e) the construction of a new accommodation underpass to carry the bridleway under the new A66.

**Work No. 09-3**— as shown on sheets 1, 2, 3 and 4 of the works plans for scheme 09 and being the construction, improvement and de-trunking of the existing A66, to include—

- (a) **Work No. 09-3A**— as shown on sheets 1 and 2 of the works plans for scheme 09 and being—
  - (i) the construction of new private means of access to land (including Browson Bank and an attenuation pond), as shown illustratively on sheet 1 of the rights of way and access plans for scheme 09;
  - (ii) the construction of an equestrian track on the north side of the carriageway, commencing from the new accommodation underpass (Work No. 09-2) and continuing in an easterly direction;
  - (iii) works to effect the stopping up of access to land on the north side of the existing A66, opposite the existing junction of the A66 with Dick Scot Lane, as shown illustratively on sheet 2 of the rights of way and access plans for scheme 09; and
  - (iv) the improvement of the northernmost length of the existing Dick Scot Lane where it meets the de-trunked A66 and the new equestrian track;
- (b) **Work No. 09-3B**— as shown on sheet 2 of the works plans for scheme 09 and being the construction of a new realigned section of the de-trunked A66, to include—
  - (i) the construction of the new realigned carriageway of the existing A66;
  - (ii) works to effect the stopping up of a length of existing Footpath 20.55/1/1 as shown illustratively on sheet 2 of the rights of way and access plans for scheme 09;
  - (iii) works to effect the stopping up of private means of access to agricultural land on the south side of the A66 and the construction of new replacement private means of access, to the east of Dick Scot Lane, as shown illustratively on sheet 2 of the rights of way and access plans for scheme 09;
  - (iv) works to effect the stopping up of private means of access to Old Duns Bank and the construction of a new private means of access, as shown illustratively on sheet 2 of the rights of way and access plans for scheme 09;
  - (v) works to effect the stopping up of private means of access into agricultural land on the south side of the A66 and the construction of new replacement private means of access, to the west of Collier Lane, as shown illustratively on sheet 2 of the rights of way and access plans for scheme 09;
  - (vi) works to effect the stopping up of a redundant length of the existing A66 where the new A66 deviates to the north of the de-trunked A66;
  - (vii) the construction of a length of new footway along the route of part of the de-trunked A66 to connect to the existing Footpath 20.55/1/1;
  - (viii) the construction of a new private means of access to land (including attenuation ponds) on the west side of Waitlands Lane, as shown illustratively on sheet 2 of the rights of way and access plans for scheme 09;
  - (ix) the construction of a new pedestrian crossing west of the junction of Collier Lane with the de-trunked A66, to enable connectivity with the new footway ((vii) above);
  - (x) the construction of new private means of access to agricultural land on the north side of the de-trunked A66, east of Collier Lane, as shown illustratively on sheet 2 of the rights of way and access plans for scheme 09; and
  - (xi) the construction of an equestrian track on the north side of the carriageway of the de-trunked A66;
- (c) **Work No. 09-3C**— as shown on sheets 2 and 3 of the works plans for scheme 09 and being—

- (i) the provision of an equestrian track on the north side of the carriageway of the de-trunked A66; and
  - (ii) the construction of new private means of access to agricultural land on the north side of the de-trunked A66, as shown illustratively on sheet 3 of the rights of way and access plans for scheme 09;
- (d) **Work No. 09-3D**— as shown on sheets 3 and 4 of the works plans for scheme 09 and being the construction of new carriageway on the de-trunked A66, to include—
- (i) the construction of an equestrian track on the north side of the carriageway of the de-trunked A66;
  - (ii) the construction of a new private means of access to agricultural land on the north side of the carriageway, as shown illustratively on sheet 3 of the rights of way and access plans for scheme 09;
  - (iii) the construction of new private means of access to land (including attenuation ponds) on the north side of the de-trunked A66, as shown illustratively on sheet 3 of the rights of way and access plans for scheme 09;
  - (iv) the construction of new private means of access to land (including attenuation ponds) on the south side of the de-trunked A66, to connect to the new bridleway (and private means of access) (Work No. 09-11), as shown illustratively on sheet 3 of the rights of way and access plans for scheme 09; and
  - (v) the provision of new at-grade crossing facilities for non-motorised users on the de-trunked A66;
- (e) **Work No. 09-3E**— as shown on sheets 3 and 4 of the works plans for scheme 09 and comprising—
- (i) the construction of new carriageway and re-alignment of existing carriageway of the de-trunked A66; and
  - (ii) the construction of an equestrian track on the north side of the de-trunked A66;
- (f) **Work No. 09-3F**— as shown on sheet 4 of the works plans for scheme 09 comprising—
- (i) the construction of new carriageway and re-alignment of existing carriageway of the de-trunked A66;
  - (ii) the construction of an equestrian track on the north side of the de-trunked A66; and
  - (iii) the construction of new private means of access to land (including attenuation ponds), as shown illustratively on sheet 4 of the rights of way and access plans for scheme 09;
- (g) **Work No. 09-3G**— as shown on sheet 4 of the works plans for scheme 09 and comprising—
- (i) the construction of new carriageway to connect the re-aligned de-trunked A66 with Warrener Lane;
  - (ii) the construction of an equestrian track on the north side of the de-trunked A66;
  - (iii) works to effect the stopping up a length of the existing Warrener Lane southwards from its junction with the existing A66 to the point where it meets the realigned de-trunked A66; and
  - (iv) the provision of a new at-grade equestrian crossing facility.

**Work No. 09-4**— as shown on sheets 2 and 3 of the works plans for scheme 09 and being the construction of a new footpath, to include—

- (a) works to effect the stopping up of a length of existing Footpath 20.72/1/1 to the south-west of West Layton Nursery, for the remainder of its length, from the point where it meets the boundary of the new A66;
- (b) the construction of a length of new footpath to connect Footpath 20.72/1/1 to the Collier Lane overbridge (forming part of Work No. 09-5);

- (c) works to effect the stopping up of Footpath 20.23/8/1, from the point where it meets the boundary of the new A66; and
- (d) the construction of a new footpath on the north side of the carriageway to connect Footpath 20.23/8/1 to the Collier Lane overbridge (forming part of Work No. 09-5).

**Work No. 09-5**— as shown on sheet 2 of the works plans for scheme 09 and being the construction of a new overbridge and the realignment of Collier Lane to the existing de-trunked A66 carriageway, to include—

- (a) works to effect the stopping up of a section of Collier Lane, from its existing junction with the A66 in a north-easterly direction for a distance of 160 metres;
- (b) the provision of a pedestrian crossing on the north side of the new overbridge;
- (c) the construction of the overbridge linking Collier Lane to the existing de-trunked A66; and
- (d) the construction of new footway on the eastern side of the overbridge to connect the existing Footpaths 20.72/1/1 and 20.23/8/1 with the de-trunked A66 on the south side of the new A66.

**Work No. 09-6**— as shown on sheets 2 and 3 of the works plans and being the construction of a new footpath connecting the new equestrian track on the north side of the de-trunked A66 to the existing Footpath 20.23/8/1 on the south side of the new A66.

**Work No. 09-8**— as shown on sheet 3 of the works plans for scheme 09 and being the construction of the new compact grade separated junction at Mains Gill (“the new Mains Gill Junction”) between the realigned, de-trunked A66 and the improved A66, comprising—

- (a) **Work No. 09-8A**—
  - (i) the construction of a new eastbound compact connector road;
  - (ii) the construction of a new underbridge to carry the connector road under the improved A66 (Work No. 09-1C);
  - (iii) the provision of an equestrian crossing facility;
  - (iv) the construction of an equestrian track on a length of the east side of the carriageway from the realigned Moor Lane (Work No. 09-8C) to the crossing facility ((iii) above); and
  - (v) the construction of an equestrian track on the west side of the carriageway from the crossing facility ((iii) above) to the crossing facility on the westbound connector road (Work No. 09-8B);
- (b) **Work No. 09-8B**—
  - (i) the construction of a new westbound compact connector road;
  - (ii) the provision of a new pedestrian / equestrian crossing facility; and
  - (iii) the construction of an equestrian track to link to the equestrian track on the north side of the de-trunked A66; and
- (c) **Work No. 09-8C**—
  - (i) the construction of a new realigned length of Moor Lane to connect the existing Moor Lane to the new eastbound compact connector road (and then the new underbridge) (forming part of Work No. 09-8A);
  - (ii) works to effect the stopping up of a length of the existing Moor Lane between the realigned Moor Lane link road and the de-trunked A66 (forming part of Work No. 09-3C); and
  - (iii) the construction of an equestrian track on the south side of the Moor Lane link road, linking the new equestrian track on the east side of the underbridge (part of Work No. 09-8A) to the new bridleway (Work No. 09-9).

**Work No. 09-9**— as shown on sheet 3 and 4 of the works plans for scheme 09 and comprising the construction of a new bridleway, to include—

- (a) works to effect the stopping up of a length of its existing Bridleway 20.23/5/1 southwards, from the point at which it meets the new A66, to its terminus; and
- (b) the construction of a new bridleway commencing from its junction with the new realigned Moor Lane (forming part of Work No. 09-8C) and connecting at its easternmost end with the existing Bridleway 20.23/5/1.

**Work No. 09-10**— as shown on sheet 3 of the works plans for scheme 09 and comprising the construction of a new bridleway connecting the crossing facility on the Mains Gill Junction (forming part of Work No. 09-8A), to the equestrian track on the north side of the de-trunked A66 (forming part of Work No. 09-3C).

**Work No. 09-11**— as shown on sheet 3 of the works plans for scheme 09 and comprising the construction of a bridleway, to include—

- (a) works to effect the stopping up of a length of existing Bridleway 20.55/6/1 where it crosses the western boundary of the farm shop; and
- (b) the construction of a new bridleway (also accommodating a new private means of access) connecting the new crossing of the de-trunked A66 (forming part of Work No. 09-3D) to the existing Bridleway 20.55/6/1.

**Work No. 09-12**— as shown on sheet 4 of the works plans for scheme 09 and comprising a new bridleway passing under the new A66, to include—

- (a) works to effect the stopping up of a length of existing Bridleway 20.30/8/1;
- (b) the construction of a new bridleway to connect the existing Bridleway 20.30/8/1 on the north side of the new A66 to the new equestrian track alongside the de-trunked A66 to the south of the new A66;
- (c) the construction of a new underpass to carry the new bridleway under the new A66; and
- (d) the construction of a new junction between the new bridleway and the existing Warrener Lane.

**Work No. 09-13**— as shown on sheet 4 of the works plans for scheme 09, to include—

- (a) works to effect the stopping up of a length of existing Bridleway 20.30/9/1 and a length of existing Bridleway 20.33/24/1;
- (b) the construction of a new bridleway from the new bridleway link (part of Work No. 09-12) to the realigned Warrener Lane (part of Work No. 09-3F);
- (c) the provision of new private means of access over part of the new bridleway, as shown on sheet 4 of the rights of way and access plans for scheme 09; and
- (d) works to effect the stopping up of a length of the existing Warrener Lane between its junction with the de-trunked A66 and its intersection with the new A66.

## PART 8

### SCHEME 11 – A1(M) J53 SCOTCH CORNER

#### **In the administrative area of the North Yorkshire Council**

The authorised development is situated in the administrative area of the North Yorkshire Council.

A nationally significant infrastructure project as defined in sections 14 (nationally significant infrastructure projects: general) and 22 (highways) of the 2008 Act, and associated development within the meaning of section 115(2) (development for which development consent may be granted) of the 2008 Act, comprising—

**Work No. 11-1**— as shown on sheet 1 of the works plans for scheme 11 and being the improvement of the existing A66 at its junction with the A1(M) Junction 53, Scotch Corner Roundabout, to include—

- (a) the provision of an additional lane on the existing Scotch Corner North Overbridge within the existing bridge cross section, facilitated by the reduction of the southern verge width;
- (b) works to construct an additional lane and to facilitate its tie-in to the existing circulatory carriageway on both the east side and the west side of the existing Scotch Corner North Overbridge; and
- (c) associated improvements to the existing circulatory carriageway of the Scotch Corner Roundabout.

**Work No. 11-2**— as shown on sheet 1 of the works plans for scheme 11 and being the improvement of Middleton Tyas Lane, to include—

- (a) the construction of additional carriageway to facilitate widening of the existing Middleton Tyas Lane, on approach to the circulatory carriageway of the Scotch Corner Roundabout;
- (b) the construction and improvement of footway and cycleway on the south side of Middleton Tyas Lane; and
- (c) the improvement of the existing Middle Tyas Lane eastbound and westbound carriageways.

### **Ancillary Works**

For the purposes of or in connection with the construction of any of the works and other development mentioned above, ancillary or related development which does not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement, consisting of—

- (a) works within highways, including—
  - (i) alteration of the layout of any street permanently or temporarily, including increasing or reducing the width of the carriageway of any street by increasing or reducing the width of any kerb, footway, cycleway, or verge within the street; and altering the level or increasing the width of any footway, cycleway or verge within the street; works for the strengthening, improvement, repair, maintenance or reconstruction of any street; and works associated with the tie-in of the authorised development to the existing highway;
  - (ii) street works, including breaking up or opening a street, or any sewer, drain or tunnel under it, and tunnelling or boring under a street;
  - (iii) relocation or provision of new road traffic signs, signals, street lighting, road restraints and carriageway lane markings;
  - (iv) works to alter, remove or maintain street furniture or apparatus (including statutory undertakers' apparatus) in, under or above a street, including mains, sewers, drains, pipes, cables, cofferdams, lights fencing and other boundary treatments;
  - (v) works to facilitate traffic management, provide vehicle recovery services and to deliver information relating to the authorised development; and
  - (vi) works to stop up, provide or re-provide private means of access to land or premises;
- (b) Other works and development—
  - (i) for the strengthening, alteration or demolition of any building;
  - (ii) to place, alter, divert, relocate, protect, remove or maintain services, plant and other apparatus and equipment belonging to statutory undertakers, utility companies and others in, under or above land, including mains, sewers, drains, pipes, cables, lights, cofferdams, fencing and other boundary treatments including bollards;
  - (iii) comprising ramps, steps, footpaths, footways, shared use cycle tracks, cycleways, bridleways, equestrian tracks, non-motorised user routes or links, byways open to all traffic, restricted byways, private means of access, laybys and crossing facilities;
  - (iv) comprising embankments, cuttings viaducts, bridges, aprons, abutments, shafts, foundations, retaining walls, drainage works, drainage treatment areas, flood compensation units, ponds, lagoons, outfalls, pollution control devices, pumping

stations, impounding sumps, culverts, wing walls, fire fighting system water tanks and associated plant and equipment, highway lighting and fencing;

- (v) comprising settlement monitoring and mitigation measures for the benefit or protection of, or in relation to, any land, building or structure, including monitoring and safeguarding of existing infrastructure, utilities and services affected by the authorised development;
- (vi) comprising landscaping, re-grading, re-profiling, contouring, noise barriers, anti-dazzle features, works associated with ecological and archaeological investigation and mitigation, and other works to mitigate any adverse effects of the construction, operation or maintenance of the authorised development;
- (vii) comprising the processing, deposition or use of excavated materials;
- (viii) comprising areas of hard or soft landscaping works, or public realm, at various locations adjacent to the new or improved highway and associated works;
- (ix) comprising site preparation works, site clearance (including fencing and other boundary treatments, vegetation removal, works of demolition, including demolition of existing structures, and the creation of alternative highways or footpaths) and earthworks (including soil stripping and storage and site levelling);
- (x) comprising construction compounds and working sites, temporary structures, storage areas (including storage of excavated material and other materials), temporary vehicle parking, construction fencing, perimeter enclosure, security fencing, construction-related buildings, erection of construction plant and equipment, temporary display of notices or advertisements, temporary worker accommodation facilities, welfare facilities, office facilities, other ancillary accommodation, construction lighting, haulage roads, and other buildings, machinery, apparatus, processing plant, works and conveniences;
- (xi) comprising service compounds, plant and equipment rooms, offices, staff mess rooms, welfare facilities, and other ancillary and administrative accommodation;
- (xii) comprising ground investigation works and remedial work in respect of any contamination or other adverse ground condition, including the installation and monitoring of associated apparatus;
- (xiii) comprising works for the benefit or protection of the authorised development; and
- (xiv) comprising works of whatever nature, as may be necessary or expedient for the purposes of, or for purposes associated with or ancillary to, the construction, operation or maintenance of the authorised development.

## SCHEDULE 2

Article 10

### PERMANENT STOPPING UP OF HIGHWAYS AND PRIVATE MEANS OF ACCESS AND PROVISION OF NEW HIGHWAYS AND PRIVATE MEANS OF ACCESS

Note: In relating this Schedule 2 to its corresponding rights of way and access plans, the provisions described herein are shown on the rights of way and access plans in the following manner—

- (a) existing highways to be stopped up, as described in column 2 of Part 1 and Part 2 of this Schedule, are shown by thick black diagonal hatching (as shown in the key on the rights of way and access plans) over the extent of the area to be stopped up, which is described in column 3 of Part 1 and Part 2 of this Schedule;
- (b) new and improved highways (side roads) which are to be substituted for a highway to be stopped up (or which are otherwise to be provided) other than the new and/or improved A66 Trunk Road, as are included in column 4 of Part 1 of this Schedule, are shown by black stipple with a zig-zag overlaid (as shown in the key on the rights of way and access plans) and are given a reference label (a capital letter in a circle) and will be a road;
- (c) new rights of way (other than side roads and other than the new and/or the improved A66 Trunk Road) which are to be substituted for a highway to be stopped up (or which are otherwise to be provided), as are included in column 4 of Part 1 of this Schedule, are shown by black stipple with a centreline (as shown in the key on the rights of way and access plans) and are given a reference label (a capital letter in a circle) and will be a road unless the words ‘footpath’, ‘cycle track’, ‘bridleway’, or ‘byway open to all traffic’ appear beneath or alongside the reference letter in column 4;
- (d) private means of access to be stopped up, as described in column 2 of Parts 3 and 4 of this Schedule, are shown by a solid black band (as shown in the key on the rights of way and access plans), over the extent of the stopping up described in column 3 of Parts 3 and 4, and are given a reference label (a lower-case letter in a circle); and
- (e) new private means of access to be substituted for a private means of access to be stopped up (or which are otherwise to be provided) in relation to the new and/or improved A66 Trunk Road, as are included in column 4 of Part 3 of this Schedule, are shown by thin diagonal hatching (as shown in the key on the rights of way and access plans), or, where they are to be provided (in part) along the route of a footpath, cycle track or bridleway, they are shown by black stipple with a centreline overlaid by thin diagonal hatching (as shown in the key on the rights of way and access plans), and are given a reference label (a number in a circle).

### PART 1

#### HIGHWAYS TO BE STOPPED UP FOR WHICH A SUBSTITUTE IS TO BE PROVIDED AND NEW HIGHWAYS WHICH ARE OTHERWISE TO BE PROVIDED

##### **SCHEME 0102 – M6 J40 TO KEMPLAY BANK**

<i>(1)</i> Area	<i>(2)</i> Highway to be stopped up	<i>(3)</i> Extent of stopping up	<i>(4)</i> New highway to be substituted/provided
<i>Scheme 0102 – The rights of way and access plans – sheet 1</i>			
	–	–	Reference A



In the administrative area of Westmorland and Furness Council and the parish of Penrith			A length of improved A592 from a point 18 metres from its existing junction with the M6 Junction 40 Roundabout for a distance of 260 metres in a north-westerly direction.
	–	–	Reference A*  A length of new cycleway on the north side of the improved A66 from a point 295 metres west of Skirsgill Business Park in a north-easterly direction for a distance of 136 metres to a point 180 metres north-west of Skirsgill Business Park.
	–	–	Reference B*  A length of new cycleway on the north side of the improved A66 from a point 135 metres south-west of the Livestock Market in a north-easterly direction for a distance of 270 metres to a point 128 metres to the east of the Livestock Market.
	–	–	Reference C*  A length of new cycleway on the south side of the improved A66 from a point 95 metres north-west of the Skirsgill Business Park for a distance of 113 metres in a north-easterly direction to a point 73 metres north-east of the Skirsgill Business Park.
	–	–	Reference D*  A length of new cycleway adjacent to the M6 J40 circulatory carriageway from a point 107 metres west of the centre of the M6 J40 roundabout for a distance

			of 100 metres in a north-easterly direction to a point 79 metres north-west of the centre of the M6 J40 roundabout.
	–	–	Reference E*  A length of new cycleway adjacent to the M6 J40 circulatory carriageway from a point 96 metres north of the centre of the M6 J40 roundabout for a distance of 64 metres in a south-easterly direction to a point 106 metres northeast of the centre of the M6 J40 roundabout.
	–	–	Reference F*  A length of new cycleway adjacent to the improved M6 southbound merge slip road and the improved A66 from a point 35 metres south-west of the centre of Skirsgill Depot, heading in a north-westerly direction then turning in an easterly direction and finally turning again in a westerly direction for a total distance of 600 metres.
	–	–	Reference G*  A length of new cycleway adjacent to the improved M6 southbound merge slip road, from a point 40 metres south of the centre of the Skirsgill Depot, heading in a south-easterly direction for a distance of 85 metres.
	–	–	Reference H*  A length of new cycleway adjacent to the improved A592 from a point 248 metres north-

			west of the North Lakes Hotel & Spa for a distance of 322 metres in a south-easterly direction to a point 100 metres north of the centre of the M6 J40 roundabout.
	–	–	Reference I*  A new cycleway adjacent to the improved A592 and the improved A66 from a point 165 metres north-west of the North Lakes Hotel & Spa in a generally westerly direction for a distance of 1.4 kilometres to a point 70 metres south-west of the Hospital.
<i>Scheme 0102 – The rights of way and access plans – sheet 2</i>			
In the administrative area of Westmorland and Furness Council	–	–	Reference B  A length of improved highway (A6) from a point 45 metres south-west of the Hospital, in a generally south-easterly direction for a distance of 56 metres, to a point 77 metres south-west of the Hospital.
	A686	A length from a point 165 metres south-east of the hospital in a generally south-westerly direction for a distance of 117 metres to its existing junction with the Kemplay Bank Roundabout.	Reference C  To be substituted by a length of improved highway (A686) from a point 165 metres south-east of the Hospital in a generally south-westerly direction, for a distance of 171 metres, to a point 78 metres south-east of the Hospital.
	–	–	Reference D  A length of improved A6 from a point 131 metres south-west of the Fire Station, proceeding in a generally northerly direction for a distance of 50 metres to a point 101 metres south-west of the Fire Station.
	–	–	Reference J*

			A length of new cycleway adjacent to the improved A6 and the improved A686 from a point 50 metres south-west of the Hospital in a generally north-easterly direction for a distance of 340 metres to a point 90 metres east of Thacka Beck.
	–	–	Reference K*  A length of new cycleway adjacent to the improved A686 from a point 83 metres north-east of the centre of the new Kemplay Bank Junction and heading northwards and then eastwards for a distance of 246 metres to a point 230 metres west of the Police Station.
	–	–	Reference L*  A length of new cycleway along the inside of the circulatory carriageway of the new Kemplay Bank Junction for a distance of 370 metres.
	–	–	Reference M*  A length of new cycleway adjacent to the improved A6 from a point 270 metres north of its junction with Skirsgill Lane, for a distance of 112 metres in a generally south-easterly direction, to a point 210 metres north-east of Skirsgill Lane.
	–	–	Reference N*  A length of new cycleway adjacent to the improved A6 from a point 44 metres north-west of the Fire Station for a distance of 65

			metres in a generally north-easterly direction to a point 83 metres west of the Hospital.
	–	–	Reference O*  A length of new cycleway adjacent to the improved A6 from a point 20 metres to the west of the Fire Station, for a distance of 138 metres in a generally south-westerly direction, to a point 125 metres south-west of the Fire Station.

**SCHEME 03 – PENRITH TO TEMPLE SOWERBY**

<i>(1) Area</i>	<i>(2) Highway to be stopped up</i>	<i>(3) Extent of stopping up</i>	<i>(4) New highway to be substituted/provided</i>
<i>Scheme 03 – The rights of way and access plans – sheet 1</i>			
In the administrative area of Westmorland and Furness Council and the parishes of Brougham and Langwathby	B6262	A length from a point 503 metres east of Brougham Castle for a distance of 85 metres in a north-easterly direction to a point 307 metres west of the Countess Pillar.	Reference A  The improved section of the B6262 from its junction with the improved A66 for a distance of 100 metres in a south-westerly direction.
	–	–	Reference B  A length of new cycle track from a point 85 metres south-west of the junction of the B6262 with the A66 in a generally north-easterly direction for a distance of 288 metres.
	–	–	Reference C  A length of new cycle track in continuation of new cycle track reference B. From a point 203 metres east of the junction of the B6262 with the A66 for a distance of 969 metres in a generally north-easterly direction,

			crossing the A66 via the new “Brougham Accommodation Bridge”.
	Footpath	A length of existing footpath from a point 30 metres to the south of the existing junction of the B6262 with the existing A66 in a generally easterly direction for a distance of 361 metres to the Countess Pillar.	Reference D A new footpath from a point 1021 metres east of Brougham Castle, continuing in a generally easterly direction for a distance of 151 metres (to provide access to the Countess Pillar).
	–	–	Reference E A new cycle track from a point 720 metres east of Brougham Castle, continuing in a generally easterly direction for a distance of 103 metres.
	–	–	Reference L A new footpath in continuation of new footpath Reference D, from a point 865 metres east of Brougham Castle, in a generally northerly direction for a distance of 56 metres (to provide access to the Countess Pillar).
	–	–	Reference M A new cycle track in continuation of new cycle track Reference E, from a point 822 metres east of Brougham Castle in a generally easterly direction for a distance of 45 metres (to provide access to Countess Pillar).
<i>Scheme 03 – The rights of way and access plans – sheet 2</i>			
In the administrative area of Westmorland and Furness Council and the parishes of Brougham and Langwathby	–	–	Reference F A new cycle track in continuation of new cycle track reference E, from a point 675 metres north-west of Whinfell

			Park in a generally easterly direction for a distance of 705 metres.
	Byway open to all traffic 311/013	A length from the existing junction of the byway open to all traffic (311/013) with the existing A66 in a generally north-easterly direction for a distance of 220 metres.	Reference G  A length of new highway from a point 200 metres north of Whinfell Park in a north-easterly direction for a distance of 136 metres.
	–	–	Reference H  A new cycle track in continuation of new cycle track reference F, from a point 225 metres north of Whinfell Park in a generally easterly direction for a distance of 1.7 km.
<i>Scheme 03 – The rights of way and access plans – sheet 3</i>			
In the administrative area of Westmorland and Furness Council and the parishes of Brougham and Langwathby	–	–	Reference A*  A length of new cycleway from a point 500 metres south-west of High Barn for a distance of 665 metres in a generally north-easterly direction to a point 54 metres north-east of High Barn.
	–	–	Reference H  (continued from sheet 2 of the rights of way and access plans for scheme 03).
	–	–	Reference I  A length of new side road from a point 118 metres north-east of the existing junction at Center Parcs, continuing in a generally easterly direction for a distance of 365 metres.
	Footpath 311/004	A length from the existing junction of the footpath (311/004) with the existing A66 in a	Reference J  A new footpath beginning at a point 196 metres south of the



		generally southerly direction for a distance of 25 metres.	existing Center Parcs junction with the A66 and continuing in a generally easterly direction for a distance of 875 metres, to connect to existing footpath 311/004 at a point 25 metres south of its existing junction with the A66.
	–	–	Reference K  A new cycle track from a point 585 metres east of the existing Center Parcs junction with the A66, and continuing in an easterly direction for a distance of 2.3 km.
	–	–	Reference B*  A length of new cycleway from a point 50 metres south of High Barn for a distance of 125 metres in an easterly direction to a point 157 metres south-east of High Barn.

*Scheme 03 – The rights of way and access plans – sheet 4*

In the administrative area of Westmorland and Furness Council	Cycleway	A length of existing cycleway on the north side of the existing A66, from a point 285 metres south of Lower Woodside, for a distance of 325 metres in an easterly direction to a point 432 metres south-east of Lower Woodside.	Reference K  (continued from sheet 3 of the rights of way and access plans for scheme 03).
	Cycleway	A length of existing cycleway on the south side of the existing A66, from a point 315 metres south of Lower Woodside, for a distance of 520 metres in a south-easterly direction to a point 432 metres	Reference K  (continued from sheet 3 of the rights of way and access plans for scheme 03).

		south-east of Lower Woodside.	
--	--	-------------------------------	--

**SCHEME 0405 – TEMPLE SOWERBY TO APPLEBY**

<i>(1) Area</i>	<i>(2) Highway to be stopped up</i>	<i>(3) Extent of stopping up</i>	<i>(4) New highway to be substituted/provided</i>
<i>Scheme 0405 – The rights of way and access plans – sheets 1 and 2</i>			
In the parish of Kirkby Thore; in the administrative area of Westmorland and Furness Council	Bridleway 336/007	A 260 metre length, from a point 105 metres to the north-east of its junction with the existing A66, in a generally north-easterly direction to its intersection with the existing Priest Lane.	Reference A  To be substituted by a 1.1 km length of new bridleway commencing at the existing junction of bridleway 336/007 with the existing A66 and continuing in a generally easterly direction for a distance of 945 metres and including a 120 metre length extending in a north-westerly direction between Points A and B (on sheet 1) via the new Priest Lane Underpass.
	–	–	The proposed Temple Sowerby Link Road  A 1.1 km length of new side road on the south side of the existing A66 (between Temple Sowerby and Low Moor Caravan Park), from a point 95 metres south of the intersection between the existing Morland Road and the existing A66, in a generally easterly direction and tying into the existing A66 at a point 292 metres east of the existing Spitals Farm Underpass.
	Priest Lane	A length from a point 140 metres to the north-west of its junction with the existing Cross Street, in a generally north-westerly direction for	Realigned Priest Lane  To be substituted by the realigned Priest Lane from a point 885 metres to the north-west of its

		a distance of 710 metres.	junction with the existing Cross Street, in a generally easterly direction for a distance of 720 metres to its junction with the realigned Cross Street.
	Cross Street	A length from its junction with the existing Priest Lane for a distance of 735 metres in a generally north-westerly direction.	The Realigned Cross Street  To be substituted by the realigned Cross Street from Point C (on sheet 2) in a generally south-easterly direction for a distance of 745 metres to its junction with the end of Priest Lane.
	Bridleway 336/018	A 205 metre length of Bridleway 336/018 in a north-easterly direction between the existing Cross Street and Point E on sheet 1.	Reference B  To be substituted by a 245 metre length of new bridleway in a generally easterly direction for a distance of 210 metres, between the realigned Cross Street and existing Bridleway 336/018 (Points D and E on sheet 2) and including a 35 metre length extending in a northerly direction to tie into the existing Bridleway 336/018 (as shown on sheet 2 of the rights of way and access plans for scheme 0405).
	—	—	Reference K  A 180 metre length of new footpath extending in a generally easterly direction between existing Bridleway 336/018 (Point E on sheet 2) and existing Footpath 366/017 (Point F on sheet 2) (as shown on sheet 2 of the rights of way and access plans for scheme 0405).

	–	–	<p>The Improved Morland Road and Roman Road (Reference A*)</p> <p>A length of new cycleway along the existing Morland Road from Point H to its junction with Roman Road (Point J), and a length of new cycleway along the existing Roman Road from its junction with Morland Road (Point J) to Point I (as shown on sheet 1 of the rights of way and access plans for scheme 0405).</p>
	–	–	<p>The Improved Roman Road (Reference B*)</p> <p>A length of new cycleway along the existing Roman Road from Point K to its junction with Morland Road (Point J) (as shown on sheet 1 of the rights of way and access plans for scheme 0405).</p>
	–	–	<p>Reference D*</p> <p>A 385 metre length of new footway on the realigned Cross Street, extending from the junction of the existing Priest Lane and Cross Street in a north-westerly direction to Point D (as shown on sheet 2 of the rights of way and access plans for scheme 0405).</p>
<i>Scheme 0405 – The rights of way and access plans – sheets 2 and 3</i>			
In the parish of Kirkby Thore; in the administrative area of Westmorland and Furness Council	Footpath 336/017	A 405 metre length of Footpath 336/017 from its junction with the existing Cross Street in a north-easterly direction to Point F on sheet 1.	<p>Reference C</p> <p>To be substituted by a 1.1 km length of new footpath from a point 90 metres south-east of the junction of Bridleway 336/018</p>

			with the existing Cross Street in a generally easterly direction to the point where it connects with existing Footpath 366/013 (as shown on sheets 2 and 3 of the rights of way and access plans for scheme 0405).
	Fell Lane	A length from a point 360 metres north-east of its junction with Main Street, in a generally north-easterly direction for a distance of 147 metres.	To be substituted by— The new and improved Fell Lane.
	Main Street	A length from a point 235 metres to the east of its junction with Sleastonhow Lane, in a generally easterly direction for a distance of 163 metres (shown on sheet 3 of the rights of way and access plans for scheme 0405).	To be substituted by—  The improved Fell Lane from its junction with the existing Main Street in a north-easterly direction for a distance of 442 metres; and  A length of new side road open to all traffic from its junction with the existing British Gypsum Access Road in a generally south-easterly direction for a distance of 532 metres and tying into the existing Main Street at Point G (all as shown on sheet 3 of the rights of way and access plans for scheme 0405).
	—	—	Reference E*  A length of new cycleway on the new realigned Fell Lane (including the new Fell Lane Bridge), from a point 150 metres to the east of the junction of the existing Fell Lane with Main Street and continuing in a north-westerly direction for a distance of 440 metres.
<i>Scheme 0405 – The rights of way and access plans – sheets 3 and 4</i>			

<p>In the parishes of Kirkby Thore and Crackenthorpe; in the administrative area of Westmorland and Furness Council</p>	<p>Sleastonhow Lane</p>	<p>A length from a point 235 metres south-east of its junction with Main Street, in a generally south-easterly direction for a distance of 590 metres.</p>	<p>To be substituted by— The new and improved Sleastonhow Lane.</p>
<p><i>Scheme 0405 – The rights of way and access plans – sheets 4 and 5</i></p>			
<p>In the parishes of Crackenthorpe and Long Marton; in the administrative area of Westmorland and Furness Council</p>	<p>Footpath 317/009 and Footpath 341/017</p>	<p>A length of Footpath 341/017 from its junction with the existing Roman Road in a generally easterly direction for a distance of 69 metres to the point where it meets the easternmost end of footpath 317/009 at the parish boundary between Long Marton and Crackenthorpe (shown on sheet 5 of the rights of way and access plans for scheme 0405); plus</p> <p>A length of footpath 317/009 from its junction with the existing A66 in a generally north-easterly direction to its junction with the existing Roman Road and footpath 341/017 (at the parish boundary between Crackenthorpe and Long Marton) (as shown on sheet 5 of the rights of way and access plans for scheme 0405).</p>	<p>To be substituted by References E and C* (part)</p> <p>Reference E</p> <p>A length of new footpath commencing from a point 69 metres to the north-east of the existing junction of Footpath 341/017 with Roman Road, continuing in a generally north-westerly direction on the east side of the new A66 until passing beneath the new Trout Beck viaduct (carrying the new A66), and then continuing in a generally south-westerly direction to the point where it meets the existing A66, 135 metres to the north of the junction of the existing A66 with Footpath 317/008; and</p> <p>Reference C* (part)</p> <p>Then continuing via part of new cycleway Reference C* (see below), along the de-trunked A66 a total distance of 1km (as shown on sheets 4 and 5 of the rights of way and access plans for scheme 0405).</p>
	<p>–</p>	<p>–</p>	<p>Reference F</p> <p>A length of new footpath, in parallel</p>

			with the eastbound carriageway of the new A66, from its junction with the existing Long Marton Road and the access to Powis House, continuing for a distance of 235 metres in a generally north-westerly direction to its tie-in point with the existing access to Powis House at a point 60 metres to the south of Powis House (as shown on sheet 5 of the rights of way and access plans for scheme 0405).
	Long Marton (Road)	<p>A length from a point 93 metres to the east of its junction with the existing A66, in a generally north-easterly direction for a distance of 136 metres; and</p> <p>Another length from a point 870 metres north-east of its junction with the existing A66, in a generally easterly direction for a distance of 125 metres (shown on sheet 5 of the rights of way and access plans for scheme 0405).</p>	To be substituted by—  The realigned Long Marton (Road) (as shown on sheet 5 of the rights of way and access plans for scheme 0405).
	Bridleway 341/001	A length of Bridleway 341/001 from a point 292 metres to the south of its junction with the existing Long Marton (Road) in a south-easterly direction for a distance of 245 metres (shown on sheet 5 of the rights of way and access plans for scheme 0405).	Reference G  To be substituted by a length of new bridleway on a similar alignment to that of the existing Bridleway 341/001, from its junction with Long Marton (Road) in a south-easterly direction for a distance of 290 metres in a generally south-easterly direction over the new Powis House Bridge and under the new Long



			<p>Marton Underpass, and tying back into the existing Bridleway 341/001 (as shown on sheet 5 of the rights of way and access plans for scheme 0405).</p>
	–	–	<p>Reference I*</p> <p>A length of new cycleway from the west side of the new and realigned Long Marton (Road) from a point 436 metres north-east of the junction of the existing A66 with the new and realigned Long Marton (Road), in a generally north-westerly direction for a distance of 190 metres; (as shown on sheet 5 of the rights of way and access plans for scheme 0405).</p>
	–	–	<p>Reference H*</p> <p>A length of new cycleway from a point 410 metres to the south-east of the junction of the existing A66 and Long Marton Road in a generally north-easterly direction, along the realigned Long Marton, for a distance of 1.2 km. (as shown on sheet 5 of the rights of way and access plans for scheme 0405).</p>
<i>Scheme 0405 – The rights of way and access plans – sheet 6</i>			
In the parish of Crackenthorpe; in the administrative area of Westmorland and Furness Council	Bridleway 317/012	A length of Bridleway 317/012 between Roman Road and Crackenthorpe from its junction with Bridleway 341/001 in a generally south-westerly direction towards Crackenthorpe, for a distance of 134 metres (shown on sheet 6 of the rights of way and	<p>Reference I</p> <p>To be substituted by a 710 metre length of new bridleway from a point approximately 210 metres north of Crackenthorpe in a generally north-easterly direction and passing under the new Crackenthorpe Underpass before</p>

		access plans for scheme 0405).	connecting to the existing Bridleway 341/001 along Roman Road (as shown on sheet 6 of the rights of way and access plans for scheme 0405)
	Footpath 317/006	A length of Footpath 317/006 between Roman Road and Crackenthorpe from its intersection with Bridleway 341/001 in a generally south-westerly direction towards Crackenthorpe for a distance of 328 metres, then another length of 160 metres in a south-easterly direction (as shown on sheet 6 of the rights of way and access plans for scheme 0405).	Reference I (as above)
<i>Scheme 0405 – The rights of way and access plans – sheet 7</i>			
In the parish of Crackenthorpe; in the administrative area of Westmorland and Furness Council	Footpath 317/004	A length of Footpath 317/004 between Roger Head Farm and the existing Roman Road from a point 240 metres to the north-east of Roger Head Farm, for a distance of 117 metres in a north-easterly direction, to a point 23 metres from its junction with the existing Roman Road (shown on sheet 7 of the rights of way and access plans for scheme 0405).	Reference J  To be substituted by a length of new Bridleway from a point 240 metres north-east of Roger Head Farm on the existing alignment of Footpath 317/004 in a south-easterly direction for a distance of 125 metres, followed by another length of 225 metres in a generally north-easterly direction and over the proposed Roger Head Farm Bridge, to its junction with the existing Roman Road, a total distance of 350 metres (as shown on sheet 7 of the rights of way and access plans for scheme 0405).
	–	–	The Improved B6542  A length from its junction with Battlebarrow in a

			generally north-westerly direction (including new cycleway Reference C*) for a distance of 1.3 km (as shown on sheet 7 of the rights of way and access plans for scheme 0405).
<i>Scheme 0405 – The rights of way and access plans – sheets 1, 2, 4, 5, 6 and 7</i>			
In the parish of Crackenthorpe; in the administrative area of Westmorland and Furness Council	–	–	The new and improved A66, including Reference C*  A length of new cycleway along the improved A66 (as shown on sheets 1, 2, 4, 5, 6 and 7 of the rights of way and access plans for scheme 0405).
	–	–	The Improved B6542  A length from its junction with Battlebarrow in a generally north-westerly direction (including new cycleway Reference C*) for a distance of 1.3 km (as shown on sheet 7 of the rights of way and access plans for scheme 0405).

**SCHEME 06 – APPLEBY TO BROUGH**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Highway to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New highway to be substituted/provided</i>
<i>Scheme 06 – The rights of way and access plans – sheet 1</i>			
In the administrative area of Westmorland and Furness Council, Parish of Warcop, Parish of Musgrave, Parish of Brough and Parish of Helbeck	–	–	Reference A*  A length of new cycleway from a point 201 metres to the north-west of Café Sixty Six in a generally south-easterly direction to a point 20 metres to the north of the junction of the existing A66 with Flitholme Road

			(as shown on sheets 1 to 5 of the rights of way and access plans).
In the administrative area of Westmorland and Furness Council and Parish of Warcop	Footpath 372/028 north of existing A66	A length from its junction with the existing A66, in a north-easterly direction for a distance of 47 metres.	Reference A* (Part)
	Bridleway 372/024 south of existing A66	A length from its junction with the existing A66, in a south-westerly direction for a distance of 70 metres.	Reference B*  To be substituted by a length of new equestrian track from a point immediately south-west of its junction with the existing A66, in a generally easterly and then a northerly direction, for a distance of 178 metres.
<i>Scheme 06 – The rights of way and access plans – sheet 2</i>			
In the administrative area of Westmorland and Furness Council and Parish of Warcop	Footpath 372/027 north of existing A66	A length from its junction with the existing A66, in a northerly direction for a distance of 90 metres.	Reference C*  To be substituted by a length of new footway from a point 90 metres north of its junction with the existing A66, in a generally south-westerly direction passing beneath the proposed Sandford junction underbridge, for a distance of 148 metres.
	Footpath 372/022 south of existing A66	A length from its junction with the existing A66, in a south-westerly direction for a distance of 212 metres.	Reference D*  To be substituted by a length of new footway from a point 80 metres to the south-east of the junction of the B6259 with the access to Dyke Nook, in a generally westerly and then northerly direction, for a distance of 401 metres; and  Reference F  To be substituted by a length of new footpath from a point 155 meters to the south-east of the junction of the B6259

			with the access to Dyke Nook, in a generally easterly direction, for a distance of 97 metres.
	Existing B6259	A length from its intersection with the southern boundary of the existing A66, in a southerly direction, for a distance of 87 metres.	Reference E  The new realigned B6259 from its junction with the new A66 westbound carriageway in a southerly direction for a distance of 221 metres.
<i>Scheme 06 – The rights of way and access plans – sheet 3</i>			
In the administrative area of Westmorland and Furness Council and Parish of Warcop	Footpath 372/013 south of existing A66	A length from its junction with the existing A66, in a south-westerly direction for a distance of 72 metres.	Reference G*  To be substituted by a length of new footway from a point immediately south-west of its junction with the existing A66, in a generally south-easterly and then a northerly direction and passing beneath the proposed Cringle Beck Viaduct, for a distance of 750 metres.
	Footpath 372/014 south of existing A66	A length from its junction with existing A66 in a south-westerly direction for a distance of 275 metres.	Reference H*  To be substituted by a length of new footway from a point immediately south-west of its junction with the existing A66, in a generally southerly direction passing beneath the proposed Cringle Beck Viaduct, for a distance of 314 metres.
	—	—	Reference I*  A length of new cycleway on the alignment of the improved de-trunked A66 from the new Warcop Eastbound Junction westwards along the de-trunked A66 to link in with new cycleway Reference A* at the point where the existing Roman Road meets the new A66.

