

A303 Amesbury to Berwick Down

TR010025

Deadline 2

**8.10.10 First Written Question - Draft Development
Consent Order (dDCO) (DCO.1)**

APFP Regulation 5(2)(q)

Planning Act 2008

The Infrastructure Planning (Examination Procedure) Rules 2010

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Infrastructure Planning

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Rules 2010

A303 Amesbury to Berwick Down

Development Consent Order 20[**]

First Written Questions - Draft Development Consent Order (dDCO) (DCO.1)

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DCO.1		Draft Development Consent Order (dDCO)	Response
Part 1 – Preliminary - Articles			
DCO.1.1	Applicant	<p>Article 2 – “the authorised development”</p> <p>Article 2 states that: <i>“authorised development” means the development and associated development, described in Schedule 1 (authorised development) or any part of it and any other development authorised by this Order, which is development within the meaning of section 32 (meaning of development of the 2008 Act”.</i></p> <p>i. The dDCO Schedule 1 includes parts of the works relating to the provision of new byways and private accesses for which development consent is sought <i>“as shown illustratively”</i> on the Works Plans and Rights of Way and Access Plans. Explain, for each of those work numbers to which that applies, why the Applicant cannot be more specific at this stage as to the nature and location of the works sought.</p>	<p>i. Schedule 1 to the draft DCO [APP-020] uses the term "as shown illustratively" on the Rights of Way and Access Plans [APP-009] in Schedule 1 to refer only to the new public rights of way and private means of access that are affected by the Scheme.</p> <p>As is detailed in section 3.2 of the Applicant's 'Additional Submission 1' (DCO application 'signposting' document) [AS-009], paragraph 3.2.2:</p> <p><i>"The Applicant's intention in applying the term 'illustratively' is to allow for the fact that what is shown on the Rights of Way and Access Plans does not - and cannot, at this stage - represent the final design / as built drawings, because the detailed design process has not yet taken place."</i></p>

		<p>ii. Please justify the degree of flexibility that reliance upon these 'illustrative' plans would allow. Explain where and how this aspect of scheme flexibility has been assessed by the ES?</p>	<p>A degree of flexibility is required for the matters shown on the Rights of Way and Access Plans – for each of the works shown illustratively - to account for the limits of deviation that apply to their parent works. For example, the new bridleway, reference Y, shown on sheet 5 of the Rights of Way and Access Plans, is intended to be set back from the cutting containing the westbound diverge slip road from the new A303 to the new southern roundabout at Longbarrow Junction. Were the alignment of this diverge slip road to be adjusted as part of the detailed design, whilst the precise alignment of the bridleway was already fixed at this stage, it would potentially prevent the delivery of one or the other of these important elements of the Scheme, or it could risk a sub-optimal design of both elements.</p> <p>ii. Section 2.3 of Chapter 2 (The Proposed Scheme) [APP-040] of the Environmental Statement explains how the scope of the authorised development has been assessed with particular regard to Schedule 1. This information is not repeated in each of the topic chapters to avoid repetition.</p> <p>In terms of the "illustrative" nature of the references to the Rights of Way and Access Plans contained in Schedule 1 to the DCO, this is addressed in paragraphs 3.2.2 to 3.2.6 of the Applicant's 'Additional Submission 1':</p> <p><i>"In this context, the term 'illustratively' signals – or illustrates – the Applicant's intention. The term 'illustratively' should therefore be interpreted on the basis of its ordinary meaning, i.e. 'serving as an example or illustration' of something (Oxford Advanced Learners Dictionary); 'serving, tending or designed to illustrate'</i></p>
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			<p>(Merriam Webster dictionary); ‘serving as an explanation or example’ of something (Oxford English Dictionary); or ‘helping to explain or prove something’ (Cambridge Dictionary).</p> <p><i>The Rights of Way and Access Plans therefore show what is intended to be delivered, subject to detailed design. The term ‘illustrative’, when used in the DCO application, is intended to explain that the plans show the preliminary design on which the detailed design will, necessarily (due to the elements that are secured by the DCO) be based.</i></p> <p><i>DCO Schedule 3 (Application Document 3.1; Inspectorate's document reference APP-020), which accompanies the Rights of Way and Access Plans and describes the locations, features and functions of what is shown on them, also evidences the Applicant's intention to deliver the parts of the authorised development which are shown here.</i></p> <p><i>Other control mechanisms relevant to the elements shown on the Rights of Way and Access Plans are the facts that each component element: (i) is particular to a specific work number / numbered work and therefore must be in the area associated with that work; (ii) must serve the relevant land (in particular where it is a replacement private means of access, as narrated in Schedule 3); and (iii) may only be delivered where the land use powers to deliver the relevant element have been sought in the DCO.</i></p> <p>Taking the example of the bridleway reference Y, discussed in the response to (i) above, Part 1 of Schedule 3 to the DCO describes this as:</p> <p><i>"A length of new bridleway from a point 560 metres south-west of the existing Longbarrow roundabout for a distance of 520 metres</i></p>
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			<p><i>in a generally easterly direction to a point 140 metres south of the existing Longbarrow roundabout"</i></p> <p>While all distances in the DCO are approximate (see article 2(4)) both the commencement point, general direction and termination of the new bridleway are clearly described by reference to existing landmarks.</p> <p>For all of these reasons, the use of the word 'illustratively' is neither intended to, nor could it, result in the relevant element being delivered anywhere within the Order limits. In reality the flexibility that it offers will be restricted by the factors noted above, and the presumption is that it will be delivered as shown on the Rights of Way and Access Plans and in full accordance with the detailed descriptions of each element contained in Schedule 3.</p>
DCO.1.2	Applicant	<p>Article 2 – “the authorised development”</p> <p>Schedule 1 of the dDCO would also authorise ancillary works “<i>for the purposes of or in connection with the construction of any of the works and other development mentioned above...</i>”, and Schedule 1 (a) to (b) lists a number of ancillary works. The Explanatory Memorandum states that this is to ensure that the authorised development is constructed efficiently and without impediment. However, the term “<i>ancillary works</i>” is not defined nor does it specify that they shall be carried out within the order limits.</p>	

		<p>i. Please provide further details as to the intended scope and location of these ancillary works.</p>	<p>i. The works described in Schedule 1, including those listed under "ancillary works", comprise the "authorised development" for which the Applicant seeks development consent (see the definition of "authorised development" in article 2(1) (interpretation)).</p> <p>In terms of definition and scope, the ancillary works are listed in Schedule 1 and support, and are ancillary to, the carrying out of the numbered works and are not to give rise to any materially new or materially worse adverse environmental effects than those assessed in the environmental statement. They must relate to the numbered works, since they must be "For the purposes of or in connection with the construction of any of the works and other development mentioned above", as set out in the paragraph preceding the list of ancillary works in Schedule 1.</p> <p>In terms of location, Article 7(1) (limits of deviation) confirms that the authorised development must be constructed within the Order limits. Any ancillary work would also be expected to be in the same general location as the numbered work to which it relates.</p> <p>Ancillary works are set out separately to the numbered works so as to avoid the need to repeat them within the description of each of the numbered works. This approach aids the clarity and legibility of the description of the numbered works.</p>
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		<p>ii. Having regard to Figure 2.7(A-E) of the ES and paragraphs 2.4.1-2.4.28, and assumptions around construction compound locations and embedded mitigation such as landscape bunds, please explain why the construction compounds are not listed as specific work numbers in the dDCO and that such provisions only appear in relation to the ancillary works?</p>	<p>ii. As is noted in paragraph 2.4.1 of the Environmental Statement (Chapter 2, The Proposed Scheme) [APP-040] the approach to construction described in paragraphs 2.4.1 to 2.4.28 is representative of the likely approach to be adopted. At this stage a detailed construction methodology has not been developed.</p> <p>Figure 2.7 A-E (Illustrative construction layout including compounds and haul routes) [APP-061] indicates how the construction compounds could be laid out, in an indicative form and illustrates the range of measures that could be implemented to mitigate the effects of their presence.</p> <p>The Applicant's view is that it is not necessary or appropriate at this stage to fix the precise location or layout of the construction compounds by listing them as specific numbered works and showing them on the works plans. To do so would limit the flexibility for a construction methodology to be developed that would deliver better environmental and project delivery benefits. As the construction compounds are listed in the ancillary works they could only be carried out if to do so would not to give rise to any materially new or materially worse adverse environmental effects to those assessed in the environmental statement.</p> <p>The OEMP [APP-187] includes a range of measures to limit or avoid dust, noise, spillage and disruption by construction traffic, which ensure that appropriate mitigation measures would be employed. Please see in particular reference MW-G28 which requires extensive measures to be employed (including bunds) to address landscape and other impacts. Other measures specifically relating to construction compounds are to be found at references MW-G26 to MW-G30.</p>
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		<p>iii. The Explanatory Memorandum justifies the inclusion of the powers to carry out ancillary works by reference to other made DCOs. Please explain why the particular DCOs mentioned are relied upon as precedents in this case?</p>	<p>iii. The Explanatory Memorandum [APP-020] refers to three Orders, A19/A1058 Coast Road (Junction Improvement) Order 2016 which illustrates a comparatively simple scheme, the A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016 which is a larger and more complex scheme and the Silvertown Tunnel Order 2018 which is another tunnel DCO. Despite their differences, all of these schemes required the same degree of flexibility that the Applicant seeks.</p> <p>As shown by these specific orders, the approach of providing for ancillary works to support the numbered works is well established and is adopted in every highway development consent order that has been made to date. Similarly, the approach of listing temporary construction facilities as ancillary works is also very well-established having been followed in all but one highway DCO made to date. Taking this into account along with the answers above to this question DCO.1.2, the Applicant believes that continuing this approach in the draft DCO is justified.</p>
DCO.1.3	Applicant	<p>Article 2 – “the authorised development”</p> <p>i. For Work No. 8 and the general provisions in ancillary works item (b)(vii), should the latter be limited in extent to reflect the works captured under Work No. 8?</p>	<p>i. No. Work No.8 is specifically identified in recognition of the significance of the processing deposition and use of excavated materials in that area as well as the intention to restore to calcareous grassland. Any works caught by ancillary works item (b)(vii) would have to be ancillary to those or other works, meaning that that category could not be used to overrule the specific powers in Work No.8 (if we have understood the concern underlying the question correctly).</p>

		<p>ii. Furthermore, should Work No. 8 be further defined with reference to the detail on the Environmental Masterplan (Figure 2.5L) or alternative plan to secure the detail to the extent that it has been assessed in the ES?</p> <p>iii. There is no 'engineering detail' on the Parsonage Down reprofiling works as part of the engineering section drawings [APP-010] and [APP-011]. It is also unclear why the limits of deviation (LoD) for Work No. 8 have been drawn as they have on the Works Plans (sheets 3 and 12 of [APP-008]. Based on the general arrangement plans (sheets 3 and 12 of [APP-012], it would appear that there are "<i>proposed landscape profiling</i>" works to the south of the LoD of Work No. 8, with the whole area presented on the general arrangements plans as a single, continuous unit. Please clarify and explain these points?</p>	<p>ii. Except where specifically secured, the Environmental Masterplan is indicative only. Work No.8 is defined by reference to the non-linear work lateral limits of deviation shown on the Works Plans [APP-008], and in the vertical plane is constrained by the upwards/downwards vertical limits of deviation specifically allocated to Work No. 8 in the Table within article 7(4). The parameters of assessment applied to the assessment of Work No. 8 in the ES, see Chapter 2 of the Environmental Statement [APP-040], are based on those horizontal and vertical limits of deviation.</p> <p>iii. In respect of the absence of a sheet in the Engineering Section Drawings (Plan and Profiles) [APP-010] showing the profiles of the East of Parsonage Down re-profiling described in Work No.8, this is deliberate. At this stage the precise levels cannot, and should not be defined. This is because the levels will necessarily flow from the detailed design. The factors that are relevant to the final form of Work No.8 include:</p> <ul style="list-style-type: none"> • the quantity of suitable excavated material generated; • the quantity of excavated material that will be used elsewhere in the Scheme; • the measures necessary to account for the presence of any archaeological remains that are encountered on the land; • the form necessary to achieve the desired landscape mitigation; • the measures necessary to ensure that slopes are stable; • the measures relating to drainage.
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			<p>However, it should be noted that the final form of Work No.8 would be subject to the Secretary of State's approval, following consultation with the planning authority, under requirement 8 of Schedule 2 to the draft DCO. Requirement 8 requires a landscaping scheme to be approved before the commencement of any part of the authorised development and requires the approved landscaping scheme to be based on the mitigation measures included in the environmental statement.</p> <p>In terms of how the non-linear limits of deviation have been drawn for Work No.8, again this is deliberate and carefully considered. Work No.8 shows the location of the deposition of excavated material, landscape re-profiling and the area within which the new chalk grassland habitat would be provided. As noted in (i) and (ii) above landscape re-profiling is required elsewhere within the Scheme which explains why landscape re-profiling shown on sheet 3 of the General Arrangement Plans [APP-012] extends beyond the bounds of Work No.8.</p>
DCO.1.4	Applicant	<p>Article 2 – “the authorised development”</p> <p>Associated Development has not been separately described in Schedule 1. The Guidance on associated development applications for major infrastructure projects (Department for Communities and Local Government April 2013) states that: “As far as practicable, applicants should explain in their explanatory memorandum which parts (if any) of their proposal are</p>	

		<p><i>associated development and why.”</i></p> <p>Furthermore, Advice Note 13: ‘Preparation of a draft order granting development consent and explanatory memorandum’ advises that the draft DCO should include: <i>“A full, precise and complete description of each element of any necessary “associated development, which should be clearly identified in a Schedule to the draft DCO.”</i></p> <p>The Explanatory Memorandum points to the potential for overlap between the two categories of development but does not seek to distinguish between them as anticipated by the guidance.</p> <p>i. Please explain this omission and identify those parts of the proposal which represent Associated Development in accordance with the guidance.</p>	<p>i. As is explained in paragraphs 2.7 to 2.10 of the Explanatory Memorandum [APP-021]; the approach taken in Schedule 1 of not separately defining elements of the Scheme as forming part of the NSIP or as associated development is deliberate, is not an omission and is in line with precedent for highways development consent orders.</p> <p>There is no requirement at law to separate the works comprising the NSIP from those constituting associated development, nor does DCLG <i>‘Guidance on associated development applications for major infrastructure projects’</i> require it. Instead, paragraph 10 of that guidance recommends that applicants, “as far as practicable”, should explain in their explanatory memorandum which parts of the development are associated development and why. Paragraphs 2.7 to 2.10 of the Explanatory Memorandum adopt this Guidance.</p>
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			<p>provision for or relating to any of the matters listed in Part 1 of Schedule 5. In principle a prohibition or reclassification of the sort discussed would fall within the scope of section 120(3), if the provision were to be "relating to, or to matters ancillary to, the development for which development consent is granted". There is no further case law or guidance that expands on the scope of section 120(3).</p> <p>To that extent the powers in section 120(3) are similar to those relating to the ability to include "associated development" within the scope of a DCO. It would not be in accordance with the scheme of the Planning Act 2008 if the scope of powers within section 120(3) were such that a lesser connection between those powers and the Scheme were required than in relation to the requirements in respect of "associated development". Accordingly, in the Applicant's view powers can only be sought in circumstances similar to those where "associated development" may be sought.</p> <p>As a result, and with due regard to paragraph 5 of the "Guidance on associated development applications for major infrastructure projects" (April 2013), it is relevant to consider the extent to which the power in question:</p> <ul style="list-style-type: none"> a) Is directly related to the development proposed in the dDCO i.e. the extent to which it supports the construction or operation of the principal development, or helps address its impacts. b) Is subordinate to the principal development; and c) Is proportionate to the nature and scale of the principal
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			<p>development.</p> <p>In the Applicant's view, the closure (through prohibition or reclassification) of the remainder of byways AMES11 and AMES12 to vehicular traffic would not be ancillary or related to the development for which development consent is sought. It is not required to support or facilitate the Scheme. It is not required to mitigate any adverse impact of the Scheme.</p> <p>In contrast, the reclassification of the motorised link (comprising the existing A303) between AMES11 and AMES12 is clearly necessary as a direct result of the Scheme which proposes the stopping up of the existing A303. The Scheme has the result that the role of the existing A303 has to be reconsidered and reclassified. The provision of a new restricted byway along the line of the existing A303 would clearly support the scheme objectives of enhancing the WHS, it would be subordinate to the principal development, is proportionate to the principal development and would deliver notable public benefits.</p>
DCO.1.5	Applicant	<p>Article 2 – “the authorised development”</p> <p>Article 2 defines “<i>ecological mitigation works</i>” to “<i>include bat roost and badger set closures and provision of hibernacula</i>”.</p> <p>i. Does this comprise a full and complete definition of the term and, if not, why not?</p>	<p>i. Yes, the definition is full. The words convey their ordinary and natural meaning but are defined in this way to be clear that that meaning includes "bat roost and badger sett closures and the provision of hibernacula". Other forms of ecological mitigation works within the natural meaning of the term would also fall</p>

		<p>ii. Why are the “<i>ecological mitigation works</i>” defined separately in this way whereas “<i>archaeological mitigation works</i>” and “<i>investigations for the purpose of assessing ground conditions</i>” are not separately defined in the dDCO interpretation section?</p> <p>iii. Should the latter two categories of works not also be defined in Article 2?</p> <p>iv. Please explain why there is no direct reference to the documents which contain the specification of the archaeological, ground conditions and ecological mitigation works.</p>	<p>within the definition. To provide an exhaustive detailed definition would necessarily restrict the ecological mitigation techniques that could be employed.</p> <p>ii. Unlike "ecological mitigation works" it was not considered necessary for clarity to include any particular form of "archaeological mitigation", nor any particular form of "investigations for the purpose of assessing ground conditions". In each case the words convey their ordinary and natural meaning.</p> <p>iii. No, in the Applicant’s view there is no need to separately define these terms. They convey their ordinary and natural meaning.</p> <p>iv. The Applicant’s view is that there is already sufficient definition of these works within the dDCO and the OEMP. "Archaeological mitigation works", "investigations for the purpose of assessing ground conditions" and "ecological mitigation works" all form part of the definition, contained in paragraph 1(1) of Schedule 2 to the draft DCO [APP-020], of the "preliminary works". The mitigation required in respect of the preliminary works is secured by requirement 4(2) of Schedule 2 to the draft DCO, which requires the preliminary works to be carried out in accordance with the preliminary works OEMP, which itself is defined in paragraph 1(1), as Table 3.2a and any other parts of the OEMP [APP187] relating to the preliminary works. Further detail of the</p>
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		<p>v. Although Table 3.2a of the Outline Environmental Management Plan (OEMP) contains some information on the “<i>environmental commitments</i>” associated with the works, should the specification of the works not be provided as a separate document to be secured within the dDCO so as to limit and clarify the extent of what would be permitted as “<i>preliminary work</i>”?</p>	<p>archaeological mitigation works is also contained within the Detailed Archaeological Mitigation Strategy (DAMS) (submitted in draft at Deadline 2), which will itself be secured by Requirement 5 and will be a certified document.</p> <p>v. The approach to defining the preliminary works either (i) follows the approach used in many DCOs in excepting these kinds of works from the definition of “commencement” (see paragraph 5.4.2 of the Explanatory Memorandum which notes that each of the elements excluded from the definition has precedent in M20 Junction 10a Development Consent Order 2017, the Silvertown Tunnel Order 2018, the East Anglia ONE Offshore Wind Farm Order 2014 and the East Anglia THREE Offshore Wind Farm Order 2017) or (ii) in the case of the highways preliminary works, uses the same approach as every highways DCO takes to the definition of numbered works in Schedule 1. In imposing the terms of the Preliminary Works OEMP on these works, the draft DCO already goes further than many other made DCOs that simply except these works from the definition of “commencement” with no further regulation of them. This established approach is justified for the following reasons.</p> <p>It would be unnecessary and unhelpful to prescribe at this stage a specification for ecological mitigation works and the investigations for the purposes of ground conditions. Specification of the works is a matter for detailed design. To do so would be unhelpful as it would necessarily risk prohibiting a solution that would lead to a lesser environmental effect. It would be unnecessary because the preliminary works are required to be carried out in accordance with the preliminary works OEMP, secured by requirement 4(1). The environmental statement has</p>
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		<p>vi. Does the definition of the archaeological preliminary works need to be better aligned to the detailed archaeological mitigation strategy (DAMS) and should a distinction be drawn with the preliminary archaeological mitigation works?</p> <p>vii.</p>	<p>assessed the carrying out of these works in accordance with those measures. There are therefore the necessary controls to ensure that the effects of the works are appropriate minimised.</p> <p>In respect of archaeological mitigation works, and indeed all works carried out under the DCO, they would be subject to the measures contained in the DAMS. An Outline Archaeological Mitigation Strategy is appended to the OEMP [APP-187]. Compliance with the DAMS is secured by requirement 5 of Schedule 2 to the DCO.</p> <p>vi. No, in the Applicant's view there is no need to separately define archaeological mitigation works and preliminary archaeological works. All works must be carried out in accordance with the DAMS, by virtue of requirement 5 in Schedule 2 to the draft DCO, which itself gives further detail of the works involved.</p>
DCO.1.6	Applicant	<p>Article 2 – “the authorised development”</p> <p>The “<i>authorised development</i>” set out in Schedule 1 includes a number of sub-works under the main work numbers. The Explanatory Memorandum states that Schedule 1 describes the authorised development, which is described in more detail in Chapter 2 of the ES.</p>	

