



Department  
for Transport

Natasha Kopala  
Head of the Transport Infrastructure Planning Unit  
Department for Transport  
Great Minster House  
33 Horseferry Road  
London SW1P 4DR

Enquiries: 07769 234115  
Email: [transportinfrastructure@dft.gov.uk](mailto:transportinfrastructure@dft.gov.uk)  
Web Site: [www.gov.uk/dft](http://www.gov.uk/dft)

Date : 7 March 2024

National Highways  
5<sup>th</sup> Floor,  
3 Piccadilly Place,  
Manchester,  
M1 3BN  
United Kingdom

Dear Sir/Madam,

## **Planning Act 2008**

### **Application for the Proposed A66 Northern Trans-Pennine Development Consent Order**

1. I am directed by the Secretary of State for Transport (“the Secretary of State”) to say that consideration has been given to:
  - The report dated 7 August 2023 (“the Report”) of the Examining Authority (“ExA”), comprised of Richard Allen BSc (Hons) PGDip MRTPI, Neil Humphrey BSC (Hons) CEng FICE MTPS, Marie-Louise Milliken BA (Hons) MPlan MRTPI and Stephen Roscoe BEng (Hons) MSc CEng MICE, who conducted an Examination (“the Examination”) into the application made by National Highways (“the Applicant”) for the A66 Northern Trans-Pennine Development Consent Order under section 37 of the Planning Act 2008 (“the PA2008”) dated 21 June 2022;
  - The responses to the further consultations undertaken by the Secretary of State in respect of the Application following the close of the Examination; and
  - Late representations received by the Secretary of State following the close of the Examination.
2. Published alongside this letter, on the Planning Inspectorate website, is a copy of the ExA’s Report of Findings and Conclusions and Recommendation to the Secretary of State (“the Report”). All “ER” references are to the specified paragraph in the Report. Paragraph numbers in the Report are quoted in the form “ER XX.XX.XX”.
3. This decision was delegated by the Secretary of State to the Minister of State, Huw Merriman. While this decision has not been taken by the Secretary of State, by law, it must be issued in the name of the Secretary of State. All references to the

Secretary of State are therefore to the Minister of State acting on behalf of the Secretary of State.

## The Application

4. The Application was accepted for Examination on 19 July 2022. The Examination began on 29 November 2022 and was completed on 29 May 2023. The Examination was conducted on the basis of written and oral submissions submitted to the ExA and by a series of hearings. There were unaccompanied site visits on 20 and 21 September 2022 and 28 November 2022 [ER 1.11.13], and one accompanied site visit on 28 February 2023 to visit areas not publicly accessible [ER 1.11.14].
5. The Development Consent Order (“the Order”) as applied for would allow for the construction and operation of works to improve the A66 between M6 motorway at Junction 40 at Penrith and the A1(M) Junction 53 at Scotch Corner. The Order 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. 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) [ER 1.3.2]. The eight schemes, collectively referred to as “the Proposed Development”, are:
  - Scheme 0102 – M6 Junction 40 to Kemplay Bank - this Scheme includes:
    - revised circulatory carriageways and slip roads at M6 Junction 40;
    - construction of grade separated junction and associated slip road alterations at Kemplay Bank roundabout;
    - construction of Kemplay Bank East and West bridges;
    - new and improved pedestrian and cycle routes;
    - relocation of access to Skirsgill depot on A66 about 95m to the east of the current access;
    - speed limit between M6 Junction 40 and Kemplay Bank roundabout to be reduced to 50mph;
    - extension to existing Carleton Hall underpass; and
    - provision of three ponds for the purpose of drainage of the road network; and necessary enabling utility works.
  - Scheme 03 – Penrith to Temple Sowerby – this Scheme comprises:
    - construction to provide a new all-purpose dual carriageway along an existing 5.2km length of single carriageway;
    - construction of new grade separated junction to replace the existing Centre Parcs junction;
    - new left in/ left out junctions to the B6262, St Ninian’s church and Whinfell Holme treatment plant;
    - provision of new footpath connection from the east to the Countess Pillar;
    - construction of the Brougham Accommodation overbridge;
    - construction of the Whinfell Forest underbridge;
    - construction of Whinfell Park underpass;
    - construction of new eastbound and westbound laybys;

- alterations or improvements to affected public rights of way network;
- alterations to private means of access; and
- provision of seven ponds for the purpose of drainage of the road network; and necessary enabling utility works.
- Scheme 0405 – Temple Sowerby to Appleby – this Scheme includes:
  - construction of a new all-purpose dual carriageway, including a new offline bypass of Kirby Thore;
  - detrunking of 8.6km of existing A66;
  - construction of new Fell Lane and Long Marton grade separated junctions;
  - construction of the Cross Street, Green Lane, Fell Lane, Sleastonhow Lane, and Roger Head Farm overbridges;
  - construction of new Trout Beck viaduct;
  - construction of Powis House underbridge;
  - construction of new Spitals Farm, Priest Lane, Long Martin and Crackenthorpe underpasses;
  - construction of new eastbound and westbound laybys;
  - improvements and amendments to affected link and access roads, including construction of the new Morland Road roundabout;
  - alterations or improvements to affected public rights of way network;
  - alterations to private means of access; and
  - provision of fifteen ponds for the purpose of drainage of the road network; and necessary enabling utility works.
- Scheme 06 – Appleby to Brough – this Scheme includes:
  - construction to provide a new all-purpose dual carriageway along an existing 8.3km length of single carriageway;
  - improvement to left in/ left out access to Café 66;
  - construction of B6259 Sandford and Warcop grade separated junctions;
  - construction of New Hall Farm, Warcop Eastbound, Langrigg Westbound, West View Farm left in / left out junctions;
  - construction of new Cringle Beck and Moor Beck viaducts;
  - construction of Warcop Village and West View Farm overbridges;
  - construction of Sandford, Warcop junction east and west, East Field Sike, Flitholme Road and West View Farm underbridges;
  - construction of Far Bank End and Walk Mill underpasses;
  - construction of Bullstone bridge extension;
  - construction of new eastbound and westbound laybys;
  - construction and laying out of replacement facilities for the Ministry of Defence;
  - provision of facilities for the replacement Brough Hill Fair site
  - alterations to private means of access;
  - improvements and amendments to affected local access roads; and
  - alterations or improvements to existing public rights of way network;
  - provision of eighteen ponds for the purpose of drainage of the road network; and necessary enabling utility works;
- Scheme 07 – Bowes Bypass – this Scheme includes:
  - construction to provide a new all-purpose dual carriageway along an existing 3km length of single carriageway;

- construction of replacement Clint Lane overbridge;
- construction of East Bowes Accommodation overbridge;
- construction of eastbound A66 underbridge;
- construction of extension to Lyndale Farm and Blacklodge Farm underpasses;
- construction of eastbound and westbound laybys;
- improvements and amendments to affected local access roads;
- alterations to Hulands Quarry access;
- alterations to private means of access;
- alterations or improvements to existing public rights of way network; and
- provision of six ponds for the purpose of drainage of the road network; and necessary enabling utility works;
- Scheme 08 – Cross Lanes to Rokeby – this Scheme includes:
  - construction to provide a new all-purpose dual carriageway along an existing 4.4km length of single carriageway; Construction of new B6277 Cross Lanes and Rokeby grade separated junctions;
  - construction of Cross Lanes overbridge; Construction of Rokeby underbridge; Construction of eastbound and westbound laybys;
  - detrunking of existing A66 running between St. Mary’s Church and the Old Rectory;
  - construction of a new roundabout on de-trunked A66 and C165 junction;
  - construction of a new eastbound merge slip road from new roundabout on C165;
  - improvements and amendments to affected local access roads;
  - alterations to private means of access;
  - alterations or improvements to existing public rights of way network; and
  - provision of six ponds for the purpose of drainage of the road network; and necessary enabling utility works.
- Scheme 09 – Stephen Bank to Carkin Moor – this Scheme includes:
  - construction of a new 5km length of all-purpose dual carriageway to the north of the existing carriageway;
  - detrunking of existing single carriageway section of A66;
  - construction of new Mains Gill grade separated junction;
  - construction of Collier Lane overbridge;
  - construction of Mains Gill underbridge;
  - construction of Dick Scot Lane and bridleway 20.30/8/1 underpasses;
  - construction of eastbound and westbound laybys;
  - construction of pedestrian/ equestrian crossings;
  - improvements and amendments to affected local access roads;
  - alterations or improvements to existing access roads and associated junctions; and
  - provision of nine ponds for the purpose of drainage of the road network; and necessary enabling utility works.
- Scheme 11 – A1(M) Junction 53 Scotch Corner – this Scheme comprises:
  - construction and amendment of changes to circulatory carriageway of roundabout; and
  - construction and improvement of widened Middleton Tyas Lane. -

- The Proposed Development is wholly within England and the individual schemes lie within the following administrative areas:
    - Schemes 0102, 03, 0405 and 06 Westmorland and Furness Council;
    - Schemes 07 and 08 Durham County Council; and
    - Schemes 09 and 11 North Yorkshire Council [ER 1.5.5].
6. On 24 March 2023 the Applicant made a request to allow 24 changes to the Proposed Development, as set out in Table A5 to Appendix A of the Report. A summary of each of these changes is set out in Table A6 to that Appendix [ER 1.12.3]. The ExA's reply is set out in Procedural Decision dated 18 April 2023, which accepted 22 of these changes [PD-014].
7. The Secretary of State agrees with the conclusions reached by the ExA that the following changes should be allowed because individually and cumulatively they are not so substantial so as to constitute a materially different project and they do not change the conclusions of the Environmental Statement ("ES") [ER 1.12.4]: The accepted changes are:
- change in speed limit west of M6 Junction 40 (change request DC-01);
  - separation of, and greater flexibility for, shared public rights of way and private access track provision (change request DC-04);
  - removal of junction for Sewage Treatment Works (and private residence) from A66, and provision of an alternative access from B6262 (change request DC-05);
  - increase in vertical Limits of Deviation local to Shell Pipeline (change request DC-06);
  - inversion of the mainline alignment at the junction at Center Parcs (change request DC-08);
  - flexibility to reuse the existing A66 carriageway (change request DC-09);
  - earlier tie-in of Cross Street to the existing road (change request DC-11);
  - realignment of Main Street (change request DC-13);
  - realignment of Sleastonhow Lane (change request DC-14);
  - realignment of Crackenthorpe underpass (change request DC-15);
  - Cafe Sixty-Six - Revised land plan (change request DC-17)
  - realignment of cycleway local to Cringle and Moor Beck (change request DC-19);
  - update to Limits of Deviation on eastbound connection to local road (change request DC-20);
  - amendments to DCO Order limits within Ministry of Defence land (change request DC-21);
  - re-use of existing A66 (north of Flitholme) (change request DC-24);
  - construction of noise barrier south of Brough (change request DC-27);
  - realignment of local access road to be closer to new dual carriageway east of Bowes (change request DC-28);

- realignment of maintenance/footpath adjacent to Waitlands Lane (change request DC-30); and
  - realignment of Warrener Lane (change request DC-31)
8. The Secretary of State also agrees with the conclusions of the ExA that the following changes, while constituting a moderate alteration to the Application, the changes both individually and cumulatively do not change the conclusions of the ES and are not so substantial to constitute a materially different project to the extent that a new application is required:
- reorientation of Kemplay Bank junction (change request DC-03);
  - removal of Langrigg westbound junction, revision to Langrigg Lane link, and shortening of Flitholme Road (change request DC-25); and
  - revision to West View Farm accommodation bridge and removal of West View Farm underpass (change request DC-26).
9. The Secretary of State agrees with the ExA that because the Applicant had not provided sufficient evidence to demonstrate potential effects in relation to flood risk and impacts to the features of the River Eden Special Area of Conservation (“SAC”), the following changes might introduce a new significant effect on the River Eden SAC and its features and could not be accepted [ER 1.12.5]:
- realignment of the Warcop westbound junction (change request DC-22); and
  - realignment of the de-trunked A66 to be closer to the new dual carriageway at Warcop (change request DC-23).

## **Summary of the ExAs Recommendations**

10. The principal issues considered during the Examination on which the ExA reached conclusions on the case for development consent are set out in the Report under the following broad headings:
- Key and Relevant Policy
  - The Need for the Proposed Development
  - Alternatives
  - Traffic and Access
  - Air Quality
  - Carbon Emissions
  - Flood Risk and Water Environment
  - Biodiversity and Wildlife
  - Landscape and Visual
  - Heritage Assets
  - Population and Human Health
  - Noise and Vibration
  - Material Assets and Waste
  - Geology and Soils
  - Cumulative and Combined Effects
  - Habitats Regulations Assessment (“HRA”)
  - Compulsory Acquisition and related matters

- Draft Development Consent Order and related matters
11. For the reasons set out in the Report, the ExA recommended that the Secretary of State should make an Order granting development consent for the Proposed Development [ER 9.2.3] in the form attached to the Report at Appendix C (“the recommended Order”), subject to the following outstanding matters being resolved [ER 9.2.1 - 9.2.3]:
    - a) Natural England advising that an adverse impact on the integrity on the North Pennine Moors SAC can be excluded in relation to Scheme 06 (Appleby to Brough);
    - b) That Westmorland and Furness Council provide an update on the progress and completion of a side agreement between the parties in relation to the compulsory acquisition of identified plots at Skirsgill Depot; and
    - c) the Ministry of Justice confirms whether the Public Trustee land within the Order limits is Crown land.
  12. The Secretary of State is satisfied that all matters listed above have been resolved, as described below.

### **Summary of the Secretary of State’s Decision**

13. The Secretary of State has decided under section 114 of the 2008 Act to make with modifications an Order granting development consent for the proposals in this Application. This letter is the statement of reasons for the Secretary of State’s decision for the purposes of section 116 of the 2008 Act and regulation 31(2) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (“the 2017 Regulations”).
14. The Secretary of State’s consideration of the Report, responses to his consultations of 11 August 2023, 30 August 2023, 15 September 2023, 28 September 2023, 18 October 2023, 8 November 2023, 7 December 2023, 5 January 2024, 24 January 2024 and 2 February 2024, representations received after the close of Examination and all other material considerations are set out in the following paragraphs. Where consultation responses are not otherwise mentioned in this letter, it is the Secretary of State’s view that these representations do not raise any new issues that were not considered by the ExA and do not give rise to an alternative conclusion or decision on the Order.
15. Where not otherwise stated in this letter, the Secretary of State can be taken to agree with the findings, conclusions and recommendations as set out in the Report and the reasons given for the Secretary of State’s decision are those given by the ExA in support of the conclusions and recommendations.
16. The Secretary of State is content that the Proposed Development is a Nationally Significant Infrastructure Project in accordance with section 14(1)(h) and section 22(1) to (3) of the PA2008 for the reasons set out at ER 1.6.1 - 1.6.2, and that section 104(2) of the PA2008 has effect in relation to the Proposed Development. In determining this Application, the Secretary of State must therefore have regard to any relevant National Policy Statements (“NPS”), and Local Impact Report (“LIR”) submitted, any matters prescribed in relation to development of the description to which the Application relates, and any other matters the Secretary of State considers to be both important and relevant to the decision [ER 2.2.2]. Under

section 104(3) of the PA2008, the Secretary of State must decide this Application in accordance with any relevant NPS which in this case is the National Policy Statement for National Networks (“NPSNN”), subject to any of the exceptions in section 104(4) to (8) of the PA2008 applying [ER 2.2.3]. The Secretary of State does not consider any of the exceptions apply to this case. The Secretary of State has also had regard to the environmental information associated with this Proposed Development as defined in regulation 3(1) of the 2017 Regulations. In making the decision, the Secretary of State has complied with all applicable legal duties and has not taken account of any matters which are not relevant to the decision.

17. With regard to the NPSNN, in a Ministerial Statement issued on 22 July 2021, the Secretary of State advised that a review of the NPSNN would begin later in 2021 for the reasons given in the Ministerial Statement. A new draft version was published on 14 March 2023 and, following public consultation and scrutiny by the Transport Select Committee, a revised version was laid before Parliament on 6 March 2024 and is subject to Parliamentary requirements set out in section 9 of the PA2008. It can only be designated for the purposes of section 104 of the PA2008 following the completion of this Parliamentary process. The Secretary of State has considered the policies in the draft revised NPSNN and notes that the modifications made to the revised NPS laid before Parliament do not materially affect the policy laid out in the draft revised NPSNN. In any event, the draft NPSNN is not yet adopted policy. The Secretary of State considers that neither the draft revised NPSNN nor the revised NPSNN support a different outcome in this case. For those reasons, he has not given the revised NPSNN or draft revised NPSNN any material weight. The Secretary of State is satisfied that as set out in the Ministerial Statement of 22 July 2021, the currently designated NPSNN remains government policy and continues to provide a proper basis on which the Planning Inspectorate can examine, and the Secretary of State can make decisions on, applications for development consent.
18. The Secretary of State has had regard to the LIRs prepared by Westmorland and Furness Council [ER 3.3.2 - 3.3.3], Durham County Council [ER 3.3.4 - 3.3.5] and North Yorkshire Council [ER 3.3.6 - 3.3.7] and their respective Local Plans as outlined at Table A8 to Appendix A of the ExA's Report [ER 2.5.1]. The Secretary of State also notes the ExA's assessment, set out in Section 2 of the Report, key legislation and policy, previous Development Consent Orders, transboundary effects and other relevant policy statements and agrees these are matters to be considered in deciding this Application.

## Principle of the Proposed Development

### *Need for the Development*

19. Chapter 2 of the ES sets out the Applicant's case for the need for the Proposed Development which is summarised by the ExA at ER 4.2.1 and includes the following:
- the A66 dualling project is identified in both the Road Investment Strategy 2015 – 2020 (“RIS1”) and the Road Investment Strategy 2020 – 2025 (“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 is an important route for tourism and connectivity for nearby communities. There are no direct rail alternatives for passenger or freight movements along this corridor; and
- the A66 is 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 affect road safety, reliability, resilience and attractiveness to the route.

20. The Secretary of State notes that the Proposed Development is identified in RIS1 and forms part of a package of proposals in RIS2 with the aim of achieving a continuous dual carriageway across the Pennines by upgrading six single carriageway sections between Scotch Corner and the M6 at Penrith [ER 4.2.3]. The Secretary of State agrees with the ExA that the current part-dualled, part-single carriageway nature of the A66 is unsatisfactory and the cause of substantial delays [ER 6.2.1], and that the Proposed Development would relieve current problems, accommodate future traffic demand and reduce congestion to enable economic growth [ER 6.2.2]. The ExA agreed with the Applicant 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 [ER 4.2.2]. The Secretary of State also agrees with this.

21. Paragraph 2.2 of the NPSNN identifies a critical need to improve the national networks to address road congestion. Paragraphs 2.12 to 2.14 of the NPSNN highlight the importance of the strategic road network in providing critical links between areas, enabling safe and reliable journeys and the movement of goods in support of national and regional economies. The Secretary of State agrees with the ExA that the Proposed Development would increase capacity and reduce congestion [ER 6.2.2] and notes the importance of the A66 to users in Scotland, Northern Ireland and the north and east of England [ER 6.2.1], and that it is a key national and regional corridor in the movement of goods and people [ER 4.2.1]. The Secretary of State is satisfied that there is a presumption in favour of granting development consent for national network Nationally Significant Infrastructure Projects that fall within the need for infrastructure established in the NPSNN and that the Proposed Development represents such a project [ER 2.3.3].

#### *Benefits to Cost Ratio*

22. The Secretary of State notes that no Interested Parties raised any substantive issues questioning the need for the Proposed Development [ER 4.2.4]; however, several Interested Parties questioned whether the Proposed Development offered good value for money, by commenting on the benefits to cost ratio ("BCR") [ER 4.2.5]. This issue was also raised by several Interested Parties in response to the Secretary of State's consultations during the decision-making stage. These representations included a request from Dr Boswell in his representation dated 5

October 2023 for a recalculation of the BCR taking into consideration updates to travel modelling/proposed speed reductions, and from Transport Action Network who considered that if the economic appraisal for the Proposed Development was updated to take account of higher rates of inflation and potential cost increases there would likely be a negative impact on the BCR

23. Paragraph 4.5 of the NPSNN states that the business case (which includes the BCR) provides the basis for investment decisions on road projects, and it will normally be based on the Department for Transport's Transport Business Case guidance and WebTAG guidance. The NPSNN further states that the economic case prepared for a transport business case will assess the economic, environmental and social impacts of a development and the information provided will be proportionate to the development and important for the Secretary of State's consideration of the adverse impacts and benefits of a proposed development.
24. The Secretary of State has considered the Applicant's Response to Written Representations made by other Interested Parties at Deadline 1 [REP2-017] dated 15 January 2023, the response dated 7 September 2023 to the Secretary of State's second round of consultation dated 30 August 2023 and the response to the Secretary of State on this matter, and notes the Applicant has valued the project's costs and benefits through a business case, and considers the Applicant has followed, and is compliant with, both the HM Treasury Green Book guidance and the WebTAG; guidance. The Secretary of State is satisfied that the business case, which was compiled to inform investment decisions, has been undertaken in a way consistent with paragraph 4.5 of the NPSNN. The Secretary of State notes that the Applicant will update and refine its business case as the project develops and more information becomes available as part of the approval stages of the business case [REP2-017]. The Secretary of State also notes the Applicant considered that it is not necessary for them to recalculate the BCR now.
25. Paragraph 4.3 of the NPSNN states that the Secretary of State, in considering any proposed development and in particular when weighing its adverse impacts against its benefits, should take into account: 1) potential benefits, including the facilitation of economic development, including job creation, housing and environmental improvement, and any long-term or wider benefits; and 2) potential adverse impacts, including any longer-term and cumulative adverse impacts, as well as any measures to avoid, reduce or compensate for any adverse impacts. The Secretary of State agrees with the Applicant that BCR is only one component of the business case, and that other impacts and benefits need to be taken into account in making a decision on the Application [ER 4.2.6].
26. In making his decision, the Secretary of State has therefore taken into account all benefits expected as a result of the Proposed Development, including qualitative benefits that cannot be monetarised, calculated and presented in the BCR. The Secretary of State's consideration of the benefits against the potential impacts are considered further in the planning balance section below. The Secretary of State is satisfied that the information provided to the Examination and in the post-Examination consultations is sufficient for him to reach an up to date conclusion on the economic benefits and impacts of the Proposed Development and to weigh these against other factors. Further, he considers that the Proposed Development would have no adverse effects such as to outweigh its benefits and as such s104(7) PA2008 does not apply. The Secretary of State is satisfied that there is no

requirement for the BCR calculation itself to be considered as part of the planning process as this is used to inform investment decisions. For those reasons, the Secretary of State is satisfied that there is no need for the BCR to be recalculated as part of the planning decision that he has to take.

### *Alternatives*

27. Chapter 3 of the ES sets out the Applicant's assessment of alternatives. The ExA's consideration of the Applicant's assessment of alternatives and options appraisals is set out in paragraphs ER 4.3.1 to 4.3.4 of the Report. The Secretary of State notes that the main issues considered during the Examination in relation to alternatives were:

- Scheme 08 (Cross Lanes to Rokeby) and the placement location of the Rokeby junction (the Black Option) and concerns relating to potential traffic impacts and impacts on St Mary's Church and Rokeby Hall;
- Scheme 06 (Appleby to Brough) and the decision not to align the route through the North Pennines AONB, to the north; and
- Scheme 0405 (Temple Sowerby to Appleby) in respect to environmental effects [ER 4.3.5].

28. The Secretary of State notes that the ExA was satisfied the Applicant had rigorously tested the alternative options for the Proposed Development and concluded that the Applicant's preferred option, the Black Option junction at Rokeby, would not be materially worse than the option preferred by Interested Parties in respect of traffic or heritage [ER 4.3.34]. The Secretary of State agrees.

29. In respect of the alternative route preferred by Interested Parties, the land north of the Scheme 06 (Appleby to Brough) section of the Proposed Development is operational Ministry of Defence land which, as Crown land, cannot be compulsorily acquired. The ExA considered the alternative route was not viable and that the Applicant's preferred option at Scheme 06 (Appleby to Brough) is acceptable. The Secretary of State agrees [ER 4.3.22].

30. The Secretary of State is aware that for Scheme 0405, the Proposed Development would deviate northwards around the village at Kirkby Thore ("Option E"), and at Crakenthorpe would follow the existing Roman Road before deviating south and joining up with the existing A66 ("Option H") [ER 4.3.23]. The ExA recorded that these routes would have a greater impact on cultural heritage and population and human health than the identified alternative routes [ER 4.3.24 to 4.3.26]. On population and health matters, the Secretary of State notes that the ExA was satisfied that the Applicant had satisfactorily assessed both the positive and negative population and health impacts in their submission relating to the outcome of the assessment on population and health set out in Chapter 13 of the ES [ER 4.11.11]. This is subject to the issues set out in ER 4.11.12 which are considered below. In respect of heritage assets, the Secretary of State notes that the Applicant stated that in respect of Option E, Historic England's concerns related to avoiding direct impact to archaeology and the population impacts were considered mitigatable [ER 4.3.25]. For Option H, the Applicant stated that while this would have a greater cultural heritage impact than Option G (which follows the disused Eden Valley railway), Option H was further from the River Eden Special Area of Conservation ("SAC") and Special Site of Scientific Interest ("SSSI") and was

Natural England and the Environment Agency's preference. The Secretary of State also notes the ES states that Option H would have less of an impact on the dwellings located in Crackenthorpe [ER 4.3.26]. The ExA recorded that during the Examination, Historic England confirmed that while the Kirby Thore Roman Fort and Vicus would be significantly impacted by the Proposed Development, the Applicant's preferred route would avoid two other Scheduled Monuments. The ExA also recorded that while Historic England considered the alternative route could potentially disturb archaeological remains, Historic England appeared to support the Option H route [ER 4.3.27]. The ExA also states that Historic England was content that adequate mitigation measures to address impacts on the historic environment will be sufficiently secured through the Environmental Management Plan ("EMP"), the Heritage Mitigation Strategy and the Schedule Monuments Method Statement which are secured by article 53 of the Order [ER 4.3.28]. The Secretary of State agrees that article 53 and associated plan, strategy and statement would effectively mitigate impacts on the historic environment.