	Footpath 372/021 south of existing A66	A length from its junction with the existing A66, in a southerly direction for a distance of 131 metres.	Reference J*  To be substituted by a length of new footway from a point 265 meters to the east of the junction of footpath 372/021 with the existing A66, in a generally south-easterly direction passing beneath the proposed Walk Mill Underpass, for a distance of 235 metres; and  Reference K*  To be substituted by a length of new footway from a point 135 metres to the south of the junction of footpath 372/021 and the existing A66, in a generally north-westerly direction passing beneath the proposed Walk Mill Underpass for a distance of 302 metres.
	Existing A66	A length from a point 172 metres west of the junction of Hayber Lane and the existing A66 on the north side of Warcop in a south-easterly direction for a distance of 50 metres.	Reference L  The new and improved C3077 (de-trunked A66) from a point where it intersects the new A66 eastbound carriageway at the new Warcop Eastbound Junction to a point 2.6 km north-east of the existing junction of the A66 and Flitholme Road (shown on sheets 3,4 and 5 of the rights of way and access plans).
<i>Scheme 06 – The rights of way and access plans – sheet 4</i>			
In the administrative area of Westmorland and Furness Council, and Parish of Warcop	Warcop Road	A length from its intersection with the southern boundary of the existing A66 in a southerly direction, for a distance of 129 metres.	Reference M  The improved Warcop Road from its junction with the new Warcop Junction Link Road in a southerly direction for a distance of 42 metres.
	–	–	Reference N  A length of new improved Station Road

			from a point 163 metres south of its junction with the existing A66 in a south-easterly direction for a distance of 54 metres.
	Footpath 372/020 south of existing A66	A length from its junction with the existing A66, in a generally south-westerly direction for a distance of 73 metres.	Reference O*  To be substituted by a length of new footway from a point immediately south of its junction with the existing A66, in a generally south-easterly direction, for a distance of 676 metres (as shown on sheets 4 and 5 of the rights of way and access plans).
<i>Scheme 06 – The rights of way and access plans – sheet 5</i>			
In the administrative area of Westmorland and Furness Council and Parish of Warcop	Flitholme Road	A length from its junction with the existing A66, in a generally south-westerly direction, for a distance of 135 metres.	Reference P  The improved Flitholme Road  A length of new improved Flitholme Road from a point at its junction with the new improved C3077 in a southerly direction for a distance of 128 metres.
	–	–	Reference Q*  A length of new equestrian track from a point 128 metres south of the junction of Flitholme Road with the existing A66, in a generally northerly direction for a distance of 128 metres, passing beneath the proposed Flitholme Road Underbridge, and then continuing for a distance of 570 metres in a generally easterly direction to connect to Bridleway 350/021.
In the administrative area of Westmorland and Furness Council, Parish of Warcop and Parish of Musgrave	–	–	Reference R*  A length of new equestrian track for a distance of 660 metres alongside the new

			Flitholme Langrigg link road between Flitholme Road and Langrigg Lane (Reference S) to connect to existing Bridleway 350/021 via new equestrian track Reference Q* at a point 570 metres to the east of the junction of Flitholme Road with the new and improved C3077.
	–	–	Reference S  The new local road connection between Flitholme and Langrigg from its junction with the existing Langrigg Lane in a generally westerly direction for a distance of 560 metres, to its connection with the re-aligned Flitholme Road.
<i>Scheme 06 – The rights of way and access plans – sheet 6</i>			
In the administrative area of Westmorland and Furness Council, Parish of Musgrave, Parish of Helbeck and Parish of Brough	–	–	Reference U  The new and improved C3077 (de-trunked A66) from a point 163 metres to the east of the property known as Turks Head, in a generally easterly direction for a distance of 1.2 km to a point 341 metres east of the junction of existing A66 and Footpath 329/001.
In the administrative area of Westmorland and Furness Council, Parish of Helbeck and Parish of Brough	–	–	Reference V*  A length of new footway from a point on the existing Footpath 329/001 where it passes Mains House, extending in a generally north-easterly direction for a distance of 145 metres, passing over the proposed West View Farm Overbridge.
	Footpath 329/001	A length from a point 95 metres north-east of the existing A66 in a south-westerly	Reference W*  A length of new footway from a point on the existing Footpath



		direction for a distance of 95 metres.	329/001, 100 metres north-east of its junction with the existing A66, extending in a generally south-westerly direction, for a distance of 151 metres passing over the proposed West View Farm Overbridge.
In the administrative area of Westmorland and Furness Council, Parish of Brough	Bridleway 309/031	A length from a point 351 metres north-west of Musgrave Lane Overbridge in a north-easterly then south-easterly direction, for a distance of 201 metres.	Reference X  A length of new bridleway from a point 545 metres north-west of the Musgrave Lane Overbridge in a generally south-easterly direction for a distance of 720 metres to connect to Musgrave Lane.
In the administrative area of Westmorland and Furness Council, Parish of Musgrave, Parish of Helbeck and Parish of Brough	–	–	Reference Y*  A length of new cycleway from the point at which the existing Langrigg Lane and Bridleway 350/021 meet the existing A66, and continuing in a generally easterly direction to a point 341 metres to the east of the junction of the existing A66 with Footpath 329/001 (as shown on sheets 5 and 6 of the rights of way and access plans).

#### SCHEME 07 – BOWES BYPASS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Highway to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New highway to be substituted/provided</i>
<i>Scheme 07 – The rights of way and access plans – sheet 1</i>			
In the administrative area of Durham County Council	Bowes Footpath 18	A length from a point 165 metres to the east of its junction with Footpath 16, for a distance of 74 metres in a generally westerly direction.	Reference A  A length of new footpath to be provided from a point 165 metres to the east of its junction with Footpath 16, and passing in an arc (to accommodate a proposed attenuation pond), then connecting into the

			existing Bowes Footpath 18 at a point 92 metres to the east of its junction with Footpath 16.
	Existing Clint Lane Bridge	A length from its junction with The Street, in a north-westerly direction for a distance of 162 metres.	Reference B  A length from its junction with The Street, in a north-westerly direction for 110 metres, passing over the improved A66 and tying into the existing Clint Lane on the north side of the improved A66.
<i>Scheme 07 – The rights of way and access plans – sheet 2</i>			
In the administrative area of Durham County Council	A67	A length from 87 metres southwest of the existing A66 overbridge, in a northerly direction for a distance of 310 metres.	Reference C  A length of improved side road from a point 87 metres south-west of the existing A66 overbridge, in a generally northerly direction for a distance of 310 metres, tying into the existing A67 at a point 19 metres north of the existing A67 junction with Clint Lane at The Old Armoury Campsite.
	Bowes Footpath 6	A length from a point 330 metres to the north-east of its junction with Low Road, for a distance of 108 metres in a generally north-easterly direction.	Reference D  A length of new footpath to be provided from a point 438 metres north-east of its junction with The Street / Low Road, continuing in an easterly direction for a distance of 185 metres and crossing under the A66 at the existing Blacklodge Farm Underpass before continuing in a westerly direction to re-join Bowes Footpath 6 on the south side of the A66, at a point 330 metres north-east of its junction with Low Road.
<i>Scheme 07 – The rights of way and access plans – sheet 3</i>			
	–	–	Reference E  A length of new highway commencing 45 metres south of the existing A66

			<p>junction with The Street, continuing in an easterly direction, then crossing the improved A66 via the new East Bowes Accommodation Overbridge, then curving eastwards and southwards.</p>
	—	—	<p>Reference F</p> <p>A length of new footpath commencing from its junction with the new highway Reference E, at a point 275 metres east of its junction with The Street / Low Road, continuing in an easterly direction, parallel to the A66 and terminating at the existing access to Bowes Cross Farm.</p>

	Bowes Footpath 12	<p>Bowes Footpath 12</p> <p>A length from a its junction with the westbound carriageway of the A66, for a distance of 8 metres in a generally southerly direction.</p>	<p>To be substituted by Reference H</p> <p>A length of new footpath commencing from its junction with existing Bowes Footpath 6 on the west side of the access to Hulands Quarry, continuing in a southerly direction for a distance of 50 metres and connecting to new footway Reference B*;</p> <p>Reference B*</p> <p>A length of new footway, from the southern end of new footpath Reference H, continuing in a westerly direction parallel to and on the north side of the new A66, for a distance of 380 metres, to its junction with the new footpath, Reference G;</p> <p>Reference G</p> <p>A length of new footpath, from its junction with the access to High Broats Farm, (private means of access Reference 13), continuing in a westerly direction parallel to and on the north side of to the new A66, until connecting to the new East Bowes Accommodation Overbridge (part of Reference E);</p> <p>Reference E (as above); and</p> <p>Reference F (as above).</p>
--	-------------------	--	---

**SCHEME 08 – CROSS LANES TO ROKEBY**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Highway to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New highway to be substituted/provided</i>
<i>Scheme 08 – The rights of way and access plans – sheet 1</i>			
In the administrative area of Durham County Council	Rutherford Lane	A length of Rutherford Lane, from a point 206 metres south of the existing junction of the A66 with Rutherford Lane, southwards for a distance of 55 metres.	Reference B  A length of the realigned Rutherford Lane, connecting with the realigned B6277 Moorhouse Lane; and  Reference D  A length of new highway comprising the realigned B6277 Moorhouse Lane.
	Bowes Footpath 1	A length from its existing junction with the A66, for a distance of 20 metres.	Reference C  A 70-metre length of new footpath, connecting Bowes Footpath 1 to Rokeby Footpath 7.
	Rokeby Footpath 7	A length from its existing junction with the A66, for a distance of 18 metres.	Reference C (as above)
	–	–	Reference A  An 80-metre length of new footpath connecting Rokeby Footpath 7 to Rokeby Footpath 8.
	A66 junction with Rutherford Lane	A length of Rutherford Lane, from the point 8 metres south of the existing junction of the A66 with Rutherford Lane, southwards for a distance of 11 metres.	Reference D  A length of new highway comprising the new Cross Lanes Junction, the realigned Rutherford Road and the realigned B6277 Moorhouse Lane; and  Reference B (as above).
	B6277 Moorhouse Lane	A 95-metre length of the existing B6277 Moorhouse Lane, northwards from a point 208 metres north of the existing junction of the A66	Reference D (as above).

		with the B6277 Moorhouse Lane.	
	Rokeby Footpath 8	A 122-metre length from its intersection with the new realigned Moorhouse Lane, 380 metres east of its intersection with Rokeby Footpath 7, in a generally easterly direction.	Reference E  A 122 metre length of new provision including a new pedestrian crossing, commencing 380 metres east of its intersection with Rokeby Footpath 7 and continuing in a generally easterly direction, connecting back to the existing provision east of the B6277.
	Moorhouse Lane (south) from its junction with the A66	A length from its junction with the A66, southwards for a distance of 24 metres.	Reference F  New link road from the existing Moorhouse Lane (south), in a generally westerly direction, broadly in parallel with the new A66, and passing to the north of the Cross Lanes Organic Farm Shop, before linking into the realigned B6277 Moorhouse Lane; and continuing via Reference D (as above).
	B6277 Moorhouse Lane (north) at its junction with the A66	A 78-metre length of the existing B6277 Moorhouse Lane, northwards from a point 13 metres north of the existing junction of the A66 with the B6277 Moorhouse Lane.	Reference G  New link road, connecting the existing Moorhouse Lane (north) to the new realigned B6277 Moorhouse Lane; and Reference D (as above).
<i>Scheme 08 – The rights of way and access plans – sheets 1 and 2</i>			
In the administrative area of Durham County Council	–	–	Reference H  A length of new cycle track from the improved B6277 Moorhouse Lane (Reference G) running broadly parallel with the new A66, until it meets the new Rokeby Junction.
<i>Scheme 08 – The rights of way and access plans – sheets 2 and 3</i>			
In the administrative area of Durham County Council	Existing A66	A 250-metre length of the existing A66, from a point 388 metres east of where	Reference J  New side road commencing at the new

		the existing Rokeby Footpath 9 meets the existing A66.	Rokeby Junction westbound connector road, continuing northwards via the new Rokeby Junction Underbridge, then curving eastwards to continue along the alignment of the existing A66, until reaching the existing junction of the A66 with the C165 Barnard Castle Road, and including a new cycleway in the west and north verge (connecting to new cycle track Reference K and existing Rokeby Footpath 5 at its junction with the north side of the existing A66).
<i>Scheme 08 – The rights of way and access plans – sheet 3</i>			
In the administrative area of Durham County Council	–	–	Reference K  A length of new cycle track between the new Rokeby Junction (where it commences at a point 56 metres to the south of the new Rokeby Junction Underbridge) and Greta Bridge Bank (where it meets the existing cycleway).
	Rokeby Footpath 6	A length from its junction with the south side of the existing A66, opposite St Marys Church, extending in a southerly direction for a distance of 245 metres.	References J and K (as above).

**SCHEME 09 – STEPHEN BANK TO CARKIN MOOR**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Highway to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New highway to be substituted/provided</i>
<i>Scheme 09 – The rights of way and access plans – sheet 1</i>			
In the administrative areas of Durham County Council and the North Yorkshire Council	Bridleway Hutton Magna 12	A length of Bridleway Hutton Magna 12, from the point where it meets the existing eastbound carriageway of the A66, northwards for a distance of 68 metres.	Reference A  To be substituted by a length of new bridleway on the north side of the new A66, connecting at its western end with existing Bridleway Hutton Magna 12, and continuing in a generally easterly direction for a distance of 405 metres, in parallel with the new A66, before turning in a southerly direction to cross the new A66 via a new underpass (then connecting to a length of new equestrian track on the north side of the de-trunked A66).
<i>Scheme 09 – The rights of way and access plans – sheet 2</i>			
In the administrative area of the North Yorkshire Council	–	–	Reference A*  A length of new equestrian track on the north side of the carriageway of the existing A66 (to be de-trunked), commencing at the new bridleway underpass, Reference A, and continuing in an easterly direction to connect to Reference B (as below).
	A66	A length from a point 13 metres to the east of the junction of Collier Lane with the A66, in an easterly direction for a distance of 30 metres.	Reference B  A 990-metre length of new carriageway to be constructed to the south of the existing A66, to connect into the de-trunked A66 on both eastern and western sides, and to include an equestrian track on the north side of the carriageway.



	Collier Lane	A length from its junction with the existing A66, in a north-easterly direction for a distance of 160 metres.	<p>Reference C</p> <p>A replacement side road (including a new overbridge) connecting the realigned carriageway of the de-trunked A66 to Collier Lane on the north side of the new A66, commencing from a point 30 metres to the south-west of the existing junction of the A66 with Collier Lane, and continuing in a north-easterly direction for a distance of 215 metres.</p>
	Footpath 20.72/1/1	A length of Footpath 20.72/1/1, from the point where it meets the existing eastbound carriageway of the A66, northwards for a distance of 110 metres.	<p>To be substituted by—</p> <p>Reference D</p> <p>A length of new footpath on the north side of the new A66, connecting at its western end with existing Footpath 20.72/1/1, and continuing in a generally easterly direction (crossing Collier Lane at a point 10 metres to the south of the existing access to West Layton Nurseries) until connecting with existing Footpath 20.23/8/1; Reference C (as above); and</p> <p>Reference F</p> <p>A length of new footpath on the south side of the new A66, connecting at its eastern end with existing Footpath 20.23/8/1, and continuing in a generally westerly direction to connect with a length of new equestrian track on the north side of the de-trunked A66, at a point 38 metres to the east of the existing Collier Lane bridge.</p>

	Footpath 20.55/1/1	A length of Footpath 20.55/1/1, from the point where it meets the existing eastbound carriageway of the A66, southwards for a distance of 35 metres.	Reference E  A length of new footpath to the south of the de-trunked A66, connecting at its eastern end with existing Footpath 20.55/1/1, and continuing in a generally westerly direction for a distance of 74 metres, to provide a connection to a point on the de-trunked A66.
<i>Scheme 09 – The rights of way and access plans – sheet 3</i>			
In the administrative area of the North Yorkshire Council	Footpath 20.23/8/1	A length of Footpath 20.23/8/1, from a point 272 metres to the north of the point where it meets the eastbound carriageway of the existing A66, southwards for a distance of 74 metres.	References D, C and F (as above).
	–	–	Reference B*  A length of new equestrian track alongside the carriageway of the de-trunked A66 to link with new side roads Reference B and Reference L.
	Bridleway 20.55/6/1	A length of Bridleway 20.55/6/1, from the point where it meets the westbound carriageway of the existing A66, in a generally south-westerly direction for a distance of 428 metres.	Reference G  A length of new bridleway from a point 343 metres to the south-west of the point where it meets the westbound carriageway of the existing A66, continuing in a north-easterly direction, parallel with the western boundary of Mainsgill Farm, towards the existing A66 for 315 metres, then continuing in a north-westerly direction parallel with the existing A66 for a distance of 143 metres.
	Moor Lane	A length from the point where it meets	Reference J

		the eastbound carriageway of the existing A66, in a generally northerly direction for a distance of 255 metres.	A length of new side road, from its junction with the existing Moor Lane at a point 50 metres to the south-west of the existing entrance to Monks Rest Farm, and continuing in a westerly direction for a distance of 192 metres, to connect with the new Mains Gill Junction.
	–	–	Reference C*  A length of new equestrian track commencing on the realigned Moor Lane and continuing through the new Mains Gill Junction (including its connector roads) and passing under the new A66 then connecting with the de-trunked A66, then continuing in an easterly direction to connect with the new bridleway (Reference G).
	–	–	Reference K  A length of new bridleway from a point on the new Mains Gill junction, continuing in a south-easterly direction to the point where it meets the de-trunked A66 at a point 20 metres to the west of the existing junction of Moor Lane with the A66.
<i>Scheme 09 – The rights of way and access plans – sheets 3 and 4</i>			
In the administrative area of the North Yorkshire Council	Bridleway 20.23/5/1	A length of Bridleway 20.23/5/1, from the point where it meets the westbound carriageway of the existing A66, in a generally northerly direction for a distance of 210 metres.	Reference H  A length of new bridleway, from a point on the realigned Moor Lane in a generally easterly direction on the north side of the new A66 to the point where it connects with existing Bridleway 20.23/5/1.
	Warrener Lane	A length from a point 50 metres to	Reference L

		the north of the existing junction of Bridleway 20.33/17/1 with Warrener Lane, in a generally northerly direction for a distance of 205 metres.	A length of new side road from the point where the existing Warrener Lane meets Bridleway 20.33/17/1, in a generally easterly direction (including a length on the alignment of the de-trunked A66) to a point 203 metres to the east of the existing junction of the A66 with Moor Lane, to include a length of new equestrian track.
<i>Scheme 09 – The rights of way and access plans – sheet 4</i>			
In the administrative area of the North Yorkshire Council	Bridleway 20.30/9/1 & 20.33/24/1	Commencing in verge of existing A66 and continuing south and west to connect into the existing Warrener Lane.	Reference M  A length of new bridleway from a point 82 metres to the north of the existing junction of Bridleway 20.33/17/1 with the existing Warrener Lane, in a generally northerly direction, for a distance of 161 metres.
	Bridleway 20.30/8/1	A length of Bridleway 20.30/8/1, from a point 40 metres to the south of Warrener House, in a generally southerly direction for a distance of 207 metres.	Reference N  A length of new bridleway from a point 222 metres to the north of the existing junction of Bridleway 20.33/17/1 with Warrener Lane, in an easterly and then a north-easterly direction, crossing the new A66 via a new underpass, and connecting with the existing Bridleway 20.30/8/1 to the north of the new A66.

**SCHEME 11 – A1(M) J53 SCOTCH CORNER**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Highway to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New highway to be substituted/provided</i>
<i>Scheme 11 – The rights of way and access plans – sheet 1</i>			
In the administrative area of the North Yorkshire Council	–	–	<p>Reference A*</p> <p>A length of footway adjacent to the new improved Middleton Tyas Lane, from a point 14 metres east of the junction with Scotch Corner roundabout, at the end of the cycleway facility (Reference B*) and continuing in a north-easterly direction for 66 metres to the existing bus stop location.</p>
	–	–	<p>Reference B*</p> <p>A length of new cycle way adjacent to the new improved Middleton Tyas Lane, from a point 14 metres east of the junction with Scotch corner roundabout, where the existing cycle facility on the northern side of Middleton Tyas crosses the carriageway, continuing in a south westerly direction for 22 metres to connect into existing cycleway which continues around the circulatory carriageway of Scotch Corner roundabout.</p>

## PART 2

### HIGHWAYS TO BE STOPPED UP FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

#### **SCHEME 0102 – M6 J40 TO KEMPLAY BANK**

(1) <i>Area</i>	(2) <i>Street to be stopped up</i>	(3) <i>Extent of stopping up</i>
<i>Scheme 0102 – The rights of way and access plans – sheet 1</i>		
–	–	–
<i>Scheme 0102 – The rights of way and access plans – sheet 2</i>		
–	–	–

#### **SCHEME 03 – PENRITH TO TEMPLE SOWERBY**

(1) <i>Area</i>	(2) <i>Street to be stopped up</i>	(3) <i>Extent of stopping up</i>
<i>Scheme 03 – The rights of way and access plans – sheet 1</i>		
In the administrative area of Westmorland and Furness Council	–	–
<i>Scheme 03 – The rights of way and access plans – sheet 2</i>		
In the administrative area of Westmorland and Furness Council	–	–
<i>Scheme 03 – The rights of way and access plans – sheet 3</i>		
In the administrative area of Westmorland and Furness Council	–	–
<i>Scheme 03 – The rights of way and access plans – sheet 4</i>		
In the administrative area of Westmorland and Furness Council	–	–

#### **SCHEME 0405 – TEMPLE SOWERBY TO APPLEBY**

(1) <i>Area</i>	(2) <i>Street to be stopped up</i>	(3) <i>Extent of stopping up</i>
<i>Scheme 0405 – The rights of way and access plans – sheet 1</i>		
–	–	–

#### **SCHEME 06 – APPLEBY TO BROUGH**

(1) <i>Area</i>	(2) <i>Street to be stopped up</i>	(3) <i>Extent of stopping up</i>
<i>Scheme 06 – The rights of way and access plans – sheet 3</i>		
In the administrative area of Westmorland and Furness Council, and Parish of Warcop	A66 (T) (Existing)	A length from its intersection with Moorhouse Lane in a generally westerly direction, for a distance of 206 metres.
<i>Scheme 06 – The rights of way and access plans – sheet 4</i>		
In the administrative area of Westmorland and Furness Council, and Parish of Warcop	Station Road	A length from its intersection with the existing A66 in a

		southerly direction, for a distance of 47 metres.
<i>Scheme 06 – The rights of way and access plans – sheet 5</i>		
In the administrative area of Westmorland and Furness Council, and Parish of Musgrave	Langrigg Lane	A length from its intersection with the existing A66 in a south-westerly direction, for a distance of 118 metres.

**SCHEME 07 – BOWES BYPASS**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>
In the administrative area of Durham County Council	–	–

**SCHEME 08 – CROSS LANES TO ROKEBY**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>
<i>Scheme 08 – The rights of way and access plans – sheet 1, 2 and 3</i>		
In the administrative area of Durham County Council	–	–

**SCHEME 09 – STEPHEN BANK TO CARKIN MOOR**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>
<i>Scheme 09 – The rights of way and access plans – sheets 1 to 4</i>		
In the administrative area of the North Yorkshire Council	–	–

**SCHEME 11 – A1(M) J53 SCOTCH CORNER**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>
<i>Scheme 11 – The rights of way and access plans – sheet 1</i>		
In the administrative area of the North Yorkshire Council	–	–

**PART 3**

PRIVATE MEANS OF ACCESS TO BE STOPPED UP FOR WHICH A SUBSTITUTE IS TO BE PROVIDED AND NEW PRIVATE MEANS OF ACCESS WHICH ARE OTHERWISE TO BE PROVIDED

**SCHEME 0102 – M6 J40 TO KEMPLAY BANK**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Private means of access to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New private means of access to be substituted/provided</i>
<i>Scheme 0102 – The rights of way and access plans – sheet 1</i>			
	–	–	Reference 1

In the administrative area of Westmorland and Furness Council			New private means of access to land (including an attenuation pond maintenance area), located 46 metres south of the existing access to Skirsgill Business Park.
	–	–	Reference 2  New private means of access from the existing access to Skirsgill Business Park, following the existing alignment to a point 46 metres south of the existing access to Skirsgill Business Park.
	Reference a  Access to Cumbria County Council's Skirsgill Depot from the south side of the existing A66, approximately 195 metres east of the existing junction of the A66 with the M6 Junction 40 roundabout.	A length from its junction with the existing A66, generally southwards, for a distance of 50 metres.	Reference 3  To be substituted by a new private means of access located 95 metres to the east of the junction of the existing access with the A66.
<i>Scheme 0102 – The rights of way and access plans – sheet 2</i>			
In the administrative area of Westmorland and Furness Council	Reference b	A length from a point 120 metres north-west of its junction with the existing Skirsgill Lane, in a generally westerly direction for a distance of 68 metres.	Reference 4  To be substituted by a new private means of access from its junction with the existing Skirsgill Lane proceeding generally north-westwards for a distance of 191 metres.
	Reference c  Access to field on the north side of the existing A686, 145 metres east of the existing junction of the A686 with the Kemplay Bank Roundabout.	The whole access.	Reference 5  To be substituted by a new private means of access in the same location as stopped up access Reference c, but repositioned 5 metres further north-west, at the new



			boundary of the improved A686.
	–	–	Reference 6 New private means of access 76 metres to the north-east of the existing Police Station.
	–	–	Reference 7 New private means of access to land (including an attenuation pond and maintenance area), 267 metres north-east of the existing Police Station.

**SCHEME 03 – PENRITH TO TEMPLE SOWERBY**

<i>(1) Area</i>	<i>(2) Private means of access to be stopped up</i>	<i>(3) Extent of stopping up</i>	<i>(4) New private means of access to be substituted/provided</i>
<i>Scheme 03 – The rights of way and access plans – sheet 1</i>			
In the administrative area of Westmorland and Furness Council	Reference a Access to a field from the north side of the existing A66, 20 metres north of the junction of the A66 with the B6262.	The whole access.	Reference 1 To be substituted by a new private means of access, 200 metres to the east of the existing access Reference a, together with a right of vehicular access over new cycle track References C and B for the benefit of the land affected by the stopping up of private means of access reference a.
	Reference c Access to a field from the north side of the existing A66, 88 metres north of the existing A66.	The whole access.	Reference 3 To be substituted by a new private means of access 2 metres south of the existing access Reference c, together with a right of vehicular access over the new cycle track Reference C, for the benefit of the land affected by the

			stopping up of private means of access reference c.
	–	–	Reference 4  A new private means of access to land (including an attenuation pond and maintenance area), 86 metres north-east of the Countess Pillar.
	–	–	Reference 5  A new private means of access from a point 49 metres south-west of the Countess Pillar, for a distance of 44 metres in a westerly direction to a point 83 metres west of the Countess Pillar, being the site of the former Llama Karma Kafe, together with a right of vehicular access over the new footpath Reference D and the new cycle track Reference E.
Reference f	The whole access.	Reference 6	To be substituted by a new private means of access 24 metres south of the existing access Reference f.
Reference d	A length from its junction with the A66 in a generally northerly direction for a distance of 110 metres.	Reference 7	To be substituted by a new private means of access, at a point 30 metres to the north of the existing access Reference d.
Reference g	The whole access.	Reference 8	To be substituted by a new private means of access between the two fields, located 71 metres to the north-
	Access to a field from the south side of the existing A66, 500 metres east of the existing junction of the A66 with the B6262.		
	Access to the existing Sewage Treatment Works from the north side of the A66, 430 metres east of the existing junction between the A66 and the B6262.		
	Access between two fields, 305 metres east of the existing junction of the A66 with the B6262.		

			east of the existing access Reference g, together with a right of vehicular access over the new cycle track References C and F, for the benefit of the land affected by the stopping up of private means of access reference g.
	–	–	Reference 9  New private means of access to land (including an attenuation pond and maintenance area), 63 metres north of the existing access to Lightwater Cottages.
	Reference h  Access to a field from the north side of the existing A66, 40 metres north of the Lightwater Cottages.	The whole access.	Reference 10  To be substituted by a new private means of access, located 66 metres to the north-east of the existing access Reference h, together with a right of vehicular access over the new cycle track References C and F, for the benefit of the land affected by the stopping up of private means of access reference h.
	Reference i  Access to a field from the north side of the existing A66, 138 metres to the north-east of the Lightwater Cottages.	The whole access.	Reference 11  To be substituted by a new private means of access, located 35 metres to the north of the existing access Reference i, together with a right of vehicular access over the new cycle track References C and F, for the benefit of the land affected by the stopping up of private means of access reference i.
	Reference k	A length from its junction with the A66,	Reference 12

	Access to land and premises located south of the existing Lightwater Cottages.	southwards for a distance of 86 metres.	To be substituted by a new access from its junction with the improved A66 and continuing in a generally southerly direction for a distance of 100 metres.
	–	–	Reference 13  A new improved private means of access (to the sewage pumping station) on its original alignment.
	Reference l  Access to a field from the south side of the existing A66, 640 metres to the north-west of Whinfell Park.	The whole access.	References 14 and 15  To be substituted by two new private means of access, 22 metres south of the existing access Reference 1, and via a new private means of access Reference 13.
<i>Scheme 03 – The rights of way and access plans – sheet 2</i>			
In the administrative area of Westmorland and Furness Council and the parish of Langwathby	Reference m  Access between two fields on the north side of the existing A66, 640 metres to the north-west of Whinfell Park.	The whole access.	Reference 16  To be substituted by a new private means of access, located 34 metres to the north-west of the existing access Reference m, together with a right of vehicular access over new cycle track References C and F, for the benefit of the land affected by the stopping up of private means of access reference m.
	Reference n  Access to a field from the north side of the existing A66, 365 metres to the north-west of Whinfell Park.	The whole access.	Reference 17  To be substituted by a new private means of access, located 34 metres to the north of the existing access Reference n, together with a right of vehicular access over new cycle track References C and F, for the benefit of the

			land affected by the stopping up of private means of access reference n.
	–	–	Reference 18  A new private means of access to land (including an attenuation pond and maintenance area), 310 metres to the north-west of Whinfell Park, on the north side of the A66.
Reference o	Access to Whinfell Park, from the south side of the existing A66.	A length from its existing junction with the A66 southwards for a distance of 85 metres.	Reference 19  To be substituted by a new private means of access, located 20 metres to the east of the existing access Reference o.
	–	–	Reference 20  A new private means of access commencing from the substituted access to Whinfell Park (Reference 19) and continuing in a generally north-easterly direction for a distance of 190 metres, crossing the improved A66 via the “Whinfell Accommodation Underpass”, together with a right of vehicular access over new cycle track Reference H.
Reference p	Access to a field from the north side of the existing A66, 273 metres to the east of the existing access to Whinfell Park.	The whole access.	Reference 21  To be substituted by a new private means of access, located 91 metres to the north-east of the existing access Reference p, together with a right of vehicular access over the new cycle track Reference H, for the benefit of the land

			affected by the stopping up of private means of access reference p.
	—	—	Reference 22  A new private means of access to land (including an attenuation pond and maintenance area), located on the north side of the A66, 545 metres to the north-east of Whinfell Park.
Reference q	The whole access.	References 19 and 28	To be substituted by new private means of access, via two alternative routes, being via the Whinfell Park access road (Reference 19) or the new A66 on the south side of the new junction at Center Parcs (Reference 28, on sheet 3).
Reference r	The whole access.	Reference 23	To be substituted by a new private means of access, located 91 metres to the north-east of the existing access Reference r, together with a right of vehicular access over new cycle track Reference H, for the benefit of the land affected by the stopping up of private means of access reference r.
Reference s	The whole access.	References 19 and 28	To be substituted by new private means of access, via two alternative routes, being via the Whinfell Park access road (Reference 19) or the new A66 on the south

			side of the new junction at Center Parcs (Reference 28, on sheet 3).
<i>Scheme 03 – The rights of way and access plans – sheet 3</i>			
In the administrative area of Westmorland and Furness Council	Reference t  Access to a field from the north side of the existing A66, 190 metres to the west of the existing junction of the Center Parcs access road with the A66.	The whole access.	Reference 24  To be substituted by a new private means of access, located 36 metres to the north of the existing access Reference t, together with a right of vehicular access over new cycle track Reference H, for the benefit of the land affected by the stopping up of private means of access reference t.
	Reference u  Access to a field from the north side of the existing A66, to the north of the existing junction of the Center Parcs access road with the A66.	The whole access.	Reference 25  To be substituted by a new private means of access, located 120 metres to the north of the existing access Reference u, together with a right of vehicular access over new cycle track Reference H, for the benefit of the land affected by the stopping up of private means of access reference u.
	Reference v  Access to a field from the north side of the existing A66, to the north of the existing junction of the Center Parcs access road with the A66.	The whole access.	Reference 26  To be substituted by a new private means of access, located 200 metres to the north-east of the existing access Reference v, together with a right of vehicular access over new cycle track Reference H, for the benefit of the land affected by the stopping up of private means of access reference v.

	–	–	Reference 27 A new private means of access to land (including an attenuation pond and maintenance area), located 175 metres to the north-east of the existing junction of the Center Parcs access road with the A66.
	–	–	Reference 28 Extension of an existing private means of access 40 metres eastwards to meet the new highway (A66).
	Reference w Access to Center Parcs from the south side of the existing A66.	A length from its junction with the A66, southwards for a distance of 290 metres.	Reference 29 A new private means of access starting from a point 207 metres to the south of the existing junction of the Center Parcs access road with the A66, continuing southwards for approximately 125 metres, to tie into the existing access to Center Parcs.
	–	–	For Reference 30 please refer to sheet 4 (below).
<i>Scheme 03 – The rights of way and access plans – sheet 4</i>			
In the administrative area of Westmorland and Furness Council	Reference y Access to a field from the south side of the existing A66, 1.1 km to the east of the existing access to Center Parcs from the A66.	The whole access.	Reference 30 To be substituted by a new private means of access commencing at the intersection of Footpath 311/004 with the A66 and continuing in a generally easterly and then a southerly direction for a distance of 435 metres, together with a right of vehicular access over new footpath reference J, for the benefit of the land affected by the stopping up of private



			means of access reference y.
	Reference x  Access to a field from the north side of the existing A66, 1.1 km east of the existing access to Center Parcs from the A66.	The whole access.	Reference 31  To be substituted by a new private means of access, located 40 metres to the north of the existing access.
	Reference z  Access to a field from the north side of the existing A66, 1.3 km to the east of the existing access to Center Parcs from the A66.	The whole access.	Reference 32  To be substituted by a new private means of access, located 140 metres north-east of the existing access Reference z, together with a right of vehicular access over the new cycle track Reference K and new cycleway Reference B*, for the benefit of the land affected by the stopping up of private means of access reference z.
	–	–	Reference 33  A new private means of access to land (including an attenuation pond and maintenance area), located 475 metres south-west of Lower Woodside.
	Reference za  Access to a field from the south side of the existing A66, 14.3 km to the east of the existing access to Center Parcs from the A66.	The whole access.	Reference 30 (as above).

**SCHEME 0405 – TEMPLE SOWERBY TO APPLEBY**

<i>(1) Area</i>	<i>(2) Private means of access to be stopped up</i>	<i>(3) Extent of stopping up</i>	<i>(4) New private means of access to be substituted/provided</i>
<i>Scheme 0405 – The rights of way and access plans – sheets 1 and 2</i>			

In the parish of Temple Sowerby; in the administrative area of Westmorland and Furness Council	Reference a	A length from a point 20 metres south of the junction of the existing A66 and Morland Road, in a generally easterly direction for a distance of 50 metres.	Reference 1
	Access to field from the east side of the existing Morland Road, 20 metres from its junction with the existing A66 (shown on sheet 1 of the rights of way and access plans for scheme 0405).		To be substituted by a new private means of access to field between the proposed Temple Sowerby Link Road and the existing A66 as well as to maintenance strip for the Proposed Temple Sowerby Link Road, from a point 20 metres south of the junction of the existing A66 and Morland Road, in a generally southerly direction for a distance of 45 metres (as shown on sheet 1 of the rights of way and access plans for scheme 0405).
	–	–	Reference 2
			New private means of access to land (including an attenuation pond) on the south-east side of the proposed roundabout on Morland Road from a point 110 metres south of the proposed roundabout, in a generally north-easterly direction for a distance of 285 metres (as shown on sheet 1 of the rights of way and access plans for scheme 0405).
	–	–	Reference 3
			New private means of access to Spitals Farm on the north side of the new A66, 195 metres to the west of the existing Spitals Farm Underpass (as shown on sheet 1 of the rights of way and access plans for scheme 0405).

In the parishes of Temple Sowerby and Crackenthorpe; in the administrative area of Westmorland and Furness Council	Reference b	A length from a point 13 metres to the south of the existing Spitals Farm Underpass, in a generally westerly direction for a distance of 205 metres.	Reference 4
	Access link to fields on the south side of the existing A66 from the Spitals Farm Underpass (shown on sheet 1 of the rights of way and access plans for scheme 0405).		To be substituted by a new private means of access from a point 30 metres to the south of the existing Spitals Farm Underpass in a generally westerly direction for a distance of 217 metres; together with another length in a generally southerly direction for a distance of 67 metres (as shown on sheet 1 of the rights of way and access plans for scheme 0405).
	–	–	Reference 5
			New private means of access to maintenance strip for the Proposed Temple Sowerby Link Road from a point 200 metres to the south-east of the existing Spitals Farm Underpass (as shown on sheet 1 of the rights of way and access plans for scheme 0405).
	–	–	Reference 6
			A new private means of access to land on the south side of the new A66, together with a right of vehicular access over new bridleway reference A (as above, in Part 1) for the benefit of that land.
	–	–	Reference 7
			New private means of access to maintenance strip south of the new A66, 530 metres to the east of the existing Spitals Farm Underpass (as shown on sheet 1 of the rights

			of way and access plans for scheme 0405).
	Reference d Access link to field adjacent to Priest Lane via Bridleway 336/007 from its junction with Priest Lane (shown on sheets 1 and 2 of the rights of way and access plans for scheme 0405).	A length from the junction of Bridleway 336/007 with Priest Lane, in a generally south-westerly direction for a distance of 85 metres.	Reference 8 To be substituted by a new private means of access on the south side of the realigned Priest Lane from a point 13 metres west of the junction of Priest Lane with Bridleway 336/007 (as shown on sheets 1 and 2 of the rights of way and access plans for scheme 0405).
	–	–	Reference 9 New private means of access to field on the north side of the realigned Priest Lane, 25 metres to the west of the junction of the existing Priest Lane with Bridleway 336/007 (as shown on sheets 1 and 2 of the rights of way and access plans for scheme 0405).
	–	–	Reference 10 New private means of access to land on the south side of the realigned Priest Lane (including drainage pond), 90 metres to the north-east of the junction of the existing Priest Lane with Bridleway 336/007 (as shown on sheets 1 and 2 of the rights of way and access plans for scheme 0405).
	Reference e Access to field from the north side of the existing Priest Lane, 75 metres to the east of its junction with the	The whole access.	Reference 11 To be substituted by a new private means of access to field on the north side of the realigned Priest Lane,

	existing Bridleway 336/007 (as shown on sheets 1 and 2 of the rights of way and access plans for scheme 0405).		149 metres north-east of the junction of Priest Lane with Bridleway 336/007 (as shown on sheets 1 and 2 of the rights of way and access plans for scheme 0405).
	Reference i  Access to field from the north side of the existing Priest Lane, 236 metres to the east of its junction with the existing Bridleway 336/007 (shown on sheet 2 of the rights of way and access plans for scheme 0405).	The whole access.	Reference 12  To be substituted by a new private means of access to field on the north side of the realigned Priest Lane, 198 metres north-east of the junction of Priest Lane with Bridleway 336/007 (as shown on sheet 2 of the rights of way and access plans for scheme 0405).
	–	–	Reference 13  New private means of access to field on the north side of the realigned Priest Lane (between the proposed Priest Lane Underpass and the realigned Station Road) (as shown on sheet 2 of the rights of way and access plans for scheme 0405).
	–	–	Reference 14  New private means of access to maintenance strip on the north side of the new A66 (as shown on sheet 2 of the rights of way and access plans for scheme 0405).
	–	–	Reference 15  New private means of access to maintenance strip on the south side of the new A66 as well as to maintenance strip on the west side of the realigned Cross Street

			(as shown on sheet 2 of the rights of way and access plans for scheme 0405).
	–	–	Reference 16  New private means of access to land on the west side of the realigned Cross Street (including a drainage pond), 263 metres north of the proposed Cross Street Bridge (as shown on sheet 2 of the rights of way and access plans for scheme 0405).
Reference l		The whole access.	Reference 17  To be substituted by a new private means of access to field on the east side of the realigned Cross Street, 360 metres north of the proposed Cross Street Bridge (as shown on sheet 2 of the rights of way and access plans for scheme 0405).
Access to field from the east side of the existing Cross Street, 357 metres north of the proposed Cross Street Bridge (shown on sheet 2 of the rights of way and access plans for scheme 0405).			
Reference k		The whole access.	Reference 18  To be substituted by a new private means of access to field on the east side of the realigned Cross Street, and to maintenance strip on the east side of the realigned Cross Street, from a point 331 metres north of the proposed Cross Street Bridge (as shown on sheet 2 of the rights of way and access plans for scheme 0405).
Access to field from the east side of the existing Station Road, 327 metres north of the proposed Cross Street Bridge (shown on sheet 2 of the rights of way and access plans for scheme 0405).			
	–	–	Reference 19  New private means of access to field on the east side of the realigned Cross Street, 283 metres north of the proposed Cross Street

			Bridge (as shown on sheet 2 of the rights of way and access plans for scheme 0405).
	Reference p Access to fields north of the new bridleway (Reference B) (shown on sheet 2 of the rights of way and access plans for scheme 0405).	A length along the route of Bridleway 336/018 from its junction with the realigned Cross Street in a north-easterly direction for a distance of 205 metres, to its junction with the new bridleway (Reference B).	References 20 and 78  To be substituted by new private means of access to land on the north side of the new A66, including a right of vehicular access over the new bridleway reference B and the new footpath reference K (as above, in Part 1) (as shown on sheet 2 of the rights of way and access plans for scheme 0405).
	–	–	Reference 21  New private means of access to land on the south side of the new bridleway (Reference B) (including a drainage pond), and to maintenance strip on the north side of the new A66 (as shown on sheet 2 of the rights of way and access plans for scheme 0405).
	–	–	Reference 22  New private means of access to maintenance strip on the east side of the realigned Cross Street (as shown on sheet 2 of the rights of way and access plans for scheme 0405).
	–	–	Reference 24  New private means of access to land between the proposed A66 and new right of way and via new private means of access (Reference 23), as well as to maintenance strip on the north side of the proposed A66,

			together with a right of vehicular access over new footpath Reference C (as shown on sheet 2 of the rights of way and access plans for scheme 0405).
	–	–	Reference 26  A new private means of access from the edge of Ashton Lea field in a generally north-easterly direction for a distance of 210 metres and joining onto another new private means of access Reference 23 and with a right of vehicular access over new footpath (Reference C) (as shown on sheet 2 of the rights of way and access plans for scheme 0405).
	–	–	Reference 27  New private means of access to maintenance strip on the proposed Fell Lane Westbound Connector Road (as shown on sheet 2 of the rights of way and access plans for scheme 0405).
<i>Scheme 0405 – The rights of way and access plans – sheets 2 and 3</i>			
In the parish of Kirkby Thore; in the administrative area of Westmorland and Furness Council	Reference q; and Reference r (Green Lane Track)  Access to fields on the north side of the new A66 (shown on sheet 2 of the rights of way and access plans for scheme 0405).	A length along Green Lane Track from its junction with the existing Cross Street in a north-easterly direction to Point F, a distance of 400 metres.	Reference 23  To be substituted by a 1.1 km length of new private means of access from a point 90 metres south-east of the junction of Bridleway 336/018 with the existing Cross Street in a generally easterly direction to the point where it connects with existing Footpath 366/013 (as shown on sheets 2 and 3 of the rights of way



			and access plans for scheme 0405).
	Reference s Access to fields north of the new A66 (shown on sheets 2 and 3 of the rights of way and access plans for scheme 0405).	A length along Green Lane Track 45 metres from the edge of Ashton Lea field in a north-easterly direction for a distance of 335 metres; then another length from Point U along footpath 366/017 in a south-easterly direction for 270 metres; a total length of 605 metres.	To be substituted by— A new private means of access (Reference 26) from the edge of Ashton Lea field in a generally north-easterly direction for a distance of 210 metres and joining onto another new private means of access (Reference 23) at Point S, and with a right of vehicular access over new footpath (Reference C);  together with another new private means of access (Reference 24) via new private means of access (Reference 23), together with a right of vehicular access over new footpath Reference C, from Point T in a southerly direction for a distance of 41 metres;  a total distance of 251 metres (as shown on sheets 2 and 3 of the rights of way and access plans for scheme 0405).
	—	—	Reference 25  New private means of access to land on the west side of the realigned Fell Lane, 97 metres north-east of the proposed Fell Lane Bridge for a distance of 38 metres in a north-westerly direction (as shown on sheets 2 and 3 of the rights of way and access plans for scheme 0405).
	—	—	Reference 29

			New private means of access to field on the south side of the existing A66, 315 metres east of the junction of Piper Lane with the existing A66 (as shown on sheet 2 of the rights of way and access plans for scheme 0405).
	–	–	Reference 30  New private means of access to field on the south side of the existing A66, 276 metres east of the junction of Piper Lane with the existing A66 (as shown on sheet 2 of the rights of way and access plans for scheme 0405).
	–	–	Reference 31  New private means of access to field on the south side of the existing A66, 232 metres east of the junction of Piper Lane with the existing A66 (as shown on sheet 2 of the rights of way and access plans for scheme 0405).
	–	–	Reference 32  New private means of access to field on the north side of the existing A66, 167 metres east of the junction of the existing A66 with Piper Lane (as shown on sheet 2 of the rights of way and access plans for scheme 0405).
	–	–	Reference 33  New private means of access to forecourt on the north side of the existing A66, 187

			metres east of the junction of the existing A66 with Piper Lane (as shown on sheet 2 of the rights of way and access plans for scheme 0405).
	–	–	Reference 34  A new private means of access to field on the south side of the existing Sleastonhow Lane at a point 245 metres south-east of the junction between the existing Sleastonhow Lane and Main Street (as shown on sheet 3 of rights of Way and Access Plans for scheme 0405).
In the parish of Kirkby Thore; in the administrative area of Westmorland and Furness Council	–	–	Reference 35  A new private means of access to land (including an attenuation pond) on the south side of the realigned Fell Lane 65 metres north-east of the junction between the realigned Fell Lane and the new side road; and joining onto the north side of the new side road at a point 110 metres south-east of the junction between the realigned Fell Lane and the new side road (as shown on sheet 3 of rights of Way and Access Plans for scheme 0405).
	Reference t  A private means of access to an industrial estate from the south side of the existing Fell Lane at a point 175 metres north-east of the junction between the existing Fell Lane and the existing Main Street	A length from its junction with Fell Lane, for a distance of 25 metres in an easterly direction	Reference 28  To be substituted by a new private means of access from the south side of the realigned Fell Lane at a point 170 metres north-east of the junction between existing Fell Lane and existing Main Street (as shown

	(shown on sheet 2 of the rights of way and access plans for scheme 0405)		on sheet 2 and 3 of rights of way and access plans for scheme 0405).
	Reference x  A private means of access to a field on the north side of the existing Main Street, 510 metres from its junction with Sleastonhow Lane (shown on sheet 3 of the rights of way and access plans for scheme 0405)	The whole access.	Reference 36  To be substituted by a new private means of access to a field on the north side of the new side road at a point 190 metres south-east of the junction between the new side road and the realigned Fell Lane (as shown on sheet 3 of rights of way and access plans for scheme 0405).
	–	–	Reference 37  A new private means of access to a field on the south side of the new side road, as well as to maintenance strips on the north side of the new A66 and associated highway bund, at a point 405 metres south-east of the junction between the new side road and the realigned Fell Lane (as shown on sheet 3 of rights of way and access plans for scheme 0405).
	Reference y  A private means of access to a field on the south side of the existing Main Street, 455 metres from its junction with Sleastonhow Lane (as shown on sheet 3 of the rights of way and access plans for scheme 0405)	The whole access.	Reference 38  To be substituted by a new private means of access to a field on the south side of the new side road at a point 430 metres south-east of the junction between the new side road and the realigned Fell Lane (as shown on sheet 3 of rights of way and access plans for scheme 0405).
	–	–	Reference 74

			New private means of access to maintenance strip on the south side of the new A66, between Fell Lane the existing Main Street (as shown on sheets 2 and 3 of rights of way and access plans for scheme 0405).
<i>Scheme 0405 – The rights of way and access plans – sheet 3 and 4</i>			
In the parish of Crackenthorpe; in the administrative area of Westmorland and Furness Council	–	–	Reference 40  A new private means of access on the south side of the existing A66 at a point 65 metres south-east of the junction between the existing A66 and existing Main Street (as shown on sheet 4 of rights of way and access plans for scheme 0405).
	Reference z  Private means of access to field on the north side of the existing A66, 400 metres south-east of the junction between the existing A66 and existing Main Street (as shown on sheet 4 of the rights of way and access plans for scheme 0405)	The whole access.	Reference 41  To be substituted by a new private means of access on the north side of the existing A66 at a point 400 metres south-east of the junction between the existing A66 and existing Main Street (as shown on sheet 4 of rights of way and access plans for scheme 0405).
	Reference aa A private means of access to field on the north side of the Old Station Yard, 115 metres north-west of the Old Station Yard (shown on sheet 4 of the rights of way and access plans for scheme 0405)	The whole access.	Reference 42  To be substituted by a new private means of access on the north side of the existing A66 at a point 115 metres north-west of the Old Station Yard (as shown on sheet 4 of rights of way and access plans for scheme 0405).
	–	–	Reference 39

In the parish of Kirkby Thore; in the administrative area of Westmorland and Furness Council			A new private means of access to existing Sleastonhow Lane as well as to maintenance strip on the north side of the realigned Sleastonhow Lane, from a point 395 metres from the junction of the realigned Sleastonhow Lane with Main Street, in a generally south-easterly direction for a distance of 213 metres (as shown on sheets 3 and 4 of the rights of way and access plans for scheme 0405).
	—	—	Reference 44  A new private means of access to land adjoining the existing Sleastonhow Lane as well as to maintenance strip on the north side of the new A66 from a point 843 metres south-east of the junction of Main Street and the existing Sleastonhow Lane (as shown on sheets 3 and 4 of the rights way and access plans for scheme 0405).
	—	—	Reference 43  New private means of access to field on the north side of the realigned Sleastonhow Lane (including a drainage pond) as well as to maintenance strips on the north side of the realigned Sleastonhow Lane and the north side of the new A66, 182 metres south-east of the new Sleastonhow Lane Bridge (as shown on sheets 3 and 4 of the rights of way and

			access plans for scheme 0405).
	–	–	Reference 45  A new private means of access to a field from the north side of the realigned Sleastonhow Lane at a point 910 metres south-east of the junction of Main Street and the existing Sleastonhow Lane (as shown on sheets 3 and 4 of the rights of way and access plans for scheme 0405).
	–	–	Reference 46  New private means of access to land (including a drainage pond) south of the realigned Sleastonhow Lane (as well as access to maintenance strip on the south side of the realigned Sleastonhow Lane), from a point 300 metres north-east of the junction of the existing A66 and the existing Farm Track in a generally northerly direction for a distance of 820 metres (as shown on sheet 4 of the rights of way and access plans for scheme 0405).
Reference ah  Access to existing Sleastonhow Lane and to fields via a farm track between the existing A66 and Sleastonhow Lane (shown on sheet 4 of rights of way and access plans for scheme 0405)		A length along the existing Farm Track from a point 335 metres north-east of its junction with the existing A66 for a distance of 188 metres in a north-easterly direction;  and including another length from its midpoint, in a south-easterly direction for a distance of 125 metres	Reference 47  To be substituted by a new private means of access (the Trout Beck Bridge north shore farm track) passing under the new Trout Beck Viaduct in a U-shape and tying back onto the existing Farm Track, a length of 555 metres (as shown on sheet 4 of rights of way and access plans for scheme 0405).