		<p>i. Please explain the extent to which the description of the development used to undertake the environmental assessment includes the sub-works described in the dDCO.</p> <p>ii. Please also explain the extent to which the geographic location of the proposed sub-works is relevant to the finding of likely significant effects in the ES taking into account the LoD</p>	<p>i. The Environmental Statement (ES) and the assessments within it are based on the works proposed in the dDCO [APP-020], described principally in Schedule 1 (including the sub-works listed under the main works numbers) of the dDCO [APP-020], along with the works plans [APP-008], the engineering sections [APP-010 and APP-011], and the maximum area of land anticipated as likely to be required as shown on the Land Plans [APP-005], taking into account the proposed limits of deviation (LoD) for the Scheme as summarised in Table 2.1 of Chapter 2 of the Environmental Statement [APP-040] and the flexibility of detailed design provided for in the dDCO. The assessments therefore take into consideration what can be regarded as a realistic ‘worst case’ assessment of the impacts associated with the proposed scheme.</p> <p>ii. The sub works listed under the main work numbers contained in Schedule 1 of the dDCO [APP-020] comprise a description of the proposed work to be undertaken. As mentioned above, the Environmental Statement (ES) and the assessments within it are based on the works proposed in the dDCO [APP-020], described in Schedule 1 (including the sub-works listed under the main works numbers) of the dDCO [APP-020], along with the works plans [APP-008], the engineering sections [APP-010 and APP-011] and the maximum area of land anticipated as likely to be required as shown on the Land Plans [APP-005] taking into account the proposed limits of deviation (LoD) for the Scheme as summarised in Table 2.1 of Chapter 2 of the Environmental Statement [APP-040] and the flexibility of detailed design provided for in the dDCO. Therefore, the geographic location of the proposed sub-works provided for in those descriptions in the draft Order and plans is relevant to the finding of likely significant effects in the ES taking into account the LoD and has been considered in the assessment</p>
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		<p>iii. If the location of the sub-works is a relevant consideration informing the outcome of the assessment, please explain how this would be secured with reference to the relevant dDCO provisions and work plans.</p> <p>iv. For example, if the western portal (DCO Work No. 1E) were to be constructed at the westernmost extent of the LoD set out in Article 7, would this have any bearing on the location of Green Bridge Four which is stated in the ES as being <i>“approximately 150m in length and approximately 150m from the western boundary of the WHS”</i>?</p>	<p>of environmental effects in the ES.</p> <p>iii. Where, in the application documentation, the locations of each of the sub-works is identified and regulated is set out in detail in the Appendix to the DCO Application Signposting Document [AS-009].</p> <p>iv. Article 7 [APP-021] provides for limits of deviation both laterally (by reference to the Order limits and to the centre lines shown on the works plans), vertically (by reference to the levels shown on the engineering section drawings (plan and profiles) and the engineering section drawings (cross sections)) and for the variation of the commencement and termination points of the numbered works. Paragraph (7) of the dDCO [APP-020] allows for a deviation of the commencement and termination points of the linear works by up to 3 metres, and, in the case of the works listed in the table (which relate to each end of the tunnel), different limits of deviation, which would enable a proportionate degree of extension to the length of the tunnel in either a generally westerly or easterly direction. The table does not include deviation in the commencement and termination points of Green Bridge Four. Therefore, in this example, should the western portal be constructed at the westernmost extent of the LoD set out in Article 7 [APP-021], this would not have any bearing on the location of Green Bridge Four.</p> <p>The Applicant also notes that, in accordance with BD 78/99 Design</p>
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			<p>of Road Tunnels Cl 4.9, the gap between the westernmost extent of the LoD tunnel and Green Bridge 4 (GB4) is at the minimum separation allowed without adversely impacting the Tunnel Approach Zone i.e. a gap which facilitates drivers having clear visibility and no distraction, enabling improved safety and prevention of accidents.</p> <p>Therefore, the position of GB4 is not affected by the construction of the tunnel at the maximum LoD if required by the contractor's detailed design.</p>
DCO.1.7	Wilshire Council	<p>Article 2 – “the authorised development”</p> <p>i. Please comment upon the definition of “<i>authorised development</i>” as set out in the dDCO and explain further your concerns in relation to the indicative nature of the design and lack of design detail provided by the application.</p> <p>ii. Please explain in detail why a prohibition of motor vehicles for the severed link between AMES11 and AMES12 should be regarded as associated development and suggest how such a provision could be included within the dDCO.</p>	N/A

DCO.1.8	Applicant	<p>Article 2 – “commence”</p> <p>The definition of “commence” excludes certain operations and potentially allows for a large number of different types of works to be undertaken prior to the approval of the Construction Environmental Management Plan (CEMP) or OEMP. Some of these activities are defined as “<i>preliminary works</i>” in Schedule 2, Part 1 and would be the subject of the preliminary works OEMP. The Additional Submission 3 states that it is <i>expected</i> that seven preliminary works CEMPs would be prepared and, unlike the main CEMP, it is not stated that they would be required to be prepared prior to the commencement of those works. Nonetheless, the REAC Table 3.2a indicates that the preliminary works contractor “<i>shall prepare a CEMP for their works, as applicable to the scope of their contract, prior to the commencement of their works.</i>”</p> <p>i. Why has this approach been taken and further why is there a distinction between the two types of works?</p>	<p>i. There is a distinction between the preliminary and main works because as set out at paragraph 1.2.5 of the OEMP, it is anticipated that the preliminary works will be carried out before the main works contractor is appointed and it is therefore necessary to make provision for the commencement of those preliminary works before it would be possible to discharge the pre-commencement requirements relating the main works. Furthermore, given the nature of the preliminary works, it is not necessary that all of the</p>
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		<p>ii. Should the approval, timeline and implementation of the preliminary works OEMP be secured by requirement?</p> <p>iii. Given the potential impacts of these advance works how can the degree of flexibility sought by the current approach be justified?</p>	<p>requirements set out in Schedule 2 would need to apply. The exception to this is the highway works that are required as part of the preliminary works, where the Applicant has recognised (see AS-07 paragraph 6.1.4) that it is appropriate that they should be subject to the requirements. For any works carried out that do not fall within the definition, even if carried out prior to the appointment of the main works contractor, they would be subject to the pre-commencement requirements.</p> <p>ii. The 'preliminary works OEMP' already exists, as defined in Schedule 2 it is <i>'Table 3.2a and any other parts of the OEMP relating to the preliminary works'</i>. It is assumed that this question is meant to refer to the CEMPs for the preliminary works. The approval, timeline and implementation of these CEMPs are already set out at item PW-G1 of the OEMP, and are therefore secured pursuant to paragraph 4 of Schedule 2 to the draft DCO.</p> <p>iii. The matters within the definition of commence (i) do not require mitigation or (ii) are mitigation or (iii) are investigations required to obtain information in support of discharge of requirements. The potential impact of these works is directly controlled by the provisions of the preliminary works OEMP which will shape the preliminary works CEMPs. These are deliberately written in a way such that they can be directly imported into the CEMPs and will enable the impacts of the works to be controlled. For example, the ecological mitigation works have specific controls for bats and badgers (PW-BIO6 and PW-BIO7). There is no extraordinary 'flexibility' being sought – the controls in table 3.2a ensure that the controls that are relevant to those works and their potential effects would apply.</p>
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		<p>iv. The Explanatory Memorandum states that the works that are excluded from the definition are either de minimis or have minimal potential for adverse impacts. Please clarify and explain the anticipated impacts of the exempted activities and how these have been assessed.</p>	<p>Indeed these controls go further than many other DCOs (for examples please see v. below) where the types of works are simply excepted from the definition of ‘commence’ without any other environmental controls applying to them. Where the works expand beyond that (i.e. the highways works) they are captured by the requirements.</p> <p>iv. The preliminary works are treated in the ES as follows:</p> <table border="1" data-bbox="1182 619 2114 1372"> <thead> <tr> <th data-bbox="1182 619 1503 687">Preliminary Works</th> <th data-bbox="1503 619 2114 687">Consideration in ES</th> </tr> </thead> <tbody> <tr> <td data-bbox="1182 687 1503 794">Archaeological Mitigation Works</td> <td data-bbox="1503 687 2114 794">Required by the Outline Archaeological Mitigation Strategy [APP-220]</td> </tr> <tr> <td data-bbox="1182 794 1503 901">Ecological Mitigation Works</td> <td data-bbox="1503 794 2114 901">Required as a result of the assessment in the Biodiversity chapter [APP-046].</td> </tr> <tr> <td data-bbox="1182 901 1503 1230">Investigations for the purpose of assessing and monitoring ground conditions and levels and remedial work in respect of contamination</td> <td data-bbox="1503 901 2114 1230">Foreshadowed by the Geology and Soils chapter [APP-048]</td> </tr> <tr> <td data-bbox="1182 1230 1503 1372">Diversion and laying of apparatus</td> <td data-bbox="1503 1230 2114 1372">Described as part of the Scheme that is assessed in Chapter 2 (paragraph 2.39 - 2.49).</td> </tr> </tbody> </table>	Preliminary Works	Consideration in ES	Archaeological Mitigation Works	Required by the Outline Archaeological Mitigation Strategy [APP-220]	Ecological Mitigation Works	Required as a result of the assessment in the Biodiversity chapter [APP-046].	Investigations for the purpose of assessing and monitoring ground conditions and levels and remedial work in respect of contamination	Foreshadowed by the Geology and Soils chapter [APP-048]	Diversion and laying of apparatus	Described as part of the Scheme that is assessed in Chapter 2 (paragraph 2.39 - 2.49).
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		<p>v. Please identify any activities excluded from the definition of “commence” that are not defined as comprising “preliminary works” in Schedule 2, Part 1.</p>	<table border="1"> <tr> <td data-bbox="1182 225 1503 400"> <p>Site clearance</p> </td> <td data-bbox="1503 225 2136 400"> <p>The landscape chapter assesses the impacts of vegetation removal and creation arising from the Scheme [APP-045].</p> </td> </tr> <tr> <td data-bbox="1182 400 1503 804"> <p>Erection of any temporary means of enclosure, receipt and erection of construction plant and equipment and the temporary display of site notices or advertisements</p> </td> <td data-bbox="1503 400 2136 804"> <p>These activities will form part of the construction compound and site boundaries. This is described in chapter 2, and its activities are considered throughout the ES.</p> </td> </tr> </table> <p>v. The activities listed in the definition of 'commence' that are not in the definition of 'preliminary works' are shown highlighted blue in the extracted definition below:</p> <p>archaeological investigations and mitigation works, ecological surveys and mitigation works, investigations for the purpose of assessing and monitoring ground conditions and levels, remedial work in respect of any contamination or other adverse ground conditions, erection of any temporary means of enclosure, receipt and erection of construction plant and equipment, diversion and laying of underground apparatus and site clearance, and the temporary display of site notices or advertisements,</p>	<p>Site clearance</p>	<p>The landscape chapter assesses the impacts of vegetation removal and creation arising from the Scheme [APP-045].</p>	<p>Erection of any temporary means of enclosure, receipt and erection of construction plant and equipment and the temporary display of site notices or advertisements</p>	<p>These activities will form part of the construction compound and site boundaries. This is described in chapter 2, and its activities are considered throughout the ES.</p>
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		<p>vi. The Explanatory Memorandum in relation to the definition of “<i>commence</i>” refers to other made DCOs that support the principle of excluding the listed activities. Please provide full details as to why the quoted examples should be regarded as reliable precedents and set out any differences between the drafting in those DCOs and the definition as drafted in the dDCO.</p>	<p>vi. The table below provides examples of DCOs which have provided similar exclusions to those found in the DCO for the Scheme:</p> <table border="1" data-bbox="1182 347 2107 1110"> <thead> <tr> <th>Terms used</th> <th>Project</th> </tr> </thead> <tbody> <tr> <td>archaeological investigations;</td> <td>A14, A19, M20, East Midlands SFRI, East Anglia One and Three</td> </tr> <tr> <td>ecological 'surveys' (rather than mitigation works)</td> <td>East Anglia One and Three</td> </tr> <tr> <td>investigations for the purpose of assessing ground conditions;</td> <td>Silvertown, A14, A19, M20, East Midlands, East Anglia One and Three.</td> </tr> <tr> <td>remedial work in respect of any contamination or other adverse ground conditions;</td> <td>A14, A19, M20, East Midlands, East Anglia One and East Anglia Three</td> </tr> <tr> <td>erection of any temporary means of enclosure</td> <td>Silvertown, A14, A19, M20, East Midlands, East Anglia One and Three.</td> </tr> <tr> <td>the temporary display or site notices or advertisements</td> <td>Silvertown, A14, A19, M20, East Midlands, East Anglia One and Three.</td> </tr> <tr> <td>Diversion and laying of services</td> <td>East Anglia One and Three</td> </tr> </tbody> </table> <p>The Applicant notes that with the exception of East Anglia One and Three, the use of the terms similar to those found for the Scheme are preceded in highways and transport schemes. Although the precedents do not relate to ecological mitigation works, the materiality of those works, indicated by the examples included in the definition, is on a par with the other preliminary works, including archaeological investigation and ground remediation works.</p>	Terms used	Project	archaeological investigations;	A14, A19, M20, East Midlands SFRI, East Anglia One and Three	ecological 'surveys' (rather than mitigation works)	East Anglia One and Three	investigations for the purpose of assessing ground conditions;	Silvertown, A14, A19, M20, East Midlands, East Anglia One and Three.	remedial work in respect of any contamination or other adverse ground conditions;	A14, A19, M20, East Midlands, East Anglia One and East Anglia Three	erection of any temporary means of enclosure	Silvertown, A14, A19, M20, East Midlands, East Anglia One and Three.	the temporary display or site notices or advertisements	Silvertown, A14, A19, M20, East Midlands, East Anglia One and Three.	Diversion and laying of services	East Anglia One and Three
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			It notes that ecological surveys and works to apparatus are not used on highways schemes, but would suggest that this is because the need here is project specific. However, the answers to points i to iii of this question illustrate that there is no lack of control arising from their inclusion, given the controls in the preliminary works OEMP.
DCO.1.9	Wilshire Council	<p>Article 2 – “commence”</p> <p>Please comment generally on the definition of “commence” in the dDCO and, in particular, whether any amendment to the definition or imposition of requirements are necessary to control the excluded operations.</p>	N/A
DCO.1.10	Applicant	<p>Article 2 – “compulsory acquisition notice”</p> <p>Please comment as to whether “compulsory acquisition notice” should be defined in the dDCO.</p>	<p>The Applicant's view is that it is not necessary to define this term as it is not used in the draft DCO [APP-020].</p> <p>In any event, the Applicant would be reluctant to include a definition in those terms as it has the potential to cause confusion with the term "compulsory acquisition notice" which is used in section 134 Planning Act 2008 to describe the process of notifying persons with interests in the land of the making of the Order.</p>

DCO.1.1 1	Applicant	<p>Article 2 – “<i>the environmental statement</i>”</p> <p>The definition of “<i>the environmental statement</i>” refers to the documents of that description referenced in Schedule 12.</p> <p>Please confirm that this will be appropriately updated in the event that further documents are submitted that require inclusion during the course of the Examination.</p>	<p>Yes, the Applicant will update the description of "environmental statement" as appropriate during the course of the Examination.</p>
DCO.1.1 2	Applicant	<p>Article 2 – “<i>maintain</i>”</p> <p>i. The definition of “<i>maintain</i>” is broadly drawn. Please justify the inclusion of such a generous definition in this case.</p>	<p>i. The Applicant considers that the definition of "maintain" is appropriately drawn to include "inspect, repair, adjust, alter, remove or reconstruct". The maintenance provisions are consistent with what the Applicant already has a duty to do under sections 41 and 329 of the Highways Act 1980 and the power to do under Part 9 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015.</p> <p>The Applicant is also seeking to avoid any future uncertainty as to whether maintenance works are properly authorised; codifying these provisions in the draft DCO removes any doubt whether the Applicant has the power to undertake the activities when maintaining the Scheme. The Applicant notes that this formulation of "maintain" has been approved by the Secretary of State in respect of the:</p> <ul style="list-style-type: none"> • M1 Junction 10a (Grade Separation) Order 2013; • the Lancashire County Council (Torrisholme to the M6 Link (A683 Completion of Heysham to M6 Link Road) Order 2013;

		<p>ii. Do any of the other activities mentioned in the definition such as “<i>remove</i>” or “<i>reconstruct</i>” require any further definition? If not, please explain why?</p>	<ul style="list-style-type: none"> • the A556 (Knutsford to Bowdon Improvement) Development Consent Order 2014; • the A160/A180 (Port of Immingham Improvement) Development Consent Order 2015; • the A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016;and • the A19/A184 Testo's Junction Alteration Development Consent Order 2018. <p>Notwithstanding these important generalities, in practical terms it is foreseeable that over the 120 year design life of the Scheme that it would become necessary for some elements of would need to be removed or reconstructed as part of the Scheme's maintenance, for example the surfaces of carriageways.</p> <p>It should be noted that the power to "maintain", contained in article 5 (maintenance of the authorised development) of the draft DCO, is a power to "maintain the authorised development" and so any such works of maintenance must be within the bounds of what is authorised to be constructed under the Order, and within the scope of article 7 (limits of deviation).</p> <p>ii. The Applicant does not consider it to be necessary or appropriate to further define "remove" or "reconstruct". The words convey their ordinary and natural meaning.</p>
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		<p>iii. Given that the definition of “<i>maintain</i>” should not result in works being authorised which have not been assessed in the ES in accordance with the EIA regulations, please confirm that all these works have been so assessed and identify where this is recorded.</p>	<p>iii. Confirmed. Maintenance activities by their nature would not have any greater effect than those arising from the construction of the Scheme, which have been fully assessed in the Environmental Statement. The approach to consideration of maintenance within the ES is set out within ES Chapter 2 The Scheme [APP-040]. Para 2.4.59 to Para 2.5.1 of ES Chapter 2 [APP-040] states ‘once the new road is opened, it would form part of the A303 Trunk Road and part of the strategic road network. The likely traffic flows on the new road and on adjacent roads are described in the Transport Assessment Report [APP-297]. Long-term maintenance and repairs would be undertaken as required to maintain the appropriate standards for the strategic road network. Maintenance activities would be as authorised under the DCO’.</p> <p>Maintenance activities are considered within relevant ES Chapters including ES Chapter 9 Noise and Vibration [APP-047], ES Chapter 5 Air Quality [APP-043] and ES Chapter 11 Road Drainage and the Water Environment [App-049]. The OEMP [APP-187] was prepared in parallel with the development of the Scheme design and construction methodology and includes appropriate mitigation of any effects of maintenance activities. It includes construction, operational and maintenance mitigation measures which have been defined in part by the requirements which arise from the technical assessments presented in the ES.</p> <p>Para 2.5.1 of ES Chapter 2 [APP-040] states ‘ As required by the OEMP, industry standard control measures would be applied and encapsulated in the Handover Environmental Management Plan (HEMP). With the implementation of these measures no significant effects are considered likely’.</p> <p>Para 1.1.2 of the OEMP [APP-187] states ‘Towards the end of</p>
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		<p>iv. Please consider whether the following words should be added at the end of the definition: <i>“provided such works do not give rise to any materially new or materially different environmental effects to those identified in the Environmental Statement, and any derivative of “maintain” must be construed accordingly”</i>.</p>	<p>construction phase, the main works contractor will prepare a final version of the CEMP for the operational and maintenance phase of the Scheme, in the form of a Handover Environmental Management Plan (HEMP). The HEMP will be subject to approval by The Authority. The HEMP will then be implemented by the maintenance authority responsible for the maintenance of the Scheme during the operational phase’.</p> <p>Works within the DCO definition of ‘maintain’ have therefore been assessed in the ES, and mitigation secured in the OEMP.</p> <p>iv. The Applicant has considered the proposed wording. In its view the inclusion of this wording would impose an unnecessary administrative burden upon its ability to carry out its statutory duties to maintain the strategic highway network. It would require it to consider and record, for each maintenance operation to the Scheme, whether that operation was within the scope of the effects assessed in the Environmental Statement, when the reality is that the Environmental Statement has already assessed all maintenance activities within the definition and reported accordingly.</p>
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		<p>v. The Explanatory Memorandum seeks to justify the inclusion of “<i>adjust</i>” and “<i>alter</i>” as being necessary constituents of “<i>maintain</i>” in order to provide the ability to carry out minor corrective works as part of routine maintenance. Please consider whether the dDCO definition, itself, should be qualified in that way.</p> <p>vi. The Explanatory Memorandum in relation to the definition of “<i>maintain</i>” refers to other made DCOs that support the principle of such a broad definition. Please explain why the quoted examples should be regarded as reliable precedents and set out any differences between the drafting in those DCOs and the definition as drafted in the dDCO.</p>	<p>v. The Applicant does not consider it to be necessary to qualify the definition in that way, for the reasons given above, in particular at paragraph (i).</p> <p>vi. The precedents referred to in paragraph 5.4.3 of the Explanatory Memorandum [APP-021] that support the Applicant's definition of "maintain" are not exhaustive; please see the response to (i) above, where that list is supplemented. It should also be noted that the paragraph 5.4.3 also lists other precedents which contain a wider definition of "maintain" than that sought by the Applicant, which were nonetheless granted. The Applicant's justification for the definition is set out above and it is not reliant solely on precedent.</p> <p>In terms of the precedents quoted in the Explanatory Memorandum [APP-021] and in the answer to (i) above; they are appropriate and reliable precedents as they are all development consent orders authorising highway schemes where the same considerations of the highway authority's duty to maintain arises. There are no material differences in terms of the elements included within the definition:</p>
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			Order	Definition
			The draft DCO [App-020]	“maintain” includes inspect, repair, adjust, alter, remove or reconstruct and any derivative of “maintain” is to be construed accordingly
			M1 Junction 10a (Grade Separation) Order 2013	“maintain” includes inspect, repair, adjust, alter, remove or reconstruct and any derivative of “maintain” is to be construed accordingly
			Lancashire County Council (Torrisholme to the M6 Link (A683 Completion of Heysham to M6 Link Road) Order 2013	“maintain” includes inspect, repair, adjust, alter, remove or reconstruct and any derivative of “maintain” is to be construed accordingly
			A556 (Knutsford to Bowdon Improvement) Development Consent Order 2014	“maintain” in relation to the authorised development includes to inspect, repair, adjust, alter, remove or reconstruct and any derivative of “maintain” is to be construed accordingly
			A160/A180 (Port of Immingham Improvement) Development Consent Order 2015	“maintain” and any of its derivatives includes inspect, repair, adjust, alter, remove or reconstruct in relation to the authorised development and any derivative of “maintain” is to be construed accordingly
			A14 Cambridge to Huntingdon	“maintain” includes inspect, repair, adjust, alter, remove or reconstruct and