### Conclusion on Alternatives

31. In conclusion, like the ExA, the Secretary of State is satisfied that the assessment of alternative options for the Proposed Development have been rigorously tested by the Applicant [ER 4.3.34] and that the requirements of the NPSNN and the 2017 Regulations with regard to alternatives have been met [ER 4.3.36]

### The Secretary of State's Conclusion on Need

32. Taking into account that need was not highlighted as an outstanding area of discussion or disagreement in any Principal Areas of Disagreement Summary or Statement or Statement of Common Ground ("SoCG"), and no Interested Party raised any substantive issues regarding the need for the Proposed Development or questioned whether it was supported by national policy [ER 4.2.4], the Secretary of State agrees with the ExA's conclusion on the need for the Proposed Development and is satisfied that the case for compelling need for the provision of new national network infrastructure is established by NPSNN, the National Infrastructure Strategy, RIS1 and RIS2, and the Highways England Strategic and Delivery Plans [ER 4.2.8]. The Secretary of State agrees that the Proposed Development is fully in accordance with the need case established by NPSNN and reinforced by other national policies and strategies and has therefore attached significant positive weight to the identified need [ER 4.2.9].

### Traffic and Access

33. The Secretary of State notes that the Applicant's assessment of traffic and transport matters is set out within the Transport Assessment ("TA") and its purpose is to assess the impact of the Proposed Development on the strategic and local highway network, road safety and local sustainable modes of transport [ER 4.4.1]. The TA is supplemented by the documents outlined at ER 4.4.2. The Secretary of State notes that, although concerns were raised by Westmorland and Furness Council regarding the modelling in and around Penrith (which is considered below), there were no concerns by the ExA or Local Highway Authorities regarding the modelling undertaken by the Applicant regarding the operation of the strategic highway network. [ER 4.4.10].

34. The ExA focussed on specific matters relating to Traffic and Access [ER 4.4.11] which the Secretary of State has considered in paragraphs 35-55 below.

### *Penrith Congestion Issues*

35. The Secretary of State has considered Westmorland and Furness Council's concerns regarding the potential for the Proposed Development to exacerbate existing congestion issues in Penrith and create additional severance and access issues including at the Council's Skirsgill depot [ER 4.4.12]. At the close of Examination the ExA concluded that the signed SoCG between the Applicant and the Council recorded that both parties agreed that traffic modelling discussions were at a stage where they were satisfied that agreement could be reached as the detailed design progressed after the Examination [ER 4.4.14]. The Secretary of State has received no indication since the end of the Examination that this is no longer the case.

### *Barnard Castle Traffic*

36. The Secretary of State is aware that a number of parties expressed concerns about the additional traffic on the B6277, and in particular on the Sills, in Startforth, and the A67 County Bridge as a result of the Proposed Development [ER 4.4.16]. It is also noted that a number of parties expressed concern about the proposed 'Black Option' chosen for the junction arrangement of the A66/C165 Barnard Castle Road rather than the 'Blue Option' and that this could lead to more traffic on the Sills than the 'Blue Option' [ER 4.4.22-4.4.23].

37. In response to a request by the ExA, the Applicant provided updated predicted traffic modelling for both options and a 'fine grained' assessment of the environmental effects of the traffic increase on the Sills resulting from the Proposed Development [ER 4.4.25-4.4.26]. The Secretary of State notes that while the more detailed assessment did not identify any additional effects not already considered in the relevant sections of the ES [ER 4.4.29] the Applicant has included monitoring on the Sills during construction to the Air Quality and Dust Management plan to ensure that should any problems arise remedial action could be taken [ER 4.4.30]. With regard to the two options, the ExA were satisfied that given the additional analysis undertaken by the Applicant, the Proposed Development would not have any severe likely significant environmental impacts on the Sills [ER 4.4.34]. The Secretary of State agrees with this conclusion.

### *Road Safety*

38. The Secretary of State has taken account of Chapter 9 of the TA which sets 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 [ER 4.4.35]. He has observed that the A66 has a higher-than-average number of accidents on sections of the route with a number of accident cluster sites and the single carriageway sections seeing accident rates 73% higher than the dual carriageway sections [ER 4.4.37].

39. The Secretary of State notes that DfT COBALT (Cost and Benefit to Accidents – Light Touch) analysis considered that, over a 60-year period, 15 fatalities and 123 serious casualties were forecast to be saved on the new A66 sections, with a greater saving on the improved sections than non-improved sections. He also notes, however, there would be a net increase in slight accidents over the same period [ER 4.4.40] and 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 injuries casualties can result in instances where

the drop in accident and casualty rate is not large enough along the existing and proposed dual carriageway lengths to offset the increase in flows along the existing sections of dualled carriageway [ER 4.4.41].

40. The Secretary of State has had regard that the Applicant has undertaken Stage 1 Road Safety Audits (“RSA”) of the initial designs [ER 4.4.43], and that recommendations made to design changes as a result of this were implemented within the submitted design. Furthermore, the Secretary of State has noted that additional changes may be made at detailed design stage as required ahead of the Stage 2 RSA [ER 4.4.44].
41. The Secretary of State agrees with the ExA that the Applicant has demonstrated that dualling the remaining sections of the A66 could lead to a significant reduction in fatal and serious casualties [ER 4.4.45].

#### *Detrunking Arrangements*

42. The Proposed Development could result in a number of areas of the old A66 needing to be stopped up or detrunked and passed to the Local Highway Authority to be re-purposed as local highway [ER 4.4.46]. Westmorland and Furness Council, Durham County Council, and North Yorkshire Council expressed concerns about a lack of a clear strategy for detrunking, specifically in relation to asset management transfer arrangements, the condition of the assets, and future maintenance requirements that would be transferred to them [ER 4.4.47]. At the close of Examination, side agreements covering these matters had not been completed and the ExA recommended that the Secretary of State may wish to consult the Applicant and the above-mentioned Councils to establish the status of the outstanding side agreements because while not directly related to the planning merits of the Proposed Development, the ExA highlighted that the responsibilities relating to the asset transfer are important [ER 4.4.48]. Following consultations by the Secretary of State, the Applicant confirmed on 29 November 2023 that agreement had been reached and side agreements completed with Westmorland and Furness Council, Durham County Council and North Yorkshire Council with Durham County Council and North Yorkshire confirming the same.

#### *Construction Diversions*

43. The Secretary of State recognises that at the end of Examination and in the final SoCG Westmorland and Furness Council, North Yorkshire Council, and Durham County Council all expressed some concerns with regard to the impact of construction diversions and the need to ensure impacts on local communities were minimised [ER 4.4.53]. Noting the Applicant’s acknowledgement of these concerns and that the diversion routes would be agreed with the Council through the detailed design stage, and as secured through article 53 of the Recommended DCO [ER 4.4.54], like the ExA, the Secretary of State is content that there are controls in place to ensure diversion plans are developed in consultation with the Councils [ER 4.4.54].

#### *Public Rights of Way (“PRoW”)*

44. The Secretary of State notes that a number of Interested Parties including the relevant local authorities submitted representations on PRoW related matters [ER 4.56 – 4.57], and that during the Examination following a request from the ExA the Applicant collated and addressed these to ensure all necessary corrections and

modifications were addressed as the Examination progressed. The Secretary of State notes that during the Examination, the Applicant submitted a schedule of amendments addressing relevant concerns [ER 4.4.57].

45. The Secretary of State notes the ExA's consideration of maintenance responsibilities [ER 4.4.58-4.4.61], route continuity [ER 4.4.62] and Countess Pillar access [ER 4.4.63] and further notes the ExA's conclusion on each. The Secretary of State agrees with the ExA conclusions on these matters.
46. Regarding the removal of access from the A66 to Penrith Wastewater Treatment Works, the change application accepted by the ExA on 18 April 2023 included among 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 National Grid's gas pipeline [ER 4.4.64]. However, the Secretary of State is aware that, at the end of Examination, there was an outstanding objection from United Water Utilities Limited ("United Utilities") (as the operator of the Penrith Wastewater Treatment Works) who had requested suitable protective provisions and a side agreement to ensure no detriment to their undertaking. At the close of Examination, negotiations between the Applicant and United Utilities on this matter remained outstanding [ER 4.4.65] and the ExA recommended that the Secretary of State consult both parties to request an update on the status of negotiations before making his decision on the Application [ER 4.4.66]. The Secretary of State consulted both parties on 11 August 2023 regarding the outstanding objection and side agreement. United Utilities confirmed on 25 October 2023 that they were withdrawing their objection following continued discussions with the Applicant to resolve the issue. Completion of a side agreement was also confirmed by the Applicant on 27 October 2023. As such, the Secretary of State considers this matter closed.
47. Furthermore, the Secretary of State has observed that concerns relating to potential increases in HGV traffic through Brougham Village, as a result of the change, were raised by United Utilities and Brougham Parish Council and that the Applicant committed to working with both of these parties during the detailed design process to explore possible mitigation in Brougham Village [ER 4.4.67].
48. Regarding Warcop Parish Council's suggestion for a new footpath to provide safe pedestrian movement around Warcop, the Secretary of State has taken into account that the Applicant has secured feasibility funding for it and that engagement and development of the detailed design scheme for a further bid would start soon. As the provision of this footpath is outside the scope of the Proposed Development, this is not considered to be material in this planning decision; however, the Secretary of State agrees with the ExA that the Applicant has been proactive in pursuing alternative funding for delivery of the footpath so as to mitigate the concerns of Warcop Parish Council in this matter [ER 4.4.68-4.4.70]. The Secretary of State notes that the ExA concluded that they were satisfied that the Applicant has sought to address any issues of severance created by the Proposed Development and, where possible, sought to improve the PRow linkages by reconnecting all severed routes in accordance with the requirement of the NPSNN. The ExA also concluded that while some of the issues are still to be worked through as part of the detailed design, they were satisfied that the Applicant had sought both to address issues of severance and where possibly improve east

west PRoW linkages. [ER 4.4.71]. The Secretary of State sees no reason to disagree with the ExA's conclusions.

#### *HGVs*

49. The Secretary of State notes that all three local highways authorities outlined concerns in relation to HGV facilities along the A66. In response, the Applicant explained that laybys on the Proposed Development would be designed in accordance with the Applicant's design standards, and that additional laybys on the existing route were outside the scope of the Proposed Development [ER 4.4.72]. Based on the Applicant's submissions, the ExA were satisfied that the Proposed Development will provide adequate HGV facilities within the Order limits [ER 4.4.75]. The Secretary of State agrees with the conclusions of the ExA.
50. Concerns were raised by various parties following the close of Examination including Dr Andrew Boswell and Transport Action Network regarding the Applicant's perceived failure to assess induced HGV traffic arising from the Proposed Development. The Secretary of State has had regard to the concerns raised and the responses provided by the Applicant, noting the correction made by the Applicant in its response dated 31 January 2024 relating to goods vehicle trip rate proportions, and the explanation provided by the Applicant on induced traffic and trip generation. He considers that the appropriate TAG guidance has been followed by the Applicant as regards both induced traffic and trip generation. As such, the Secretary of State considers this matter to be concluded.

#### *Lake District National Park Traffic*

51. The Secretary of State has had regard to the concerns raised relating to increased vehicular traffic to the Lake District National Park [ER 4.4.79]. The Secretary of State notes that the representations from the Lake District National Park Authority and the Friends of the Lake District that the predicted 350 vehicles per day were too low and underestimates the impact on the Lake District National Park. The Friends of the Lake District submitted its report regarding how upgraded roads can stimulate increased vehicular traffic. The Applicant's response stated its modelling allowed for such an increase [ER 4.4.80]. Although there were no further submissions during examination, the Secretary of State has had regard to the representations made by a number of parties, including the Friends of the Lake District, in response to the Secretary of State's consultations after the close of Examination in relation to the impact on traffic levels in the Lake District National Park. The Secretary of State notes the Applicant's response dated 27 October 2023 wherein the Applicant highlighted that this matter had been fully considered during examination. The Secretary of State does not consider that any new evidence has been provided by Interested Parties to persuade him against accepting the ExA's conclusion on this matter, further the Secretary of State has had regard to TR010062 Technical Note: Lake District World Heritage Site prepared in response to the Deadline 4 submission from Historic England which concluded that the impact on changes to traffic volumes would be negligible within the Lake District National park as a result of the Proposed Development. In the Statement of Common Ground between the Applicant and Historic England, it states that the two parties have come to an agreement regarding the impact on traffic flows within the National Park, with Historic England noting that the Technical Note had addressed their concerns. Historic England also responded to the consultation of 18 October



with a letter dated 27 October 2023 which confirmed that they had no further comments beyond the information already provided, detailed above. Given the Applicant's evidence and explanation during examination, the ExA was satisfied that the traffic increase would have limited effect on the Lake District National Park [ER 4.4.81]. Given this, and the responses from the Applicant and Historic England during consultation, the Secretary of State agrees with the ExA's conclusion.

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

52. The Secretary of State has considered the concerns expressed by Westmorland and Furness Council in relation to the effects of traffic arrangements on Appleby Horse Fair during construction and operation of the Proposed Development. The Council wanted the Construction Traffic Management Plan to include any necessary alterations of the Appleby Horse Fair Traffic Management Plan [ER 4.4.82]. The Secretary of State observes that the signed SoCG [REP9-007] between the Applicant and the Council states the Construction Traffic Management Plan would be developed on the understanding that the Appleby Horse Fair Traffic Management Plan would be considered, so any amendments required to either document could be made. The Secretary of State notes the Applicant considered the Council's other concern (regarding additional stopping places on the detrunked sections of the old A66) fell outside the scope of the Proposed Development but could be an opportunity for a funding bid [ER 4.4.83]. In the absence of further correspondence on this matter, the Secretary of State considers the matter closed.

#### The Secretary of State's Conclusions on Traffic and Access

53. The Secretary of State agrees with the ExA that the Applicant has demonstrated that the Proposed Development would achieve the transport objectives set out in the Report [ER 4.4.84]. The Secretary of State notes that the relevant highways authorities will be fully engaged in the development of the detailed Construction Traffic Management Plan, which will be approved by the Secretary of State as part of the second iteration of the EMP in consultation with relevant statutory authorities and parties (see the 'Process for Approving EMP2' subsection below). The Secretary of State is aware that the Applicant intends to develop the Construction Traffic Management Plan on a scheme-by-scheme basis in order that the different local traffic circumstances are fully considered in the operation of the Construction Traffic Management Plan [ER 4.4.85].

54. Additionally, the Secretary of State has, as recommended by the ExA at ER 4.4.86 and in Appendix D of the Report, consulted the relevant highways authorities on the outstanding side agreements during his decision-making stage. The Secretary of State has had regard to the Applicant's response of 29 November 2023 in relation to side agreements and notes that agreement has been reached and side agreements completed with Westmorland and Furness Council, North Yorkshire Council and Durham County Council.

55. Overall, the ExA concluded that the Proposed Development would accord with the NPSNN, and all legislation and policy requirements and that moderate positive weight should be given to Traffic and Access matters in the planning balance [ER 4.4.87]. The Secretary of State sees no reason to disagree with the ExA's conclusion.

#### Air Quality

56. The Secretary of State notes that the Applicant's assessment of likely significant air quality effects is based on Design Manual for Roads and Bridges LA105 (air quality) and is set out in Chapter 5 of the ES [ER 4.5.1]. It is supplemented by the documents outlined at ER 4.5.2 and ER 4.5.4. The Secretary of State has taken account of the summary of effects outlined at ER 4.5.3 and that the detailed Air Quality and Dust Management plan will form part of EMP2 that he would approve following detailed design [ER 4.5.4]. Like the ExA, the Secretary of State is satisfied that the Applicant has identified, assessed, and addressed the impacts on air quality resulting from the Proposed Development on, amongst other matters, human health and that the EMP represents an effective means of mitigating impacts [ER 4.5.19].
57. The Secretary of State notes that during the Examination, new UK targets for PM<sub>2.5</sub> were announced in a Ministerial Statement in December 2022 and the Environmental Improvement Plan, published in January 2023 required the Secretary of State to set a long-term target for air quality, and a target for the annual average concentrations of PM<sub>2.5</sub> in the air in accordance with the Environmental Targets (Fine Particulate Matter) (England) Regulations 2023. It is noted that the new legal target for PM<sub>2.5</sub> annual average concentrations is set at 10 µg/m<sup>3</sup> to be reached by 31 December 2040, with the interim target set at 12 µg/m<sup>3</sup> to be reached by 31 January 2028.
58. Submissions received after the Examination questioned the impact of the construction and operation of the Proposed Development on annual average PM<sub>2.5</sub> concentrations and its compliance with the new targets set for PM<sub>2.5</sub>. The Secretary of State notes from the Applicant's consultation response dated 27 October 2023, that in the baseline year of 2019, together with the construction assessment year of 2024 and the operational year of 2029, both with and without the Proposed Development in place, PM<sub>2.5</sub> pollutant concentrations were predicted to be below the PM<sub>2.5</sub> legal target of 10µg/m<sup>3</sup> (to be achieved by 2040) at all modelled receptors. The Applicant stated that as the PM<sub>2.5</sub> concentrations for the Proposed Development are below the PM<sub>2.5</sub> legal target (and therefore already below the interim target of 12µg/m<sup>3</sup> to be achieved in 2028) at all modelled receptors, it considered that no likely significant effects are anticipated as a result of the Proposed Development and accordingly, there was no need to update Chapter 5 of the ES. The Secretary of State is satisfied that in view of the above, the Proposed Development complies with the new targets and that it is not necessary for Chapter 5 of the ES to be updated.

#### *Appropriateness of LA105*

59. The Secretary of State notes that Natural England did not support the use of Design Manual for Roads and Bridges LA105 because they considered it was not compliant with the standard of assessment required in carrying out a Habitats Regulation Assessment and preferred the use of Natural England guidance: NEA001 Natural England's approach to advising competent authorities on the assessment of road traffic emissions under the Habitats Regulations [ER 4.5.8].
60. In response, the Applicant stated that the air quality assessment undertaken in the ES takes account of Natural England's approach in advising competent authorities under the Habitats Regulations and this general policy approach is the subject of an ongoing dialogue between Natural England and the Applicant at a national level regarding the assessment of air quality in road schemes [ER 4.5.8]. The Secretary

of State agrees with the ExA that the overall policy position does not specifically relate to the air quality assessment undertaken for the Proposed Development [ER 4.5.10] and that consideration of air quality impacts on protected sites is considered as part of the Habitats Regulation Assessment and set out below at paragraphs – 193 - 232.

#### *Penrith – Castlegate Potential Air Quality Management Area*

61. The Secretary of State has taken note that Westmorland and Furness Council's LIR raised concerns that the Applicant had not provided sufficient evidence that the Proposed Development would not compromise its ability to maintain air quality in parts of Penrith, in particular on the potential Air Quality Management Area it was likely to declare in Castlegate [ER 4.5.12]. Noting the agreement subsequently reached between the parties and that the detailed Air Quality and Dust Management plan would form part of the EMP2 which would be approved by the Secretary of State, following consultation with the relevant local planning authority as secured by Article 53 of the recommended Order [ER 4.5.14], the Secretary of State is content that this issue is now resolved.

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

62. While Durham County Council did not have any fundamental objection to the findings of Chapter 5 of the ES, it is noted that they sought further information regarding the parameters used in the Applicant's assessment [ER 4.5.15]. The Secretary of State notes that amendments to EMP Annex B4 Air Quality and Dust Management, which included additional air quality monitoring on the Sills to reflect the concerns regarding the potential effects about traffic increases along this road, were subsequently agreed [ER 4.5.16 - 4.5.17]. The Secretary of State is satisfied that the measures provided are satisfactory to ensure that should any problems arise on the Sills during construction, remedial action could be taken [ER 4.4.30].

#### The Secretary of State's Conclusion on Air Quality

63. In conclusion, like the ExA, the Secretary of State is satisfied that the Applicant has identified, assessed and addressed the air quality impacts of the Proposed Development and he has had regard to the Applicant's air quality assessment which has concluded that there no significant effects are considered likely for human health due to traffic emissions during the construction phase following the implementation of mitigation set out in the EMP and that there are no likely significant effects for human health due to traffic emissions during the operational phase [ER 4.5.3]. He is content that the EMP represents an effective means of mitigating impacts [ER 4.5.19]. The Secretary of State's consideration of the issue of air quality impacts on protected sites is considered further in the Habitats Regulation Assessment section below.

#### Carbon Emissions

##### *Background*

64. Section 104 of the PA2008 states that the Secretary of State must decide an application for a national networks Nationally Significant Infrastructure Project in accordance with the NPSNN unless he is satisfied that one or more of the following exceptions contained in section 104(4) to (8) apply: doing so would lead to him

being in breach of any duty imposed on him by or under any enactment; doing so would be unlawful by virtue of any enactment; the adverse impact of the proposed development would outweigh its benefits; or doing so would lead to the UK being in breach of its international obligations.

65. The UK's international obligations include its obligations under the Paris Agreement, which was ratified by the UK Government in 2016, after the NPSNN was designated in 2014. This is translated in the UK by way of the carbon budgets set under the Climate Change Act 2008. In June 2019, the Government announced a new carbon reduction 'Net Zero' target for 2040 which was given effect by the Climate Change Act 2008 (2050 Target Amendment) Order 2019. This is a legally binding target for the Government to cut carbon emissions to net zero, against the 1990 baseline by 2050.
66. The Climate Change Act requires five-yearly carbon budgets to be set 12 years in advance so as to meet the 2050 target. Six carbon budgets have been adopted. The time periods covering the third ("3CB"), fourth ("4CB"), fifth ("5CB") and sixth ("6CB") carbon budgets are 2018-2022, 2023-2027, 2028-2032 and 2033-2037 respectively. Achieving net zero will require future greenhouse gas ('GHG') emissions to be aligned with these and any future new or revised carbon budgets that may be set out by Government to achieve the 2050 target. Compliance with the Climate Change Act 2008 (as amended) would provide a route towards compliance with the Paris Agreement.
67. The Applicant's assessment of the Proposed Development's impact on Climate is set out in Chapter 7 of their ES. This includes an assessment of GHG emissions (assessed as carbon dioxide equivalent emissions and referred to here as carbon emissions) with regard to construction and operational effects of the Proposed Development. The Secretary of State notes that the impact assessment methodology applied by the Applicant is set out in Design Manual for Roads and Bridges (DMRB) LA 114 Climate ("DMRB LA 114") as updated in June 2021, which requires the calculation of estimated carbon emissions from the construction and operation of the scheme and assessment of these against the carbon budget period in which they arise.

#### *Assessing the Impacts of the Proposed Development*

68. The Applicant's assessment of the impact of the Proposed Development on Climate is outlined at [ER 4.6.3] setting out an assessment of GHG emissions compared to UK carbon budgets (assessed as carbon dioxide equivalent emissions and referred to here as carbon emissions) with regard to construction and operational effects of the Proposed Development. The Applicant's ES states that construction phase emissions for the Proposed Development were calculated at 518,562 tCO<sub>2</sub>e with the total net operational emissions over a 60-year period calculated at 2,190,452 tCO<sub>2</sub>e as noted at paragraphs 7.11.16 and 7.11.17 of Chapter 7 of the ES. With regard to construction, the Secretary of State notes that article 53 of the Order set outs a need for a Carbon Strategy to be developed in consultation with stakeholders to ensure carbon emissions are minimised through design and during construction [ER 4.6.6]. With regard to operation, the Applicant's ES states that it has used the more conservative figure for 'net' GHG emissions, which excludes benefits from operational land use change over the sixty-year study period and benefits from mitigation provided by the Proposed Development. It is therefore possible that the emissions from construction and/or operation could be

lower than those assessed and therefore the assessment provided by the Applicant is conservative (see also ER 4.6.63-4.6.64). Furthermore, as stated at paragraph 7.7.7 of Chapter 7 of the ES, there is an expected positive impact on net GHG emissions through sequestration of carbon in the operational phase of the Proposed Development, however this was not included in the evaluation of significance. The Secretary of State is satisfied that the information provided for construction and operation reflects an assessment of the impact of the emissions of the Proposed Development itself. The net carbon emissions would equate to 0.027% of CB4, 0.03% of CB5 and 0.019% of CB6 [ER 4.6.3]. This means contributions in any of the carbon budgets are expected to be a maximum of 0.03% in the relevant carbon budget. The Secretary of State also considers that this is an acceptable way to approach an assessment of the in combination impacts of the Proposed Development for the reasons set out more fully below.