	<p>Reference ae</p> <p>Private means of access to fields on the north side of the existing A66, 540 metres south-east of the Old Station Yard (shown on sheet 4 of the rights of way and access plans for scheme 0405)</p>	<p>The whole access.</p>	<p>Reference 48</p> <p>To be substituted by a new private means of access on the north side of the existing A66 at a point 540 metres south-east of the Old Station Yard (as shown on sheet 4 of the rights of way and access plans for scheme 0405).</p>
	<p>–</p>	<p>–</p>	<p>Reference 49</p> <p>A length of new private means of access from a point 135 metres to the north-west of the junction of the existing A66 with Footpath 317/008 in a north-easterly direction for 45 metres, followed by another length in a generally north-easterly direction towards the new A66 for a distance of 255 metres towards the new A66 to Point M; a total distance of 300 metres (as shown on sheets 4 and 5 of the rights of way and access plans for scheme 0405).</p>
	<p>–</p>	<p>–</p>	<p>Reference 50</p> <p>A length of new private means of access along a stopped-up length of the existing Long Marton Road from a point 90 metres north of the junction of the existing A66 with the existing Long Marton Road for a distance of 85 metres (as shown on sheet 5 of the rights of way and access plans for scheme 0405).</p>
<p><i>Scheme 0405 – The rights of way and access plans – sheet 5</i></p>			



In the parish of Crackenthorpe; in the administrative area of Westmorland and Furness Council	–	–	Reference 75  New private means of access to land (including a drainage pond) on the north side of the new footpath (Reference F) and new private means of access (Reference 52), 40 metres north of the junction of new footpath Reference F with the existing Long Marton (Road) (as shown on sheet 5 of the rights of way and access plans for scheme 0405).
	–	–	Reference 76 (Not used)
	Reference ai  (Powis House access road) (shown on sheet 5 of the rights of way and access plans for scheme 0405)	A 247 metre length of the existing Powis House access road from its junction with the existing Long Marton (Road) in a generally north-westerly direction, to its tie-in with the new replacement private means of access (Reference 52)	Reference 52  To be substituted by a new private means of access, on the alignment of, and with a right of vehicular access over, new footpath Reference F, from a point 15 metres north-east of the junction of the existing Long Marton Road and Powis House access road in a generally north-westerly direction to its tie-in point with the existing Powis House access road, 60 metres from Powis House, over a distance of 235 metres (as shown on sheet 5 of the rights of way and access plans for scheme 0405).
	–	–	Reference 51  A new private means of access to field on the north side of the existing Long Marton (Road), from a point 355 metres north-east of the junction of the

			existing Long Marton (Road) with the existing A66 (as shown on sheet 5 of the rights of way and access plans for scheme 0405).
	–	–	Reference 56  New private means of access to maintenance strips on the east side of the realigned Long Marton as well as the proposed Long Marton Eastbound Connector road (as shown on sheet 5 of rights of way and access plans for scheme 0405).
	–	–	Reference 57  A new private means of access to fields on the north side of the new Bridleway (Reference G), from a point 35 metres south-east of the new Long Marton Underpass, in a generally northerly direction for a distance of 106 metres (as shown on sheet 5 of the rights of way and access plans for scheme 0405).
	–	–	Reference 53  New private means of access to land on the south side of the existing Long Marton (Road) (including drainage pond) as well as to maintenance strip on the west side of the realigned Long Marton, from a point 135 metres north-west of the junction of the existing Long Marton (Road) and realigned Long Marton (as shown on sheet 5 of rights of Way and

			Access Plans for scheme 0405).
	–	–	Reference 41 (Not Used)
	–	–	Reference 54  New private means of access to fields on the east side of the realigned Long Marton as well as to maintenance strip on the east side of the realigned Long Marton from Point V in a generally south-westerly direction for a distance of 548 metres (as shown on sheet 5 of rights of Way and Access Plans for scheme 0405).
	–	–	Reference 58  New private means of access to land on the west side of the realigned Long Marton (Road) (including drainage pond), as well as to maintenance strip on the west side of the realigned Long Marton from a point 150 metres north-east of the junction of the realigned Long Marton (Road) and the existing A66 (as shown on sheet 5 of rights of way and access plans for scheme 0405).
	–	–	Reference 59  New private means of access to maintenance strip on the south side of the realigned Long Marton, from a point 180 metres north-east of its junction with the existing A66, in a generally north-

			easterly direction for a distance of 55 metres (as shown on sheet 5 of the rights of way and access plans for scheme 0405).
	–	–	Reference 60 New private means of access to the north of the existing A66, at a point 125 metres south of the junction between the existing A66 and the realigned Long Marton (Road) (as shown on sheet 5 of rights of Way and Access Plans for scheme 0405).
	–	–	Reference 61 New private means of access from the north side of the existing A66, at a point 220 metres south of the junction between the existing A66 and the realigned Long Marton (Road) (as shown on sheet 5 of rights of way and access plans for scheme 0405).
	Reference zd Access to fields north of the existing A66 along Roman Road and east of the existing Long Marton (Road) (shown on sheet 5 of the rights of way and access plans for scheme 0405).	A length of private means of access along Bridleway 341/001 from a point 292 metres from its junction with the existing Long Marton (Road) in a south-easterly direction for a distance of 245 metres.	Reference 55 To be substituted by a new private means of access via new bridleway reference G (as above in Part 1), together with a right of vehicular access over the new bridleway Reference G) (as shown on sheet 5 of the rights of way and access plans for scheme 0405).
<i>Scheme 0405 – The rights of way and access plans – sheet 6</i>			
In the parish of Crackenthorpe; in the administrative area of Westmorland and Furness Council	–	–	Reference 62 A new private means of access to land (including a drainage pond) on the south side

			of the new A66, a distance of 775 metres in a generally north-easterly direction from Crackenthorpe (as shown on sheet 6 of the rights of way and access plans for scheme 0405).
	–	–	Reference 63  A new private means of access to land on the north side of the new A66 from a point approximately 210 metres north of Crackenthorpe, in a generally north-easterly direction and passing under the new Crackenthorpe Underpass before connecting to Bridleway 341/001 along Roman Road (as shown on sheet 6 of the rights of way and access plans for scheme 0405).
<i>Scheme 0405 – The rights of way and access plans – sheet 7</i>			
In the parish of Crackenthorpe; in the administrative area of Westmorland and Furness Council	Reference au  Access to fields between Roger Head Farm and the existing Roman Road (along existing track) (shown on sheet 7 of the rights of way and access plans for scheme 0405).	A length of private means of access (existing track) along the route of Footpath 317/004 between Roger Head Farm and the existing Roman Road from a point 240 metres north-east of Roger Head Farm, for a distance of 117 metres in a north-easterly direction, to a point 23 metres from its junction with the existing Roman Road.	Reference 64  To be substituted by a new private means of access (including access to maintenance strips north and south of the new A66), from a point 240 metres north-east of Roger Head Farm on the existing alignment of Footpath 317/004 in a south-easterly direction for a distance of 125 metres, followed by another distance of 225 metres in a generally north-easterly direction and over the proposed Roger Head Farm Bridge, to its junction with the existing Roman Road, a total distance of 350 metres

			(as shown on sheet 7 of the rights of way and access plans for scheme 0405).
	—	—	Reference 65  New private means of access connecting Roger Head Farm to the new bridleway (Reference J) and private means of access (Reference 64) (as shown on sheet 7 of the rights of way and access plans for scheme 0405).
	—	—	Reference 66  New private means of access to land on the north side of the existing A66 (including a drainage pond) and to maintenance strip south of the new A66, from a point 450 metres south-west of the proposed Roger Head Farm Bridge in a generally easterly direction for a distance of 590 metres (as shown on sheet 7 of rights of way and access plans for scheme 0405).
	—	—	Reference 67  New private means of access between Bridleway 341/001 and the new A66, from a point 165 metres north of the junction between the existing A66 and the improved B6542, extending in a generally north-easterly direction for a distance of 252 metres, to its junction with Bridleway 341/001 (as shown on sheet 7 of rights of way and

			access plans for scheme 0405).
	–	–	Reference 68  New private means of access to land on the south side of the existing B6542, located at a point 89 metres south-east of the junction between the existing B6542 and the existing A66 (as shown on sheet 7 of rights of way and access plans for scheme 0405).
	Reference ay  Access to field on the south side of the existing B6542 at a point 250 metres south-east of the junction of the existing B6542 and the existing A66 (shown on sheet 7 of the rights of way and access plans for scheme 0405).	The whole access.	Reference 69  New private means of access to land on the south side of the realigned B6542 (including a drainage pond), from a point 30 metres east of the junction of the realigned B6542 with the new private means of access (Reference 68) (as shown on sheet 7 of rights of way and access plans for scheme 0405).
	–	–	Reference 70  New private means of access from the south side of the existing B6542, located at a point 310 metres south-east of the junction between the existing B6542 and the existing A66 (as shown on sheet 7 of rights of way and access plans for scheme 0405).
	–	–	Reference 71  New private means of access from the north side of existing B6542, located at a point 378 metres south-east of

			the junction between the existing B6542 and the existing A66 (as shown on sheet 7 of rights of way and access plans for scheme 0405).
	–	–	Reference 72  New private means of access from the north side of existing B6542, located at a point 415 metres south-east of the junction between the existing B6542 and the existing A66 (as shown on sheet 7 of rights of way and access plans for scheme 0405).
	–	–	Reference 73  New private means of access to land on the south side of the existing B6542, located at a point 501 metres south-east of the junction between the existing B6542 and the existing A66 (as shown on sheet 7 of rights of way and access plans for scheme 0405).
	–	–	Reference 77  New private means of access to maintenance strip on the south side of the new A66, located on the north side of the realigned B6542 at a point 450 metres south-east of the junction between the existing B6542 and the existing A66 (as shown on sheet 7 of rights of way and access plans for scheme 0405).

**SCHEME 06 – APPLEBY TO BROUGH**

(1)	(2)	(3)	(4)
-----	-----	-----	-----



<i>Area</i>	<i>Private means of access to be stopped up</i>	<i>Extent of stopping up</i>	<i>New private means of access to be substituted/provided</i>
<i>Scheme 06 – The rights of way and access plans – sheet 1</i>			
In the administrative area of Westmorland and Furness Council, and Parish of Warcop	Reference a  Access to premises (occupied by Café Sixty Six) on the north side of the existing A66, at the point where Footpath 372/028 meets the existing A66.	The whole access.	Reference 1  To be substituted by a new private means of access diverging off and merging back onto the eastbound carriageway of the new A66, providing access to Café Sixty Six and passing to the rear thereof.
	Reference b  Access to Far Bank End from the south side of the existing A66 to and from its eastbound carriageway, 174 metres south-east of the Café Sixty Six.	The whole access.	To be substituted by References 2, 3, 4 and 5  New private means of access on the same alignment as part of new cycleway Reference A* (Reference 2) and equestrian track Reference B* (Reference 3), together with a right of vehicular access to be granted over cycleway Reference A* and equestrian track Reference B*, for the benefit of the land affected by the stopping up of private means of access reference b, for access to the eastbound carriageway of the new A66; and  New private means of access via References 4 and 5 (see below) for access to the westbound carriageway of the new A66.
	–	–	Reference 4  New private means of access linking private means of access References 3 and 5



	metres south-east of the Café Sixty Six.		Link Road) on the same alignment as part of new cycleway Reference A* together with a right of vehicular access to be granted over part of new cycleway Reference A*, for the benefit of the land affected by the stopping up of private means of access reference e (as shown on sheets 1 and 2 of the rights of way and access plans) and via private means of access Reference 13 (see below).
	Reference f  Access to land on the north side of the existing A66, 978 metres south-east of the Café Sixty Six.	The whole access.	To be substituted by Reference 9 (as above) new private means of access providing access to land on the north side of the new A66; and  Reference 13 (see below) new private means of access to land on the north side of the new A66.
	Reference g  Access to land on the north side of the existing A66, 1.2 km metres south-east of the Café Sixty Six.	The whole access.	To be substituted by Reference 9 (as above) new private means of access providing access to land on the north side of the new A66; and  Reference 13 (see below) new private means of access to land on the north side of the new A66.
	Reference h  Access to land on the south side of the existing A66, from a point 1.2 km metres south-east of the Café Sixty Six.	The whole access.	Reference 11  To be substituted by a new private means of access from the new realigned B6259 on the south side of the new A66 (as shown on sheets 1 and 2 of the rights of way and access plans) and via

			private means of access Reference 12 (see below).
	Reference i  Access to land on the north side of the existing A66, from a point 1.3 km south-east of the Café Sixty Six.	The whole access.	To be substituted by Reference 9 (as above) new private means of access providing access to land on the north side of the new A66; and  Reference 13 (see below) new private means of access to land on the north side of the new A66.
<i>Scheme 06 – The rights of way and access plans – sheet 2</i>			
In the administrative area of Westmorland and Furness Council, and Parish of Warcop	–	–	Reference 10  New private means of access to land on the north side of new A66 via private means of access Reference 9 (as above) and private means of access Reference 13 (as below).
	–	–	Reference 11  New private means of access to land on the south side of the new A66 to the west of the new Sandford Junction Link Road via private means of access Reference 12 (as below).
	Reference j  Access to land on the south side of the existing A66, from a point 484 metres north-west of its junction with the existing B6259.	The whole access.	References 11 and 12  To be substituted by a new private means of access from the new Sandford Junction Link Road on the south side of the new A66 via private means of access Reference 12 (as below).
	Reference k  Access to land on the north side of the existing A66, from a point 368 metres	The whole access.	To be substituted by Reference 9 (as above) new private means of access to land on the north side of the new A66

	north-west of its junction with the existing B6259.		And via private means of access Reference 13 (see below).
	Reference l  Access to land on the south side of the existing A66, from a point 290 metres north-west of its junction with the existing B6259.	The whole access.	To be substituted by Reference 11 (as above) new private means of access to land on the south side of the new A66 and via private means of access Reference 12 (see below).
	Reference m  Access to land on the south side of the existing A66, from a point 162 metres north-west of its junction with the existing B6259.	The whole access.	To be substituted by Reference 11 (as above) new private means of access to land on the south side of the new A66 And via private means of access Reference 12 (see below).
	–	–	Reference 12  New private means of access to land (including drainage pond) on the south side of the new A66 from the new realigned B6259.
	Reference n  Access to land on the north side of the existing A66, from a point 139 metres north-west of its junction with the existing B6259.	The whole access.	To be substituted by Reference 9 (as above) new private means of access to land on the north side of the new A66 and via private means of access Reference 13 (see below).
	–	–	Reference 13  New private means of access to land on the north side of new A66 from the new Sandford Junction Link Road.
	–	–	Reference 14  New private means of access to land (including drainage pond) on the south side of the new A66 from the new realigned B6259.
	Reference p	The whole access.	Reference 15

	Access to land on the south-eastern side of the existing B6259, from a point 185 metres south of its junction with the existing A66.		To be substituted by a new private means of access to land (including drainage pond) from the new realigned B6259 on the south side of new A66.
	–	–	Reference 16  New private means of access to land (including drainage pond) on the north side of new A66 via private means of access Reference 9 (as above) and private means of access Reference 13 (as above).
<i>Scheme 06 – The rights of way and access plans – sheet 3</i>			
In the administrative area of Westmorland and Furness Council, and Parish of Warcop	Reference s  Access to land on the south side of the existing A66, from a point 230 metres west of its junction with Moorhouse Lane.	The whole access.	Reference 17  To be substituted by a new private means of access from the existing (de-trunked) A66 (new C3077) on the same alignment as part of new footway Reference G* together with a right of vehicular access to be granted over new footway Reference G*, for the benefit of the land affected by the stopping up of private means of access Reference s.
	–	–	Reference 18  New private means of access to land (including drainage pond) on the south side of the new A66, from the existing (de-trunked) A66 (new Unclassified Road U3221, Moorhouse Link), and continuing on the same alignment as part of new footway

			Reference H* together with a right of vehicular access to be granted over new footway Reference H*, for the benefit of land on the south side of the new A66; and Via new private means of access Reference 19 (see below).
	–	–	Reference 19  New private means of access to land (including drainage pond) on the south side of the new A66, located 270 metres to the south-west of Hayber Lane and via private means of access Reference 18 (see above).
	–	–	Reference 20  New private means of access to land on south side of the existing A66 from a point 24 metres south of its junction with Hayber Lane.
	–	–	Reference 21  New private means of access to land on north side of the new improved C3077 from a point 105 metres south-east of its junction with Hayber Lane.
<i>Scheme 06 – The rights of way and access plans – sheet 4</i>			
In the administrative area of Westmorland and Furness Council, and Parish of Warcop	–	–	Reference 22  New private means of access to land (including drainage pond) on the south side of the new A66, from the new Warcop Junction Link Road, following the route of the stopped-up length of Warcop Road.

	<p>Reference t</p> <p>Access to MOD compound and land on the north side of the existing A66, from a point 11 metres west of its junction with Warcop Road.</p>	<p>The whole access.</p>	<p>Reference 23</p> <p>To be substituted by a new private means of access from the new Warcop Junction Link Road at a point west of the junction of the existing A66 and Warcop Road.</p>
	<p>Reference u</p> <p>Access to MOD playing field off Warcop Road on the south side of the existing A66, from a point 92 metres south-west of its junction with the existing A66.</p>	<p>The whole access.</p>	<p>Reference 25</p> <p>To be substituted by a new private means of access to the proposed replacement MOD playing field from a point at the junction of the B6259 and Castlehill Road to the south-east of Warcop for a distance of 440 metres in a generally north-easterly direction.</p>
	<p>Reference v</p> <p>Access to land off Warcop Road on the south side of the existing A66, from a point 112 metres south-west of the junction of Warcop Road with the existing A66.</p>	<p>The whole access.</p>	<p>To be substituted by Reference 25 (as above).</p>
	<p>Reference w</p> <p>Access to land off Warcop Road on the south side of the existing A66, from a point 112 metres south-west of the junction of Warcop Road with the existing A66.</p>	<p>The whole access.</p>	<p>To be substituted by Reference 25 (as above).</p>
	<p>Reference y</p> <p>Access to MOD training ranges, compound and land on the north side of the existing A66, from a point 215 metres south-east of its</p>	<p>The whole access.</p>	<p>To be substituted by Reference 23 (as above).</p>



	junction with Warcop Road.		
	Reference za  Access to MOD land on the north side of the existing A66, from a point 375 metres east of its junction with Warcop Road.	The whole access.	To be substituted by Reference 23 (as above).
	–	–	Reference 24  New private means of access to land (including drainage pond) on the south side of the new A66 from Station Road to the south-east of the new Warcop Junction Link Road.
	Reference zb  Access to property known as Toddygill Hall on the north side of the existing A66, from a point 517 metres east of its junction with the existing Warcop Road.	A length from its junction with the existing A66 for a distance of 10 metres in a generally north-easterly direction.	Reference 26  To be substituted by a new private means of access to Toddygill Hall from the new improved C3077.
	Reference zc  Access to property known as Eastfield Gate on the north side of the existing A66, from a point 595 metres east of its junction with the existing Warcop Road.	A length from its junction with the existing A66 for a distance of 10 metres in a generally north-easterly direction.	Reference 27  To be substituted by a new private means of access to Eastfield Gate from the new improved C3077.
	Reference zd  Access to existing MOD compound on the north side of the existing A66, from a point 15 metres east of its junction with Station Road.	A length from its junction with the existing A66 for a distance of 10 metres in a generally north-easterly direction.	Reference 28  To be substituted by a new private means of access to new MOD compound from the new improved C3077.
	Reference ze  Access to existing MOD compound on the north side of the existing A66, from a	The whole access.	Reference 29  To be substituted by a new private means of access to new MOD compound, from the

	point 200 metres east of its junction with Station Road.		new improved C3077 and to be substituted by References 30 and 31 new private means of access to new MOD compound, from the new improved C3077 and via private means of access Reference 31 (see below).
	–	–	Reference 31 New private means of access to MOD training ranges and compound from the new improved C3077.
	–	–	Reference 32 New private means of access for the benefit of East Field Farm from a point 32 metres to the south-west of the proposed Flitholme Road Underbridge in a generally westerly direction for a distance of 420 metres to the field boundary directly to the east of East Field Farm (as shown on sheets 4 and 5 of the rights of way and access plans).
<i>Scheme 06 – The rights of way and access plans – sheet 5</i>			
In the administrative area of Westmorland and Furness Council, and Parish of Warcop	–	–	Reference 33 New private means of access to land (including drainage pond) on the east side of the new Flitholme Road.
	–	–	Reference 34 New private means of access to land (including drainage pond) on the west side of the new Flitholme Road.
In the administrative area of Westmorland and Furness Council,	–	–	Reference 35

and Parish of Musgrave			New private means of access to land (including drainage pond) on the west side of Langrigg Lane.
<i>Scheme 06 – The rights of way and access plans – sheet 6</i>			
In the administrative area of Westmorland and Furness Council, and Parish of Musgrave	Reference zm Access to land on the north side of the existing A66, from a point 808 metres east of its junction with Langrigg Lane.	A length from its junction with the existing A66 for a distance of 5 metres in a generally northerly direction.	Reference 36 To be substituted by a new private means of access from the new and improved C3077 to the north of the new A66, in a similar location to the existing private means of access.
In the administrative area of Westmorland and Furness Council, Parish of Musgrave and Parish of Brough	–	–	Reference 37 New private means of access to land (including drainage ponds) on the south side of the new A66 from West View Farm (as shown on sheets 5 and 6 of the rights of way and access plans).
In the administrative area of Westmorland and Furness Council, Parish of Helbeck and Parish of Brough	Reference zq Access to land and property known as Foxtower View on the south side of the existing A66, from a point 558 metres north-west of the Musgrave Lane Overbridge.	The whole access.	To be substituted by Reference 39 New private means of access to land on the south side of the new A66; and Reference 42 New private means of access Reference 42, via the new West View Farm Overbridge, and linking to the new private means of access Reference 37 and West View Farm; and Reference 45 New private means of access between Reference 42 and the new improved C3077 (de-trunked A66); and

			<p>Reference 43</p> <p>New private means of access via the new bridleway Reference X, together with a right of vehicular access over Reference X, to connect to Musgrave Lane.</p> <p>Reference 40</p> <p>New private means of access between private means of access Reference 42 and private means of access Reference 43.</p>
	<p>Reference zr</p> <p>Access to land and property known as Mains House on the south side of the existing A66, from a point 528 metres north-west of the Musgrave Lane Overbridge.</p>	The whole access.	<p>To be substituted by Reference 41</p> <p>New private means of access to Mains House; and</p> <p>References 40, 43 and 45 (as above).</p>
	<p>Reference zp</p> <p>Access to land and properties on the south side of the existing A66, from a point 759 metres north-west of the Musgrave Lane Overbridge.</p>	The whole access.	<p>To be substituted by Reference 42 (as above)</p> <p>New private means of access to land and properties on the south side of the existing A66; and</p> <p>Via References 40 and 43 (as above).</p>
In the administrative area of Westmorland and Furness Council and Parish of Helbeck	–	–	<p>Reference 44</p> <p>New private means of access to land (including drainage pond) on the north side of the new A66 and the new and improved C3077 via new highway access Reference U (as above).</p>
	Reference zs	A length from its junction with the	Reference 45 (as above)

	Access to land on the north side of the existing A66, from a point 540 metres north-west of the Musgrave Lane overbridge.	existing A66 for a distance of 15 metres in a generally northerly direction.	
In the administrative area of Westmorland and Furness Council and Parish of Brough	–	–	Reference 46  New private means of access to land (including drainage pond) on the south side of the new A66 via private means of access Reference 43 (as above).

#### SCHEME 07 – BOWES BYPASS

<i>(1) Area</i>	<i>(2) Private means of access to be stopped up</i>	<i>(3) Extent of stopping up</i>	<i>(4) New private means of access to be substituted/provided</i>
<i>Scheme 07 – The rights of way and access plans – sheet 1</i>			
In the administrative area of Durham County Council	–	–	Reference 1  New private means of access to land (including an attenuation pond) on the south side of the new A66, to the south of The Street.
	References a and b  Access to farmland on the north side of the existing A66, 263 metres west of the existing Clint Lane overbridge.	The whole access.	Reference 2  To be substituted by a new private means of access on the west side of Clint Lane, to the north of the improved A66.
	–	–	Reference 3  New private means of access on the east side of Clint Lane, to the north of the improved A66.
<i>Scheme 07 – The rights of way and access plans – sheet 2</i>			
In the administrative area of Durham County Council	–	–	Reference 4  New private means of access to land on the north side of the improved A66 via the

			extended Lyndale Farm Underpass.
	–	–	Reference 5  New private means of access to land (including an attenuation pond) on the south side of the improved A66, via the existing unnamed side road from the A67 at the Bowes Junction, 120 metres south-east of the existing A66 underbridge.
Reference f		The whole access.	Reference 6  New private means of access off the east side of the A67, and running parallel with the improved A66.
Gated access to land on the north side of the existing A66, 250 metres east of the point where the A67 crosses the A66.			
Reference g		The whole access.	Reference 6  To be substituted by a new private means of access from the A67 via private means of access Reference 6 (as above), continuing on the same alignment as new footpath Reference D (above), together with a right of vehicular access over new footpath Reference D, for the benefit of the land affected by the stopping up of reference g.
Gated access to land on the north side of the existing A66, 70 metres to the west of the existing Blacklodge Farm underpass.			
	–	–	Reference 7  New private means of access to land (including an attenuation pond) on the north side of the new A66 via new footpath, Reference D (above), together with a right of vehicular access over new footpath Reference D.

	–	–	Reference 8  New private means of access to land (including an attenuation pond) on the south side of the new A66, from The Street, 105 metres south-west of the existing junction of The Street with the A66.
<i>Scheme 07 – The rights of way and access plans – sheet 3</i>			
In the administrative area of Durham County Council	–	–	Reference 9  New private means of access to land (including an attenuation pond) on the south side of the new A66, 180 metres to the south-west of the existing access to Mid Lowfield Farm from the A66.
	Reference i  Access to farmland on the north side of the existing A66, 200 metres to the east of the existing junction of The Street with the A66.	The whole access.	Reference 10  To be substituted by a new private means of access, parallel to the new A66, commencing 30 metres north of an existing access (Reference i) from the north side of the A66), and extending in a generally easterly direction connecting to the new East Bowes Accommodation Overbridge (part of Reference E).
	Reference j  Access to farmland on south side of existing A66, 200 metres to the east of the existing junction of The Street with the A66.	The whole access.	Reference E (as above).
	Reference k  Access to farmland on the north side of the	The whole access.	To be substituted by Reference 10 (as above).

	existing A66, 215 metres to the east of the existing junction of The Street with the A66.		
	Reference m  Access to farmland on the north side of the existing A66, 337 metres to the east of the existing junction of The Street with the A66.	The whole access.	To be substituted by Reference 10 (as above).
	Reference n  Access to land at Low Broats Farm on the north side of the existing A66, 440 metres to the east of the existing junction of The Street with the A66.	The whole access.	Reference 17  To be substituted by a new private means of access via new highway Reference E, for the benefit of the land affected by the stopping up of Reference n.
	Reference o  Access to land including Mid Lowfield Farm on the south side of the existing A66, 440 metres to the east of the existing junction of The Street with the A66.	A length from its existing junction with the A66, for a distance of 30 metres.	Reference 11  To be substituted by a new private means of access via new highway Reference E and new Footpath Reference F (as above), together with a right of vehicular access over new footpath Reference F for the benefit of the land affected by the stopping up of private means of access Reference o.
	–	–	Reference 12  New private means of access to land (including an attenuation pond) on the south side of the new A66, 48 metres to the south of the existing access to Mid Lowfield Farm, via new Highway Reference E (as above) and new footpath Reference F (as



			above), together with a right of vehicular access over new footpath Reference F.
Reference p	Access to land, including High Broats Farm, on the north side of the existing A66, 591 metres to the east of the existing junction of The Street with the A66.	A length from its existing junction with the A66, for a distance of 15 metres.	Reference 13 To be substituted by a new private means of access, 40 metres north of the existing access with the A66, accessed via new highway Reference E (as above) and new footpath Reference G (as above), together with a right of vehicular access over new footpath Reference G, for the benefit of the land affected by the stopping up of private means of access reference p.
Reference q	Access to East Lowfield Farm and land on the south side of the existing A66, 880 metres to the east of the existing junction of The Street with the A66.	A length from its existing junction with the A66, for a distance of 26 metres, including gaps in the central reserve.	Reference 14 To be substituted by a new private means of access, via new highway Reference E (as above) and new footpath Reference F, together with a right of vehicular access over new footpath Reference F for the benefit of the land affected by the stopping up of private means of access Reference q.
–	–	–	Reference 15 New private means of access to Hulands Quarry from the eastbound carriageway of the A66.
Reference r	Direct access from the A66 to Bowes Cross Farm and other	A length from its existing junction with the A66, for a distance of 12 metres, including gaps in the central reserve.	Reference 14 To be substituted by a new private means of access (Reference 14), together with a right of

	<p>dwelling, on the south side of the A66.</p>		<p>vehicular access over new footpath Reference F (as above) and new highway Reference E (as above), for the benefit of the land affected by the stopping up of private means of access reference r.</p>
--	--	--	--

**SCHEME 08 – CROSS LANES TO ROKEBY**

<i>(1) Area</i>	<i>(2) Private means of access to be stopped up</i>	<i>(3) Extent of stopping up</i>	<i>(4) New private means of access to be substituted/provided</i>
<i>Scheme 08 – The rights of way and access plans – sheet 1</i>			
<p>In the administrative area of Durham County Council</p>	<p>Reference a</p> <p>Access to land on the south side of the existing A66, approximately 130 metres to the west of the existing junction between the A66 and Rutherford Lane.</p>	<p>A length from its existing junction with the A66, for a distance of 20 metres.</p>	<p>Reference 1</p> <p>To be substituted by a new private means of access located off the existing Rutherford Lane.</p>
	<p>Reference b</p> <p>Access to land (including North Bitts farm) on the north side of the existing A66, exactly opposite the existing junction between the A66 and Rutherford Lane.</p>	<p>A length from its existing junction with the A66, for a distance of 20 metres.</p>	<p>Reference 2</p> <p>To be substituted by a new private means of access (Reference 2) located off the eastbound connector road at the new Rokeby Junction, together with a right of vehicular access over the new footpath (Reference C).</p>
	–	–	<p>Reference 3</p> <p>New private means of access off the realigned B6277 Moorhouse Lane (Reference D) to land (including attenuation pond) on the south side of the A66.</p>
	–	–	<p>Reference 4</p> <p>New private means of access to land (including attenuation</p>

			pond), located at the northern end of the realigned B6277 Moorhouse Lane (Reference D).
	Reference c	A length from its existing junction with the A66, for a distance of 6 metres.	Reference 5 To be substituted by a new private means of access (Reference 5) from a point on the new side road (Reference G, as above) 35 metres to the south-east of Ivy Cottage.
<i>Scheme 08 – The rights of way and access plans – sheets 1 and 2</i>			
In the administrative area of Durham County Council	Reference d	A length from its existing junction with the A66, for a distance of 6 metres.	Reference 15 To be substituted by a new private means of access (Reference 15), commencing from its junction with the new side road (Reference G) and continuing eastwards towards the access to Street Side Farm, via new cycle track Reference H (as above), together with a right of vehicular access over new cycle track Reference H, for the benefit of the land affected by the stopping up of private means of access Reference d.
	Reference e	A length from its existing junction with the A66, for a distance of 6 metres.	Reference 15 To be substituted by a new private means of access (Reference 15, as above) and including a right of vehicular access over new cycle track Reference H, for the benefit of the land affected by the stopping up of private means of access Reference e.
	Reference f	A length from its existing junction with	Reference 15

		the A66, for a distance of 6 metres.	To be substituted by a new private means of access (Reference 15, as above) and including a right of vehicular access over new cycle track Reference H, for the benefit of the land affected by the stopping up of private means of access Reference f.
	Reference g	A length from its existing junction with the A66, for a distance of 6 metres.	Reference 15 To be substituted by a new private means of access (Reference 15, as above) and including a right of vehicular access over new cycle track Reference H, for the benefit of the land affected by the stopping up of private means of access Reference g.
	Reference h	A length from its existing junction with the A66, for a distance of 6 metres.	Reference 15 To be substituted by a new private means of access (Reference 15, as above), and including a right of vehicular access over new cycle track Reference H, for the benefit of the land affected by the stopping up of private means of access Reference h.
	Reference j Access to land (including Birk House Farm) on the south side of the existing A66, 680 metres to the east of the existing junction between the A66 and the B6277 Moorhouse Lane.	A length from its existing junction with the A66, for a distance of 44 metres.	Reference 6 To be substituted by a new private means of access to be provided from new side road Reference F commencing 62 metres north of Tutta Bridge, running parallel to the south side of the A66.

*Scheme 08 – The rights of way and access plans – sheet 2*

In the administrative area of Durham County Council	–	–	Reference 7  New private means of access to land (including attenuation pond) on the south side of the new A66, in part via the new private means of access Reference 6 (as above).
	–	–	Reference 8  New private means of access to land (including attenuation pond) on the north side of the new A66, to the east of Street Side Farm, together with a right of vehicular access over the new cycle track Reference H.
	Reference k  Access to land on the north side of the existing A66, 295 metres to the west of the point where Rokeby Footpath 9 meets the existing A66.	A length from its existing junction with the A66, for a distance of 6 metres.	Reference 15  To be substituted by a new private means of access (Reference 15, as above) and including a right of vehicular access over new cycle track Reference H (as above) for the benefit of the land affected by the stopping up of private means of access Reference k.
	Reference p  Access to land (including Tutta Beck Cottage), on the south side of the existing A66, located on the south side of the existing A66 opposite the point where Rokeby Footpath 10 meets the existing A66.	A length from its existing junction with the A66, for a distance of 35 metres.	Reference 9  To be substituted by a new private means of access (Reference 9) together with a right of vehicular access over the new cycle track Reference K.
	Reference q  Access to land (including Rokeby	A length from its existing junction with the A66, for a distance of 30 metres.	Reference 10  To be substituted by a new private means of

	Grange) on the north side of the existing A66, approximately 980 metres to the west of the existing junction of the A66 with the C165 Barnard Castle Road.		access to the east of the existing access, together with a right of vehicular access over the new cycle track Reference H for a distance of 12 metres from its junction with the new Rokeby Junction (Reference J), for the benefit of the land affected by the stopping up of private means of access Reference q.
<i>Scheme 08 – The rights of way and access plans – sheet 3</i>			
In the administrative area of Durham County Council	–	–	Reference 11  New private means of access to land (including attenuation pond) on the south side of the A66, together with a right of vehicular access over the new cycle track (Reference K).
	Reference r  Access to land (including Ewebank Farm) on the south side of the existing A66, 410 metres to the west of the existing junction of the A66 with the C165 Barnard Castle Road.	A length from its existing junction with the A66, for a distance of 80 metres.	Reference 12  To be substituted by a new private means of access located 80 metres to the south of the stopped-up access (Reference m), together with a right of vehicular access over the new cycle track (Reference K), for the benefit of the land affected by the stopping up of private means of access Reference r.
	–	–	Reference 13  New private means of access to land (including attenuation pond), together with a right of vehicular access over the new cycle track (Reference K).
	Reference s  A length from its existing junction with	A length from its existing junction with	Reference 14

	Access to land (including Tack Room Cottage), directly opposite the existing junction of the A66 with the C165 Barnard Castle Road.	the A66, for a distance of 50 metres.	To be substituted by a new private means of access (Reference 14) located 53 metres south-east of the stopped-up access (Reference s), together with a right of vehicular access over the new cycle track (Reference K), for the benefit of the land affected by the stopping up of private means of access Reference s.
--	---	---------------------------------------	--

**SCHEME 09 – STEPHEN BANK TO CARKIN MOOR**

<i>(1) Area</i>	<i>(2) Private means of access to be stopped up</i>	<i>(3) Extent of stopping up</i>	<i>(4) New private means of access to be substituted/provided</i>
<i>Scheme 09 – The rights of way and access plans – sheet 1</i>			
In the administrative area of the North Yorkshire Council	Reference a Access to land and premises (Browson Bank Farm) on the south side of the existing A66, 1 km to the north-west of its junction with the existing Dick Scot Lane.	A length from its existing junction with the A66, south-westwards for a distance of 60 metres.	Reference 1 To be substituted by a new private means of access from a point on the new (realigned and de-trunked) A66 located 460 metres to the south-east of the existing access.
	–	–	Reference 2 New private means of access to land (including attenuation pond) on the south side of the A66, from a point on the existing Browson Bank access track 182 metres to the south of the existing A66, and continuing southwards for a distance of 173 metres.
<i>Scheme 09 – The rights of way and access plans – sheets 1 and 2</i>			
In the administrative area of Durham County Council and the North Yorkshire Council	Reference b Access to agricultural land on the north side of the A66, opposite the existing junction of	A length from its junction with the existing A66, northwards for a distance of 33 metres.	Reference 3 To be substituted by a new private means of access (including via the new underpass

	the A66 with Dick Scot Lane.		beneath the new A66), together with a right of vehicular access over the new bridleway (reference A) for the benefit of the land affected by the stopping up of private means of access Reference b.
<i>Scheme 09 – The rights of way and access plans – sheets 2 and 3</i>			
In the administrative area of the North Yorkshire Council	Reference c  Access to agricultural land on the south side of the existing A66, 260 metres to the east of the existing junction of the A66 with Dick Scot Lane.	The whole access.	Reference 4  To be substituted by a new private means of access in the same location as stopped up access reference c, but repositioned at the boundary of the de-trunked A66 Reference B.
	Reference d  Access to land and premises (Old Duns Bank) on the south side of the existing A66, 480 metres to the north-west of the existing junction of the A66 with Collier Lane.	A length from its existing junction with the A66, southwards for a distance of 40 metres.	Reference 5  To be substituted by a new private means of access in the same location as stopped up access reference d, but repositioned at the boundary of the de-trunked A66 Reference B.
	–	–	Reference 6  A new private means of access to land (including attenuation pond), on the south side of the de-trunked A66, located 80 metres to the south of the existing junction of the de-trunked A66 with Waitlands Lane.
	–	–	Reference 7  A new private means of access to agricultural land on the north side of the existing A66, and being located 155 metres to the east of the existing junction of



			the A66 with Collier Lane.
<i>Scheme 09 – The rights of way and access plans – sheet 3</i>			
In the administrative area of the North Yorkshire Council	–	–	Reference 8  A new private means of access to agricultural land on the north side of the existing A66, located 400 metres to the south-east of the existing junction of the A66 with Collier Lane.
	–	–	Reference 9  A new private means of access to agricultural land on the north side of the existing A66, located 585 metres to the south-east of the existing junction of the A66 with Collier Lane.
	–	–	Reference 10  New private means of access to land (including attenuation pond) on the north side of the existing A66, 550 metres to the north-west of the existing junction of the A66 with Moor Lane.
	–	–	Reference 11  A new private means of access to agricultural land on the north side of the existing A66, located 440 metres to the north-east of the existing junction of the A66 with Moor Lane.
	–	–	Reference 12  New private means of access to land (including attenuation pond) on the south side of the existing A66, 340 metres to the north-west of the
	–	–	

			existing junction of the A66 with Moor Lane, together with a right of vehicular access over the new bridleway (reference G).
	–	–	Reference 13 New private means of access to land (including attenuation pond) on the north side of the de-trunked A66, 90 metres to the east of the existing junction of the A66 with Moor Lane.
	–	–	Reference 14 New private means of access to agricultural land on the north side of the existing A66, 255 metres to the east of the existing junction of the A66 with Moor Lane.
<i>Scheme 09 – The rights of way and access plans – sheet 4</i>			
In the administrative area of the North Yorkshire Council	–	–	Reference 15 New private means of access to land (including attenuation pond) on the north side of the new side road Reference L, 300 metres to the south-west of the existing junction of the A66 with Warrener Lane.
	–	–	Reference 16 New private means of access to land (including attenuation pond) on the north side of the new side road Reference L, 160 metres to the south-west of the existing junction of the A66 with Warrener Lane.
	–	–	Reference 17 New private means of access to land on the

			south side of the new A66, together with a right of vehicular access over new bridleway reference M and new bridleway reference N.
--	--	--	--

**SCHEME 11 – A1(M) J53 SCOTCH CORNER**

<i>(1) Area</i>	<i>(2) Private means of access to be stopped up</i>	<i>(3) Extent of stopping up</i>	<i>(4) New private means of access to be substituted/provided</i>
<i>Scheme 11 – The rights of way and access plans – sheet 1</i>			
In the administrative area of the North Yorkshire Council	–	–	–

## PART 4

### PRIVATE MEANS OF ACCESS TO BE STOPPED UP FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

#### **SCHEME 0102 – M6 J40 TO KEMPLAY BANK**

<i>(1)</i> Area	<i>(2)</i> Private means of access to be stopped up	<i>(3)</i> Extent of stopping up
<i>Scheme 0102 – The rights of way and access plans – sheets 1 and 2</i>		
–	–	–

#### **SCHEME 03 – PENRITH TO TEMPLE SOWERBY**

<i>(1)</i> Area	<i>(2)</i> Private means of access to be stopped up	<i>(3)</i> Extent of stopping up
<i>Scheme 03 – The rights of way and access plans – sheet 1</i>		
In the administrative area of Westmorland and Furness Council	Reference b  Access between two fields 305 metres east of the existing junction of the A66 with the B6262.	The whole access.
	Reference e  Access to a field from the south side of the existing A66, 450 metres east of the existing junction of the A66 with the B6262.	The whole access.
	Reference j  Access to a garden at Lightwater Cottages. (No longer required due to demolition).	The whole access.