			<p>Improvement Scheme Development Consent Order 2016</p> <p>A19/A184 Testa's Junction Alteration Development Consent Order 2018</p>	<p>any derivative of “maintain” is to be construed accordingly</p> <p>“maintain” in relation to the authorised development includes to inspect, repair, adjust, alter, remove or reconstruct and any derivative of “maintain” is to be construed accordingly</p>
DCO.1.1 3	Wilshire Council	<p>Article 2 – “maintain”</p> <p>Please comment generally on the definition of “maintain” in the dDCO and, in particular, whether any amendment to the definition is necessary.</p>	N/A	
DCO.1.1 4	Applicant	<p>Article 2 - “tree and hedgerow plans”</p> <p>The dDCO does not include a definition of ‘tree and hedgerow plans’. Are further plans required to specifically identify the trees and hedgerows that fall within the ambit of article 17 and, if so, should such a definition be included.</p>	<p>The draft DCO [APP-020] does not use the term "tree and hedgerow plans" in the Order, so no definition is necessary.</p> <p>Article 17 is discussed in more detail in the Applicant's response to DCO.1.38</p>	

DCO.1.1 5	Wiltshire Council	Article 2 - “tree and hedgerow plans” Please comment in relation to the above question.	N/A
DCO.1.1 6	Environm ent Agency Natural England	Article 3 (1) and (2) – Disapplication of legislative provisions i. Please comment generally on the effect of this Article given that its consequence would be that certain consents would no longer need to be obtained. ii. Would there still be sufficient regulation of the activities that fall within Article 3(1) (a) to (g)?	The Applicant continues to discuss the provisions of article 3 with Environment Agency and Natural England, and the latest progress of these discussions is recorded in the Statements of Common Ground with these parties submitted at Deadline 2.
DCO.1.1 7	Wiltshire Council	Article 3 (1) and (2) – Disapplication of legislative provisions Please comment generally on the effect of Article 3(2).	N/A
DCO.1.1 8	Applicant	Article 3 (1) (h) - Disapplication of legislative provisions Why is it not proposed to align the Temporary Possession powers in the dDCO with the section 20(3) Neighbourhood Planning Act 2017 three months’ notice period?	The provisions of the Neighbourhood Planning Act 2017 ("NPA 2017") relevant to the temporary possession of land (Chapter 1 of Part 2) will come into force on a date to be appointed. The NPA 2017 received royal assent on 27 April 2017 and despite five sets of commencement regulations having been made in the intervening two years, a date has not been appointed for the coming into force of Chapter 1 of Part 2 of the NPA 2017. The provisions are not in force and there is no certainty as to when, or whether, they will come into force.

			<p>The Applicant's rationale for disapplying the relevant provisions of the NPA 2017 is that the regulations required to provide more detail on the operation of the regime have not yet been consulted upon, let alone made.</p> <p>As such, it is considered appropriate to apply the 'tried and tested' temporary possession regime which has been included in numerous DCOs and Orders made under the Transport and Works Act 1992 to date and to ensure that this endures throughout construction of the Scheme.</p> <p>The 14 day minimum notice period is sufficient and appropriate to the Scheme and would ensure that the construction programme would not be threatened, which might occur if the Applicant is required to give the three months notice envisaged by Chapter 1 of Part 2 of the NPA 2017. Article 3(1)(h) of the draft DCO [APP-020] protects the Scheme from this disruption.</p> <p>If the Applicant is required to give three months notice it would reduce the Applicant's flexibility in how to exercise the temporary possession power. An unintended consequence of this is that it may need to make decisions on when it requires land on a precautionary basis to avoid programme disruption, leading to land being possessed temporarily earlier than would otherwise be the case.</p> <p>It should be noted that the 14 day notice period is a minimum. Where it is practicable to do so the Applicant would be able to give a longer period of notice.</p> <p>The Applicant's approach here has precedent in other recently made Orders. See for example the Silvertown Tunnel Order 2018, the Eggborough Gas Fired Generating Station Order 2018, the Port of Tilbury (Expansion) Order 2019 and the Millbrook Gas</p>
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			Fired Generating Station Order 2019.
DCO.1.1 9	Applicant	<p>Article 3 (1) (h) - Disapplication of legislative provisions</p> <p>Please consider whether it would be appropriate to align the Temporary Possession powers set out in Articles 21, 29 and 30 with the Neighbourhood Planning Act 2017 requirement to specify the maximum period of Temporary Possession?</p>	<p>The Applicant has considered this and concluded that it would not be appropriate for it to be required to specify in the notice served under article 29 (temporary use of land for constructing the authorised development) the duration of the temporary possession.</p> <p>As is explained in its response to DCO.1.18 above, the relevant provisions of the Neighbourhood Planning Act 2017 are not yet in force, there is no certainty as to when, or even if, they will come into force and any supporting regulations have not yet even been consulted upon, let alone made.</p> <p>In the specific circumstances of the Scheme the unintended consequences of requiring the Applicant to specify the duration of possession would be for it to take a precautionary approach and specify a longer period than is envisaged at the time possession is required, in order to account for any unforeseeable slippage to the construction programme. As such, there is unlikely to be any particular benefit to either party to the introduction of that procedure.</p> <p>It should be noted the duration of temporary possession permitted under article 29 is not unlimited. Article 29(3) requires the land to be returned no longer than one year after the completion of the relevant work for which possession of the land was temporarily taken.</p>

Part 2 – Works Provisions - Articles			
DCO.1.20	Applicant	<p>Article 7 – Limits of Deviation</p> <p>The reference to “<i>plans</i>” in Article 7(3) should be to “<i>works plans</i>”.</p> <p>Please confirm that the word “<i>works</i>” will be inserted before “<i>plans</i>” in the revised dDCO?</p>	<p>Article 7(3) (limits of deviation) uses the phrase “those plans” to refer to the “works plans” which are featured in article 7(2). Both article 7(2) and 7(3) are concerned with lateral limits of deviation, the former in respect of the non-linear works and the latter in respect of the linear works. While the Applicant considers the drafting to be unambiguous it has amended the reference in revision 1 of the draft DCO submitted at Deadline 2.</p>
DCO.1.21	Applicant	<p>Article 7 – Limits of Deviation</p> <p>For Work No. 4, please clarify whether the LoD would allow for the realigned A360 to be within the World Heritage Site (WHS) boundary?</p>	<p>The lateral limit of deviation for Work No.4 would not permit the A360 to be re-aligned so as to lie within the World Heritage Site. This is because Work No. 4, which is a non-linear work, is subject to the lateral limits of deviation provided for in article 7(3)(a), which permit only a limited degree of variation to the location and alignment of the work centreline as shown on the Works Plans. In constructing or maintaining Work No.4, the Applicant would only be permitted to deviate by a maximum of 3 metres either side of the centreline of the realigned A360 shown on the Works Plans. As such, and for the further reasons set out below, the LoDs would not allow for the realigned A360 to be relocated within the WHS boundary.</p> <p>In addition, the description of Work No.4 in Schedule 1 does not include the re-alignment of the existing A360. Instead it would authorise, amongst other matters:</p> <p><i>“(d) the construction of a new single carriageway two-way link road and tie-in from the new northern roundabout (forming part of the new Longbarrow Junction) to the existing A360 (north)”</i></p> <p>Once the new carriageway has tied into the existing A360, which lies outside of the WHS, there is no authorisation to further re-align</p>

			<p>the existing A360.</p> <p>Additionally, whilst allowing for the 3m lateral LoD of the proposed A360 centreline, the realigned A360 is also constrained by a requirement to tie into the geometry of the existing road which runs parallel to the WHS boundary. Consequently, in order to ensure an effective and safe connection, in accordance with design standards, between the improvement section of the A360 and the existing road it is not practical to realign the A360 within the WHS.</p> <p>The Order limits that cross into the WHS on Sheet 14 of the Works Plans [APP-008] are required in connection with other elements of Work No.4, namely Work No.4(f) a new restricted byway.</p>
DCO.1.22	Applicant	<p>Article 7 – Limits of Deviation</p> <p>The ES, Chapter 2, Table 2.1: Limits of deviation summarises the proposed LoD for the scheme and the Additional Submission 1 ‘signposting’ document seeks to explain the controls that would regulate the location/dimension of the Works.</p> <p>i. For the avoidance of doubt, please provide an expanded Table 2.1 to include all sub-paragraphs of the relevant work number, for example, Work No. 1A (i) to (vii).</p>	<p>i. The Applicant considers that the position is clear. The limits of deviation for each of the sub-paragraphs of each numbered work are the same as its "parent" numbered work. This is clearly specified in article 7 (limits of deviation). The only exception to this principle is set out explicitly in article 7(3)(c) where Work No.6(a), a new restricted byway, is permitted to deviate only within the bounds of the carriageway and verges of the existing</p>

		<p>ii. Please explain the relationship between the lateral and centreline limits of deviation set out in ES Chapter 2, Table 2.1.</p>	<p>A303.</p> <p>ii. The lateral limits of deviation for the linear works are established by reference to the centreline for that numbered work as shown on the Works Plans [APP-008]. The centreline of the corresponding numbered work must not deviate laterally more than 3 metres (save for Work No.1F) from the centreline shown.</p> <p>It should be noted that, taking into account the standards for highway design specified in the DMRB to maintain appropriate geometry of highways alignment, a 3m deviation of the centreline is, in practice, a very modest deviation.</p> <p>The reference to the Order limits in Table 2.1 recognises that during construction, construction activities and ancillary works may take place anywhere within the Order limits that relate to the construction of the corresponding numbered work area and are constrained by the ultimate limit of deviation, being the Order limits in accordance with article 7(1).</p>
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<p>DCO.1.23</p>	<p>Applicant</p>	<p>Article 7 – Limits of Deviation</p> <p>The ES Chapter 2, Table 2.1: Limits of deviation, sets out the LoD for each of the proposed works.</p> <p>In relation to Work Nos. 1E, 1F and 1G, please clarify how the LoD relate to the relevant Works Plans. The limits shown on the Works Plans (sheets 6-8) show the start and end of linear works.</p> <ul style="list-style-type: none"> i. Is it intended that the LoD would allow the start and end of these linear works to move in accordance with the lengths specified in Table 2.1? If so, please update the Works Plans to show where these limits are spatially. 	<p>i. By way of introduction, it should be noted that article 7 (limits of deviation) of the draft DCO [APP-020] is the source of the limits of deviation (LoDs) in respect of the numbered works comprising the authorised development. Table 2.1 in the ES does not set the LoDs; it merely mirrors them for the purpose of defining the parameters of assessment which have informed the assessments comprised in the Environmental Statement.</p> <p>In response to (i), however, yes, that is the intention (i.e. it is intended that the LoDs would allow the start and end points of linear works to move in accordance with the lengths specified in paragraph (7) of article 7 of the draft DCO, which lengths are replicated in Table 2.1 in Chapter 2 of the ES). The function of the Works Plans [APP-008] is to provide points of reference from which the lateral limits of deviation for the authorised development are expressed in article 7 of the draft DCO. In the case of the commencement and termination points of numbered linear works, these are shown on the Works Plans with "bow-tie" symbols. Article 7(7) generally permits the deviation of the points of commencement/termination "bow-tie" symbols by 3m generally</p>
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		<p>ii. Please also clarify this point in relation to the engineering section chainage profile drawings which show the start and end points within the LoD and figure 2.16.</p>	<p>westward or eastward (along the centre line of the linear work, which of course may be varied by up to 3 metres either way, perpendicular to the centreline), although different deviations are permitted in respect of Work Nos. 1E, 1F and 1G which comprise the bored tunnel and the cut and cover sections and associated works, as shown in the table embedded in article 7(7).</p> <p>The Applicant does not consider it to be necessary to update the Works Plans [APP-008] as the Applicant considers the limits of deviation permitted for the commencement and termination points of the numbered works are sufficiently clear when the Works Plans are read together with Article 7(7). The Applicant considers that it would be practically difficult to show the lateral deviation of the "bow-ties" in a consistent manner. The majority may only deviate either way by only 3m which would be difficult to show meaningfully on the 1:2500 scale of the Works Plans. The approach of showing the location of the commencement/termination point and describing the limit of deviation by reference to that point provides for greater precision than would be the case from attempting to show these deviations at the scale of the Works Plans.</p> <p>ii. The function of the Engineering Section Drawings (Plan and Profiles) [APP-010] and Engineering Section Drawings (Cross Sections) [APP-011] is to provide a reference point from which the vertical limits of deviation, as expressed in article 7(4) of the draft DCO, apply. Article 7(4) provides an overarching default (i.e. applying to all numbered works unless otherwise specified in article 7) vertical limit of deviation of upwards by 0.5 metres or downwards by 1 metre; exceptions to these default limits of deviation are set out in the table embedded in paragraph (4).</p>
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			<p>When the Engineering Section Drawings (Plan and Profile) and the Engineering Section Drawings (Cross Sections) are read together with article 7(4) the vertical limits of deviation for each numbered work are clear.</p> <p>In response to (ii), the terms of the ‘plan’ elements of APP-010, where chainages are shown and labels are applied to indicate the positions of the coterminous start and end points of numbered linear works, the Applicant confirms that the labelled points on the ‘plan’ elements of APP-010 (which are also mirrored in the section drawings below each plan) correspond to the positions of the bow-ties on the Works Plans and would therefore would be permitted by the LoDs to move in accordance with the length specified in Article 7(7).</p> <p>A slightly different approach is taken to the vertical limits of deviation for Work No.1F, which comprises the bored tunnel and its associated works, due to its subterranean nature. The vertical limits of deviation for Work No.1F are set out in article 7(5) by reference to the Bored Tunnel Limit of Deviation Plan [APP-019]. Article 7(5) permits:</p> <ul style="list-style-type: none"> • the crown of the tunnel to deviate upwards to any position that is no higher than the upper limit of deviation for the crown of the bored tunnel, shown on the Bored Tunnel Limits of Deviation Plan; • the finished road level may deviate upwards to any position that is no higher than the upper limit of deviation for the finished road level, shown on the Bored Tunnel Limits of Deviation Plan; and • downwards, to any extent the undertaker considers necessary or convenient. <p>Please refer to Note 3 on the Bored Tunnel Limits of Deviation</p>
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		<p>iii. Should Table 2.1 limit the lateral deviation of Work Nos. 1E, 1F and 1G, as it presently indicates that these works would only be constrained laterally by the Order limits?</p>	<p>Plan, which confirms that "For any extension of the bored tunnel outside chainage 7400 to 10400 the upper limit of deviation of the crown of the bored tunnel would be a minimum of 6.75m below existing ground level and the upper limit of deviation for the finished road level would be a minimum of 15m below existing ground level."</p> <p>The degree of flexibility is necessary to account for any unforeseen ground conditions.</p> <p>iii. It should be noted that Table 2.1 in chapter 2 of the Environmental Statement [APP-039] records the limits of deviation that have specifically informed the EIA parameters of assessment (see above). While the Applicant confirms that the limits of deviation noted in Table 2.1 are the same as those provided by Article 7 and its associated plans, it would be inappropriate to amend Table 2.1 as it is a factual record of the assessment that has been carried out by the Applicant. The lateral limits of deviation for the purposes of the draft DCO are expressed in article 7(3) and (7) by reference to the positions shown on the Works Plans [APP-008].</p> <p>Generally, the lateral limits of deviation for linear works are expressed in article 7(3) by reference to the centreline of the numbered works shown on the Works Plans. Work Nos. 1E and 1G are constrained laterally by reference to their centrelines (not just the Order limits) and may only move up to 3m from that centreline. This is unambiguously stated in article 7(3) and reflected in Table 2.1. However, in respect of Work No.1F, comprising the bored tunnel and associated works, the Applicant considers that a greater degree of flexibility is both required and</p>
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		<p>iv. Please confirm that the extent of the deviations sought, including that allowed for Work Nos. 1 E, 1F and 1G, have been assessed in the ES.</p> <p>v. Article 7(3)(b) would permit a very wide lateral deviation in the construction or maintenance of Work No. 1 F. Please provide a further explanation as to why this is regarded as being necessary and proportionate.</p>	<p>is justified, given the different character of subterranean works.</p> <p>Work No.1F is the only linear work that is not constrained by a centreline limit of deviation. This greater degree of lateral deviation is necessary in order to respond to any unforeseen adverse ground conditions. The lateral limit of deviation is expressed in the draft DCO by the exception of Work No.1F from the general centreline limit of deviation provided by article 7(3)(a) and the clarification provided in 7(3)(b) that Work No.1F must be carried out within the Order limits.</p> <p>iv. The Applicant confirms that all limits of deviation expressed in article 7 by reference to the relevant plans have been assessed in the environmental statement. This fact is recorded in Table 2.1 which summarises the effect of article 7.</p> <p>v. As noted in the Applicant's response to (iii) above, the limit of lateral deviation for Work No.1F is the Order limits. However, it should be noted that this does not mean that Work No.1F can be carried out anywhere within the Order limits. It may only be carried out between the commencement and termination points of Work No.1F shown (by "bow-tie" symbols) on the Works Plans, themselves subject to limits of deviation (see response to question (i) above). The lateral limit of deviation is necessary to enable the Applicant to respond to any unforeseen ground conditions that could be encountered. In reality, however, there is still a degree of constraint on the lateral positioning of Work No. 1F (the bored tunnel section) since the zone of protection which is required to extend above it and around it (as shown in</p>
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			<p>Figure 1 in the Statement of Reasons [APP-023]) would still need to ‘fit’ within the Order limits. As such, it would not be possible for the bored tunnel – or even for its exclusion zone (again, refer to Figure 1 in the Statement of Reasons) - to be located directly adjacent to the Order limits on either side of its length. Also the beginning and end of Work No. 1F will necessarily be constrained by the lateral LoDs applying to the works to which the tunnel must connect.</p> <p>The likely scenario under which a deviation to Work No. 1F would be required is as a result of the further detailed design by the contractor as part of their risk management of the whole tunnelling operation. This would include: the development of preferred geological and hydrogeological conditions in which to commence tunnelling, and avoiding features in the ground to reduce risks during tunnelling. These changes to the alignment would be made during detailed design, hence the requirement to cater for the lateral limit of deviation in the draft DCO.</p> <p>The wider limit of deviation is proportionate because as noted above, the limits of deviation in article 7 have been assessed in the Environmental Statement, see in particular Chapter 10 (Geology and Soils) [APP-048] and Chapter 11 (Road Drainage and the Water Environment) [APP-49] which assess the geological and hydrogeological effects of the Scheme.</p>
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DCO.1.24	Applicant	<p>Article 7 – Limits of Deviation</p> <p>The ES, Chapter 6, makes no reference to the LoD. There is only a single reference to a ‘worst case’ having been adopted.</p> <p>Please explain with particular reference to the lateral LoD of the tunnel portals themselves and the upper / lower limits of deviation set out in the dDCO and on the tunnel LoD plan [APP-019]. For example, does the assessment assume that the tunnel would be built at the shallowest depth with highest potential for impacts on buried archaeology?</p>	<p>Chapter 2 of the Environmental Statement Table 2.1 lists the limits of deviation that have been assessed. The full envelope of the Scheme within those LoDs has been assessed; and that would necessarily include assessing the tunnel at its shallowest depth, as well as the other elements of the Scheme at their limits of deviation. All of the topic chapters have assessed the limits of deviation described in Chapter 2. This information is not duplicated in each of the topic chapters.</p>
DCO.1.25	Applicant	<p>Article 7 – Limits of Deviation</p> <p>Please explain, with reference to the relevant ‘asset groups’, for works 1E, 1F and 1G how the cultural heritage assessment in ES Chapter 6 [APP-044] and the Heritage Impact Assessment [APP-195] have specifically accounted for the LoD set out in the dDCO and shown on the tunnel limits of deviation plan [APP-019].</p>	<p>The Environmental Statement Chapter 6 [APP-044] and the Environmental Statement Appendix 6.1 - Heritage Impact Assessment [APP-195] considered the worst case scenario for the Scheme and the results of the archaeological evaluations for the western portal and approaches and the eastern portal and approaches prior to submission of the DCO application. With regards to the works detailed in 1E, 1F and 1G as set out in Table 2.1: Limits of deviation in Environmental Statement Chapter 2 [APP-040], which align with the limits of deviation set out in article 7 of the draft DCO [APP-020] these are outlined below and discussed further in the Applicant's response to DCO.1.26.</p>

