



Little Crow

Solar Park

Little Crow Solar Park, Scunthorpe

**APPLICANT'S RESPONSE TO THE SCHEDULE
OF THE EXAMINING AUTHORITY'S
RECOMMENDED AMENDMENTS TO THE
APPLICANT'S DRAFT DEVELOPMENT CONSENT
ORDER**

DEADLINE 7

**Revision:
Regulation No:
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**Author:
Date:**

**Eversheds Sutherland
September 2021**

Schedule of the Examining Authority's ("ExA") recommended amendments to the Applicant's draft DCO version F [REP6-003]

Purpose of this Document

- 1.1 This document is submitted by INRG Solar (Little Crow) Ltd ("the Applicant") and contains the Applicant's response to the schedule of the Examining Authority's recommended amendments to the Applicant's draft development consent order ("DCO").
- 1.2 The Applicant's response has been added as a final column to the ExA's schedule.

Little Crow Solar Park

Examining Authority's (ExA) Consultation on the draft Development Consent Order (DCO)

**Schedule of ExA's recommended amendments to the Applicant's
draft DCO version F [REP6-003]**

Issued on 1 September 2021

Note to Interested Parties

The Examining Authority (ExA) reminds Interested Parties (IP) that the recommended schedule of changes to the draft DCO [REP6-003] as set out below follows a statutory process. It is made irrespective of the recommendation the ExA will make to the Secretary of State (SoS) and is not an indication that ExA has already made up its mind on the Application. IPs participation and written responses will be treated as being given without prejudice to any position or view they hold on the scheme. IPs are invited to identify any outstanding concerns previously raised that are not addressed below.

For ease of reference, text shown emboldened in red identifies insertions of new text, while text shown with a double strike through is proposed for deletion. Please provide any comments you may wish to make on this schedule of changes by Examination Deadline 7 on 20 September 2021.



Ref	ExA's suggested changes	ExA's comments	Applicant's response
<p>Articles</p> <p>Article 2 Interpretation</p>	<ul style="list-style-type: none"> “archaeological management plan” means the document certified as the archaeological management plan for the purposes of the this Order in accordance with under article 14 (certification of plans and documents etc);” “LEMP” means the landscape and ecological plan approved pursuant to requirement 10;” 	<ul style="list-style-type: none"> Revision suggested for reasons of consistency with other definitions that refer to article 14. The ExA considers that a definition for LEMP does not need to be included in Article 2 because it would duplicate what is stated in the Interpretation section of Part 1 of Schedule 2. The amended wording would provide a definition for the outline BSMP referred to in Requirement 	<p>The Applicant agrees with the ExA's approach and has amended Article 2 as suggested apart from the deletion of “(certification of plans and documents etc);” this is the first mention of the article and that is why the name appears here but not elsewhere</p> <p>The LEMP is referred to in Schedule 1, before the definitions in Schedule 2, so the Applicant has not deleted this. The definition in Part 1 of Schedule 2 has instead been removed to prevent duplication.</p> <p>The Applicant has amended the definition to 'BSMP' as suggested</p>



Ref	ExA's suggested changes	ExA's comments	Applicant's response
Articles			
	<ul style="list-style-type: none"> “outline battery safety management plan BSMP” means the plan certified by the Secretary of State as the battery safety management plan for the purposes of this Order under article 14;” 	7 and be consistent with the approach taken to defining the other outline management plans and the proposed revisions to the wording for Requirement 7 (see below).	
Article 8 Temporary closure and diversion of public footpath	‘8(1) The undertaker may, during the construction and decommissioning of the authorised development, temporarily close public footpath 214 as specified in column (2) (3) of Schedule 3 (public footpath to be temporarily closed and diverted) to the extent specified in column (4) (5) of Schedule 3, and must provide the temporary substitute public footpath specified in column (5) (6) of Schedule 3 for the period during which the footpath is temporarily closed.’	Some of the column numbering referenced in Article 8 does not appear to be consistent with the column numbers used in Table 1 in Schedule 3. The ExA has therefore suggested amendments to the drafting of Article 8, which it considers would result in consistency between Article 8 and Schedule 3.	The Applicant agrees with the ExA's comments and has amended Article 8(1) as suggested to ensure it is consistent with Schedule 3.
Article 10 Authority to survey and	‘(5) The undertaker must compensate the owners and occupiers of the land for any loss	Amendment suggested to assist clarity.	The Applicant agrees with the ExA's proposal and has amended Article 10 (5) for clarity