#### **SCHEME 0405 – TEMPLE SOWERBY TO APPLEBY**

<i>(1)</i> Area	<i>(2)</i> Private means of access to be stopped up	<i>(3)</i> Extent of stopping up
<i>Scheme 0405 – The rights of way and access plans – sheets 1 and 2</i>		
In the parish of Kirkby Thore; in the administrative area of Westmorland and Furness Council	Reference c  Access to field on the north side of the existing A66, from a point 50 metres to the east of the existing Priest Lane Underpass (shown on sheet 1 of the rights of way and access plans for scheme 0405).	The whole access.
	Reference g	The whole access.

	<p>Access to field from the north side of existing Priest Lane from a point 110 metres south-east of the junction between Bridleway 336/007 and existing Priest Lane (shown on sheets 1 and 2 of the rights of way and access plans for scheme 0405).</p>	
	<p>Reference f</p> <p>Access to field from the south side of existing Priest Lane from a point 115 metres south-east of the junction between Bridleway 336/007 and existing Priest Lane (shown on sheets 1 and 2 of the rights of way and access plans for scheme 0405).</p>	<p>The whole access.</p>
	<p>Reference h</p> <p>Access to field from the south side of existing Priest Lane from a point 180 metres south-east of the junction between Bridleway 336/007 and existing Priest Lane (shown on sheets 1 and 2 of the rights of way and access plans for scheme 0405).</p>	<p>The whole access.</p>
	<p>Reference j</p> <p>Access to field from the south side of existing Priest Lane from a point 285 metres south-east of the junction between Bridleway 336/007 and existing Priest Lane (shown on sheet 2 of the rights of way and access plans for scheme 0405).</p>	<p>The whole access.</p>
	<p>Reference m</p> <p>Access to field from the west side of the existing Cross Street from a point 340 metres north-west of the junction between the existing Priest Lane and Cross Street (shown on sheet 2 of the rights of way and access plans for scheme 0405).</p>	<p>The whole access.</p>
	<p>Reference n</p> <p>Access to field from the east side of existing Cross Street from a point 225 metres north-</p>	<p>The whole access.</p>

	west of the junction between existing Priest Lane and Cross Street (shown on sheet 2 of the rights of way and access plans for scheme 0405).	
	Reference o  Access to field from the west side of existing Cross Street from a point 225 metres north-west of the junction between existing Priest Lane and Cross Street (shown on sheet 2 of the rights of way and access plans for scheme 0405).	The whole access.
<i>Scheme 0405 – The rights of way and access plans – sheet 3</i>		
In the parish of Kirkby Thore; in the administrative area of Westmorland and Furness Council	Reference u  Access to Winthorn from the south side of existing Main Street at a point 330 metres north-east of the junction between existing Main Street and existing Fell Lane (shown on sheet 3 of the rights of way and access plans for scheme 0405).	The whole access.
	Reference v  Access to field from the north side of existing Main Street at a point 370 metres north-east of the junction between existing Main Street and existing Fell Lane (shown on sheet 3 of the rights of way and access plans for scheme 0405).	The whole access.
	Reference w  Access to Winthorn from south side of existing Main Street at a point 375 metres north-east of the junction between existing Main Street and existing Fell Lane (shown on sheet 3 of the rights of way and access plans for scheme 0405).	The whole access.
	Reference ab  (Not Used)	–
	Reference ac  Access to field from the south side of existing Sleastonhow Lane from a point 580 metres south-east of the junction	The whole access.

	between existing Main Street and existing Sleastonhow Lane (shown on sheet 4 of the rights of way and access plans for scheme 0405).	
	Reference ad  Access to field from the north side of realigned Sleastonhow Lane from a point 880 metres south-east of the junction between existing Main Street and existing Sleastonhow Lane (shown on sheet 4 of the rights of way and access plans for scheme 0405).	The whole access.
	Reference ag  Access to field from the west side of the existing Farm Track from a point 320 metres north-east of the junction between an existing farm track and the existing A66 (shown on sheet 4 of the rights of way and access plans for scheme 0405).	The whole access.
	Reference af  Access to field from the west side of the existing Farm Track from a point 105 metres north-east of the junction between existing Farm Track and the existing A66 (shown on sheet 4 of the rights of way and access plans for scheme 0405).	The whole access.
<i>Scheme 0405 – The rights of way and access plans – sheet 5</i>		
In the parish of Crackenthorpe; in the administrative area of Westmorland and Furness Council	Reference aj  Access to field from the west side of the existing Long Marton Road from a point 180 metres north-east of its junction with the existing A66 (shown on sheet 5 of the rights of way and access plans for scheme 0405).	The whole access.
	Reference ak  Access to field from the west side of the existing Long Marton Road from a point 210 metres north-east of its junction with the existing A66 (shown on sheet 5 of the rights of way	The whole access.

	and access plans for scheme 0405).	
	<p>Reference al</p> <p>Access to fields on the south side of the existing Roman Road from a point 188 metres north-east of the junction of the existing A66 and the existing Long Marton (Road) (shown on sheet 5 of the rights of way and access plans for scheme 0405).</p>	A length from its junction with the existing Long Marton (Road) in a generally south-easterly direction for a distance of 750 metres
	<p>Reference an</p> <p>Access to field north of the existing A66 from a point 340 metres east of its junction with the existing Long Marton Road (shown on sheet 5 of the rights of way and access plans for scheme 0405).</p>	The whole access.
	<p>Reference am</p> <p>Access to field north of the existing A66 from a point 341 metres east of its junction with the existing Long Marton Road (shown on sheet 5 of the rights of way and access plans for scheme 0405).</p>	The whole access.
	<p>Reference ap</p> <p>Access to field on the south side of the existing Bridleway 341/001 from a point 655 metres north-east of the junction of the existing A66 with the existing Long Marton Road (shown on sheet 5 of the rights of way and access plans for scheme 0405).</p>	The whole access.
	<p>Reference aq</p> <p>Access to field on the south side of the existing Long Marton Road from a point 910 metres north-east of the junction of the existing A66 with the existing Long Marton Road (shown on sheet 5 of the rights of way and access plans for scheme 0405).</p>	The whole access.
	<p>Reference ao</p>	The whole access.



	Access to field on the south side of the existing Bridleway 341/001 from a point 535 metres north-east of the junction of the existing A66 with the existing Long Marton Road (shown on sheet 5 of the rights of way and access plans for scheme 0405).	
	Reference bb  Access to field from the north side of Bridleway 341/001 from a point 245 metres east of its junction with the existing Long Marton Road (shown on sheet 5 of the rights of way and access plans for scheme 0405).	The whole access.
<i>Scheme 0405 – The rights of way and access plans – sheet 7</i>		
In the parish of Appleby-in-Westmorland; in the administrative area of Westmorland and Furness Council	Reference av  Access to fields between Bridleway 341/001 and the existing A66 at a point 260 metres south-west of the intersection of Bridleway 341/001 and the existing railway line (shown on sheet 7 of the rights of way and access plans for scheme 0405).	The whole access.
	Reference aw  Access to fields between Bridleway 341/001 and the existing A66 at a point 260 metres south-west of the intersection of Bridleway 341/001 and the existing railway line (shown on sheet 7 of the rights of way and access plans for scheme 0405).	The whole access.
	Reference ax  Access to field north of the existing A66 at a point 290 metres to the south of the intersection of Bridleway 341/001 and the existing railway line (shown on sheet 7 of the rights of way and access plans for scheme 0405).	The whole access.
	Reference az  Access to field south of the existing B6542 at a point 610 metres south-east of the	The whole access.

	junction of the existing A66 and B6542 (shown on sheet 7 of the rights of way and access plans for scheme 0405).	
	Reference ba  Access to field on the south side of the existing B6542 at a point 655 metres south-east of the junction of the existing B6542 and the existing A66 (as shown on sheet 7 of the rights of way and access plans for scheme 0405).	The whole access.

**SCHEME 06 – APPLEBY TO BROUGH**

<i>(1)</i> Area	<i>(2)</i> Private means of access to be stopped up	<i>(3)</i> Extent of stopping up
<i>Scheme 06 – The rights of way and access plans – sheet 2</i>		
In the administrative area of Westmorland and Furness Council, and Parish of Warcop	Reference o  Access to land on the south side of the existing A66, from a point 35 metres south of its junction with the existing B6259.	The whole access.
	Reference q  Access to land on the south side of the existing A66, from a point 270 metres south-west of its junction with the existing B6259.	The whole access.
	Reference r  Access to land on the north side of the existing A66, from a point 280 metres south-west of its junction with the existing B6259.	The whole access.
<i>Scheme 06 – The rights of way and access plans – sheet 4</i>		
In the administrative area of Westmorland and Furness Council, and Parish of Warcop	Reference x  Access to land on the south side of the existing A66, from a point 210 metres south-east of the junction of Warcop Road with the existing A66.	The whole access.
	Reference z  Access to land on the south side of the existing A66, from a point 332 metres south-east of its junction with Warcop Road.	The whole access.

	Reference zf  Access to land on the south side of the existing A66, from a point 233 metres south-east of its junction with Station Road.	The whole access.
	Reference zg  Access to land on the south side of the existing A66, from a point 494 metres south-east of its junction with Station Road.	The whole access.
<i>Scheme 06 – The rights of way and access plans – sheet 5</i>		
In the administrative area of Westmorland and Furness Council, and Parish of Warcop	Reference zh  Access to land on the south-east side of the existing Flitholme Road, from a point 182 metres south-west of its junction with the existing A66.	The whole access.
	Reference zi  Access to land on the south side of the existing A66, from a point 7 metres east of its junction with the existing Flitholme Road.	The whole access.
	Reference zj  Access to land on the south-east side of the existing Flitholme Road, from a point 56 metres south of its junction with the existing A66.	The whole access.
In the administrative area of Westmorland and Furness Council, and Parish of Musgrave	Reference zk  Access to land on south side of the existing A66, from a point 211 metres east of its junction with the existing Flitholme Road.	The whole access.
	Reference zl  Access to land on the east side of the existing Musgrave Lane, from a point 50 metres south of its junction with existing A66.	The whole access.
<i>Scheme 06 – The rights of way and access plans – sheet 6</i>		
In the administrative area of Westmorland and Furness Council, and Parish of Musgrave	Reference zn  Access to land on the south side of the existing A66, from a point 1 km east of its junction with the Musgrave Lane Overbridge.	The whole access.

	Reference zo  Access to land on the south side of the existing A66, from a point 1 km east of its junction with the Musgrave Lane Overbridge.	The whole access.
--	---	-------------------

**SCHEME 07 – BOWES BYPASS**

<i>(1)</i> Area	<i>(2)</i> Private means of access to be stopped up	<i>(3)</i> Extent of stopping up
<i>Scheme 07 – The rights of way and access plans – sheet 2</i>		
In the administrative area of Durham County Council	Reference c  Access via land on the north side of the existing A66, to other land on the north side of the A66, via existing underpass (also to be stopped up) beneath the existing A66 at Bowes Junction.	The whole access.
	Reference d  Extension of Reference c: Access to land on the south side of the existing A66, via the unnamed side road, on the south side of the A66, adjacent to Bowes Hall Farm Underpass.	The whole access.
	Reference e  Access to land on the south side of the existing A66, via the unnamed side road, on the south side of the A66.	The whole access.
	Reference h  Gated access from the south side of the existing A66, 70 metres to the west of the existing Blacklodge Farm underpass, to land on the south side of the A66.	The whole access.

**SCHEME 08 – CROSS LANES TO ROKEBY**

<i>(1)</i> Area	<i>(2)</i> Private means of access to be stopped up	<i>(3)</i> Extent of stopping up
<i>Scheme 08 – The rights of way and access plans – sheet 2</i>		
	Reference m	The whole access.

In the administrative area of Durham County Council	Access to land on the south side of the existing A66, 285 metres to the west of the point where Rokeby Footpath 9 meets the existing A66.	
	Reference n  Access to land on the south side of the existing A66, 30 metres southeast of the point where Rokeby Footpath 9 meets the existing A66.	The whole access.

**SCHEME 09 – STEPHEN BANK TO CARKIN MOOR**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Private means of access to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>
<i>Scheme 09 – The rights of way and access plans – sheet 2</i>		
In the administrative area of the North Yorkshire Council	Reference e  Access to agricultural land on the south side of the existing A66, 335 metres to the north-west of the existing junction of the A66 with Collier Lane.	The whole access.

**SCHEME 11 – A1(M) J53 SCOTCH CORNER**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Private means of access to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>
<i>Scheme 11 – The rights of way and access plans – sheet 1</i>		
In the administrative area of the North Yorkshire Council	–	–

## SCHEDULE 3

Article 17

### TREES SUBJECT TO TREE PRESERVATION ORDERS

<i>(1)</i> <i>Tree preservation order and tree group reference</i>	<i>(2)</i> <i>Tree preservation order trees location plans and sheet number reference</i>	<i>(3)</i> <i>Type of tree or group of trees</i>	<i>(4)</i> <i>Works to be carried out</i>
<b>SCHEME 0102 – M6 JUNCTION 40 TO KEMPLAY BANK</b>			
Westmorland and Furness Council T3/CC6-T22	Sheet 1 of the tree preservation order trees location plan for scheme 0102	Ash tree in a line of trees along the Cumbria County Council Skirsgill Depot Road towards the health and care services building.	Crown lift branches overhanging land within Order limits.
Westmorland and Furness Council T3/CC6-T23	Sheet 1 of the tree preservation order trees location plan for scheme 0102	Elm tree in a line of trees along the Cumbria County Council Skirsgill Depot Road towards the health and care services building.	Crown lift branches overhanging land within Order limits.
Westmorland and Furness Council T3/CC6-T24	Sheet 1 of the tree preservation order trees location plan for scheme 0102	Sycamore tree in a line of trees along the Cumbria County Council Skirsgill Depot Road towards the health and care services building.	Crown lift branches overhanging land within Order limits.
Westmorland and Furness Council T3/CC6-T25	Sheet 1 of the tree preservation order trees location plan for scheme 0102	Sycamore tree in a line of trees along the Cumbria County Council Skirsgill Depot Road towards the health and care services building.	Crown lift branches overhanging land within Order limits.
Westmorland and Furness Council T3/CC6-T26	Sheet 1 of the tree preservation order trees location plan for scheme 0102	Sycamore tree in a line of trees along the Cumbria County Council Skirsgill Depot Road towards the health and care services building.	Removal.
Westmorland and Furness Council TPO111-G1	Sheet 2 of the tree preservation order trees location plan for scheme 0102	Group of five lime and one sycamore, standing on the A66 frontage on the south side of the roundabout.	Removal.
Westmorland and Furness Council TPO206-W1	Sheet 2 of the tree preservation order	Mixed broadleaved and coniferous woodland on sloping	Removal of SW corner within Order limits.

	trees location plan for scheme 0102	ground between A686 Carleton Avenue and A66.	Crown lift branches of remaining trees overhanging land within Order limits.
Westmorland and Furness Council TPO206-W2	Sheet 2 of the tree preservation order trees location plan for scheme 0102	Mixed broadleaved woodland on sloping ground between field and A66 directly south of Carleton Hall Farm.	Crown lift branches overhanging land within Order limits.
Westmorland and Furness Council TPO206-W3	Sheet 2 of the tree preservation order trees location plan for scheme 0102	Mixed broadleaved and coniferous woodland on sloping ground between W2 and W4 within land managed as part of A66.	Crown lift branches overhanging land within Order limits.
Westmorland and Furness Council TPO206-W4	Sheet 2 of the tree preservation order trees location plan for scheme 0102	Mixed broadleaved woodland on sloping ground between Carleton Road (east) and A66 directly south of Carleton Brow.	Crown lift branches overhanging land within Order limits.
<b>SCHEME 06 – APPLEBY TO BROUGH</b>			
Westmorland and Furness Council TPO155-W1	Sheet 1 of the tree preservation order trees location plan for scheme 06	Narrow woodland between Crooks Beck and Castlehill Road to the east of the war memorial in Warcop.	Crown lift branches overhanging land within Order limits.
<b>SCHEME 09 – STEPHEN BANK TO CARKIN MOOR</b>			
The North Yorkshire Council 1984/03/TPO	Sheet 1 of the tree preservation order trees location plan for scheme 09	Mixed broadleaved and coniferous woodland situated within the grounds of West Layton Manor.	Crown lift branches overhanging land within Order limits.

SCHEDULE 4

Article 22

LAND IN WHICH ONLY NEW RIGHTS ETC., MAY BE ACQUIRED

(1) <i>Area</i>	(2) <i>Plot Reference Number(s) shown on land plans</i>	(3) <i>Purpose(s) for which new rights may be acquired or restrictive covenants may be imposed</i>
<b>SCHEME 0102 – M6 J40 TO KEMPLAY BANK</b>		
<i>Scheme 0102 – The land plans – sheet 1</i>		
–	None	–
<i>Scheme 0102 – The land plans – sheet 2</i>		
In the administrative area of Westmorland and Furness Council	0102-02-106	Acquisition of new rights (including the imposition of restrictive covenants) for the purpose of erecting, accessing and maintaining mammal fencing, adjacent to the A66, to mitigate the environmental impacts of the scheme.
	0102-02-54 0102-02-57 0102-02-58 0102-02-68 0102-02-70 0102-02-72 0102-02-73	Acquisition of new rights (including the imposition of restrictive covenants) to plant, access and maintain woodland habitat to mitigate the environmental impacts of the scheme.
	–	–
<b>SCHEME 03 – PENRITH TO TEMPLE SOWERBY</b>		
<i>Scheme 03 – The land plans – sheets 1 to 4</i>		
–	None	–
<b>SCHEME 0405 – TEMPLE SOWERBY TO APPLEBY</b>		
<i>Scheme 0405 – The land plans – sheets 1 to 7</i>		
–	None	–
<b>SCHEME 06 – APPLEBY TO BROUGH</b>		
<i>Scheme 06 – The land plans – sheets 1 to 6</i>		
–	None	–
<b>SCHEME 07 – BOWES BYPASS</b>		
<i>Scheme 07 – The land plans – sheets 1 to 3</i>		
–	None	–
<b>SCHEME 08 – CROSS LANES TO ROKEBY</b>		
<i>Scheme 08 – The land plans – sheets 1 to 3</i>		
–	None	–
<b>SCHEME 09 – STEPHEN BANK TO CARKIN MOOR</b>		
<i>Scheme 09 – The land plans – sheet 1 to 4</i>		
–	None	–
<b>SCHEME 11 – A1(M) J53 SCOTCH CORNER</b>		
<i>Scheme 11 – The land plans – sheet 1</i>		
–	None	–



**MODIFICATION OF COMPENSATION AND COMPULSORY  
PURCHASE ENACTMENTS FOR THE CREATION OF NEW  
RIGHTS AND RESTRICTIVE COVENANTS**

**Compensation enactments**

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right or imposition of a restrictive covenant as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limitation on the scope of paragraph 1, the 1961 Act has effect subject to the modification set out in sub-paragraph (2).

(2) For section 5A (relevant valuation date) of the 1961 Act substitute—

“5A. If—

- (a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 4 to the A66 Northern Trans-Pennine Development Consent Order 202[\*] (the “202[\*] Order”));
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A (counter notice requiring purchase of land not in notice to treat) to the 1965 Act (as substituted by paragraph 5(8) of Schedule 4 to the 202[\*] Order) to acquire an interest in the land; and
- (c) the acquiring authority enters on and takes possession of that land,

the authority is deemed for the purposes of subsection 3(a) to have entered on that land where it entered on that land for the purpose of exercising that right.”

3.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973 has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 5(3)—

- (a) for “land is acquired or taken from” substitute “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for “acquired or taken from him” substitute “over which the right is exercisable or the restrictive covenant enforceable”.

**Application of the 1965 Act**

4. Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act, as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and modified by article 25 (modification of Part 1 of the 1965 Act)) to the acquisition of land under article 19 (compulsory acquisition of land), applies to the compulsory acquisition of a right by the creation of a new right, or to the imposition of a restrictive covenant under article 22(1) (compulsory acquisition of rights and restrictive covenants)—

- (a) with the modifications specified in paragraph 5; and
- (b) with such other modifications as may be necessary.

5.—(1) The modifications referred to in paragraph 4(a) are as follows.

(2) References in the 1965 Act to land are, in the appropriate context, to be read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired, or the restriction imposed or to be imposed; or
- (b) the land over which the right is or is to be exercisable, or the restriction is or is to be enforceable.

(3) For section 7 (measure of compensation in case of severance) of the 1965 Act substitute—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the restrictive covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”.

(4) The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are modified to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

(5) Section 11 (powers of entry)(a) of the 1965 Act is modified to secure that, where the acquiring authority has served notice to treat in respect of any right or restricted covenant, as well as the notice of entry required by subsection (1) of that section (as it applies to a compulsory acquisition under article 19 (compulsory acquisition of land)), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant; and sections 11A (powers of entry: further notices of entry)(b), 11B (counter-notice requiring possession to be taken on specified date)(c), 12 (unauthorised entry)(d) and 13 (refusal to give possession to acquiring authority)(e) of the 1965 Act are modified correspondingly.

(6) Section 20 (tenants at will, etc.)(f) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 25(4) (modification of Part 1 of the 1965 Act) is also modified so as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise

- 
- (a) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), sections 186(2), 187(2) and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22) and S.I. 2009/1307.
  - (b) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22).
  - (c) Section 11B was inserted by section 187(3) of the Housing and Planning Act 2016 (c. 22).
  - (d) Section 12 was amended by section 56(2) of, and Part 1 of Schedule 9 to, the Courts Act 1971 (c. 23) and paragraphs 2 and 4 of Schedule 16 to the Housing and Planning Act 2016 (c. 22).
  - (e) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).
  - (f) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34) and S.I. 2009/1307.

the right acquired or enforce the restrictive covenant imposed, subject to compliance with that section as respects compensation.

(8) For Schedule 2A to the 1965 Act substitute—

## “SCHEDULE 2A COUNTER-NOTICE REQUIRING PURCHASE OF LAND NOT IN NOTICE TO TREAT

### **Introduction**

1.—(1) This Schedule applies where an acquiring authority serve a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 of the 1981 Act as applied by article 26 (application of the 1981 Act) of the A66 Northern Trans-Pennine Development Consent Order 202[\*] in respect of the land to which the notice to treat relates.

(2) But see article 27(3) (acquisition of subsoil, etc., only) of the A66 Northern Trans-Pennine Development Consent Order 202[\*] which excludes the acquisition of subsoil or airspace only from this Schedule.

2. In this Schedule, “house” includes any park or garden belonging to a house.

### **Counter-notice requiring purchase of land**

3. A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the acquiring authority to purchase the owner’s interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

### **Response to counter-notice**

5. On receiving a counter-notice, the acquiring authority must decide whether to—

- (a) withdraw the notice to treat,
- (b) accept the counter-notice, or
- (c) refer the counter-notice to the Upper Tribunal.

6. The authority must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served (“the decision period”).

7. If the authority decide to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

8. If the authority do not serve notice of a decision within the decision period they are to be treated as if they had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the authority serves notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in the house, building or factory.

### **Determination by Upper Tribunal**

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or
- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

**11.** In making its determination, the Upper Tribunal must take into account—

- (a) the effect of the acquisition of the right or the imposition of the restrictive covenant,
- (b) the use to be made of the right or restrictive covenant proposed to be acquired or imposed, and
- (c) if the right or restrictive covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

**12.** If the Upper Tribunal determines that the acquisition of the right or the imposition of the restrictive covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the authority ought to be required to take.

**13.** If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

**14.—(1)** If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph they must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.”.

## SCHEDULE 6

Article 29

### LAND OF WHICH ONLY TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> Area	<i>(2)</i> Plot Reference Number(s) shown on land plans	<i>(3)</i> Purpose for which temporary possession may be taken	<i>(4)</i> Relevant part of the authorised development
<b>SCHEME 0102 – M6 J40 TO KEMPLAY BANK</b>			
<i>Scheme 0102 – The land plans – sheet 1</i>			
In the administrative area of Westmorland and Furness Council	0102-01-01	Required for the provision of working space and to facilitate the construction of additional carriageway and improvements to the existing A66 on the western approach to M6 Junction 40 and the provision of landscaping and reprofiling.	Work No. 0102-1A
	0102-01-08	Required for the provision of working space and to facilitate the construction of additional carriageway and improvements to the existing A66 on the western approach to M6 Junction 40 and the provision of new private means of access, landscaping and reprofiling.	Work No. 0102-1A
	0102-01-33	Required for the provision of working space and to facilitate the construction of additional carriageway and improvements to sections of the existing A66 and the provision of landscaping and reprofiling.	Work No. 0102-1C
	0102-01-46	Required for the provision of working space and to facilitate the improvement of the existing M6 southbound merge slip road, the construction of an additional auxiliary lane at the M6 Junction 40 and the provision of construction compound and storage area.	Work No. 0102-5
<i>Scheme 0102 – The land plans – sheet 2</i>			
In the administrative area of Westmorland and Furness Council	0102-02-21 0102-02-55	Required for the provision of working space and to facilitate the construction of additional carriageway and improvements to sections of the existing A66 and the provision of landscaping and reprofiling.	Work No. 0102-1D
	0102-02-35	Required for the provision of working space and to facilitate the construction of additional carriageway and improvements to	Work Nos. 0102-1D and 0102-8

		sections of the existing A686 and its tie-in to the new Kemplay Bank Junction and the provision of environmental mitigation, landscaping and reprofiling.	
	0102-02-49	Required for the provision of working space and to facilitate the improvement of the existing Kemplay Bank Roundabout, to comprise a new grade-separated Junction (“the new Kemplay Bank Junction”), and the construction of additional carriageway and improvements to sections of the existing A6 and the provision of environmental mitigation, landscaping and reprofiling.	Work Nos. 0102-1D; 0102-7B; and 0102-7C
	0102-02-51	Required for the provision of working space and to facilitate the improvement of the existing Kemplay Bank Roundabout, to comprise a new grade-separated Junction (“the new Kemplay Bank Junction”), and the construction of additional carriageway and improvements to sections of the existing A6.	Work Nos. 0102-1D; 0102-7B; and 0102-7C
	0102-02-59 0102-02-63 0102-02-65 0102-02-82 0102-02-86	Required for the provision of working space and to facilitate the construction of additional carriageway and improvements to sections of the existing A66.	Work Nos. 0102-1D; 0102-7B; and 0102-7C
	0102-02-64 0102-02-69	Required for the provision of working space and to facilitate the construction of additional carriageway and improvements to sections of the existing A66 and the provision of landscaping and reprofiling, construction of surface water drainage infrastructure.	Work Nos. 0102-1D; 0102-7B and 0102-7C
<b>SCHEME 03 – PENRITH TO TEMPLE SOWERBY</b>			
<i>Scheme 03 – The land plans – sheet 1</i>			
In the administrative area of Westmorland and Furness Council	03-01-30	Required for the provision of working space and to facilitate the construction of a new footpath connecting to the site of the countess pillar on the south side of the improved A66 and the provision of landscaping and reprofiling.	Work Nos. 03-9A and 03-9B

	03-01-70	Required for the provision of working space and to facilitate the construction of a new all-purpose dual carriageway (“the new A66”) and of improvements to the existing A66 (“the improved A66”) between Penrith and Temple Sowerby and related works and the provision of landscaping and reprofiling, construction of surface water drainage infrastructure.	Work No. 03-1B
<i>Scheme 03 – The land plans – sheet 2</i>			
–	None	–	–
<i>Scheme 03 – The land plans – sheet 3</i>			
In the administrative area of Westmorland and Furness Council	03-03-09	Required for the provision of working space and to facilitate part of the new “Junction at Center Parcs”, to include the improvement of the existing junction on the westbound carriageway of the improved A66, the construction of a new road to connect between the westbound carriageway of the improved A66, the new connector road and an existing private means of access to “Center Parcs” and the provision of landscaping and reprofiling.	Work No. 03-4B
	03-03-21	Required for the provision of working space and to facilitate the construction of a new all-purpose dual carriageway (“the new A66”) and of improvements to the existing A66 (“the improved A66”) between Penrith and Temple Sowerby and related works and part of the new “Junction at Center Parcs”, to include the improvement of the existing junction on the westbound carriageway of the improved A66, the construction of a new road to connect between the westbound carriageway of the improved A66, the new connector road and an existing private means of access to “Center Parcs” and the provision of landscaping and reprofiling.	Work No. 03-1B, Work No. 03-4B
<i>Scheme 03 – The land plans – sheet 4</i>			
–	None	–	–
<b>SCHEME 0405 – TEMPLE SOWERBY TO APPLEBY</b>			
<i>Scheme 0405 – The land plans – sheet 1</i>			
In the administrative area of Westmorland and Furness Council	0405-01-20	Required for the provision of working space and to facilitate the improvement of the existing slip road and Morland Road including	Work No. 0405-3B

		new roundabout and the provision of landscaping and reprofiling.	
	0405-01-22	Required for the provision of working space and to facilitate the improvement of the existing slip road and Morland Road including new roundabout and the provision of environmental mitigation, landscaping and reprofiling.	Work No. 0405-3B
	0405-01-26	Required for the provision of working space and to facilitate the improvement of the existing slip road and Morland Road including new roundabout and the provision of environmental mitigation, landscaping and reprofiling, construction compound and storage area.	Work No. 0405-3B
	0405-01-68	Required for the provision of working space and to facilitate the construction of a new local road between Temple Sowerby and Low Moor Caravan Park, cycle track and private means of access and the provision of environmental mitigation, landscaping and reprofiling, haul route.	Work No. 0405-4A
	0405-01-114	Required for the provision of working space and to facilitate the construction of the new A66 eastbound and improvements to sections of the existing A66 eastbound and de-trunking and reclassification of the existing A66, the construction of a new compact grade separated junction, realignment of Fell Lane and construction of an overbridge, and provision of public rights of way and private means of access and the provision of landscaping and reprofiling, haul route.	Work No. 0405-1A
	0405-01-132	Required for the provision of working space and to facilitate the construction of the new A66 eastbound and improvements to sections of the existing A66 eastbound and de-trunking and reclassification of the existing A66, the construction of a new compact grade separated junction, realignment of Fell Lane and construction of an overbridge, and provision of public rights of way and private means of access and the provision of landscaping and reprofiling.	Work No. 0405-1A



<i>Scheme 0405 – The land plans – sheet 2</i>			
In the administrative area of Westmorland and Furness Council	0405-02-31 0405-02-34	Required for the provision of working space and to facilitate The improvement of the existing A66, once de-trunked and the provision of non-motorised users' facilities, landscaping and reprofiling.	Work No. 0405-4B
	0405-02-36	Required for the provision of working space and to facilitate The improvement of the existing A66, once de-trunked and the provision of non-motorised users' facilities, landscaping and reprofiling, construction compound and storage area.	Work No. 0405-4B
	0405-02-39 0405-02-45 0405-02-49	Required for the provision of working space and to facilitate The improvement of the existing A66, once de-trunked and the provision of non-motorised users' facilities, landscaping and reprofiling, permanent diversion of third party apparatus.	Work No. 0405-4B
<i>Scheme 0405 – The land plans – sheet 3</i>			
In the administrative area of Westmorland and Furness Council	0405-03-01	Required for the provision of working space and to facilitate the construction of a length of new footpath, between the re-aligned Cross Street on the south side of the new A66, and the realigned Fell Lane on the north side of the new A66; the provision of new private means of access; and works to effect the stopping up of a length of existing Footpath 336/017 and of existing private means of access.	Work No. 0405-9
	0405-03-05 0405-03-06 0405-03-07	Required for the provision of working space and to facilitate the construction of a length of new footpath, between the re-aligned Cross Street on the south side of the new A66, and the realigned Fell Lane on the north side of the new A66; the provision of new private means of access; and works to effect the stopping up of a length of existing Footpath 336/017 and of existing private means of access and the provision of landscaping and reprofiling.	Work No. 0405-9
	0405-03-68	Required for the provision of working space and to facilitate the improvement and re-alignment of the existing Sleastonhow Lane, the stopping up of part of the existing Sleastonhow Lane and the	Work No. 0405-13

		construction of new private means of access.	
	0405-03-70 0405-03-77 0405-03-78	Required for the provision of working space and to facilitate the improvement and re-alignment of the existing Sleastonhow Lane, the stopping up of part of the existing Sleastonhow Lane and the construction of new private means of access and the provision of landscaping and reprofiling.	Work No. 0405-13
	0405-03-82	Required for the provision of working space and to facilitate the realignment and improvements to the existing Fell Lane, works to effect the stopping up of existing private means of access and the construction of a new and replacement private means of access and the construction of a length of new footpath, between the realigned Cross Street on the south side of the new A66, and the realigned Fell Lane on the north side of the new A66; the provision of new private means of access; and works to effect the stopping up of a length of existing Footpath 336/017 and of existing private means of access and the provision of landscaping and reprofiling.	Work No. 0405-11A, Work No. 0405-9
	0405-03-85	Required for the provision of working space and to facilitate the construction of a new road connecting the realigned Fell Lane with the realigned Main Street, new private means of access and works to effect the stopping up of a length of the existing Main Street and the provision of landscaping and reprofiling, construction compound and storage area.	Work No. 0405-12
	0405-03-92 0405-03-98 0405-03-100	Required for the provision of working space and to facilitate the construction of a new road connecting the realigned Fell Lane with the realigned Main Street, new private means of access and works to effect the stopping up of a length of the existing Main Street and the provision of landscaping and reprofiling.	Work No. 0405-12
<i>Scheme 0405 – The land plans – sheet 4</i>			
In the administrative area of Westmorland and Furness Council	0405-04-28	Required for the provision of working space and to facilitate the improvement and re-alignment of	Work No. 0405-13

		the existing Sleastonhow Lane, the stopping up of part of the existing Sleastonhow Lane and the construction of new private means of access and the provision of landscaping and reprofiling.	
	0405-04-54	Required for the provision of working space and to facilitate the improvement of the existing A66, once de-trunked and the provision of landscaping and reprofiling.	Work No. 0405-4B
<i>Scheme 0405 – The land plans – sheet 5</i>			
In the administrative area of Westmorland and Furness Council	0405-05-17	Required for the provision of working space and to facilitate the improvement of a length of the existing A66 (to be de-trunked) to the south-west of Powis House and the construction of a new cycleway alongside the carriageway the existing A66 and the provision of landscaping and reprofiling, construction compound and storage area.	Work No. 0405-18
	0405-05-43 0405-05-46	Required for the provision of working space and to facilitate the construction of the new A66 westbound and improvements to sections of the existing A66 westbound, including a compact grade separated junction, stopping up and re-provisions of public rights of way and the provision of landscaping and reprofiling.	Work No. 0405-2B
	0405-05-51	Required for the provision of working space and to facilitate the construction of the new A66 eastbound and improvements to sections of the existing A66 eastbound and works related to the construction of a new compact grade separated junction, de-trunking and reclassification of the existing A66, provision of public rights of way (including overbridge) and new and replacement private means of access and the construction of the new A66 westbound and improvements to sections of the existing A66 westbound, including a compact grade separated junction, stopping up and re-provisions of public rights of way and the construction of the realigned Long Marton and the provision of landscaping and reprofiling, construction compound and storage area.	Work No. 0405-1B, Work No. 0405-2B, Work No. 0405-16

	0405-05-66	Required for the provision of working space and to facilitate the construction of the new A66 westbound and improvements to sections of the existing A66 westbound, including a compact grade separated junction, stopping up and re-provisions of public rights of way and the provision of landscaping and reprofiling, permanent diversion of third party apparatus.	Work No. 0405-2B
	0405-05-76	Required for the provision of working space and to facilitate the construction of the realigned Long Marton. The construction of a new connector road connecting the new A66 eastbound carriageway with the realigned Long Marton and a new private means of access adjacent to the Long Marton eastbound compact connector road and the provision of landscaping and reprofiling, construction compound and storage area.	Work No. 0405-16, Work No. 0405-17A
	0405-05-81	Required for the provision of working space and to facilitate the construction of a new connector road connecting the new A66 eastbound carriageway with the realigned Long Marton and a new private means of access adjacent to the Long Marton eastbound compact connector road and the provision of landscaping and reprofiling.	Work No. 0405-17A
	0405-05-82	Required for the provision of working space and to facilitate the construction of a new connector road connecting the new A66 eastbound carriageway with the realigned Long Marton and a new private means of access adjacent to the Long Marton eastbound compact connector road and the provision of environmental mitigation, landscaping and reprofiling, construction compound and storage area.	Work No. 0405-17A
	0405-05-93	Required for the provision of working space and to facilitate the construction of the new A66 eastbound and improvements to sections of the existing A66 eastbound and de-trunking and reclassification of the existing A66, the construction of a new compact grade separated junction, re-	Work No. 0405-1A, Work No. 0405-2B

		alignment of Fell Lane and construction of an overbridge, and provision of public rights of way and private means of access and the construction of the new A66 westbound and improvements to sections of the existing A66 westbound, including a compact grade separated junction, stopping up and re-provisions of public rights of way and the provision of landscaping and reprofiling.	
	0405-05-96	Required for the provision of working space and to facilitate the construction of the realigned Long Marton and the provision of landscaping and reprofiling.	Work No. 0405-16
	0405-05-110 0405-05-111	Required for the provision of working space and to facilitate the construction of the realigned Long Marton.	Work No. 0405-16
<i>Scheme 0405 – The land plans – sheet 6</i>			
In the administrative area of Westmorland and Furness Council	0405-06-29 0405-06-41 0405-06-58	Required for the provision of working space and to facilitate the construction of the new A66 westbound and improvements to sections of the existing A66 westbound, including a compact grade separated junction, stopping up and re-provisions of public rights of way and the provision of landscaping and reprofiling, construction compound and storage area.	Work No. 0405-2B
<i>Scheme 0405 – The land plans – sheet 7</i>			
In the administrative area of Westmorland and Furness Council	0405-07-06	Required for the provision of working space and to facilitate the improvement of a length of the existing A66 (to be de-trunked) between Powis House and Roger Head Farm and the construction of a new cycleway alongside the carriageway as part of improvements to the existing A66 and the improvement of a length of the existing A66 (to be de-trunked) to the south of Roger Head Farm, the construction of a new cycleway alongside the carriageway as part of improvements to the existing A66, the improvement and re-alignment of the existing B6542, the construction of a new cycleway adjacent to the carriageway of the improved B6542, improvements to a private road junction connecting to	Work No. 0405-19C, Work No. 0405-19D

		the improved B6542, and the construction of new and replacement private means of access and the provision of landscaping and reprofiling.	
	0405-07-18	Required for the provision of working space and to facilitate the construction of the new A66 westbound and improvements to sections of the existing A66 westbound, including a compact grade separated junction, stopping up and re-provisions of public rights of way and the provision of landscaping and reprofiling, construction compound and storage area.	Work No. 0405-2B
	0405-07-22	Required for the provision of working space and to facilitate the improvement of a length of the existing A66 (to be de-trunked) to the south of Roger Head Farm, the construction of a new cycleway alongside the carriageway as part of improvements to the existing A66, the improvement and re-alignment of the existing B6542, the construction of a new cycleway adjacent to the carriageway of the improved B6542, improvements to a private road junction connecting to the improved B6542, and the construction of new and replacement private means of access and the provision of new private means of access, landscaping and reprofiling.	Work No. 0405-19D
	0405-07-33 0405-07-35	Required for the provision of working space and to facilitate the improvement of a length of the existing A66 (to be de-trunked) to the south of Roger Head Farm, the construction of a new cycleway alongside the carriageway as part of improvements to the existing A66, the improvement and re-alignment of the existing B6542, the construction of a new cycleway adjacent to the carriageway of the improved B6542, improvements to a private road junction connecting to the improved B6542, and the construction of new and replacement private means of access and the provision of landscaping and reprofiling.	Work No. 0405-19D

	0405-07-40	Required for the provision of working space and to facilitate the construction of the new A66 westbound and improvements to sections of the existing A66 westbound, including a compact grade separated junction, stopping up and re-provisions of public rights of way and the provision of landscaping and reprofiling.	Work No. 0405-2B
	0405-07-41 0405-07-45	Required for the provision of working space and to facilitate the construction of the new A66 eastbound and improvements to sections of the existing A66 eastbound and works related to the construction of a new compact grade separated junction, de-trunking and reclassification of the existing A66, provision of public rights of way (including overbridge) and new and replacement private means of access and the construction of a new footpath crossing the new A66 via a new bridge (Roger Head Farm Bridge), works to effect the stopping up of a length of the existing Footpath 317/004 and private means of access north of the Proposed Roger Head Farm Bridge, and the construction of new private means of access between Roger Head Farm and Roger Head Farm Bridge and the provision of landscaping and reprofiling.	Work No. 0405-1B, Work No. 0405-21
	0405-07-52	Required for the provision of working space and to facilitate the construction of the new A66 eastbound and improvements to sections of the existing A66 eastbound and works related to the construction of a new compact grade separated junction, de-trunking and reclassification of the existing A66, provision of public rights of way (including overbridge) and new and replacement private means of access and the provision of environmental mitigation, landscaping and reprofiling, construction compound and storage area, haul route.	Work No. 0405-1B

	0405-07-63 0405-07-94	Required for the provision of working space and to facilitate the improvement of a length of the existing A66 (to be de-trunked) to the south of Roger Head Farm, the construction of a new cycleway alongside the carriageway as part of improvements to the existing A66, the improvement and re-alignment of the existing B6542, the construction of a new cycleway adjacent to the carriageway of the improved B6542, improvements to a private road junction connecting to the improved B6542, and the construction of new and replacement private means of access and the construction of the new A66 westbound and improvements to sections of the existing A66 westbound, including a compact grade separated junction, stopping up and re-provisions of public rights of way and the provision of landscaping and reprofiling.	Work No. 0405-19D, Work No. 0405-2B
<b>SCHEME 06 – APPLEBY TO BROUGH</b>			
<i>Scheme 06 – The land plans – sheet 1</i>			
In the administrative area of Westmorland and Furness Council	06-01-40 06-01-41 06-01-42 06-01-46 06-01-47 06-01-48 06-01-49 06-01-50 06-01-51 06-01-52 06-01-53 06-01-54	Required for the provision of working space and to facilitate works for the improvement of the existing A66 eastbound and westbound single lane carriageway and the construction of an additional carriageway to upgrade the A66 eastbound and westbound single carriageway to a dual carriageway.	Work No. 06-1A
<i>Scheme 06 – The land plans – sheet 2</i>			
In the administrative area of Westmorland and Furness Council	06-02-14	Required for the provision of working space and to facilitate works for the improvement of the existing A66 eastbound and westbound single lane carriageway and the construction of an additional carriageway to upgrade the A66 eastbound and westbound single carriageway to a dual carriageway.	Work No. 06-1A
	06-02-28	Required for the provision of working space and to facilitate works for the improvement of the existing A66 eastbound and westbound single lane carriageway	Work No. 06-1A



		and the construction of an additional carriageway to upgrade the A66 eastbound and westbound single carriageway to a dual carriageway.	
	06-02-23 06-02-27 06-02-34	Required for the provision of working space and to facilitate the construction of works for the improvement and upgrading of the A66, including for use as a haul route.	Work No. 06-1A, Work No. 06-1B
<i>Scheme 06 – The land plans – sheet 3</i>			
In the administrative area of Westmorland and Furness Council	06-03-18	Required for the provision of working space and to facilitate works for the improvement of the existing A66 eastbound and westbound single lane carriageway (including the provision of new cycleway) and the construction of an additional carriageway to upgrade the A66 eastbound and westbound single carriageway to a dual carriageway and the provision of de-trunking works associated with the existing A66.	Work No. 06-1CA
	06-03-34	Required for the provision of environmental mitigation.	All works
<i>Scheme 06 – The land plans – sheet 4</i>			
In the administrative area of Westmorland and Furness Council	06-04-01	Required for the provision of working space and to facilitate the provision of facilities for use by and benefit of the Ministry of Defence (MoD) and the provision of landscaping and reprofiling.	Work No. 06-9
	06-04-02 06-04-08 06-04-09 06-04-10 06-04-16	Required for the provision of working space and to facilitate the provision of facilities for use by and benefit of the Ministry of Defence (MoD).	Work No. 06-9
<i>Scheme 06 – The land plans – sheet 5</i>			
In the administrative area of Westmorland and Furness Council	06-05-23 06-05-25	Required for the provision of working space and to facilitate the construction of part of a new single carriageway local access road connecting Flitholme Road with Langrigg Lane, via the new Flitholme – Langrigg Link,	Work No. 06-7

		including the construction of a length of new equestrian track to connect to new cycleway, the construction of new private means of access to land and properties on the south side of the new A66, and works to effect the stopping up of a length of Langrigg Lane to the south of the existing A66.	
	06-05-19 06-05-20 06-05-24	Required for the provision of working space and to facilitate the construction of works for the improvement and upgrading of the A66, including for use as a haul route.	Work No. 06-1D
<i>Scheme 06 – The land plans – sheet 6</i>			
In the administrative area of Westmorland and Furness Council	06-06-10	Required for the provision of working space and to facilitate the construction of the new single carriageway local access road connecting the existing de-trunked A66 into Mains Street, Brough and the provision of landscaping and reprofiling, construction of surface water drainage infrastructure, construction compound and storage area.	Work No. 06-8
	06-06-31 06-06-40 06-06-45	Required for the provision of working space and to facilitate the construction of the new single carriageway local access road connecting the existing de-trunked A66 into Mains Street, Brough and the provision of landscaping and reprofiling, construction compound and storage area.	Work No. 06-8
<b>SCHEME 07 – BOWES BYPASS</b>			
<i>Scheme 07 – The land plans – sheet 1</i>			
In the administrative area of Durham County Council	07-01-01	Required for the provision of working space and to facilitate the construction of the new eastbound carriageway of the new all-purpose A66 dual carriageway and the provision of landscaping and reprofiling.	Work No. 07-1A
<i>Scheme 07 – The land plans – sheet 2</i>			
In the administrative area of Durham County Council	07-02-59	Required for the provision of working space and to facilitate the improvement of the existing A67 and the construction of new private means of access and the provision of environmental mitigation, landscaping and reprofiling, construction compound and storage area.	Work No. 07-5

<i>Scheme 07 – The land plans – sheet 3</i>			
–	None	–	–
<b>SCHEME 08 – CROSS LANES TO ROKEBY</b>			
<i>Scheme 08 – The land plans – sheet 1</i>			
–	None	–	–
<i>Scheme 08 – The land plans – sheet 2</i>			
In the administrative area of Durham County Council	08-02-39	Required for the provision of working space and to facilitate the construction of a new all-purpose dual carriageway (the new A66) and improvements to the existing A66 and the provision of environmental mitigation, landscaping and reprofiling, permanent diversion of third party apparatus, construction compound and storage area, haul route.	Work No. 08-1C
<i>Scheme 08 – The land plans – sheet 3</i>			
–	None	–	–
<b>SCHEME 09 – STEPHEN BANK TO CARKIN MOOR</b>			
<i>Scheme 09 – The land plans – sheet 1</i>			
–	None	–	–
<i>Scheme 09 – The land plans – sheet 2</i>			
In the administrative area of the North Yorkshire Council	09-02-09	Required for the provision of working space and to facilitate the construction of a shared equestrian track on the north side of the carriageway, the construction of new private means of access to land (including Browson Bank and an attenuation pond), and the improvement of the northernmost length of the existing Dick Scot Lane where it meets the de-trunked A66 and the new equestrian track and the construction of a new realigned section of the de-trunked A66, works to effect the stopping up of redundant lengths of the existing A66, public rights of way (including an equestrian track and a footway) and private means of access and the provision of landscaping and reprofiling, de-trunking works associated with the existing A66.	Work No. 09-3A, Work No. 09-3B
	09-02-13	Required for the provision of working space and to facilitate the construction of a new realigned section of the de-trunked A66, works to effect the stopping up of redundant lengths of the existing A66, public rights of way (including an equestrian track and a footway) and private means of access and the provision of landscaping and	Work No. 09-3B

		reprofiling, de-trunking works associated with the existing A66.	
<i>Scheme 09 – The land plans – sheet 3</i>			
–	None	–	–
<i>Scheme 09 – The land plans – sheet 4</i>			
In the administrative area of the North Yorkshire Council	09-04-30	Required for the provision of working space and to facilitate the construction of new westbound carriageway of the A66 and the provision of environmental mitigation, landscaping and reprofiling, haul route.	Work No. 09-1E
<b>SCHEME 11 – A1(M) J53 SCOTCH CORNER</b>			
<i>Scheme 11 – The land plans – sheet 1</i>			
–	None	–	–

## CLASSIFICATION OF ROADS, ETC.

## PART 1

## SCHEME 0102 – M6 J40 TO KEMPLAY BANK

*THE NEW AND IMPROVED A66 TRUNK ROAD**In the administrative area of Westmorland and Furness Council***A 2.8 km length of new and improved A66 trunk road**

1. A 2.8 km length of new and improved highway to be classified as part of the A66, commencing from a point 150 metres to the south-west of the existing access to the Livestock Market, and following the existing alignment of the A66 for a distance of 2.4 km to a point 668 metres to the north-east of the new Kemplay Bank Roundabout, and comprising—

- (a) a 390 metre length of improved highway commencing from a point 265 metres west of Skirsgill Business Park and following the existing alignment of the A66 for a distance of 390 metres, to a point on the existing A66 carriageway 100 metres south-east of the Livestock Market;
- (b) a 600 metre length of improved circulatory carriageway of the M6 J40 roundabout;
- (c) a 1.8 km length of improved highway commencing from a point 115 metres south of the North Lakes Hotel & Spa and following the alignment of the existing A66 in a generally westwards direction, passing beneath the bridges at the new Kemplay Bank Roundabout and following the existing alignment of the A66 in a north-easterly direction, then joining the existing A66 carriageway at a point 200 metres north-east of the Police Station,

identified by a red line on the classification of roads plan for scheme 0102.