			<p><i>Work No.1E</i></p> <p>Article 7(7) allows for the cut and cover section of the tunnel to commence 200 metres westwards from the location shown by the "bow-tie" on the Works Plans [App-008] and by a nominal 1m eastwards from that position. The 200m deviation westwards would allow for the point of commencement of Work No.1F (the bored tunnel and associated works) to also deviate westwards by the same amount, should it be required during the detailed design for the reasons set out in the Applicant's response to DCO.1.26.</p> <p>The exercise of this limit of deviation would allow archaeological remains, that would otherwise be archaeologically excavated and recorded prior to construction of the Scheme (which positions the western portal tunnel face at chainage 7400), to be preserved in situ. The nominal 1m deviation of the point of termination of Work No.1E eastwards would only increase the footprint slightly for the western portal and would not physically impact archaeological remains that are known to contribute to the OUV of the WHS. The significant effects reported in the Environmental Statement Chapter 6 [APP-044] and the conclusions reached in the Environmental Statement Appendix 6.1 - Heritage Impact Assessment [APP-195] are therefore the same whether the limits of deviation are used or not.</p> <p>Should the maximum westerly deviation of 200m be required by the detailed design (for the reasons given in DCO.1.26) for both Work No.1E and Work No.1F then this would benefit the setting of five isolated designated heritage assets that contribute to the OUV of the WHS and lying to the south of the A303. This includes:</p>
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			<ul style="list-style-type: none"> • Bowl barrow south of the A303 and north-west of Normanton Gorse (NHLE 1010832); • Pond barrow south of the A303 and 400m west of Normanton Gorse containing the 'Wilsford Shaft' (NHLE 1010833); • Bowl barrow 400m west of Normanton Gorse (NHLE 1010831); • Bowl barrow 350m south-west of Normanton Gorse (NHLE 1013812); and • Linear boundary within Normanton Gorse (NHLE 1010838) <p>The above benefits would result in Slight Beneficial (and therefore non-significant effects) and therefore the conclusions reached in the Environmental Statement Chapter 6 [APP-044] and the overall conclusions reached in the Environmental Statement Appendix 6.1 - Heritage Impact Assessment [APP-195] are the same whether the limits of deviation are used or not.</p> <p><i>Work No. 1F</i></p> <p>Article 7(7) allows for the points of commencement and termination of Work No.1F (the bored tunnel and associated works) to deviate from the "bow-ties" shown on the Works Plans by up to 200m westwards and 30m eastwards respectively. It also permits the point of commencement of Work No.1F to deviate by a nominal 1m eastwards and the point of termination to deviate by a nominal 1m westwards.</p> <p>The same considerations as those discussed in respect of Work No. 1E above apply to westward deviation of the point of commencement of Work No.1F. Regarding the 30m eastwards</p>
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			<p>deviation of the point of termination of Work No.1F this would allow archaeological remains, that would otherwise be archaeologically excavated and recorded prior to construction of the Scheme (which positions the eastern portal tunnel face at chainage 10400), to be preserved in situ. The nominal 1m deviation westwards of the point of termination of Work No.1F would only increase the footprint slightly for the eastern portal and would not physically impact archaeological remains that are known to contribute to the OUV of the WHS. The significant effects reported in the Environmental Statement Chapter 6 [APP-044] and the conclusions reached in the Environmental Statement Appendix 6.1 - Heritage Impact Assessment [APP-195] are therefore the same whether the limits of deviation are used or not.</p> <p><i>Work No.1G</i></p> <p>Article 7(7) allows the points of commencement and termination of Work No.1G to deviate eastwards from the "bow-tie" shown on the Works Plans by up to 30m and by up to 1m westwards. This is considered in response to 1F above.</p> <p><i>Vertical limits of deviation</i></p> <p>The vertical limits of deviation for Work No.1F are set out in article 7(5) by reference to the Bored Tunnel Limits of Deviation Plan [APP-019] and Note 3 on the Bored Tunnel Limits of Deviation Plan, which confirms that "For any extension of the bored tunnel outside chainage 7400 to 10400 the upper limit of deviation of the crown of the bored tunnel would be a minimum of 6.75m below existing ground level and the upper limit of deviation for the finished road level would be a minimum of 15m below existing</p>
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			<p>ground level.". As such, the upper limit of deviation of the crown of the bored tunnel would be a minimum of 6.75m below existing ground level this would allow enough chalk coverage to preserve surface archaeological remains (generally located within the top 2m) above the tunnel, even where it is closest to the surface (at 6.75m below the ground surface).</p> <p>The significant effects as reported in the Environmental Statement Chapter 6 [APP-044] and the conclusions reached in the Environmental Statement Appendix 6.1 - Heritage Impact Assessment [APP-195] are therefore the same whether the limits of deviation are used or not.</p> <p><i>Lateral deviations from the centreline</i></p> <p>Regarding the lateral limits of deviation for the western and eastern tunnel portals from the centre line of +3m/-3m, again this would only vary the footprint slightly for the eastern or western portals and would not physically impact archaeological remains that are known to contribute to the OUV of the WHS. The significant effects as reported in the Environmental Statement Chapter 6 [APP-044] and the conclusions reached in the Environmental Statement Appendix 6.1 - Heritage Impact Assessment [APP-195] are therefore the same whether the limits of deviation are used or not.</p>
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DCO.1.26	Applicant	<p>Article 7 – Limits of Deviation</p> <p>The Explanatory Memorandum, paragraph 6.12, states that Article 7(7) would enable a proportionate degree of extension to the length of the tunnel in either a westerly or easterly direction as specified in the accompanying table.</p> <ul style="list-style-type: none"> i. Please explain in detail why provision for these allowances are necessary and proportionate and the likely scenario under which such a deviation would be required. ii. Please provide a full explanation as to why the flexibility sought by Article 7(7)(b) for Work Nos. 1 E, 1F and 1G, is necessary and proportionate? The Explanatory Memorandum would appear to be silent on this matter. 	<p>i. and ii.</p> <p><u>Proportionate</u></p> <p>In respect of the points of commencement and termination listed in the table embedded in paragraph (7) of article 7, these relate to Work Nos. 1E, 1F and 1G, which comprise the bored tunnel and the cut and cover sections and associated works. The Applicant has carefully considered the degree of flexibility that it requires to undertake these works. It should be noted that these works, as the constituent parts of the tunnel, are subject to considerations that do not affect the other numbered works comprised in the Scheme.</p> <p>The effect of the table embedded in article 7(7) is to permit the western commencement of Work No.1F, the twin bore tunnel and its associated works, to deviate 200 metres to the west of the location shown (by a "bow-tie" symbol) on Sheet 6 of the Works Plans. The westerly deviations of termination/commencement points for Work Nos. 1D and 1E are necessary to accommodate the westerly deviation of Work No. 1F and to ensure there are no "gaps" in the Scheme. It should be noted that a deviation of only 1m in an easterly direction is permitted for the commencement/termination of Work Nos. 1E and 1F.</p>
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			<p>At the eastern end of the twin bore tunnel the termination point of Work No.1F and the commencement point of Work No.1G (the cut and cover section and associated works), shown by the "bow-tie" symbol on Sheet 8 of the Works Plans, is permitted to deviate in an easterly direction by 30m. The easterly deviation of the point of commencement of Work No.1H and the point of termination of Work No.1G is permitted to deviate by the same amount, to ensure that the Scheme is continuous and without any gaps.</p> <p>The degree of flexibility is proportionate in that it is clearly defined by article 7(7), has been assessed in the environmental statement and is sought only in connection with the works for which it is considered to be necessary.</p> <p><u>Necessary</u></p> <p>The degree of flexibility provided in article 7(7) for the commencement and/or termination points of Work Nos. 1E, 1F, 1G and 1H is necessary to facilitate the safe construction of the bored tunnel by allowing some realignment of the location of the temporary drive and reception portals at the western and eastern end of the tunnel. The proposed means of tunnelling is based on the assembly and launch of the tunnel boring machine ("TBM") from the point of commencement of Work No.1F on sheet 6 of the Works Plans, with the first tunnel drive west to east towards Amesbury. At the end of the first drive, the TBM will be received within the temporary portal where it will be turned around and re-launched to drive the second bore east to west. Therefore the location of the drive and reception portals are a very important consideration as part of overall safe tunnel construction and operation of the TBM. Flexibility is sought under Article 7 to</p>
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			<p>facilitate this in tunnelling.</p> <p>TBMs are large and complex machines. The cutting head and segment erector are contained within the shield and constitute the main components at the front of the TBM. They are followed by a long train of supporting ancillary trailers supplying all the mechanical and electrical equipment, pre-cast segments and other materials, as well as the means of removing the excavated material. Making an adjustment to either the vertical or horizontal alignment of the tunnel can only be accommodated by a series of small incremental adjustments during the construction of each individual ring within the front shield. Therefore, any change in the alignment for a large diameter TBM can take between 200-300m to accommodate during tunnelling. This is why the 200m westerly deviation of the point of commencement of Work No.1F, and consequential, corresponding deviations of its neighbouring numbered works, is sought at the western portal. The Applicant considered making equivalent provision at the eastern tunnel portal but concluded that it would not be appropriate at that location because of the constraints of the position of The Avenue, the existing A303 and the new highway alignment to the slip-roads to Countess Roundabout, all of which make it more difficult to adjust the position of the eastern portal and hence the smaller LoD simply to allow for alignment adjustments during the initial boring itself.</p> <p><u><i>Scenario where LoD is likely to be exercised</i></u></p> <p>The likely scenario under which such a deviation would be required is as a result of the further detailed design by the contractor as part of their risk management of the whole tunnelling operation. This would include: the development of preferred geological and hydrogeological conditions in which to commence tunnelling, and</p>
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		<p>iii. Please provide full justification for this clause and identify where the permitted degree of flexibility provided by all aspects of Article 7(7) has been assessed by the ES.</p> <p>iv. How does this reflect the guidance in Advice Note 15, paragraph 17?</p>	<p>avoiding features in the ground to reduce risks during tunnelling. These changes to the alignment would be made during detailed design, hence the requirement to provide the lateral limits of deviation in the draft DCO.</p> <p>iii. The Environmental Statement has fully assessed the limits of deviation provided for in Article 7. This is recorded in Table 2.1 and paragraph 2.3.1 in Chapter 2 (The Proposed Scheme) [APP-040].</p> <p>iv. The Applicant notes that section 17 (Providing flexibility – approving and varying final details) of Advice Note 15 <i>Drafting Development Consent Orders</i>, is concerned with the drafting of requirements that require further details to be submitted for approval but assumes that the question goes to the justification for the flexibility of project description sought via Article 7. Article 7 sets the scope of the consent that the Applicant seeks and as noted above, has been fully assessed in the Environmental Statement. The Applicant's justification for the scope of the flexibility that it seeks is set out above in its responses to parts (i) to (iii) of question DCO.1.26.</p>
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DCO.1.27	Applicant	<p>Article 7 – Limits of Deviation</p> <p>Please explain how Article 7 is intended to apply to those works comprised in the relevant work numbers which are presently shown by way of ‘illustrative’ plans? For example, what would be the scope for lateral or vertical deviation for Work No. 1A(ii) (Green Bridge One)?</p>	<p>The Applicant's use of the word "illustratively" in Schedule 1 to the draft DCO is addressed in response to question DCO.1.1.</p> <p>In terms of the Green Bridges, their locations are illustrated on the Rights of Way and Access Plans [APP-009]. The centreline of the parent work in which they are comprised may deviate laterally by 3 metres in accordance with article 7(3). This underlines why the locations on the Rights of Way and Access Plans are "illustrative" as those plans do not account for the 3m centreline limit of deviation.</p> <p>The vertical limits of deviation of the Green Bridges are set out in article 7(4) by reference to the levels shown on the Engineering Section Drawings (Plan and Profiles) [APP-010]. In the case of Green Bridge One, which forms part of Work No.1A, the vertical limit of deviation is upwards by up to 1 metre and downwards by up to 1 metre. Green Bridge One is shown at chainage 2850 in both plan and profile.</p>
DCO.1.28	Applicant	<p>Article 7 – Limits of Deviation</p> <p>Does Article 7 require amendment to include reference to the ES assessment? For example, the A556 (Knutsford to Bowden Improvement) DCO (from which support is drawn in relation to Article 11) includes the proviso that the “<i>deviation is within the scope of the environmental impact assessment</i>”.</p>	<p>No, this is unnecessary as the environmental statement has fully assessed the limits of deviation that are sought.</p>

DCO.1.29	Applicant	<p>Article 7 – Limits of Deviation</p> <p>Article 7(6) allows for deviation that would exceed the specified limits where effects “<i>would not give rise to any materially new or materially worse adverse environmental effects from those reported in the environmental statement.</i>”</p> <p>i. How would the deviations allowed for by Article 7(6) be assessed in the future as against the effects revealed by the ES?</p> <p>ii. What would be the mechanism for the Secretary of State to certify his or her satisfaction and should provision be made for that decision to be made in consultation with the relevant planning authority?</p> <p>iii. How does the flexibility that this article would allow sit with enabling full and appropriate public</p>	<p>i. The Applicant would include with any application for certification under article 7(6) an assessment of the proposed change that would assess whether or not the Applicant's proposal would give rise to any materially new or materially worse environmental effects in comparison with those reported in the environmental statement.</p> <p>ii. The Applicant anticipates that this would be certified by way of a letter. The Applicant agrees that provision should be made for consultation with the planning authority on matters related to its function. Although this is not included in the revised draft DCO submitted at Deadline 2 the Applicant will insert appropriate provision in the updated version of the draft DCO to be submitted at Deadline 3.</p> <p>iii. Any changes sought pursuant to article 7(6) would necessarily be minor in nature in order for them to “<i>not give rise to any materially new or materially worse adverse environmental effects from those reported in the environmental statement</i>”. With</p>
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		<p>consultation on any final scheme that might be delivered?</p> <p>iv. Should the deviations allowed for result in a material change to the project which has not been examined, by what means would this be consulted upon?</p> <p>v. This procedure would seem to have the scope to circumvent the procedures for applying for non-material and material changes to DCOs in the PA2008. The Explanatory Memorandum, paragraph 6.13, refers to:</p>	<p>no material new or worse effects, public consultation would not be justified, in the same way that development that does not result in likely significant effects does not require to be subject to environmental impact assessment and the public consultation obligations to go with it.</p> <p>iv. The changes envisaged by article 7(6) would necessarily be minor in nature in order for them to "<i>not give rise to any materially new or materially worse adverse environmental effects from those reported in the environmental statement.</i>" and it is very unlikely that a change within those constraints could, nonetheless, be material.</p> <p>The Applicant notes the '<i>Guidance on Changes to Development Consent Orders</i>' published by the Department for Communities and Local Government in December 2015 which discusses the factors relevant to whether a change is "<i>material</i>". The Applicant would anticipate that should the Secretary of State consider that a change sought under article 7(6) was material in the sense described in the Guidance, that he would refuse to certify the change.</p> <p>In terms of consultation, see the answer to (iii) above.</p> <p>v. Article 7(6) does not, and does not seek to, circumvent the procedures for material and non-material changes to development consent orders. The provision is included to provide a necessary degree of flexibility within the scope of the consent that is being applied for. Any changes would necessarily be within the scope of the environmental assessment.</p>
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		<p><i>“reducing the risk that the authorised development as approved cannot later be implemented for reasons which, at the time the application was made, could not reasonably have been foreseen”</i>. The Additional Submission 1 DCO application ‘signposting’ document, paragraph 2.4, claims that it is prudent to enable <i>“implementation to proceed without the scheme promotor having to recourse to additional consenting procedures, such as applications for material or non-material DCO changes”</i>. Please explain why potential budgeting and programming implications of making such an application can be said to justify not making use of the statutory procedures in the PA2008, by way of an application to make a change to the DCO, rather than the proposed ad hoc certification process by the Secretary of State?</p>	
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		vi. Why has Advice Note 15, paragraph 17, not been followed in this respect?	<p>vi. The Applicant notes that section 17 (Providing flexibility – approving and varying final details) of Advice Note 15 <i>Drafting Development Consent Orders</i>, is concerned with the drafting of requirements that require further details to be submitted for approval but assumes that the question goes to the justification of the flexibility of project description sought via Article 7.</p> <p>Article 7 describes the scope of the consent that the Applicant seeks and as noted above, this has been fully assessed in the Environmental Statement. The Applicant's justification for the scope of article 7 is discussed in response to (i) to (v) above.</p>
DCO.1.30	Wiltshire Council Natural England	<p>Article 7 – Limits of Deviation</p> <p>Please comment on the limits of deviation proposed for the development.</p>	N/A
DCO.1.31	Applicant	<p>Article 11 – Temporary stopping up of streets</p> <p>i. Please explain why the streets that would be the subject of this power cannot be identified and referred to in a schedule at this stage?</p>	<p>i. The full details of the traffic management measures required during construction are not yet available. These would be developed in due course once the full construction methodology has been developed.</p> <p>It would be impractical at this stage to list all streets that could be subject to this power. While it is theoretically possible to list every street that could conceivably be temporarily stopped or diverted on a precautionary basis the Applicant considers that there would be little benefit to this approach which would necessarily risk closing off options for traffic management that may prove</p>

		<p>ii. Does that represent a necessary and proportionate approach?</p>	<p>beneficial and would otherwise be acceptable to the street authority.</p> <p>The Applicant's approach to this article is well precedented, see for example article 13 of the A160/A180 (Port of Immingham Improvement) Development Consent Order 2015, article 14 of the A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016, article 10 of the Silvertown Tunnel Order 2018 and article 12 of the A19/A184 Testo's Junction Alteration Development Consent Order 2018. Each of these Orders adopts materially the same wording and does not separately list the streets in a separate schedule.</p> <p>ii. Yes, the approach is necessary in order to allow for the proper management of traffic during the construction of the Scheme. It is proportionate in that it has appropriate safeguards on its exercise, see in particular article 11(4) which requires the consent of the street authority to be obtained. Without this power it would be necessary to request the traffic authority for the relevant street to make a traffic regulation Order under the Road Traffic Regulation Act 1984, imposing a cost and administrative burden on them, impeding the proper management of traffic during construction and ultimately delaying the delivery of the Scheme, a nationally significant infrastructure project.</p>
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DCO.1.32	Applicant	<p>Article 12 – Access to works</p> <p>i. Please consider whether the words “<i>with the consent of the street authority</i>” should be included.</p> <p>ii. Please provide further justification for this general power which would permit the creation of means of access without examination.</p>	<p>i. The Applicant has considered this suggestion and is of the view that, for the reasons set out below, the inclusion of this drafting would not be appropriate to the circumstances of this particular Scheme. The Scheme is a Nationally Significant Infrastructure Project and the Applicant must have the ability to form accesses, or improve existing accesses, to standards and to timescales sufficient for its purposes in connection with the Scheme. It would not be appropriate to add drafting with the potential to enable a street authority to refuse consent for the Applicant to do so, thereby impeding the delivery of the Scheme. It is entirely appropriate for the Applicant, as the strategic highway authority, to exercise this general power to ensure access to works, without it being made subject to third party approval.</p> <p>ii. As noted above the general power is necessary because the location of all means of access has yet to be determined. This will follow at the detailed design stage, once the full construction methodology has been determined. For example, the precise layout of accesses to construction compounds will need to take into account factors such as the swept path of the construction vehicles together with appropriate landscape mitigation which cannot be fixed at this stage. The general power is intended to put the Scheme on an equivalent footing with schemes authorised under the Highways Act 1980 which would benefit from the wide power contained in section 129 of that Act. The exercise of the power would be subject to the requirements, in particular requirement 4 which secures compliance with the measures in the Outline Environmental Management Plan [APP-187], see in particular:</p>
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			<ul style="list-style-type: none"> • MW-G20 which deals with the suitability of accesses for emergency services; • MW-G28 which deals with construction compounds generally (including access); • MW-G32 which deals with communication and collaboration with emergency services and the highway authority in respect of site access • MW-COM1 which deals with communications with landowners and occupiers. <p>Given these controls and the information on where the scheme could interact with other elements requiring access there is sufficient information before the examination for the ExA and the Secretary of State to comprehend the works that could be covered by this Article.</p> <p>The existence of the general power in article 12 must also be seen in the context of article 10 (permanent stopping up of streets and private means of access) which provides for the creation of new, and replacement of stopped-up, means of access. The specific power in article 10 applies to the provision of accesses that are described in detail in Schedule 3 to the draft DCO and shown on the Rights of Way and Access Plans [APP-009].</p>
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		<p>iii. The Explanatory Memorandum in relation to this article refers to made DCOs that set a precedent for this general power. Please explain why the quoted examples should be regarded as providing reliable precedents and set out any differences between the drafting in those DCOs and the article as drafted in the dDCO.</p>	<p>iii. The precise form of words that the Applicant has adopted for article 12 is taken from the A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016.</p> <p>The precedents cited in the Explanatory Memorandum are intended to show the range of statutory orders within which the principle of a general power has been considered appropriate. The Northumberland County Council (A1 – South East Northumberland Link Road (Morpeth Northern Bypass)) Development Consent Order 2015 is an example of an early form of this general power where the general power was granted to a local highway authority; the Silvertown Tunnel Order 2018 is an example of the general power being granted in respect of another tunnel scheme.</p> <p>The table below shows the drafting differences from article 12 of the draft DCO in red:</p> <table border="1" data-bbox="1182 874 2112 1361"> <thead> <tr> <th data-bbox="1182 874 1426 917">Order</th> <th data-bbox="1426 874 2112 917">Drafting</th> </tr> </thead> <tbody> <tr> <td data-bbox="1182 917 1426 1361">The draft DCO [APP-020]</td> <td data-bbox="1426 917 2112 1361">Article 12: The undertaker may form and lay out means of access, or improve existing means of access at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.</td> </tr> </tbody> </table>	Order	Drafting	The draft DCO [APP-020]	Article 12: The undertaker may form and lay out means of access, or improve existing means of access at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.
Order	Drafting						
The draft DCO [APP-020]	Article 12: The undertaker may form and lay out means of access, or improve existing means of access at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.						