Ref	ExA's suggested changes	ExA's comments	Applicant's response
Articles			
investigate the land	or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.		
Article 14 Certification of plans		General point for consideration - Possible relocation of items (f) to (k) (the various outline management plans) to item (b) as they are technical appendices of the Environmental Statement.	The Applicant has relocated items listed in Article 14 (f) - (k) to 14. (b)(xi) – (xvi) as proposed by the ExA in order to keep the references to the Environmental Statement technical appendices with the rest of the references to the Environmental Statement.



Ref	ExA's suggested changes	ExA's comments	Applicant's response
Schedule 1 Authorised Development			
Paragraph 1	<p>'1. The construction, operation, maintenance and decommissioning of a nationally significant infrastructure project as defined in sections 14(l) and 15 of the 2008 Act with associated development under section 115(1)(b) of the 2008 Act.</p> <p>The nationally significant infrastructure project comprises a generating station with a gross electrical output of over 50 up to 300 megawatts comprising all or any of the work numbers in this Schedule or any part of any work number in this Schedule—</p> <p>Work No. 1 - a generating station comprising: arrays of ground-mounted solar panels with a gross electrical output of over 50 up to 300 megawatts ...'</p>	<p>On the basis of the submissions that the Applicant has made during the Examination with respect to the generating capacity for the Proposed Development, including those made in response to the ExA's third written question 3.6.1 [REP6-019], the ExA considers that the generating capacity should be stated as being up to 300 megawatts in any made DCO.</p>	<p>The Applicant's previous submissions as outlined in the Applicant's Response to the s51 Advice, (Document Reference 9.14 LC OTH, PINS Reference AS-004), at ISH1 and in the Applicant's Post Hearing Submissions (Document Reference 9.17 LC OTH, PINS Reference REP1-008), as noted by the ExA in ExQ2.6.5, and covered in EXQ3 3.6.1 (Document Reference 9.43 LC OTH, PINS Reference REP6-019). The Applicant set out its views on why it is inappropriate to impose a limit on the capacity of the generating station. The Applicant does not seek to repeat those here, but respectfully disagrees with the ExA's conclusion and would request that the ExA's report notes the position to enable the Secretary of State to consider the matter if the ExA's view remains the same.</p> <p>In further support of its position, the Applicant wishes to draw the</p>