*M6 JUNCTION 40 AND SLIP ROADS**In the administrative area of Westmorland and Furness Council***M6 northbound diverge slip road**

2. A 328 metre length of improved slip road to be classified as part of the M6 special road, commencing from its diverge point on the existing northbound carriageway of the M6 and continuing in a north-westerly direction to its junction with the existing roundabout at M6 Junction 40, identified by a blue line on the classification of roads plan for scheme 0102.

**M6 northbound merge slip road**

3. A 210 metre length of improved slip road to be classified as part of the M6 special road, commencing from its junction with the existing roundabout at M6 Junction 40 and continuing in a north-westerly direction to its merge point on the existing M6 northbound carriageway, identified by a blue line on the classification of roads plan for scheme 0102.

**M6 southbound diverge slip road**

4. A 263 metre length of improved slip road to be classified as part of the M6 special road, commencing from its diverge point on the existing M6 southbound carriageway and continuing in a south-easterly direction to its junction with the existing roundabout at M6 Junction 40, identified by a blue line on the classification of roads plan for scheme 0102.

### **M6 southbound merge slip road**

5. A 270 metre length of improved slip road to be classified as part of the M6 special road, commencing from its junction with the existing roundabout at M6 Junction 40 and continuing in a south-easterly direction to its merge point on the existing M6 southbound carriageway, identified by a blue line on the classification of roads plan for scheme 0102.

#### *THE IMPROVED A592*

*In the administrative area of Westmorland and Furness Council*

### **A 205 metre length of improved A592**

6. A length of improved highway to be classified as part of the A592, commencing from a point 425 metres to the north-west of the existing access to Skirsgill Depot, and following the existing alignment of the A592 in a south-easterly direction for a distance of 205 metres, to its junction with the M6 Junction 40 roundabout, identified by a pink line on the classification of roads plan for scheme 0102.

#### *THE NEW KEMPLAY BANK JUNCTION SLIP ROADS*

*In the administrative area of Westmorland and Furness Council*

### **A66 eastbound diverge slip road**

7. A 320 metre length of new bifurcated slip road to be classified as part of the A66 trunk road, commencing from its diverge point on the new A66 eastbound carriageway in a north-easterly direction to its junction with the new Kemplay Bank Roundabout, identified by a red line on the classification of roads plan for scheme 0102.

### **A66 eastbound merge slip road**

8. A 360 metre length of new bifurcated slip road to be classified as part of the A66 trunk road, commencing from its junction with the new Kemplay Bank Roundabout and continuing in a north-easterly direction to its merge point on the new eastbound carriageway of the A66, identified by a red line on the classification of roads plan for scheme 0102.

### **A66 westbound diverge slip road**

9. A 343 metre length of new bifurcated slip road to be classified as part of the A66 trunk road, commencing from its diverge point on the new westbound carriageway of the A66 in a south-westerly direction to its junction with the new Kemplay Bank Roundabout, identified by a red line on the classification of roads plan for scheme 0102.

### **A66 westbound merge slip road**

10. A 330 metre length of new bifurcated slip road to be classified as part of the A66 trunk road, commencing from its junction with the new Kemplay Bank Roundabout and continuing in a south-westerly direction to its merge point on the new westbound carriageway of the A66, identified by a red line on the classification of roads plan for scheme 0102.

*THE IMPROVED A6, INCLUDING THE CIRCULATORY CARRIAGEWAY OF THE NEW  
KEMPLAY BANK ROUNDABOUT*

*In the administrative area of Westmorland and Furness Council*

**Kemplay Bank Roundabout**

11. A 416 metre length of improved circulatory carriageway at the Kemplay Bank Roundabout, to be re-classified as part of the A6, identified by a green line on the classification of roads plan for scheme 0102.

**A 90 metre length of improved A6 (southbound approach to Kemplay Bank Roundabout)**

12. A length of improved highway to be classified as part of the A6, commencing from a point 75 metres to the south-west of the existing Hospital, and following the existing alignment of the A6 for a distance of 90 metres, to its junction with the new A6 Kemplay Bank Roundabout, identified by a green line on the classification of roads plan for scheme 0102.

**A 155 metre length of improved A6 (northbound approach to Kemplay Bank Roundabout)**

13. A length of improved highway to be classified as part of the A6, commencing from a point 182 metres to the south-west of the existing Penrith Community Fire Station, and following the existing alignment of the A6 for a distance of 155 metres, to its junction with the new Kemplay Bank Roundabout, identified by a green line on the classification of roads plan for scheme 0102.

*THE NEW AND IMPROVED A686*

*In the administrative area of Westmorland and Furness Council*

**A 242 metre length of improved A686**

14. A length of new road to be classified as part of the A686, commencing from a point 177 metres to the north of the existing Police Station, and continuing in a generally south-westerly direction for a distance of 242 metres, to its junction with the new A6 Kemplay Bank Roundabout at a point 95 metres south-east of the existing Hospital, identified by a cyan line on the classification of roads plan for scheme 0102.

*ROAD TO BE DE-TRUNKED*

*In the administrative area of Westmorland and Furness Council*

15. A length of approximately 416 metres of the existing A66, comprising the existing circulatory carriageway of the Kemplay Bank Roundabout, commencing from a point A (as identified on the de-trunking plan for scheme 0102) located 90 metres to the south of the Hospital and continuing in a clockwise direction returning to the same point A, 90 metres to the south of the Hospital, as identified by black diagonal hatching on the de-trunking plans for scheme 0102.

**PART 2**

**SCHEME 03 – PENRITH TO TEMPLE SOWERBY**

*THE NEW AND IMPROVED A66 TRUNK ROAD*

*In the administrative area of Westmorland and Furness Council*

**A 2.9 kilometre length of improved A66 trunk road**

16. A length of highway proposed to be improved and to be classified as part of the A66, commencing from a point 360 metres to the north-east of Brougham Castle, and following the

existing A66 alignment for a distance of 2.9 km, to a point on the existing A66 carriageway 610 metres to the west of Lane End, identified by a red line on the classification of roads plan for scheme 03.

#### **A 2.4 kilometre length of new A66 trunk road**

17. A 2.4 km length of new road to be constructed and classified (as identified in sub-paragraphs (a) to (d) below) as part of the A66 trunk road

- (a) commencing from a point 610 metres to the west of Lane End, then departing from the existing alignment in a south-easterly direction and continuing in a generally easterly direction to a point 370 metres west of Lane End;
- (b) passing beneath the new bridge at the Junction at Center Parcs and then continuing in an easterly direction for a distance of 725 metres to a point where it joins the existing A66 carriageway at a point 315 metres east of Lane End;
- (c) then departing from the existing A66 alignment in a north easterly direction commencing from a point 315 metres to the east of Lane End in a generally north-easterly direction for a distance of 920 metres; and
- (d) continuing eastwards for a distance of 760 metres to a point where it joins the existing A66 carriageway at a point 405 metres to the north-west of the existing westbound junction at Temple Sowerby,

identified by a red line on the classification of roads plan for scheme 03.

#### *NEW JUNCTION AT CENTER PARCS*

*In the administrative area of Westmorland and Furness Council*

#### **A 116 metre length of new road (Northbound Approach)**

18. A 116 metre length of new road to be classified as part of the A66, commencing from a point 472 metres to the south-west of Lane End continuing in a generally northerly direction to its junction with the westbound carriageway of the new A66 at a point 436 metres to the east of Lane End, identified by a red line on the classification of roads plan for scheme 03.

#### **A 493 metre length of new road (Connector Loop)**

19. A 493 metre length of new road to be classified as part of the A66, commencing from its junction with the new A66 on the eastbound carriageway at a point 469 metres to the west of Lane End, continuing northwards for a distance of 157 metres, before turning eastwards and then southwards and passing under the new A66 at a point 361 metres to the south-west of Lane End, continuing generally south-eastwards to its junction with the new northbound approach at a point 472 metres to the south-east of Lane End, identified by a red line on the classification of roads plan for scheme 03.

#### *NEW B6262*

*In the administrative area of Westmorland and Furness Council*

#### **B6262 (Realigned)**

20. A 101 metre length of new and improved road to be classified as part of the B6262, commencing from a point 460 metres to the east of Brougham Castle and continuing in a generally northerly direction to its junction with the improved A66 at a point 520 metres to the east of Brougham Castle, identified by a green line on the classification of roads plan for scheme 03.



*NEW JUNCTION AND LINK ROAD OPPOSITE WHINFELL PARK*  
*In the administrative area of Westmorland and Furness Council*

**A 144 metre length of new road (Unclassified U3192)**

21. A length of new unclassified road (U3192), commencing at its intersection with byway 311/013 at a point 933 metres to the south-west of St. Ninian's Church and continuing in a generally southerly direction to its junction with the improved A66 at a point 204 metres to the north of Whinfell Park, identified by a black line on the classification of roads plan for scheme 03.

*NEW JUNCTION AND LINK ROAD TO DE-TRUNKED SECTION OF A66 (ROMAN ROAD)*  
*In the administrative area of Westmorland and Furness Council*

**A 247 metre length of new road (unclassified westbound approach) (Unclassified U3193)**

22. A length of new unclassified road (U3193), commencing from a point 121 metres to the west of Lane End and continuing in a generally westerly direction to its junction with a new connector road at the new junction at Center Parcs, at a point 354 metres to the west of Lane End, identified by a black line on the classification of roads plan for scheme 03.

*ROAD TO BE DE-TRUNKED*  
*In the administrative area of Westmorland and Furness Council*

23. A length of approximately 451 metres of the existing A66, commencing from a point A on sheet 1 of the de-trunking plans for scheme 03, being a point on the A66 trunk road 200 metres to the east of Lane End, extending in an easterly direction to a point B on sheet 1 of the de-trunking plans for scheme 03, being a point on the A66 trunk road 261 metres to the east of Lane End.

## PART 3

### SCHEME 0405 – TEMPLE SOWERBY TO APPLEBY

*THE NEW AND IMPROVED A66 TRUNK ROAD*  
*In the administrative area of Westmorland and Furness Council*

**An 8.6 kilometre length of new road**

24. An 8.6 km length of new road to be constructed and classified (as identified in sub-paragraphs (a) to (h) below) as part of the A66 trunk road (such length also including existing highway to be improved, as identified in sub-paragraphs (a) to (h) below)—

- (a) commencing from a point 430 metres to the south-east of the existing Morland Road Underpass and following the existing alignment of the A66 for a distance of 333 metres in a generally easterly direction passing over the existing Spitals Underpass ;
- (b) then departing from the existing alignment of the A66 in a north-easterly direction, and passing to the north of Kirkby Thore, for a distance of 1.3 km, passing beneath the new bridge at Cross Street;
- (c) continuing on its new alignment to the north of Kirkby Thore for a distance of 889 metres and passing beneath the new C3065 Fell Lane Bridge which forms part of the new Kirkby Thore Junction;
- (d) then continuing on its new alignment in a generally southerly direction for a distance of 870 metres and passing beneath the new Sleastonhow Lane Bridge;
- (e) then continuing in a south-easterly direction for a distance of 682 metres and crossing the Trout Beck on a new viaduct east of the existing A66;

- (f) then continuing in a generally south–easterly direction for a distance of 925 metres, to its junction with the new C3063 (the new Long Marton Junction) where it passes over the new C3063 (which passes beneath the new A66 via an underbridge);
- (g) continuing on its new alignment in a generally south-easterly direction, passing to the north of Crackenthorpe, and running parallel to the existing alignment of the A66 (to be reclassified as the new B6542) for a distance of 2.88 km, and then reconnecting with the existing alignment of the A66 at a point 205 metres to the west of the existing railway bridge;
- (h) then following the existing alignment of the A66 for a distance of 250 metres passing below the existing railway bridge, and continuing to a point 150 metres to the west following the existing alignment of the A66,

identified by a red line on the classification of roads plan for scheme 0405.

*THE NEW A66 COMPACT CONNECTOR ROADS*  
*In the administrative area of Westmorland and Furness Council*

**Temple Sowerby connector road**

25. A 129 metre length of new and existing road to be classified as part of the new A66 commencing at a point 15 metres to the south of its existing junction with the A66 westbound carriageway, continuing in a generally easterly direction, to its junction with the proposed roundabout as shown on sheet 1 of the classification of roads plan for scheme 0405, identified by a red line on the classification of roads plan for scheme 0405.

**Kirkby Thore Junction (access to British Gypsum) eastbound connector road**

26. A 155 metre diverge slip road off, and a 210 metre merge slip road onto, the eastbound carriageway of the new A66, connecting to a 178 metre length of new compact connector road, in a generally northerly direction, connecting with the improved unclassified Fell Lane (C3065). Slip roads and compact connector road to be classified as part of the A66, identified by a red line on the classification of roads plan for scheme 0405.

**Kirkby Thore Junction (access to British Gypsum) westbound connector road**

27. A 160 metre diverge slip road off, and a 180 metre merge slip road onto, the westbound carriageway of the new A66, connecting to a 217 metre length of new compact connector road, in a generally southerly direction, connecting with the new C3065. Slip roads and compact connector road to be classified as part of the A66, identified by a red line on the classification of roads plan for scheme 0405.

**Long Marton Junction eastbound connector road**

28. A 115 metre diverge slip road off, and a 130 metre merge slip road onto, the eastbound carriageway of the new A66, connecting to a 222 metre length of new compact connector road, in a generally north-easterly direction, connecting with the new C3063. Slip roads and compact connector road to be classified as part of the A66, identified by a red line on the classification of roads plan for scheme 0405.

**Long Marton Junction westbound connector road**

29. A 120 metre diverge slip road off, and a 129 metre merge slip road onto, the westbound carriageway of the new A66, connecting to a 200 metre length of new compact connector road, in a generally easterly direction, connecting with the new C3063. Slip roads and compact connector road to be classified as part of the A66, identified by a red line on the classification of roads plan for scheme 0405.

### **Local road linking C3057 to A66**

**30.** A 26 metre length of existing road to be classified as part of the new A66, commencing at its junction with the C3057 (Roman Road) and continuing in a south-westerly direction, following the alignment of the existing road which links with the eastbound carriageway of the A66, identified by a red line on the classification of roads plan for scheme 0405.

#### *THE NEW B6542*

*In the administrative area of Westmorland and Furness Council*

### **An 8.5 km length of new and existing road**

**31.** An 8.5 km length of new and existing road (as identified in sub-paragraphs (a) to (c) below) to be classified as part of the new B6542—

- (a) commencing at Point A, shown on the classification of roads plan for scheme 0405, and being the eastern arm of the new roundabout junction of the new B6542 with the new C3057 and the new A66 Temple Sowerby link road, and continuing for a distance of 1 km in a south-easterly direction and passing over the Spitals Underpass;
- (b) following the alignment of the existing A66 for a distance of 6.4 km in a generally south-easterly direction;
- (c) then departing from the alignment of the existing A66 at a point 800 metres to the east of its junction with Crackenthorpe Road and continuing for a distance of 1 km on the alignment of the existing B6542, to a point 277 metres to the west of the junction of the existing B6542 with Battlebarrow Road,

identified by a dark blue line on the classification of roads plan for scheme 0405.

### **Proposed Roundabout**

**32.** A new roundabout, connecting the new Temple Sowerby connector road with the new B6542, and the new C3057 (Morland Road north and south), identified by a dark blue line on the classification of roads plan for scheme 0405.

#### *THE NEW C3057*

*In the administrative area of Westmorland and Furness Council*

### **C3057 South**

**33.** A 154 metre length of improved road to be classified as part of the C3057, commencing at a point 317 metres south of the point where it passes beneath the existing A66 and continuing in a generally northerly direction until Point B on the classification of roads plan for scheme 0405, identified by a green line on the classification of roads plan for scheme 0405.

### **C3057 North**

**34.** A 508 metre length of improved road to be classified as part of the C3057, commencing from Point C on the classification of roads plan for scheme 0405, and continuing in a generally northerly direction on the existing alignment of Morland Road, then continuing in a westerly direction on the alignment of the existing Roman Road for a distance of 245 metres, to a point 100 metres to the west of the junction of Roman Road with the new link road leading to the existing A66, identified by a green solid line on the classification of roads plan for scheme 0405.

### *THE NEW C3065*

*In the administrative area of Westmorland and Furness Council*

#### **C3065 Road – Fell Lane**

35. A 342 metre length of new and improved road to be classified as part of the C3065, commencing at a point on Fell Lane, 97 metres to the north of its junction with existing Main Street, passing over the new A66 trunk road at the new Kirkby Thore Junction, and continuing in a generally south-westerly direction, on the existing alignment of Fell Lane, up to its junction with the realigned Main Street, identified by an orange line on the classification of roads plan for scheme 0405.

#### **C3065 Road – Realigned Main Street**

36. A 646 metre length of new road to be classified as part of the C3065, commencing from its junction with the improved (unclassified) Fell Lane (C3065), and continuing in a generally south-easterly direction to a point 30 metres to the north-east of the existing access to Green Barn, identified by an orange line on the classification of roads plan for scheme 0405.

37. An 87 metre length of existing road to be classified as part of the C3065, commencing at its junction with the new B6542 and continuing for a distance of 87 metres along the existing alignment of Main Street in Kirkby Thore, identified by an orange line on the classification of roads plan for scheme 0405.

### *THE NEW C3063*

*In the administrative area of Westmorland and Furness Council*

#### **A 1.2 km length of new road**

38. A 1.2 km length of new road to be classified as part of the C3063, commencing at Point D on the classification of roads plan, being at a distance of 1 km to the east of the junction of the existing Roman Road (bridleway) with the existing highway known as Long Marton, and continuing in a westerly and then a south-westerly direction, passing beneath the new A66 trunk road at the new compact grade-separated Long Marton Junction, and continuing to the point at which it meets the existing A66 (reclassified as the B6542), identified by a purple line on the classification of roads plan for scheme 0405.

### *THE NEW UNCLASSIFIED ROADS*

*In the administrative area of Westmorland and Furness Council*

#### **Roman Road (Unclassified U3199)**

39. A 302 metre length of the improved unclassified Roman Road (U3199), commencing at its junction with the new C3057, continuing on the existing alignment of Roman Road for a distance of 302 metres to the point where it meets the existing Priest Lane, identified by a black line on the classification of roads plan for scheme 0405.

#### **New Cross Street (Unclassified C3030)**

40. A 750 metre length of improved road, commencing on the existing Cross Street at a point to the east of Halefield Farm, following the existing alignment of Cross Street (C3030) for a distance of 85 metres, then departing and passing over the new A66 at the Cross Street bridge and terminating at Point F on the classification of roads plan for scheme 0405.

41. A 33 metre length of existing link road, commencing at its junction with the existing Cross Street and continuing for a distance of 33 metres in a generally southerly direction.

42. A 32 metre length of existing link road, commencing at its junction with Cross Street and terminating at Point G on the classification of roads plan for scheme 0405.

43. A 207 metre length of existing road, commencing at point E and continuing in a generally easterly direction to point F, points E and F being as shown on the classification of roads plan for scheme 0405, identified by a black line on the classification of roads plan for scheme 0405.

#### **Main Street (Unclassified U3772)**

44. A 290 metre length of improved unclassified road (U3772), commencing at the junction of Main Street and Fell Lane, continuing in a generally easterly direction for a distance of 290 metres, identified by a black line on the classification of roads plan for scheme 0405.

#### **New Sleastonhow Lane (Unclassified U3202)**

45. An 824 metre length of new unclassified road (U3202), commencing at a point on the existing Sleastonhow Lane 256 metres to the south of its junction with Main Street, continuing on the existing alignment of Sleastonhow Lane for a distance of 80 metres, then continuing in a south-easterly direction on its new alignment, and passing over the new A66 trunk road via the new Sleastonhow Lane bridge, and reconnecting with the existing alignment of Sleastonhow Lane at a point 901 metres to the south of its junction with Main Street, then continuing for a distance of 115 metres, identified by a black line on the classification of roads plan for scheme 0405.

#### **Improved Long Marton (Unclassified U3773)**

46. An 860m length of improved and unclassified road (U3773) comprising—

- (a) an 89 metre length of improved highway known as Long Marton (U3773), commencing at the junction of Long Marton with the existing A66 (to be reclassified as the B6542), and continuing in a north-easterly direction for a distance of 89 metres;
- (b) a 771 metre length of new and improved unclassified road (U3773) comprising highway known as Long Marton, commencing at a point 218 metres north-east of the junction of Long Marton with the existing A66 (to be reclassified as the B6542), and continuing on its existing alignment for a distance of 617 metres, and then continuing on a new alignment in a south-easterly direction to its junction with the new C3063,

identified by a black line on the classification of roads plan for scheme 0405.

#### **Existing Fell Lane (Unclassified C3065)**

47. A 185 metre length of improved unclassified road (C3065), from its junction with the realigned Main Street part of the C3065, for a distance of 185 metres in a north-easterly direction, identified by a black line on the classification of roads plan for scheme 0405.

### *UNCLASSIFIED ROAD WITH NEW QUIET LANE DESIGNATION*

*In the administrative area of Westmorland and Furness Council*

#### **Priest Lane (Unclassified U3199)**

48. A 1.9 km length of road (U3199), commencing at the existing junction of Roman Road with Priest Lane, continuing on the existing alignment of Priest Lane for a distance of 1.1 km, then continuing in a generally north-easterly direction to the point where it meets the improved (unclassified) Cross Street, identified by a cyan line on the classification of roads plan for scheme 0405.

*ROADS TO BE DE-TRUNKED*

*In the administrative area of Westmorland and Furness Council*

49. A 7.2 km length of the existing A66 trunk road from Point A on sheet 1 (of 6) of the de-trunking plans for scheme 0405, being a point 242 metres to the south-east of Spitals Farm, to Point B on sheet 6 (of 6) of the de-trunking plans for scheme 0405, being a point 277 metres to the west of the railway bridge carrying the existing A66 over the Settle to Carlisle railway line.

**PART 4**

**SCHEME 06 – APPLEBY TO BROUGH**

*THE NEW AND IMPROVED A66 TRUNK ROAD*

*In the administrative area of Westmorland and Furness Council*

**An 8.2 kilometre length of new road**

50. An 8.2 km length of new road to be constructed and classified (as identified in sub-paragraphs (a) to (h) below) as part of the A66 trunk road (such length also including existing highway to be improved, as identified in sub-paragraphs (a) and (h) below)—

- (a) commencing from a point 200 metres to the west of Café Sixty Six and following the existing alignment of the A66 for a distance of 980 metres in a generally south-easterly direction to a point 1.2 km west of the junction of the existing A66 with the Sandford Road B6259;
- (b) passing over the new bridge at the new compact grade-separated B6259 Sandford Junction and then continuing in a generally south-easterly direction for a distance of 1.8 km to a point 531 metres to the east of the centreline of the existing B6259;
- (c) then continuing on a new alignment in a south-easterly direction, passing to the north of Warcop, for a distance of 610 metres, crossing the Cringle Beck on a new viaduct at a point 210 metres south of the existing A66;
- (d) continuing from the Cringle Beck in a generally south-easterly direction for a distance of 680 metres, crossing the Moor Beck on a new viaduct at a point 21 metres south of the existing A66 Moor Beck crossing;
- (e) continuing from the Moor Beck in a generally south-easterly direction for a distance of 320 metres to cross the existing Warcop Road at a point 165 metres north of its junction with the existing Station Road;
- (f) continuing from Warcop Road and passing under the new bridge to the west of Warcop Road carrying the local road connection and continuing to the north of Warcop for a distance of 1.5 km in a generally south-easterly direction and crossing the route of the existing Flitholme Road at a point 47 metres south of its junction with the existing A66;
- (g) continuing to the north of Flitholme and Langrigg in a generally easterly direction for a distance of 570 metres and crossing the route of the existing Langrigg Lane at a point 33 metres south of its junction with the existing A66; and
- (h) from Langrigg Lane continuing to the south of the existing A66 for a distance of 1.8 km in a generally easterly direction to a point located 394 metres to the west of the existing Musgrave Lane Overbridge at Brough,

identified by a red line on the classification of roads plan for scheme 06.

*B6259 SANDFORD JUNCTION (A66 TRUNK ROAD)*  
*In the administrative area of Westmorland and Furness Council*

**New B6259 Sandford Junction**

51. A 556 metre length of new road, including diverge and merge slip roads onto and off the eastbound carriageway of the new A66 and a new connector road (together forming part of the new compact grade-separated Sandford Junction) to be constructed and classified as part of the A66 trunk road, commencing from its diverge point on the centre of the new A66 eastbound carriageway, continuing in a northerly and then a southerly direction, passing under the new A66 mainline and continuing in an easterly direction to its connection with the new B6259, identified by a red line on the classification of roads plan for scheme 06.

*NEW WARCOP EASTBOUND JUNCTION*  
*In the administrative area of Westmorland and Furness Council*

**New Warcop Eastbound Junction**

52. A 285 metre length of new road to be constructed and classified as part of the new C3077, commencing from its diverge point on the centre of the new A66 eastbound carriageway and continuing in a north-easterly direction to its merge point on the centre of the new C3077 (old de-trunked A66), identified by an orange line on the classification of roads plan for scheme 06.

*NEW WARCOP WESTBOUND JUNCTION*  
*In the administrative area of Westmorland and Furness Council*

**New Warcop Westbound Junction**

53. A 715 metre length of new road to be constructed and classified as part of the A66 trunk road, commencing from its diverge point on the centre of the new A66 westbound carriageway (including merge and diverge slip roads and connector road) and continuing in a southerly and then a northerly direction over the new A66 to its connection with the new local road (C3077) on the north side of the new A66, identified by a red line on the classification of roads plan for scheme 06.

*THE NEW B6259*  
*In the administrative area of Westmorland and Furness Council*

**A 220m length of new road (new B6259)**

54. A 220 metre length of new road to be constructed and classified as part of the new B6259 located 29 metres to the east of the existing B6259, north of Sandford, and extending generally northwards from a point 220 metres south of the existing junction of the B6259 and the A66, identified by a green line on the classification of roads plan for scheme 06.

*THE EXISTING A66 (NEW C3077)*  
*In the administrative area of Westmorland and Furness Council*

**A 1.1 kilometre length of existing A66 trunk road**

55. A 1.1 km length of the existing A66 trunk road to be reclassified as part of the C3077 (as identified in sub-paragraphs (a) and (b) below)—

- (a) commencing from a point 12 metres to the west of Hayber Lane following the existing A66 alignment for a distance of 113 metres in a generally south-easterly direction to a point 100 metres east of the junction of the existing A66 with Hayber Lane; and

- (b) commencing from a point 311 metres to the east of the junction of Flitholme Road with the existing A66, and following the existing A66 alignment for a distance of 1 km in a generally easterly direction to a point 1.2 km east of the junction of the existing A66 with Flitholme Road,

identified by an orange line on the classification of roads plan for scheme 06.

*THE NEW C3077*

*In the administrative area of Westmorland and Furness Council*

**A 3.5 kilometre length of new road (realigned old A66)**

**56.** A 3.5 km length of new local road to be constructed and classified as part of the C3077 (as identified in sub-paragraphs (a) and (b) below)—

- (a) commencing from a point 100 metres to the east of Hayber Lane and continuing on a new alignment adjacent to the new A66 for a distance of 2.3 km in a generally south-easterly direction to a point 311 metres east of the junction of the existing A66 with Flitholme Road; and
- (b) commencing from a point 759 metres to the east of Langrigg Lane and continuing on a new alignment, in parallel with the new A66, for a distance of 1.2 km in a generally easterly direction to a point 254 metres west of the junction of Musgrave Lane and Main Street,

identified by an orange line on the classification of roads plan for scheme 06.

*THE NEW UNCLASSIFIED U3311*

*In the administrative area of Westmorland and Furness Council*

**A 126 metre length of new road (Flitholme Road)**

**57.** A 126 metre length of new local road to be constructed and classified as the U3311 commencing from its junction with the new Flitholme to Langrigg Link (U3311) and continuing for a distance of 126 metres in a generally north-easterly direction to its junction with the new C3077, identified by a black line on the classification of roads plan for scheme 06.

*THE NEW UNCLASSIFIED U3311*

*In the administrative area of Westmorland and Furness Council*

**A 666 metre length of new road (Flitholme to Langrigg Link)**

**58.** A 666 metre length of new local road to be constructed and classified as the U3311 commencing from a point 145 metres to the north-east of the Low Gill Beck near Flitholme village and continuing for a distance of 666 metres in a generally easterly direction to connect with the existing Langrigg Lane, identified by a black line on the classification of roads plan for scheme 06.

*THE NEW UNCLASSIFIED U3221*

*In the administrative area of Westmorland and Furness Council*

**A 890 metre length of the existing A66 at Warcop (Moorhouse Link)**

**59.** An 890 metre length of the existing A66 to become an unclassified road (U3221) between the New Warcop Eastbound Junction and a point 280 metres to the west of its junction with Moorhouse Lane, identified by a black line on the classification of roads plan for scheme 06.



*ROADS TO BE DE-TRUNKED*  
*In the administrative area of Westmorland and Furness Council*

**A 1.2 kilometre length of existing A66 Trunk Road**

60. A 1.2 km metre length of the existing A66 trunk road from point A on sheet 1 of the de-trunking plans for scheme 06, being the junction of the existing A66 trunk road with Moorhouse Lane, extending in a generally south-easterly direction to point B on sheet 1 of the de-trunking plans for scheme 06, being a point on the existing A66 trunk road, 270 metres to the south-east of its intersection with Hayber Lane.

**A 1.4 kilometre length of existing A66 Trunk Road**

61. A 1.4 km length of the existing A66 trunk road from point C on sheet 2 of the de-trunking plans for scheme 06, being a point on the A66 trunk road 490 metres to the west of the junction of the existing A66 with Bridleway 350/021, in an easterly direction to point D on sheet 2 of the de-trunking plans for scheme 06, being a point on the existing A66 trunk road, 900 metres to the east of its intersection with Langrigg Lane.

**PART 5**

**SCHEME 07 – BOWES BYPASS**

*THE NEW AND IMPROVED A66 TRUNK ROAD*  
*In the administrative area of Durham County Council*

**A66 all-purpose dual carriageway**

62. A 3.6 km length of new road to be constructed and classified as part of the A66 trunk road all-purpose dual carriageway (such length also including existing highway to be improved) commencing from a point 550 metres to the west of the Clint Lane Overbridge and following the existing A66 alignment for a distance of 3.6 km in a generally easterly direction to a point 363 metres east of the access to Hulands Quarry, identified by a red line on the classification of roads plan for scheme 07.

*THE NEW AND IMPROVED BOWES JUNCTION*  
*In the administrative area of Durham County Council*

**A66 eastbound diverge slip road**

63. A 525 metre length of new slip road to be classified as part of the A66 trunk road, commencing from its diverge point on the new A66 eastbound carriageway, in a north-easterly direction to its junction with the improved A67, 35 metres north of the A66, identified by a red line on the classification of roads plan for scheme 07.

**A66 eastbound merge slip road**

64. A 450 metre length of new slip road to be classified as part of the A66 trunk road, commencing from its junction with the improved A67, 88 metres north of the new A66, and continuing in a south-easterly direction to its merge point on the centre of the eastbound carriageway of the new A66 trunk road, identified by a red line on the classification of roads plan for scheme 07.

### **A66 westbound diverge slip road**

65. A 604 metre length of new slip road to be classified as part of the A66 trunk road, commencing from its diverge point on the new A66 westbound carriageway in a westerly direction to its junction with the unnamed unclassified side road (from the A67 into Bowes), 42 metres south-east of the junction with the A67, identified by a red line on the classification of roads plan for scheme 07.

### **A66 westbound merge slip road**

66. A 368 metre length of new slip road to be classified as part of the A66 trunk road, commencing from the existing alignment of the A67, 72 metres south-east of its junction with the unnamed unclassified side road (from the A67 into Bowes), and continuing in a generally westerly direction to its merge point on the westbound carriageway of the new A66 trunk road, identified by a red line on the classification of roads plan for scheme 07.

### **A67**

67. A 339 metre length of existing road to be widened and classified as part of the A67, commencing 72 metres south-east of its junction with the unnamed unclassified side road (from the A67 into Bowes), and continuing in a generally north-easterly direction, identified by a green line on the classification of roads plan for scheme 07.

## *UNCLASSIFIED ROADS, THE STREET AND CLINT LANE OVERBRIDGE*

*In the administrative area of Durham County Council*

### **The Street**

68. A 733 metre length of new unclassified road to be constructed, commencing 160 metres to the west of the existing junction of “The Street” with the A66 and continuing in an easterly direction for approximately 420 metres, then turning and continuing in a generally northerly direction and crossing the A66 via the East Bowes Accommodation Overbridge. The new unclassified road then curves eastwards and southwards before terminating at the new private means of access to Low Broats Farm and High Broats Farm, on the eastern side of the existing Low Broats Farm property, identified by a black line on the classification of roads plan for scheme 07.

### **The new Clint Lane Overbridge**

69. A 115 metre length of new unclassified road to be constructed, comprising the new Clint Lane Overbridge (replacing the existing Clint Lane Overbridge), passing over the new A66 and linking Clint Lane with The Street, identified by a black line on the classification of roads plan for scheme 07.

### **Unnamed Side Road**

70. A 126 metre length of existing unclassified road to be improved, commencing from its junction with the realigned A67 and continuing in a generally southerly direction towards The Street, identified by a black line on the classification of roads plan for scheme 07.

## *ROADS TO BE DE-TRUNKED*

*In the administrative area of Durham County Council*

### **A66 Junction with The Street**

71. A length of approximately 45 metres of the existing A66 trunk road as shown on sheet 1 of the de-trunking plan for scheme 07 and being the existing junction of “The Street” with the westbound carriageway of the A66, to the east of Stone Bridge Farm.

## PART 6

### SCHEME 08 – CROSS LANES TO ROKEBY

*THE NEW AND IMPROVED A66 TRUNK ROAD  
In the administrative area of Durham County Council*

#### **A66 all-purpose dual carriageway**

72. A 4.2 km length of new road to be constructed and classified (as identified in sub-paragraphs (a) to (e) below) as part of the A66 trunk road all-purpose dual carriageway (such length also including existing highway to be improved, as identified in sub-paragraphs (a), (c) and (e) below)—

- (a) commencing from a point 200 metres to the west of the existing junction of the A66 with Rutherford Lane and following the existing A66 alignment for a distance of 1.1 km in a generally easterly direction; passing through the new Cross Lanes compact grade separated junction and under the new B6277 Moorhouse Lane bridge to a point 400 metres east of the junction of the existing A66 with B6277 Moorhouse Lane;
- (b) then departing from the existing alignment of the A66 in a south-easterly direction, running generally parallel with the existing A66 for a distance of 645 metres past Street Side Farm, in an easterly direction;
- (c) re-joining the existing A66 alignment at a point 393 metres east of the existing junction of the private means of access to Birk House Farm with the A66 and continuing in an easterly direction for 644 metres;
- (d) departing from the existing alignment of the A66 in a south-easterly direction, passing through the new Rokeby Junction and passing on the south side of the Old Rectory building 100 metres south of the existing A66 before curving northwards and re-joining the existing alignment of the A66 at the existing junction with the C165 Barnard Castle Road;
- (e) continuing in an easterly direction along the alignment of the existing A66 for a distance of 445 metres,

identified by a red line on the classification of roads plan for scheme 08.

*THE NEW CROSS LANES JUNCTION AND UNCLASSIFIED SIDE ROADS AT RUTHERFORD  
LANE AND MOORHOUSE LANE*

*In the administrative area of Durham County Council*

#### **Eastbound A66 / B6277 compact connector road**

73. A 150 metre diverge slip road off, and a 130 metre merge slip road with a 40 metre nose onto, the eastbound carriageway of the new A66, both connecting to a 177 metre length of new compact connector road curving in a northerly and then an easterly direction, and connecting to the new B6277 Moorhouse Lane. Slip roads and compact connector road to be classified as part of the A66, identified by a red line on the classification of roads plan for scheme 08.

#### **Westbound A66 / B6277 compact connector road**

74. A 150 metre diverge slip road off, and a 170 metre merge slip road onto, the westbound carriageway of the new A66, both connecting to a 78 metre length of new compact connector road in a southerly direction, connecting with the new B6277 Moorhouse Lane. Slip roads and compact connector road to be classified as part of the A66, identified by a red line on the classification of roads plan for scheme 08.

#### **New B6277 Moorhouse Lane link road**

75. A 1.1 km length of new road to be constructed (as identified in sub-paragraphs (a) to (c) below) and classified as the B6277 Moorhouse Lane—

- (a) commencing 70 metres to the south-west of its junction with the realigned Rutherford Lane, at a point 240 metres south of the existing junction of the A66 with Rutherford Lane; continuing in a north-easterly direction;
- (b) then crossing the new A66 via a new overbridge, 125 metres west of the existing A66 junction with the B6277 Moorhouse Lane;
- (c) continuing northwards and re-joining the existing B6277 Moorhouse Lane, at a point 410 metres north of the existing junction of the A66 with the B6277 Moorhouse Lane,

identified by a cyan line on the classification of roads plan for scheme 08.

#### **Realigned Moorhouse Lane (north)**

76. A 170 metre length of new unclassified road to be constructed, commencing from its junction with the new B6277 Moorhouse Lane at a point 235 metres north of the existing junction of the A66 with the B6277 Moorhouse Lane and continuing in a southerly direction for a distance of 70 metres (replacing the equivalent length of the existing B6277 Moorhouse Lane with unclassified road), identified by a black line on the classification of roads plan for scheme 08.

#### **Realigned Rutherford Lane**

77. A 78 metre length of new unclassified road to be constructed, commencing from its junction with the new B6277 Moorhouse Lane link road, approximately 225 metres south of the existing junction of the A66 with Rutherford Lane, continuing in a northerly direction before connecting into the existing Rutherford Lane, identified by a black line on the classification of roads plan for scheme 08.

#### **Realigned Moorhouse Lane (south)**

78. A 332 metre length of new unclassified road to be constructed, commencing from its junction with the new B6277 Moorhouse Lane link road and continuing eastwards, passing to the north of the Cross Lanes Organic Farm Shop and Café before curving southwards to connect to the existing Moorhouse Lane (south), identified by a black line on the classification of roads plan for scheme 08.

### *THE NEW ROKEBY JUNCTION*

*In the administrative area of Durham County Council*

#### **A66 Eastbound Diverge connector road**

79. A 183 metre diverge slip road off the eastbound carriageway of the new A66 curving northwards to connect to the existing A66 (to be reclassified as part of the C165 Barnard Castle Road), identified by a red line on the classification of roads plan for scheme 08.

#### **Westbound A66 / C165 compact connector road**

80. A 150 metre diverge slip road off, and a 170 metre merge slip road onto, the westbound carriageway of the new A66, both connecting to a 210 metre length of new compact connector road in a southerly direction, connecting with the new C165 Barnard Castle Road. Slip roads and compact connector road to be classified as part of the A66, identified by a red line on the classification of roads plan for scheme 08.

#### **Rokeby Junction compact grade separated junction**

81. A 200 metre length of new road to be classified as part of the C165 Barnard Castle Road. Commencing at a point 155 metres south of the existing alignment of the A66, then continuing northwards under the new A66 via a new underbridge, then curving in an easterly direction to join the existing alignment of the A66, (to be reclassified as part of the C165 Barnard Castle Road) at a

point 190 metres west of St Mary's Church, identified by a pink line on the classification of roads plan for scheme 08.

*RECLASSIFICATION OF THE EXISTING A66 AS THE C165  
In the administrative area of Durham County Council*

**Existing A66**

- 82.** A length of the existing A66 to be reclassified as the C165 Barnard Castle Road—
- (a) commencing at the new Rokeby Junction, from a point 190m west of St Mary's Church, and continuing in an easterly direction for 920 metres;
  - (b) then continuing around the circulatory carriageway of the new roundabout at the existing junction of the A66 with the C165 Barnard Castle Road,
- identified by a purple line on the classification of roads plan for scheme 08.

*A66 EASTBOUND MERGE SLIP ROAD FROM RECLASSIFIED C165 BARNARD CASTLE  
ROUNDBOUT*

*In the administrative area of Durham County Council*

**A66 Eastbound Merge Slip Road**

- 83.** A 350 metre length of the existing A66, linking the C165 (formerly the A66) to the new A66, to be classified as the A66. Commencing at the new roundabout linking the new C165 Barnard Castle Road with the A66 and continuing eastwards to connect onto the new A66 all-purpose dual carriageway, identified by a red line on the classification of roads plan for scheme 08.

*ROADS TO BE DE-TRUNKED*

*In the administrative area of Durham County Council*

**A66 Junction with Rutherford Lane**

- 84.** A length of approximately 55 metres of the existing A66 trunk road, identified between points A and B on sheet 1 of the de-trunking plans for scheme 08, and being located at the existing junction of Rutherford Lane with the A66.

**A66 Trunk Road**

- 85.** A length of approximately 26 metres of the existing A66 trunk road, identified between points C and D on sheet 1 of the de-trunking plans for scheme 08, and being located opposite the existing junction of Moorhouse Lane (South) with the A66.

**A66 Junction with Moorhouse Lane (South)**

- 86.** A length of approximately 105 metres of the existing A66 trunk road, identified between points E and F on sheet 1 of the de-trunking plans for scheme 08, and being located at the existing junction of Moorhouse Lane (South) with the A66.

**A66 Trunk Road**

- 87.** A length of approximately 1.27 km of the existing A66 trunk road, commencing from a point on the A66 trunk road 200 metres to the east of the point where existing Rokeby Footpath 10 meets the existing A66, identified as point G on sheet 2 of the de-trunking plans for scheme 08, and continuing in an easterly direction to a point on the existing A66 trunk road, 20 metres to the east of the existing junction of the A66 with Barnard Castle Road, identified as point H on sheet 3 of the de-trunking plans for scheme 08.