			<p>The Northumberland County Council (A1 – South East Northumberland Link Road (Morpeth Northern Bypass)) Development Consent Order 2015</p>	<p>Article 16: The undertaker may, for the purposes of the authorised development—</p> <p>(a) form and lay out means of access, or improve existing means of access, in the locations specified in columns (1) and (2) of Parts 1 and 2 of Schedule 8 (access to works); and</p> <p>(b) with the approval of the relevant planning authority after consultation with the highway authority (where the highway authority is not the undertaker), form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.</p>
			<p>The A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016</p>	<p>Article 15: The undertaker may, for the purposes of the authorised development, form and lay out means of access, or improve existing means of access at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.</p>

			<p>Silvertown Tunnel Order 2018</p>	<p>Article 11: TfL may, for the purposes of the authorised development and with the consent of the street authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as TfL reasonably requires for the purposes of the authorised development.</p>
			<p>In terms of the drafting differences and the different circumstances prevailing between the schemes listed above and the Applicant's current Scheme:</p> <ul style="list-style-type: none"> • The A1 DCO is a local highway authority Order. It specifically lists private means of access under sub-paragraph (a). The Applicant's draft DCO also does this, but it is done under the ambit of article 10 which deals with Rights of Way and Private Means of Access generally. This is reflective of a different style of drafting between Northumberland County Council and the Applicant, albeit the underlying principles and content are substantially the same. It is also a local highway authority scheme so, in practice, the requirement for street authority consent is of limited value as the Council itself would be the street authority for the relevant roads; • The Silvertown Tunnel scheme was promoted by Transport for London who hold a unique position in terms of highway maintenance and regulation within London. That Scheme was located within the capital which has very different and more complex arrangements for the regulation of traffic and maintenance of public highways where multiple highway authorities' areas are in close proximity to one another. In contrast, with the Applicant's 	

			<p>scheme the only highway authorities will be Applicant and Wiltshire Council. This explains the requirement for street authority consent to the exercise of the general power in the Silvertown Tunnel Order;</p> <ul style="list-style-type: none"> The A14 Scheme is reflective of the Applicant's preferred approach, as the strategic highway company, which has been followed in other Highways England Orders, see for example article 15 of the M4 Motorway (Junctions 3 to 12) (Smart Motorway) Development Consent Order 2016 and more recently article 14 of the A19/A184 Testo's Junction Alteration Development Consent Order 2018. <p>For the reasons outlined in response to questions (i) and (ii) above, the Applicant does not propose to include any drafting that would make the exercise of the power subject to third party approval.</p>
DCO.1.33	Applicant	<p>Article 13 (7)(a) – Discharge of water</p> <p>Please consider a drafting change as a result of the Homes and Communities Agency being replaced by Homes England?</p>	<p>While Homes England and the Regulator of Social Housing replaced the Homes and Communities Agency in January 2018, the underlying entity remains the Homes and Communities Agency. Homes England still holds and acquires land interests in the name of the Homes and Communities Agency.</p> <p>The Applicant considers that it remains appropriate to refer to the Homes and Communities Agency in the context of this article but will clarify the drafting to acknowledge the change of brand such that article 13(7)(a) will instead read "<i>Homes and Communities Agency (known as Homes England)</i>".</p>

DCO.1.34	Environment Agency	<p>Article 13 (7)(a) – Discharge of water</p> <p>Please comment on the Article 13 provisions generally and the safeguard provided by Article 13(6) in particular.</p>	<p>The Applicant notes that the provision authorises the discharge of water to watercourses and sewers. Article 13(6) ensures that the Applicant would still be required to obtain an environmental permit should the discharge be such that one is required under the Environmental Permitting (England and Wales) Regulations 2015.</p>
DCO.1.35	Applicant	<p>Article 14 – Protective works to buildings</p> <p>i. Notwithstanding the reference to the Model Provisions and made DCOs referred to in the Explanatory Memorandum, paragraph 6.36, explain further why is it necessary to have this power in the circumstances of this particular project.</p>	<p>i. As is explained in paragraph 6.40 of the Explanatory Memorandum [APP-021] "<i>The article is necessary to make appropriate provision to carry out protective works in the unlikely event that the need to do so arises.</i>". As a precautionary power the Applicant does not anticipate that it would be exercised. Its inclusion is necessary to ensure that should the circumstances arise where protective works are required to protect third party interests, the Applicant would be able to carry out those necessary works.</p> <p>It is therefore prudent, and in the interests of both the Applicant and third party building owners, to empower the Applicant to protect buildings from harm in the unlikely circumstances that the need to do so arises. The power is deliberately framed to allow the Applicant to carry out works before that harm arises, therefore avoiding the greater harm and disruption that would arise if action could only be taken after damage occurred. It is accompanied by both a right to compensation and a notice procedure for owners and occupiers that can result in a dispute being taken to arbitration in accordance with article 58.</p>

		<p>ii. Please identify the ‘certain buildings’ that may require protective works on the edge of the Order limits referred to in the Explanatory Memorandum, paragraph 6.37.</p>	<p>Without this power the Applicant could not carry out protective works. This would likely lead to greater compensation claims being made against it, increasing the cost to the public purse, and greater disruption and distress to the affected owners and occupiers</p> <p>ii. The Applicant does not anticipate it being necessary to exercise this power. The certain buildings referred to are those on land adjacent to the Order limits. As mentioned above the Applicant England remain of the view protective works are not required but considers it prudent to ensure that should the need arise, it is empowered to take protective action.</p>
DCO.1.36	Applicant	<p>Article 15(1)(b) – Authority to survey and investigate the land</p> <p>i. Please identify the land adjacent to, but outside the Order limits where surveys or investigation work would potentially be needed and explain why.</p>	<p>i. The Applicant has included within the Order limits all land that it considers is necessary to delivery the Scheme. However, the Applicant can envisage circumstances where it would be necessary to carry out surveys outside the Order limits to facilitate the delivery of the Scheme. The Applicant is not at this time able to identify exhaustively the land adjacent to, but outside the Order limits where surveys or investigations under this article may be required. Surveys or investigations outside of the Order limits may be required to survey ecological receptors in land adjacent to the Order limits where construction activities are taking place to the Order limits, for example. Similarly, it may reasonably be necessary to survey groundwater levels at locations outside of the Order limits to respond to unforeseen and unforeseeable circumstances.</p>

		<p>ii. The Explanatory Memorandum, paragraph 6.43, refers to the Model Provisions and the Silvertown Tunnel DCO as setting a precedent for this general power. It acknowledges that the drafting departs from the model provisions in that it would apply on land outside but adjacent to the Order limits where “<i>reasonably necessary</i>”. Please explain why this power is considered to be necessary and proportionate in the particular circumstances of this case.</p> <p>iii. Please set out any differences between the circumstances which justified the inclusion of the article in the Silvertown Tunnel DCO and the situation in this case and any differences in the drafting of the comparable article in that DCO and the article as drafted in the</p>	<p>ii. By the nature of its drafting, the power to survey on land adjacent to the Order limits may only be carried out where it is “reasonably necessary”. If the purpose of a survey could be achieved within the Order limits, it would not be “reasonably necessary” to conduct it on land adjacent to but outside Order limits. Similarly, while wider than the Order limits, it is clearly constrained to land adjacent to the Order limits.</p> <p>In terms of proportionality, the power could only be exercised, whether within or without the Order limits, on 14 days' notice to the owner and occupier of the land. The Applicant is obliged to compensate the owners and occupiers for any loss suffered.</p> <p>iii. The circumstances between the Silvertown scheme and the Applicant’s Scheme are similar in that both include the provision of a significant highway tunnel crossing under a sensitive receptor. In Silvertown's case that receptor was the River Thames, in the Applicant's case it is the WHS. In both cases it is justified to include a limited surveying power to outside of the Order limits.</p> <p>The drafting differences are identified below. In the main the drafting is identical save that the term "the undertaker" replaces "TfL" for obvious reasons, and the Applicant has clarified that investigations of the land include investigations of watercourses,</p>
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		dDCO.	<p>groundwater and static water bodies. These departures from the Silvertown precedent add clarity rather than change to the scope of the provision.</p> <p>It should be noted that the Applicant's updated DCO submitted at Deadline 2 will delete paragraph (7) and the words "but such consent not to be unreasonably withheld" in paragraph (4) as these matters are addressed in article 59 (consents, agreements and approvals).</p> <p>16.—(1) TfL <u>The undertaker</u> may for the purposes of this Order enter on—</p> <p>(a) any land within the Order limits; and</p> <p>(b) where reasonably necessary, any land which is adjacent to but outside the Order limits,</p> <p>and—</p> <p>(i) survey or investigate the land <u>(including any watercourses, groundwater, static water bodies or vegetation on the land)</u>;</p> <p>(ii) without limitation to the scope of sub-paragraph (i), make <u>any excavations or</u> trial holes <u>and boreholes</u> in such positions on the land as TfL the undertaker thinks fit to investigate the nature of the surface layer, <u>and</u> subsoil <u>and groundwater</u> and remove soil samples <u>and discharge water</u></p>
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			<p><u>samples on to the land;</u></p> <p>(iii) without limitation to the scope of sub-paragraph (i), carry out ecological or archaeological investigations on such land, including making any excavations or trial holes on the land for such purposes; and</p> <p>(iv) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes <u>and boreholes</u>.</p> <p>(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days' notice has been served on every owner and occupier of the land.</p> <p>(3) Any person entering land under this article on behalf of TfL—</p> <p>(a) must, if so required, before or after entering the land, produce written evidence of their authority to do so; and</p> <p>(b) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.</p> <p>(4) No trial holes <u>or boreholes</u> are to be made under this article—</p> <p>(a) in land located within the highway boundary without the consent of the highway authority; or</p>
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			<p>(b) in a private street without the consent of the street authority, <u>but such consent must not be unreasonably withheld.</u></p> <p>(5) TfL must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the powers conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.</p> <p>(6) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.</p> <p><u>(7) If either a highway or a street authority which has received an application for consent under paragraph (4) fails to notify the undertaker of its decision within 28 days of receiving the application, that authority is deemed to have granted the consent.</u></p>
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DCO.1.37	Applicant	<p>Article 16 – Removal of human remains</p> <p>i. Notwithstanding the reference to the Model Provision in the Explanatory Memorandum, paragraph 6.44, explain further why it is necessary and proportionate to have this power in the particular circumstances of this project.</p>	<p>i. The article is necessary in the circumstances of the Scheme because, given the nature of the historic landscape in which it is set, the Applicant considers there is a reasonable prospect that human remains may be encountered. Article 16 provides a single clear set of procedures that would be followed in such cases. Without this article the Applicant would be required to obtain a faculty from an ecclesiastical court before removing human remains (see section 25 Burial Act 1857). The Burial Act 1857 is problematic in that while it was no doubt enacted with traditional burial grounds (graveyards etc.) in mind, together with the issues encountered during the Victorian era with the unauthorised removal of human remains, its terms are so broad that it would catch the removal of remains that could be encountered through the delivery of the Scheme. This would risk unduly delaying the delivery of the Scheme.</p> <p>The power to remove human remains is proportionate in that it is sensitive to the wishes of those related to the deceased in cases where the remains are reasonably believed to have been interred within 100 years. It prohibits the removal of remains until the procedures set out in the article are complied with. Those procedures comprise:</p> <ul style="list-style-type: none"> • publicity inviting relatives or personal representatives of the deceased to claim the remains within 56 days; • requires the remains to be treated in accordance with relatives' or personal representatives' wishes at the Applicant's expense; • if no such person comes forward the Applicant is required to re-inter the remains in a suitable burial ground and send a completed certificate confirming the place of removal and re-interment of the remains to the Registrar General to
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		<p>ii. The Explanatory Memorandum acknowledges that the drafting of paragraph (12) departs from the model provision and states that this approach has precedent in the Crossrail Act 2008. Please explain further why that Act and project should be regarded as providing an appropriate comparison and reliable precedent for this scheme? Please identify any differences in the drafting of the comparable section of that Act and the article as drafted in the dDCO.</p>	<p>ensure an accessible public record of the removal of the remains is maintained.</p> <p>ii. It is the approach in the Crossrail Act 2008 that the Applicant cites it as precedent, rather than the detail of its drafting. The Crossrail Act 2008 includes a whole Schedule (Schedule 16) to tackle the issue.</p> <p>To adopt that approach, as is explained in paragraph 6.45 of the Explanatory Memorandum [APP-021] the Applicant has adapted the equivalent Model Provision through the use of article 16(12), which follows paragraph 1(3) of Schedule 16 to the Crossrail Act 2008 which provides that the equivalent notice procedure to that referred to above does not apply in respect of remains interred more than 100 years ago Article 16(13) adopts the definition of "relative" in paragraph 2(7) of Schedule 16 to the Crossrail Act 2008, although the Applicant goes further in paragraph (13) of article 16 by also defining "personal representative" for which there is no definition in the Crossrail Act 2008.</p> <p>Article 16(12) ensures that no notice is required to be published under article 16(3) where the Applicant is satisfied that the remains were interred more than 100 years ago or that no relative or personal representative of the deceased is likely to object to the removal of the remains in accordance with the article. the Applicant consider that it is reasonable to expect that it is unlikely that there would be any surviving relatives (as defined in article 16(13)) of persons interred more than 100 years ago.</p> <p>The Applicant consider that the scheme authorised by the Crossrail Act 2008 is comparable to the Scheme for which it seeks development consent in that the delivery of both projects</p>
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			would risk delay were they required to comply with the existing procedures for the removal of human remains.
DCO.1.38	Applicant	<p>Article 17 – Felling or lopping of trees and hedgerows</p> <ul style="list-style-type: none"> i. Please confirm that the power to fell or lop any tree would not affect any tree protected by a tree preservation order (TPO) or situated in a conservation area. ii. If any trees covered by this article are protected by virtue of TPOs or being situated in a conservation area, in the light of Advice Note 15 paragraph 22.2, please specifically identify them by reference to a plan and schedule. 	<ul style="list-style-type: none"> i. The Applicant confirms article 17 would not authorise the felling or lopping of trees protected under a tree preservation order or situated within a conservation area. ii. This is unnecessary as the Applicant is not seeking authorisation to carry out works to any protected trees, see (i) above.

		<p>iii. The Explanatory Memorandum, paragraph 6.49, makes reference to the Hedgerow Regulations 1997. Explain why this power is necessary in relation to hedgerows given the existing powers available to the Applicant to remove hedgerows under those regulations.</p> <p>iv. In the light of Advice Note 15, paragraph 22, and Good Practice point 6, please identify hedgerows affected in a schedule and on a plan accompanying the dDCO and also identify those hedgerows that are 'important' hedgerows.</p>	<p>iii. Article 17 does not disapply the restrictions on the removal of hedgerows under the Hedgerow Regulations and the regulations would remain in force against works carried out under the Order.</p> <p>However, as is noted in paragraph 6.50 of the Explanatory Memorandum [APP-021], the Applicant in any event has the benefit of regulation 6(1)(h) of the Hedgerow Regulations 1997 which has the effect of deeming the grant of hedgerow consent where the Applicant is carrying out its functions in respect of any highway for which it is the highway authority or where it has the same powers as a local highway authority.</p> <p>iv. As noted above, the restrictions on the removal of hedgerows under the Hedgerow Regulations 1997 would be unaffected by this article and so the recommendations in paragraph 22 and Good Practice Point 6 of Advice Note 15 do not apply. However, the Environmental Statement includes details of hedgerows in section 8.6 (Habitats) and Table 8.11 (Summary evaluation of habitats present within the Scheme and study area) [APP-046]. Also Figure 8.5 (Phase 1 Habitat Survey [APP-151] details all of the hedgerows (but does not differentiate 'important hedgerows'). Figure 8.6 (Botany and lichen survey areas and important hedgerows) [APP-152] details the one confirmed important hedgerow in the vicinity of the Scheme, that hedgerow being near Vespasian's Camp. Further details are available in Appendix 8.5 (Hedgerow Survey Report) [APP-240]. No hedges that qualify as 'important hedges' under the Hedgerow Regulations would be lost as a result of the Scheme.</p>
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		<p>v. The Explanatory Memorandum, paragraph 6.48, states that the powers available to the Applicant under the Highways Act 1980 would be insufficient to protect the tunnel comprised in the authorised development. Please explain why the tunnel requires special consideration in this respect.</p>	<p>v. Highway authorities have the benefit of the power in section 154 Highways Act 1980 to cut back any hedge, tree or shrub that <i>overhangs</i> any highway, road or footpath so as to endanger, obstruct or interfere with the lawful use of the highways. The tunnel requires special consideration as it is conceivable, over its operational lifetime, that it may be threatened from damage from root intrusion, which would not fall within the scope of the power in section 154. Article 17 makes provision for addressing the risk of damage to the authorised development from root intrusion.</p>
DCO.1.39	Applicant	<p>Article 18 – Maintenance of drainage works</p> <p>Please provide a full explanation of and justification for the inclusion of this Article.</p>	<p>The proposed development involves works to drains in an area that has historically been subject to Inclosure Act 'awards'.</p> <p>As stated in the Explanatory Memorandum [APP-021]:</p> <p><i>"The purpose and effect of this article is to make it clear that any realignment of award drains or other works to them that are carried out as part of the authorised development do not affect the existing allocation of responsibility for maintenance of those drains, unless this is agreed between Highways England and the responsible party."</i></p> <p>As such, this article is simply ensuring the 'status quo' remains in terms of responsibility for drainage works, following any works carried out, absent an agreement between the Applicant and the responsible party.</p>

DCO.1.40	Environment Agency	<p>Article 18 – Maintenance of drainage works</p> <p>Please comment upon the purpose and effect of this Article in relation to responsibility for maintenance of drainage works.</p>	N/A
DCO.1.41	Applicant	<p>Article 21 – Time limit for exercise of powers to possess land temporarily or to acquire land compulsorily</p> <p>The power provided by Article 21(2) would allow the undertaker to remain in Temporary Possession of the land indefinitely.</p> <p>Notwithstanding the inclusion of similar powers in other made DCOs, please provide full justification for the need for this power given the particular circumstances of this project.</p>	<p>Article 21(1) ensures that after the expiry of 5 years from the date the DCO comes into force, the powers of compulsory acquisition and temporary possession for the purposes for construction may not be exercised. This gives certainty to affected persons so they can be sure that, if prior to that date land has not been acquired or possessed temporarily for the purposes of construction, their land will not be acquired or possessed temporarily for those purposes.</p> <p>Article 21(2) clarifies that, if temporary possession is taken within the first 5 years following the date the Order comes into force, the authorisation of that temporary possession does not cease prematurely on that date. Article 21(2) does not set the limit of the duration of temporary possession, rather it limits when possession may be taken.</p> <p>The limits on the duration of temporary possession for the purposes of construction of the authorised development are set out in article 29(3) which provides that the Applicant must return the land possessed temporarily to the owner within one year of the completion of the work(s) for which possession was taken, unless agreement to the contrary is reached with the owner. The one year period is required in order to ensure that the land is restored appropriately when it is returned to the landowner or occupier. The Applicant would be motivated to restore and return</p>

			<p>the land promptly to reduce the quantum of any compensation claims.</p> <p>The justification for the temporary possession power is explained in the Applicant's response to DCO.1.48.</p>
DCO.1.42	Applicant	<p>Article 22 – Compulsory acquisition of rights</p> <p>This Article provides a wide power to acquire rights over the Order land or impose new restrictive covenants affecting the land.</p> <p>i. Please provide full justification for seeking this wide power over all of the Order land.</p>	<p>i. The general power to acquire rights or impose restrictive covenants over the "Order land" is set out in paragraph (1) of article 22. The "Order land" is defined in article 2(1) as meaning <i>"the land shown coloured pink, the land shown hatched pink, the land shown coloured blue and the land shown coloured grey on the land plans, and which is described in the book of reference."</i> It should be noted that the definition excludes the land shown in green on the Land Plans [APP-006] which denotes land subject to the power of temporary possession only for the purposes of construction under article 29.</p> <p>The general power is also subject to paragraph (2) which limits the power of acquisition to only acquire rights and impose restrictive covenants over the land listed in Schedule 4, and shown in blue on the Land Plans [APP-005], for the purposes stated in that Schedule. Paragraph (2) also limits the power to acquire rights over the land listed in Schedule 6, the subsoil land shown hatched pink on the Land Plans, to rights or restrictive covenants for the purposes specified in that Schedule.</p>