			<p>attention of the ExA to the following paragraph in the Draft National Policy Statement for Renewable Energy Infrastructure (EN-3) which was published for consultation by BEIS on 6 September 2021 (Document Reference 9.47 LC OTH) (Applicant's emphasis):</p> <p><i>2.48.8 It should also be noted that the DC installed generating capacity of a solar farm will decline over time in correlation with the reduction in panel array efficiency. Light induced degradation affects most solar panels and on average panels degrade at a rate of up to 1% each year. Applicants may account for this by overplanting solar panel arrays [43]. <u>Therefore, AC installed export capacity should not be seen as an appropriate tool to constrain the impacts of a solar farm.</u> Other measurements, such as panel size, total area and percentage of ground cover should be used to set the maximum extent of development when determining the planning impacts of an application.</i></p>
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			<p>The Applicant's position is that the above endorses its stance in its previous submissions and the imposition of a capacity limit as suggested by the ExA would not be in accordance with paragraph 2.48.8 of the Draft NPS. Adherence to the physical parameters of the panel and other matters referred to in paragraph 2.48.8 of the panels assessed in the ES is secured via Requirement 6(2) in Schedule 2 Part 1 of the Draft DCO and compliance with the works plan secured via Article 3.</p> <p>The Applicant also draws attention to the provisions of paragraph 2.48.5 which notes (inter alia):</p> <p><i>In order for a solar farm to generate electricity efficiently, site layout must be designed so as to maximise irradiance levels, and the panel array spacing should also seek to maximise the potential power output of the site.</i></p> <p>Therefore in designing a project the expectation in the Draft NPS is that an Applicant should approach the</p>
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			<p>exercise to maximise the site's potential power output. Imposing an arbitrary capacity limit would curtail such potential.</p> <p>In respect of the relevance of the Draft NPS in the determination of the current application, the Applicant would draw the ExA's attention to the transitional provisions in section 1.6 of the Draft Overarching National Policy Statement for Energy (EN-1) (Document Reference 9.47 LC OTH). The Applicant acknowledges that any revised NPS which may be designated following the current consultation will not have effect for the purposes of determining its application (para. 1.6.2). Nevertheless, para 1.6.3 states:</p> <p><i>1.6.3 However, any emerging draft NPSs (or those designated but not having effect) are potentially capable of being important and relevant considerations in the decision-making process. The extent to which they are relevant is a matter for the relevant Secretary of State to consider within the framework of the Planning Act and with regard to the</i></p>
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			<p><i>specific circumstances of each development consent order application.</i></p> <p>The ExA should refer to the Applicant's response to ExA Q4.1.1 for its full submission on the relevance of the Draft NPS for the purposes of s105 Planning Act 2008 in the determination of this application. Applying that analysis to paras 2.48.5 and 2.48.8 of Draft EN-3 the Applicant submits that its advice not to impose a capacity limit on the project is an important and relevant consideration to which the ExA and the Secretary of State should have regard and give significant weight.</p> <p>Notwithstanding the above, and entirely without prejudice to its primary argument, the Applicant has the following further comments to make in respect of the ExA's proposed amendments to Schedule 1 para 1 of the draft DCO as shown in Document Reference PD-016 were it minded to maintain them in its report to the Secretary of State:</p>
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			<p>The Applicant does not envisage that the installed export capacity of the solar pv element of the project (Work No. 1) is likely to exceed 300MW. Consequently, the imposition of a 300MW installed capacity limit on Work No.1 is unlikely to constrain the project and therefore could be accepted by the Applicant.</p> <p>However, for the reasons explained in its previous submissions, it is certainly foreseeable that advances in technology would mean that the combined capacity of the solar pv (Work No. 1) and the battery energy storage system (Work No.2A/2B) could exceed 300MW and therefore such a limit on the total capacity of the generating station would be an unreasonable constraint and potentially prevent the operation of the project in accordance with full extent of the parameters assessed in the ES and presented in the application.</p> <p>It is not clear to the Applicant whether it is the ExA's intention to impose a limit on the aggregate capacity of both the solar pv and</p>
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			<p>BESS elements of the project, but the Applicant considers that there is a risk that the draft DCO could be interpreted as doing so if the first of the ExA's amendments is incorporated. This is because whilst the BESS comprises an "exempt electricity storage facility" for the purposes of section 15(3C) Planning Act 2008 (i.e. its capacity is to be disregarded in considering whether the project is a NSIP), it is still an activity which comprises energy generation and therefore its capacity remains part of the overall generating capacity of the generating station.</p> <p>As a result the Applicant would strongly resist the first of the ExA's proposed amendment to Schedule 1 Para 1 and suggest that that part of the draft DCO remains as originally drafted as follows:</p> <p>The nationally significant infrastructure project comprises a generating station with a gross electrical output of over 50MW comprising all or any</p>
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			of the work numbers in this Schedule or any part of any work number in this Schedule
Schedule 2 Part 1 – Requirements			
5(2) Phases of authorised development	'(2) The scheme must be implemented as approved.' The authorised development must be implemented in accordance with the approved phasing scheme.'	The ExA considers that the suggested wording would be more precise.	The Applicant agrees with the ExA's approach and has amended requirement 5(2) as suggested.
6(1) Detailed design approval	'(1) No phase of the authorised development may be commenced until written details of the following for that phase have been submitted to and approved by the local planning authority.' is to be	The ExA considers that the suggested wording would assist precision and enforcement.	The Applicant agrees with the ExA's approach and has amended requirement 6(1) as suggested.
6(2) Detailed design approval	'(2) The details must be submitted for approval must accord with ...' to be	The ExA considers that the suggested wording would be more precise.	The Applicant agrees with the ExA's approach and has amended requirement 6(2) as suggested.
7 Battery safety management	'(2) The details must be submitted for approval must accord with ...' Battery safety management Safety Management Plan (BSMP)	The ExA considers the suggested changes to Requirement 7 should be made because:	The Applicant agrees with the ExA's approach and has amended requirement 7(1) as suggested.