69. The Applicant's climate assessment in the ES concluded that emissions from the Proposed Development would be low compared against the relevant carbon budgets and would not have a significant effect on climate or a material impact on the ability of Government to meet its carbon reduction plan targets and carbon budgets [ER 4.6.4].
70. The Secretary of State considers that there is no set significance threshold for carbon but as set out in paragraph 5.18 of the NPSNN, an increase in carbon emissions is not a reason to refuse development unless any increase is so significant that it would have a material impact on the ability of Government to meet its carbon reduction targets. The question of whether there is a material impact is a judgement call to be made by the decision maker. In this case, the Secretary of State is satisfied with the assessment of the Proposed Development's impact on carbon emissions (including cumulative effects), that it complies with the requirements of paragraphs 5.16, 5.17 and 5.18 of the NPSNN and, noting the predicted impact on carbon budgets as set out above, is satisfied that the Proposed Development would be unlikely to materially impact the ability of the Government to meet its carbon reduction targets. As set out above, the Secretary of State also considers that the Applicant's assessments represent a conservative assessment and therefore, as recognised by paragraph 5.18 NPSNN, he considers that the impacts may ultimately be lower than those assessed given the approach taken by the Applicant and the range of non-planning policies adopted by Government which seek to reduce carbon emissions from road transport.
71. The Secretary of State notes that the revised NPSNN states that approval of schemes with residual carbon emissions is allowable and can be consistent with meeting carbon budgets, net zero and the UK's Nationally Determined Contribution. In this respect, insofar as relevant to the Proposed Development, the Secretary of State does not consider there to be a material difference between the requirements of the NPSNN and the revised NPSNN and that emerging policy on carbon emissions does not weigh against granting consent for the Proposed Development.
72. With regard to the Paris Agreement, the UK's Nationally Determined Contributions ('NDC') commits it to reduce net GHG emissions by at least 68% by 2030 compared to 1990. This represents an increase of ambition on the 5CB, which covers the period 2028-2032. The Government has set out wider policies around net zero in 'The Net Zero Strategy: Build Back Greener', published by Government

in October 2021 and the Carbon Budget Delivery Plan published in March 2023 (together referred to as the 'Net Zero Strategy') set out policies and proposals for decarbonising all sectors of the UK economy to meet the 2050 target. It identified how the UK will therefore need to overachieve on 5CB to meet its international climate targets and stay on track for 6CB. This Net Zero Strategy sets out the action Government will take to keep the UK on track for meeting the UK's carbon budgets and the 2030 NDC and establishes the UK's longer-term pathway towards net zero by 2050. The Secretary of State has no reason to consider that the Proposed Development will hinder delivery of the Net Zero Strategy. The Secretary of State is satisfied, in light of the net construction and operation emissions that have been identified, that consenting the Proposed Development will not affect the delivery of the Net Zero Strategy, or net zero in principle, nor will it have a material impact on the ability to meet the national targets, including 5CB (and overachievement in the Net Zero Strategy) or the 6CB, and it will not lead to a breach of the UK's international obligations in relation to the Paris Agreement or any domestic enactments or duties. Like the ExA, the Secretary of State is satisfied that the Applicant has assessed GHG emissions from the Proposed Development against UK carbon budgets, which are a means for the UK to achieve compliance with the Paris Agreement and is content that assessment against the carbon budgets is sufficient for consideration of compliance with the UK's international obligations. In considering section 104 of the PA2008, the Secretary of State agrees with the ExA that the Proposed Development would be unlikely to cause the UK to be in breach of its international obligations [ER 4.6.22] including the obligations contained in the Paris Agreement 2015.

73. The Secretary of State notes the recent progress report of the Climate Change Committee ("CCC") submitted to Parliament on 23 June 2023. The CCC's advice was that the rate of emissions reductions in the UK will need to significantly increase to meet its 2030 NDC and the 6CB. The CCC advice included a recommendation that the Government should carry out systematic review of current and future road-building schemes to assess their consistency with environmental goals and to ensure that decisions do not lock in unsustainable levels of traffic growth and develop conditions that only permit schemes to be consented where they are consistent with net zero. The Government responded to the CCC's report on 26 October 2023 stating in particular that National Highways already provide environmental impact assessments to allow consenting authorities to take decisions that are consistent with environmental policy and legislation and that, as set out in the Transport Decarbonisation Plan, the Government will continue to adapt and take further action if needed to decarbonise transport. Whilst the Secretary of State notes this has been raised by parties, the Secretary of State notes that the CCC's advice is not planning policy but simply advice to Government, which Government is free to accept or reject. The CCC's advice is directed at the issue of achieving compliance with carbon budgets overall and the CCC has not set out any recommendations with respect to individual planning decisions or development consent applications. The approach to development consent applications is set out in the NPSNN. There are other policy mechanisms available outside of the PA2008 and NPSNN which can address any difficulties in meeting the NDC and/or the 6CB. The Secretary of State therefore gives the CCC's advice neutral weight.

### *Examination issues*

74. The Secretary of State notes the main objections to this matter were put forward by Transport Action Network (“TAN”) and Climate Emergency Planning and Policy (“CEPP”) and that whilst the Applicant responded to these objections, TAN and CEPP did not change their positions much during the Examination [ER 4.6.7]. The Secretary of State notes that the ExA considered the main issues of concern to be those summarised at ER 4.6.8. The Secretary of State also notes CEPP’s request to the ExA to record the various points it made and that this is set out at REP8-087 and requests that the Secretary of State considers them in the decision made. Such matters have been considered.

*Assessment of Significance in Accordance with the NPSNN and the Climate Change Act 2008 and Contextualisation against Local, Regional or sectoral Targets*

75. CEPP considered there was an absence of an assessment on carbon that complied with NPSNN paragraph 4.4 (“In this context, environmental, safety, social and economic benefits and adverse impacts, should be considered at national, regional and local levels”) [ER 4.6.11]. CEPP also considered that the Applicant was incorrect to claim that the ES ‘broadly aligns’ with IEMA guidance as contextualisation of the greenhouse gas emission assessment against local, regional and sectoral targets had not been provided [ER 4.6.29].

76. The Secretary of State agrees with the ExA’s view at ER 4.6.23 and considers that neither the NPSNN nor the 2017 Regulations specify a requirement for local or regional carbon assessments and that the Net Zero Strategy is clear that there are currently no net zero statutory targets on local authorities or communities and there is no requirement in national legislation or policy for an assessment against local or regional carbon budgets. Noting that there are also no sectoral targets and that the only statutory carbon budgets are those at a national level and that the impact of carbon emissions is not limited to a specific geographic area, the Secretary of State is satisfied that an assessment against the statutory carbon budgets has been undertaken and that paragraph 4.4 of the NPSNN has been complied with. The Secretary of State, like the ExA is therefore satisfied that the ES should not consider local or regional targets [ER 4.6.31].

77. With regard to CEPP’s concerns that the Proposed Development risks the legal requirement to deliver the CB5 and CB6 under the Climate Change Act 2008, breaching international obligations [ER 4.6.12], as set out above, the Secretary of State considers that the approach set out in the NPSNN continues to be relevant in light of international obligations and domestic obligations related to reducing carbon emissions that have been introduced since the NPSNN was designated. Carbon budgets are economy-wide and not just targets in relation to transport meaning increases in one area can be compensated in another. Government is legally required to meet the carbon budgets which provide one pathway to net zero and the Secretary of State considers that the Proposed Development is consistent with existing and emerging policy requirements to achieve the UK’s trajectory towards net zero. CEPP made a further point that the Proposed Development was inconsistent with the transport pathway within the CBDP. However, as CEPP recognises, the transport pathway is not a legally binding target. The CBDP includes sectoral emissions, but it is clearly stated in the CBDP that these are only projections and should not be used as hard sectoral targets and there is a need within the overall carbon budget to retain flexibility. As set out above, the Secretary of State considers that the Proposed Development’s contribution to overall carbon

levels will not have a material impact on the ability of Government to meet its legally binding carbon reduction targets.

78. The Secretary of State notes that CEPP were concerned that the Applicant is incorrect in claiming that the ES 'broadly aligns' with the Institute of Environmental Management and Assessment ("IEMA") Guidance as contextualisation of the GHG assessment has not been done [ER 4.6.13]. The Applicant highlighted that this fails to acknowledge section 6.2 of the IEMA guidance [ER 4.6.19]. The ExA considered that the IEMA Guidance is guidance only and the Applicant has contextualised the GHG emissions in line with the IEMA guidance as set out in ER 4.6.25. Overall the Secretary of State notes the concerns on contextualisation made by CEPP both during and after the Examination and is content that national carbon budgets are the only statutory carbon budgets that need to be considered and that an assessment against these has been provided and that the information on the impact of the Proposed Development on carbon is sufficient to enable the Secretary of State to understand these impacts. The Secretary of State considers that there is no single defined way to assess carbon impacts or decide their significance but as set out above, is content that the relevant test is still that set out in the NPSNN and is satisfied that this has been met.

#### *Cumulative Impact Assessment*

79. The Secretary of State notes the concerns raised by CEPP with regard to a cumulative assessment as set out at ER 4.6.32-4.6.35 that include there being no assessment of the impact of cumulative carbon emissions in the ES thus breaching the EIA Regulations [ER 4.6.32], the Applicant's approach of assessing the "do-something" minus the "do-nothing" scenario results in an assessment of significance from the impact of the scheme alone only [ER 4.6.34], that the Applicant's approach to assessing this impact against the carbon budgets is illogical as the national carbon budgets are a benchmark and not an estimate of the Proposed Development's cumulative emissions [ER 4.6.35].
80. The Secretary of State considers an appropriate assessment of cumulative effects has been carried out and this provides adequate information to enable the Secretary of State to understand the cumulative effects of the Proposed Development on carbon emissions. The Secretary of State considers that as there is no single prescribed approach to assessing the cumulative impacts of carbon emissions, there are a number of ways such an assessment can acceptably be undertaken. The Secretary of State also notes that for the impact and effect of carbon emissions on climate change, unlike other environmental topics, there is only a single receptor impacted by carbon emissions (the atmosphere) and it is a global one.
81. The Secretary of State considers that as carbon budgets and the 2050 target relate to the whole of the UK economy and society and are legally binding, they reflect a reasonable assessment, based on current knowledge, of what the UK's impact will be on this receptor as they set out what carbon levels can reasonably be expected to occur in the future (because they represent a legal limit on what can be emitted). It is therefore considered that as legally binding budgets they provide a reasonable reference point for considering the effects of carbon from the Proposed Development and that these legally binding budgets are relevant to a consideration of cumulative effects in that they represent the limit of the emissions that are permitted within each carbon budget period from a range of sectors including



transport rather than a benchmark as suggested by CEPP. Given the global nature of the impacts of carbon, the Secretary of State considers that the alternative approach of assessing the impact of the Proposed Development with other local schemes against the cumulative carbon budget as suggested would be arbitrary. This is because the nature of carbon emissions is that their impact will not be local, meaning that only assessing local schemes, or schemes from just one sector (i.e. surface transport), will provide limited additional information and selecting one scheme to include over another, regardless of its sector or location, would again be arbitrary. Further, the wider the geographic area considered the greater the impact will inevitably be, again providing little more detail of the impact of the Proposed Development. The purpose of the carbon budgets is to ensure the cumulation of emissions from a range of sectors across the UK do not exceed those budgets. A detailed assessment of how Government compensates for emission from one sector through reductions in another and the policies that are put in place to meet carbon budgets are outside the scope of consideration for this application, although the Secretary of State notes that there are policies in place within transport the Transport Decarbonisation Plan ('TDP') and the economy as a whole (the Net Zero Strategy) which are designed to help ensure that compliance with carbon budgets is achieved. The Secretary of State therefore considers that the Applicant's approach which takes account of these carbon budgets for the purposes of its cumulative assessment is reasonable, proportionate, and accords with the principles set out in the IEMA guidance that a) GHG emission impacts are global rather than affecting one localised area and b) there is no basis for selecting one or more particular cumulative projects for assessment over any other(s).

82. The Secretary of State's assessment of cumulative carbon emissions (based on the Applicant's approach) has been legally challenged by Dr Boswell. The High Court in its judgment dated 7 July 2023 (R (on the application of) Andrew Boswell v Secretary of State [2023] EWHC 1710) dismissed the claims and this was upheld by the Court of Appeal in its judgment dated 22 February 2024 (R (on the application of) Andrew Boswell v Secretary of State for Transport [2024] EWCA Civ 145) This makes clear that the approach to assessing cumulative effects was lawful and complied with the 2017 Regulations and that the Secretary of State had not acted unlawfully in concluding that he had sufficient information to assess the cumulative effects of the road schemes in issue in that case. The approach and methodology adopted by the Applicant for the Proposed Development is the same as that adopted for the A47 road schemes that were considered in the Boswell case. While the Secretary of State appreciates these cases may still be appealed to the Supreme Court, the position of the Secretary of State is that this ruling supports his overall view that the Applicant's assessments and methodology are reasonable and provide a sufficient basis for reaching a conclusion on the likely significant effects of the Proposed Development when taken together with other existing and/or approved projects on climate.

83. The Secretary of State considers that the Applicant's approach overall, to both the assessments of the Proposed Development's impact on carbon emissions and its cumulative impact, is adequate and agrees with the ExA that the Proposed Development complies with the 2017 Regulations as well as applicable guidance [ER 4.6.42].

*Carbon Policy*

84. The Secretary of State notes CEPP raised various concerns about how Government policy had been applied to the consideration of the impact of the Proposed Development on carbon emissions [ER 4.6.43]. CEPP raised concerns that following publication of the revised Net Zero Strategy, the delivery of the strategy and the UK carbon budgets have not been secured and that there has been no adequate risk assessment of the delivery of the strategy and all assumptions that these have been secured should be removed from the Application [ER 4.6.43]. The Applicant noted that in the absence of any court order quashing the adoption of policy, policy which is material to a decision remains lawful and must be taken into account [ER 4.6.44]. The Secretary of State agrees with this and the ExA's conclusion that the Examination of this application is not the proper forum to challenge the lawfulness of government's revised Net Zero Strategy or to make submissions on Government policy [ER 4.6.45]. The Secretary of State notes that the revised Net Zero Strategy is subject to a legal challenge but considers that unless and until it is quashed it remains Government policy and considers that there is no basis to doubt the legality or effectiveness of existing Government policy. The Secretary of State further notes that the Secretary of State for Energy Security and Net Zero is responsible for ensuring that there are policies and proposals which will enable carbon budgets to be met and that the Secretary of State for Energy Security and Net Zero has procedures in place to keep the package of proposals and policies under review in order to discharge that duty. The Secretary of State considers that, for all of these reasons, it is appropriate for him to take into account the Net Zero Strategy and that the question of delivery risk does not affect his conclusions on the impacts of the Proposed Development. The CBDP records in Appendix D that the Government has reasonable to high confidence in the delivery of the commitments in the TDP in any event.

#### *Approach to Assessment*

85. CEPP considered that the GHG emissions from local land based and road developments had been underestimated for the reasons set out at ER 4.6.53. Like the ExA, the Secretary of State is content that the approach to assessment is proportionate and based on plans and projects that are reasonably foreseeable [ER 4.6.57]. CEPP also had concerns about the baseline used in the do-minimum scenario and that these should not include "other schemes promoted by NH" and "local land based and road developments" [ER 4.6.58] so these elements can be cumulatively assessed. The Secretary of State considers that this links to disagreements with the Applicant's approach taken to cumulative assessment and CEPP's preferred way that this should be undertaken. As stated above, the Secretary of State, whilst noting that there is a number of ways a cumulative assessment can be undertaken, is satisfied with the approach adopted by the Applicant. The Applicant noted that with regard to traffic modelling for the reasons set out at ER 4.6.63, their approach is highly precautionary. The Applicant also advised that the GHG assessment includes projected uptake of electric vehicles within the end user assessment and the emissions are calculated using the Emissions Factor Toolkit which provides government's assumptions on energy efficiency adjustments, and the transition to low emissions vehicle up to 2050 [ER 4.6.64]. The Secretary of State notes that since the close of Examination, the Prime Minister announced on 20 September 2023 the postponement of the ban on the sales of petrol and diesel cars from 2030 to 2035. In response to concerns that the impact of the Proposed Development on carbon emissions should be reappraised as a result of this, the Secretary of State invited the Applicant on 28 September

2023 to confirm if any update is needed to the carbon assessment or any other assessment that supports the application was required as a result of the announcement. The Applicant responded on 5 October 2023 stating that this did not affect the air quality modelling or assessment of greenhouse gas emissions as the road traffic forecasts published in DfT's TAG Databook, which were used in the development of the Emissions Factor Toolkit v11 (published by Defra) ("EFT") used to assess the Proposed Development's impacts do not currently allow for the introduction of the Zero Emissions Mandate. Therefore, the proposed delay to the ban to 2035 would not affect the traffic fleets in the TAG Databook, which in turn would not affect the fleets in the EFT and consequently nor would it affect the precautionary modelling undertaken for the Proposed Development. The Applicant, therefore, considered that it did not need to update its carbon assessment or any other assessment that supported the Order Application. Comments were sought on this on 18 October 2023 and however no new information was raised in responses. As such, the Secretary of State accepts the Applicants position that the postponement of the ban on the sales of petrol and diesel cars to 2035 does not impact the Assessment undertaking as part of the Application.

86. The Secretary of State agrees with the ExA that the strategic and future traffic model provides appropriate data to understand the impact of the Proposed Development cumulatively. The Secretary of State also agrees with the ExA that the use of baselines that change over time allows traffic growth that is forecast to occur anyway to be accounted for [ER 4.6.65].
87. Overall, the Secretary of State is content with the modelling approach used and that this is effective in allowing the Secretary of State to understand the impacts of the Proposed Development alone and in combination with other plans and projects.

#### The Secretary of State's Conclusion on Carbon

88. The ExA were satisfied that carbon emissions and impacts have been appropriately considered as part of the appraisal of scheme options prior to the Application being submitted [ER 4.6.68]. The Secretary of State is content that the Applicant has adequately assessed the likely significant effects of the Proposed Development on climate and its cumulative impacts on climate taking account of both construction and operation as required by the 2017 Regulations and this information has been taken into consideration when assessing whether development consent should be granted. Like the ExA the Secretary of State is also satisfied that appropriate mitigation measures would be incorporated into the design and construction phase and that these measures are secured in the Order via the carbon strategy and the EMP [ER 4.6.69].
89. Overall, the Secretary of State considers that the information provided by the Applicant on the impact of the Proposed Development on carbon emissions (including the cumulative effects of carbon emissions from the Proposed Development with other existing and/or approved projects in relation to construction and operation) is sufficient to understand the impact on carbon emissions, to assess the effect of the Proposed Development on climate matters and represents the information that the Applicant can reasonably be required to

compile having regard to current knowledge and in light of the information about the national carbon budgets.

90. Overall, the Secretary of State considers that: over time the net carbon emissions resulting from the Proposed Development's operation will decrease as measures to reduce emissions from vehicle usage are delivered; the magnitude of the increase in carbon emissions resulting from the Proposed Development is predicted to be a maximum of 0.03% of any carbon budget and therefore very small; and there are a range of non-planning policies which will help to reduce carbon emissions over the transport network as a whole over time such as the TDP, published in July 2021, and help to ensure that carbon reduction commitments are met such as the Net Zero Strategy. The Secretary of State is satisfied that the Proposed Development is compatible with these policies and that the very small increase in emissions that will result from the Proposed Development can be managed within Government's overall strategy for meeting net zero and the relevant carbon budgets. The Secretary of State considers that there are appropriate mitigation measures secured in the Order to ensure carbon emissions are kept as low as possible and that the Proposed Development will not materially impact the Government's ability to meet its net zero targets.
91. The Secretary of State is satisfied that the Proposed Development complies with the NPSNN and will not lead to a breach of any international obligations that result from the Paris Agreement or Government's own policies and legislation relating to net zero.
92. The Secretary of State is aware that all emissions contribute to climate change. Whilst the Proposed Development will result in an increase in carbon emissions, as set out above, the Secretary of State considers that the Proposed Development needs to be considered in the context of existing and emerging policy and legal requirements to achieve the UK's trajectory towards net zero. The Secretary of State therefore agreed with the ExA that the Proposed Development's effect on climate change would be minor adverse and therefore negative. However, the Secretary of State considers that the Proposed Development will not significantly impact government's ability to meet carbon targets and therefore Net Zero and the Paris Agreement 2015 and the likelihood of the Government's legally binding targets decreasing carbon emissions over the lifetime of the Proposed Development, limited negative weight is attached to this.

#### Flood Risk and Water Environment

93. The Secretary of State is aware that during the Examination, concerns were raised by the Environment Agency and the Lead Local Flood Authorities ("Local Flood Authorities") because the hydraulic model had not been accepted by the Environment Agency at the time of the submission of the Application [ER 4.7.11]. The ExA also recorded that it had received a number of objections in relation to flood and drainage issues, including from persons affected by compulsory acquisition or temporary possession where drainage on their land is integral to flood risk on their retained land [ER 4.7.12].
94. By the end of the Examination, the Secretary of State notes that with the exception of Scheme 06 (Appleby to Brough), the Environment Agency was satisfied that the Applicant had demonstrated that any fluvial flood risk associated with the Proposed

Development can be satisfactorily managed and the validation of modelling approaches used for schemes other than Scheme 06 could be completed in accordance with the EMP and Project Design Principles during detailed design [ER 4.7.11]. The ExA recorded that the SoCGs between the Applicant and Westmorland and Furness Council confirmed agreement on drainage and flood risk; the SoCG between the Applicant and North Yorkshire Council confirmed agreement on all matters; and the SoCG with Durham County Council confirmed that all drainage matters were agreed in principle [ER 4.7.13]. The ExA further noted that all objections from the Environment Agency and the Local Flood Authorities had been resolved, as set out in ER 4.7.14.

#### *Scheme 06 (Appleby to Brough)*

95. The Secretary of State is aware that for Scheme 06, the Environment Agency and Applicant could not agree the baseline hydraulic modelling, the hydraulic modelling of the Proposed Development and compensatory flood storage proposals [ER 4.7.15]. He notes that each party proposed a mechanism for post decision approval and regulation of the flood risk matters not agreed, and that the Applicant preferred regulation through the EMP whereas the Environment Agency favoured regulation through the Order [ER 4.7.16].
96. The Secretary of State is mindful that the ExA considers that all reasonable steps have been taken by the parties to resolve the outstanding concerns in accordance with the NPSNN [ER 4.7.18] and he agrees with the ExA that hydraulic modelling and compensatory flood storage proposals are critical to the acceptability of Scheme 06 (Appleby to Brough) in respect of flood risk. As set out by the ExA, as it is the Environment Agency who have a statutory responsibility for flood risk and a higher level of in-house expertise, the Secretary of State agrees that the Environment Agency's suggested mechanism for the approval of hydraulic modelling and compensatory flood storage on Scheme 06 (Appleby to Brough) should be adopted and has included such a mechanism in article 54 (detailed design) as set out in paragraphs 294 - 298 below. The Secretary of State agrees with the ExA that the Applicant's suggested mechanism of regulation through the EMP could result in a lack of clarity on this critical matter due to the different functions of the two organisations involved [ER 4.7.17].

#### *Drainage*

97. The Secretary of State notes that the ExA concluded that the proposed drainage arrangements for the Proposed Development 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 paragraph 5.113 of the NPSNN. Noting the agreement between the Applicant and Environment Agency regarding this, with the exception of Scheme 06 for the same reason as stated above, the Secretary of State agrees with the ExA 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 [ER 4.7.23].
98. The ExA considers 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. Further the Order makes provision for the maintenance of any SuDS by the

Applicant. The ExA further considered that, due to the critical nature of flood risk in the Warcop area, the partnership approach with Westmorland and Furness Council to manage local drainage and flooding issues, is particularly appropriate. The Secretary of State agrees with this conclusion [ER 4.7.24].

99. Regarding mitigation measures, like the ExA, the Secretary of State is satisfied that there are reasonable and secured mitigation measures to ensure that the Proposed Development would remain functional in the event of predicted flooding in accordance with paragraph 5.104 of the NPSNN [ER 4.7.25].
100. Having considered the overland flow analysis and noted that this uses industry standard methods which are tried and tested, the Secretary of State agrees with the ExA that site layout and surface water drainage systems should cope with events that exceed the design capacity of the system. The analysis shows excess water can be safely stored on or conveyed from the site without adverse impacts, in accordance with paragraph 5.112 of the NPSNN, where it is required [ER 4.7.26].

#### *Flood Risk*

101. The Secretary of State notes from the FRA that with the exception of drainage attenuation pond S02-02, which is located in Flood Zone 2 and is at medium risk of fluvial flooding, the majority of the Proposed Development is located in Flood Zone 1. The Secretary of State also notes that the Applicant states that it considered flood risk from all potential sources and that the Proposed Development is shown to be at low risk of surface water and groundwater flooding. However, as some of the areas of the scheme are located in Flood Zones 2 or 3a or 3b and the Proposed Development is greater than 1ha, a Flood Risk Assessment is required. The ExA recorded that the Proposed Development is classified as Essential Infrastructure in the Design Manual for Roads and Bridges LA 113 Road Drainage and the Water Environment guidance ("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 [ER 4.7.7].
102. The Secretary of State notes that the methodology for the assessment and strategy of the Flood Risk Assessment and Outline Drain Strategy ("FRA") provided by the Applicant follows the guidance set out in the Design Manual for Roads and Bridges LA 113 and was provided under the relevant policy framework contained in the NPSNN and other relevant guidance and policy [ER 4.7.1]. The Secretary of State agrees with the ExA that the FRA is detailed and comprehensively covers each of the 8 schemes that make up the Proposed Development [ER 4.7.20], and is satisfied that in preparing the FRA, the Applicant has complied with paragraph 5.94 of the NPSNN [ER 4.7.21].

#### *Sequential Test*

103. In respect of the Sequential Test, paragraph 5.105 of the NPSNN states preference should be given to locating projects in Flood Zone 1, and if there are no reasonably available sites in Flood Zone 1, then projects can be located in Flood Zone 2. If there are no reasonably available sites in Flood Zones 1 or 2, then national networks infrastructure projects can be located in Flood Zone 3, subject to the Exception Test. If the development is not essential transport infrastructure that has to cross the area at risk, it is not appropriate in Flood Zone 3b, the functional floodplain where water has to flow and be stored in times of flood.

104. The Secretary of State agrees with the ExA that as the Proposed Development would form part of the strategic road network it would be classified as essential transport infrastructure [ER 4.7.19]. In any event, the Proposed Development is classified as such in the Design Manual for Roads and Bridges 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 in Flood Zones 3a or 3b. Moreover, the Secretary of State notes the ExA's comment that alternative alignments have been considered by the Applicant to satisfy the Sequential Test [ER 4.7.7]. The Secretary of State agrees.