			<p>The land coloured grey on the land plans relates to special category land which is subject to the specific controls in article 34 (special category land).</p> <p>When taken together with paragraph (2), article 34 and the definition of "Order land", the general power to acquire rights or impose restrictive covenants is limited to land which the Applicant seeks authorisation to acquire outright and which is shown coloured pink on the Land Plans. The Applicant's justification for the full acquisition of this land is set out in the Statement of Reasons [APP-023] and on a plot by plot basis in Table 1 to the Statement of Reasons.</p> <p>This general power to acquire rights or impose restrictive covenants over the "pink land" is justified because it may be the case that the Applicant could achieve its aim through an alternative means, through the exercise of a lesser power to acquire rights or impose restrictive covenants, instead of acquiring the "pink land" outright and depriving the owners of that land wholly and permanently. Having the flexibility to exercise its powers in this way, and to offer an alternative strategy to landowners where appropriate, would allow the Applicant to take this proportionate approach should the opportunity arise.</p>
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		<p>ii. The Explanatory Memorandum, paragraph, 7.8 draws support for the power to impose restrictive covenants from the Silvertown Tunnel Order 2018. Please set out the particular circumstances which justified the inclusion of the article in the Silvertown Tunnel DCO and the particular circumstances relied upon to justify its inclusion in this case.</p>	<p>ii. The reference to the Silvertown Tunnel Order 2018 in paragraph 7.8 of the Explanatory Memorandum [APP-021] is discussing the Applicant's approach to the acquisition of subsoil for the tunnel and the acquisition of rights and restrictive covenants over land at and below surface level, for the purposes of protecting the structural integrity of the tunnel from potential future conflicting development. In terms of the Applicant's Scheme, the land that would be affected in this way is listed in Schedule 6 and shown hatched pink on the Land Plans [APP-005] and is given effect in the draft DCO through article 27. This is wholly in line with paragraph 24.1 of Advice Note 15 which refers to the Silvertown Tunnel Order in footnote 23 as an example of where the imposition of restrictive covenants has been considered to be appropriate.</p> <p>In relation to the Applicant's Scheme, the justification for this power (to impose restrictive covenants) is set out in the Statement of Reasons [APP-023] at paragraphs 5.3.4 to 5.3.8 and is illustrated in Figure 1.</p> <p>There is parity in the circumstances of the Scheme and the Silvertown Tunnel Order 2018, in that the Applicant is seeking to acquire the subsoil land necessary for the tunnel and its support and to acquire rights and restrictive covenants up to and including the surface of the land above, in order to protect the tunnel (as explained above). This would enable land uses compatible with the tunnel to continue without interference. As with the Silvertown Tunnel Order 2018, this approach is more proportionate than simply acquiring (and thereby potentially sterilising) all of the subsoil and surface.</p>
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		<p>iii. The corresponding article in that DCO was subject to the proviso that the undertaker TfL could not impose restrictive covenants affecting the land situated within identified regions. Thus, it would seem that the precedent relied upon was not drafted as widely as that now sought. Please explain this difference in the drafting of the comparable article in that DCO and the article as drafted in the dDCO.</p>	<p>However, it should be noted that the imposition of restrictive covenants in respect of the land in Schedule 6 (land in which only subsoil or new rights in and above subsoil and surface may be acquired) is achieved through article 27.</p> <p>iii. The restrictions to the imposition of restrictive covenants referred to in article 22(5) of the Silvertown Tunnel Order 2018 related to land within the control of the Port of London Authority and it appears that TfL considered that it would not be appropriate to impose restrictions over land that would affect the Port of London Authority's undertaking. That aside, the approach to the general power remains as described in (i) above. That specific concern of TfL to avoid imposing restrictions on the Port of London Authority does not apply to the Applicant's Scheme.</p>
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		<p>iv. Please comment as to whether such a wide power is necessary and proportionate in the light of the Secretary of State's decision, paragraph 62, of the M4 Motorway (Junctions 3 to 12) (Smart Motorway) DCO which expressed the view that it was inappropriate in that case to give such a wide power over any of the Order land in the absence of a specific and clear justification for conferring such a wide-ranging power without an indication of how the power would be used.</p> <p>v. Please provide specific and clear justification for the use of the power sought in this case and an indication of how it would be used.</p>	<p>iv. In terms of how the power to impose restrictive covenants might be used, the Applicant's position is readily distinguishable from the factors influencing the Secretary of State's decision on the M4 Motorway (Junctions 3 to 12) (Smart Motorway) DCO. In the Applicant's DCO documentation the purpose for which the power to impose restrictive covenants is clearly articulated – see column (4) of Schedule 4 (Land in which only new rights etc., may be acquired) and of Schedule 6 (Land in which only subsoil and new rights in and above subsoil and surface may be acquired) to the draft DCO [APP-020]. Also, see column (3) of Tables 2 and 3 of Appendix A to the Statement of Reasons [APP-023]. As noted in the answer to (i) above, the general power is not wide, it affects only the "pink" land which the Applicant would be authorised to acquire outright if the Order was made. The acquisition of rights or the imposition of restrictive covenants over the "pink" land would provide the flexibility to enable a more proportionate approach to the acquisition of the land interests necessary to deliver the Scheme. Without this provision the Applicant would have no alternative but to acquire the land outright if an alternative agreement could not be reached by agreed private treaty.</p> <p>v. see responses to (i) and (iv) above. The general power would be used as an alternative to outright acquisition. For example plot 04-17 is required for the new A303, including the River Till viaduct. It may be that once the detailed design of the viaduct is complete the Applicant may seek to acquire only the land required to accommodate the viaduct but impose restrictions necessary to protect the viaduct embankments, together with the necessary rights to access the embankment for maintenance purposes, over the land on the surface that is crossed by the</p>
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		<p>vi. In the light of Advice Note 15, paragraph 24.1, and Good Practice point 9, please provide justification which is specific to each of the areas of land over which the power is being sought, rather than generic reasons and include a clear indication of the sorts of restrictions which would be imposed.</p>	<p>viaduct. This would be as an alternative to the outright acquisition of all of the land.</p> <p>However, at this time, pending the detailed design, the Applicant is not in position to more narrowly delineate the rights and restrictions that it would need and must maintain its power of outright acquisition in order to deliver the Scheme. The general power in article 22(1) would enable this more proportionate exercise of powers as an alternative to acquisition at a later date.</p> <p>vi. In respect of the general power in article 22(1) affecting the land shown in pink on the Land Plans [APP-005], please see H the Applicant's responses to questions (i), (iv) and (v) above. the Applicant's justification for the acquisition of the land is set out on a plot by plot basis in Table 1 in the Statement of Reasons.</p> <p>In respect of the land shown in blue on the Land Plans the purposes for which rights may be acquired and restrictive covenants be imposed is specified for each plot in Schedule 4 to the draft DCO. The Applicant's justification for the acquisition of rights and the imposition of restrictive covenants is set out on a plot by plot basis in Table 2 in the Statement of Reasons.</p> <p>In respect of the rights to be acquired and restrictive covenants to be imposed in respect of the subsoil and surface shown hatched pink on the Land Plans, please see Schedule 6 to the draft DCO which sets out the purposes for which such rights may be acquired and restrictions imposed. The Applicant's justification for the acquisition of rights and the imposition of restrictive covenants is set out on a plot by plot basis in Table 3 in the Statement of Reasons. Generally, the rights and restrictions required relate to the diversion of statutory undertaker's</p>
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		<p>vii. In the light of Advice Note 15, paragraph 24.3, please identify the land to which the restrictive covenants relate and describe the nature of the restrictive covenants sought in a schedule and provide full justification for each covenant.</p> <p>viii. Explain further why power to create new rights over all the Order land is necessary and proportionate, as opposed to limiting such a power to create new rights over the land listed in Schedules 4 and 6.</p>	<p>apparatus and the restrictions relate to the protection of that apparatus. In terms of the tunnel, restrictive covenants would be required to protect the tunnel structure and to ensure it was prevented from being subject to the impacts of potentially conflicting development. This approach is wholly in line with paragraph 24.2 of Advice Note 15.</p> <p>vii. Please see the Applicant's responses to question (vi) above.</p> <p>viii. Please see the Applicant's responses to questions (i), (ii), (iv), (v) and (vi) above. The general power to acquire rights and impose restrictions would only apply as an alternative to the outright acquisition of land shown coloured "pink" on the land plans. In adopting this approach, and drafting the DCO to ensure it is a deliverable approach, the Applicant has sought to respond to the Government policy requirement (as set out in paragraph 8 of the Guidance issued in September 2013 by the (then) Department for Communities and Local Government – Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land) to consider potential alternatives to (outright) compulsory acquisition.</p>
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DCO.1.43	Applicant	<p>Article 22 – Compulsory acquisition of rights</p> <p>A number of Interested Parties raise the issue of the potential for the restriction (via restricted covenants) of future archaeological research within the affected part of the WHS (e.g. above the tunnel route) as being contrary to the provisions of the Stonehenge WHS Management Plan.</p> <p>Please comment on these concerns in respect of the need for restrictive covenants and their potential to conflict with the WHS management plan.</p>	The Applicant's response to this question is addressed in its response to question CH.1.27.
DCO.1.44	Wiltshire Council	<p>Article 22 – Compulsory acquisition of rights</p> <p>Please explain in detail the concern raised as regards the power to impose restrictive covenants on groundworks on land above the tunnel and the implications that might have for archaeological investigations in the WHS.</p>	N/A

DCO.1.45	Applicant	<p>Article 24 – Power to override easements and other rights</p> <ul style="list-style-type: none"> i. Please explain why this power is necessary given the effect of sections 152 and 158 of the PA2008 which appear to cover the same issue? ii. Does this Article provide anything additional which sections 158 and 152 do not provide for which should reasonably be included in this particular dDCO? 	<p>i. & ii. This article covers the same substantive matters as are addressed in sections 152 and 158 of the Planning Act 2008. However, those sections only set out in broad terms the principles. The purpose of article 24 is to clearly state how, in practical terms, those provisions are given effect.</p> <p>The Applicant is aware that it has been suggested that sections 203 to 205 of the Housing and Planning Act 2016 would supersede the effect of this article. The Applicant is of the clear view that this would not be the case. The power in section 203 of the Housing and Planning Act 2016 has effect only in respect of <i>building or maintenance</i> work. Article 24(2)(b) extends this to apply to "the exercise of any power authorised by this Order". The extension to the exercise of other Order powers is necessary to ensure that the Applicant can exercise its full range of powers under the DCO and to ensure that persons whose rights are overridden by that exercise have a clear and unambiguous route to claim compensation if it is due to them.</p> <p>In light of the considerations articulated above, the Applicant considers the inclusion of this power in the DCO to be necessary for these purposes and its inclusion in the DCO to be desirable, in that it draws this together clearly in one place on the face of the DCO, avoiding the need to cross-refer to extraneous material contained in two separate Acts.</p>
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DCO.1.46	Applicant	<p>Article 27 – Subsoil or new rights only to be acquired</p> <p>This Article includes power to impose restrictive covenants. In the light of Advice Note 15, paragraph 24, please describe the nature of the restrictive covenants sought in a schedule or the Book of Reference.</p>	<p>The rights that may be acquired and the restrictions that would be imposed under article 27 are subject to article 22(2) which limits those rights and restrictions to being for the purposes set out in column (4) of Schedule 6.</p> <p>Therefore, the purposes for which restrictive covenants may be acquired are already set out in Schedule 6 on a plot by plot basis. The justification for the acquisition of those rights and for the imposition of such restrictions is set out in Table 3 to the Statement of Reasons [APP-023].</p> <p>The imposition of restrictive covenants is necessary to protect the tunnel and would be more proportionate than the outright acquisition of the land. This approach has been acknowledged as being appropriate in the context of the Silvertown Tunnel Order 2018 and the same circumstances apply to the Scheme as applied in respect of the Silvertown Tunnel Scheme. See in particular paragraphs 24.1 to 24.3 and footnote 23 to Advice Note 15.</p> <p>Please see the Applicant's response to question DCO.1.42 for further information.</p>
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DCO.1.47	Applicant	<p>Article 29 – Temporary use of land for constructing the development</p> <p>The Explanatory Memorandum points out that the time limits set out in Article 21 apply to this Article. The effect of this appears to be that the undertakers may remain on the land indefinitely. Please explain why this is necessary and proportionate.</p>	<p>See DCO.1.41 for further information on the interaction between the time limits imposed under article 21 on the exercise of the temporary possession for the purposes of construction power in article 29.</p> <p>Article 29(3) imposes limits on the duration for which temporary possession may be taken. The duration is not without limit. the Applicant must return the land to its owner within the period of one year from the completion of the works for which possession was taken.</p> <p>This is necessary because at this stage there is no certainty as to the precise period of time for which temporary possession is required. It is proportionate because the temporary possession must be for the purposes of constructing the Scheme and, in the case of the land shown in green on the Land Plans and which is listed in Schedule 7, be for the purposes specified in column (4) of that Schedule. Once that purpose has been achieved the Applicant is allowed the period of one year to restore the land and return it to its owner. In practice, the Applicant would be motivated to return the land as soon as it is able to do so, in order to reduce the quantum of a claim for compensation arising from the temporary possession.</p>
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DCO.1.48	Applicant	<p>Article 29 – Temporary use of land for constructing the development</p> <p>Notwithstanding the details provided in the Explanatory Memorandum, explain in detail the justification and necessity for seeking to take Temporary Possession of the land in question having regard to human rights considerations.</p>	<p>In overarching terms, the power to take temporary possession has the potential to infringe a landowner or occupier’s human rights; however, the power may also, in the context of compulsory acquisition, allow for an alternative approach with the potential to enable an acquiring authority, such as the Applicant, to adopt a more proportionate approach than full compulsory acquisition and so further limit an infringement of human rights protected under the European Convention on Human Rights.</p> <p>The Applicant’s consideration of human rights in the context of its exercise of the land use powers which the DCO, if made, would authorise, is set out in section 6 of the Statement of Reasons [APP-023]. In summary, the Statement of Reasons concludes that the Order would engage article 1 of the First Protocol, article 6 and article 8 of the European Convention on Human Rights, but such interference would be justified by the compelling case in the public interest for the Scheme, and that any interference is proportionate and otherwise justified.</p> <p>Article 29 also has general application over land identified for compulsory acquisition (shown in pink on the Land Plans [APP-005]). This power is required to enable the Applicant to take possession ahead of the permanent acquisition of land and would enable it to carry out works and then refine the scope of the land that it requires permanently following the execution of works. The justification for the acquisition of land is set out on a plot by plot basis with reference to the numbered works in Table 1 to the Statement of Reasons.</p> <p>Article 29 also applies to land that is subject to the acquisition of rights or the imposition of restrictive covenants and shown in blue on the Land Plans and listed in Schedule 4 to the draft DCO [APP-020]. The Applicant’s justification for seeking powers to</p>
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			<p>acquire rights and to impose restrictive covenants is set out on a plot by plot basis with reference to the numbered works comprising the authorised development in Table 2 of Appendix A to the Statement of Reasons [APP-023]. Temporary possession of this land is required in connection with the construction of the Scheme and would be a lesser imposition than the permanent acquisition of rights or imposition of restrictive covenants.</p> <p>In respect of the land shown in green on the Land Plans and listed in Schedule 7 to the draft DCO; the power is necessary in order to deliver the Scheme, in that although not required permanently, the land is required to facilitate construction. Table 4 of Appendix A to the Statement of Reasons sets out, on a plot by plot basis, with reference to the numbered works comprised in the authorised development, the Applicant's justification for the possession of the land included in Schedule 7 to the DCO that would be subject to the power of temporary possession only.</p> <p>With particular regard to temporary possession under article 29, the temporary possession of land is proportionate in that would potentially impose a lesser infringement of human rights than would be the case were the land to be subject to other powers of permanent acquisition. In addition, affected persons would be compensated for being deprived of the possession of the land for the temporary period (see article 29(5)).</p>
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DCO.1.49	Applicant	<p>Article 31 – Statutory undertakers</p> <p>i. Please explain why it would be impracticable to show and describe all statutory undertakers' land and why such a general power in relation to apparatus not specifically shown on the land plans and described in the Book of Reference is required in the particular circumstances of this case?</p> <p>ii. In that respect, the Statement of Reasons, paragraph 7.5, indicates, that land held by Southern Electric Power Distribution Limited and Wessex Water has been identified and the location of relevant major utilities diversions is known. Why is it nevertheless considered necessary and proportionate for a general power over or within any of the Order land to be sought?</p>	<p>i.&ii. Where known through the Applicant's diligent enquiries statutory undertaker's interests in land are recorded in the Book of Reference and cross-referenced to plots shown on the Land Plans [APP-005].</p> <p>It is impractical to limit the general power to only the undertaker's apparatus identified at this stage because not all undertakers keep accurate and checkable records. What records are kept do not always align with the reality on, or under, the ground. The general power would also enable the Applicant to deal with any new apparatus installed after the making of the DCO and prior to the exercise of the power.</p> <p>Statutory undertakers have been consulted during the pre-application consultation and currently have the opportunity to participate in the examination of the Scheme, should they have concerns with the Applicant's proposals.</p> <p>The provision in article 31 is necessary to account for these potentially very varied circumstances and is proportionate when read in combination with the protective provisions in Schedule 11.</p>
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DCO.1.50	Applicant	<p>Article 31 – Statutory undertakers</p> <p>The Explanatory Memorandum draws support for this approach the M20 J10a DCO 2017 which includes a similar Article. However, there are other made DCOs relating to other road improvement schemes where this power is restricted to the land belonging to statutory undertakers shown on the land plans within the limits of the land to be acquired or used permanently or temporarily and described in the Book of Reference.</p> <p>Why has a different approach been adopted in this case?</p>	<p>The Applicant expects that any difference between article 31 of the draft DCO and the other highway development consent orders referred to in the question are a matter of drafting style.</p> <p>Article 31 would authorise the exercise of the powers in article 19 (compulsory acquisition of land) and article 22 (compulsory acquisition of rights) as against the interests of statutory undertakers. It would also authorise the extinguishment of rights and removal and repositioning of apparatus. In every case, the exercise of this power is constrained to the "Order land", as defined in article 2 as "the land shown coloured pink, the land shown hatched pink, the land shown coloured blue and the land shown coloured grey on the land plans, and which is described in the book of reference". Notably, the term Order limits does not include land which is proposed to be subject to powers of temporary possession.</p> <p>Therefore, the only material difference in the Applicant's approach (compared with "other road improvement schemes" as mentioned by the ExA in Question DCO.1.50) is that article 31 does not apply to the land identified as being subject to powers of temporary possession only (shown in green on the Land Plans [APP-005] and identified in Schedule 7). This is because it is not necessary to explicitly authorise the temporary possession of statutory undertaker's land because section 127 Planning Act 2008 does not apply in cases of temporary possession of statutory undertaker's land.</p> <p>In considering article 31 it is important to bear in mind that its exercise is subject to the protective provisions in Schedule 11.</p>
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DCO.1.51	Applicant	<p>Article 31 – Statutory undertakers</p> <p>Please note that where a representation is made under section 127 PA2008 and has not been withdrawn, the Secretary of State will be unable to authorise Article 29 unless satisfied evidence that the tests in section 127 would be met.</p> <p>Where appropriate, the Applicant is requested to provide evidence that the tests in sections 127 or 138 PA2008, as appropriate, would be met.</p>	<p>The Applicant anticipates that there will be no outstanding objections within section 127 Planning Act 2008 by the close of the examination. Should that position change the Applicant would supply the Examining Authority with the evidence required to demonstrate that the statutory tests are met at an appropriate time to enable their full examination.</p>
DCO.1.52	Applicant	<p>Article 31 – Statutory undertakers</p> <p>Please identify the relevant Statutory Undertakers where Protective Provisions have not yet been agreed and provide an update on the progress of such negotiations.</p>	<p>Please see the Applicant's response to DCO.1.108 which summarises the status of negotiations with statutory undertakers, and other persons, who would have the benefit of the protective provisions in Schedule 11.</p>