## PART 7

### SCHEME 09 – STEPHEN BANK TO CARKIN MOOR

#### *THE NEW AND IMPROVED A66 TRUNK ROAD*

*In the administrative area of the North Yorkshire Council*

#### **A66 all-purpose dual carriageway**

**88.** A 6.2 km length of new road to be constructed and classified (as identified in sub-paragraphs (a) to (f) below) as part of the A66 trunk road all-purpose dual carriageway (such length also including existing highway to be improved, as identified in sub-paragraphs (a), (e) and (f) below)—

- (a) commencing from a point 675 metres to the west of the existing junction of the A66 with access to Browson Bank, and following the existing A66 alignment for a distance of 675 metres in a generally easterly direction;
- (b) then departing from the existing alignment of the A66, to run generally parallel with the north side of the existing A66 for a distance of 1.4 km in a generally easterly direction;
- (c) continuing in a generally north-easterly direction, passing under the C12 Collier Lane via a new underbridge 50 metres to the north of the existing junction of the A66 with Collier Lane, then continuing in an easterly direction, to a point 250 metres to the north of the existing A66, at Fox Grove, before curving back in a south-easterly direction;
- (d) continuing in a south-easterly direction through the new Mains Gill Junction, the crossing the existing Moor Lane road at a point 135 metres to the north of the existing junction of the A66 with Moor Lane, and then continuing in a south-easterly direction to cross the existing A66 at a point 328 metres to the east of Mainsgill Bridge;
- (e) then continuing in an easterly-direction and re-joining the existing alignment of the A66, at a point 287 metres to the west of the existing junction of the A66 with the C108 Warrener Lane;
- (f) continuing on the existing alignment of the A66 in an easterly direction for a distance of 1.1 km, to a point 775 metres to the east of the existing junction of the A66 with the C108 Warrener Lane,

identified by a red line on the classification of roads plan for scheme 09.

#### **A66 westbound merge slip road**

**89.** A 240 metre length of new slip road to be constructed and classified as part of the A66 all-purpose dual carriageway commencing from a point 205 metres to the east of the existing junction of the A66 with Brownson Bank and continuing in a south-easterly direction for a distance of 240 metres until it meets the existing A66 (from which point the existing A66 is to be reclassified as the C108), identified by a red line on the classification of roads plan for scheme 09.

#### *THE EXISTING A66 AND WARRENER LANE LINK ROAD*

*In the administrative area of the North Yorkshire Council*

#### **C108 Warrener Lane**

**90.** A 4.5 km length of new road to be constructed and existing A66 (as identified in sub-paragraphs (a) to (c) below) to be reclassified as part of the C108 Warrener Lane Road (such length also including existing highway to be improved, as identified in sub-paragraphs (a) and (c) below)—

- (a) a 450-metre length of the existing A66 to be reclassified as the C108 Warrener Lane, commencing from with the point at which it meets the new A66 westbound merge slip road (onto the new A66 dual carriageway) and continuing in an easterly direction to a point 175 metres to the west of the existing junction of the A66 with the U1084 Dick Scot Lane;

- (b) departing southwards from the existing alignment of the A66 road and continuing for a distance of 990 metres before re-joining the existing A66 at a point 205 metres to the west of the existing junction of the A66 with the C12 Collier Lane;
- (c) then continuing on the alignment of the existing A66 through the new Mains Gill Junction for a distance of 1.6 km and terminating at a point 89 metres to the east of the Mainsgill Bridge;
- (d) a 1.1 km length of new road to be constructed and to be classified as the C108 Warrener Lane, commencing from a point 89 metres to the east of the Mainsgill Bridge, then continuing in a generally south-easterly direction to the south of the existing A66, until connecting to the existing C108 Warrener Lane at the access to Pond Dale Farm,

identified by a cyan line on the classification of roads plan for scheme 09.

### **Realigned C12 Collier Lane**

**91.** A 190 metre length of new road to be constructed and classified as the C12 Collier Lane, to carry the carriageway over the new A66, commencing from a point 12 metres south of the existing Collier Lane junction with the A66 and continuing in a north-easterly direction to tie in with the existing Collier Lane, identified by a pink line on the classification of road plans for scheme 09.

## *MAINS GILL JUNCTION*

### **Eastbound A66 compact connector road**

**92.** A 480 metre length of new road to be classified as the new A66, commencing from the eastbound carriageway of the new A66, continuing first in a northerly direction, then in an easterly direction, and then in a southerly direction and crossing the new A66 via a new overbridge (comprising part of the new Mains Gill Junction), before terminating at its junction with the existing A66 (to be de-trunked and reclassified as the C108), identified by a red line on the classification of roads plans for scheme 09.

### **Westbound A66 compact connector road**

**93.** A 255 metre length of new road to be classified as the new A66, commencing from the westbound carriageway of the new A66, continuing in a southerly direction, then in an easterly direction before terminating at its junction with the new A66 eastbound compact connector road, identified by a red line on the classification of roads plans for scheme 09.

### **Moor Lane link road**

**94.** A 192 metre length of new road to be unclassified, commencing from its junction with the new eastbound compact connector road at, at a point 50 metres to the north of the new overbridge carrying the eastbound connector road over the A66 at the new Mains Gill Junction, and continuing in a generally north-easterly direction to connect into the existing Moor Lane at a point 317 metres to the north of the exiting junction of the A66 with Moor Lane, identified by a black line on the classification of roads plans for scheme 09.

## *ROADS TO BE DE-TRUNKED*

*In the administrative area of the North Yorkshire Council*

### **A66 Trunk Road (west)**

**95.** A length of approximately 1.1 km of the existing A66 trunk road, commencing from a point on the existing A66 trunk road 375 metres to the east of the existing access to Browson Bank, identified as point A on sheet 1 of the de-trunking plans for scheme 09, and continuing in an easterly direction to a point on the existing A66 trunk road, 66 metres to the east of the access to Old Duns Bank, identified as point B on sheet 2 of the de-trunking plans for scheme 09.

### **A66 Trunk Road (east)**

**96.** A length of approximately 1.9 km of the existing A66 trunk road, commencing from a point on the A66 trunk road 25 metres to the west of the existing junction of Collier Lane with the A66, identified as point C on sheet 2 of the de-trunking plans for scheme 09, and continuing in an easterly direction to a point on the existing A66 trunk road, 150 metres to the east of the Mainsgill Bridge, identified as point D on sheet 3 of the de-trunking plans for scheme 09.



SCHEDULE 8

Article 42

TRAFFIC REGULATION MEASURES ETC.

PART 1

SCHEME 0102 – M6 J40 TO KEMPLAY BANK

Note 1: Where roads are to become restricted roads as indicated in this Schedule (Part 1) and as shown on the plans relating to this Schedule (the traffic regulation measures (speed limits) plans), speed limits are to apply in accordance with the provision of the Road Traffic Regulation Act 1984 (which defines speed limits of 30mph on ‘restricted’ roads by reference to street lighting).

Note 2: Where existing speed limits (to be retained) are shown on the traffic regulation measures (speed limits) plans which relate to Part 1 of this Schedule, this is for information only and such speed limits are not subject to this Order.

**SPEED LIMITS AND RESTRICTED ROADS**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Road name number and length</i>	<i>(3)</i> <i>Speed limit and restricted roads status</i>
<i>Scheme 0102 – The traffic regulation measures (speed limits) plans – sheet 1</i>		
In the administrative area of Westmorland and Furness Council and the parish of Penrith	Improved length of existing A66 trunk road (dual carriageway)  From a point 380 metres south-west of the M6 J40 roundabout in a north-easterly direction to where the A66 meets the M6 J40 roundabout.	50 miles per hour
	Improved existing circulatory carriageway of the M6 J40 roundabout.	National speed limit (30 miles per hour)
	Improved M6 southbound diverge slip road  A length from its diverge point on the southbound carriageway of the M6 for a distance of 115 metres in a south-easterly direction along its approach to the M6 J40 roundabout.	National speed limit (70 miles per hour)
	Improved M6 southbound merge slip road  A length from its merge point on the southbound carriageway of the M6 for a distance of 200 metres in a north-westerly direction along its approach to the M6 J40 roundabout.	National speed limit (70 miles per hour)
	Improved M6 northbound diverge slip road  A length from its diverge point on the northbound carriageway of the M6 for a distance of 227 metres in a north-	National speed limit (70 miles per hour)

	westerly direction along its approach to the M6 J40 roundabout.	
	Improved M6 northbound merge slip road  A length from its merge point on the northbound carriageway of the M6 for a distance of 150 metres in a south easterly direction along its approach to the M6 J40 roundabout.	National speed limit (70 miles per hour)
	Improved A592  From the point where the A592 meets the M6 J40 roundabout for a distance of 112 metres in a north-westerly direction, to a point 80 metres west of the North Lakes Hotel & Spa.	National speed limit (30 miles per hour)
	New improved A592  From a point 112 metres to the northwest of the M6 J40 roundabout for a distance of 164 metres in a north-westerly direction to a point 230 metres northwest of the North Lakes Hotel & Spa.	National speed limit (30 miles per hour)
	New (realigned) A66 trunk road  From the point where the A66 connects with the eastern side of the M6 J40 roundabout, for a distance of 180 metres in an easterly direction to a point 125 metres north of Skirsgill Depot.	National speed limit (30 miles per hour)
	New (realigned) A66 trunk road  From a point where the A66 connects with the western side of the M6 J40 roundabout, for a distance of 71 metres in a westerly direction.	National speed limit (30 miles per hour)
<i>Scheme 0102 – The traffic regulation measures (speed limits) plans – sheets 1 and 2</i>		
In the administrative area of Westmorland and Furness Council and the parish of Penrith	New (realigned) A66 trunk road  From a point 164 metres to the east of the junction of the A66 with the circulatory carriageway of the M6 J40, in a generally north-easterly direction for a distance of 1.6km, to a point 235 metres to the north-east of the existing Police Station.	50 miles per hour
<i>Scheme 0102 – The traffic regulation measures (speed limits) plans – sheet 2</i>		
In the administrative area of Westmorland and Furness Council and the parish of Penrith	Improved circulatory carriageway of the Kemplay Bank Roundabout and a length of the approaches of the A66, the A6 and the A686 to the circulatory carriageway of the Kemplay Bank Roundabout.	National speed limit (30 miles per hour)
	New (realigned) A66 trunk road eastbound diverge slip road to the Kemplay Bank Roundabout	50 miles per hour

	A length from its diverge point on the eastbound carriageway of the A66 for a distance of 247 metres in a north-easterly direction along its approach to the Kemplay Bank Roundabout.	
	New (realigned) A66 trunk road eastbound merge slip road from the Kemplay Bank Roundabout  A length from its merge point on the eastbound carriageway of the A66 for a distance of 380 metres in a westerly direction along its approach to the Kemplay Bank Roundabout.	50 miles per hour
	New (realigned) A66 trunk road westbound diverge slip road for the Kemplay Bank Roundabout  A length from its diverge point on the westbound carriageway of the A66 for a distance of 345 metres in a south-westerly direction along its approach to the Kemplay Bank Roundabout.	50 miles per hour
	New (realigned) A66 trunk road westbound merge slip road from the Kemplay Bank Roundabout  A length from its merge point on the westbound carriageway of the A66 for a distance of 292 metres in a north-easterly direction along its approach to the Kemplay Bank Roundabout.	50 miles per hour
	New (realigned) A6  From the point where the A6 meets the north side of the Kemplay Bank Roundabout, for a distance of 40 metres in a north-westerly direction to a point 72 metres south west of the Hospital.	National speed limit (30 miles per hour)
	New (realigned) A6  From a point 85 metres north of the point where the A6 meets the Kemplay Bank Roundabout, north-westwards for a distance of 44 metres.	30 miles per hour
	New (realigned) A6  From the point where the A6 meets the south side of the Kemplay Bank Roundabout, to a point 65 metres south of this.	National speed limit (30 miles per hour)
	New (realigned) A6  From a point 82 metres south of the point where the A6 meets the Kemplay Bank	30 miles per hour

	Roundabout, southwards for a distance of 24 metres.	
	New (realigned) A686 From the point where the A686 joins the Kemplay Bank Roundabout for a distance of 95 metres in a north-easterly direction.	National speed limit (30 miles per hour)
	New (realigned) A686 From a point 95 metres north-east of where the A686 joins the Kemplay Bank Roundabout for a distance of 125 metres in a north-easterly direction.	40 miles per hour

**TRAFFIC REGULATION MEASURES (PROHIBITIONS)**

(1) <i>Area</i>	(2) <i>Road name number and length</i>	(3) <i>Measures</i>
<i>Scheme 0102 – The traffic regulation measures (clearways and prohibitions) plans – sheet 1</i>		
In the administrative area of Westmorland and Furness Council and the parish of Penrith	Improved length of existing A66 trunk road (dual carriageway)  From a point 380 metres south-west of the M6 J40 roundabout in a north-easterly direction to the point where the A66 meets the M6 J40 roundabout.	Clearway (to include verges, hard shoulders and slip roads; and to exclude laybys)
	Improved circulatory carriageway of the M6 J40 roundabout.	Clearway (to include verges, hard shoulders and slip roads; and to exclude laybys)
	Improved M6 southbound diverge slip road  From its junction with the M6 J40 roundabout for a distance of 225 metres in a north-westerly direction.	Clearway (to include verges, hard shoulders and slip roads; and to exclude laybys)
	Improved M6 southbound merge slip road  From its junction with the M6 J40 roundabout for a distance of 260 metres in a south-easterly direction.	Clearway (to include verges, hard shoulders and slip roads; and to exclude laybys)
	Improved M6 northbound diverge slip road  From its junction with the M6 J40 roundabout for a distance of 285 metres in a south-easterly direction.	Clearway (to include verges, hard shoulders and slip roads; and to exclude laybys)
	Improved M6 northbound merge slip road  From its junction with the M6 J40 roundabout for a distance of 185 metres in a north-westerly direction.	Clearway (to include verges, hard shoulders and slip roads; and to exclude laybys)

	Improved A592  From the point where the A592 meets the M6 J40 roundabout to a point 112 metres north-west of this.	Clearway (to include verges, hard shoulders and slip roads; and to exclude laybys)
<i>Scheme 0102 – The traffic regulation measures (clearways and prohibitions) plans – sheets 1 to 2</i>		
In the administrative area of Westmorland and Furness Council and the parish of Penrith	New (realigned) A66 trunk road  From the point where the A66 connects with the eastern side of the M6 J40 roundabout for a distance of 1.7km in an easterly direction.	Clearway (to include verges, hard shoulders and slip roads; and to exclude laybys)
<i>Scheme 0102 – The traffic regulation measures (clearways and prohibitions) plans – sheet 2</i>		
In the administrative area of Westmorland and Furness Council and the parish of Penrith	Improved circulatory carriageway of the Kemplay Bank Roundabout and merge and diverge lane approaches from the A66.	Clearway (to include verges, hard shoulders and slip roads; and to exclude laybys)
	New (realigned) A66 trunk road eastbound diverge slip road to the Kemplay Bank Roundabout  From a point 373 metres south-west of the centre point of the Kemplay Bank Roundabout for a distance of 320 metres in a generally north-easterly direction.	Clearway (to include verges, hard shoulders and slip roads; and to exclude laybys)
	New (realigned) A66 trunk road eastbound merge slip road from the Kemplay Bank Roundabout  From a point 60 metres north-east of the centre point of the Kemplay Bank Roundabout for a distance of 418 metres in a generally north-easterly direction.	Clearway (to include verges, hard shoulders and slip roads; and to exclude laybys)
	New (realigned) A66 trunk road westbound diverge slip road to the Kemplay Bank Roundabout  From a point 75 metres east of the centre point of the Kemplay Bank Roundabout for a distance of 403 metres in a generally north-easterly direction.	Clearway (to include verges, hard shoulders and slip roads; and to exclude laybys)
	New (realigned) A66 trunk road westbound merge slip road from the Kemplay Bank Roundabout  From a point 70 metres south-west of the centre point of the Kemplay Bank Roundabout for a distance of 330 metres in a generally south-westerly direction.	Clearway (to include verges, hard shoulders and slip roads; and to exclude laybys)
	New (realigned) A6  From the point where the A6 meets the north side of the Kemplay Bank	Clearway (to include verges, hard shoulders and slip roads; and to exclude laybys)

	Roundabout, northwards for a distance of 85 metres.	
	New (realigned) A6 From the point where the A6 meets the south side of the Kemplay Bank Roundabout. Southwards for a distance of 82 metres.	Clearway (to include verges, hard shoulders and slip roads; and to exclude laybys)
	New (realigned) A686 From the point where the A686 joins the Kemplay Bank Roundabout for a distance of 155 metres in a north-easterly direction.	Clearway (to include verges, hard shoulders and slip roads; and to exclude laybys)

**REVOCATIONS AND VARIATIONS OF EXISTING TRAFFIC REGULATION ORDERS**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Road Name, number and length</i>	<i>(3)</i> <i>Order</i>	<i>(4)</i> <i>Revocations or Variations</i>
<i>Scheme 0102 – The traffic regulation measures (clearways and prohibitions) plans – sheets 1 to 2</i>			
In the administrative area of Westmorland and Furness Council and the parish of Penrith	The existing A66 trunk road  From a point 311 metres south-east of the North Lakes Hotel & Spa for a distance of 690 metres in a north-easterly direction to a point 182 metres west of the Fire Station.	Order name not known	Order to be revoked between the points stated in column (2) as shown on sheets 1 and 2 by the dashed red line.
	The existing A6  From a point 95 metres south-west of the Hospital for a distance of 45 metres in a north-westerly direction to a point 70 metres south-west of the hospital.	Order name not known	Order to be revoked between the points stated in column (2) as shown on sheet 2 by the dashed red line.
	The existing A686  From a point 87 metres south-east of the Hospital for a distance of 131 metres in an easterly direction to a point 125 metres to the east of the Hospital.	Order name not known	Order to be revoked between the points stated in column (2) as shown on sheet 2 by the dashed red line.
	The existing A66 trunk road  From a point 115 metres north-west of the Fire Station for a	Order name not known	Order to be revoked between the points stated in column (2) as shown on sheet 2 by the dashed red line.

	distance of 390 metres in a north-easterly direction to a point 75 metres north of the Police Station.		
--	--	--	--

## PART 2

### SCHEME 03 – PENRITH TO TEMPLE SOWERBY

Note 1: Where roads are to become restricted roads as indicated in this Schedule (Part 1) and as shown on the plans relating to this Schedule (the traffic regulation measures (speed limits) plans), speed limits are to apply in accordance with the provision of the Road Traffic Regulation Act 1984 (which defines speed limits of 30mph on ‘restricted’ roads by reference to street lighting).

Note 2: Where existing speed limits (to be retained) are shown on the traffic regulation measures (speed limits) plans which relate to Part 1 of this Schedule, this is for information only and such speed limits are not subject to this Order.

#### SPEED LIMITS AND RESTRICTED ROADS

<i>(1)</i> Area	<i>(2)</i> Road name number and length	<i>(3)</i> Speed limit and restricted roads status
<i>Scheme 03 – The traffic regulation measures (speed limits) plans – sheets 1,2,3 and 4</i>		
In the administrative area of Westmorland and Furness Council	New A66 (dual carriageway) trunk road  From a point beginning 115 metres to the south-east of the centre of Brougham Castle Bridge for a distance of 5.2 km to a point 430 metres to the west of the existing junction on the westbound carriageway at Temple Sowerby.	National speed limit (70 miles per hour)
<i>Scheme 03 – The traffic regulation measures (speed limits) plans – sheet 1</i>		
In the administrative area of Westmorland and Furness Council	New (realigned) B6262  From a point beginning 490 metres to the east of Brougham Castle for a distance of 130 metres in a south- westerly direction.	National speed limit (60 miles per hour)
<i>Scheme 03 – The traffic regulation measures (speed limits) plans – sheet 2</i>		
In the administrative area of Westmorland and Furness Council	New access road for access to byway (BOAT 311/013)  From a point beginning 200 metres to the north of the centre Whinfell Park, for a distance of 125 metres in a north-easterly direction.	National speed limit (60 miles per hour)
<i>Scheme 03 – The traffic regulation measures (speed limits) plans – sheet 3</i>		
In the administrative area of Westmorland and Furness Council	New Junction at Center Parcs  The new connector road from the eastbound carriageway of the new A66, crossing over the A66 (on a bridge) to connect to the realigned side road to	National speed limit (60 miles per hour)

	Center Parcs on the south side of the A66.	
	New side road (Link from New Junction at Center Parcs to existing Roman Road)  From a point 117 metres north-east of the new junction at Center Parcs on the north side of the A66 for a distance of 253 metres in a generally easterly direction.	National speed limit (60 miles per hour)
	Realigned side road (A66 to Center Parcs)  From the westbound carriageway of the A66 at the new junction at Center Parcs, southwards towards the existing access to Center Parcs, for a distance of 125 metres.	National speed limit (60 miles per hour)

### TRAFFIC REGULATION MEASURES (PROHIBITIONS)

(1) <i>Area</i>	(2) <i>Road name number and length</i>	(3) <i>Measures</i>
<i>Scheme 03 – The traffic regulation measures (clearways and prohibitions) plans – sheets 1 to 4</i>		
In the administrative area of Westmorland and Furness Council	New A66 (dual carriageway) trunk road  From a point beginning 115 metres to the south-east of the centre of Brougham Castle Bridge for a distance of 5.2 km to a point 430 metres to the west of the existing junction on the westbound carriageway at Temple Sowerby.	Clearway (to include verges, hard shoulders and slip roads; and to exclude laybys)
<i>Scheme 03 – The traffic regulation measures (clearways and prohibitions) plans – sheet 3</i>		
In the administrative area of Westmorland and Furness Council	New Junction at Center Parcs  The new connector road from the eastbound carriageway of the new A66, crossing over the A66 (on a bridge) to connect to the realigned side road to Center Parcs on the south side of the A66.	Clearway (to include verges, hard shoulders and slip roads; and to exclude laybys)
	New side road (Link from New Junction at Center Parcs to existing Roman Road)  From a point 117 metres north-east of the new junction at Center Parcs on the north side of the A66 for a distance of 253 metres in a generally easterly direction.	Clearway (to include verges, hard shoulders and slip roads; and to exclude laybys)
	Realigned side road (A66 to Center Parcs)  From the westbound carriageway of the A66 at the new junction at Center Parcs, southwards towards the existing access to Center Parcs, for a distance of 125 metres.	Clearway (to include verges, hard shoulders and slip roads; and to exclude laybys)



**REVOCATIONS AND VARIATIONS OF EXISTING TRAFFIC REGULATION ORDERS**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Road Name, number and length</i>	<i>(3)</i> <i>Order</i>	<i>(4)</i> <i>Revocations or Variations</i>
<i>Scheme 03 – The traffic regulation measures (clearways and prohibitions) plans – sheet 1</i>			
In the administrative area of Westmorland and Furness Council	B6262  A length of the existing B6262 from a point 460 metres to the east of Brougham Castle for a distance of 46 metres in a northerly direction to a point 731 metres south-west of Whinfell Holme Sewage Works.	Order name not known	Order to be partially revoked between the points stated in column (2) as shown on sheet 1 by the dashed red line
<i>Scheme 03 – The traffic regulation measures (clearways and prohibitions) plans – sheet 2</i>			
–	–	–	–
<i>Scheme 03 – The traffic regulation measures (clearways and prohibitions) plans – sheet 3</i>			
In the administrative area of Westmorland and Furness Council	A66  A length of the existing A66 from a point 454 metres to the south-west of High Barn, for a distance of 32 metres in a north-westerly direction to a point 450 metres to the south-west of High Barn.	Order name not known	Order to be partially revoked between the points stated in column (2) as shown on sheet 3 by the dashed red line
	A66  A length of the existing A66 from a point 454 metres to the south-west of High Barn, for a distance of 474 metres in a westerly direction to a point 50 metres to the south of High Barn.	Order name not known	Order to be partially revoked between the points stated in column (2) as shown on sheet 3 by the dashed red line
<i>Scheme 03 – The traffic regulation measures (clearways and prohibitions) plans – sheet 3 and 4</i>			
In the administrative area of Westmorland and Furness Council	A66  A length of the existing A66 from a point 140 metres to the south-east of Lane End, for a distance of 970 metres in a south-easterly direction to a point 400 metres to the	Order name not known	Order to be revoked between the points stated in column (2) as shown on sheets 3 and 4 by the dashed red line

	south-west of Lower Woodside.		
--	-------------------------------	--	--

### PART 3

#### SCHEME 0405 – TEMPLE SOWERBY TO APPLEBY

Note 1: The naming conventions used in this Schedule to describe roads, junctions and structures relate to the naming conventions used in the labels on the traffic regulation measures plans.

Note 2: Where roads are to become restricted roads as indicated in this Schedule (Part 1) and as shown on the plans relating to this Schedule (the traffic regulation measures (speed limits) plans), speed limits are to apply in accordance with the provision of the Road Traffic Regulation Act 1984 (which defines speed limits of 30mph on ‘restricted’ roads by reference to street lighting).

Note 3: Where existing speed limits (to be retained) are shown on the traffic regulation measures (speed limits) plans which relate to Part 1 of this Schedule, this is for information only and such speed limits are not subject to this Order.

#### SPEED LIMITS AND RESTRICTED ROADS

<i>(1)</i> Area	<i>(2)</i> Road name number and length	<i>(3)</i> Speed limit and restricted roads status
<i>Scheme 0405 – The traffic regulation measures (speed limits) plans – sheets 1, 2, 3, 4, 5, 6 and 7</i>		
In the administrative area of Westmorland and Furness Council, Temple Sowerby Parish, Kirkby Thore Parish, Crackenthorpe Parish, Long Marton Parish and Appleby in Westmorland Parish	New A66 eastbound carriageway  The full 8.2 km length of the new A66 eastbound carriageway commencing from a point on the existing A66, 300 metres to the east of the existing Spitals Underpass and continuing in a generally south-easterly direction for a distance of 8.2 km, to a point 45 metres to the east of the existing Railway bridge.	National speed limit (70 miles per hour)
	New A66 westbound carriageway  The full 8.2 km length of the new A66 westbound carriageway from a point on the existing A66, 300 metres to the east of the existing Spitals Farm Underpass and continuing in a generally south-easterly direction for a distance of 8.2 km, to a point 45 metres to the east of the existing Railway bridge.	National speed limit (70 miles per hour)
<i>Scheme 0405 – The traffic regulation measures (speed limits) plans – sheets 2 and 4</i>		
In the administrative area of Westmorland and Furness Council, Kirkby Thore Parish, Crackenthorpe Parish	Existing A66 carriageway (to be de-trunked)  A 315 metre length of existing road, from a point 110 metres to the south-east of the access to Eden View, and continuing in a generally south-easterly direction (on the existing alignment of the A66) for a distance of 315 metres, to a point 29	National speed limit (60 miles per hour)

	metres to the east of its existing junction with Piper Lane.	
	Existing A66 carriageway (to be de-trunked)  A 683 metre length of existing road from a point 29 metres south-east of its existing junction with Piper Lane, to a point 50 metres south-east of the eastern-most access to the filling station.	30 miles per hour
	Existing A66 carriageway (to be de-trunked)  A 217 metre length of existing road from a point 50 metres south-east of the eastern-most access to the filling station to a point 36 metres south-east of the existing access into Old Station Yard.	National speed limit (60 miles per hour)
<i>Scheme 0405 – The traffic regulation measures (speed limits) plans – sheet 1</i>		
In the administrative area of Westmorland and Furness Council, Temple Sowerby Parish, Kirkby Thore Parish	New B6542  A 1.1 km length of new road from its junction with the existing Morland Road, continuing in an easterly direction for a distance of 1.1 km, to a point 58 metres to the west of the entrance to Low Moor Caravan Park.	National speed limit (60 miles per hour)
In the administrative area of Westmorland and Furness Council, Temple Sowerby Parish	New C3057 (south)  A 154 metre length of improved road commencing at a point 317 metres south of the point where it passes beneath the existing A66 and continuing in a generally northerly direction for a distance of 154 metres.	National speed limit (60 miles per hour)
	New C3057 (north)  A 69 metre length of improved road commencing at the existing Morland Road Underpass and continuing in a generally southerly direction for a distance of 69 metres.	National speed limit (60 miles per hour)
	Temple Sowerby Westbound Connector Road  A 65 metre length of improved road from its junction with the existing Morland Road, continuing in a generally westerly direction for a distance of 65 metres.	National speed limit (60 miles per hour)
<i>Scheme 0405 – The traffic regulation measures (speed limits) plans – sheets 1 and 2</i>		
In the administrative area of Westmorland and Furness Council, Kirkby Thore Parish	New (Realigned) Cross Street  A 806 metre length of new road, commencing from a point 128 metres to the south of the entrance to Halefield Farm, and continuing in a generally	30 miles per hour

	<p>south-easterly direction to its junction with the existing Priest Lane.</p> <p>New Priest Lane</p> <p>A 720 metre length of new road, commencing at a point 1.2 km to the east of the existing junction of Priest Lane with the existing Roman Road, and continuing in a generally easterly direction for a distance of 720 metres to its junction with the realigned Cross Street.</p>	National speed limit (60 miles per hour)
<i>Scheme 0405 – The traffic regulation measures (speed limits) plans – sheets 2 and 3</i>		
In the administrative area of Westmorland and Furness Council, Kirkby Thore Parish	<p>Kirkby Thore Junction eastbound compact connector road</p> <p>A 178 metre length of new compact connector road, commencing from the eastbound carriageway of the new A66 and continuing in a north-easterly direction to its junction with the existing Fell Lane C3065.</p>	National speed limit (60 miles per hour)
	<p>Kirkby Thore Junction westbound compact connector road</p> <p>A 218 metre length of new compact connector road commencing from its junction with the westbound carriageway of the new A66 and continuing in a south-easterly direction to its junction with the new Fell Lane C3065.</p>	National speed limit (60 miles per hour)
	<p>New C3065 – Fell Lane</p> <p>A 482 metre length of new road commencing at a point 76 metres to the south-west of the existing access into the industrial estate, continuing in a north-easterly direction following the alignment of the existing road.</p>	30 miles per hour
	<p>New C3065 – Realigned Main Street</p> <p>A 608 metre length of new road, commencing from its junction with the realigned Fell Lane, continuing in south-easterly direction for a distance of 608 metres to a point 105 metres to the north of the existing access to Green Barn.</p>	30 miles per hour
In the administrative area of Westmorland and Furness Council, Kirkby Thore Parish	<p>Existing Main Street</p> <p>A 242 metre length of existing road, from a point 87 metres to the east of the existing junction of Fell Lane with Main Street and continuing on its existing alignment for a distance of 242 metres.</p>	30 miles per hour
<i>Scheme 0405 – The traffic regulation measures (speed limits) plans – sheets 3 and 4</i>		

<p>In the administrative area of Westmorland and Furness Council, Kirkby Thore Parish</p>	<p>Existing and realigned Sleastonhow Lane</p> <p>A 1.2 km length of existing road and new road, from a point on the existing Sleastonhow Lane, 25 metres to the south of its junction with Main Street, continuing on the existing alignment of Sleastonhow Lane for a distance of 225 metres, then continuing in a south-easterly direction on its new alignment, and passing over the new A66 trunk road via the new Sleastonhow Lane bridge, and reconnecting with the existing alignment of Sleastonhow Lane at a point 954 metres to the south of its junction with Main Street, then continuing for a distance of 235 metres to the end of the existing (adopted) road.</p>	<p>30 miles per hour</p>
<p><i>Scheme 0405 – The traffic regulation measures (speed limits) plans – sheet 5</i></p>		
<p>In the administrative area of Westmorland and Furness Council, Kirkby Thore, Long Marton Parish</p>	<p>Realigned Long Marton</p> <p>A 1.2 km length of new road, from a point 85 metres to the west of the junction of the existing Long Marton Road with Footpath 341/003, in a generally south-westerly direction for a distance of 1.2 km, until its junction with the existing A66.</p>	<p>National speed limit (60 miles per hour)</p>
	<p>Long Marton Junction eastbound compact connector road</p> <p>A 220 metre length of new compact connector road, commencing from the eastbound carriageway of the new A66 and continuing in a north-westerly direction to its junction with the new C3063.</p>	<p>National speed limit (60 miles per hour)</p>
	<p>Long Marton Junction westbound compact connector road</p> <p>A 200 metre length of new compact connector road, commencing from its junction with the westbound carriageway of the new A66 and continuing in a south-westerly direction to its junction with the new C3063.</p>	<p>National speed limit (60 miles per hour)</p>
	<p>Realigned Long Marton</p> <p>A 152 metre length of new road, commencing at its junction with the new C3063 and linking into the alignment of the existing Long Marton (Road).</p>	<p>National speed limit (60 miles per hour)</p>
	<p>Existing A66</p>	<p>National speed limit (60 miles per hour)</p>

	A 246 metre length of existing road, commencing 317 metres to the west of its junction with the existing Long Marton Road, and continuing to a point 132 metres to the west of its junction with the new C3063.	
<i>Scheme 0405 – The traffic regulation measures (speed limits) plans – sheets 6 and 7</i>		
In the administrative area of Westmorland and Furness Council, Crackenthorpe Parish, Appleby in Westmorland Parish	New B6542  A 1.1 km length of new road, commencing at a distance of 134 metres to the east of its junction with the access road leading to Roger Head Farm, continuing for a distance of 1.02 km on the alignment of the existing B6542 road, to a point 277 metres to the west of the junction of the existing B6542 road with the existing Long Marton Road.	National speed limit (60 miles per hour)

#### TRAFFIC REGULATION MEASURES (CLEARWAYS AND PROHIBITIONS)

(1) <i>Area</i>	(2) <i>Road name number and length</i>	(3) <i>Measures</i>
<i>Scheme 0405 – The traffic regulation measures (clearways and prohibitions) plans – sheets 1, 2, 3, 4, 5, 6 and 7</i>		
In the administrative area of Westmorland and Furness Council, Temple Sowerby Parish, Kirkby Thore Parish, Crackenthorpe Parish, Long Marton Parish and Appleby in Westmorland Parish	New A66 eastbound carriageway  The full 8.2 km length of the new A66 eastbound carriageway commencing from a point on the existing A66, 300 metres to the east of the existing Spitals Underpass and continuing in a generally south-easterly direction for a distance of 8.2 km, to a point 45 metres to the east of the existing railway bridge.	Clearway (to include verges, hard shoulders and slip roads; and to exclude laybys)
	New A66 westbound carriageway  The full 8.2 km length of the new A66 westbound carriageway from a point on the existing A66, 300 metres to the east of the existing Spitals Underpass and continuing in a generally south-easterly direction for a distance of 8.2 km, to a point 45 metres to the east of the existing railway bridge.	Clearway (to include verges, hard shoulders and slip roads; and to exclude laybys)
<i>Scheme 0405 – The traffic regulation measures (clearways and prohibitions) plans – sheets 2 and 3</i>		
In the administrative area of Westmorland and Furness Council, Temple Sowerby Parish, Kirkby Thore Parish, Crackenthorpe Parish, Long Marton Parish and Appleby in Westmorland Parish	Kirkby Thore Junction eastbound compact connector road  A 178 metre length of new compact connector road, commencing from the eastbound carriageway of the new A66 and continuing in a north-easterly direction to its junction with the existing Fell Lane.	Clearway (to include verges, hard shoulders and slip roads; and to exclude laybys)

	<p>Kirkby Thore Junction westbound compact connector road</p> <p>A 218 metre length of new compact connector road commencing from the westbound carriageway of the new A66 and continuing in a south-westerly direction to its junction with the new Fell Lane C3065.</p>	<p>Clearway (to include verges, hard shoulders and slip roads; and to exclude laybys)</p>
<i>Scheme 0405 – The traffic regulation measures (clearways and prohibitions) plans – sheet 5</i>		
<p>In the administrative area of Westmorland and Furness Council, Crackenthorpe Parish, Long Marton Parish</p>	<p>Long Marton Junction eastbound compact connector road</p> <p>A 220 metre length of new compact connector road, commencing from the eastbound carriageway of the new A66 and continuing in a north-westerly direction to its junction with the realigned Long Marton.</p>	<p>Clearway (to include verges, hard shoulders and slip roads; and to exclude laybys)</p>
	<p>Long Marton Junction westbound compact connector road</p> <p>A 200 metre length of new compact connector road, commencing from its junction with the westbound carriageway of the new A66 and continuing in a south-westerly direction to its junction with the new C3063.</p>	<p>Clearway (to include verges, hard shoulders and slip roads; and to exclude laybys)</p>

#### REVOCATIONS AND VARIATIONS OF EXISTING TRAFFIC REGULATION ORDERS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Road Name, number and length</i>	<i>(3)</i> <i>Order</i>	<i>(4)</i> <i>Revocations or Variations</i>
<i>Scheme 0405 – The traffic regulation measures (clearways and prohibitions) plans – sheet 1</i>			
<p>In the administrative area of Westmorland and Furness Council, Temple Sowerby Parish, Kirkby Thore Parish</p>	<p>The existing A66 Trunk Road</p> <p>The existing A66 eastbound and westbound from the point where the existing Morland Road passes beneath the existing A66 and terminating 66 metres east of the Spitals Farm Underpass.</p>	<p>The A66 Trunk Road (Cumbria County Council) Appleby Bypass (24 hours clearway) Order 2003-145</p>	<p>Order to be partially revoked between the points stated in column (2) as shown on sheet 1 by a red dashed line</p>
	<p>The existing A66 Trunk Road</p> <p>Temple Sowerby westbound connector road from its junction with the existing A66 to</p>	<p>The A66 Trunk Road (Cumbria County Council) Appleby Bypass (24 hours clearway) Order 2003-145</p>	<p>Order to be partially revoked between the points stated in column (2) as shown on sheet 1 by a red dashed line</p>

	its junction with the existing Morland Road.		
<i>Scheme 0405 – The traffic regulation measures (clearways and prohibitions) plans – sheet 7</i>			
In the administrative area of Westmorland and Furness Council, Crackenthorpe Parish, Long Marton Parish and Appleby in Westmorland Parish	The existing A66 Trunk Road  The existing A66 eastbound carriageway commencing at a point 347 metres to the east of the existing access leading to Roger Head Farm and terminating 51 metres to the east of the existing railway bridge.	The A66 Trunk Road (Cumbria County Council) Appleby Bypass (24 hours clearway) Order 2003-145	Order to be partially revoked between the points stated in column (2) as shown on sheet 7 by a red dashed line
	The existing A66 Trunk Road  The existing A66 westbound carriageway commencing 347 metres to the east of the existing access leading to Roger Head Farm and terminating 51 metres to the east of the existing railway bridge.	The A66 Trunk Road (Cumbria County Council) Appleby Bypass (24 hours clearway) Order 2003-145	Order to be partially revoked between the points stated in column (2) as shown on sheet 7 by a red dashed line

## PART 4

### SCHEME 06 – APPLEBY TO BROUGH

Note 1: Where roads are to become restricted roads as indicated in this Schedule (Part 1) and as shown on the plans relating to this Schedule (the traffic regulation measures plans (speed limits and restricted roads)), speed limits are to apply in accordance with the provision of the Road Traffic Regulation Act 1984 (which defines speed limits of 30mph on ‘restricted’ roads by reference to street lighting).

Note 2: Where existing speed limits (to be retained) are shown on the traffic regulation measures plans (speed limits and restricted roads) which relate to Part 1 of this Schedule, this is for information only and such speed limits are not subject to this Order.

#### SPEED LIMITS AND RESTRICTED ROADS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Road name number and length</i>	<i>(3)</i> <i>Speed limit and restricted roads status</i>
<i>Scheme 06 – The traffic regulation measures (speed limits) plans – sheets 1, 2, 3, 4, 5 and 6</i>		
In the administrative area of Westmorland and Furness Council, Parish of Warcop, Parish of Musgrave, Parish of Brough and Parish of Helbeck	New A66 eastbound carriageway  The full 8.2 km length of the new and improved A66 eastbound carriageway commencing from a point on the existing A66, 202 metres to the west of Café Sixty	National speed limit (70 miles per hour)



	Six and continuing in a generally south-easterly direction for a distance of 8 km to a point 385 metres to the west of the Musgrave Lane Overbridge at Brough.	
	New A66 westbound carriageway  The full 8.2 km length of the new and improved A66 westbound carriageway commencing from a point on the existing A66, 202 metres to the west of Café Sixty Six and continuing in a generally south-easterly direction for a distance of 8 km to a point 385 metres to the west of the Musgrave Lane Overbridge at Brough.	National speed limit (70 miles per hour)
<i>Scheme 06 – The traffic regulation measures (speed limits) plans – sheet 2</i>		
In the administrative area of Westmorland and Furness Council, and Parish of Warcop	New Sandford Junction Link Road  A length of new highway from its diverge point on the new A66 eastbound carriageway, in a north-westerly, south-westerly and then an easterly direction passing under the new A66 to its connection with the new realigned B6259 for a distance of 504 metres.	National speed limit (60 miles per hour)
In the administrative area of Westmorland and Furness Council, and Parish of Warcop	The new realigned B6259  A length of new highway from a point 32 metres to the east of the existing B6259, to the north of Sandford, and extending in a generally southerly direction to a point 224 metres to the south of the existing junction of the B6259 and the A66, for a distance of 224 metres.	National speed limit (60 miles per hour)
<i>Scheme 06 – The traffic regulation measures (speed limits) plans – sheet 3</i>		
In the administrative area of Westmorland and Furness Council, and Parish of Warcop	New Warcop Eastbound Junction  A length of new highway from its diverge point on the new A66 eastbound carriageway, in a north-easterly direction to its merge point on the old A66 (new and improved C3077) 107 metres to the west of Hayber Lane, for a distance of 237 metres.	50 miles per hour
	De-trunked A66  A 890 metre length of the existing A66 from a point 280 metres to the west of its junction with the existing Moorhouse Lane, to a point 110 metres to the west of its junction with Hayber Lane.	30 miles per hour
<i>Scheme 06 – The traffic regulation measures (speed limits) plans – sheets 3 and 4</i>		
In the administrative area of Westmorland and Furness Council, and Parish of Warcop and Parish of Musgrave	De-trunked A66 (new and improved C3077)	50 miles per hour

	A length of new highway from a point 156 metres to the east of the junction of Hayber Lane with the existing A66, following the alignment of the existing A66 for a distance of 1.3 km in a generally south-easterly direction to a point 635 metres to the west of the junction of the existing A66 with Flitholme Road.	
<i>Scheme 06 – The traffic regulation measures (speed limits) plans – sheets 3 and 4</i>		
In the administrative area of Westmorland and Furness Council, and Parish of Warcop	New Warcop Westbound Junction  A length of new highway from its diverge point on the new A66 westbound carriageway 90 metres to the west of the existing road to Warcop, and continuing in a south-westerly, easterly and then north-easterly and easterly direction over the new A66 to its connection with the new local road on the north side of the new A66, for a distance of 663 metres.	National speed limit (60 miles per hour)
<i>Scheme 06 – The traffic regulation measures (speed limits) plans – sheets 4 and 5</i>		
In the administrative area of Westmorland and Furness Council, Parish of Warcop and Parish of Musgrave	De-trunked A66 (new and improved) C3077  A length of new highway from a point 635 metres to the west of the junction of the existing A66 with Flitholme Road, following the alignment of the existing A66 for a distance of 985 metres in a generally easterly direction to a point 350 metres to the east of the junction of the existing A66 with Flitholme Road.	30 miles per hour
<i>Scheme 06 – The traffic regulation measures (speed limits) plans – sheet 5</i>		
In the administrative area of Westmorland and Furness Council, Parish of Warcop and Parish of Musgrave	Flitholme to Langrigg Link (U1066/02)  A length of new highway commencing from a point 145 metres to the north-east of the Low Gill Beck near Flitholme village and continuing for a distance of 666 metres in a generally easterly direction to connect with the existing Langrigg Lane.	30 miles per hour
	Re-aligned Flitholme Road  A length of new highway commencing from its junction with the new Flitholme to Langrigg Link (U1066/02) and continuing for a distance of 126 metres in a generally north-easterly direction to its junction with the de-trunked A66.	30 miles per hour
<i>Scheme 06 – The traffic regulation measures (speed limits) plans – sheet 6</i>		
In the administrative area of Westmorland and Furness Council, Parish of Musgrave,	Existing A66 Trunk Road (new and improved C3077)	50 miles per hour

Parish of Brough and Parish of Helbeck	A length of new highway from a point 686 metres to the east of the new overbridge at West View Farm, following the alignment of the existing A66 for a distance of 1.1 km in a generally easterly direction to a point 270 metres to the east of the junction of the existing A66 with Main Street.	
--	---	--

**TRAFFIC REGULATION MEASURES (PROHIBITIONS)**

(1) <i>Area</i>	(2) <i>Road name number and length</i>	(3) <i>Measures</i>
<i>Scheme 06 – The traffic regulation measures (clearways and prohibitions) plans – sheets 1, 2, 3, 4, 5 and 6</i>		
In the administrative area of Westmorland and Furness Council, Parish of Warcop, Parish of Musgrave, Parish of Brough and Parish of Helbeck	New A66 eastbound carriageway  The full 8.2 km length of the new and improved A66 eastbound carriageway commencing from a point on the existing A66, 202 metres to the west of Café Sixty Six and continuing in a generally south-easterly direction for a distance of 8 km to a point 385 metres to the west of the Musgrave Lane Overbridge at Brough.	Clearway (to include verges, hard shoulders and slip roads; and to exclude laybys)
	New A66 westbound carriageway  The full 8.2 km length of the new and improved A66 westbound carriageway commencing from a point on the existing A66, 202 metres to the west of Café Sixty Six and continuing in a generally south-easterly direction for a distance of 8 km to a point 385 metres to the west of the Musgrave Lane Overbridge at Brough.	Clearway (to include verges, hard shoulders and slip roads; and to exclude laybys)
<i>Scheme 06 – The traffic regulation measures (clearways and prohibitions) plans – sheet 2</i>		
In the administrative area of Westmorland and Furness Council and Parish of Warcop	New Sandford Junction Link Road  A length of new highway from its diverge point on the new A66 eastbound carriageway, in a north-westerly, south-westerly and then an easterly direction passing under the new A66 to its connection with the new realigned B6259 for a distance of 504 metres.	Clearway (to include verges, hard shoulders and slip roads; and to exclude laybys)
<i>Scheme 06 – The traffic regulation measures (clearways and prohibitions) plans – sheets 3 and 4</i>		
In the administrative area of Westmorland and Furness Council and Parish of Warcop	New Warcop Westbound Junction  A length of new highway from its diverge point on the new A66 westbound carriageway 90 metres to the west of the existing road to Warcop, and continuing in a south-westerly, easterly and then north-easterly and easterly direction over the new A66 to its connection with the	Clearway (to include verges, hard shoulders and slip roads; and to exclude laybys)

	new local road on the north side of the new A66, for a distance of 663 metres.	
--	--	--

**REVOCATIONS AND VARIATIONS OF EXISTING TRAFFIC REGULATION ORDERS**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Road Name, number and length</i>	<i>(3)</i> <i>Order</i>	<i>(4)</i> <i>Revocations or Variations</i>
<i>Scheme 06 – The traffic regulation measures (clearways and prohibitions) plans – sheet 1</i>			
In the administrative area of Westmorland and Furness Council, and Parish of Warcop	Existing A66 trunk road From a point on the existing A66 202 metres to the north-west of Café Sixty Six, in a generally south-easterly direction to a point 308 metres to the west of Café Sixty Six.	(Order 2003/45) Road Traffic  The A66 Trunk Road (Appleby Bypass) (24 hour clearway and prohibition of waiting) Order 2003  Made 22/01/2003 Coming into force 25 January 2003	Parts 1, 2, 3 and 4 of Order to be partially revoked between the points stated in column (2) as shown on sheet 1 by a red dashed line
<i>Scheme 06 – The traffic regulation measures (clearways and prohibitions) plans – sheets 2, 3, 4, 5 and 6</i>			
In the administrative area of Westmorland and Furness Council, Parish of Warcop, Parish of Musgrave, Parish of Brough and Parish of Helbeck	Existing A66 trunk road From a point on the existing A66 2.1 km to the north-west of the point where Footpath 372/027 meets the existing A66, in a generally south-easterly direction to a point 41 metres to the north-west of the point at which Bridleway 309/031 meets the existing A66.	The A66 Trunk Road (Sandford/Warcop, Cumbria) (50 mph speed limit) Order ..... (S.I. ..../.....) [not known]	Order to be revoked in respect of the length of highway extending from sheet 2 to sheet 6, between the two pairs of blue squared symbols marking the start and end points of the part of the Order to be revoked

**PART 5**

**SCHEME 07 – BOWES BYPASS**

Note 1: Where roads are to become restricted roads as indicated in this Schedule (Part 1) and as shown on the plans relating to this Schedule (the traffic regulation measures (speed limits) plans), speed limits are to apply in accordance with the provision of the Road Traffic Regulation Act 1984 (which defines speed limits of 30mph on ‘restricted’ roads by reference to street lighting).