#### *Exception Test*

105. The Secretary of State is also aware that the Applicant has submitted evidence to inform the Exception Test 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 [ER 4.7.7].

106. In respect of the Exception Test, paragraphs 5.106 and 5.108 of the NPSNN state that if, following the Sequential Test, it is not possible to locate a development in zones of a lower probability of than Flood Zone 3a, then the Exception Test can be applied. For the Exception Test to be passed:

- it must be demonstrated that the project provides wide sustainability benefits to the community that outweigh flood risk; and
- a FRA must demonstrate that the project will be safe for its lifetime, without increasing flood risk elsewhere and, where possible, will reduce flood risk overall.

107. The Secretary of State is satisfied that the wider sustainability benefits to the community cited by the Applicant as including safety, connectivity, noise levels, reduced congestion and tourism would outweigh flood risk, as required by the Exception Test [ER 4.7.8]. The ExA also noted that the Proposed Development would be safe for its lifetime without increasing flood risk elsewhere and the Secretary of State is therefore satisfied that the Exception Test has been demonstrated in the FRA in accordance with the NPSNN [ER 4.7.19].

#### *Flitholme Fen and Flitholme Woodland groundwater*

108. The Secretary of State notes that, with the implementation of mitigation, the ES concludes that with the exception of a significant adverse effect during operation on the Flitholme Fen and Flitholme Woodland groundwater dependent terrestrial ecosystems, in relation to Scheme 06, due to a loss or degradation of potential supporting habitats, there would be no likely significant adverse effects on the water environment attributable to the Proposed Development [ER 4.7.9]. Further consideration is given to the Flitholme Fen and Flitholme Woodland groundwater dependent terrestrial ecosystems in the biodiversity section below, but like the ExA, the Secretary of State considers the Applicant's proposals in this regard to be acceptable [ER 4.7.29].

#### *Construction Impacts*

109. The Secretary of State is aware that while construction issues are not considered in the FRA, the EMP includes details of measures to protect the water environment during construction. The Secretary of State notes that the ExA has considered the

EMP in detail during the Examination and is content with the approach to construction issues, which also has the agreement of the Environment Agency. Like the ExA, the Secretary of State is satisfied with the Applicant's approach to construction issues [ER 4.7.20].

#### *Water Framework Directive*

110. The Secretary of State is aware that matters relating to the Water Framework Directive ("WFD") were considered during the Examination, and that the Applicant submitted a WFD Compliance Assessment in support of its Application. The Applicant's WFD Compliance Assessment identified that the Proposed Development has the potential to cause a deterioration in the current status of nine watercourses [APP-220 paragraph 14.1.9.5]. The Applicant therefore identified additional mitigation measures including ecological mitigation and WFD mitigation comprising: low flow channel creation; bank reprofiling; removal of existing structures; wetland habitat creation/improving floodplain connectivity; and buffer strips [APP-220 paragraph 14.1.19.2]. The Secretary of State notes that the Applicant concluded that the additional measures were considered appropriate to mitigate the identified potential adverse effects [APP 220-paragraph 14.1.19.2] and that the measures are secured in the EMP [APP-220 paragraph 14.1.10.1]. The Secretary of State also notes that with the additional mitigation identified the Applicant did not consider the potential for residual adverse overall effects to remain at this stage [APP-220 paragraph 14.1.11.3].
111. The Secretary of State notes the conclusions of the Applicant's WFD Compliance Assessment is based on a precautionary worst-case scenario. Additionally, the Secretary of State notes that to ensure compliance with the WFD and no detriment to the current WFD condition of potentially impacted water bodies, the Applicant states that the EMP secures the maximum extent of mitigation required as identified in the WFD Compliance Assessment paragraph 14.1.1.15 of 3.4 Environmental Statement, Appendix 14.1: WFD Compliance Assessment. The Secretary of State also notes that mitigation will be further developed using detailed design and additional surveys as agreed in accordance with the EMP, which is secured by article 53 of the recommended Order.
112. The Secretary of State further notes that the ExA was satisfied that the Applicant's WFD Compliance Assessment follows relevant guidance, comprehensively covers the extent and influence of the Proposed Development and that the changes introduced into the Examination have been incorporated by way of revised figures relating to surface water and groundwater bodies. Accordingly, the ExA concluded that there was no reason to doubt the positive compliance conclusion of the assessment and the Secretary of State has no reason to disagree [ER 4.7.27].

#### The Secretary of State's Conclusion on Flood Risk and Water

113. Environment The Secretary of State is satisfied that the Proposed Development, which is supported by an appropriate FRA, would not give rise to any unacceptable risks in terms of flooding [ER 4.7.28], that it would be compliant with the WFD and have no unmanaged adverse effects [ER 4.7.29]. The Secretary of State also notes that the ExA has taken into account all submissions made on flood risk and the water environment and that the ExA considers that they 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 Order [ER 4.7.30].

114. The Secretary of State notes that the ExA is satisfied that with the inclusion of the mechanism for the approval of hydraulic modelling and compensatory flood storage in relation to Scheme 06 in the recommended Order, the Proposed Development would have no likely significant adverse effect on flood risk and the water environment. Further, he notes that the ExA considers that the Proposed Development would accord with the NPSNN and with all legislation and policy requirements and that mitigation is adequately provided for and secured in the recommended Order. The Secretary of State has no reason to disagree with the ExA and has concluded that Flood Risk and Water Resources carry neutral weight in the planning balance [ER 4.7.31 and 6.2.12].

### Biodiversity and Wildlife

115. Chapter 6 of the ES reports on biodiversity matters and identifies 18 statutory sites, 27 non-statutory designated sites, 16 ancient woodlands, habitats of ecological interest and multiple protected species [ER 4.8.2].
116. The ExA recorded that while the ES confirms that there is a potential for the Proposed Development to result in permanent likely significant adverse operational effects to barn owls at Scheme 0405 (Temple Sowerby to Appleby) and Scheme 09 (Stephen Bank to Carkin Moor), it is noted that the ExA also concluded that, with the mitigation in place as set out in ER 4.8.3 and secured through the Register of Environmental Actions and Commitments (“REAC”) the effect is likely to be neutral on the barn owl population and is not considered significant [ER 4.8.4]. The ExA states that no significant concerns were raised by any party in respect to the identified impact on barn owls or the mitigation proposed [ER 4.8.11] and that Natural England agreed that the REAC commitments were adequate [ER 4.8.12]. Accordingly, like the ExA, the Secretary of State is satisfied that with the mitigation in the REAC commitments within the EMP, as summarised at ER 4.8.3, would ensure the effect on the barn owl population would be neutral and not significant [ER 4.8.4 and ER 4.8.26].
117. The ExA also recorded that, within Chapter 14 of the ES, likely permanent significant adverse effects are identified in relation to the Flitholme Spring (Scheme 06 Appleby to Brough) as a result of construction activities due to the risk posed by the design encroaching into it [ER 4.8.5]. The Flitholme Spring was highlighted as feeding into the Flitholme Fen, a sensitive habitat indicated by Natural England to be a highly valuable habitat [ER 4.8.6]. The Flitholme Woodland is categorised as having moderate dependency on a precautionary basis, due to a known spring in the vicinity. The Secretary of State further notes that it is stated that both the Fen and Woodland will be directly impacted by the Proposed Development which will result in the direct loss of this habitat [ER 4.8.6]. The Applicant states that further ecological surveys will take place at detailed design stage, and whilst mitigation at the Fen and Woodland cannot be guaranteed, the REAC commitments contained in the First Iteration of the EMP (“EMP1”) and the creation of new habitat and the commitment to produce a Landscape Ecology Mitigation Plan (“LEMP”) will maximise opportunities for biodiversity and minimise negative effects [ER 4.8.7].

118. The Secretary of State notes that no Interested Parties raised concerns with matters around the identified impact on water habitat and ecosystems at Flitholme Spring, Fen and Woodland and that Natural England agreed that the REAC commitments, including an invasive and non-native species management plan, would adequately manage biodiversity and their habitats [ER 4.8.12]. The ExA concluded that, in the absence of evidence to the contrary, the Applicant's proposals were acceptable as the ExA considered the EMP to be capable of identifying and replacing any habitat to be affected or lost by the Proposed Development [ER 4.8.13]. The Secretary of State has no reason to disagree. Further, like the ExA, the Secretary of State is satisfied that the EMP adequately provides for surveys and mitigation to replace potential habitat lost at Flitholme Fen and Woodland [ER 4.8.26].

### *Examination Issues*

119. The Secretary of State notes the representations, including from Westmorland and Furness Council and Durham County Council, that the Proposed Development should achieve biodiversity net gain of at least 10%, and notes the position of Natural England [ER 4.8.14] and the Applicant [ER 4.8.15 - ER 4.8.16]. Like the ExA, the Secretary of State accepts that it is not a requirement for the Proposed Development to achieve biodiversity net gain. However, he agrees with the ExA that the Applicant's approach to maximise biodiversity is welcomed [ER 4.8.28].

120. While the absence of the detailed designs for the proposed Trout Beck, Cringle Beck and Moor Beck viaducts are discussed in the Landscape and Visual section of this letter, the Secretary of State notes the concerns held by the Environment Agency and Natural England, particularly that the absence of details of the placements of the supporting pillars meant they could not advise on the effect of the Proposed Development on the aquatic environment or find no adverse effect on the integrity of 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 [ER 4.8.17]. Although the Secretary of State notes that these matters were resolved through changes and amendments to the REAC in EMP1 and the PDP, for the reasons set out in the Landscape and Visual section, he agrees with the ExA that he should approve the designs to ensure that the pillar placements would be acceptable [ER 4.8.18]. The ExA was satisfied that the inclusion of the Secretary of State's "call-in power" in paragraphs (6) to (9) of article 53 of the recommended Order addressed concerns by Natural England and Environment Agency on the Applicant's initial proposals around "self-approvals" [ER 4.8.19]. The Secretary of State has further amended article 53 (as set out in paragraphs 282 - 295) to remove reference to the "call-in power" and requires the applicant to provide a summary report, with the second iteration EMP that is submitted to the Secretary of State for approval, but considers that his amendments go further to address the concerns of statutory bodies including Natural England, the Environment Agency and relevant authorities.

121. Natural England and the Environment Agency provided a long list of general concerns with the Application which largely centred on the quantum of information contained within the EMP1, the REAC commitments and the appendices [ER 4.8.20]. However, by the close of the Examination, the Secretary of State notes that the Environment Agency confirmed that there were no matters of disagreement or outstanding concern on biodiversity matters and, in respect of Natural England,

the outstanding matters related to the HRA are discussed in the HRA section of this letter [ER 4.8.24].

122. Regarding tree loss, the Secretary of State notes the concerns expressed by the ExA regarding the absence of an arboricultural impact assessment which meant that there was insufficient information on tree loss and their locations. The ExA considered that, if left until the detailed design stage, tree losses could be unquantified and uncontrolled and removed at will at the behest of construction operatives on the ground [ER 4.8.22]. The Secretary of State notes the Tree Loss and Compensation Planting Report subsequently submitted by the Applicant which 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 [ER 4.8.23]. Like the ExA, the Secretary of State is 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 [ER 4.8.27]. He has further considered the commitments that are included in the LEMP to ensure that tree removal is kept to a minimum and further surveys are proposed by the Applicant at the detailed design stage and to ensure accordance with British Standard BS5837:2012: Trees in relation to design, demolition and construction [ER 4.9.36]. In accordance with paragraph 5.32 of the NPSNN, the Secretary of State is satisfied that the loss of veteran trees is outweighed by the national need for, and benefits of, the Proposed Development in that location. The benefits that will result from the Proposed Development are set out in paragraph 233.

123. While the Secretary of State notes that Westmoreland and Furness Council continues to raise concerns regarding the management of red squirrels, he is satisfied that both parties consider that these matters will be controlled, if required, at EMP2 stage and following the completion of the detailed design [ER 4.8.25].

#### The Secretary of State's Conclusion on Biodiversity

124. The Secretary of State concurs with the ExA that biodiversity matters have been adequately scoped and assessed in the ES in that an assessment has been carried out for the Proposed Development to determine any likely significant effects on internationally nationally and locally designated sites and all potential ecological receptors as required by the NPSNN (paragraph 5.22). The ExA was satisfied that mitigation is adequately secured in the EMP and PDP [ER 4.8.27]. Like the ExA, the Secretary of State is also content that the Proposed Development accords with NPSNN and all legislation and policy requirements, and that mitigation is adequately provided for and secured in article 53 of the Order. Accordingly, the Secretary of State agrees with the ExA that, in this respect, the Proposed Development attracts neutral weight in the planning balance [ER 4.8.29].

#### Landscape and Visual

125. Chapter 10 of the ES outlines the effects of the Proposed Development in relation to landscape and visual matters, as summarised at ER 4.9.2 - ER 4.9.3. It sets out that the landscape planting design would include a range of measures designed to complement the local landscape character and measures in relation to mitigation planting and a monitoring regime for the proposed planting [ER 4.9.5]. The four

main issues considered during the Examination are summarised at ER 4.9.6 and each issue is considered in paragraphs 126 – 133, below.

*The effect of the Proposed Development on the North Pennines Area of Outstanding Natural Beauty (“AONB”) at Scheme 06 (Appleby to Brough)*

126. The Secretary of State notes the representations made regarding 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, where land north of the A66 at Warcop contains Ministry of Defence (“MoD”) owned land and is designated AONB. Notwithstanding its designation, the Secretary of State is mindful that a number of parties considered this land to be in an unkempt state, comprising areas of hardstanding and dilapidated buildings and several interested parties expressed a preference for re-routing the A66 through the MoD land and therefore away from the village with less effect on the AONB [ER 4.9.7]. The consideration given to alternative routes is discussed further in detail in the ‘alternatives’ section above.

127. The ExA recognised the need to seek clarification of this matter as outlined at ER 4.9.8 and following discussion of the effect of the Proposed Development on the AONB at the issue specific hearing 2, the Applicant confirmed its position. The Applicant stated that the selection of the preferred route followed an optioneering exercise that identified which route would result in limited incursion into the AONB and MoD land leading to less of an influence on landscape, character and setting, that Natural England welcomed the selected route over any alternative route that would take the road further into the AONB notwithstanding its current condition [ER 4.9.9] and that the proposed route was deemed acceptable by the North Pennines AONB Partnership. The Secretary of State agrees with the ExA that overall, the route of the Proposed Development presents the least direct impact and physical encroachment into the AONB itself [ER 4.9.10].

128. The Secretary of State, like the ExA, is also content that the landscape mitigation proposed by the Applicant would reduce the impact of the Proposed Development on the AONB to an acceptable degree [ER 4.9.11].

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

129. As outlined at ER 4.9.12, the ExA had significant concerns about the potential visual impacts of three proposed viaduct crossings over Trout Beck [ER 4.9.13], Cringle Beck [ER 4.9.14] and Moor Beck [ER 4.9.15] and by what appeared to be a distinct lack of information before the Examination regarding their design and appearance [ER 4.9.12]. While the ExA acknowledged that the Applicant’s approach to designing the proposed viaducts is to undertake this at the detailed stage and that such designs would be in accordance with the Project Design Principles (“PDP”) [ER 4.9.16], the Secretary of State notes that, as set out at ER 4.9.17 - 4.9.18, the ExA were concerned that:

- the PDP for the designs of the viaducts were too general and therefore insufficient in controlling the design of the structures;
- the visual impact of the viaducts would likely be significant;
- if not carefully designed, the viaducts could appear as rudimentary or unattractive structures in what is a pleasant landscape; and

- high quality design of the three viaduct structures could not be fully secured through documents including the PDP.

130. The Secretary of State notes the additional information requested by the ExA in the form of additional viewpoints and photomontages [ER 4.9.18] and regarding the PDPs and the detailed design of the viaducts [ER 4.9.20]. The Applicant's response is also noted as well as the further information supplied including additional viaduct visualisations and revised photomontages [ER 4.9.21 - ER 4.9.22] and the concerns which were raised regarding the adequacy of the viewpoints and photomontages provided [ER 4.9.19] together with the ExA's disappointment that these were provided in the form of watercolour visualisations and not traditional photomontages [ER 4.9.21].

131. While the Secretary of State notes that the Applicant did not consider it necessary for him to approve the final design of the three viaducts [ER 4.9.22], he agrees with the ExA's recommendation that he should do so [ER 4.9.24]. This is because of the viaducts' scale, span and sensitive location and because the PDP, as set out in Table 4.2 below ER 4.9.16, and additional information provided by the Applicant do not sufficiently provide the detail or assurance necessary that these three significant new structures in this landscape will not have a significant effect. Accordingly, the Secretary of State has included the additional wording recommended by the ExA at article 54(7) of the recommended Order. Like the ExA, the Secretary of State is satisfied this provides greater certainty regarding the appropriate detailed design of the structures minimising the overall landscape impact [ER 4.9.24].

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

132. The Secretary of State notes the issue regarding the areas of land required for mitigation within the grounds of Skirsgill Hall as set out at ER 4.9.25, the subsequent discussions between the Applicant and Dr Leeming [ER 4.9.26 - ER 4.9.29] and that the position at the close of the Examination was that the matter was still in dispute between the parties [ER 4.9.30] and discussions were ongoing [ER 4.9.31]. The Secretary of State notes from the letter from Walton Goodland dated 19 October 2023 on behalf of Dr and Lady Leeming that an agreement has now been reached between them and the Applicant which satisfactorily addresses the concerns raised. The Secretary of State is therefore satisfied that the issues and objections raised are now resolved.

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

133. The Secretary of State notes the concerns raised regarding the issue of tree loss as a result of the Proposed Development and the absence of an Arboricultural Impact assessment ("AIA") which the ExA considered meant that the full understanding on the impact on trees could not be ascertained [ER 4.9.32]. While it is noted that the Applicant did not provide an AIA during the Examination stage because they proposed to complete one at the detailed design stage, the Secretary of State notes that a Tree Loss and Compensation Planting Report was subsequently provided [ER 4.9.34] to the satisfaction of the ExA who were content that the issue of tree loss was adequately addressed by the Applicant and that the total area required to replace tree loss could be achieved within the Order limits. The Secretary of State notes that the ExA recommended that he should satisfy himself 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 and has amended article 53 to include a reference to the AIA [ER 4.9.35]. The Secretary of State has had regard to the submissions made during consultation by a number of Interested Parties in relation to the AIA. In particular, the Secretary of State notes the Woodland Trust's response to the consultation dated 24 January 2024 and those other submissions that were written in support of the Woodland Trust. Although the Secretary of State acknowledges the Woodland Trust's concerns regarding the Applicant producing an AIA during detailed design, owing to the commitments made by the Applicant, as summarised at ER 4.9.36 – ER 4.9.37 and the amendments made to article 53, the Secretary of State has no reason to disagree with the ExA's conclusion that tree loss is adequately addressed by the Applicant [ER 4.9.35].

### The Secretary of State's Conclusion on Landscape and Visual Impacts

134. The Secretary of State agrees that for the reasons set out by the ExA at ER 4.9.39, the overall effect of the Proposed Development on 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 11 (Scotch Corner) would be neutral, noting that the Proposed Development would be predominately an online replacement of the existing road and would amount to a relatively small incursion into the overall landscape in those locations.
135. Regarding Scheme 0405 (Temple Sowerby to Appleby), the Secretary of State is satisfied with the ExA's conclusion that a large proportion of the Proposed Development in this location will be offline and would therefore amount to new development in previously open land. However, for the reasons at ER 4.9.40, and the proposed landscape mitigation secured by the Order, the Secretary of State considers the incursion would not be significant and the overall effect would be minor negative [ER 4.9.40]. In relation to the part of this scheme that would cross Sleastonhow Farm and the Trout Beck and, in respect of Scheme 06 (Appleby to Brough) the land to the north of Warcop, where in both cases viaducts are required, the Secretary of State concurs with the ExA that the presence of the road and viaduct structures would amount to a significant adverse effect on the landscape [ER 4.9.41, 4.9.42]. However, with mitigation in the form of the planting proposed and the inclusion of the additional wording within Article 54(7) of the Order, the Secretary of State concurs with the ExA that this would be sufficient to reduce the overall effect of the Proposed Development to moderate negative [ER 4.9.41 and ER 4.9.42].
136. The Secretary of State agrees with the ExA that, taking the Proposed Development as a whole, there would be unavoidable harm to the landscape, due to the presence of hard structures where, in part, open countryside exists. The Secretary of State also concurs with the ExA, that harm to the landscape and the AONB is inevitable for this type of project, and in the medium to long term, the harm would reduce as the proposed landscape mitigation establishes. The ExA considers that while the overall design of the Proposed Development is acceptable, safeguarding measures in the recommended Order ensure that this would be carried out, particularly in regard to the aforementioned viaduct structures [ER 4.9.43]. The Secretary of State has no reason to disagree.

137. The Secretary of State agrees with the ExA 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 and would be in some conflict with paragraph 5.149 of the NPSNN. However, the Secretary of State considers that, with mitigation and with high quality designs for the three viaduct structures, a moderate negative weight in the planning balance should be applied to the landscape character, when taken as a whole [ER 4.9.44].

### Heritage Assets

138. Section 8.4 of Chapter 8 of the ES contains the assessment methodology in relation to heritage assets, as summarised at ER 4.10.1. Section 8.7 sets out the consideration given to the potential impacts of the Proposed Development on heritage assets during construction and operation, section 8.8 concerns mitigation measures and the residual effects on heritage assets are dealt with in section 8.9 [ER 4.10.1-2].

139. The Applicant identified 434 heritage resources in the ES Appendix 8.10 Impact Assessment Table [REP4-008] and concluded that there would be a temporary construction impact and effect on 221 heritage resources, a permanent construction impact and effect on 320 heritage resources and an operational impact and effect on 80 heritage resources because of the Proposed Development [ER 4.10.3]. The Secretary of State notes that, of the 392 heritage assets identified by the Applicant as being both positively and negatively affected by the Proposed Development, a significant number are considered by the ExA to be sufficiently distant from the road and associated infrastructure. Like the ExA, he is therefore satisfied that the significance of those assets would not be undermined to a tangible degree by the Proposed Development [ER 4.10.38].

140. The Secretary of State also agrees with the ExA that of the 32 heritage assets identified by the Applicant that would receive a potentially significant adverse effect following mitigation, the Applicant's proposed routing, together with the mitigation measures proposed, would reduce the overall effects as far as practicable [ER 4.10.39].

141. The Secretary of State notes that the ExA heard little evidence of concerns regarding the heritage assets that would be subject to likely significant effects ("LSE") [ER 4.10.5] as summarised at ER 4.10.38 to 4.10.40. Like the ExA, the Secretary of State is satisfied that the mitigation set out in the Outline Heritage Mitigation Strategy ("HMS") which forms part of the EMP, as supported by Historic England, is sufficient [ER 4.10.5].

### *The Applicant's outline HMS and EMP*

142. The Secretary of State notes that questions were asked during the Examination regarding the relationship between the first iteration of the HMS and the EMP approval process, how this would work in practice and how changes would be managed [ER 4.10.8]. In response to the issue raised by the ExA regarding the "carving out" of the "start" definition in relation to archaeological mitigation works and when an approved HMS would be in place, the Applicant revised the EMP1 to remove the reference to an approved HMS from the definition of "start" [ER 4.10.9]. In response to the questions raised by the ExA as to how changes to the HMS would be managed, it is noted that the Applicant confirmed that the HMS would be

approved as part of the EMP2, and therefore the same provisions that apply to changes to the EMP2 would apply to the HMS and that any changes would require consultation with statutory bodies [ER 4.10.10]. In relation to how the EMP would be approved going forward, the Applicant confirmed that EMP2 would be subject to approval by the Secretary of State and 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 [ER 4.10.11].

143. The ExA noted that, at the close of the Examination, there were two matters which remained in dispute between the Applicant and Historic England, namely 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 Order [ER 4.10.15]. The latter point was reiterated by the Applicant post Examination in response to the Secretary of State's consultations. The ExA noted that the Applicant maintained that the proposed inclusion of additional paragraphs (13) and (14) to Article 53 of the recommended Order was unnecessary and changes to the Order were not required. Like the ExA, the Secretary of State agrees that adding the proposed wording would avoid any ambiguity and concurs with Historic England 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 [ER 4.10.16]. The Secretary of State has therefore accepted the amendments to Article 53 as set out by the ExA at Table 8.3 of the ER [ER 4.10.17].

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

144. The Secretary of State notes that concerns were raised regarding the potential impacts of the Proposed Development on Rokeby Registered Park and Garden ("RPG") and nearby heritage assets [ER 4.10.18]. However, the Applicant confirmed that adverse effects which would occur in relation to the setting of RPG as a result of the Proposed Development would not significantly affect the value of the asset [ER 4.10.21].
145. The Secretary of State notes that opposing views were taken by Mortham Estates and Historic England regarding the severity of harm caused by "the Black Option" route and the principal alternative "the Blue Option" route 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" [ER 4.10.20]. Overall, Historic England considered that the Proposed Development would cause the least amount of harm to St Mary's Church and further advised that moving the route off-line west of the RPG would maintain the integrity of RPG, avoid physically severing Church Plantation and move much of the current traffic further away from the precious landscape [ER 4.10.22]. However, Mortham Estates stated they preferred "the Blue Option" route, for reasons which included 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 southwest Rokeby Park entrance [ER 4.10.23].



146. The ExA concluded that, having visited RPG, and having had regard to the documentation provided by all parties and mitigation measures proposed by the Applicant, they were satisfied 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. The Secretary of State agrees with this and accepts the ExA's conclusion that the Proposed Development would not significantly affect the value of the RPG or heritage assets within the vicinity [ER 4.10.24].