DCO.1.53	<p>Southern Electric Power Distribution plc</p> <p>Wessex Water</p> <p>BT Group plc</p> <p>Esso Petroleum Company Limited</p> <p>Century Link Limited</p> <p>Sky</p> <p>Virgin Media Limited</p> <p>Southern Gas Networks plc</p> <p>Wessex Water Services Limited</p>	<p>Article 31 – Statutory undertakers</p> <p>The relevant Statutory Undertakers are requested to set out their views as to whether the section 127 and 138 tests would be met or confirm that they wish to withdraw their representations.</p>	N/A
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DCO.1.54	Wiltshire Council	<p>Article 34 – Special category land</p> <p>Please comment on the proposed mechanism for providing the replacement land including the reference to consultation with the planning authority.</p>	N/A
DCO.1.55	Applicant	<p>Article 34 – Special category land</p> <p>In relation to plots 10-18, 10-19, 11-04 and 11-05 please explain further why the Explanatory Memorandum, paragraph 7.3.9, states that the land when burdened with the rights sought will be no less advantageous than it was before.</p>	<p>The Applicant understands that the reference to paragraph 7.3.9 is to that paragraph as it appears in the Statement of Reasons [APP-023].</p> <p>As is explained in the Statement of Reasons, plots 10-18, 10-19, 11-4 and 11-05 comprise open space land over which the Applicant seeks to acquire rights for the benefit of statutory undertakers in respect of their apparatus.</p> <p>A detailed response is given in the Applicant's response to question CA.1.36. In summary, the land will be no less advantageous because the continued use of the land as open space is not incompatible with the rights sought.</p>
DCO.1.56	Applicant	<p>Article 38 – Crown land</p> <p>Please confirm that all Crown interests (other than those held otherwise than by or on behalf of</p>	<p>Yes, this is confirmed. The Book of References excludes Crown interests. Where plots include Crown interests, the wording in the relevant plot descriptions in the Book of Reference includes the phrase "excluding all interests of the Crown."</p>

		the Crown) are excluded from the scope of the powers of Compulsory Acquisition.	
DCO.1.57	Applicant	<p>Article 38 – Crown land</p> <p>Please provide an update as regards obtaining the necessary consents under section 135(1) and 135(2) PA2008 from the Secretary of State for Defence and the Secretary of State for Digital, Culture, Media and Sport.</p>	<p>A detailed response is given in response to question CA.1.39. In summary, consent has been obtained from the Secretary of State for Defence in respect of Crown interests where it is a freehold owner (i.e. as Category 1 person), but not yet in respect of Crown interests where it has the benefit of rights (i.e. as a Category 2 person), notwithstanding that consent was sought by the Applicant for both Category 1 and Category 2 Crown interests. Consent has not yet been obtained from the Secretary of State for Digital, Culture, Media and Sport. The Applicant will continue to seek the necessary consents from both the Secretary of State for Defence and the Secretary of State for Digital, Culture, Media and Sport.</p>
DCO.1.58	Wiltshire Council	<p>Article 49 – Traffic regulation measures</p> <p>Please comment generally upon the implications of and any concerns relating to this article of the dDCO.</p>	N/A
DCO.1.59	Applicant	<p>Article 51- Consent to transfer the benefit of the order</p> <p>The Article, as drafted, would allow powers under the Order to be transferred and the Secretary of State's consent would seem to only be required for the transfer of the</p>	<p>Article 51 as it appeared in the draft DCO submitted with the application [APP-020] was prepared so as to be compatible with PF2 procurement. It would have allowed contracts to be entered prior to the grant of the Secretary of State's approval of the transfer of functions under the Order, albeit those functions could not have been exercised until the Secretary of State had given consent. This was necessary to assist the co-ordination and</p>

		<p>functions of the Undertaker.</p> <p>Please redraft the Article so that the Secretary of State's consent would be required for any transfer of powers/liabilities under the Order.</p>	<p>timing of the completion of these complex contractual arrangements.</p> <p>However, with the Government's announcement of the cancellation of PF2 the Applicant has taken the opportunity to redraft this article in the updated DCO submitted at Deadline 2.</p>
DCO.1.60	Applicant	<p>Article 51- Consent to transfer the benefit of the order</p> <p>The Explanatory Memorandum, paragraph 9.4, draws support for this Article as drafted from the Silvertown Tunnel Order 2018. However, this has not been the case for other DCOs authorising road schemes.</p> <p>Please set out the particular circumstances relied upon to justify the inclusion of the Article as drafted in this case.</p>	<p>Please see response to DCO.1.59 above.</p>
DCO.1.61	Applicant	<p>Article 52 – Application of landlord and tenant law</p> <p>Please explain why this Article is necessary given the particular</p>	<p>As is explained in paragraph 9.6 of the Explanatory Memorandum [APP-021] this article provides for landlord and tenant law to be overridden in respect of any agreement entered into under Article 51 to transfer the benefit of the Order.</p> <p>The provision is necessary to ensure the safe operation of</p>

		circumstances of this project.	<p>nationally significant infrastructure, such that the Applicant could re-assume its role without being delayed or prevented from doing so by the constraints of the Landlord and Tenant Act 1954 and the common law.</p> <p>The provision has its genesis in the Infrastructure Planning (Model Provisions) (England and Wales) 2009 and has been included in the majority of DCOs made to date.</p>
DCO.1.62	Applicant	<p>Article 53 – Operational land for the purposes of the 1990 Act</p> <p>Please explain why this Article is necessary given the particular circumstances of this project.</p>	<p>The article is necessary to ensure that land to be acquired under the DCO is treated as operational land for the purposes of the Town and Country Planning (General Permitted Development) Order 2015. It is necessary to ensure that the Applicant enjoys the full range of permitted development afforded to it under that Order. The drafting is taken from the Model Provisions and has been included in numerous made Orders.</p>
DCO.1.63	Applicant	<p>Article 58 - Arbitration</p> <p>Please consider the addition of the following words to the end of this Article in the dDCO: <i>“to be appointed on the application of either party (after giving notice in writing to the other) by the Secretary of State”</i>.</p>	<p>The Applicant understands that the question asks it to consider whether the article 58 (arbitration) should place the responsibility of appointing an arbitrator where the parties to the dispute are unable to agree on the appointment of an arbitrator, to the Secretary of State rather than the President of the Institution of Civil Engineers, as currently drafted.</p> <p>The Applicant consider the President of the Institution of Civil Engineers to be an appropriate, impartial, person to appoint an arbitrator to resolve a dispute under this article. Moreover the President is routinely requested to appoint arbitrators in a way that the Secretary of State is not, and so is significantly better placed to quickly select an appropriate person to deal with the</p>

			dispute efficiently and effectively. The Applicant also notes that this drafting has been included in included in all of the Applicant's development consent orders to date.
Schedule 2 – Part 1 – Requirements			
DCO.1.64	Applicant	<p>There would seem to be an absence of specific Requirements covering matters such as construction traffic impacts, traffic monitoring and mitigation, cultural heritage, ecology, land contamination and pollution control, surface water, drainage, flood risk, air quality, lighting, noise and vibration that might reasonably be expected to be included.</p> <p>Notwithstanding the reliance placed upon Requirement 4 and the OEMP to secure environmental mitigation for the scheme, please provide justification for their absence and consider the inclusion of specific Requirements to cover the areas of greatest environmental concern and ensure they are readily enforceable.</p>	<p>As is explained in the Mitigation Schedule [APP-186], the mitigation set out in the ES is secured either in the OEMP, the DCO requirements in Schedule 2, or as described in the Mitigation Schedule. (The information in the Mitigation Schedule has now been consolidated into a new Consolidated Environmental Mitigation Schedule (CEMS) submitted at Deadline 2 which puts the mitigation content of the OEMP and the Mitigation Schedule in one document).</p> <p>In terms of the topics raised by this question:</p> <ul style="list-style-type: none"> • construction traffic impacts and traffic monitoring and mitigation are secured through items MW-TRA2, TRA6 and TRA10-11 of the OEMP; • cultural heritage impacts are controlled through the cultural heritage section (both in practical and design terms) of table 3.2b of the OEMP; • surface water measures are set out in the water section of table 3.2b of the OEMP; • flood risk mitigation measures are secured through the requirement of a Flood Risk Management Plan in item MW-WAT12; • air quality matters are covered by the air quality section of table 3.2b of the OEMP;

			<ul style="list-style-type: none"> • lighting controls are set out in items MW-G29, MW-CH1, D-CH9 to 12, MW-BIO4 and MW-TRA9; and • noise and vibration measures are set out in the noise and vibration section of table 3.2b of the OEMP, including the requirement for developing a noise and vibration management plan (item MW-NOI3). <p>This combination of items across the OEMP reflects the fact that seeking to inhibit all of the various measures set out in the OEMP within the DCO as individual topic requirements would restrict all parties in being able to react flexibly to the detailed design and construction of the Scheme as it takes place</p>
DCO.1.65	Wiltshire Council	<p>Please comment as to whether any additional Requirements would be necessary to secure the proposed monitoring and mitigation measures, for example, in relation to air quality, noise, vibration and flood risk.</p> <p>Please provide, for the ExA's consideration, draft Requirements for any such topic areas where the Council perceives there to be a need for them to be imposed.</p>	N/A

DCO.1.66	Applicant	<p>There would seem to be some matters included in the Environmental Mitigation Schedule that are not secured by Requirements. For example, in some cases reliance is simply placed upon contractual requirements between the Undertaker and the main works contractor. Furthermore, the ExA questions whether the mitigation and/or commitment is in all cases adequately secured by the requirement referred to in the Mitigation Schedule.</p> <p>i. Please explain further how all the mitigation identified by the ES and set out in the Mitigation Schedule would be secured by the dDCO.</p>	<p>i. The approach to securing mitigation is set out at paragraphs 2.3.61-62 of chapter 2 of the ES. As is explained in the Mitigation Schedule [APP-186], the mitigation set out in the ES is secured either in the OEMP, the DCO requirements in Schedule 2, the scheme design shown in the relevant plans submitted with the application, or as described in the Mitigation Schedule. Submitted at Deadline 2 is a single freestanding Consolidated Environmental Mitigation Schedule (CEMS), consolidating the information previously contained in the OEMP and the previous Mitigation Schedule [APP-186]. The CEMS also takes the opportunity to update the mitigation items previously contained in the Mitigation Schedule to state where each item is secured.</p>
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		<p>ii. Please identify any aspect of the proposed mitigation that is not specifically secured by the dDCO Requirements and provide full justification for the omission.</p> <p>iii. Please explain the procedure and timeline for the approval of the CEMPs and scope for consultation with the local authority within that process.</p> <p>iv. How would any consultation process, for example, in relation to the Noise and Vibration Management Plan be secured by the dDCO?</p>	<p>ii. There are some aspects of proposed mitigation that are secured by way of a commitment to require the relevant contractor to deliver the mitigation as specified in the ES or Environmental Masterplan, unless it is able to define an alternative measure or measures, approved by the Applicant, which achieves the same level of mitigation. This is required in order to allow the necessary flexibility of detailed design and the mitigation design accompanying it outside the key areas stipulated in the Requirements, the OEMP and the scheme plans (see paragraph 2.3.61 of chapter 2 of the ES), to deliver value for money while still ensuring the high level of mitigation catered for in the ES.</p> <p>iii. Item MW-G5 of the OEMP sets out that a CEMP must be prepared prior to the commencement of construction of a relevant phase and that in preparing the CEMP, the main works contractor must consult with Wiltshire Council and the Environment Agency, i.e. they will be consulted prior to the commencement of works. The Applicant intends to apply these consultation obligations to the Preliminary Works CEMPs in the update of the OEMP that it intends to submit at Deadline 3.</p> <p>iv. Where consultation is required, e.g. for specific plans, this is included within the 'Reporting Criteria' column of the OEMP [APP-187]. However, as a general point in relation to consultation, item MW-G7 of the OEMP indicates that the topic specific plans will be appended to the CEMP as appropriate, and as noted above the CEMP is consulted upon prior to the commencement of construction. The process is therefore set out in the OEMP and the OEMP is secured via Requirement 4 of the dDCO.</p>
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DCO.1.67	Applicant	<p>The OEMP, paragraph 3.2.10, states that in preparing the CEMP for the main works, the main works contractor or the maintenance authority shall update the full REAC table for the main works. Where actions are modified, this should be justified as being consistent with the principle of the OEMP to the satisfaction of Highways England.</p> <p>How can that degree of flexibility be justified in this case and should the local planning authority not be consulted upon any changes to the REAC tables?</p>	<p>The local planning authority and the Environment Agency (EA) will be consulted upon any change to the tables, as they will be consulted on the CEMP, which, as per item MW-G5 of the OEMP, must be in accordance with the OEMP. As such any change to the REAC tables which form part of the OEMP, would need to be justified within the CEMP upon which the local planning authority and the EA will be consulted.</p> <p>Flexibility is justified in this case as like any major infrastructure project proceeding through consenting, a main works contractor is not yet procured and detailed design has yet to be undertaken and as such, some detailed design-related environmental surveys would still need to be undertaken (e.g. protected species confirmation surveys). As a result, some measures in the OEMP may not be necessary or may require revision (e.g. if surveys for bats found the presence of a previously unidentified roost), and this provides a way for updates to be made if necessary. Equally some provisions of the OEMP may need to be made more specific to the circumstances of the detailed design to effectively deliver the mitigation that they are designed to achieve. The OEMP, like any Code of Construction Practice or similar document, is designed to be a living document that is central to the mitigation of environmental effects of the scheme. To be effective it must be flexible enough to ensure clarity for contractors in how it applies to the detailed design while at the same time delivering the mitigation that it is designed to achieve. Setting out that the update must be consistent with the principles of the OEMP ensures that any update will be consistent with the mitigation already secured in the OEMP.</p>
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DCO.1.68	Applicant	<p>The Additional Submission document 1, Appendix 5.1, for Works No 1A (vi) indicates that the construction and installation of a new variable message sign would be controlled by means of the reference to the same within Table 3.3b of the OEMP which in turn is secured by Requirement 4.</p> <p>i. However, would that provide a sufficiently precise and satisfactory safeguard in relation to the erection of such a sign at the western end of the WHS or should that be made the subject of a specific Requirement?</p>	<p>i. In the Applicant's view the commitment in D-CH8 is clear, enforceable and proportionate. The commitment is "At the western end of the WHS, no road signs will be set higher than the top of the adjacent cutting and the signs shall not be lit". By complying with this measure the Applicant would avoid giving rise to an effect that could alter the outcome of the environmental assessment. Beyond that effect, which is avoided through this measure, the precise location of the VMS is a matter that must be left to the Applicant to determine as part of its detailed design of the Scheme so that it can be located appropriately so as to provide the right information to road users at an appropriate location to enable it to be safely acted upon.</p> <p>If the VMS were to be located within the WHS at the western end of the Scheme it would be readily apparent if it were to be set higher than adjacent cutting and clearly prohibited, and capable of enforcement against, under requirement 4. In the Applicant's view, then, there is no need for a separate Requirement.</p>
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		<p>ii. Please explain in practice what is meant by the reference to “<i>no road sign will be set higher than the top of the adjacent cutting</i>”.</p> <p>iii. The Additional Submission document 1 also indicates that, if changes were made to the position of the Motorway Signal Mark 4 (MS4s), it would still be the intention of the Applicant not to locate them within the WHS. However, are there satisfactory safeguards within the dDCO to prevent that occurrence or should that be made the subject of a specific Requirement?</p>	<p>ii. The intention expressed in D-CH8 of the OEMP is that road signs will not protrude above the cutting within the western end of the WHS. That is to say, the highest part of any road sign would not exceed the height of the highest part of the adjacent cutting, within the area between the western boundary of the WHS and the western tunnel portal. The Applicant will consider further whether this wording needs to be refined in light of any difference in height of different sides of the cutting and make any necessary amendments in the updated OEMP to be submitted at Deadline 3.</p> <p>iii. As is explained in response to (i) above there are satisfactory safeguards in place to prevent road signs, which include the Motorway Signal Mark 4, from causing adverse effects in the World Heritage Site. A specific requirement is unwarranted and would unnecessarily duplicate the measure D-CH8, secured by Requirement 4.</p>
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DCO.1.69	Applicant	<p>The Additional Submission document 1, Appendix 5.1, for Work No. 1C (i) describes it by reference to an 'illustrative' Rights of Way and Access Plan.</p> <p>Should that description also include reference to the relevant Engineering Section drawing referred to in the Appendix to that document as providing the means of control to regulate the location/dimension of the work?</p>	<p>No, the purpose of the reference to being shown "illustratively" in Schedule 1 is to illustrate the location within the area identified for the corresponding linear work, of the public rights of way and means of access (discussed further in the Applicant's response to DCO.1.1) and the engineering sections are already secured via the provisions of Requirement 3 of Schedule 2 of the draft DCO [APP-020], as set out at paragraph 2.3.3 of Additional Submission 1, the DCO Application Signposting Document [AS-009].</p>
DCO.1.70	Applicant	<p>In relation to Additional Submission document 3:</p> <ul style="list-style-type: none"> i. Does the description of preliminary works, paragraph 2.1, coincide with that in the dDCO, paragraph 2.4.1? 	<ul style="list-style-type: none"> i. Paragraph 2.21 of AS3 misses out 'investigations for the purpose of assessing ground conditions' in defining 'preliminary works' in that document - this was an error, wrongly conflating the investigations with any remedial works that might follow.

		<p>ii. The preliminary works contractors would be required to prepare the Preliminary Works CEMPS for their works for approval by and in consultation with Highways England. For the main works, paragraph 2.5.2, provides that in preparing the CEMP, the main works contractor must consult with Wiltshire Council and the Environment Agency. Why is there no provision for consultation for the Preliminary Works CEMP?</p> <p>iii. How is it anticipated that the main works CEMP consultation and approval process would operate in practice?</p>	<p>ii. As mentioned in DCO.1.66 above, an amendment to the OEMP will be brought forward at Deadline 3 to provide for the preliminary work CEMPs to be consulted upon with Wiltshire Council and the Environment Agency.</p> <p>iii. Item MW-G5 of the OEMP makes it clear that CEMPs, prepared in line with the OEMP, must be prepared prior to each construction phase, which is then approved by the Authority (i.e. the Applicant). Item G-5 also makes clear that in preparing the CEMP the main works contractor must consult with Wiltshire Council and the Environment Agency. As such the process would be: plan preparation – consultation – plan modification – plan approval – construction commencement.</p>
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DCO.1.71	Applicant	<p>Additional Submission 3, paragraph 3.1.2, confirms that certain preliminary works contractors would be required to prepare a noise and vibration management plan (PW-NO13), together with vibration management actions (PW-NO14) and noise monitoring (PW-NO15).</p> <p>i. Please explain why the preparation of the management plan (PW-NO13) does not require consultation with the local planning authority.</p> <p>ii. Why there is no requirement to carry out the works in accordance with the approved noise and vibration management plan unlike the heritage management plan (PW-CH1)?</p>	<p>i. As noted in response to question DCO 1.70, an amendment will be brought forward at Deadline 3 to the OEMP to provide for the preliminary work CEMPs to be consulted upon with Wiltshire Council and the Environment Agency. This amendment will also make clear that, as with the main works CEMP, subsidiary plans such as the Noise and Vibration Management Plan will be appended to the preliminary works CEMP, and thus Wiltshire Council will be consulted accordingly.</p> <p>ii. Noted. An amendment will be made to item PW-NO13 of the OEMP at Deadline 3 stating that 'The preliminary works will be undertaken in accordance with the Noise and Vibration Management Plan.'</p>
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		<p>iii. Please explain the reporting procedure for the noise monitoring (PW-NO15).</p> <p>iv. How would adherence to and enforceability of the provisions set out in PW-NO13, PW-NO14 and PW-NO15 be ensured?</p>	<p>iii. The monitoring proposals, including reporting criteria, would be developed by the appointed contractor, during detailed design, and would be included within their Noise and Vibration Management Plan (as required by item PW-NOI3 (d) of the OEMP).</p> <p>iv. Adherence to the provisions outlined within PW-NOI3 to PW-NOI5 would be ensured through contractual agreement between the Applicant and the appointed contractor. The contractor’s Environmental Manager and ultimately Project Manager (PM), are responsible for ensuring that controls specified within the CEMP are implemented. This is detailed within Table 2.1:Roles and Responsibilities section of the OEMP [APP-187]. They would also be enforceable by Wiltshire Council as enforcing authority of the provisions of the DCO under the Planning Act 2008, given failure to adhere to them would be a breach of the OEMP and therefore a breach of Requirement 4 of the draft DCO and therefore a criminal offence under s161 of the Planning Act 2008.</p>
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DCO.1.72	Applicant	<p>Additional Submission document 3, paragraph 5.1.2, indicates that failure to prepare and/or comply with the phase specific CEMPs and/or management plans would be a breach of the OEMP and would constitute a breach of Requirement 4.</p> <p>Although, for example MW-G7, states that management plans shall be prepared for certain specified topics please identify where it states that they would be implemented and adhered to and where a timeline for that process can be found?</p>	<p>The OEMP [APP-187] does not currently state that the plans identified within item MW-G7 would be implemented and adhered to, nor identify a timeframe for their approval. To clarify this, the Applicant proposes an amendment to item MW-G7 of the OEMP, to include the text 'These plans shall be approved by the Authority prior to works commencing' and 'The main works shall be carried out in accordance with the approved plans'. The OEMP is secured by Paragraph 4 of Schedule 2 of the dDCO [APP-020], therefore the proposed amendments would ensure that failure to produce or comply with the plans would constitute a breach of Requirement 4.</p>
DCO.1.73	Applicant	<p>Additional Submission document 3, paragraph 6.1.2, indicates that the preliminary works would be exempted from, for example, Requirements 8, 9 and 10.</p> <p>Please explain further why it is not necessary for these works to be subject to those or similar Requirements.</p>	<p>Please see the response to question DCO.1.8 which considers the same point in the context of the definition of 'commence'.</p>

DCO.1.74	Wiltshire Council	<p>The OEMP provides for Highways England to approve the CEMP and other management plans defined within the OEMP, detailed schemes required by the OEMP and variations to these.</p> <p>Please comment on the proposed system for approval of these various matters and identify any specific concerns and/or means whereby consultation with the Council could be secured by the dDCO.</p>	N/A
DCO.1.75	Environment Agency	<p>i. Please explain further the need, if any, for additional Requirements to cover historic contamination mitigation measures and remediation work, the dewatering impact assessment and mitigation measures, the groundwater monitoring programme, updated groundwater risk assessment provision for the containment of contaminated runoff, and the treatment of runoff. Please provide draft Requirements for those</p>	N/A