Note 2: Where existing speed limits (to be retained) are shown on the traffic regulation measures (speed limits) plans which relate to Part 1 of this Schedule, this is for information only and such speed limits are not subject to this Order.

**SPEED LIMITS AND RESTRICTED ROADS**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Road name number and length</i>	<i>(3)</i>
---------------------------	--	------------

		<i>Speed limit and restricted roads status</i>
<i>Scheme 07 – The traffic regulation measures (speed limits) plans – sheets 1, 2 and 3</i>		
In the administrative area of Durham County Council	New A66 eastbound carriageway  For a length of approximately 3.6 km, from a point approximately 550 metres to the west of the existing Clint Lane Overbridge, along the existing and new A66 eastbound dual carriageway, to a point approximately 363 metres east of the access to Hulands Quarry.	National speed limit (70 miles per hour)
	New A66 westbound carriageway  For a length of approximately 3.6 km, from a point approximately 550 metres to the west of the existing Clint Lane Overbridge, along the existing and new A66 westbound dual carriageway, to a point approximately 363 metres east of the access to Hulands Quarry.	National speed limit (70 miles per hour)
<i>Scheme 07 – The traffic regulation measures (speed limits) plans – sheet 2</i>		
In the administrative area of Durham County Council	New A66 eastbound diverge slip road connecting to the A67  A length from its diverge point on the eastbound carriageway of the improved A66, for a distance of 427 metres in a north-easterly direction along its approach to the A67.	National speed limit (70 miles per hour)
	New A66 eastbound merge slip road from the A67  A length from its merge point on the eastbound carriageway of the improved A66 for a distance of 452 metres in a north-westerly direction along its approach to the A67.	National speed limit (70 miles per hour)
	New A66 westbound diverge slip road connecting to the A67  A length from its diverge point on the westbound carriageway of the improved A66 for a distance of 540 metres in a generally westerly direction along its approach to the A67.	National speed limit (70 miles per hour)
	A66 westbound merge slip road from the A67  A length from its merge point on the westbound carriageway of the improved A66 for a distance of 280 metres in a generally easterly direction along its approach to the A67.	National speed limit (70 miles per hour)

	A67  A length of the existing A67 to be widened to facilitate a right turn lane, from the existing A66 overbridge for a distance of 209 metres in a generally northerly direction along the A67.	National speed limit (60 miles per hour)
<i>Scheme 07 – The traffic regulation measures (speed limits) plans – sheet 3</i>		
In the administrative area of Durham County Council	Improved side road – “The Street”  A 733 metre length of new unclassified side road, commencing 420 metres to the west of the existing junction of “The Street” with the improved A66 and continuing in an easterly direction for approximately 340 metres, then turning and continuing in a generally northerly direction and crossing the A66 via the East Bowes Accommodation Overbridge, then curving eastwards and southwards before terminating at the new private means of access to Low Broats Farm and High Broats Farm, on the eastern side of the existing Low Broats Farm property.	National speed limit (60 miles per hour)

**TRAFFIC REGULATION MEASURES (CLEARWAYS AND PROHIBITIONS)**

(1) Area	(2) Road name number and length	(3) Measures
<i>Scheme 07 – The traffic regulation measures (clearways and prohibitions) plans – sheets 1, 2 and 3</i>		
In the administrative area of Durham County Council	New A66 eastbound carriageway  For a length of approximately 3.6 km, from a point approximately 550 metres to the west of the existing Clint Lane Overbridge, along the existing and new A66 eastbound dual carriageway, to a point approximately 363 metres east of the access to Hulands Quarry.	Clearway (to include verges, hard shoulders and slip roads; and to exclude laybys)
	New A66 westbound carriageway  For a length of approximately 3.6 km, from a point approximately 550 metres to the west of the existing Clint Lane Overbridge, along the existing and new A66 westbound dual carriageway, to a point approximately 363 metres east of the access to Hulands Quarry.	Clearway (to include verges, hard shoulders and slip roads; and to exclude laybys)
<i>Scheme 07 – The traffic regulation measures (clearways and prohibitions) plans – sheet 2</i>		
In the administrative area of Durham County Council	New A66 eastbound diverge slip road connecting to the A67  A length from its diverge point on the eastbound carriageway of the improved A66, for a distance of 427 metres in a	Clearway (to include verges, hard shoulders and slip roads; and to exclude laybys)

	north-easterly direction along its approach to the A67.	
	New A66 eastbound merge slip road from the A67  A length from its merge point on the eastbound carriageway of the improved A66 for a distance of 452 metres in a north-westerly direction along its approach to the A67.	Clearway (to include verges, hard shoulders and slip roads; and to exclude laybys)
	New A66 westbound diverge slip road connecting to the A67  A length from its diverge point on the westbound carriageway of the improved A66 for a distance of 540 metres in a generally westerly direction along its approach to the A67.	Clearway (to include verges, hard shoulders and slip roads; and to exclude laybys)
	A66 westbound merge slip road from the A67  A length from its merge point on the westbound carriageway of the improved A66 for a distance of 280 metres in a generally easterly direction along its approach to the A67.	Clearway (to include verges, hard shoulders and slip roads; and to exclude laybys)
<i>Scheme 07 – The traffic regulation measures (clearways and prohibitions) plans – sheet 3</i>		
In the administrative area of Durham County Council	–	–

#### **REVOCATIONS AND VARIATIONS OF EXISTING TRAFFIC REGULATION ORDERS**

<i>(1) Area</i>	<i>(2) Road Name, number and length</i>	<i>(3) Order</i>	<i>(4) Revocations or Variations</i>
<i>Scheme 07 – The traffic regulation measures (clearways and prohibitions) plans – sheets 1, 2 and 3</i>			
In the administrative area of Durham County Council	–	–	–

## **PART 6**

### **SCHEME 08 – CROSS LANES TO ROKEBY**

Note 1: Where roads are to become restricted roads as indicated in this Schedule (Part 1) and as shown on the plans relating to this Schedule (the traffic regulation measures plans (speed limits and restricted roads)), speed limits are to apply in accordance with the provision of the Road Traffic Regulation Act 1984 (which defines speed limits of 30mph on ‘restricted’ roads by reference to street lighting).

Note 2: Where existing speed limits (to be retained) are shown on the traffic regulation measures plans (speed limits and restricted roads) (sheets 1 to 3) which relate to Part 1 of this Schedule, this is for information only and such speed limits are not subject to this Order.

#### **SPEED LIMITS AND RESTRICTED ROADS**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Road name number and length</i>	<i>(3)</i> <i>Speed limit and restricted roads status</i>
<i>Scheme 08 – The traffic regulation measures (speed limits) plans – sheets 1, 2 and 3</i>		
In the administrative area of Durham County Council	<p>New A66 eastbound carriageway</p> <p>The full length of the new A66 eastbound carriageway commencing from a point on the existing A66, 325 metres to the west of the existing junction of the A66 with Rutherford Lane, in a generally easterly direction for 4.5 km to a point 620 metres south-east of the existing junction of the A66 with the C165 Barnard Castle Road.</p>	National speed limit (70 miles per hour)
	<p>New A66 westbound carriageway</p> <p>The full length of the new A66 westbound carriageway commencing from a point on the existing A66, 325 metres to the west of the existing junction of the A66 with Rutherford Lane, in a generally easterly direction for 4.5 km to a point 620 metres south-east of the existing junction of the A66 with the C165 Barnard Castle Road.</p>	National speed limit (70 miles per hour)
<i>Scheme 08 – The traffic regulation measures (speed limits) plans – sheet 1</i>		
In the administrative area of Durham County Council	<p>New A66 /B6277 eastbound connector road (Cross Lanes Junction)</p> <p>Full length of the new A66 eastbound carriageway compact connector road commencing from its intersection with the A66, curving in a northerly and then an easterly direction, and connecting to the new B6277 Moorhouse Lane.</p>	National speed limit (60 miles per hour)
	<p>New A66 / B6277 westbound connector road (Cross Lanes Junction)</p> <p>Full length of the new A66 westbound carriageway compact connector road, commencing from its intersection with the A66 and continuing in a southerly direction to connect with the new B6277 Moorhouse Lane.</p>	National speed limit (60 miles per hour)
	<p>New realigned B6277 Moorhouse Lane connecting to Rutherford Lane</p> <p>A 1.1 km length of new carriageway commencing 70 metres to the south-west of its junction with the realigned Rutherford Lane, at a point 240 metres south of the existing junction of the A66 with Rutherford Lane; continuing in a north-easterly direction and re-joining</p>	National speed limit (60 miles per hour)



	<p>the existing B6277 Moorhouse Lane, at a point 410 metres north of the existing junction of the A66 with the B6277 Moorhouse Lane.</p>	
	<p>New realigned Moorhouse Lane connection to realigned B6277 Moorhouse Lane (north)</p> <p>A 170 metre length of new road, commencing from its junction with the new B6277 Moorhouse Lane at a point 235 metres north of the existing junction of the A66 with the B6277 Moorhouse Lane and continuing in a southerly direction for a distance of 170 metres.</p>	National speed limit (60 miles per hour)
	<p>Realigned Rutherford Lane</p> <p>A 78 metre length of new road, commencing from its junction with the new B6277 Moorhouse Lane link road, 225 metres south of the existing junction of the A66 with Rutherford Lane, and continuing in a northerly direction before connecting into the existing Rutherford Lane.</p>	National speed limit (60 miles per hour)
	<p>Realigned Moorhouse Lane (south)</p> <p>A 332 metre length of new road, commencing from its junction with the new B6277 Moorhouse Lane link road and continuing eastwards, passing to the north of the Cross Lanes Organic Farm Shop and Café before curving southwards to connect to the existing Moorhouse Lane (south).</p>	National speed limit (60 miles per hour)
<i>Scheme 08 – The traffic regulation measures (speed limits) plans – sheets 2 and 3</i>		
In the administrative area of Durham County Council	<p>New A66 (Rokeby) westbound compact connector road and length of existing reclassified A66 (now C165)</p> <p>Full length of the new A66 westbound compact connector road and its link to a length of the former A66 (reclassified as the C165). Commencing at its intersection with the new A66 and continuing in a southerly direction, then connecting with the new C165 Barnard Castle Road. Then continuing northwards under the new A66 via a new underbridge, then curving in an easterly direction to join the existing alignment of the A66 and continuing eastwards to the existing junction of the A66 with the C165 Barnard Castle Road.</p>	National speed limit (60 miles per hour)

	<p>New A66 (Rokeby) eastbound diverge slip road connecting to reclassified A66 (C165)</p> <p>Full length of the new A66 eastbound diverge slip road connecting to the existing A66 (now C165 Barnard Castle Road); commencing at its intersection with the new A66 and continuing in a generally northerly direction until connecting to the existing A66 (now C165 Barnard Castle Road).</p>	National speed limit (60 miles per hour)
<i>Scheme 08 – The traffic regulation measures (speed limits) plans – sheet 3</i>		
In the administrative area of Durham County Council	<p>New C165 Barnard Castle Road roundabout</p> <p>Full circulatory carriageway of the new C165 Barnard Castle Road roundabout situated at the existing junction of the A66 with the C165 Barnard Castle Road.</p>	National speed limit (60 miles per hour)
	<p>C165 Barnard Castle Road</p> <p>Length of the existing C165 Barnard Castle Road commencing 160 metres to the north of the existing junction of the A66 with the C165 and continuing southwards to form a junction with the new roundabout.</p>	National speed limit (60 miles per hour)
	<p>New A66 eastbound merge slip road from existing A66 (now C165 Barnard Castle Road)</p> <p>Length of new carriageway commencing at the new roundabout (located at the existing junction of the A66 with the C165 Barnard Castle Road) and continuing in a south-easterly direction until connecting to the new A66.</p>	National speed limit (70 miles per hour)

**TRAFFIC REGULATION MEASURES (CLEARWAYS AND PROHIBITIONS)**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Road name number and length</i>	<i>(3)</i> <i>Measures</i>
<i>Scheme 08 – The traffic regulation measures (clearways and prohibitions) plans – sheets 1, 2 and 3</i>		
In the administrative area of Durham County Council	<p>New A66 eastbound carriageway</p> <p>For a length of 4.5 km, from a point 325 metres to the west of the existing junction of Rutherford Lane with the A66, continuing along the existing and new A66 westbound dual carriageway, to a point 620 metres south-east of the existing junction of the C165 Barnard Castle Road with the A66.</p>	Clearway (to include verges, hard shoulders and slip roads; and to exclude laybys)
	New A66 westbound carriageway	Clearway

	For a length of 4.5 km, from a point 325 metres to the west of the existing junction of Rutherford Lane with the A66, continuing along the existing and new A66 westbound dual carriageway, to a point 620 metres south-east of the existing junction of the C165 Barnard Castle Road with the A66.	(to include verges, hard shoulders and slip roads; and to exclude laybys)
<i>Scheme 08 – The traffic regulation measures (clearways and prohibitions) plans – sheet 1</i>		
In the administrative area of Durham County Council	New A66 / B6277 eastbound connector road (Cross Lanes Junction)  A length from its diverge point on the A66, curving in a northerly and then an easterly direction for a distance of 427 metres, and connecting to the new B6277 Moorhouse Lane.	Clearway (to include verges, hard shoulders and slip roads; and to exclude laybys)
	New A66 / B6277 westbound connector road (Cross Lanes Junction)  A length from its diverge point on the A66, continuing in a southerly direction until connecting with the new B6277 Moorhouse Lane.	Clearway (to include verges, hard shoulders and slip roads; and to exclude laybys)
<i>Scheme 08 – The traffic regulation measures (clearways and prohibitions) plans – sheet 2</i>		
In the administrative area of Durham County Council	New A66 (Rokeby) westbound compact connector road and length of existing reclassified A66 (now C165)  A 1.3 km length of the new A66 westbound compact connector road and existing A66 (now C165), from its diverge point on the westbound carriageway of the A66, 948 metres southwest of the existing A66 junction with the C165 Barnard Castle Road, continuing in a southerly direction, connecting with the new C165 Barnard Castle Road. Then continuing northwards under the new A66 via a new underbridge, then curving in an easterly direction to join the existing alignment of the A66 and continuing eastwards to the existing junction of the A66 with the C165 Barnard Castle Road.	Clearway (to include verges, hard shoulders and slip roads; and to exclude laybys)
	New A66 (Rokeby) eastbound diverge slip road connecting to reclassified A66 (C165)  A 90 metre length from its diverge point on the A66 eastbound diverge slip road, commencing at its intersection with the new A66, 130 metres south-east of the existing A66 access to Rokeby Grange, and continuing in a generally northerly	Clearway (to include verges, hard shoulders and slip roads; and to exclude laybys)

	direction, until connecting to the existing A66 (now C165 Barnard Castle Road).	
<i>Scheme 08 – The traffic regulation measures (clearways and prohibitions) plans – sheet 3</i>		
In the administrative area of Durham County Council	–	–

#### REVOCATIONS AND VARIATIONS OF EXISTING TRAFFIC REGULATION ORDERS

<i>(1) Area</i>	<i>(2) Road Name, number and length</i>	<i>(3) Order</i>	<i>(4) Revocations or Variations</i>
<i>Scheme 08 – The traffic regulation measures plans (clearways and prohibitions) – sheets 1, 2 and 3</i>			
In the administrative area of Durham County Council	–	–	–

### PART 7

#### SCHEME 09 – STEPHEN BANK TO CARKIN MOOR

Note 1: Where roads are to become restricted roads as indicated in this Schedule (Part 1) and as shown on the plans relating to this Schedule (the traffic regulation measures (speed limits) plans), speed limits are to apply in accordance with the provision of the Road Traffic Regulation Act 1984 (which defines speed limits of 30mph on ‘restricted’ roads by reference to street lighting).

Note 2: Where existing speed limits (to be retained) are shown on the traffic regulation measures (speed limits) plans which relate to Part 1 of this Schedule, this is for information only and such speed limits are not subject to this Order.

#### SPEED LIMITS AND RESTRICTED ROADS

<i>(1) Area</i>	<i>(2) Road name number and length</i>	<i>(3) Speed limit and restricted roads status</i>
<i>Scheme 09 – The traffic regulation measures (speed limits) plans – sheets 1, 2, 3 and 4</i>		
In the administrative area of the North Yorkshire Council	New A66 eastbound carriageway  The full length of the new A66 eastbound carriageway commencing from a point on the existing A66, 674 metres to the west of the existing junction of the A66 with the access to Browson Bank, and continuing in a generally easterly direction for a distance of 6.2 km to a point 775 metres to the east of the existing junction of the A66 with Warrener Lane.	National speed limit (70 miles per hour)
	New A66 westbound carriageway  The full length of the new A66 westbound carriageway commencing from a point on the existing A66, 674 metres to the west of the existing junction of the A66 with the access to Browson	National speed limit (70 miles per hour)

	Bank and continuing in a generally easterly direction for 6.2 km to a point 775 metres to the east of the existing junction of the A66 with Warrener Lane.	
<i>Scheme 09 – The traffic regulation measures (speed limits) plans – sheet 1</i>		
In the administrative area of the North Yorkshire Council	New A66 westbound merge slip road  A length of new carriageway connecting the existing A66 to the westbound carriageway of the new A66, from a point 205 metres to the east of the existing junction of the A66 with the access to Browson Bank and continuing in an easterly direction for 240 metres.	National speed limit (70 miles per hour)
	A length of new realigned carriageway connecting the new A66 merge slip road to the de-trunked A66 (C108)  A length of new carriageway connecting the new A66 westbound merge slip road to the de-trunked A66 (now C108), from a point 445 metres to the east of the existing junction of the A66 with the access to Browson Bank and continuing in an easterly direction for 326 metres.	50 miles per hour
<i>Scheme 09 – The traffic regulation measures (speed limits) plans – sheet 2</i>		
In the administrative area of the North Yorkshire Council	New realigned carriageway on the de-trunked A66  A length of new realigned carriageway commencing 300 metres to the west of the existing junction of the A66 with Old Duns Bank, continuing in an easterly direction for 993 metres to the existing junction of the A66 with the access to Ravensworth Lodge.	50 miles per hour
	Collier Lane overbridge  A length of the new realigned Collier Lane from a point 174 metres to the north of the existing junction of the A66 with Collier Lane, in a generally south-westerly direction for a distance of 190 metres until it meets the new realigned length of the de-trunked A66.	50 miles per hour
<i>Scheme 09 – The traffic regulation measures (speed limits) plans – sheet 2</i>		
In the administrative area of the North Yorkshire Council	Mains Gill Junction Eastbound compact connector road  A length of new carriageway forming part of the new Mains Gill Junction. Commencing from the new A66 eastbound carriageway, continuing first in a northerly direction, then in an easterly direction, and then in a southerly direction and crossing over the new A66	National speed limit (60 miles per hour)

	via a new overbridge (comprising part of the new Mains Gill Junction) before connecting with the existing A66, at a point 178 metres to the west of the existing junction of the A66 with Moor Lane.	
	Mains Gill Junction westbound compact connector road  A 225-metre length of new carriageway forming part of the new Mains Gill Junction. Commencing from the new A66 westbound carriageway, continuing in a southerly direction and then in an easterly direction, before terminating at its junction with the new eastbound compact connector road.	National speed limit (60 miles per hour)
	Moor Lane link road  A 192-metre length of new road commencing from its junction with the A66 eastbound compact connector road, at a point 50 metres north of the new overbridge carrying the eastbound connector road over the A66 (at the new Mains Gill Junction) then continuing in a generally north-easterly direction to connect into the existing Moor Lane at a point 317 metres to the north of the exiting junction of the A66 with Moor Lane.	National speed limit (60 miles per hour)
<i>Scheme 09 – The traffic regulation measures (speed limits) plans – sheets 3 and 4</i>		
In the administrative area of the North Yorkshire Council	A length of new carriageway on the alignment of the de-trunked A66, connecting to Warrener Lane  A 1.7 km length of new carriageway commencing from a point 370 metres to the west of the existing junction of the A66 with Moor Lane, continuing in an easterly direction and then departing southwards from the existing A66 alignment to connect with Warrener Lane.	50 miles per hour

**TRAFFIC REGULATION MEASURES (CLEARWAYS AND PROHIBITIONS)**

(1) <i>Area</i>	(2) <i>Road name number and length</i>	(3) <i>Measures</i>
<i>Scheme 09 – The traffic regulation measures (clearways and prohibitions) plans – sheets 1, 2, 3 and 4</i>		
In the administrative area of the North Yorkshire Council	New A66 eastbound carriageway  The full length of the new A66 eastbound carriageway commencing from a point on the existing A66, 674 metres to the	Clearway (to include verges, hard shoulders and slip roads; and to exclude laybys)

	west of the existing junction of the A66 with the access to Browson Bank and continuing in a generally easterly direction for a distance of 6.2 km to a point 775 metres to the east of the existing junction of the A66 with Warrener Lane.	
	New A66 westbound carriageway  The full length of the new A66 westbound carriageway commencing from a point on the existing A66, 674 metres to the west of the existing junction of the A66 with the access to Browson Bank and continuing in a generally easterly direction for 6.2 km to a point 775 metres to the east of the existing junction of the A66 with Warrener Lane.	Clearway (to include verges, hard shoulders and slip roads; and to exclude laybys)
<i>Scheme 09 – The traffic regulation measures (clearways and prohibitions) plans – sheet 1</i>		
In the administrative area of the North Yorkshire Council	None	None
<i>Scheme 09 – The traffic regulation measures (clearways and prohibitions) plans – sheet 2</i>		
In the administrative area of North Yorkshire Council	New Local Road C108 (on the alignment of the de-trunked A66) and Waitlands Lane  From the eastbound carriageway of the new local road C108 into Waitlands Lane, at the junction of the new local road C108 with Waitlands Lane.	Prohibition of entry (no right turn)
<i>Scheme 09 – The traffic regulation measures (clearways and prohibitions) plans – sheet 3</i>		
In the administrative area of North Yorkshire Council	Mains Gill Junction eastbound connector road  A 480-metre length of new road, commencing from the eastbound carriageway of the new A66, continuing first in a northerly direction, then in an easterly direction, and then in a southerly direction and crossing the new A66 via a new overbridge (comprising part of the new Mains Gill Junction), before terminating at its junction with the existing A66, 178 metres west of the existing A66 junction with Moor Lane.	Clearway (to include verges, hard shoulders and slip roads; and to exclude laybys)
	Mains Gill Junction westbound connector road  A 255-metre length of new road, commencing from the westbound carriageway of the new A66, continuing in a southerly direction, then in an easterly direction before terminating at its junction with the new A66 eastbound compact connector road.	
<i>Scheme 09 – The traffic regulation measures (clearways and prohibitions) plans – sheet 4</i>		

In the administrative area of Durham County Council	None	None
---	------	------

**REVOCATIONS AND VARIATIONS OF EXISTING TRAFFIC REGULATION ORDERS**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Road Name, number and length</i>	<i>(3)</i> <i>Order</i>	<i>(4)</i> <i>Revocations or Variations</i>
<i>Scheme 09 – The traffic regulation measures plans (clearways and prohibitions) – sheets 1, 2 and 3</i>			
In the administrative area of the North Yorkshire Council	Junction of Waitlands Lane with the existing A66 trunk road  At the intersection of Waitlands Lane and the existing A66 trunk road, prohibition on right turn movements into Waitlands Lane from the eastbound carriageway of the existing A66 trunk road	The A66 Trunk Road (Waitlands Lane, Ravensworth) (Prohibition of Right Turns) Order 2004	Order to be revoked. Location of the revocation is as stated in column (2) and as shown on sheet 2 by the blue squared symbol



## PROTECTIVE PROVISIONS

## PART 1

## FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

1.—(1) The provisions of this Part of this Schedule have effect for the protection of utility undertakers unless otherwise identified in another Part of this Schedule or agreed in writing between the undertaker and the utility undertaker in question.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and the utility undertaker concerned, where the benefit of this Order is transferred or granted to another person under article 44 (consent to transfer benefit of Order), any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between the utility undertaker concerned and the transferee or grantee (as the case may be).

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to the utility undertaker concerned (but see paragraph 11(3)(b)).

2. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means—

- (a) in the case of a utility undertaker within paragraph (a) of the definition of that term, electric lines or electrical plant (as defined in the Electricity Act 1989(a)), belonging to or maintained by the utility undertaker for the purposes of electricity supply;
- (b) in the case of a utility undertaker within paragraph (b) of the definition of that term, any mains, pipes or other apparatus belonging to or maintained by the utility undertaker for the purposes of gas supply;
- (c) in the case of a utility undertaker within paragraph (c) of the definition of that term—
  - (i) mains, pipes or other apparatus belonging to or maintained by the utility undertaker for the purposes of water supply; and
  - (ii) mains, pipes or other apparatus that is the subject of an agreement to adopt made under section 51A (agreements to adopt water main or service pipe at future date) of the Water Industry Act 1991(b); and
- (d) in the case of a sewerage undertaker—
  - (i) any drain or works vested in the sewerage undertaker under the Water Industry Act 1991; and
  - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4)(c) (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104(d) (agreements to adopt sewer, drain or sewage disposal works, at a future date) of that Act,

---

(a) The definition of “electrical plant” (in section 64) was amended by paragraphs 24 and 38(1) and (3) of Schedule 6 to the Utilities Act 2000 (c. 27).

(b) Section 51A was inserted by section 92(1) of the Water Act 2003 (c. 37) and amended by section 10(1) and (2) of the Water Act 2014 (c. 21).

(c) Section 102(4) was amended by section 96(1)(c) of the Water Act 2003 and paragraph 90 of Schedule 7 to the Water Act 2014.

(d) Section 104 was amended by sections 96(4) and 101(2) of, and Part 3 of Schedule 9 to, the Water Act 2003, by section 42(3) of the Flood and Water Management Act 2010 (c. 29) and by section 11(1) and (2) of, and paragraphs 2 and 91 of Schedule 7 to, the Water Act 2014.

and includes a sludge main, disposal main (within the meaning of section 219 (general interpretation) of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and in each case includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land;

“plan” includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed; and

“utility undertaker” means—

- (a) any licence holder within the meaning of Part 1 (electricity supply) of the Electricity Act 1989;
- (b) a gas transporter within the meaning of Part 1 (gas supply) of the Gas Act 1986<sup>(a)</sup>;
- (c) a water undertaker within the meaning of the Water Industry Act 1991; and
- (d) a sewerage undertaker within the meaning of the Water Industry Act 1991,

for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

### **On street apparatus**

3. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by Part 3 (street works in England and Wales) of the 1991 Act.

### **Apparatus in closed streets**

4.—(1) Regardless of the temporary closure, alteration or diversion of streets under the powers conferred by article 11 (temporary prohibition, restriction or regulation of use or alteration or diversion of streets), a utility undertaker is at liberty at all times to take all necessary access across any such street and to carry out and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the temporary closure, alteration or diversion was in that street.

(2) Where any street is stopped up under article 10 (permanent stopping up of streets and private means of access), any utility undertaker whose apparatus is in the street has the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to the utility undertaker legal easements reasonably satisfactory to the utility undertaker in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of the utility undertaker to require the removal of that apparatus under paragraph 6 or to carry out works under paragraph 8.

### **Protective works to buildings**

5. The undertaker, in the case of the powers conferred by article 14 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus.

### **Acquisition of land**

6. Despite any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

---

(a) A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45) and was further amended by section 76 of the Utilities Act 2000 (c. 27).

## **Removal of apparatus**

7.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of a utility undertaker to maintain that apparatus in that land must not be extinguished, until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (6).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question 28 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the utility undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 51 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 51 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that the undertaker desires itself to execute any work, or part of any work, in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker, without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

## **Facilities and rights for alternative apparatus**

8.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 51 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the utility undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

## **Retained apparatus**

9.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect any apparatus the removal of which has not been required by the undertaker under paragraph 7(2), the undertaker must submit to the utility undertaker in question a plan and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which the plan and description under sub-paragraph (1) are submitted to it.

(4) If a utility undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency, but in that case it must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

## **Expenses and costs**

10.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker all expenses reasonably incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 7(2).

(2) The value of any apparatus removed under the provisions of this Part of this Schedule must be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 51 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

**11.—(1)** Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 5 or 7(2), or by reason of any subsidence resulting from such development or works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any unscheduled interruption in any service provided, or in the supply of any goods, by a utility undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the utility undertaker,

by reason or in consequence of any such damage or interruption.

(2) The fact that any act or thing may have been done by a utility undertaker on behalf of the undertaker or in accordance with a plan approved by a utility undertaker or in accordance with any requirement of a utility undertaker or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1) unless the utility undertaker fails to carry out and execute the works properly with due care and attention and in a skilful and professional like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to—

- (a) any damage or interruption to the extent that it is attributable to the act, neglect or default of a utility undertaker, its officers, servants, contractors or agents; or
- (b) any part of the authorised development carried out by a utility undertaker in the exercise of any functions conferred by this Order pursuant to a transfer or grant under article 44 (consent to transfer benefit of Order).

(4) The utility undertaker must at all times take reasonable steps to prevent and mitigate any such expenses, loss, damage, penalty or costs.

(5) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

## **Cooperation**

**12.** Where in consequence of the proposed construction of any part of the authorised development, the undertaker or a utility undertaker requires the removal of apparatus under paragraph 7(2) or a utility undertaker makes requirements for the protection or alteration of apparatus under paragraph 9, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the utility undertaker's undertaking and each utility undertaker must use its best endeavours to co-operate with the undertaker for that purpose.

13. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaker in respect of any apparatus in land belonging to the undertaker on the date on which this Order is made.

## PART 2

### FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

14.—(1) For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

(2) In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003;

“electronic communications apparatus” means the code set out in Schedule 3A (the electronic communications code) to the 2003 Act(a);

“electronic communications code networks” means—

(a) so much of an electronic communications network or infrastructure system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 (application of the electronic communications code) of the 2003 Act; and

(b) an electronic communications network which the undertaker is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act;

“infrastructure system” has the same meaning as in the electronic communications code(b) and references to providing an infrastructure system are to be construed in accordance with paragraph 7 of that code; and

“operator” means the operator of an electronic communications code network.

15. The exercise of the powers of article 31 (statutory undertakers) is subject to Part 10 (undertakers’ works affecting electronic communications apparatus) of the electronic communications code.

16.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works—

(a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator; or

(b) there is any unscheduled interruption in the supply of the service provided by an operator, the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other reasonable expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

---

(a) See section 106 was amended by section 4(3) to (9) of the Digital Economy Act 2017 (c. 30).

(b) The electronic communications code was inserted by Schedule 1 to the Digital Economy Act 2017.

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 51 (arbitration).

17. This Part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act; or
- (b) any damage, or any interruptions, caused by electro-magnetic interference arising from the construction or use of the authorised development.

18. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

## PART 3

### FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY TRANSMISSION PLC AS ELECTRICITY UNDERTAKER

#### Application

19.—(1) For the protection of National Grid as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Grid.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid, where the benefit of this Order is transferred or granted to another person under article 44 (consent to transfer benefit of Order)—

- (a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between National Grid and the transferee or grantee (as the case may be); and
- (b) written notice of the transfer or grant must be given to National Grid on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Grid (but see paragraph 29(3)(b)).

#### Interpretation

20. In this Part of this Schedule—

“1991 Act” means the New Roads and Street Works Act 1991;

“alternative apparatus” means appropriate alternative apparatus to the reasonable satisfaction of National Grid to enable National Grid to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by National Grid together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid for the purposes of transmission, distribution or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2(1) (interpretation) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“commence” and “commencement” in paragraphs 27 and 29 of this Part of this Schedule includes any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Grid (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, requires the undertaker to submit for National Grid’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” includes the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid including construct, use, repair, alter, inspect, renew or remove the apparatus;

“National Grid” means National Grid Electricity Transmission Plc or any successor as a licence holder within the meaning of Part 1 of the Electricity Act 1989;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed; and

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 25(2) or otherwise; or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 25(2) or otherwise.

**21.** Except for paragraphs 22 (apparatus of National Grid in stopped up streets), 27 (retained apparatus: protection of electricity undertaker), 28 (expenses) and 29 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Grid, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

### **Apparatus of National Grid in closed streets**

**22.—(1)** Where any street is stopped up under article 10 (permanent stopping up of streets and private means of access), if National Grid has any apparatus in the street or accessed via that street National Grid has the same rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to National Grid, or procure the granting to National Grid of, legal easements reasonably satisfactory to National Grid in respect of such apparatus and access to it prior to the stopping up of any such street but nothing in this paragraph affects any right of the undertaker or National Grid to require the removal of that apparatus under paragraph 25 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 27.



(2) Notwithstanding the temporary closure or diversion of any highway under the powers of article 11 (temporary prohibition, restriction or regulation of use or alteration or diversion of streets), National Grid is at liberty at all times to take all necessary access across any such closed highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the closure or diversion was in that highway.

### **Protective works to buildings**

23. The undertaker must exercise the powers conferred by article 14 (protective works to buildings) so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid (such consent not to be unreasonably withheld).

### **Acquisition of land**

24.—(1) Regardless of any provision in this Order or anything shown on the land plans, the undertaker may not acquire any interest in land or apparatus or override any easement or other interest of National Grid otherwise than by agreement.

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Grid and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Grid or affect the provisions of any enactment or agreement regulating the relations between National Grid and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid unless otherwise agreed by National Grid, and it will be the responsibility of the undertaker to procure and secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid or other enactments relied upon by National Grid as of right or other use in relation to the apparatus, then the provisions in this Schedule prevail.

(4) Any agreement or consent granted by National Grid under paragraph 27 or any other paragraph of this Part of this Schedule, is not to be taken to constitute agreement under sub-paragraph (1).

### **Removal of apparatus**

25.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to National Grid to its reasonable satisfaction (taking into account paragraph 26(1)) the necessary facilities and rights—

- (a) for the construction of alternative apparatus in other land of, or secured by, the undertaker;  
and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation does not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Grid and the undertaker.

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to National Grid of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

#### **Facilities and rights for alternative apparatus**

**26.**—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Grid facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid.

(2) If the facilities and rights to be afforded by the undertaker under sub-paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the matter may be referred to arbitration in accordance with paragraph 33 (arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

#### **Retained apparatus: protection of electricity undertaker**

**27.**—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan of the works to be executed and seek from National Grid details of the underground extent of their electricity tower foundations.

(2) In relation to works which will or may be situated on, over, under or within (i) 15 metres measured in any direction of any apparatus, or (ii) involve embankment works within 15 metres of any apparatus, the plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;

- (f) any intended maintenance regimes; and
- (g) an assessment of risks of rise of earth issues.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing—

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
- (c) details of load bearing capacities of trenches;
- (d) details of any cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and ongoing maintenance of any cable route;
- (f) written details of the operations and maintenance regime for any cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by National Grid's engineers; and
- (h) evidence that trench bearing capacity is to be designed to support overhead line construction traffic of up to 26 tonnes in weight.

(4) The undertaker must not commence any works to which sub-paragraph (2) or (3) apply until National Grid has given written approval of the plan so submitted.

(5) Any approval of National Grid required under sub-paragraph (4)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (6) or (8); and,
- (b) must not be unreasonably withheld.

(6) In relation to any work to which sub-paragraph (2) or (3) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage, for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works executed under sub-paragraph (2) or (3) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (6), as approved or as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (6) or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(8) Where under sub-paragraph (6) National Grid requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grid's satisfaction prior to the commencement of any specified works for which protective works are required and National Grid must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If National Grid in accordance with sub-paragraph (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 19 to 21 and 24 to 26 apply as if the removal of the apparatus had been required by the undertaker under paragraph 25(2).

(10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances.

(12) In sub-paragraph (11) “emergency works” means works whose execution at the time when they are executed is required in order to put an end to or to prevent the occurrence of circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property.

## **Expenses**

**28.—**(1) Subject to the following provisions of this paragraph, the undertaker must pay to National Grid within 30 days of receipt of an itemised invoice or claim from National Grid all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid;
  - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 25(3); or
  - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 33 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances

to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to National Grid in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Grid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

## **Indemnity**

**29.—**(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand accompanied by an invoice or claim from National Grid the cost reasonably and properly incurred by National Grid in making good such damage or restoring the supply; and
- (b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party as aforesaid other than arising from any default of National Grid.

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (2) unless National Grid fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents;
- (b) any part of the authorised works carried out by National Grid in the exercise of any functions conferred by this Order pursuant to a grant or transfer under article 44 (consent to transfer benefit of Order).

(4) National Grid must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) National Grid must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) National Grid must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within National Grid's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Grid's control and if reasonably requested to do so by the undertaker National Grid must provide an explanation of how the claim has been minimised, where relevant.

### **Enactments and agreements**

**30.** Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

### **Co-operation**

**31.**—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Grid requires the removal of apparatus under paragraph 25(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 27, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of National Grid's undertaking and National Grid must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever the undertaker's or National Grid's consent, agreement or approval is required in relation to plans, documents or other information submitted under this schedule, or agreement is required to be reached between the parties under this schedule, it must not be unreasonably withheld or delayed.

### **Access**

**32.** If in consequence of the agreement reached in accordance with paragraph 24(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

### **Arbitration**

**33.** Save for differences or disputes arising under paragraphs 25(2), 25(4) and 26(1), any difference or dispute arising between the undertaker and National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 51 (arbitration).

### **Notices**

**34.** Notwithstanding article 50 (service of notices), any plans submitted to National Grid by the undertaker pursuant to paragraph 27 must be sent to National Grid LSBUD at <https://lsbud.co.uk/> or [assetprotection@nationalgrid.com](mailto:assetprotection@nationalgrid.com) or such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

**PART 4**  
**FOR THE PROTECTION OF NATIONAL GAS TRANSMISSION PLC AS GAS UNDERTAKER**

**Application**

**35.**—(1) For the protection of National Grid as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Grid.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid, where the benefit of this Order is transferred or granted to another person under article 44 (consent to transfer benefit of Order)—

- (a) any agreement of the type mentioned in sub-paragraph (3) has effect as if it had been made between National Grid and the transferee or grantee (as the case may be); and
- (b) written notice of the transfer or grant must be given to National Grid on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Grid (but see paragraph 45(3)(b)).

**Interpretation**

**36.** In this Part of this Schedule—

“1991 Act” means the New Roads and Street Works Act 1991;

“alternative apparatus” means appropriate alternative apparatus to the reasonable satisfaction of National Grid to enable National Grid to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any gas mains, pipes, pressure governors, ventilators, cathodic protections, cables or other apparatus belonging to or maintained by National Grid for the purposes of gas supply together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid for the purposes of transmission, distribution or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2(1) (interpretation) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“commence” and “commencement” in paragraph 43 of this Part of this Schedule includes any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment,

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Grid (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities

and the extent of ground subsidence which, if exceeded, requires the undertaker to submit for National Grid's approval a ground mitigation scheme;

"ground subsidence event" means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

"in" in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

"maintain" and "maintenance" includes the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid including construct, use, repair, alter, inspect, renew or remove the apparatus;

"National Grid" means National Gas Transmission Plc or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986 as the context requires;

"plan" or "plans" include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed; and

"specified works" means any of the authorised works or activities undertaken in association with the authorised works which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 41(2) or otherwise; or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 41(2) or otherwise.

37. Except for paragraphs 38 (apparatus of National Grid in stopped up streets), 43 (retained apparatus: protection of gas undertaker), 44 (expenses) and 45 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Grid, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

### **Apparatus of National Grid in closed streets**

38.—(1) Where any street is stopped up under article 10 (permanent stopping up of streets and private means of access), if National Grid has any apparatus in the street or accessed via that street National Grid has the same rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to National Grid, or procure the granting to National Grid of, legal easements reasonably satisfactory to National Grid in respect of such apparatus and access to it prior to the stopping up of any such street but nothing in this paragraph affects any right of the undertaker or National Grid to require the removal of that apparatus under paragraph 41 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 43.

(2) Notwithstanding the temporary closure or diversion of any highway under the powers of article 11 (temporary prohibition, restriction or regulation of use or alteration or diversion of streets), National Grid is at liberty at all times to take all necessary access across any such closed highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the closure or diversion was in that highway.

### **Protective works to buildings**

39. The undertaker must exercise the powers conferred by article 14 (protective works to buildings) so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid (such consent not to be unreasonably withheld).



## **Acquisition of land**

40.—(1) Regardless of any provision in this Order or anything shown on the land plans, the undertaker may not acquire any interest in land or apparatus or override any easement or other interest of National Grid otherwise than by agreement.

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Grid and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Grid or affect the provisions of any enactment or agreement regulating the relations between National Grid and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid unless otherwise agreed by National Grid, and it will be the responsibility of the undertaker to procure and secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid or other enactments relied upon by National Grid as of right or other use in relation to the apparatus, then the provisions in this Schedule prevail.

(4) Any agreement or consent granted by National Grid under paragraph 43 or any other paragraph of this Part of this Schedule, is not to be taken to constitute agreement under sub-paragraph (1).

## **Removal of apparatus**

41.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraphs (2) to(5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to National Grid to its reasonable satisfaction (taking into account paragraph 42(1)) the necessary facilities and rights—

- (a) for the construction of alternative apparatus in other land of, or secured by, the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph 25(2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation does not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Grid and the undertaker.

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to National Grid of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

#### **Facilities and rights for alternative apparatus**

**42.**—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Grid facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid.

(2) If the facilities and rights to be afforded by the undertaker under sub-paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the matter may be referred to arbitration in accordance with paragraph 49 (arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

#### **Retained apparatus: protection of gas undertaker**

**43.**—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan and, if reasonably required by National Grid, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) any intended maintenance regimes.

(3) The undertaker must not commence any specified works until National Grid has given written approval of the plan so submitted.

(4) Any approval of National Grid required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7); and,
- (b) must not be unreasonably withheld or delayed.

(5) National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage, for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Specified works must only be executed in accordance with—

- (a) the plan, submitted under sub-paragraph (1), as approved or as amended from time to time by agreement between the undertaker and National Grid; and
- (b) such reasonable requirements as may be made in accordance with sub-paragraph (5) or (7) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(7) Where under sub-paragraph (6) National Grid requires any protective works to be carried out by itself or by the undertaker such protective works (whether of a temporary or permanent nature) must be carried out to National Grid's satisfaction prior to the commencement of any specified works for which protective works are required and National Grid must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If National Grid in accordance with sub-paragraph (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 41 and 42 apply as if the removal of the apparatus had been required by the undertaker under paragraph 41(2).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) ) As soon as reasonably practicable after any ground subsidence event attributable to the authorised works—

- (a) the undertaker must implement an appropriate ground mitigation scheme; and
- (b) National Grid retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 44.

(11) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances.

(12) In sub-paragraph (11) “emergency works” means works whose execution at the time when they are executed is required in order to put an end to or to prevent the occurrence of circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property.

## **Expenses**

**44.**—(1) Subject to the following provisions of this paragraph, the undertaker must pay to National Grid within 30 days of receipt of an itemised invoice or claim from National Grid all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid;
  - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 41(3); or
  - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;

- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 49 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to National Grid in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Grid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

## **Indemnity**

**45.—**(1) Subject to sub-paragraphs (1) and (2), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of National Grid, or there is any interruption in any service provided, or in the supply of

any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand accompanied by an invoice or claim from National Grid the cost reasonably and properly incurred by National Grid in making good such damage or restoring the supply; and
- (b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party as aforesaid other than arising from any default of National Grid.

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions sub-paragraph (1) unless National Grid fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents;
- (b) any part of the authorised works carried out by National Grid in the exercise of any functions conferred by this Order pursuant to a grant or transfer under article 44 (consent to transfer benefit of Order).