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

147. The Proposed Development would be located within close proximity to the Countess Pillar, a Scheduled Monument, the Grade II\* Listed Alms Table, and, in particular, St Mary's Church [ER 4.10.26]. The experience of these assets would be adversely affected by the Proposed Development [ER 4.10.40]. Like the ExA, however, the Secretary of State is mindful that these assets are already in close proximity to the existing A66 and therefore agrees with the ExA that these heritage assets would be subject to less than substantial harm from the Proposed Development [ER 4.10.40].

148. It is noted that the ExA was initially concerned about accessibility to heritage assets from the west, due to a rotation on a General Arrangement Drawing 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 accessibility of the assets in the wider historic context of Brougham Roman Fort and Civil Settlement and Brougham Castle [ER 4.10.26]. Noting the amended drawing subsequently provided by the Applicant 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, like the ExA, the Secretary of State is satisfied that the Proposed Development would not undermine the significance of these heritage assets in this regard [ER 4.10.28].

149. The Secretary of State also concurs with the ExA that the proposed environmental mitigation, including vegetation clearance, would serve to enhance views of the heritage assets from the Proposed Development, which would increase their visibility and would help to assist with the long-term viability of the assets. The Secretary of State has also taken into account paragraph 5.137 of the NPSNN and considers that this weighs favourably in the planning balance. Like the ExA, the Secretary of State is content that the mitigation would be sufficiently secured as outlined in ER 4.10.29 and acknowledges that position is supported by Historic England as outlined in their final signed SoCG [ER 4.10.29].

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

150. The Secretary of State notes the consideration given by the ExA regarding whether a Heritage Impact Assessment ("HIA") was necessary in regard to the Lake District National Park World Heritage Site ("WHS") [ER 4.10.30], notwithstanding the fact that the Applicant concluded that the Lake District National Park WHS lay outside the 1km study area for heritage which was agreed upon with Historic England as part of the statutory consultation process and that the ES

considered that there would not be any significant effects upon the WHS from a Heritage perspective [ER 4.10.31].

151. The Secretary of State acknowledges the concern regarding the potential increase in, and impact of, vehicle trips on the WHS because of the Proposed Development. He also recognises the concerns raised by Historic England that the ES did not adequately address the issue of potential impacts on the Lake District WHS, particularly indirect impacts, which Historic England suggested required an appropriate HIA in line with UNESCO guidance [ER 4.10.32]. The Secretary of State also notes that Historic England subsequently confirmed that the Applicant had submitted supporting technical information which adequately explained why an HIA is not required and that they were content with the Applicant's approach [ER 4.10.36]. The Secretary of State requested a copy of this in a letter of 18 October 2023 and it was subsequently provided by the Applicant in their response of 27 October 2023. No comments were received on this from Interested Parties. Accordingly, noting that there were no outstanding comments from Interested Parties that either disagreed with or disputed the Applicant's scope of assessment [ER 4.10.41], the Secretary of State agrees with the ExA that there is no reason to disagree with Historic England, as the statutory advisor on the historic environment, that an HIA is not required in relation to the Proposed Development [ER 4.10.41]. Likewise, and noting that the supporting technical information incorporating HE's comments that the Applicant provided in response to the consultation letter dated 18 October 2023, the Secretary of State has no reason to disagree with the Applicant's conclusions that significant effects upon the WHS would not occur from a heritage perspective [ER 4.10.36].

#### The Secretary of State's Conclusion on Heritage Assets

152. The Secretary of State notes the ExA has considered the effect of the Proposed Development on heritage assets identified by the Applicant in the study area and notes that at the close of the Examination, there were no outstanding comments from Interested Parties that either disagreed with or disputed the Applicant's scope of assessment [ER 4.10.41].

153. The Secretary of State agrees with the ExA that, in accordance with paragraph 5.129 of NPSNN, the Proposed Development route has been developed to reduce the impact on the historic environment by avoiding known high value heritage assets, where practicable [ER 4.10.37]. The ExA considered that the Proposed Development would result in likely significant effects on the historic environment and there would therefore be some conflict with paragraphs 5.128 to 5.134 of the NPSNN in this regard, but the Secretary of State is satisfied that mitigation is adequately provided for and secured in the recommended Order to reduce the effect of the significance of the heritage assets. As such, the ExA considered that Heritage Assets attract an overall minor negative weight in the planning balance [ER 4.10.42]. The Secretary of State agrees with this conclusion. He considers that in line with paragraph 5.132 of the NPSNN, the public benefits secured by the Proposed Development outweigh the likely significant effects on the historic environment and that, overall, the Proposed Development will result in less than substantial harm to the significance of the heritage assets considered above in accordance with paragraph 5.134 of the NPSNN.

## Population and Human Health

154. Chapter 13 of the ES contains the Applicant's assessment of the Proposed Development upon population and human health which included effects on 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 [ER 4.11.1].

155. The Applicant's conclusions of these effects are summarised at ER 4.11.1-4.11.10. The ExA were satisfied that the Applicant had satisfactorily assessed both the positive and negative population and health impacts [ER 4.11.11] and following further representations there were some issues that needed to be further considered during the Examination and these matters were set out in ER 4.11.12 and are considered in the paragraphs below.

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

156. The Secretary of State is aware that the Proposed Development would take most of the Brough Hill Fair ("the Fair") site which is currently located adjacent to the existing A66 route. The ExA recorded that the Fair takes place over four days near the end of September each year and set out the significant importance to the gypsy and traveller community ("the Fair Communities") [ER 4.11.13 and ER 4.11.16]. The Secretary of State notes that the ExA examined in detail the Applicant's proposed replacement site for the Fair ("the replacement Fair site"), which would be provided to mitigate the loss of the existing Fair site.

157. The Secretary of State has considered the representations [AS-007] submitted by Mr Billy Welch, the Fair Communities representative, which highlighted the propriety and prescriptive rights to hold the fair, and included objections relating to:

- the size of the proposed alternative site being too small meaning that it is inadequate for the number of caravans and grazing horses;
- the location of the alternative site which would result in caravans and horses being too close to the fast-moving traffic on the new dual carriageway;
- the proximity of the alternative site to an existing dwelling;
- an alternative and shorter route further north which would allow the Fair site to remain in situ; and
- the cultural, heritage and ancestral importance of the site to the Fair Communities and the impact of the loss of the site to those within that community [ER 4.11.17]. The threat to the intangible cultural heritage of the Gypsy Community caused by the Proposed Development, concerns regarding the Applicant's failure to include the Fair in the cultural section of the EMP and class the Fair Site as Special Category Land were also raised in

representations made on behalf of the Fair Community in response to the Secretary of State's consultations.

158. The Secretary of State has also considered the representation [REP5-044] made by the Heron family who own and operate the Eastfield Farm which is located immediately adjacent to the replacement Fair site. In their representation, the Heron family highlighted the following points:

- the replacement Fair site abuts farm buildings that are used for intense dairy farming including livestock, feed buildings and a milking parlour and is an area where large farming machines regularly operate;
- the replacement Fair site also adjoins several properties occupied by members of this Interested Party;
- a 24-hour operational haulage yard and concrete plant is located to the west of the farm buildings; and
- a substantial number of heavy vehicles will continue to access the concrete plant via both public and private access routes following the construction of the Proposed Development.

159. The Heron family objections to the replacement Fair site included:

- operational risks to the farm and businesses including safety and security concerns;
- noise and waste impacts to one dwelling located 10 metres and a second dwelling 20 metres from the replacement Fair site, and other dwellings and buildings in nearby proximity;
- disturbance and impacts on livestock, milk production and animal welfare concerns;
- disturbance to the farm, business and livestock which would continue to have an impact not only during the Fair but for some time after an event; and
- there is an alternative route north of the route of the Proposed Development which would leave the Fair in its current location

160. The Secretary of State notes that the Heron family also raised concerns regarding the lack of arrangement for the ownership of the replacement Fair site and stated that most of their concerns would be mitigated if the site, after being acquired by the Applicant, is transferred to them for management [ER 4.11.29].

161. The ExA's consideration of the concerns raised in respect of the replacement Fair site is set out in paragraphs 4.11.13 to 4.11.64 of the Report. Overall, the ExA concluded that: the alternative Fair site is of a similar size to the current site even accounting for a notable pinch point between two parts of the site; provides a safe environment for the enjoyment of the Fair, considering road safety concerns for children and horses; provides suitable boundary treatment to reduce noise and visual intrusion of nearby traffic from the Proposed Development when compared to the existing site; preserves the rights to hold the Fair; and would be laid out in consultation with the representatives of the Fair Communities, adjacent landowners, the local planning authority and the local highways authority [ER 4.11.57].

## The Secretary of State's Conclusion on Brough Hill Fair

162. As set out in the Alternatives section above, the Secretary of State agrees with the ExA that the alternative options for the Proposed Development have been rigorously tested as discussed at paragraph 31, and the Secretary of State is 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 [ER 4.11.86].
163. The ExA recorded that the Fair was established by a Royal Charter relating to the Manor of Brough in 1330 and that it is said to have been moved to Brough Hill, north of the A66, in the 1600s. The Fair was moved to its current location in 1947 [ER 4.11.16]. The Secretary of State notes that the Applicant is seeking to relocate the Fair and agrees with the ExA that the historic right to hold the Fair will be protected and secured through article 36 (relocation of Brough Hill Fair) of the Order [ER 4.11.62]. There is opposition to the relocation of the fair raised both during and after the Examination.
164. The Secretary of State notes that the plan submitted by the Applicant during the Examination shows that, at 5.4 hectares, the replacement Fair site is the same size as the existing area. The ExA considered that the pinch point, which was understood to measure approximately 7 metres, which was raised as a concern in terms of exercising horses, is sufficient for both access and manoeuvrability within the overall site [ER 4.11.45]. The Secretary of State has no reason to disagree with this.
165. The ExA also recorded that engagement between the Applicant and the Fair Communities started in early 2021, has been ongoing and that the ExA did not receive a submission from the Fair Communities disputing this [ER 4.11.40]. The Secretary of State agrees with the ExA that in examining the Application, the ExA explored the concerns raised by the Fair Communities, how these were being addressed by the Applicant, and took into account the importance of the Fair to these communities and its intangible cultural heritage [ER 4.11.58 - 4.11.60]. This is considered further by the Secretary of State in the 'The Equality Act 2010 and Public Sector Equality Duty' section below.
166. The Secretary of State notes the representations made on behalf of the Fair Communities regarding article 36 in response to his consultations, in particular that this article is insufficient to guarantee a suitable alternative site and does not provide for consultation with the Fair Communities. The Secretary of State notes that article 36 of the recommended Order provides for, amongst other things, a scheme for the provision of the replacement Fair site which must: include facilities at least equivalent to those of the existing site; make appropriate provision for safe access to and from the replacement Fair site for vehicles, horses and persons; and make provision for the treatment of the boundaries of the replacement Fair site. It also provides for the detailed design of the replacement site to be approved by the Secretary of State in consultation with the Fair Communities, adjacent landowners and occupiers, the local planning authority and the local highways authority [ER 4.11.51]. The ExA considered that the relocation of the Brough Hill Fair site had been explored in detail during examination, and were satisfied the proposed replacement site was suitable, and that the applicant was committed to address outstanding concerns at detailed design [ER 4.11.86]. The Secretary of State has, following consultation, made amendments to article 36 of the draft Order, as discussed further at paragraph 299, which better ensure adequate consultation will

occur and provide for independent verification that the revised site has been implemented in line with the scheme approved by the Secretary of State. As such, the Secretary of State therefore agrees with the ExA that the concerns raised in relation to the replacement Fair site will be adequately addressed through the provisions included in article 36 of the Order.

#### Scheme 06 Langrigg Lane – Infrastructure Proposals

167. The Secretary of State notes that concerns were raised by Warcop Parish Council regarding the complexity of the junction at Langrigg, particularly that it was too close to properties which would have significant effects on elderly residents living nearby [ER 4.11.65]. The Secretary of State has taken account of the consideration given to this issue by the ExA as set out at ER 4.11.67 - 4.11.71, who shared the concerns raised by Dr Mary Clare Martin 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 [ER 4.11.67].
168. In response, the Applicant submitted a Change Request, which was accepted by the ExA and this altered the layout and reduced the carriageways in the proximity of the property [ER 4.11.69]. However, it was apparent to the ExA that the drainage ponds and servicing hardstanding was to remain near the property on the western side of Langrigg Lane. Although the Applicant states that any amendments to the pond designs and associated access for maintenance will be undertaken in consultation with the drainage authorities and the land interests affected [ER 4.11.70] the Secretary of State agrees with the ExA that the potential significant effects on living conditions due to the uncertainty of the final design layout warrants him approving the final design of the works in this area [ER 4.11.71 and ER 4.11.77].
169. The Secretary of State notes the concerns raised by Dr Martin regarding the potential infringement to both the Equality Act 2010 and the Human Rights Act 1998 as a result of the Applicant's approach which she stated discriminated against her parents who were an elderly non-computer literate couple who were unable to access information [ER 4.11.72]. These concerns were also raised in response to his consultations. The Secretary of State is mindful that age is a protected characteristic [ER 4.11.74] and he has considered this further in the 'Equality Act 2010 and Public Sector Equality Duty' section below.

#### *Playing Fields Affected*

170. The Secretary of State has had regard to the concerns raised by Westmorland and Furness Council regarding the impact on Wetheriggs Country Park as a result of land take, removal of trees and potential loss of sports pitches [ER 4.11.78] together with the concerns raised by Sports England regarding the playing fields and replacement football pitch as outlined at ER 4.11.79 and ER 4.11.81 - ER 4.11.83. The ExA noted that in relation to Wetheriggs Country Park, the Applicant agreed that it would work with Westmorland and Furness Council to develop a designated funding bid to support development of a masterplan for the country park [ER 4.11.80] and with regard to the adverse impact on playing fields, concluded that the Applicant has suitably addressed and proposed mitigation [ER 4.11.84]. The Secretary of State has no reason to disagree.

## The Secretary of State's Conclusion on Langrigg Lane – Infrastructure Proposals

171. Like the ExA, the Secretary of State agrees that the Proposed Development would accord with the NPSNN, other relevant legislation and policy requirements and is satisfied that mitigation is adequately provided for and secured in the recommended Order. Accordingly, the Secretary of State agrees with the ExA that the Proposed Development attracts neutral weight in the planning balance [ER 4.11.87].

### Noise and vibration

172. The Secretary of State is aware that the Applicant's assessment of noise and vibration set out in Chapter 12 of the ES [ER 4.12.1] identifies a number of residual significant adverse effects in relation to construction and operational noise and vibration. The Secretary of State notes the Applicant's proposals to minimise the operational impacts as far as practical and sustainable as summarised in ER 4.12.3 of the Report, and that where practical and sustainable, further mitigation would be considered to avoid significant effects as set out in the Noise and Vibration Management Plan ("NVMP"), following engagement with local authorities and stakeholders [ER 4.12.4].

173. The Secretary of State notes that the Applicant identified four residential receptors which potentially qualify for noise insulation [ER 4.12.4] and that, for receptors with a predicted operational significant adverse effect, the Applicant has assessed the viability of providing a noise barrier in the form of a fence to avoid these significant effects, as contained within the EMP, subject to the discussion and agreement with relevant stakeholders during detailed design, including where appropriate with property owners [ER 4.12.5].

174. The Secretary of State notes the ExA identified the following main issues in respect of noise and vibration: impacts during the construction phase and proposed mitigation and traffic noise during operation and proposed mitigation [ER 4.12.7]. Each issue is considered in the following paragraphs.

#### *Noise and vibration impacts during the construction phase and proposed mitigation*

175. Concerns were raised regarding the issue of noise during the construction phase, particularly regarding the Applicant's ability 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 [ER 4.12.8].

176. The ExA noted that the Applicant confirmed that the mitigation contained within EMP1 would be developed further by the appointed 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 [ER 4.12.9]. The Applicant also confirmed that the appointed contractor would undertake further assessments based on their intended methods of working and usage of plant, and that the NVMP, as part of the EMP2, would be developed for approval in parallel with the design development [ER 4.12.10]. The ExA concluded that, following the updates to the NVMP and the EMP during the Examination, and in the absence of evidence to the contrary, they were satisfied that the noise and vibration matters raised by the Local Authorities had been sufficiently dealt with by the Applicant [ER 4.12.12]. The Secretary of State has no

reason to disagree. Although the Secretary of State notes that some minor matters remain outstanding between the parties, like the ExA, he is satisfied that the Applicant has committed to continue engagement during the detailed design stage [ER 4.12.12].

#### *Traffic noise during the operational phase and proposed mitigation*

177. The Secretary of State notes that the issue of traffic noise during the operational stage was raised by a number of Interested Parties including three host local authorities [ER 4.12.14] and by Natural England in relation to the noise and vibration impacts on sensitive areas, including the North Pennines AONB and highlighted the Proposed Development as providing an opportunity to improve this matter [ER 4.12.13]. The Secretary of State notes that at the close of the Examination, the signed SoCG between the Applicant and Natural England confirmed that the issue of operational traffic noise, including with regard to the AONB, was not a matter in dispute between the parties [ER 4.12.15]. However, the Secretary of State has had regard to the fact that there are three issues that remained under discussion between the parties. These matters relate to the atmospheric pollution associated with the affected road network in relation to the North Pennine Moors Special Area of Conservation/Special Area of Protection; the application of the DMRB LA 105 assessment methodology; and the assessment of air quality and the consideration of in combination effects included in that assessment. Overall, the ExA concluded that, with regard to operational traffic noise, the mitigation measures proposed by the Applicant in relation to noise and vibration, 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 relevant statutory environmental bodies [ER 4.12.16].

#### The Secretary of State's Conclusion on Noise and Vibration

178. Although the Secretary of State acknowledges that the Proposed Development would result in an increase in noise and vibration during the construction phase, overall, the Secretary of State agrees with the ExA's conclusions and is satisfied that the Proposed Development accords with the NPSNN, all legislation and policy requirements and that the proposed mitigation is adequately provided for and secured in the recommended Order, through the EMP (which includes the NVMP) and accordingly, the Proposed Development attracts neutral weight in the planning balance [ER 4.12.18].

#### Material Assets and Waste

179. The Secretary of State notes that the ExA's consideration of material assets and waste is set out in section 4.13 of the Report, and the Applicant's assessment of likely significant material assets and waste effects of the construction and operation of the Proposed Development are set out in Chapter 11 of the ES [ER 14.13.1]. The Applicant's assessment confirmed that the predicted reasonable worst-case scenario amount of demolition waste arising from the Proposed Development would be 20,287 tonnes [ER 14.13.2], the predicted excavation waste would be 1,461,450 tonnes and the construction waste predicted to be 26,146 tonnes, with the quantity of excavation and construction waste being diverted from landfill, via re-use, recycling and recovery is based on a landfill diversion rate of 90%, a



commitment which it is secured within the EMP [2.7 Environmental Management Plan, Table 3-2 register of environmental actions and commitments, MW-MAW-02, page 57] [ER 14.13.3]. Regarding earthworks, the Secretary of State notes the Applicant's design aim of each scheme would be to achieve a cut and fill balance within the individual schemes where possible and where it was not possible due to the nature of the scheme, materials would be shared between schemes with prioritising use at the closest location to source as possible [ER 14.13.4].

#### *Identification of landfill sites to be used for disposal of material*

180. During the Examination, Westmorland and Furness Council raised the issue of the identification of landfill sites for the disposal of material and asked the Applicant to identify these within future iterations of the Site Waste Management Plan ("SWMP") for the Proposed Development [ER 4.13.8]. The Secretary of State has taken account that the Applicant provided confirmation that the Principal Contractor would update the SWMP to include the landfills that will be used for disposal. Noting that at the close of Examination this matter was no longer in dispute [ER 4.13.9], like the ExA, the Secretary of State is satisfied that this issue was adequately dealt with by the Applicant [ER 4.13.10].

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

181. The Secretary of State notes that the Applicant's assessment concluded that, during the operational stage, there would be likely significant adverse residual effects regarding the potential for the sterilisation of Carboniferous Limestone within the Cross Lanes to Rokeby section, notwithstanding the fact that the Applicant refined the proposed Cross Lanes and Rokeby junctions to reduce their footprint and encroachment into the Mineral Safeguarding Area [ER 4.13.5].

182. The Secretary of State notes that the issue of safeguarding mineral resources and prevention of sterilisation was raised by various parties [ER 4.13.11]. In response, the Applicant confirmed that the potential effects of sterilisation of mineral and peat resources were assessed within the ES and that no unnecessary sterilisation would take place. The Secretary of State has had regard to the Applicant's confirmation that although mineral sterilisation was not included in the EMP, the risk was included within the PDPs with a requirement to restrict the loss of further mineral safeguarded sites [ER 4.13.12]. Noting the absence of objections from statutory bodies, and that at the close of Examination this matter was no longer a matter in dispute between the Applicant and Councils, the Secretary of State agrees with the ExA that the Proposed Development would not result in any unnecessary sterilisation [ER 4.13.13].

#### The Secretary of State's Conclusion on Material Assets and Waste

183. While the Secretary of state acknowledges that the Proposed Development would have a residual significant adverse effect due to the potential for sterilisation of the Carboniferous Limestone within the Cross Lanes to Rokeby section, he agrees with the ExA that overall, the Proposed Development as a whole would not result in unnecessary sterilisation [ER 4.13.14] and would therefore accord with the NPSNN. The Secretary of State is also satisfied that the effects in relation to material assets and waste arising from the Proposed Development will be adequately dealt with through the provisions in the PDP, SWMP, and EMP together with secured mitigation measures within the recommended Order and accordingly,

agrees that in relation to waste assets and materials, the Proposed Development attracts neutral weight in the planning balance [ER 4.14.15].

### Geology and Soils

184. The Secretary of State notes the methodology for the assessment in relation to geology and soils as outlined in Section 9.4 of Chapter 9 of the ES, the matters taken into account [ER 4.14.2] and the study area [ER 4.14.3] and, like the ExA, is content that the Applicant's consideration accords with the NPSNN and that the construction and operation effects of the Proposed Development on geology and soils have been adequately scoped and assessed [ER 4.14.20].

185. During construction, it is noted that there would be a temporary loss of approximately 70ha of Best and Most Versatile ("BMV") Grade 2 soil and approximately 43ha of Grade 3a soil [ER 4.14.4], with the largest areas of temporarily impacted BMV land located in Scheme 03 (Penrith to Temple Sowerby) and Scheme 0405 (Temple Sowerby to Appleby) where over 34ha and 2.8ha, respectively, will be impacted temporarily [ER 4.14.5]. Additionally, there would be a permanent loss of approximately 80ha of BMV Grade 2 soil and approximately 64ha of Grade 3a soil, with the largest area of BMV permanently lost located in the Temple Sowerby to Appleby section of the Proposed Development where over 70ha would be impacted [ER 14.4.6]. The Applicant concludes that both the temporary and permanent impact and loss of this BMV land would be a significant adverse effect of the Proposed Development [ER 14.4.5-6]. The Applicant also states that approximately 130ha of Grade 3b soil and 30ha of Grade 4 soil would be permanently lost which is assessed as a significant adverse effect of the Proposed Development. There would also be the permanent loss of 3.5ha of Grade 5 soil which the Applicant concludes would not amount to a significant effect [ER 14.4.7].

### *Land subject to Agricultural Land Classification ("ALC") survey*

186. During the Examination, the issue of whether an appropriate proportion of ALC surveys had been undertaken to inform the baseline was raised by various parties including Natural England [RR-180], who also queried the discrepancies in some of the figures for the total areas between Chapter 9 (Geology and Soils) of the ES and Appendix 9.5 (Agricultural Land Classification (ALC) Factual Soil Survey Report) to the ES [ER 4.14.12].

187. The Secretary of State notes from Appendix 9.5, that an ALC survey was undertaken on 686.1ha ha of the site, of which 499.2ha is agricultural land and a further 77.8ha of the site was not surveyed due to access constraints. Noting that the area of land surveyed was based on Natural England's guidance, that Natural England and relevant local authorities were consulted during the scoping process and the assessment approach was therefore agreed [ER 4.14.13], the ExA was content that this issue has been adequately dealt with by the Applicant, including to the satisfaction of Natural England [ER 4.14.15]. The Secretary of State has no reason to disagree with this.

### *The loss of BMV agricultural land*

188. The Secretary of State agrees with the ExA that the loss of BMV agricultural land is a significant impact of the Proposed Development, although, like the ExA, is

mindful that such impacts are often likely consequences of developments of this scale [ER 4.14.16].

189. The Secretary of State notes that the Applicant's Soil Management Plan (which will form part of EMP2) sets out the requirements of the Soil Resource Plan and Soil Handling Strategy and commits the Applicant to reuse topsoil and subsoils that are permanently displaced due to construction within mitigation areas as close to their source as feasible [ER 4.14.17]. The Secretary of State is mindful that the Soil Management Plan does not commit the Applicant to full replacement and there would be a permanent loss of BMV soils by reason of the Proposed Development [ER 4.14.17] and because the permanent loss would not be wholly replaced there would be in some conflict with the NPSNN and the ExA considers that the Proposed Development would have a significant adverse and thus a negative effect [ER 14.4.21]. Owing to the fact that no interested Party raised any substantial objection to the Applicant's approach [ER 4.14.19] and that the broad outline of mitigation proposed by the Applicant (including a commitment to reuse a significant proportion of the BMV within the vicinity of removal, as secured through the EMP and Article 53 of the recommended Order) will ensure that this loss would be largely mitigated, the Secretary of State is satisfied that the Applicant's approach complies with paragraph 5.168 of the NPSNN [ER 4.14.22].