	<p>'7.-(1) Prior to the commencement of either Work No. 2A or Work No. 2B as notified to the local planning authority under Article 3(4) a Battery Safety Management Plan (BSMP) BSMP must be ...'</p>	<ul style="list-style-type: none">• Battery Safety Management Plan (BSMP) would be defined in the interpretation section in Part 1 of Schedule 2; and• They would be consistent with the format for the other management plans, for example the CEMP (Requirement 8).	
8(1) and 8(2) Construction Environmental Management Plans (CEMPs)	<p>'(1) No phase of the authorised development may is to be commenced until a CEMP for that phase has been submitted to and approved by the local planning authority. The approved CEMP must be in accordance with the outline CEMPs Any CEMP submitted for approval must be in accordance with the outline CEMP and any approved CEMP must be adhered to throughout for the duration of the works in that the phase of the authorised development to which the CEMP relates.</p>	<p>The ExA considers that the suggested wording would assist precision and enforcement. The reference to lighting in subparagraph 8(2)(c) has been suggested for deletion because this would appear to duplicate part of the provisions of paragraph 8(2)(g).</p>	<p>The Applicant agrees with the ExA's approach and has amended requirement 8(1) and 8(2) as suggested.</p>



	<p>(2) The CEMP for each phase of the authorised development must provide details of— ...</p> <p>(c) nuisance management including measures to avoid or minimise the impacts of construction works (covering dust, noise, and vibration and lighting); ...'</p>		
<p>9(1) and 9(2)(c) Construction Traffic Management Plan (CTMP)</p>	<p>'(1) No phase of the authorised development may is to be commenced until a CTMP ...</p> <p>(2) The CTMP must include details of ...</p> <p>(c) a condition survey of for any road which will be affected by undertaking that phase of the authorised development and a further condition survey following that phase of the construction works. and in In the event that any defects are identified in that condition ...'</p>	<p>The ExA considers that the suggested wording would be more precise.</p>	<p>The Applicant agrees with the ExA's approach and has amended requirement 9(1) and 9(2)(c) as suggested.</p>



<p>10(1) and 10(2)(c) and (d) Landscape and Ecological Management Plan (LEMP)</p>	<p>'(1) No phase of the authorised development may is to be commenced until a LEMP covering that phase and in accordance which accords with the outline LEMP has been submitted to and approved by the local planning authority.</p> <p>(2) The LEMP must include- ...</p> <p>(c) details of ... during the lifetime of the scheme authorised development ...</p> <p>(d) a timetable for the landscape management of the land within the Order limits during the lifetime of the scheme authorised development; and ...'</p>	<p>The ExA considers that the suggested wording would be more precise.</p>	<p>The Applicant agrees with the ExA's approach and has amended requirement 10(1) and 10(2)(c) and (d) as suggested.</p>
<p>11(1) Construction hours</p>	<p>'(1) Subject to sub-paragraph (2), no construction works are to take place except between the hours of—</p> <p>(a) 07:00 and 18:00 Monday to Friday; and</p> <p>(b) 08:00 and 13:30 on Saturday7.</p>	<p>The ExA considers that the suggested insertion of wording would assist precision, while the deleted 'tailpiece' text is unnecessary as the Applicant has not demonstrated that there would be circumstances necessitating working outside the hours stated in sub-</p>	<p>The Applicant agrees that adding 'the hours of' makes the requirement more precise and has made this amendment to requirement 11(1).</p> <p>The Applicant is willing to accept the removal of the 'tailpiece' text and</p>



	unless otherwise agreed by the local planning authority. ...'	paragraph (1) and which would also not come within the scope of the provisions of subparagraph (2).	has deleted this from requirement 11(1).
12(1) Surface and foul water drainage	'(1) No phase of the authorised development may is to be commenced until ...'	The ExA considers that the suggested wording would be more precise.	The Applicant agrees with the ExA's approach and has amended requirement 12(1) as suggested.
13(1), (3), (5) and (6) Archaeology	'(2) No phase of the authorised development may is to be commenced until the archaeological exclusion zone ... (4) No phase within the authorised development may is to be commenced until a written scheme ... (6) Any archaeological works ... under the approved scheme for investigation must be ... (7) Any archaeological works or programme of archaeological investigation must be carried out in accordance with the approved scheme approved under subparagraph (4) .	The ExA considers that the suggested wording would be more precise and would assist the enforcement of this requirement.	The Applicant agrees with the ExA's approach and has amended requirement 13(2)(4)(6), (7) and (8) as suggested.