(4) National Grid must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) National Grid must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) National Grid must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within National Grid's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Grid's control and if reasonably requested to do so by the undertaker National Grid must provide an explanation of how the claim has been minimised, where relevant.

### **Enactments and agreements**

46. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

### **Co-operation**

47.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Grid requires the removal of apparatus under paragraph 41(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 43, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of National Grid's undertaking and National Grid must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever the undertaker's or National Grid's consent, agreement or approval is required in relation to plans, documents or other information submitted under this schedule, or agreement is required to be reached between the parties under this schedule, it must not be unreasonably withheld or delayed.

## Access

48. If in consequence of the agreement reached in accordance with paragraph 40(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

## Arbitration

49. Save for differences or disputes arising under paragraphs 41(2), 41(4) and 43(1), any difference or dispute arising between the undertaker and National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 51 (arbitration).

## Notices

50. Notwithstanding article 50 (service of notices), any plans submitted to National Grid by the undertaker pursuant to paragraph 43 must be sent to National Grid LSBUD at <https://lsbud.co.uk/> or [assetprotection@nationalgrid.com](mailto:assetprotection@nationalgrid.com) or such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

# PART 5

## FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

51.—(1) The following provisions will apply for the protection of the Agency unless otherwise agreed in writing between the undertaker and the Agency.

(2) In this Part of this Schedule—

“the Agency” means the Environment Agency;

“construction” includes execution, placing, altering, replacing, relaying and removal and excavation and “construct” and “constructed” is construed accordingly;

“drainage work” means any main river and includes any land which provides or is expected to provide flood storage capacity for any main river and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage or flood defence;

“fishery” means any waters containing fish and fish in, or migrating to or from, such waters and the spawn, spawning ground, habitat or food of such fish;

“main river” has the same meaning given in section 113(1) of the Water Resources Act 1991(a);

“plans” includes sections, drawings, specifications, calculations and method statements;

“remote defence” means any berm, wall or embankment that is constructed for the purposes of preventing or alleviating flooding from, or in connection with, any main river;

“specified work” means so much of any work or operation authorised by this Order as is in, on, under, over or within—

(a) 8 metres of the base of a remote defence which is likely to—

(i) endanger the stability of, cause damage or reduce the effectiveness of that remote defence; or

(ii) interfere with the Agency’s access to or along that remote defence;

(b) 8 metres of a drainage work or is otherwise likely to—

(i) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;

(ii) affect the flow, purity or quality of water in any watercourse or other surface waters;

---

(a) 1991 c. 57. The definition of “main river” was amended by section 59(3) of the Water Act 2014 (c. 21).

- (iii) cause obstruction to the free passage of fish or damage to any fishery;
  - (iv) affect the conservation, distribution or use of water resources; or
  - (v) affect the conservation value of the main river and habitats in its immediate vicinity;
- or which involves—
- (c) an activity that includes dredging, raising or taking of any sand, silt ballast, clay gravel or other materials from or off the bed or banks of a drainage work (or causing such materials to be dredged, raised or taken), including hydrodynamic dredging or desilting; and
  - (d) any quarrying or excavation within 16 metres of a drainage work which is likely to cause damage to or endanger the stability of the banks or structure of that drainage work;
- “watercourse” includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, basins, sewers and passages through which water flows except a public sewer.

### **Submission and approval of plans**

**52.**—(1) Before beginning to construct any specified work, the undertaker must submit to the Agency plans of the specified work and such further particulars available to it as the Agency may within 28 days of the receipt of the plans reasonably request.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 62.

(3) Any approval of the Agency required under this paragraph—

- (a) must not be unreasonably withheld or delayed;
- (b) is deemed to have been refused if it is neither given nor refused within 2 months of the submission of the plans or receipt of further particulars if such particulars have been requested by the Agency for approval; and
- (c) may be given subject to such reasonable requirements as the Agency may have for the protection of any drainage work or the fishery or for the protection of water resources, or for the prevention of flooding or pollution or for nature conservation or in the discharge of its environmental duties.

(4) The Agency must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

(5) In the case of a refusal, if requested to do so the Agency must provide reasons for the grounds of that refusal.

### **Construction of protective works**

**53.** Without limiting paragraph 52 the requirements which the Agency may have under that paragraph may include conditions requiring the undertaker, at its own expense, to construct such protective works, whether temporary or permanent, before or during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

- (a) to safeguard any drainage work against damage; or
- (b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased,

by reason of any specified work.

### **Timing of works and service of notices**

**54.**—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 53, must be constructed—

- (a) without unreasonable delay in accordance with the plans approved under this Part of this Schedule; and
- (b) to the reasonable satisfaction of the Agency,

and the Agency is entitled by its officer to watch and inspect the construction of such works.

(2) The undertaker must give to the Agency not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is completed.

(3) If the Agency reasonably requires, the undertaker must construct all or part of the protective works so that they are in place prior to the construction of any specified work to which the protective works relate.

### **Works not in accordance with this Schedule**

**55.**—(1) If any part of a specified work or any protective work required by the Agency is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the Agency may by notice in writing require the undertaker at the undertaker's own expense to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Agency reasonably requires.

(2) Subject to sub-paragraph (3) and paragraph 60, if, within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (1) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any reasonable expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(3) In the event of any dispute as to whether sub-paragraph (1) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (2) until the dispute has been finally determined in accordance with paragraph 62.

### **Maintenance of works**

**56.**—(1) Subject to sub-paragraph (6) the undertaker must from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land held by the undertaker for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any such drainage work which the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the undertaker to repair and restore the work, or any part of such work, or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as the Agency reasonably requires.

(3) Subject to sub-paragraph (5) and paragraph 60, if, within a reasonable period, being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may do what is necessary for such compliance and any reasonable expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(4) If there is any failure by the undertaker to obtain consent or comply with conditions imposed by the Agency in accordance with the provisions of this Part of this Schedule the Agency may serve written notice requiring the undertaker to cease all or part of the specified works and on receipt of



such notice the undertaker must cease the specified works or part thereof until it has obtained the consent or complied with the condition unless the cessation of the specified works or part thereof would cause greater damage than compliance with the written notice.

(5) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the Agency must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 62.

(6) This paragraph does not apply to—

- (a) drainage works which are vested in the Agency, or which the Agency or another person is liable to maintain and is not prevented by the exercise by the undertaker of the powers of the Order from doing so; and
- (b) any obstruction of a drainage work expressly authorised in the approval of specified works plans and carried out in accordance with the provisions of this Part of this Schedule provided that any obstruction is removed as soon as reasonably practicable.

### **Remediating impaired drainage work**

**57.** If by reason of the construction of any specified work or of the failure of any such work, the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by the undertaker to the reasonable satisfaction of the Agency and if the undertaker fails to do so, the Agency may make good the impairment or damage and recover any expenditure incurred by the Agency in so doing from the undertaker.

### **Agency access**

**58.** If by reason of construction of the specified work the Agency's access to flood defences or equipment maintained for flood defence purposes is materially obstructed, the undertaker must provide such alternative means of access that will allow the Agency to maintain the flood defence or use the equipment no less effectively than was possible before the obstruction within 24 hours or as soon as reasonably practicable of the undertaker becoming aware of such obstruction.

### **Free passage of fish**

**59.—(1)** The undertaker must take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in the fishery during the construction of any specified work.

(2) If by reason of—

- (a) the construction of any specified work; or
- (b) the failure of any such work,

damage to the fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on the undertaker requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage.

(3) Subject to paragraph 60, if within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage or expected damage to a fishery, the undertaker fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and any expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(4) Subject to paragraph 60, in any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the undertaker any expenditure incurred in so doing provided that notice specifying those steps is served on the

undertaker as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

### **Indemnity**

**60.** The undertaker indemnifies the Agency in respect of all costs, charges and expenses which the Agency may incur—

- (a) in the examination or approval of plans under this Part of this Schedule;
- (b) in the inspection of the construction of the specified works or any protective works required by the Agency under this Part of this Schedule; and
- (c) in the carrying out of any surveys or tests by the Agency which are reasonably required in connection with the construction of the specified works.

**61.—(1)** The undertaker is responsible for and indemnifies the Agency against all costs and losses not otherwise provided for in this Schedule which may be reasonably incurred or suffered by the Agency by reason of—

- (a) the construction, operation or maintenance or failure during construction of any specified works comprised within the authorised development;
- (b) the operation or maintenance of any specified works comprised within the authorised development or the failure of any such works; or
- (c) any act or omission of the undertaker, its employees, contractors or agents or other persons acting under the direction of the undertaker whilst engaged upon—
  - (i) the construction, operation or maintenance of the specified works; or
  - (ii) in the case of those specified works that the undertaker is liable to maintain, dealing with any failure of those specified works.

(2) For the avoidance of doubt, in sub-paragraph (1)—

“costs” includes—

- (a) expenses and charges;
- (b) staff costs and overheads;
- (c) legal costs;

“losses” includes physical damage.

(3) The undertaker indemnifies the Agency against all liabilities, claims and demands arising out of or in connection with the authorised development or otherwise out of the matters referred to in sub-paragraph (1).

(4) In sub-paragraph (3)—

“claims” and “demands” include as applicable—

- (a) costs (within the meaning of sub-paragraph (2)) incurred in connection with any claim or demand;
- (b) any interest element of sums claimed or demanded;

“liabilities” includes—

- (a) contractual liabilities;
- (b) tortious liabilities (including liabilities for negligence or nuisance);
- (c) liabilities to pay statutory compensation or for breach of statutory duty;
- (d) liabilities to pay statutory penalties imposed on the basis of strict liability (but does not include liabilities to pay other statutory penalties).

(5) The Agency must give to the undertaker reasonable notice of any such claim or demand and must not settle or compromise a claim without the agreement of the undertaker and that agreement must not be unreasonably withheld or delayed.

(6) The Agency must, at all times take reasonable steps to prevent and mitigate any such claims, demands, proceedings, costs, damages, expenses or loss.

(7) The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator must not relieve the undertaker from any liability under the provisions of this Part of this Schedule.

(8) Nothing in this paragraph imposes any liability on the undertaker with respect to any costs, charges, expenses, damages, claims, liabilities, demands or losses to the extent that they are attributable to the neglect or default of the Agency, its officers, servants, contractors or agents.

## **Disputes**

**62.** Any dispute arising between the undertaker and the Agency under this Part of this Schedule must, if the parties agree, be determined by arbitration under article 51 (arbitration), but failing agreement be determined by the Secretary of State for Environment Food and Rural Affairs or its successor and the Secretary of State for Transport or its successor acting jointly on a reference to them by the undertaker or the Agency, after notice in writing by one to the other.

## **PART 6**

### **FOR THE PROTECTION OF NETWORK RAIL INFRASTRUCTURE LIMITED**

**63.** The following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 77, any other person on whom rights or obligations are conferred by that paragraph.

**64.** In this Part of this Schedule—

“asset protection agreement” means an agreement to regulate the construction and maintenance of the specified work in a form prescribed from time to time by Network Rail;

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“network licence” means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State exercise of their powers under section 8 (licences) of the Railways Act 1993(a);

“Network Rail” means Network Rail Infrastructure Limited (company number 02904587, whose registered office is at 1 Eversholt Street, London NW1 2DN) and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006(b)) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited and any successor to Network Rail Infrastructure Limited’s railway undertaking;

“plans” includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

---

(a) 1993 c. 43. Section 8 was amended by section 216 of, and Part 1 of Schedule 2, paragraph 4 of Schedule 17 and Part IV of Schedule 31 to, the Transport Act 2000 (c. 38), by section 16(5) of, and paragraph 5 of Schedule 2 to, the Railways and Transport Safety Act 2003 (c. 20), by sections 1 and 60 of, and paragraph 3 of Schedule 1 and Part 1 of Schedule 13 to, the Railways Act 2005 (c. 38), by S.I. 2015/1682 and by S.I. 2015/1682.

(b) 2006 c.46.

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

“railway property” means any railway belonging to Network Rail and—

- (a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and
- (b) any easement or other property interest held or used by Network Rail or a tenant or licensee of Network Rail for the purposes of such railway or works, apparatus or equipment;

“regulatory consents” means any consent or approval required under—

- (a) the Railways Act 1993;
- (b) the network licence; and/or
- (c) any other relevant statutory regulatory provisions,

by either the Office of Rail and Road or the Secretary of State for Transport or any other competent body including change procedures and any other consents, approvals of any other accessor beneficiary that may be required in relation to the authorised development any accessor beneficiary that may be required in relation to the authorised development; and

“specified work” means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property and for the avoidance of doubt, includes the maintenance of such works under the powers conferred by article 5 (maintenance of the authorised development) in respect of such works.

**65.—**(1) Where under this Part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

- (a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
- (b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

**66.—**(1) The undertaker must not exercise the powers conferred by—

- (a) article 13 (discharge of water);
- (b) article 14 (protective works to buildings);
- (c) article 15 (authority to survey and investigate the land);
- (d) article 17 (felling or lopping of trees and hedgerows);
- (e) article 19 (compulsory acquisition of land);
- (f) article 22 (compulsory acquisition of rights and restrictive covenants);
- (g) article 23 (private rights over land);
- (h) article 24 (power to override easements and other rights);
- (i) article 27 (acquisition of subsoil, etc., only);
- (j) article 28 (rights over or under streets);
- (k) article 29 (temporary use of land for constructing the authorised development);
- (l) article 30 (temporary use of land for maintaining the authorised development);
- (m) article 31 (statutory undertakers);
- (n) the powers conferred by section 11(3) (power of entry) of the 1965 Act;

- (o) the powers conferred by section 203 (power to override easements and rights) of the Housing and Planning Act 2016<sup>(a)</sup>;
- (p) the powers conferred by section 172 (right to enter and survey land) of the Housing and Planning Act 2016; and
- (q) any powers in respect of the temporary possession of land under the Neighbourhood Planning Act 2017<sup>(b)</sup>,

in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker must not exercise the powers conferred by sections 271 (extinguishment of rights of statutory undertakers: preliminary notices) or 272 (extinguishment of rights of electronic communication code network operators: preliminary notices) of the 1990 Act, or article 31 (statutory undertakers), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The undertaker must not under the powers of this Order acquire or use or acquire new rights over, or seek to impose any restrictive covenants over, any railway property, or extinguish any existing rights of Network Rail in respect of any third party property, except with the consent of Network Rail.

(5) The undertaker must not under the powers of this Order do anything which would result in railway property being incapable of being used or maintained or which would affect the safe running of trains on the railway.

(6) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions but it will never be unreasonable to withhold consent for reasons of operational railway safety (such matters to be in network Rail's absolute discretion).

(7) The undertaker must enter into an asset protection agreement prior to the commencement of any specified work.

**67.—**(1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled in accordance with article 51 (arbitration).

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated their disapproval of those plans and the grounds of such disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer shall be deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

---

(a) 2016 c. 22.  
(b) 2017 c. 20.

(4) When signifying their approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case without unnecessary delay and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to their reasonable satisfaction.

**68.**—(1) Any specified work and any protective works to be constructed by virtue of paragraph 67(4) must, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 67;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction shall be caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

**69.** The undertaker must—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as they may reasonably require with regard to a specified work or the method of constructing it.

**70.** Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

**71.**—(1) If any permanent or temporary alterations or additions to railway property, are reasonably necessary in consequence of the construction of a specified work or a protective works, during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker reasonable written notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work or a protective work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work or the protective work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work or the protective work is to be constructed, Network Rail must assume construction of that part of the specified work or the protective work and the undertaker must, notwithstanding any such approval of a specified work or a protective work under paragraph 67(4), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work or protective works.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 72(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

**72.** The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 67(3) or in constructing any protective works under the provisions of paragraph 67(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work or a protective work;
- (c) in respect of the employment or procurement of the services of any inspectors, signallers, watch-persons and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work or a protective work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or a protective work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works or a protective work, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work or a protective work.

**73.—**(1) In this paragraph—

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 67(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker's compliance with sub-paragraph (3)—

- (a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail's apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 67(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail's apparatus identified pursuant to sub-paragraph (a); and
- (c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 67(1) has effect subject to this sub-paragraph.

(6) Prior to the commencement of the operation of the authorised development the undertaker must test the use and operation of the authorised development in a manner that must first have been agreed with Network Rail and if, regardless of any measures adopted pursuant to sub-paragraph (3), the testing of the authorised development causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred—

- (a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;
- (b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI;
- (c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI; and
- (d) the undertaker must not allow the use or operation of the authorised development in a manner that has caused or will cause EMI until measures have been taken in accordance with this paragraph to prevent EMI occurring.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraph (5) or (6)—

- (a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus; and
- (b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 68.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 77(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 72(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.



(11) In relation to any dispute arising under this paragraph the reference in article 51 (arbitration) to a single arbitrator to be agreed between the parties is to be read as a reference to an arbitrator being a member of the Institution of Engineering and Technology.

74. If at any time after the completion of a specified work or a protective work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work or the protective work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work or protective work in such state of maintenance as not adversely to affect railway property.

75. The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

76. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work or a protective work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

77.—(1) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule which may be occasioned to or reasonably incurred by Network Rail—

- (a) by reason of the construction, maintenance or operation of a specified work or protective work or the failure thereof;
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work or a protective work;
- (c) by reason of any act or omission of the undertaker or any person in its employ or of its contractors or others whilst accessing to or egressing from the authorised development;
- (d) in respect of any damage caused to or additional maintenance required to, railway property or any such interference or obstruction or delay to the operation of the railway as a result of access to or egress from the authorised development by the undertaker or any person in its employ or of its contractors or others; or
- (e) in respect of costs incurred by Network Rail in complying with any railway operational procedures or obtaining any regulatory consents which procedures are required to be followed or consents obtained to facilitate the carrying out of the authorised development,

and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or a protective work or any such failure, act or omission; and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision shall not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail must give the undertaker reasonable written notice of any such claim or demand and no settlement or compromise of such claim or demand is to be made without the prior written consent of the undertaker.

(3) The sums payable by the undertaker under sub-paragraph (1) will if relevant include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs is, in the event of default, enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph—

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any specified work or protective work including but not limited to any restriction of the use of Network Rail’s railway network as a result of the construction, maintenance or failure of a specified work or a protective work or any such act or omission as mentioned in sub-paragraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

**78.** Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 77) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part of this Schedule (including any claim relating to those relevant costs).

**79.** In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

**80.** The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

- (a) any railway property shown on the works and land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

**81.** Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part I of the Railways Act 1993.

**82.** The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State’s consent, under article 44 (consent to transfer benefit of Order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

**83.** The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 49 (certification of plans, etc.) are certified by the Secretary of State, provide a set of those plans to Network Rail in a format specified by Network Rail.

## PART 7

### FOR THE PROTECTION OF DURHAM COUNTY COUNCIL

**84.** The provisions of this Part of this Schedule apply for the protection of Durham County Council in relation to its functions under the Land Drainage Act 1991 as the lead local flood authority.

**85.** In this Part of this Schedule—

“construction” includes execution, placing, altering, laying, replacing, relaying, connecting, building, installing, removal and excavation, and “construct” and “constructed” are to be construed accordingly;

“the drainage authority” means Durham County Council in relation to its functions under the Land Drainage Act 1991 as the lead local flood authority within the meaning of section 6 (other definitions) of the Flood and Water Management Act 2010(a);

“drainage work” means any ordinary watercourse and includes any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage or flood defence in connection with an ordinary watercourse which is the responsibility of the drainage authority;

“ordinary watercourse” has the same meaning as given in section 72 (interpretation) of the Land Drainage Act 1991(b);

“plans” includes sections, drawings, specifications and method statements; and

“specified work” means any of the following works carried out in relation to or which may affect any ordinary watercourse—

- (a) erecting any mill dam, weir or other similar obstruction to the flow of the watercourse, or raising or otherwise altering any such obstruction;
- (b) construction or installation of a bridge or other structure;
- (c) installing a culvert in the watercourse; or
- (d) altering a watercourse or a culvert or other form of drainage infrastructure in a manner that would be likely to affect the flow of the watercourse.

**86.—(1)** Before beginning to construct any specified work, the undertaker must submit to the drainage authority plans of the work, and such further particulars as the drainage authority may within 14 days of the first submission of the plans reasonably require.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the drainage authority, or determined under paragraph 92.

(3) The drainage authority must approve or refuse approval of the plans for a specified work within 28 days of receipt of the later of—

- (a) the plans under sub-paragraph (1); or
- (b) such further particulars as the drainage authority may reasonably require under sub-paragraph (1).

(4) Any approval of the drainage authority required under this paragraph—

- (a) must not be unreasonably withheld or delayed;
- (b) is to be deemed to have been given if it is neither given nor refused within the period specified in sub-paragraph (3); and
- (c) may be given subject to such reasonable requirements or conditions as the drainage authority may make for the protection of any ordinary watercourse or for the prevention of flooding.

**87.** The requirements or conditions which the drainage authority may make under paragraph 86 include conditions requiring the undertaker at its own expense to construct such protective works (including any new works as well as alterations to existing works) as are reasonably necessary—

---

(a) 2010 c. 29.  
(b) 1991 c. 59.

- (a) to safeguard any ordinary watercourse against damage, or
- (b) to secure that the efficiency of any ordinary watercourse for flood defence or land drainage purposes is not impaired and that the risk of flooding is not otherwise increased, by reason of the specified work in relation to the ordinary watercourse.

**88.**—(1) Any specified work in relation to an ordinary watercourse, and all protective works required by the drainage authority under paragraph 86, must be constructed to the reasonable satisfaction of the drainage authority and an officer of the drainage authority is entitled, on giving such notice as may be reasonable in the circumstances, to inspect and watch the construction of such works.

(2) The undertaker must give to the drainage authority not less than 14 days' notice of its intention to commence construction of any specified work and the undertaker must give to the drainage authority notice of completion of a specified work not later than 7 days after the date on which it is brought into use.

(3) If any part of a specified work in, over or under any ordinary watercourse is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the drainage authority may by notice require the undertaker at its own expense to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and the drainage authority in writing consents, such consent not to be unreasonably withheld) at the undertaker's expense to remove, alter or pull down the work and, where removal is agreed, to restore the site to its former condition to such extent and within such limits as the drainage authority reasonably requires.

(4) Subject to sub-paragraph (5), if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (3) is served upon the undertaker, it has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress toward their implementation, the drainage authority may execute the works specified in the notice and any expenditure reasonably incurred by it in so doing is to be recoverable from the undertaker.

(5) In the event of any dispute as to whether sub-paragraph (3) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the drainage authority must not, except in an emergency, exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined.

**89.**—(1) From the commencement of the construction of any specified work until the date falling 12 months from the date of completion of the specified work ("the maintenance period"), the undertaker must at its expense, maintain in good repair and condition and free from obstruction the drainage work which is situated within the limits of deviation for that specified work and within land held or occupied by the undertaker, whether the drainage work is constructed under this Order or is already in existence.

(2) If any such drainage work which the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the drainage authority, it may by notice require the undertaker to maintain the drainage work at the undertaker's expense, or any part of it, to such extent as the drainage authority reasonably requires.

(3) If, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the drainage authority may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in doing so from the undertaker.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the drainage authority must not, except in a case of emergency, exercise the powers of sub-paragraph (3) until the dispute has been finally determined.

(5) This paragraph does not apply to—

- (a) drainage works which are vested in the drainage authority, or which the drainage authority or another person is liable to maintain and is not prevented by this Order from so doing; and

- (b) any obstruction of a drainage work for the purpose of a work or operation authorised by this Order and carried out in accordance with the provisions of this Part of this Schedule provided that any obstruction is removed as soon as reasonably practicable.

**90.** Subject to paragraph 89(5)(b), if by reason of the construction of any specified work or of the failure of any such work the efficiency of any ordinary watercourse for flood defence or land drainage purposes is impaired, or that watercourse is otherwise damaged, so as to require remedial action, such impairment or damage must be made good by the undertaker at its own expense to the reasonable satisfaction of the drainage authority and if the undertaker fails to do so, the drainage authority may make good the same and recover the expense reasonably incurred by it in so doing from the undertaker.

**91.—(1)** The undertaker must make reasonable compensation for costs, charges and expenses which it may reasonably incur or which it may sustain—

- (a) in the examination or approval of plans under this Part of this Schedule; and
- (b) in the inspection and supervision of the construction of a specified work in respect of an ordinary watercourse or any protective works required by the drainage authority under this Part of this Schedule.

(2) The maximum amount payable to the drainage authority under sub-paragraph (1)(a) or (1)(b) is to be the same as would have been payable to the drainage authority in accordance with the scale of charges for pre-application advice and land drainage consent applications published on the drainage authority's website from time to time.

**92.** Any dispute arising between the undertaker and the drainage authority under this Part of this Schedule is to be determined by arbitration in accordance with article 51 (arbitration) of the Order.

## SCHEDULE 10

Article 49

### DOCUMENTS TO BE CERTIFIED

<i>(1)</i> <i>Document</i>	<i>(2)</i> <i>Description</i>	<i>(3)</i> <i>Reference</i>	<i>(4)</i> <i>Date submitted</i>
Book of reference	Book of Reference – Volume One: Scheme 0102: M6 Junction 40 to Kemplay Bank	5.7 (Rev P04)	16/5/2023
	Book of Reference – Volume Two: Scheme 03: Penrith to Temple Sowerby	5.7 (Rev 2)	16/5/2023
	Book of Reference – Volume Three: Scheme 0405: Temple Sowerby to Appleby	5.7 (Rev 2)	16/5/2023
	Book of Reference – Volume Four: Scheme 06: Appleby to Brough	5.7 (Rev P06)	16/5/2023
	Book of Reference – Volume Five: Scheme 07: Bowes Bypass	5.7 (Rev 2)	16/5/2023
	Book of Reference – Volume Six: Scheme 08: Cross Lanes to Rokeby	5.7 (Rev 2)	16/5/2023
	Book of Reference – Volume Seven: Scheme 09: Stephen Bank to Carkin Moor	5.7 (Rev 2)	16/5/2023
	Book of Reference – Volume Eight: Scheme 11: A1(M) Junction 53 Scotch Corner	5.7 (Rev 2)	16/5/2023
Classification of roads plans	Classification of Roads Plan Scheme 0102: M6 Junction 4 to Kemplay Bank	5.20	21/6/2022
	Classification of Roads Plan Scheme 03: Penrith to Temple Sowerby	5.20	21/6/2022
	Classification of Roads Plan Scheme 0405: Temple Sowerby to Appleby	5.20	21/6/2022
	Classification of Roads Plan Scheme 06: Appleby to Brough	5.20 (Rev 3)	16/5/2023
	Classification of Roads Plan Scheme 07: Bowes Bypass	5.20 (Rev 2)	9/5/2023
	Classification of Roads Plan Scheme 08: Cross Lanes to Rokeby	5.20	21/6/2022
	Classification of Roads Plan Scheme 09: Stephen Bank to Carkin Moor	5.20	21/6/2022
Crown land plans	Crown Land Plans Scheme 06: Appleby to Brough	5.14 (Rev 4)	26/5/2023
	Crown Land Plans Scheme 07: Bowes Bypass	5.14	21/6/2022
Design principles	Project Design Principles	5.11 (Rev 5)	16/5/2023
De-trunking plans	De-Trunking Plans Scheme 0102: M6 Junction 40 to Kemplay Bank	5.21	21/6/2022
	De-Trunking Plans Scheme 03: Penrith to Temple Sowerby	5.21 (Rev 2)	9/5/2023
	De-Trunking Plans Scheme 0405: Temple Sowerby to Appleby	5.21	21/6/2022
	De-Trunking Plans Scheme 06: Appleby to Brough	5.21 (Rev 2)	9/5/2023
	De-Trunking Plans Scheme 07: Bowes Bypass	5.21 (Rev 2)	9/5/2023
	De-Trunking Plans Scheme 08: Cross Lanes to Rokeby	5.21	21/6/2022

	De-Trunking Plans Scheme 09: Stephen Bank to Carkin Moor	5.21 (Rev 2)	9/5/2023
Engineering section drawings: cross sections	Engineering Section Drawings: Cross Sections Scheme 0102: M6 Junction 40 to Kemplay Bank	5.18 (Rev 2)	9/5/2023
	Engineering Section Drawings: Cross Sections Scheme 03: Penrith to Temple Sowerby	5.18 (Rev 2)	9/5/2023
	Engineering Section Drawings: Cross Sections Scheme 0405: Temple Sowerby to Appleby	5.18 (Rev 2)	9/5/2023
	Engineering Section Drawings: Cross Sections Scheme 06: Appleby to Brough	5.18 (Rev 2)	9/5/2023
	Engineering Section Drawings: Cross Sections Scheme 07: Bowes Bypass	5.18 (Rev 2)	9/5/2023
	Engineering Section Drawings: Cross Sections Scheme 08: Cross Lanes to Rokeby	5.18	21/6/2022
	Engineering Section Drawings: Cross Sections Scheme 09: Stephen Bank to Carkin Moor	5.18 (Rev 2)	9/5/2023
	Engineering Section Drawings: Cross Sections Scheme 11: A1(M) Junction 53 Scotch Corner	5.18	21/6/2022
	Engineering section drawings: plan and profiles	Engineering Section Drawings: Plan and Profiles Scheme 0102: M6 Junction 40 to Kemplay Bank	5.17 (Rev 2)
Engineering Section Drawings: Plan and Profiles Scheme 03: Penrith to Temple Sowerby		5.17 (Rev 2)	9/5/2023
Engineering Section Drawings: Plan and Profiles Scheme 0405: Temple Sowerby to Appleby		5.17 (Rev 2)	9/5/2023
Engineering Section Drawings: Plan and Profiles Scheme 06: Appleby to Brough		5.17 (Rev 3)	16/5/2023
Engineering Section Drawings: Plan and Profiles Scheme 07: Bowes Bypass		5.17 (Rev 2)	9/5/2023
Engineering Section Drawings: Plan and Profiles Scheme 08: Cross Lanes to Rokeby		5.17	21/6/2022
Engineering Section Drawings: Plan and Profiles Scheme 09: Stephen Bank to Carkin Moor		5.17 (Rev 2)	9/5/2023
Engineering Section Drawings: Plan and Profiles Scheme 11: A1(M) Junction 53 Scotch Corner		5.17	21/6/2022
Environmental management plan	Environmental Management Plan	2.7 (Rev 5)	16/5/2023
	Environmental Management Plan Annex A Constraints Plan	2.7	21/6/2022
	Environmental Management Plan Annex B1 Outline Landscape and Ecology Management Plan	2.7 (Rev 4)	16/5/2023
	Environmental Management Plan Annex B2 Outline Site Waste Management Plan	2.7 (Rev 2)	24/1/2023
	Environmental Management Plan Annex B3 Outline Heritage Mitigation Strategy	2.7 (Rev 5)	16/5/2023
	Environmental Management Plan Annex B4 Air Quality and Dust Management Plan	2.7 (Rev 3)	16/5/2023
	Environmental Management Plan Annex B5 Noise and Vibration Management Plan	2.7 (Rev 3)	16/5/2023

	Environmental Management Plan Annex B6 Public Rights of Way Management Plan	2.7	21/6/2022
	Environmental Management Plan Annex B7 Ground and Surface Water Management Plan	2.7 (Rev 2)	24/1/2023
	Environmental Management Plan Annex B8 Materials Management Plan	2.7	21/6/2022
	Environmental Management Plan Annex B9 Soil Management Plan	2.7 (Rev 2)	24/1/2023
	Environmental Management Plan Annex B10 Construction Worker Travel and Accommodation Plan	2.7	21/6/2022
	Environmental Management Plan Annex B11 Community Engagement Plan	2.7 (Rev 2)	24/1/2023
	Environmental Management Plan Annex B12 Skills and Employment Strategy	2.7	21/6/2022
	Environmental Management Plan Annex B13 Construction Traffic Management Plan	2.7 (Rev 2)	16/5/2023
	Environmental Management Plan Annex B14 Site Establishment Plan	2.7	21/6/2022
	Environmental Management Plan Annex B15 Invasive Non-Native Species (INNS)	2.7 (Rev 2)	24/1/2023
	Environmental Management Plan Annex C1 Working in and Near SAC Method Statement	2.7 (Rev 2)	24/1/2023
	Environmental Management Plan Annex C2 Working in Watercourses Method Statement	2.7 (Rev 2)	24/1/2023
	Environmental Management Plan Annex C3 Scheduled Monuments Method Statement	2.7 (Rev 4)	16/5/2023
	Environmental Management Plan Annex C4 Piling Method Statement	2.7	21/6/2022
	Environmental Management Plan Annex D Emergency Procedures	2.7 (Rev 2)	24/1/2023
Environmental statement	Environmental Statement Non-Technical Summary	3.1	21/6/2022
	Environmental Statement Volume 1 (Main Report) - Chapters 1 to 15	3.2	21/6/2022
	Environmental Statement Volume 1 (Main Report) - Chapter 16	3.2 (Rev 2)	6/9/2022
	Environmental Statement Volume 2 (Figures) – Figures 1.1, 2.3, 8.9.1, 10.8, 11.1, 12.2, 12.5 and 12.9	3.3	21/6/2022
	Environmental Statement Volume 2 (Figures) – Figure 10.9	3.3 (Rev 2)	14/2/2023
	Environmental Statement Volume 2 (Figures) – Figures 2.1 to 2.2, 2.4 to 8.8.2, 8.9.2 to 10.7, 12.1, 12.3 to 12.4, 12.6 to 12.8 and 13.1 to 15.2	3.3 (Rev 2)	9/5/2023
	Environmental Statement Volume 3 (Appendices) – Appendices 1.1 to 5.3, 6.1 to 8.9, 9.1 to 9.4 and 10.1 to 10.5	3.4	21/6/2022
	Environmental Statement Volume 3 (Appendices) – Appendix 9.5 and 13.2	3.4 (Rev 2)	24/1/2023
	Environmental Statement Volume 3 (Appendices) 5.4, 8.10 and 10.6	3.4 (Rev 2)	14/2/2023
	Errata Report	6.1 (Rev 3)	16/5/2023



Land plans	Land Plans Scheme 0102: M6 Junction 40 to Kemplay Bank	5.13 (Rev 3)	9/5/2023
	Land Plans Scheme 03: Penrith to Temple Sowerby	5.13	21/6/2022
	Land Plans Scheme 0405: Temple Sowerby to Appleby	5.13 (Rev 2)	2/9/2022
	Land Plans Scheme 06: Appleby to Brough	5.13 (Rev 3)	26/5/2023
	Land Plans Scheme 07: Bowes Bypass	5.13 (Rev 2)	16/5/2023
	Land Plans Scheme 08: Cross Lanes to Rokeby	5.13	21/6/2022
	Land Plans Scheme 09: Stephen Bank to Carkin Moor	5.13 (Rev 2)	16/5/2023
	Land Plans Scheme 11: A1(M) Junction 53 Scotch Corner	5.13	21/6/2022
Rights of way and access plans	Rights of Way and Access Plans Scheme 0102: M6 Junction 40 to Kemplay Bank	5.19	21/6/2022
	Rights of Way and Access Plans Scheme 03: Penrith to Temple Sowerby	5.19 (Rev 3)	16/5/2023
	Rights of Way and Access Plans Scheme 0405: Temple Sowerby to Appleby	5.19	21/6/2022
	Rights of Way and Access Plans Scheme 06: Appleby to Brough	5.19 (Rev 2)	9/5/2023
	Rights of Way and Access Plans Scheme 07: Bowes Bypass	5.19 (Rev 2)	9/5/2023
	Rights of Way and Access Plans Scheme 08: Cross Lanes to Rokeby	5.19	21/6/2022
	Rights of Way and Access Plans Scheme 09: Stephen Bank to Carkin Moor	5.19 (Rev 2)	9/5/2023
	Rights of Way and Access Plans Scheme 11: A1(M) Junction 53 Scotch Corner	5.19	21/6/2022
Special category land plans	Special Category Land Plans Scheme 0102: M6 Junction 40 to Kemplay Bank	5.15 (Rev 2)	9/5/202
	Special Category Land Plans Scheme 0405: Temple Sowerby to Appleby	5.15	21/6/2022
	Special Category Land Plans Scheme 06: Appleby to Brough	5.15 (Rev 2)	9/5/2023
	Special Category Land Plans Scheme 07: Bowes Bypass	5.15	21/6/2022
Traffic regulation measures (clearways and prohibitions) plans	Traffic Regulation Measures (Clearways and Prohibitions) Plans Scheme 0102: M6 Junction 40 to Kemplay Bank	5.22	21/6/2022
	Traffic Regulation Measures (Clearways and Prohibitions) Plans Scheme 03: Penrith to Temple Sowerby	5.22 (Rev 2)	9/5/2023
	Traffic Regulation Measures (Clearways and Prohibitions) Plans Scheme 0405: Temple Sowerby to Appleby	5.22	21/6/2022
	Traffic Regulation Measures (Clearways and Prohibitions) Plans Scheme 06: Appleby to Brough	5.22 (Rev 2)	9/5/2023
	Traffic Regulation Measures (Clearways and Prohibitions) Plans Scheme 07: Bowes Bypass	5.22 (Rev 2)	9/5/2023
	Traffic Regulation Measures (Clearways and Prohibitions) Plans Scheme 08: Cross Lanes to Rokeby	5.22	21/6/2022

	Traffic Regulation Measures (Clearways and Prohibitions) Plans Scheme 09: Stephen Bank to Carkin Moor	5.22 (Rev 2)	9/5/2023
Traffic regulation measures (speed limits) plans	Traffic Regulation Measures (Speed Limits) Plans Scheme 0102: M6 Junction 40 to Kemplay Bank	5.23 (Rev 2)	9/5/2023
	Traffic Regulation Measures (Speed Limits) Plans Scheme 03: Penrith to Temple Sowerby	5.23 (Rev 2)	9/5/2023
	Traffic Regulation Measures (Speed Limits) Plans Scheme 0405: Temple Sowerby to Appleby	5.23 (Rev 2)	9/5/2023
	Traffic Regulation Measures (Speed Limits) Plans Scheme 06: Appleby to Brough	5.23 (Rev 2)	9/5/2023
	Traffic Regulation Measures (Speed Limits) Plans Scheme 07: Bowes Bypass	5.23 (Rev 2)	9/5/2023
	Traffic Regulation Measures (Speed Limits) Plans Scheme 08: Cross Lanes to Rokeby	5.23	21/6/2022
	Traffic Regulation Measures (Speed Limits) Plans Scheme 09: Stephen Bank to Carkin Moor	5.23 (Rev 2)	9/5/2023
Tree preservation order trees location plan	Tree Preservation Order Trees Location Plan Scheme 0102: M6 Junction 40 to Kemplay Bank	5.24	21/6/2022
	Tree Preservation Order Trees Location Plan Scheme 06: Appleby to Brough	5.24 (Rev 2)	9/5/2023
	Tree Preservation Order Trees Location Plan Scheme 09: Stephen Bank to Carkin Moor	5.24 (Rev 2)	9/5/2023
Works plans	Works Plans Scheme 0102: M6 Junction 40 to Kemplay Bank	5.16 (Rev 2)	9/5/2023
	Works Plans Scheme 03: Penrith to Temple Sowerby	5.16 (Rev 2)	9/5/2023
	Works Plans Scheme 0405: Temple Sowerby to Appleby	5.16 (Rev 2)	9/5/2023
	Works Plans Scheme 06: Appleby to Brough	5.16 (Rev 2)	9/5/2023
	Works Plans Scheme 07: Bowes Bypass	5.16 (Rev 2)	9/5/2023
	Works Plans Scheme 08: Cross Lanes to Rokeby	5.16	21/6/2022
	Works Plans Scheme 09: Stephen Bank to Carkin Moor	5.16 (Rev 2)	9/5/2023
	Works Plans Scheme 11: A1(M) Junction 53 Scotch Corner	5.16	21/6/2022

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order authorises National Highways Company Limited to construct, operate and maintain the A66 (Northern Trans-Pennine). This is a series of eight schemes along the A66 between M6 Junction 40 Penrith and A1(M) Junction 53 Scotch Corner and associated works.

The Order would permit National Highways to acquire, compulsorily or by agreement, land and rights in and to use land for this purpose.

A copy of all documents mentioned in this Order and certified in accordance with article 49 (certification of plans, etc.) of this Order may be inspected free of charge during working hours at National Highways, Bridge House, 1 Walnut Tree Close, Guildford, Surrey, GU1 4LZ.

## APPENDIX D: MATTERS FOR THE SECRETARY OF STATE'S FURTHER CONSIDERATION

Table D1 – Matters where the Secretary of State is Recommended to Seek Further Information

Interested Party	Reason	Relevant Paragraph(s) in Report
<p>Natural England</p> <p>The Applicant</p>	<p>At D9, the Applicant <a href="#">[REP9-034]</a> and NE <a href="#">[REP9-046]</a> issued a joint position statement that matters concerning ammonia and nitrogen surveys and the Applicant's conclusion that the Proposed Development would not give rise to an adverse effect on the integrity of the North Pennine Moors SAC remained ongoing. Both parties remain hopeful matters can be resolved before the end of the ExA's reporting period.</p> <p>Because of this, the ExA cannot at the present time recommend no adverse effects on integrity, which will have implications upon the Secretary of State's AA.</p> <p>The ExA therefore recommends that the Secretary of State seeks an update from both parties prior to determination of the Application.</p>	<p>Section 5</p> <p>8.7.5 and 8.7.6</p>
<p>The Ministry of Justice</p> <p>The Public Trustee</p>	<p>At D9, the Public Trustee first advised that it did not consider Plot 07-02-45 to be Crown land, notwithstanding that the Public Trustee is an associated office of the MoJ <a href="#">[REP9-037]</a>.</p> <p>The ExA therefore recommends that the Secretary of State seeks advice from the MoJ on whether the Public Trustee land within the Order limits is Crown land and the CA powers sought in respect of Public Trustee Crown land should not be granted until any necessary Crown consent has been obtained or the recommended DCO and associated certified documents have been amended.</p>	<p>7.4.4, 7.6.24, 7.6.25, 7.6.34, 7.8.34 to 7.8.39 and 7.9.10</p>

Interested Party	Reason	Relevant Paragraph(s) in Report
<p>Westmorland and Furness Council</p> <p>The Applicant</p>	<p>At D9 <a href="#">[REP9-050]</a>, Westmorland and Furness C stated that all matters relating to land take are agreed subject to the completion of a legal side agreement and, whilst most issues have been agreed, some detailed matters that will take some weeks beyond the end of the Examination to conclude.</p> <p>The Council adds that this agreement should include an assurance that the Applicant would not permanently acquire land at Skirsgill depot and that access to the depot would always remain unfettered, as this is critical for the Council's performance of its statutory duty to manage highways safely.</p> <p>The ExA therefore recommends that the Secretary of State seeks confirmation from Westmorland and Furness C and the Applicant that a side agreement has been completed before making any Order that includes CA and TP powers over the Council's land at its Skirsgill depot or the Recommended DCO and associated certified documents should be amended.</p>	<p>7.7.333 to 7.7.336</p>

**Table D2 - Matters where the Secretary of State May Wish to Seek Further Information**

Interested Party	Reason	Relevant Paragraph(s) in Report
<p>United Utilities Water Limited</p>	<p>United At D8 <a href="#">[REP8-086]</a>, SU states it remained concerned regarding Change Request DC-05 but that discussions were ongoing with the Applicant and a withdrawal of an objection maybe possible with a Side Agreement in place.</p>	<p>8.6.4 and 8.6.5</p>

Interested Party	Reason	Relevant Paragraph(s) in Report
	<p>The Secretary of State therefore may wish to ask for an update from both parties prior to determination of the Application.</p>	
<p>Northern Powergrid National Grid Electricity Transmission National Gas Transmission</p>	<p>At D9 [REP9-048], [REP9-044] and [REP9-043], the SUs stated that a Side Agreements were near to completion but had not been signed by the close of the Examination. Accordingly, objections raised in RRs [RR-158], [RR-053] and [RR-130] would remain without it.</p> <p>The Secretary of State therefore may wish to ask for an update from both parties prior to determination of the Application.</p>	8.6.6
<p>North Yorkshire Council</p>	<p>At D9 [REP9-047], North Yorkshire C stated that a Side Agreement was near to completion but had not been signed by the close of the Examination, and that its concerns on detrunking arrangements listed in its final PADSS [REP7-183] remains.</p> <p>The Secretary of State therefore may wish to ask for an update from both parties prior to determination of the Application.</p>	<p>Section 4 Paragraphs 4.4.47 to 4.4.51</p>
<p>Westmorland and Furness Council</p>	<p>At D9 [REP9-050], Westmorland and Furness C stated that a Side Agreement was near to completion but had not been signed by the close of the Examination, and that its concerns on a number of matters listed in its submission and its final PADSS [REP7-190] remain.</p> <p>The Secretary of State therefore may wish to ask for an update from both parties prior to determination of the Application.</p>	<p>Section 4 Paragraphs 4.4.47 to 4.4.51</p>
<p>Durham CC</p>	<p>In the signed SoCG [REP8-022] states in Item 3-1.23 that issues are</p>	<p>Section 4</p>

Interested Party	Reason	Relevant Paragraph(s) in Report
	<p>agreed but will be developed as part of the detrunking agreement. There was no conformation submitted into the Examination from either party as to such an agreement being completed.</p> <p>The Secretary of State therefore may wish to ask for an update from both parties prior to determination of the Application.</p>	Paragraphs 4.4.47 to 4.4.51
The Applicant Dr Leeming	By the close of the Examination, the Applicant and Dr Leeming were still in discussion on the most appropriate location for the mitigation land. The Secretary of State therefore may wish to ask for an update from both parties prior to determination of the Application.	4.8.28
The Applicant	<p>At D9 [<a href="#">REP9-061</a>], Penrith Properties Ltd maintains that the final BoR entry for Plot 0102-01-20 is incorrect and that Notices have already been incorrectly served.</p> <p>The Secretary of State therefore may wish to seek confirmation from the Applicant that the final BoR entry for Plot 0102-01-20 is correct prior to determination of the Application.</p>	7.7.265 and 7.7.271