#### The Secretary of State's Conclusion on Geology and Soils

190. In conclusion, the Secretary of State agrees with the ExA that the permanent loss of BMV soils during construction would be a significant adverse effect [ER 4.14.21] but that with the SMP secured through the EMP, this loss would be largely mitigated, and like the ExA, considers that overall, the Proposed Development would attract minor negative weight in the planning balance [ER 4.14.21 and ER 6.2.32].

#### Cumulative and Combined Effects

191. The Secretary of State notes the Applicant's cumulative and combined assessment as set out in Chapter 15 of the ES [ER 14.15.1] in which it concluded that there would be no significant cumulative effects anticipated which would result in any materially new or significant effects beyond those already identified and no additional mitigation was required [ER 14.15.2]. Additionally, the Secretary of State notes that the Applicant confirmed that there would be no new or different LSE effects as a result of the accepted changes to the Proposed Development [ER 4.15.4].

#### The Secretary of State's Conclusion on Cumulative and Combined Effects

192. The Secretary of State agrees with the ExA that the Applicant has considered the cumulative and combined effects of the Proposed Development as required by the NPSNN and in accordance with policy and legislation. While the construction of the Proposed Development would cumulatively with other developments and in combination with other schemes cause some nuisance and disturbance, the Secretary of State agrees with the ExA that these effects would be temporary and time limited [ER 4.15.5]. He is satisfied that the Proposed Development would have no likely significant effects taken cumulatively with all topic matters, or with other

known and planned projects. Like the ExA, the Secretary of State is also satisfied that mitigation is adequately provided for and secured in the recommended Order and in this respect, the Proposed Development accords with the NPSNN and attracts neutral weight in the planning balance [ER 4.15.6 and 6.2.34].

### Habitats Regulations Assessment

193. Under regulation 63 of the Conservation of Habitats and Species Regulations 2017, as amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (“the Habitats Regulations”), the Secretary of State as the competent authority is required to consider whether the Proposed Development (which is a project for the purposes of the Habitats Regulations) would be likely, either alone or in combination with other plans and projects, to have a significant effect on a site of the National Site Network.
194. Where likely significant effects cannot be ruled out the Secretary of State must undertake an appropriate assessment (“AA”) under regulation 63(1) of the Habitats Regulations to address potential adverse effects on site integrity. Such an assessment must be made before any decision is made on undertaking the plan or project or any decision giving consent, permission or other authorisation to that plan or project. In light of any such assessment, the Secretary of State may grant development consent only if it has been ascertained that the project will not, either on its own or in combination with other plans and projects, adversely affect the integrity of such a site, unless there are no feasible alternatives and imperative reasons of overriding public interest (“IROPI”) apply (regulation 64). Where a plan or project is agreed to in accordance with regulation 64, notwithstanding a negative assessment of the implications of the sites of the National Site Network, regulation 68 also requires that the appropriate authority must secure any necessary compensatory measures to ensure the overall coherence of the national site network is protected.
195. The Secretary of State notes the Applicant screened in five sites as follows [ER 5.2.2]:
- Helbeck and Swindale Woods Special Area of Conservation (“SAC”);
  - Moor House-Upper Teesdale SAC;
  - River Eden SAC;
  - North Pennine Moors SAC; and
  - North Pennine Moors Special Protection Area (“SPA”).
196. The Secretary of State agrees with the ExA that the correct impact pathways on each site have been assessed and is satisfied with the approach taken to the assessment of likely significant effect both alone and in combination [ER 5.2.16].
197. Having considered the assessment material submitted during and since the Examination, the Secretary of State considers that likely significant effects in relation to the operation of the Proposed Development could not be ruled out. The Secretary of State therefore considered that an AA should be undertaken to discharge his obligations under the Habitats Regulations. The AA is published alongside this letter.

### *Likely Significant Effects Assessment*

198. The Secretary of State concurs with the Applicant, the ExA and Natural England that there would be no likely significant effects arising from the Proposed Development, either alone or in combination with other plans and projects, on Helbeck and Swindale Woods SAC and Moor House Upper Teesdale SAC [ER 5.2.12].
199. The Applicant identified impacts from the Proposed Development considered to have the potential to result in Likely Significant Effects alone on the remaining sites [ER 5.2.4]. The impacts considered by the Applicant to have the potential to result in Likely Significant Effects during construction and operation are [ER 5.2.5]:
- Land take / resource requirements / reduction in habitat area;
  - Disturbance of mobile species;
  - 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).
200. The Secretary of State agrees with the ExA that likely significant effects cannot be ruled out at the River Eden SAC, the North Pennine Moors SAC and the North Pennine Moors SPA [ER 5.3.1].

### *Appropriate Assessment*

#### *River Eden SAC*

201. In relation to the River Eden SAC, the Secretary of State is satisfied that, of the identified effects on the qualifying features of this site and where relevant, the measures in place to avoid and reduce potential harmful effects, there would not be any implications for the achievements of the conservation objectives to these sites arising from habitat loss (both temporary and permanent); habitat degradation from water quality changes; introduction of invasive non-native species; changes in hydrology and fluvial geomorphological processes; habitat degradation from air quality changes [considered in ER 5.4.13 to 5.4.14]. The ExA was satisfied that with the correct mitigation secured in the Environment Management Plan (“EMP”) and Project Design Principles (“PDP”) there would be no adverse effect on site integrity from the Proposed Development alone. Natural England agreed with this conclusion [ER 5.4.24 and 5.4.25]. The Secretary of State is satisfied and finds no reason to disagree with this conclusion.
202. The in combination assessment for the River Eden SAC identified four projects that could potentially interact with the Proposed Development [set out in ER 5.4.27]. Only one project, the Eden Rivers Trust Trout Beck Restoration was considered to potentially act in combination with the Proposed Development but with the secured mitigation measures being in place for the construction and

operation of the Proposed Development the Applicant concluded there would be no adverse effect on integrity from in combination effects [ER 5.4.32]. Noting the mitigation secured through the EMP and PDP and Natural England's agreement with the Applicant's conclusions the ExA was satisfied that there would be no in combination effects on the River Eden SAC [ER 5.4.28 and 5.4.33]. The Secretary of State agrees with this conclusion.

#### *North Pennine Moors SPA*

203. For the North Pennine Moors SAC and SPA, the Secretary of State is satisfied that the only impact pathway identified to have a potentially likely significant effect was habitat degradation from air quality [ER 5.3.34]. The only qualifying habitat or species that was recorded within 60m of the Affected Road Network within the SAC was blanket bog habitat which also provides potential breeding and foraging habitat for the SPA qualifying bird features [ER 5.4.37 and 5.4.43]. The Secretary of State notes that the Applicant concluded that there would be no impact on the integrity of this site and features from potential effects either alone or in combination [ER 5.4.38].

204. Suitable breeding habitats for the SPA qualifying bird species were presented in the Applicant's Statement to Inform the Appropriate Assessment ("SIAA"). The SIAA explains that only the blanket bog was recorded in the study area of 60m from the ARN. The Applicant has estimated that the total area of blanket bog within the study area is approximately 4.01ha, equating to 0.01% in the SPA [ER 5.4.43]. In section 4 of the Applicant's Supplementary Note (26 May 2023) at paragraph 4.1.25, the Applicant sets out the Habitats Regulations Assessment Handbook (Tyldesley and Chapman, 2013) and Natural England guidance (NEA001) considers the "integrity" of a site to be "the coherence of its ecological structure and function across its whole area that enables it to sustain the habitat, complex of habitats...". In this regard the coherence 99.98% of the blanket bog feature of the SAC, and twelve of the thirteen qualifying habitats of the SAC remain unaffected by the Proposed Development, and it is this which forms the suitable breeding habitat in the SPA. As the majority (99.98%) of these habitats are unaffected by the Proposed Development, they can therefore provide suitable and sufficient breeding habitat for the qualifying SPA bird features, with only 0.021% of blanket bog being affected.

205. For the North Pennine Moors SPA, the Secretary of State is content to conclude no adverse effect both alone and in combination can be reached from degradation of habitat from air quality impacts.

#### *North Pennine Moors SAC*

206. At the close of Examination, Natural England disputed the Applicant's conclusion of no adverse effect on site integrity in relation to air quality effects from the Proposed Development on the blanket bog Annex I feature of the North Pennine Moors SAC either alone or in combination with other projects [ER 6.2.35]. The ExA considered that whilst there was no agreement between the Applicant and Natural England over the conclusions of no Adverse Impact on Integrity on the North Pennines Moors SAC [ER 5.5.3], it was considered that there was a reasonable expectation that this issue would be resolved and that Natural England would be able to advise the Secretary of State that there would be no adverse effect on

integrity [ER 5.5.5]. Where this could not be agreed, the ExA recommended that the Secretary of State consider the following options [ER 6.3.8]:

- Withhold consent;
- Remove scheme 06 from the Order and grant consent for the remaining Proposed Development; or
- Engage regulation 64 of the Habitats Regulations which requires consideration of the three legal tests at the derogations stage.

207. In response to consultations by the Secretary of State it was evident that this matter had not been concluded after the Examination. Natural England stated that the Impacts from air quality have potential to undermine the 'maintain and restore' conservation objectives of the SAC which require the critical loads for nitrogen ("NCLo") are not exceeded. Exceedance of the critical loads ("CLO") has potential to modify the soil chemical status, accelerating/damaging plant growth and altering vegetation structure and composition. This in turn causes the loss of typical sensitive species associated with blanket bog [ER 5.4.41]. The NCLo for blanket bog is 5 – 10 kilograms of nitrogen per hectare per year (kgN/ha/yr), however this is currently being exceeded with an average of 19.4kgN/ha/yr [ER 5.4.42]. The Applicant's assessment identifies that the Proposed Development would introduce a maximum of 17.6% increase in nitrogen deposition relative to the lower NCLo for blanket bog (5kgN/ha/yr) at 5m from the road edge to 1.1% at 65m [ER 5.4.54].

208. The ExA noted that ammonia was not discussed in this wider context [ER 5.4.55] but was addressed in the Applicant's Supplementary Note at Deadline 9 (26 May 2023). The ammonia critical level (NH<sub>3</sub>-CLE) for the protection of lichens and bryophytes (mosses and liverworts) for the blanket bog is 1 microgram per metre cubed (µg/m<sup>3</sup>). The ExA further noted that the Applicant's assessment identifies that there will be a modelled maximum increase and exceedance of the NH<sub>3</sub>-CLE occurring 5m from the Affected Road Network with a 13.7% increase, which reduces to a lower exceedance of 3.5% at 65m from the road edge [ER 5.4.53].

209. It was explained in the Applicant's Supplementary Note (26 May 2023) that the Proposed Development would not affect twelve of the thirteen qualifying habitats, which make up 99.98% of the SPA/SAC with only 0.021% of blanket bog habitat being affected. The Supplementary Note explains that road traffic contributes 6.5% of the total nitrogen deposition in the SAC, with agriculture contributing 61.6%. If all transport contributions were removed at a local level, the Applicant argued, the total nitrogen deposition would still be three times the lower nitrogen critical load for blanket bog [ER 5.4.55].

210. Natural England disputed these points in their response (dated 14 July 2023) to the Supplementary Note. Blanket bog and its surrounding mosaic habitats are a main designated feature of the SAC. The habitat's relative importance of the area affected in terms of the rarity, location, distribution, vulnerability to change and ecological structure which the affected area contributes to the overall integrity of the site. Natural England explain that the site's contribution to the conservation status of that habitat type should exert a stronger influence over decision makers than the spatial extent of the effect. Natural England did not agree that blanket bog and surrounding mosaic as a small part of the SAC is an appropriate argument to justify a conclusion of no adverse effect on integrity on its own.

211. Natural England confirmed on 20 December 2023, in response to the Secretary of State's 7 December 2023 consultation, they considered that the affected section of blanket bog habitat is a mosaic of both active and non-active forms of blanket bog, some of which is actively forming through peat forming species and some areas that may be degraded. The active sections of the blanket bog can be identified as a priority habitat within the North Pennine Moors SAC due to the peat forming species present. The sections of blanket bog that are active have the ability to become restored and to enhance these sections of the bog indicating that they meet the requirements to be described as priority natural habitat. The Secretary of State also notes that the evidence provided in the target notes of the Applicant's walkover survey (25 August 2023) indicates the Applicant correctly adopted a precautionary approach in line with the joint guidance and treated the blanket bog habitat as a priority natural habitat. These target notes identify several species that have the characteristics of vegetation that is normally peat forming. The Secretary of State is satisfied that the evidence provided confirms the blanket bog habitat in the North Pennine Moors SAC is to be treated as a priority natural habitat.
212. The Secretary of State agrees with Natural England that adverse effects to the integrity of the SAC could occur as a result of habitat degradation from changes in air quality due to the operation of the Proposed Development. The ExA notes that in line with the Design Manual for Roads and Bridges LA115 guidance, an increase of more than 1000 Annual Average Daily Traffic has the potential for air quality impacts and requires further assessment. As air quality construction impacts are not predicted to be above the 1000 Annual Average Daily Traffic threshold which requires more detailed assessment, these impacts were not considered further [ER 5.4.40].

#### *Consideration of Mitigation*

213. The Secretary of State requested on 15 September 2023 that the Applicant and Natural England set out if any measures can be imposed to mitigate the impacts from the Proposed Development on the SAC such as speed restrictions. The Applicant and Natural England responded on 5 October 2023 to say speed restrictions would not be sufficient to mitigate the air quality impacts and allow the Proposed Development to meet its Conservation Objectives. The use of vegetation buffers to change dispersion and deposition processes was explored by the Applicant but discounted because it could detrimentally affect the groundwater adjacent to the bog potentially leading to new degradation of the bog habitat or be inappropriate to the open aspects of the SAC. Physical barriers were also discounted due to the need for significant and disproportionate level of engineering required both above and below ground with consequential ground impacts, including dewatering the bog, and a significant impact on the visual landscape. Following the recommendation from the ExA, the Secretary of State also sought views on removing Scheme 06 and the Applicant stated in their reply of 25 August 2023 that both they and Natural England agreed that it is not considered necessary or appropriate as the designated Blanket Bog, which forms part of the SAC, is outside the Order limits and located between Schemes 06 and 07 and the air quality issues are project-wide rather than directly related or restricted to a particular scheme.
214. In their letter of 25 August 2023, the Applicant also proposed a Blanket Bog Land Management Plan ("BBLMP") to address the existing land use pressures by



improving the resilience of the baseline environment. The Applicant stated that the BBLMP was not mitigation nor compensation for any adverse effect on the SAC but was intended to act as an assurance of there being no adverse effect on integrity of the site. Natural England, in their letter of 8 September 2023, did not agree with the Applicant's view of the BBLMP. Whilst welcomed by Natural England, Natural England considered the measures proposed in the BBLMP would not prevent the impacts from the road and read like compensatory rather than mitigation measures. Natural England set out that the BBLMP would be beneficial in its own right as part of wider measures to address some of the existing impacts of this road. The Secretary of State, in his letter of 15 September 2023 to the Applicant indicated that he was minded to agree with Natural England that the BBLMP is not a mitigation measure and that he further considers that it does not enable a conclusion beyond reasonable scientific doubt of no adverse effect on the integrity of the SAC.

215. The Secretary of State has therefore not been able to identify any mitigation measures that could be imposed which would remove the potential adverse effects on integrity identified and therefore considers it necessary to proceed to consider the derogation provisions of the Habitat Regulations (regulations 64 and 68).

216. As this information was not provided during the Examination, the Secretary of State requested on 15 September 2023 information from the Applicant to inform his consideration of the derogation provisions of the Habitats Regulations including the provision of details of compensation measures that are agreed with Natural England. The Applicant provided this on 27 October 2023.

*Consideration of further tests under the Habitats Regulations*

217. In accordance with the Habitats Regulations and the guidance on the application of HRA (“the 2021 HRA guidance”) published by Defra, the Welsh Government, Natural England and Natural Resources Wales, the Secretary of State reviewed the Proposed Development following the sequential process giving consideration to:

- alternative solutions to the Proposed Development
- whether there are any IROPI for the Proposed Development to proceed; and
- the adequacy of compensation measures proposed by the Applicant for ensuring that the overall coherence of the national site network is protected.

*Alternative solutions*

218. The 2021 HRA guidance explains that the alternatives need to meet the original objectives of the proposal under consideration. An alternative solution will be acceptable if it achieves the same overall objective as the original proposal; is financially, legally and technically feasible; and is less damaging to the European site and does not have an adverse effect on the integrity of this or any other site of the National Site Network.

219. The objectives which the Proposed Development are intended to achieve are as follows:

Theme	Project Objectives
-------	--------------------

Economic	Regional: Support the economic growth objectives of the Northern Powerhouse and Government levelling up agenda
	Ensure the improvement and long-term development of the Strategic Road Network
	Maintain and improve access for tourism served by the A66
	Seek and improve access to services and jobs for local road users and the local community
Transport	Improve road safety, during construction, operation and maintenance for all, including road users, non-motorised users (NMU), road workers, local business and local residents
	Improve road journey time reliability for road users
	Improve and promote 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
Community	Reduce the impact of the route on severance for local communities
Environment	Minimise adverse impacts on the environment and where possible optimise environmental improvement opportunities

220. The Applicant provided evidence on alternative options to the dualling of the A66, non-dualling alternatives, alternative modes and a 'do nothing' scenario, which are reviewed in the HRA. For reasons given in the HRA, the Secretary of State is satisfied that no alternative solutions are available which would achieve the objectives of the Proposed Development.

#### Imperative Reasons of Overriding Public Interest ("IROPI")

221. In line with the 2021 HRA guidance the Secretary of State has considered whether the Proposed Development is imperative, in the public interest and if the public interest outweighs the harm or risk of harm to the integrity of the North Pennine Moors SAC. The Secretary of State is satisfied that, for the reasons given in the HRA there is an imperative need to upgrade and complete dualling of the A66.

222. Given the impact on a priority natural habitat, the IROPI to be considered under regulation 64(2)(a) are those of human health, public safety or beneficial consequences of primary importance to the environment, in the first instance. The Secretary of State has reviewed the information submitted by the Applicant in their without prejudice derogation case and has considered public safety and human health for IROPI as being sufficient. The arguments for the reasons being relied on are considered in more detail in the HRA Report and summarised briefly below.

#### *Public Safety*

223. The imperative benefits to Public Safety were detailed in the Case for the Project in 3.2 Environmental Statement Chapter 2 and reproduced in the Applicant's without prejudice IROPI derogation case.

224. The information submitted indicates that the existing A66 has average casualties 50% higher than the average across the Strategic Road Network. Road traffic accidents being the major cause with clusters directly correlated to single carriageway lengths and where dualled lengths meet or are reduced to single carriageway. Analysis shows that over the 60 year period the Proposed Development could save 281 personal injury accidents resulting in an overall reduction of 530 casualties. Improvements resulting from the Proposed Development include better visibility at junctions, junction simplification, dual carriageway and standard speed. The repurposing of the existing A66 as part of the local road network will also provide better safer routes for the benefit of road users, non-motorised users, slow vehicles and people living and working in the local area and across the wider region.

225. The Secretary of State is satisfied that the Proposed Development will offer imperative benefits to public safety.

### *Human Health*

226. The case for imperative human health benefits have been drawn from the Applicant's human health assessment in Chapter 13 of the Environment Statement.

227. Improvements to human health receptors are expected through reconnecting communities, better links between settlements along the route thereby providing better links to healthcare, employment areas, education, sporting, leisure and cultural facilities and increased opportunities for social interaction. Better local links and increased connectivity with the creation of improved public rights of way network will encourage active travel choices leading to concurrent health benefits to non-motorised users. With more reliable, shorter journey times with decreased congestion will benefit mental health and wellbeing to both motorists and non-motorised users of the Proposed Development and the repurposed existing A66 as well as the benefits to human health resulting from the improved access to employment, improved accessibility and reduced severance.

228. The Secretary of State is satisfied that the Development will deliver lasting benefits imperative for human health.

229. The Secretary of State has considered the adverse effects on the integrity of the North Pennine Moors SAC as a result of habitat degradation from changes in air quality due to the operation of the Proposed Development. The Applicant has provided information on the IROPI for public safety, human health, the environment and social and economic benefits. The Secretary of State has concluded that, for reasons given in the HRA Report, it is sufficient for the Public Safety and Human Health benefits of the Proposed Development to be relied upon as imperative reasons of overriding public interest. In relation to the effects on the blanket bog SAC feature, the Secretary of State is satisfied that the IROPI test has been met, subject to the provision of appropriate compensatory measures.

### *Compensatory Measures*

230. The Applicant has proposed a set of compensatory measures which are detailed in their Outline Blanket Bog Compensation and Management Plan ("OBCMP") submitted in response to the Secretary of State's fifth consultation. The delivery of the OBCMP is secured through article 53(11) of the DCO requiring a Detailed

Blanket Bog Compensation and Maintenance Plan (“DBCMP”) to be prepared in accordance with the OBCMP submitted to and approved by the Secretary of State following consultation with Natural England. The compensatory measures are highlighted as:

- Cease all managed rotational burning on all areas of deep peat with a depth of 40cm or more to encourage improved structure and function of peat forming species
- Allow light seasonal grazing where appropriate to improve physical structure and function
- Block drains, grips and gullies to increase level of water table to improve structure and function for blanket bog forming species
- Reprofiling peat banks and hags to reduce presence of bare peat to increase connectivity to the water table to encourage growth of peat forming species
- Re-routing of historic or current access tracks away from areas where active peat management is occurring
- Cease all peat cutting and reprofile cutover areas
- Inoculate bare peat with peat-forming moss
- Control of invasive and non-native species

231. Natural England confirmed in their letter of 29 November 2023 that they were satisfied that the outline blanket bog compensation plan is suitable to ensure the integrity of the blanket bog network, pursuant to regulation 68 of the Habitats Regulations. The Secretary of State agrees with this and is confident that the compensatory measures are adequate to maintain the coherence of the national site network. The delivery of the measures has been secured by requirements in the DCO. The Secretary of State notes that the Applicant’s preference is for these measures to be in place before the Proposed Development is opened for public use whilst Natural England’s preference is for these to be approved before construction of the mainline A66 commenced. Given the impact on the SAC is expected to result from operation rather than construction, the Secretary of State has secured the compensation measures in line with the proposal put forward by the Applicant.

#### The Secretary of State’s conclusion on the Habitats Regulations Assessment

232. The Secretary of State is satisfied that the extent of adverse effects on the integrity of the North Pennine Moors SAC has been correctly identified, there are no alternative solutions which could achieve the objectives of the Proposed Development, there are IROPI for carrying out the Proposed Development and adequate compensatory measures have been secured. These conclusions are set out in more detail in the HRA that accompanies this letter. Given the adverse impact on the integrity of the SAC that is identified in the HRA and which cannot be ruled out, the Secretary of State considers that this matter is given negative weight against the development. However, the Secretary of State is satisfied that there is IROPI in this case for the reasons set out above and in more detail in the HRA, as well as satisfactory compensation measures secured in the DCO. The Secretary

of State in taking account of these matters has therefore given this neutral weighting in the planning balance.

### The Planning Balance

233. The ExA considered that the following matters weigh in favour of the Proposed Development:

- Need for the Proposed Development - significant positive weight consistent with the NPSNN as well as promoting economic benefits for the region [ER 6.2.2 - 6.2.3 and 6.3.15];
- Traffic and access – moderate positive weight for potentially delivering the transport objectives taking account of some local access concerns [ER 6.3.15].

234. The following are considerations the ExA has weighed against the Proposed Development [ER 6.3.14]:

- Carbon emissions - limited negative weight because of the minor adverse effect resulting from an increase in carbon emissions that is not significant as it would not have a material impact on the ability of the Government to meet its carbon reduction targets.
- Landscape and Visual: moderate negative weight because of the alignment of the Proposed Development in open countryside and from the tree loss which cannot be restored in the short or medium term. The Secretary of State also includes the loss of veteran and notable trees in the moderate negative weight against the Proposed Development.
- Heritage Assets: minor negative weight due to residual significant adverse effects pertaining to heritage assets.
- Geology and Soils: minor negative weight due to the permanent loss of BMV land.

235. The ExA has concluded that the remaining matters weigh neutrally in the planning balance for the Proposed Development.

- Air Quality [ER 6.2.7 - 6.2.10]
- Flood Risk and the Water Environment [ER 6.2.12]
- Biodiversity and Wildlife [ER 6.2.14]
- Population and Human Health [ER 6.2.23]
- Noise and Vibration [ER 6.2.25]
- Material Assets and Waste [ER 6.2.27]
- Cumulative Assessment [ER 6.2.34]

236. In addition to the above, the Secretary of State considers that the impact on the SAC is given neutral weight given the conclusion of the HRA and the compensation secured in the DCO. As set out in paragraphs 19 – 21 and 32 above, the Secretary of State is satisfied that there is a need for the Proposed Development which accords with the need case established by the NPSNN and therefore affords

substantial weight to the contribution the Proposed Development would make to meeting the need set out in the NPSNN. The Secretary of State is of the view that the potential negative impacts do not outweigh the need and other benefits that will result from the Proposed Development.

### Compulsory Acquisition

237. The Secretary of State notes that ER 7.3.3 sets out the Compulsory Acquisition (“CA”) and Temporary Possession (“TP”) powers sought for the Proposed Development, including for Associated Development. Associated Development is defined under the PA2008 as development which is associated with the principal development. He has taken note of the view of the ExA that the Associated Development in Schedule 1 of the recommended Order accords with the Department for Communities and Local Government Guidance (“DCLG”) Guidance on associated development [ER 7.8.9-7.8.11]. It is further noted that a full description of the extent and existing nature of land required for construction, operation and maintenance is set out in the Applicant’s Statement of Reasons and the Book of Reference and, in general terms, at ER 7.4. The Secretary of State has noted the legislative requirements and national guidance set out by the ExA at ER 7.2.