	(8) ' Within six months of the commencement of the authorised development the undertaker shall must submit a scheme ...'		
14(1) to (3) Protected Species	<p>'(1) No work, including site preparation works, shall be commenced in any phase of the authorised development until final pre-construction survey work has been carried out for that phase ...</p> <p>(2) Where a protected species is shown to be present, the authorised development must not be commenced within that phase until a scheme of protection ...</p> <p>(3) The authorised development must be carried out in accordance with the approved any scheme approved under sub-paragraph (2).'</p>	The ExA considers that the suggested wording would be more precise.	The Applicant agrees with the ExA's approach and has amended requirement 14(1)(2) and (3) as suggested
15(1) and (2) Operational noise	'(1) No phase of the authorised development may is to commence until an operational noise assessment ...	The ExA considers that the suggested wording would assist precision and enforcement.	The Applicant agrees with the ExA's approach and has amended requirement 15(1) and (2) as suggested



	<p>(2) The design as described in the operational noise assessment must be implemented as approved. The authorised development must be implemented and operated for its duration in accordance with the approved operational noise assessment.</p>		
16(1) to (3) Temporary diversion to public footpath	<p>'(1) No phase of the authorised development may is to be commenced and no decommissioning may shall be undertaken until a public rights of way management plan for the phase incorporating that any part of public footpath 214 and proposed shown to be temporarily closed and diverted on the temporary diversion of public footpath plan has been submitted to and is approved by the local planning authority ...</p> <p>(2) The public rights of way management plan must include details of— ...</p>	The ExA considers that the suggested wording would aid precision and enforcement.	The Applicant agrees with the ExA's approach and has amended requirement 16(1) (2) and (3) as suggested save that the Applicant has used the word 'will' instead of 'shall' in 16 (1) to increase certainty.



	<p>(3) Prior to the commencement of any phase of the authorised development and of any decommissioning the public rights of way management plan must be implemented as approved.'</p>		
<p>18(1) to (3) Amendments to approved details</p>	<p>'(1) With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved by the local planning authority or another person, the approved details must be carried out as approved unless an amendment or variation is has previously agreed been approved in writing by the local planning authority or that other person in accordance with sub-paragraph (2).</p> <p>(2) Any amendments to or variations from the approved details must be in accordance with the principles and assessments set out in the environmental statement. Such agreement may only be given in</p>	<p>With the iterative redrafting of the Schedule 2 of the draft DCO that the Applicant has undertaken during the Examination and having regard to the fact that the local planning authority would be responsible for discharging the Requirements contained within Part 1 of Schedule 2, in the first instance, there would be no other person/organisation approving amendments to previously approved details. The ExA therefore considers that the references to other/another person in Requirement 18 would be unnecessary and should be deleted.</p> <p>While the ExA notes that other/another person has been included in the comparable</p>	<p>The Applicant agrees with the ExA's approach and has amended requirement 18 (1) as suggested.</p> <p>The Applicant has also made the amendment proposed to 18(2) but queries the EXA's addition of "or that other person". The Applicant presumes this was to be a deletion and has amended 18(2) accordingly.</p>



	<p>relation to immaterial changes where it has been demonstrated to the satisfaction of the local planning authority or that other person that the subject matter of the agreement sought is unlikely to give rise to any materially new or materially different environmental effect from those assessed in the environmental statement.</p> <p>(3) The approved details must be taken to include any amendments that may subsequently be approved in writing by the local planning authority or that other person.'</p>	<p>Requirement, Requirement 19, of the made DCO for the Cleve Hill solar park [included in REP1-008], that would appear to be in the context of an arbitrator (another person) potentially determining part of Requirement 17 if the undertaker for Cleve Hill and the Environment Agency do not reach agreement with respect to a matter affecting the decommissioning of Cleve Hill.</p> <p>The ExA further notes that with respect to the Hornsea Three wind farm the Marine Management Organisation, the highway authority and lead local flood authority are responsible for discharging some of that wind farm's Requirements. For Hornsea Three a number of organisations (persons) would be responsible for discharging Requirements and issuing approvals for amendments made to previously approved details under Requirement 26 of the Hornsea Three made DCO [appended to REP1-008].</p>	
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		<p>The multi-agency discharging circumstances for Cleve Hill and Hornsea Three would not arise for Little Crow, hence the reason why the ExA considers it would be unnecessary for the phraseology other/another person to be included in Requirement 18 of the draft DCO.</p>	
Schedule 2 Part 2 – Procedure for Discharge of Requirements			
<p>Paragraph 19 Interpretation</p>	<p>Delete the whole of paragraph 19 and renumber the subsequent paragraphs in Part 2 of Schedule 2</p>	<p>The ExA considers that there is no need for the interpretation provided within paragraph 19. That is because the only authority responsible for discharging the Requirements set out in Part 1 of Schedule 2 would be North Lincolnshire Council, with 'local planning authority' being defined in Article 2 of the draft DCO. While an interpretation paragraph similar to the proposed paragraph 19 has been included in the made DCO for the Cleve Hill solar park [appended to REP1-008], as explained above the circumstances for the</p>	<p>The Applicant agrees with the ExA's comments that the local planning authority is the only authority responsible for discharging requirements, but the local planning authority may not be the only party required to provide consent under the requirements. This is why the Applicant considers a wider definition is required here. It was also noted at 2.6.16 of the Applicant's response to EXQ2 (Document Reference 9.33 LC OTH, PINS Reference REP4-018) that Natural England, Humberside Fire and Rescue Service and the Health and Safety Executive, whilst they are not expressly a discharging</p>



		discharging of the requirements for that scheme are different to those that would apply to Little Crow.	authority for the purposes of the requirement, it is possible that these bodies might need to give approvals to activities undertaken pursuant to documents submitted under the requirements. The Applicant notes that Part 2 of Schedule 2 of the dDCO expressly applies to the giving of consent, agreement or approval further to documents referred to in the requirements (such as the CEMP and LEMP, for example). The definition in paragraph 19 clarifies this so the Applicant has not deleted it.
Paragraphs 20 (Applications made under requirements), 21 (Further information regarding requirements) and 22 (Appeals)	Throughout these paragraphs substitute 'discharging authority' with 'local planning authority'	Replacing local planning authority for discharging authority in paragraphs 20 to 22 would be consistent with paragraph 19 being deleted.	The Applicant has not made the consequential amendments proposed for the reason set out above (see Paragraph 19, Interpretation).
Paragraph 22 Appeals	<ul style="list-style-type: none">Throughout this paragraph substitute 'applicant' with 'undertaker'	In the interests of consistency within Part 2 of Schedule the ExA considers undertaker should replace applicant with	The Applicant agrees with the ExA's comment and has amended paragraph 22 as suggested.



	... the appointed person must have regard to relevant the guidance on costs in the Planning Practice Guidance website or any official circular or guidance which may from time to time replace it.		.
Schedule 3 Public footpath to be temporarily closed and diverted			
Column 2 in Table 1	'Drawing P17-0718-30 D REV G 1 – PROW (document reference 2.39 LC DRW)	The version of the plan submitted by the Applicant with its application showing the proposed temporary diversion of public footpath 214 appears to be a revision G 1 or G I rather than D [Examination reference APP-043 and application document 2.39]	The Applicant agrees that the Drawing Reference should be P17-0718-30 REV G 1 rather than P17-0718-30 REV D. The Applicant has amended the reference in column 2
Column 6 in Table 1	'From A-D-C-B A-C-D-B as shown with a dashed black line ...'	The letters C and D appear to have been transposed in Column 6 when compared with the lettering shown on the footpath diversion plan [APP-043].	The Applicant agrees that the letters C and D were transposed and has corrected this in column 6 of Schedule 3.

End of Schedule