238. The Secretary of State notes that all land within the Order limits is considered necessary for the Proposed Development and that in all events the Applicant would seek to minimise the effects on land interests, for instance seeking only to CA that part of the land required [ER 7.3.5]. Where possible, the Applicant would seek new rights or restrictive covenants through negotiations with landowners, for example to enable environmental mitigation to be delivered and maintained on the land without the landowner being deprived of land ownership [ER 7.3.6]. The Secretary of State agrees with the ExA that the Land Plans present a worst-case scenario to provide sufficient flexibility to ensure that in the absence of an agreed solution the Applicant is able to grant the rights required by statutory undertakers or by persons needing right of access and is still able to deliver the environmental mitigation [ER 7.3.10]. The Secretary of State notes the ExA’s consideration of individual objections at ER 7.7 and agrees with the reasoning and conclusions on each of these matters. The Secretary of State is satisfied that the ExA has considered all the objections received. He concurs with the ExA that none of these objections lead to the view that its conclusion in relation to the Applicant’s general case for CA and TP powers should be changed in any way. He has noted the ExA’s recommendation regarding the grant of CA and TP powers in each individual case, subject to the matters relating to Skirsgill Depot and Plot 0102-01-20 [ER 7.8.31]. A number of objections are further considered below.

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

239. The Secretary of State notes the concerns raised by the Affected Persons (“APs”) represented by George F White as summarised at ER 7.7.7 to ER 7.7.12, including particularly that the Applicant had failed in its duty to engage and provide adequate detail, making it unclear whether the Applicant requires all the permanent and temporary land and rights sought [ER 7.7.7].

240. They also raised a concern that the areas for ecological mitigation have been arbitrarily identified without reference to the nature or quality of the land in question

[ER 7.7.8] and when deciding the locations for ponds, compounds and soil storage, the Applicant has not considered the relative qualities of agricultural land, or the impact on continuing agricultural businesses [ER 7.7.9] not complying with section 15, paragraph 174 (a) to (b) of the National Planning Policy Framework (“NPPF”) which requires that planning and policy decisions should protect the best and most versatile agricultural land and preserve storage [ER 7.7.10].

241. They further argued that the Applicant failed to provide details of how it would ensure that land drainage is protected during and after the construction period and that the Applicant has not confirmed that no new liabilities, in respect of new infrastructure, would be imposed on the APs [ER 7.7.11]. They also raised concerns that 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 meaning the Applicant cannot demonstrate that sufficient funding is available and fails in its fiduciary duty to ensure best value from public funds [ER 7.7.12].

242. The Secretary of State notes the Applicant’s response at ER 7.7.13 - 7.7.23 and the ExA’s consideration of these matters and agrees with the ExA’s reasoning and conclusions as set out at ER 7.7.24 - 7.7.25. This includes that consultation and information provided was satisfactory and was undertaken in accordance with the DCLG guidance [ER 7.7.24]; the CA and TP powers sought are a worst-case scenario and last resort and which it is reasonable to include provisions authorising CA for 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 [ER 7.7.26]. Regarding the quality of lost agricultural land and the impact of this, the ExA accepted the Applicant’s position on the value of land to be lost, that the balance between agricultural production and biodiversity should be considered under the NPSNN rather than the NPPF as the primary policy document that applies to the Proposed Development. As set out above, the Applicant’s ES concludes that there will be a significant permanent adverse effect in respect of Grade 2 and 3a soils [ER 7.7.29] and, like the ExA, the Secretary of State is satisfied that mitigation and compensation provisions are secured in the Order. The Secretary of States notes the ExA’s conclusion that, as secured within the EMP [2.7 Environmental Management Plan, Table 2-2 role and responsibilities during construction, page 23], an Agricultural Liaison Officer would coordinate land drainage surveys and the sharing of relevant land drainage information with land owners [ER 7.7.32], that new infrastructure, embankments, roads, bridges or ponds would not be imposed on APs without their consent in terms of management agreements or access rights [ER 7.7.33] and continuing engagement would occur across the detailed design stage, with the role of the Agricultural Liaison Officer limiting impacts on land not under active management [ER 7.7.34]. The Secretary of States sees no reason to disagree with this conclusion.

*Affected Persons Represented by the National Farmers Union*

243. The APs represented by the National Farmers Union (“NFU”) were concerned about the uncertainty of what land would be required on a temporary basis and what would be able to be returned to agriculture. They disputed the right of the Applicant to compulsorily acquire land even if it is returned at the end of

construction, because the impact would be greater on landowners from the start, and they would not know what land might be returned [ER 7.7.37].

244. Further concerns were raised around the excessive amount of CA requested without a clear explanation of the need. The Secretary of State notes that the Applicant accepted that the application represents a worst-case scenario [ER 7.7.38]. The ExA said it had nothing to add over that stated previously in respect of the need for CA powers [ER.7.7.51] and, in respect of the environmental mitigation land, the ExA was satisfied that all such land is required for essential environmental mitigation, in accordance with paragraph 5.33 of the NPSNN [ER 7.7.52]. The Secretary of State agrees with the ExA's conclusion.

245. The NFU requested a three month notice period for taking TP of land as provided for in the Neighbourhood Planning Act 2017 and in the HS2 Phase 2a Birmingham to Crewe scheme [ER 7.7.43]. The Secretary of State notes the Applicant would not commit to this as it would reduce their flexibility in respect of TP [ER 7.7.49]. The ExA agreed with the Applicant, stating that the current 14-day notice period gives an appropriate balance between the landowners' interests and the progress of the Proposed Development [ER 7.7.53]. The Secretary of State agrees with the ExA that the current notice period is appropriate.

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

246. The ExA noted that issues with the Applicant's poor management and uncertainty over definition of the areas needed to be compulsorily acquired had led the APs represented by Addisons Chartered Surveyors to losses in terms of compensation and difficulty with business planning [ER 7.7.56]. The ExA was satisfied that the two methods the Applicant had proposed to acquire land and the level of their communication with the landowners was appropriate [ER 7.7.59]. The Secretary of State agrees with this.

#### *John Richard Lane, James Hare, Alan Moore Bowe and Sarah Crane (Trustees of the Winderwath 1989 Settlement Trust)*

247. While the Secretary of State notes the representations made by the Trustees of the Winderwath 1989 Settlement Trust [ER 7.7.132 - 7.7.143] and the Applicant's response [ER 7.7.144 - ER 7.7.155], he notes the letter dated 31 August 2023 from H and H Land Estates which confirms that, since the close of the Examination, the Trustees have reached an agreement with the Applicant which satisfactorily addresses the concerns raised during the Examination and the Trustees have therefore withdrawn their representations, submissions and objections. The Secretary of State is therefore content that the outstanding matters are now resolved.

#### *Dr Anthony Richard Leeming and Lady Elizabeth Mary Cecilia Leeming (as trustee of the AR Leeming Voluntary Arrangement)*

248. While the Secretary of State notes the representations made by the representatives for Dr and Lady Leeming [ER 7.7.224 -7.7.228] and the Applicant's response [ER 7.7.229-7.7.230], he notes the correspondence from the AP dated 19 October 2023 as set out above, stating that agreement had been reached and that the objection has been withdrawn. The Secretary of State is therefore content that the outstanding matters are now resolved.



### *Penrith Properties Limited*

249. The Secretary of State notes that, at the close of Examination, there remained a number of issues relating to Penrith Properties Limited. This includes the Book of Reference which contained incorrect information for Penrith Properties Limited [ER 7.7.264]. This was corrected following the close of examination as outlined in the letter from the Applicant dated 25 August 2023, and thus the Secretary of State considers this matter resolved.
250. The Secretary of State also notes that Penrith Properties Limited raised concerns relating to the extent of the need for CA on its land [ER 7.7.265] and has noted the Applicant's response [ER 7.7.266-7.7.268]. The Secretary of State agrees with the ExA's conclusion that a compelling case for the CA powers sought on this land has been made, given that the powers conferred to the Applicant in respect of CA only allows land to be acquired following detailed design, and the justification given as to the need for the land in question [ER 7.7.271-7.7.275].

### *Alison Elaine Noble*

251. The Secretary of State notes that the land owned by this AP comprises a residential property and an equestrian unit, Happy Hooves Riding Centre, which is a fully certified British Horse Society centre and Riding for the Disabled Association approved facility [RR-094]. The ExA recorded that while this AP does not object to the Proposed Development, due to concerns relating to the impact of the Proposed Development on its various business operations, the AP requested that the Applicant purchase the property and land so that it can relocate its business within the local area [ER 7.7.174].
252. The Secretary of State notes that the Applicant proposes to use this land primarily for a drainage attenuation pond, and that land is also required temporarily for excavation and deposition of material. The Secretary of State notes that the area required temporarily would be reprofiled and, if agreed, returned to the landowner. The ExA noted that the attenuation ponds and associated maintenance tracks would be used infrequently, and the most likely impact on businesses operating on this site would be from de-silting of the pond which the ExA records is typically done once every 10 years [ER 7.7.176]. The Secretary of State agrees with the ExA that the Applicant has appropriately engaged with the AP, that the Applicant has adequately justified the need for CA powers and that the compensation provisions include situations where there is total extinguishment of a business should this become necessary [ER 7.7.178]. The ExA was also 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 or that there has been any lack of regard to the needs identified in the Public Sector Equality Duty [ER 7.7.179] and has considered this further in the 'Equality Act 2010 and Public Sector Equality Duty' section below.

### *Other Affected Parties*

253. The Secretary of State has had regard to all other objections from APs and the ExA's considerations of these at ER 7.7.61 – 7.7.343, noting that a number of these remained outstanding at the end of Examination. The Secretary of State agrees with the ExA for the reasons set out by the ExA that none of the matters raised would prevent the grant of the CA and TP powers sought, that the land subject to objections is required and proportionate for the Proposed Development and that

there is compelling case for the powers requested [ER 7.7.343]. The Secretary of State notes that the ExA's conclusion on these matters is subject to matters relating to Westmorland and Furness Council's Skirsgill depot, where the Council have sought assurances that land at Skirsgill depot would not be permanently acquired, and that access would not be impacted to enable the Council to continue to manage highways safety as per its statutory duty. The Secretary of State notes that some detailed matters in relation to an agreement between the Council and the Applicant remained outstanding at close of Examination [ER 7.7.332]. However, the Applicants consultation response dated 29 November 2023 confirms that the side agreement between the Applicant and Westmorland and Furness Council was completed on the 1 December 2023. The Secretary of State therefore considers that this matter is resolved.

### *Statutory Undertakers*

254. The Secretary of State agrees with the ExA's considerations regarding statutory undertakers at ER 7.7.344 - 7.7.359 and with its conclusions that:

- the Proposed Development would, in accordance with section 127 of the PA2008, the CA powers sought would not lead to any serious detriment to statutory undertakers undertaking their functions [ER 7.8.32]; and
- the rights sought by the Applicant from statutory undertakers would, in accordance with section 138 of the PA2008, be necessary for the purposes of the Proposed Development [ER 7.8.32].

255. Regarding Protective Provisions, the ExA recommended that the Secretary of State seeks an update on the position of the Side Agreements between the Applicant and United Utilities, Northern Powergrid, National Grid Electricity Transmission PLC ("NGET") and National Gas Transmission PLC prior to making his decision given that, at the close of Examination, no agreement had been reached [ER 8.6.5 and ER 8.6.6].

256. Following the close of the Examination the Secretary of State notes that on the 25 October 2023 United Utilities withdrew their objections and it was confirmed that the side agreement is in place, on 3 August 2023, Northern Powergrid confirmed their Asset Protection Agreement had been completed and withdrew their objection; on 13 June 2023, National Gas Transmission PLC withdrew their objection following the completion of terms of agreement, and on 6 July 2023 NGET also withdrew its objection, following the completion of terms of agreement with the Applicant. Consequently, the Secretary of State concurs with the ExA that adequate protection is provided to Statutory Undertakers such that there would be no serious detriment to the carrying out their respective roles and functions [ER 8.6.9].

### *Crown Land*

257. The Secretary of State notes that the recommended Order includes provision for the acquisition of interests in Crown land [ER 7.4.2]. The Crown land on Scheme 06 is listed in the Book of Reference as being owned by the Secretary of State for Defence and occupied and used by the Ministry of Defence ("MoD") [ER 7.4.3]. The ExA concluded there was nothing to suggest that the Applicant would not be able to acquire the necessary MoD land by agreement and considered that the recommended Order accords with the PA2008 in respect of MoD Crown land [ER

7.8.33]. Noting the Applicant has received Crown authority consent from the MoD in accordance with section 135 PA2008, the Secretary of State has no reason to disagree.

258. The Applicant also identified a single plot of Public Trustee Crown land (Plot 07-02-45) within the Order limits of Scheme 07 [ER 7.8.35], which is required for the construction of the westbound carriageway of the Proposed Development, landscaping, reprofiling and the diversion of third-party apparatus and the ExA considered that the plot is integral to the delivery of Scheme 07 [ER 7.8.36]. The Secretary of State notes the Public Trustee did not accept that this plot was Crown land and so would not provide Crown authority consent under section 135 of the PA2008 [ER 7.8.34]. The ExA was not satisfied that the Public Trustee land was not Crown land under the PA2008 because they considered the Office of the Public Trustee to be an associated office of the Ministry of Justice [ER 7.8.37]. Accordingly, the ExA recommended that the Secretary of State sought further advice from the Ministry of Justice on whether the Public Trustee land within the Order limits Crown land is and, if so, from whom the relevant Crown authority consent should be sought [ER 7.8.38].

259. In response to the Secretary of State's consultation letter dated 11 August 2023, in their email dated 20 August 2023, Muckle LLP on behalf of the Public Trustee, confirmed that terms for the transfer of Plot 07-02-45 to the Applicant were agreed, and in accordance with the statutory procedure, a hearing had been listed at Darlington County Court. The Applicant subsequently confirmed in their letter dated 7 September 2023, that the Court had granted an Order authorising the transfer of Plot 07-02-45 to the Applicant and that the Crown authority consent element of the Order sought was adjourned on the basis that the Public Trustee would be able to request it from the judge within the next 12 months if required.

260. Accordingly, the Secretary of State agrees with the ExA that he has the necessary section 135 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 [ER 7.9.9].

#### *Special Category Land*

261. The Secretary of State notes that the Applicant is seeking CA powers over special category land and rights over such land, more specifically over common land and open space on Scheme 0102, 0405, 06 and 07, meaning that sections 131 and 132 of PA2008 are engaged. Section 132(2) of PA2008 Act provides that if the Secretary of State is satisfied that one of the subsections (3) to (5) applies, Special Parliamentary Procedure ("SPP") authorising CA of a right over a common or open space can be avoided [ER 7.4.5].

262. The Secretary of State notes that special category land is to be subject to CA and the CA of a right and that 2.6 ha of land will be subject to CA powers to provide replacement land [ER 7.3.3].

263. Westmorland and Furness Council raised concerns about the impact of CA and TP on the public open space at Wetheriggs Country Park and the ability of the remaining area to support the Park's formal sport pitches. 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. It is noted by the Secretary of State that the ExA agreed with the Applicant that the

existing football pitch at the park is not within the area over which CA is sought [ER 7.8.41]. The Secretary of State notes that Sport England also had concerns about the loss of playing field sites, the SoCG between the Applicant and Sports England set out continuing dialogue on this matter and that there were no outstanding issues. The ExA were therefore satisfied that this issue did not change its view on the adequacy of the replacement land proposed [ER 7.8.42]. The Secretary of State has no reason to disagree with this.

264. Whilst noting the loss of open space can trigger SPP under section 131 of PA2008, the Secretary of State is content that replacement land will be provided in exchange and that it will be vested in the prospective seller and subject to the same rights, trusts and incidents as attached to the order land. Owing to this section 131(4) of PA2008 applies, meaning SPP is not triggered in respect of the land subject to CA [REP9-026, Section 8.2]. Like the ExA, the Secretary of State considers the recommended Order provides adequate replacement land where required [ER 7.8.40]. Regarding the special category land in respect of which the Order authorises CA of a right over land, the Secretary of State is satisfied that the replacement land will be no less advantageous than it was before the making of this Order to those in whom it is vested, and those entitled to use the land, including the public. The Secretary of State is satisfied that section 132(3) of PA2008 is met and SPP is not necessary.

#### *Human Rights*

265. The Secretary of State considers that the ExA's procedural decisions gave the owners/occupiers of the property near the A66 a fair opportunity to participate in the Examination. The Secretary of State agrees with the ExA's conclusion, that in relation to human rights, the Examination has ensured a fair and public hearing and the requirement of Article 6 of the European Convention on Human Rights ("ECHR"), as incorporated in the Human Rights Act 1998 is met [ER 7.8.52].

266. The Secretary of State notes that 10 residential properties will be impacted by the CA powers sought [ER 7.8.48]. The Secretary of State agrees with the ExA that, in relation to Article 1 of the First Protocol and Article 8 of the ECHR, the Applicant approached the acquisition of residential properties in a sensitive and appropriate way and that the Examination offered a fair process [ER 7.8.50]. The Secretary of State agrees with the ExA that the CA powers sought will not be likely to place an excessive burden on those whose human rights could be affected, in part due to the fair compensation available [ER 7.8.51]. The Secretary of State agrees with the ExA that there is no violation of Article 1 and 8 of the ECHR.

267. The Secretary of State agrees with the ExA that any interference with human rights is for legitimate purposes, proportionate and in the public interest [ER 7.8.54].

268. The Secretary of State agrees with the ExA's conclusion that the public benefit from the Proposed Development outweighs any impact on the human rights of those with an interest in the land affected, meeting the overarching aims of the Human Rights Act 1998 and relevant guidance [ER 7.8.53].

269. The Secretary of State agrees with the ExA that there is no reason to doubt the validity of the estimated capital costs in the Applicant's Funding Statement [ER 7.8.58]. Secretary of State agrees with the ExA that in view of the Applicant's and Government's funding commitments, there is nothing to suggest that the necessary

funds would not be available to finance the Proposed Development [ER 7.8.59] and, further, 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 [ER 7.9.13].

#### The Secretary of State's Conclusion on Compulsory Acquisition

270. The ExA concluded that none of the cases for objectors would give any reason to override a general conclusion on the Applicant's case for CA and TP powers. It also concluded that, where representations regarding Statutory Undertakers' land have not been withdrawn, there would be no serious detriment to the carrying on of the undertaking [ER 7.8.7]. The Secretary of State has no reason to disagree with this conclusion.
271. The Secretary of State agrees with the ExA that the Proposed Development aligns with paragraph 2.2 of the NPSNN and the "critical need" to improve the national road networks [ER 7.8.12], that, as set out above, the Applicant has adequately demonstrated that there is a clear and significant need for the Proposed Development, and that the benefits, including this need, outweigh the potential harm [ER 7.8.13]. The Secretary of State like the ExA is also content that there is sufficient certainty regarding the identified need and justification for the extent of CA powers sought and that measures put in place in article 19 of the recommended Order would minimise impact of CA in only authorising the acquisition of such land as is required for the Proposed Development [ER 7.8.14].
272. The Secretary of State has had regard to considerations as to the justification for TP powers [ER 7.8.25-7.8.27] and sees no reason to disagree with the ExA's conclusion that the TP powers sought are required to facilitate the implementation of the Proposed Development and that such powers are also justified, and that adequate compensation provisions are in place for those whose land is affected [ER 7.8.28].
273. The Secretary of State has taken account of the ExA's consideration of private loss over the length of the Proposed Development and the steps taken by the Applicant to limit the exercise of CA powers over APs [ER 7.8.16] and through the use of TP where possible to mitigate the extent of private loss [ER 7.8.17]. The Secretary of State sees no reason to disagree with the ExA's view that private loss has been reasonably mitigated by the Applicant and any loss would be subject to fair and reasonable compensation [ER 7.8.20].
274. The Secretary of State notes the ExA's views on the consideration of alternatives [ER 7.8.21-7.8.24] and that the ExA was content the Applicant had explored all reasonable alternatives to CA, including modifications to the Proposed Development [ER 7.9.3], that the Applicant had demonstrated a clear idea of how it intends to use the land and that there was a reasonable prospect of the requisite funds for the CA and implementing the scheme becoming available [ER 7.9.4]. The ExA is also satisfied that the Applicant has met the relevant parts of the CA Regulations and the DCLG Guidance [ER 7.9.1].
275. In conclusion, the Secretary of State notes that the ExA recommended that the CA powers included in the Order be granted, subject to the Secretary of State being satisfied regarding the following matters [ER 7.10.1]:

- that advice is sought from the MoJ on whether the Public Trustee land within the Order limits is Crown land;
- that confirmation is sought 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;
- that confirmation is sought from the Applicant that the final Book of Reference entry for Plot 0102-01-20 is correct prior to determination of the application;

276. Paragraphs 258 - 259 outline the Secretary of State's consideration of the identified Public Trustee land. Noting the Applicant's response dated 29 November 2023 to his consultation of 8 November which contained an updated Book of Reference, the Secretary of State is content that this issue is now resolved. Regarding side agreement between Westmorland and Furness Council, in the Applicant's response dated 29 November 2023 to the Secretary of State's consultation dated 8 November 2023, the Applicant confirmed that a side agreement with Westmorland and Furness Council had been agreed and completed on 1 November 2023.

277. The Secretary of State agrees with the ExA's conclusions on the purpose for which CA is sought and that the requirements of section 122(2)(a) and (b) of the PA200 are met. He is satisfied that the land to be acquired by CA powers would be required and are proportionate to facilitate or to be incidental to the Proposed Development both for the principal development and the Associated Development [ER 7.9.1]. The Secretary of State is also satisfied that there is a compelling case in the public interest for the land to be acquired compulsorily. The Secretary of State also considers that the public benefits associated with the Proposed Development would strongly outweigh the private loss suffered by those whose land would be affected [ER 7.9.2]. The Secretary of State further agrees with the ExA's conclusion that the Proposed Development would comply with section 122(3) of the PA2008 subject to him being satisfied regarding matters relating to Westmorland and Furness Council's Skirsgill depot [ER 7.9.6], which he considers now resolved as discussed further at paragraph 253.

## **The Draft Development Consent Order and Related Matters**

278. The main issues regarding the draft Order during the Examination were:

- The appropriateness of using an article instead of Requirements as a control mechanism, and the wording and content of article 53 (environmental management plans) of the recommended Order concerning the EMP;
- the wording and content of article 54 (detailed design) of the recommended Order concerning detailed design; and
- the wording and content of article 36 (relocation of Brough Hill Fair) of the recommended Order concerning the protections for the Brough Hill Fair.

### Background

279. The Secretary of State notes that article 53 (along with article 54) is the control mechanism for the submission of documents within the recommended Order and that this is a departure from the conventional and previous development consent

orders where such controls would normally take the form of individual Requirements, usually found in a Schedule to the Order [ER 8.4.2]. In a further departure from the usual practice, instead of providing for individual topic matters to be discharged separately, under the recommended Order, there is a single document, the EMP together with its appendices, which includes all the environmental actions and commitments, together with the detailed documents on how they will be carried out [ER 8.4.3]. The EMP comprises –

- EMP1 (the first iteration EMP) which specifies the intended environmental outcomes that need to be achieved for the Proposed Development.
- EMP2 (the second iteration EMP) which would set out how these environmental outcomes would be achieved, with more detail on the specific measures to be implemented. The process for amending EMP2 is discussed below.
- EMP3 (the third iteration EMP) would effectively be an operational EMP, setting out how the road would be operated to comply with the on-going mitigation required to be implemented [ER 8.4.4].

#### Article 53 – the Environmental Management Plan

280. The Secretary of State notes the main concerns regarding article 53 were:

- The legality and appropriateness of using an article to secure measures normally included in a requirement.
- Whether the Secretary of State should consult relevant authorities and statutory parties (and others) as part of his consideration and determination of EMP2, and whether the recommended Order ought to be amended to provide for this.
- The “self-approval” process regarding amendments to EMP2 [ER 8.4.5].

#### *Legality and Appropriateness*

281. The Secretary of State notes the ExA wanted to test the legality and appropriateness of the Applicant’s approach of using an article to secure measures normally included in a requirement [ER 8.4.6], the Applicant’s justification in the bullet points in ER 8.4.6, and further notes the Applicant’s view that there was no good reason why an article cannot or should not be used to secure mitigation for the Proposed Development [ER 8.4.8]. Since no Interested Party 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 the ExA’s questions on this issue, the ExA were satisfied with the Applicant’s response in this regard [ER.8.4.9]. The Secretary of State has no reason to disagree with the ExA on this issue.

282. The Secretary of State accepts that there is no issue of legality in the approach being adopted by the Applicant. However, while the Applicant has described EMP1 as a ‘single source of truth’ for all controls for the Proposed Development [ER 8.4.7], the Secretary of State is conscious that there is not the same level of transparency in contrast to matters as set out in a Requirements Schedule.

283. The Secretary of State notes that the Applicant has adopted this approach to expediate delivery. The Secretary of State is however conscious that this approach has not yet been tested and is a new regime in contrast to the use of requirements which is tried and tested and is a regime that is familiar to all relevant parties. As a

result, the Applicant will want to reflect on the effectiveness of this approach before potentially applying it to other schemes (if that is the intention).

### *Process for Approving EMP2*

284. Paragraphs 1.4.9 to 1.4.52 of EMP1 [REP8-005] set out the criteria for the approvals process for EMP2, including measures to consult certain local authorities and statutory bodies, which are referred to in the recommended Order as “the consultation and determination provisions” [ER 8.4.10].
285. The Secretary of State notes the Applicant proposed that the consultation and determination provisions only apply before submission of the EMP2 to the Secretary of State and that because the Applicant would have undertaken two rounds of consultation before submitting EMP2 to the Secretary of State, the Applicant’s intention was for the Secretary of State to consider and determine EMP2 without the need for additional consultations. The Secretary of States notes the ExA had concerns with this approach and that Westmorland and Furness Council considered the EMP process should not disadvantage the Council in any way or limit their input and influence over the matters contained within each EMP iteration [ER 8.4.11].
286. The Applicant considered its proposed measures would ensure that adequate consultation would occur and there would be no need for the Secretary of State to undertake what in effect would be a third round of consultation, which in the Applicant’s view would be counterproductive and would only further delay the consenting process. In any event, the Applicant noted that the Secretary of State is also able to consult with any relevant parties before making a determination, at his discretion [ER 8.4.12].
287. The Secretary of State notes the ExA disagrees with the Applicant and considers that, under the Applicant’s proposal, the Applicant could make further changes to EMP2 prior to the submission to the Secretary of State and, 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 [ER 8.4.13]. The ExA also considers the Applicant’s proposed approach contrasts sharply with the way a determinative body would usually consult on material before them and satisfy themselves of the views of parties prior to making any decision [ER 8.4.14]. The ExA further considered that given the importance of the EMP2 the Secretary of State should satisfy himself that he has heard directly from relevant parties and statutory bodies regarding the environmental submissions and mitigation proposed or that those bodies have been provided with an opportunity to do so and that the Secretary of State should not have to rely on pre-submission consultation responses before approving EMP2 [ER 8.4.15].
288. The Secretary of State notes the ExA recommended a new paragraph (2) be inserted into article 53 of the draft Order, requiring the Secretary of State to consult relevant authorities and statutory parties on EMP2 and giving the consultees 30 days to respond. The Secretary of State notes North Yorkshire Council and Westmorland and Furness Council confirmed they supported the proposed amendment [ER 8.4.16]. For the reasons set out by the ExA, the Secretary of State is content with the principle of new paragraph (2); however, the Secretary of State



has made some drafting amendments to it to improve its clarity by replacing 'statutory environmental bodies' with the Environment Agency, Historic England and Natural England and setting out for the avoidance of any doubt the consultation is on the submitted second iteration of the EMP.

### *The Process for amending approved EMP2*

289. The Secretary of State notes that paragraphs (3) to (6) of article 53 of the draft Order submitted with the Application would have allowed the Applicant to make any amendments to EMP2 and to decide for themselves whether to seek the Secretary of State's approval. The 'self-approval' process was a major area of concern for Interested Parties [ER 8.4.19]. The ExA's principle concern was whether the Applicant, in using the "self-approval" powers to make amendments to EMP2, could undermine the scope and assessment in the ES and the findings of the HRA [ER 8.4.20].

290. The Secretary of State notes the draft Order submitted at D2 included two amendments which resolved the ExA's concerns, namely:

- The Applicant must have completed the consultation and determination provisions in relation to the proposed amendments to EMP2; and
- The Applicant must submit a copy of the proposed amendments to the Secretary of State who would have the power to "call-in" the amendments and determine the amendments himself [ER 8.4.21].

291. The ExA considers the second amendment provides the necessary procedural check on any amendments sought by the Applicant to EMP2. Following additional concerns raised by the ExA, additional powers were added to paragraph (8)(b) of article 53 which allow the Secretary of State to take longer than 14 days to consider an amendment to EMP2 [ER 8.4.22 - 8.4.24].

292. The Secretary of State does not consider that sufficient clarity has been provided on how the "call in" process would work. In his consultation letter dated 8 November 2023, the Secretary of State sought views on proposed changes to Article 53 which would allow the Secretary of State to directly consult relevant parties and statutory bodies on any changes to the EMP2 submitted for his approval and suggested that the submission of the Arboricultural Impact Assessment should form part of EMP2. While the Applicant considered these amendments unnecessary for the reasons outlined in its consultation response dated 29 November 2023, Westmorland and Furness Council, Durham City Council, North Yorkshire Council and other Interested Parties were generally supportive of the proposed changes. The Secretary of State considers it necessary that the AIA form part of the EMP2 and, as discussed at paragraph 134, had amended article 53 accordingly. The Secretary of State notes the concerns raised by the Applicant with regard to the additional delay imposed by additional scrutiny of changes to the EMP, but is not persuaded that the Applicant should have the power to amend EMP2 without allowing the views of Interested Parties to be considered. As such, the Secretary of State has made amendments to article 53 which require the Applicant to make available to all Interested Parties information relating to any changes made to EMP2. Should the Interested Parties not raise any disagreement with the proposed changes, the Secretary of State is content for the Applicant to proceed. However, should any

Interested Parties raise concerns about the proposed changes, the decision will be for the Secretary of State to approve the changes, taking consideration of the arguments posed by the Applicant and the Interested Parties and allowing for consultation on the matter should he deem it necessary. The Secretary of State is of the opinion that these amendments to article 53 take into consideration and balance the concerns of the Applicant regarding timescales as well as the concerns raised by the various Interested Parties to ensure that EMP2 does not diverge too greatly from EMP1 without appropriate oversight.

#### Article 54 – Detailed design

293. The Secretary of State notes the ExA's main concern regarding article 54 was 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) and the fact that the ExA had significant concerns that the Project Design Principles ("PDP"), the Works plans for Scheme 0405 and Scheme 06, and Engineering Cross Section Drawings for Scheme 0405 and Scheme 06 ("the Article 54(1) documents") are not sufficiently detailed for such important structures to be designed to a high architectural standard befitting their sensitive landscape setting [ER 8.4.34].
294. The Secretary of State notes that, to allay the ExA's concerns, the Applicant has produced a document entitled "Overview of the Design Process for Trout Beck, Cringle Beck and Moor Beck viaducts" and a series of watercolour visualisations alongside a technical note, but that the ExA maintained some concerns [ER 8.4.35].
295. The Secretary of State notes the ExA considers there is insufficient detail and controls in the article 54(1) documents to demonstrate and ensure that the three viaducts will be designed appropriately to sit well within the landscape and recommended to the Applicant that an additional paragraph be added to article 54 requiring Secretary of State approval of the viaducts, following consultation with the relevant planning authority [ER 8.4.36]. The Secretary of State agrees with the ExA regarding the necessity of this paragraph, which is paragraph (7) of article 54 of the made Order. However, the Secretary of State believed that the relevant planning authority is better placed to provide approval and sought views on this proposal. In response, Westmorland and Furness Council were concerned about the burden this would place on them and considered that the Secretary of State should determine the final approval of the design and appearance. This position was supported by the Applicant and other Interested Parties. The Secretary of State has therefore adopted the additional paragraph at article 54 as recommended by the ExA requiring Secretary of State approval of the viaducts, following consultation with the relevant planning authority.
296. The Secretary of State has also taken account of the considerable importance placed by the ExA on the appropriate way that drainage matters should be controlled and attaches significant weight to the EA's position. The Secretary of State agrees with the ExA on this matter, and has noted and accepted the new paragraphs inserted into article 54 [ER 8.7.2 – 8.7.4].
297. In respect to the Langrigg junction within Scheme 06, the Secretary of State notes the Applicant sought a change to the design of this part of the scheme in its Change Request submissions [ER 8.4.39] and that the ExA was concerned about

the apparent over-engineered design solution and the potential significant adverse effects to the living conditions of residents within proximity of the realigned A66 and drainage ponds and access roads. The Applicant considered issues could be dealt with through further engagement and the EMP provisions [ER 8.4.40]. Owing to 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 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 [ER 8.4.41]. The Secretary of State notes the Applicant did not consider the additional paragraph was necessary and that a change to the PDP would be satisfactory [ER 8.4.42]; however, the ExA remained 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 [ER 8.4.43]. The Secretary of State agrees with the ExA and has included the ExA's recommended additions in the made Order.

298. As discussed at paragraphs 302-311, the Secretary of State has had regard to the submissions made by Interested Parties relating to the amendments being made by section 245 of the Levelling-up and Regeneration Act 2023. In noting the importance of actively seeking to further the purpose of conserving and enhancing in relation to protected landscapes, the Secretary of State has made provision in article 54 to ensure that at the detailed design stage the Applicant is to have regard to the amendments made by section 245 to the duty to further the purpose of conserving and enhancing the protected landscapes.

#### Article 36 – Brough Hill Fair

299. The Secretary of State notes the ExA's summary of the development of article 36 [ER 8.4.44 to 8.4.46]. In his consultation dated 7 December 2023, the Secretary of State sought the views of Westmorland and Furness Council and the Applicant as to amendments to article 36(1) of the draft Order as regards which party would be best placed to approve a scheme prepared by the Applicant under article 36(1). In its response dated 20 December 2023, Westmorland and Furness Council set out a number of reasons why they did not wish to assume responsibility for either approving the scheme for provision of the replacement site or for certifying satisfactory implementation, suitability, or availability for use. Noting the response from the Applicant, and concerns raised by other Interested Parties as regards article 36, the Secretary of State has amended article 36 to require a consultation report to be submitted together with the prepared scheme prior to its approval. The amendments made also provide for the Secretary of State to undertake his own consultation if he regards it appropriate to do so, and requires that the undertaker provide independent verification that the arrangements for the implementation of the approved scheme have been effectively undertaken before the approved scheme is certified. With these additional clauses, the Secretary of State agrees with the ExA that article 36 provides adequate protection to Fair Communities to ensure the replacement Fair site is approved, provided and made available before the extant site is taken for the Proposed Development [ER 8.4.47]. Further detail regarding Brough Hill Fair is included at paragraphs 156 – 166.

#### Late Representations outside of Formal Consultation

300. The Secretary of State received a number of late representations after the close of examination and outside the formal consultation questions raising concerns about the Proposed Development.
301. The Secretary of State is aware of an administrative issue during the early rounds of consultation which meant that not all interested parties were made aware of the consultations dated 11 August 2023, 30 August 2023, 15 September 2023, 28 September 2023 and 18 October 2023. In his consultation letter of 8 November 2023, the Secretary of State highlighted this administrative issue and invited all interested parties to consider the earlier consultation rounds and providing easy access to them. The Secretary of State notes the responses from Dr Andrew Boswell on behalf of CEPP dated 29 November 2023 and Emma Nicholson dated 29 November 2023 wherein the Secretary of State's response to the administrative issue were further queried, requesting further information as to which parties were affected and discussing the timelines for response of these Interested Parties in relation to the consultation letter of 8 November 2023. The Secretary of State considers that, given the additional time provided for responses to his 8 November consultation letter, that this issue has been resolved satisfactorily, that the views of all Interested Parties have been taken into consideration, and that this decision is in line with the Aarhus convention regarding public participation and access to information relating to the decision.
302. The Secretary of State also notes that concerns were raised by a number of parties including Anne Robinson, Friends of the Lake District, Emma Nicholson, Transport Action Network, and Dr Mary Clare Martin regarding section 245 of the Levelling Up and Regeneration Act 2023 ("the 2023 Act") which took effect from 26 December 2023. These responses were provided to the Secretary of State's consultation of 5 January 2024 and were published 23 January. Section 245 amends (insofar as is relevant to this matter) section 11A of the National Parks and Access to the Countryside Act 1949 ("NPAC Act") and section 85 of the Countryside and Rights of Way Act 2000 ("CRW Act") so as to impose a duty on relevant authorities, including the Secretary of State, to seek to further the purposes of National Parks and Areas of Outstanding Natural Beauty. With regard to National Parks, the relevant purposes are set out in s.5(1) NPAC Act: conserving and enhancing the natural beauty, wildlife and cultural heritage of national parks and promoting opportunities for the understanding and enjoyment of the special qualities of national parks by the public. For AONBs the relevant purpose is conserving and enhancing the natural beauty of the AONB (see s.85A1 CRW Act). The respondents referred to at the start of this paragraph regarded the application of this amended duty to be a material consideration to the Proposed Development due to its interactions with the Lake District National Park and North Pennines Moors AONB.
303. In his consultations of 7 December 2023, 5 January and 24 January 2024, the Secretary of State requested information from the Applicant and all Interested Parties regarding the application of the amended duty for protected landscapes made by section 245 of the 2023 Act and the comments received on this matter. The Applicant in their response of 20 December, set out their view that this is not

a duty to further the purpose but a duty to “seek to further” the purpose and that the decision maker is required to exercise his duty to try to achieve these purposes. The Applicant also notes that the amendments to section 11A and section 85 plainly envisage that regulations would be made to assist in the application of this duty. The Applicant considered from the language of section 11(1A) and section 85 that the effect of the new duties is that where it is concluded that a scheme will not enhance a National Park or AONB, the decision maker in determining the DCO application needs to consider whether anything further could be done to avoid or mitigate the harm identified to meet the duty. The Applicant considered that the NPSNN and draft revised NPSNN already reflect the new duty, as they set out an approach to conserve and enhance a National Park or AONB.

304. In response to this a number of parties raised concerns about compliance with this duty. It was argued by some that an alternative needed to be looked at that would both reduce the existing damage linked to the A66 and avoid the harm that would be imposed by dualling on both the AONB and the Lake District National Park. In the Natural England response dated 19 January 2024 they set out that the duty to seek to further the purposes of the National Landscape is an active duty, wherein a relevant authority must take all reasonable steps to explore how the statutory purpose of the protected landscape can be furthered, going beyond mitigation. In his consultation letter dated 24 January 2024, the Secretary of State invited the Applicant to respond to this.

305. The Applicant responded on 31 January 2024 stating that their response dated 20 December 2023 was consistent with the comments from NE. The Applicant set out that in relation to the duty in section 11A their ES identified a permanent moderate beneficial residual effect in terms of access to and from the Lake District National Park (the Secretary of State’s consideration of this issue is set out above) and no adverse effect upon the Yorkshire Dales National Park and no adverse impacts in landscape and visual terms upon natural beauty, wildlife, and cultural heritage of any national park. The Applicant also noted that in relation to the section 85 duty the only AONB which is potentially affected by the Proposed Development is the North Pennines AONB, that the Proposed Development was designed with the duty to conserve and enhance the natural beauty of the North Pennines AONB in mind, and that careful regard was given to the special qualities of the AONB as identified in the AONB Management Plan and identified no impact upon these qualities. The Applicant also highlighted ways that the Proposed Development will have positive benefits for the AONB and that the Environmental Management Plan includes a number of provisions to control any temporary effects during construction in the Register of Environmental Actions and Commitments. The Applicant considered that it had adopted all measures that can be required in accordance with paragraphs 4.9 or 4.10 of the NPSNN i.e. which are necessary, relevant to planning, relevant to the development to be consented, enforceable, precise, and reasonable in all other respects or which are necessary to make the development acceptable in planning terms, directly related to the proposed development and fairly and reasonably related in scale and kind to the Proposed Development. The Applicant therefore concluded that as a result, the Proposed Development would further the purpose of conserving and enhancing the natural beauty of the AONB in relation to the section 85 duty. Comments on this from

Interested Parties were sought by the Secretary of State in his letter dated 2 February 2024.

306. The Secretary of State notes the response from the Campaign for National Parks (“CNP”) dated 13 January 2024 which attached a legal opinion obtained from Counsel Alex Shattock. The Secretary of State has noted Counsel’s consideration of the requirements imparted by the duty as amended by section 245 of the 2023 Act, and the principles outlined by Counsel which the Secretary of State might wish to consider in reaching a decision regarding the new statutory duty. In response, the Applicant in its response dated 12 February 2024 considers that the CNP’s legal opinion is flawed as the cases identified by Counsel were not interpreting statutory language that had similar wording to the statutory duty under section 11A of the 1949 Act. Furthermore, the Applicant notes that the amendments to section 11A require only that the furthering of the statutory purposes is sought, not that this must be achieved in every case, nor that all measures that are theoretically available must be adopted, and that the duty under section 11A does not give rise to any overarching legal duty to adopt an alternative that best furthers the statutory purposes and in doing so the legal opinion applies a gloss to the words of the duty under section 11A and adopts a test which is not warranted by the statutory language. The Secretary of State has also had regard to the response from CNP dated 27 February 2024 which considers the Applicant’s response of 12 February and which expresses concern that the conclusions in the legal opinion have been misrepresented. The Secretary of State has noted the points made in that response.
307. The Secretary of State notes that the existing A66 runs through the North Pennines AONB, that the Lake District National Park lies approximately 2 kilometres (km) south-west of Penrith, and that the Yorkshire Dales National Park lies approximately 3.5km to the south of the A66 [ER 1.5.1]. He has had regard to the Case for the Project which states that the Applicant has taken a landscape-led approach to the design of the Proposed Development and has sought opportunities for enhancement of effected National Landscape and notes commitments in the Project Design Principles that the Applicant will, through detailed design, explore opportunities to improve upon designated landscapes.
308. As set out above, the Secretary of State has considered the alternatives proposed for the Proposed Development and agrees with the ExA’s conclusion that these alternatives are either not viable or would have greater impacts on the environment and surrounding National Landscape [ER 4.3.35].
309. In light of the above and the steps taken by the Applicant, and in the absence of definitive guidance published by the Department for the Environment, Food and Rural Affairs, the Secretary of State is satisfied that the Applicant has sought to further purposes of the AONB and the two National Parks for the reasons given by the Applicant and has provided evidence of the ways in which it has done that. The Secretary of State in making his decision has also applied the duty of seeking to further those purposes. Whilst the Scheme will result in some harms (as identified above) the Secretary of State is satisfied that on the specific facts relating to this Scheme and in the absence of viable or less harmful alternatives (as considered above), all necessary steps have been taken to further the relevant purposes and to comply with the statutory duty in this particular case.

310. Whilst he notes the comments on this matter and the potential different approaches to the interpretation of the duty itself, he is satisfied that the duty to “seek to further” the statutory purposes is satisfied on the evidence whichever of the differing interpretations is applied. The Secretary of State welcomes the commitment by the Applicant during detailed design to consider ways in which to further the purposes of National Landscapes impacted by the Proposed Development appropriately. Furthermore, the Secretary of State considers that the BBLMP secured in the DCO, (and discussed in more detail in the Habitats Regulation Assessment), also furthers and enhances the existing National Landscape. These measures act to further support compliance with the statutory duty under section 11A and section 85 as amended by section 245 of the 2023 Act. Furthermore, the amendments which the Secretary of State has made to article 54 of the Order as detailed above at paragraphs 293 - 298 ensure that at the detailed design stage of the Proposed Development the Applicant is to take account of the amendments made by the 2023 Act.
311. The Secretary of State has had regard to the arguments presented by Interested parties as regards section 245 of the 2023 Act. The Secretary of State recognises the force of the Applicant’s responses of 20 December 2023, 31 January and 12 February 2024 in relation to the effect of the amendments made by the 2023 Act and the consequential interpretation of those provisions. However, the Secretary of State considers that the requirements of the statutory duty have been satisfied in the context of this decision on the interpretation of the duty as advanced by CNP in any event.
312. The Secretary of State notes the consultation response dated 18 January 2024 from the Cumbria Constabulary with a number of concerns relating to the Proposed Development both relating to design, with impacts for access on the Cumbria Police Headquarters estate, and operational concerns for the Cumbria Police during construction and operation of the Proposed Development. The Applicant responded to each of the concerns in their response dated 31 January 2024, noting engagement that has occurred between the two parties during preliminary design and committing to continued engagement with Cumbria Police to review how the construction and operation phases of the Project will meet the requirements of Cumbria Police in respect to critical operations. As there was no further correspondence relating to the issue, the Secretary of State considers the matter closed.
313. Several Interested Parties raised the Office of Rail and Road’s decision to undertake an investigation into National Highway’s performance which was announced on 14 February 2024 as a reason to delay a decision on the Proposed Development. The Secretary of State does not consider the Office of Rail and Road’s decision to fall within the scope of planning considerations, as the investigation relates to National Highways’ performance with regard to meeting its targets rather than the planning merits of any particular road scheme, and therefore does not consider it a matter relevant to the consideration of this application. However, even if it were considered material, the Secretary of State does not consider it to be a good reason to delay a decision on the Proposed Development.
314. The Secretary of State does not consider that anything, beyond the points which were discussed above, in any of the responses to consultation or later representation constitute new evidence, raises a new issue not considered by the

ExA or in this letter or needs to be referred to interested parties before he proceeds to a decision.

#### Further Modifications to the DCO made by the Secretary of State

315. It has been necessary for the Secretary of State to remove elements of Schedule 8 of the draft DCO, as he has noted a number of errors. Schedule 8 contains tables dealing with revocations and variations of existing Traffic Regulation Orders (TRO). Column (2) sets out the points along the road for which the change will have effect. Column (4) sets out the detail of the revocation or variation that is to be made to existing TROs. The name of the TRO is set out in column (3) and has been correctly set out for Schemes 0405, 06 and 09. There are no TROs for Schemes 07 and 08. However, for the following:

- The name of all TROs is missing for Scheme 0102 and Scheme 03 and these tables have been deleted;
- The name of one traffic regulation is incomplete for Scheme 06 and this part of the table has been deleted.

316. The Secretary of State notes that the above provisions are intended to have legislative effect but, without the name of the TROs, it is impossible to determine that effect. To this extent, these tables are defective. As such, the Secretary of State has amended Schedule 8 of the Order to remove the elements mentioned above.

317. The Secretary of State has also made some minor drafting revisions. These revisions are contained in Schedules 2, 3 and 5 where rows in tables containing no information have been removed; and in paragraph 62 of Part 5 of Schedule 9, the Secretary of State has removed the part of the provision providing for the joint determination of any dispute by the Secretary of State for Environment Food and Rural Affairs and the Secretary of State for Transport.

#### The Equality Act 2010 and Public Sector Equality Duty

318. Section 149 of the Equality Act 2010 includes a public sector “general equality duty” setting out the need to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not. The Secretary of State notes that the Examining Authority, in coming to its conclusions in the Report, has had due regard to the duties under this legislation in the managing of the examination [ER 2.2.6]. The Secretary of State further notes that in respect of those persons that share a relevant protected characteristic and who may be impacted by aspects of the Proposed Development, particularly in relation to the relocation of Brough Hill Fair, Langrigg Lane and the Happy Hooves equestrian unit the ExA considered that due regard had been paid to the needs identified in the Public Sector Equality Duty by the Applicant and the ExA [ER 7.8.56]. The Secretary of State has further considered:



- Brough Hill Fair: the replacement Fair site is of a similar size to the current site and provides a safe environment for the enjoyment of the Fair [4.11.45 and 4.11.49], provides suitable boundary treatment to reduce noise and visual intrusion of nearby traffic from the Proposed Development when compared to the existing site [ER4.11.50]. The rights of the Fair Community to hold the Fair; will be preserved and would be laid out in consultation with the representatives of the Fair Communities, adjacent landowners, the local planning authority and the local highways authority [ER 4.11.50]. The matters set out are secured by article 36 of the recommended Order.
- Langrigg Lane: throughout the Examination Dr Martin attended Issue Specific Hearings and her mother attended at Issue Specific Hearing 1, and the ExA visited Langrigg Lane on their Unaccompanied Site Inspection and Dr Martin's parents garden on their Accompanied Site inspection [ER 4.11.75]. The ExA obtained a full understanding of the issues of concern and was content that the changed layout and approval by the Secretary of State to the final design, provides the most effective means of reducing the effects on living conditions at this location [ER 4.11.76].
- Happy Hooves Riding Centre: the ExA concluded that any business disruption would be subject to appropriate compensation set out in the recommended Order and includes provisions in situations where there may be a total extinguishment of a business [ER 7.7.178]. The proposed mitigation includes ongoing discussion with the AP on potential impacts on activities at the stables and the Applicant's facilitation of relocation to an appropriate extent should the business be minded to do so [ER 7.7.177].

319. The ExA concluded overall that there is no evidence in the Applicant's Equalities Impact Assessment to suggest that the Proposed Development would have any specific impact on 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 Public Sector Equality Duty [ER 7.8.56]. The Secretary of State agrees with the ExA 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 Public Sector Equality Duty [ER 7.8.57], and that there is no evidence to suggest that the Proposed Development would not accord with section 149 of the Equality Act 2010 and that due regard has been paid to the needs identified in the Public Sector Equality Duty [ER 7.9.12].

#### Natural Environment and Rural Communities Act 2006

320. The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006 as amended by section 102 of the Environment Act 2021, has had regard to the purpose of conserving and enhancing biodiversity and, in particular, to the United Nations Environmental Programme on Biological Diversity of 1992. The Secretary of State notes that the ExA has had regard to the Natural Environment and Rural Communities Act 2006 and biodiversity duty in the relevant sections of the Report [ER 9.1.12]. In reaching a decision to grant development consent, the Secretary of State has had due regard to the duty of conserving and enhancing biodiversity.

### **SECRETARY OF STATE'S OVERALL CONCLUSION AND DECISION**

321. For all the reasons set out in this letter and the ER, the Secretary of State considers that there is a clear justification for authorising the Development. The Secretary of State has therefore decided to accept the ExA's recommendation at paragraph 11 and grant development consent, subject to the changes to the Order referred to in paragraphs 279 - 299. The Secretary of State is satisfied that none of these changes constitutes a material change and is therefore satisfied that it is within the powers of section 114 of the 2008 Act for the Secretary of State to make the Order as now proposed.

### **CHALLENGE TO DECISION**

322. The circumstances in which the Secretary of State's decision may be challenged are set out in Annex A of this letter.

### **PUBLICITY FOR THE DECISION**

323. The Secretary of State's decision on this Application is being publicised as required by section 116 of the 2008 Act and regulation 31 of the 2017 Regulations.

Yours faithfully,

Natasha Kopala

## ANNEX A

### LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the High Court during the period of 6 weeks beginning with the day after the day on which the Order is published. Please also copy any claim that is made to the High Court to the address at the top of this letter.

The A66 Northern Trans-Pennine Development Consent Order 2023 (as made) is being published on the Planning Inspectorate website at the following address:

**[A66 Northern Trans-Pennine Project | National Infrastructure Planning \(planninginspectorate.gov.uk\)](https://www.planninginspectorate.gov.uk/a66-northern-trans-pennine-project-national-infrastructure-planning)**

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (020 7947 6655)