		<p>topic areas for the ExA's consideration.</p> <p>ii. Please explain how the provision of environmental enhancements and opportunities could be secured through the dDCO.</p>	
DCO.1.76	Applicant	<p>Requirement 1 - Interpretation</p> <p>Please clarify whether it is intended that the OEMP proposed to be certified by the Secretary of State is the OEMP submitted as ES document 6.3 and whether this is regarded as a final version rather than a draft.</p>	<p>The OEMP submitted as ES document 6.3 will be updated during the course of the Examination. As mentioned above, the Applicant intends to submit an updated version of the OEMP at Deadline 3.</p> <p>The final version that is submitted to the Examination will be a certified document.</p>
DCO.1.77	Applicant	<p>Requirement 1 - Interpretation</p> <p>Why is the definition of "<i>archaeological mitigation works</i>" within the dDCO definition of "<i>preliminary works</i>" not specifically linked to the definition of such works as set out in section 4 of the OAMS?</p>	<p>As noted below in response to question DCO.1.79, the OAMS is not intended to be a certified document so it would not be appropriate for it to be referenced here.</p> <p>In any event, the definition is specifically not limited to those measures set out in any document, as it may be the case that measures outwith those documents are required, which may not be known until work starts on site (e.g. once a Method Statement starts to be followed).</p> <p>For example, additional sites that require preservation in situ may be identified during the preliminary works stage (see paragraph 4.1.4 of APP-0187 and section 6.2.2 of the draft Detailed Archaeological Mitigation Strategy (DAMS) submitted at Deadline</p>

			2).
DCO.1.78	Applicant	<p>Requirement 1 - Interpretation</p> <p>Could the Applicant, by updating Tables 2.1, 2.2 and 2.3 of the OAMS against each of the numbered works, be more definitive about which items of archaeological mitigation works would be delivered as part of the “<i>preliminary works</i>” and which would (and/or could) be delivered as part of the main construction works?</p>	<p>The OAMS will be superseded by the Detailed Archaeological Strategy submitted to the examination at Deadline 2. Table 2.1 within the OAMS has been incorporated into the DAMS (Table 10-2). This identifies the work stage where an archaeological mitigation measure is anticipated to be delivered. The content of Tables 2.2 and 2.3 of the OAMS has been expanded into the contents of Appendices D (preservation in situ) and E (archaeological fieldwork areas) of the DAMS. Each site has a description of required archaeological mitigation measures, therefore reference can be made to Table 10-2 to identify when the measure is anticipated to be delivered.</p> <p>As stated in the Outline Environmental Management Plan [APP-187], paragraph 1.2.3, and the DAMS submitted at deadline 2 (paragraph 4.1.5), it is intended that the majority of the archaeological mitigation works will be undertaken during the preliminary works stage, however there may be the requirement to undertake measures during the main works, e.g. where site conditions prevent archaeological fieldwork at the preliminary works stage. It is anticipated that such circumstances will generally be limited to small scale works, e.g. within the existing highway boundary.</p>

DCO.1.79	Applicant	<p>Requirement 1 - Interpretation</p> <ul style="list-style-type: none"> i. Please explain why the dDCO does not refer to the OAMS. ii. Is it proposed that the OAMS will be superseded by the DAMs during the course of the Examination? 	<p>i and ii. The dDCO does not refer to the OAMS because yes, it will be superseded by the DAMS during the course of the Examination. This is further explained in document reference [AS-10].</p>
DCO.1.80	Applicant	<p>Requirement 3 (1) and (2) – Preparation of detailed design etc</p> <p>The Additional Submission document 1 – DCO application ‘signposting’ document, paragraph 2.3.3, states that “<i>compliance with certain key DCO Plans is secured by DCO Requirement 3</i>”. Requirement 3(1) envisages that the detailed design will be developed at a later date and simply requires it to be “<i>compatible</i>” with the works plans and the engineering section drawings. This seems to be at odds with the Explanatory Memorandum, paragraph 10.5.3, which states that “<i>the authorised</i></p>	

		<p><i>development must be carried out in accordance with the scheme design shown on certain plans”.</i></p> <p>i. Please justify the degree of flexibility sought by Requirement 3 and explain why it does not specify that the authorised development must be required to be carried out in accordance with the scheme design shown on submitted plans, as stated in the Explanatory Memorandum.</p>	<p>i. The Scheme presented in the Works Plans [APP-008], Engineering Sections Drawings (Plan and Profiles) [APP-010], Engineering Section Drawings (Cross Sections) [APP-011] represents a reference design that must be developed into a detailed design following the grant of development consent, if granted.</p> <p>Requirement 3 requires that the undertaker delivers a scheme that is compatible with those plans, as against a limit of deviation, which permissively sets the scope of what may or may not be delivered. The term "accordance" is used in the Explanatory Memorandum as it is considered to be a cognate way of explaining what is intended by "compatible" in this context without merely repeating the wording used in the requirement.</p> <p>The Applicant remains of the view that "compatible" is the appropriate word for requirement 3 and notes that the Secretary of State has considered this drafting to be appropriate in other DCOs, for example requirement 3 of the A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016. The same need for flexibility is present in this Scheme, which is also a complex highway scheme.</p> <p>the Applicant also note that the wording in requirement 3 does not detract from or override the limits of deviation set by Article 7. If the Applicant were to construct any part of the Scheme outside of the limits of deviation this would be an enforceable breach of</p>
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		<p>ii. There is no reference to consultation with the relevant planning authority at that detailed design stage. The reference to consultation with the planning authority on matters related to its functions applies when the Secretary of State is considering amendments to the submitted plans and drawings. Explain why there is no proviso for consultation in relation to the initial detailed design stage and should it be included.</p> <p>iii. Please explain why there is no reference in this Requirement to the Rights of Way and Access Plans.</p>	<p>the Order irrespective of the word "compatible" being present in requirement.</p> <p>ii. The Applicant acknowledges that this is the effect of requirement 3. The Applicant is considering with key statutory stakeholders how they could be consulted on key aspects of the detailed design of the Scheme that relate to their functions and how this could be satisfactorily secured in the DCO. Please see the answer to DCO.1.81(ii) below.</p> <p>iii. There is no need to refer to Rights of Way and Access Plans [APP-009] in this requirement. Those plans relate to the functions contained in article 10 (permanent stopping up of streets and private means of access). Article 10 is concerned with the creation, stopping up and replacement of highways and private means of access, described in detail in Schedule 3 and as shown on the Rights of Way and Access Plans. There is no precedent,</p>
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			that the Applicant is aware of, for Rights of Way and Access Plans to be subject to a requirement of the kind envisaged in requirement 3.
DCO.1.81	Applicant	<p>Requirement 3 (1) and (2) – Preparation of detailed design etc</p> <p>The Additional Submission document 1 – DCO application ‘signposting’ document, paragraph 2.4.1, states that “<i>the development consent, if granted, includes a proportionate amount of flexibility, allowing a degree of potential departure from certain aspects of the consented Scheme as shown in certain DCO plans – in this case the Works Plans and the Engineering Section Drawings - as these are the documents which set the constraints by reference to which the limits of deviation are subsequently defined</i>”.</p>	

		<p>i. Whilst the need for a degree of flexibility is recognised, given the reliance placed on those Works Plans and Engineering Section Drawings is the absence of detail revealed by them not disproportionate?</p>	<p>i. A distinction needs to be drawn between the use of the Works Plans [APP-008], Engineering Section Drawings (Plan and Profiles) and (Cross Sections)([APP-010] and [APP-011] respectively) and the Bored Tunnel Limits of Deviation Plan [APP-019] (collectively "DCO Plans") to set limits of deviation (LoDs) from the centrelines, levels and positions shown on the DCO Plans (which is the context for paragraph 2.4.1 of [AS-009] referred to in the ExA's question) and the use of the DCO Plans for the purposes of requirement 3.</p> <p>Article 7 sets carefully considered limits of deviation that have been used to inform the assessment set out in the environmental statement. When read together the level of detail is, in the Applicant's view, adequate, appropriate and proportionate to the level of design detail that is available at this stage and to which it is able to commit.</p> <p>In contrast to the use of the DCO Plans as a reference point for the limits of deviation in article 7, the purpose and function of requirement 3 is to ensure that the contents of what is delivered by the Scheme is "compatible" with what is shown on those plans. The Applicant's <i>'Additional Submission 1'</i> [AS-009] includes an Appendix that details for each numbered work the controls on the location, dimensions and regulation of each of the numbered works. These should be read alongside the design commitments included in the OEMP [APP-187]; those measures pre-fixed with the letter "D", the measures in the OEMP itself and the requirements which, when taken together, provide a proportionate amount of flexibility. That proportionate flexibility has been assessed in the environmental statement.</p>
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		<p>ii. Please justify why a greater level of detail could not be provided at this stage. For example, in relation to the locations of features such as compounds, tunnel support buildings, green bridges, electricity sub-stations, drainage, retaining structures and wingwalls.</p>	<p>ii. The Applicant's justification for the LoDs sought is set out in detail in response to questions DCO.1.20 to DCO.1.29. In respect of construction compounds please see DCO.1.2(ii).</p> <p>The reason that such details cannot be provided at this time is that the Scheme reflects a reference design, sufficient for the purposes of carrying out the environmental assessment, that will be developed into a detailed design once a contractor has been appointed. If the Applicant were to fix those details now it would unduly constrain its ability to deliver the Scheme optimally. For example, the Applicant has explained in its answer to DCO.1.26 why it requires a 30m lateral commencement/termination limit of deviation for the eastern commencement of the twin bored tunnel and related adjacent numbered works. Were it to fix the details of the tunnel support buildings it would prevent it from appropriately integrating those buildings into the works, should it need to exercise the limits of deviation sought. Flexibility in the detailed design is essential to enable the design to respond to ground conditions which will only be discovered when works begin, to enable design to deliver greater value for money through the value engineering process, and to allow for more refined designs that deliver better environmental outcomes. The Applicant has provided a set of General Arrangement Drawings [APP-012] which show indicatively the reference design for the Scheme. What is shown is deliverable but is subject to further development during detailed design for the reasons set out above.</p> <p>The Applicant does, however, recognise that in the particular circumstances of this scheme there is a need to give key stakeholders confidence that the detailed design of the Scheme will be carried out appropriately. The Applicant is currently</p>
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		<p>iii. Could these plans depict the designated land parcels such as the World Heritage Site (WHS), SSSI, SAC, and SPA with appropriate annotations to demarcate the Private Means of Access?</p>	<p>discussing or about to discuss with heritage stakeholders a mechanism:</p> <ol style="list-style-type: none"> 1. obliging the Applicant to consult with them on detailed design of key aspects of the Scheme; 2. setting out design principles according to which the Applicant will require the detailed design of those key aspects of the scheme to be undertaken; and 3. committing to certain additional key aspects of design, additional to the “D Series” design commitments already contained in the OEMP [APP-187]. <p>Once the Applicant has had the opportunity to discuss matters with all heritage stakeholders, it intends to draft for the obligations in the OEMP and submit an updated draft at Deadline 3.</p> <p>iii. The Works Plans [APP-008] show the boundaries of the World Heritage Site by means of an orange line with diagonal dashes. New and replacement private means of access are shown on the Rights of Way and Access Plans [APP-009]. Ecological designations are shown on figure 8.4 of the Environmental Statement [APP-150]. The Applicant considers that to include all of the additional information on the DCO Plans as suggested would detract from their clarity. It is established good practice for sets of DCO plans to separately reflect the various requirements of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009, and for those various sets of plans to then be required to be read in combination with one another and alongside other documents comprised in the DCO application.</p>
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DCO.1.82	Applicant	<p>Requirement 3 (1) and (2) – Preparation of detailed design etc</p> <p>Many aspects of the works packages listed in Schedule 1 of the dDCO are referred to being shown “<i>illustratively</i>” on the relevant Works Plans and Rights of Way and Access Plans.</p> <ul style="list-style-type: none"> i. Please explain why these features are only ‘illustrative’ and precisely what is meant by that term. ii. Why can the drawings to be certified not be more specific in the identification of the relevant features that comprise the proposed works? 	<ul style="list-style-type: none"> i. This is addressed in the Applicant's '<i>Additional Submission</i>' [AS-009] and is further considered in the Applicant's response to question DCO.1.1. ii. Please see the Applicant's response to DCO 1.81(ii) above.
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DCO.1.83	Applicant	<p>Requirement 3 (1) and (2) – Preparation of detailed design etc</p> <p>Requirements 3(1) and 3(2) would allow for the works plans and engineering section drawings which will have been examined as part of the current application, to be changed at a later date without having to follow the statutory process in section 153, Schedule 6 of the PA2008, contrary to Advice Note 15. This provision appears to circumvent the statutory procedures for non-material and material changes to DCOs in the PA2008 by allowing the Secretary of State to approve changes at a later date.</p> <p>i. Please explain why Advice Note 15, paragraph 17, has not been followed in this respect.</p>	<p>i. The Applicant has had regard to the advice in section 17 of the Planning Inspectorate's Advice Note 15 and is of the firm view that the drafting in requirement 3 accords with that advice. Advice Note 15 section 17.3 advises:</p> <p><i>"Applicants should be aware that details fixed by the terms of the DCO can only be changed if authorised and following adherence with the prescribed approach explained in section 153 of and Schedule 6 to the PA2008. Furthermore, it is not acceptable to circumvent the prescribed process in Schedule 6 by seeking to provide another route to approving such changes or variations,</i></p>
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		<p>ii. Where is the opportunity for properly consulting upon and assessing environmental impacts of such an amendment and for public consultation in the process?</p>	<p><i>by a person other than the Secretary of State who made the DCO, for example by applying the provisions of section 73 and/or section 96A of the TCPA 1990.</i></p> <p>Requirement 3 does not, and does not seek to, circumvent the procedures for material and non-material changes to development consent orders. It is included to allow a proportionate degree of flexibility to allow the Secretary of State that made the Order to approve amendments to the referenced plans where to do so would not give rise to any materially new or materially worse adverse environmental effects in comparison with those reported in the environmental statement, following consultation with the planning authority. The Secretary of State has approved the approach in numerous development consent orders granted to the Applicant, including the A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016 and most recently in the A19/184 Testo's Junction Alteration Development Consent Order 2018.</p> <p>ii. Requirement 3 requires the Secretary of State to consult the planning authority on matters related to its functions on any changes to the Works Plans [APP-008], Engineering Sections Drawings (Plan and Profiles) [APP-010] and the Engineering Sections Drawings (Cross Sections) [APP-011]. The procedure for the discharge of requirements is detailed in Part 2 of Schedule 2.</p> <p><i>Any changes sought pursuant to article 7(6) would necessarily be minor in nature in order for them to "not give rise to any materially new or materially worse adverse environmental effects from those reported in the environmental statement". With no material new or worse effects, public consultation would not be</i></p>
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			required, in the same way that development that does not result in likely significant effects on the environment does not require to be subject to environmental impact assessment and the public consultation obligations to go with it.
DCO.1.84	Applicant	<p>Requirement 3 (1) and (2) – Preparation of detailed design etc</p> <p>The Environmental Masterplan includes details that are not referenced in other plans referred to in Requirement 3 of the dDCO (for example landscaping and drainage attenuation details). The ExA is therefore considering the merit in securing delivery of the Environmental Masterplan as part of this Requirement such as to have sufficient confidence in its delivery as assessed in the ES. Requirement 3 also uses the term that the detailed design must be “<i>compatible</i>” with the plans referred to within the requirement and the ExA is unclear why this language has been used instead of the design being “<i>in accordance with</i>” the plans.</p> <p>Please comment on both of these points.</p>	<p>In respect of the Environmental Masterplan, key elements are already secured, as set out in the Requirements, the OEMP, the relevant scheme plans and as set out in the Consolidated Mitigation Schedule (CEMS) submitted at Deadline 2. See for example in relation to biodiversity item MW-BIO2 of the OEMP, and in respect of landscaping Requirement 8, which refers to mitigation measures set out in the ES - the Environmental Masterplan is referred to in section 7.8 of the Environmental Statement (ES) [APP-045]. Please see paragraphs 2.2.61-62 of Chapter 2 of the ES [APP-040] for the approach to mitigation and the further detail contained in answer to question DCO.1.66 above.</p> <p>In the Applicant’s submission, it would not be appropriate to simply secure delivery of the entire Environmental Masterplan because this would not supply the necessary flexibility for detailed design of the scheme and of mitigation accompanying it described in DCO.1.66.</p> <p>In relation to the use of the term ‘compatible’, please see the response to DCO.1.80 above.</p>

<p>DCO.1.85</p>	<p>Applicant</p>	<p>Requirement 4 – Outline Environmental Management Plan</p> <p>The OEMP makes provision for the preparation of a CEMP by the main contractor in consultation with Wiltshire Council and the Environment Agency.</p> <ul style="list-style-type: none"> i. Please explain how that would provide adequate control of the content of the CEMPs and how they would be secured, implemented and enforced to reflect the mitigation anticipated for the scheme. ii. Please respond likewise in relation to the preliminary works CEMP and also explain why similar consultation is not required for the preliminary works CEMP. 	<ul style="list-style-type: none"> i. The appointed contractor will consult with Wiltshire Council and the Environmental Agency as their CEMP is developed during the detailed design stage. This will enable both stakeholders to advise on specifications and requirements to be included within the CEMP. Adherence to the provisions outlined within the OEMP, and ultimately the CEMP, is secured through requirement 4 of the draft DCO and would be enforceable by Wiltshire Council as enforcing authority under the Planning Act 2008. The contractor’s Environmental Manager and ultimately Project Manager are responsible for ensuring that controls specified within the CEMP are implemented (refer to Table 2.1 within the OEMP [APP-187] for Roles and Responsibilities). Adherence would also be secured in the contract between the Applicant and the contractor. ii. With the addition of the obligation to consult Wiltshire Council and the Environment Agency on the preliminary work CEMPs committed to by the Applicant above (DCO.1.66), the terms of answer i above apply equally to the preliminary works CEMPs. That addition remedies the point regarding lack of consultation of the preliminary works CEMPs
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		<p>iii. Please explain the means of consultation for the proposed management plans to be appended to the CEMP and how their approval, implementation and enforcement would be achieved.</p> <p>iv. Explain why this requirement does not specifically control the provision, approval and implementation of the management plans, working methods and mitigation measures for each of the topics covered in the environmental report and incorporate the measures specified in the ES and Environmental Mitigation Schedule.</p>	<p>iii. The appointed contractor will consult with Wiltshire Council and the Environment Agency as their CEMP, and the plans within them requiring consultation, are developed during the detailed design stage. Please see answer (i) above and answer DCO.1.71 for how the plans would be enforced.</p> <p>iv. This requirement does not need to set out the provision, approval and implementation of management plans as this is already provided within the OEMP itself (e.g. item MW-G7). Any requirement wording would therefore just be a repeat of the OEMP, which is already secured by Requirement 4.</p> <p>The approach to securing measures specified in the ES and the Environmental Mitigation Schedule is explained in the response to DCO.1.66 above.</p>
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		<p>v. Should these matters not be specifically required by Requirement 4 with the relevant plans listed and/or the relevant topics and mitigation to be covered by the OEMP?</p>	<p>v. This is not necessary as the plans and responsibilities are set out in the OEMP, which is already secured by Requirement 4.</p>
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DCO.1.86	Applicant	<p>Requirement 4 – Outline Environmental Management Plan</p> <p>The OEMP indicates that the CEMPs would be prepared for ‘the relevant phase’ of the scheme by the ‘relevant contractor’ which would incorporate the requirements of the OEMP relevant to that phase, and contractors would be required to comply with applicable environmental legislation and any additional environmental controls imposed in the DCO. Each CEMP or update would be prepared in accordance with the principles of the original OEMP and would require approval by ‘The Authority’. The OEMP identifies ‘The Authority’ as Highways England. Given that Highways England might be the author and approver of the CEMPs.</p> <p>How can that approach be justified and assurance provided that appropriate scrutiny would be applied when reviewing documentation which ‘The Authority’ has both produced and approved?</p>	<p>The relevant contractor would be the author of the CEMP, not the Applicant. Appropriate assurance of scrutiny is in the detailed consideration of the OEMP through the ongoing examination before certification in the DCO (if made) and in requirement (MW-G5) for the contractor to consult Wiltshire Council and the Environment Agency in its development of the CEMP, before approval by the Applicant.</p>
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<p>DCO.1.87</p>	<p>Applicant</p>	<p>Requirement 4 – Outline Environmental Management Plan</p> <p>The Additional Submission document 3 seeks to explain the relationship between the CEMPs and the OEMP.</p> <ul style="list-style-type: none"> i. Nevertheless, should dDCO Requirement 4 also require the development to be carried out in accordance with the CEMPs and specifically require that the CEMP itself must include the series of management plans for individual topics listed at MW-G7? ii. Likewise, for the preliminary works OEMP/CEMP(s) should the seven preliminary work CEMPs be defined within Requirement 3 itself? 	<ul style="list-style-type: none"> i. This is not necessary as requirement 4 requires compliance with the OEMP. The OEMP at paragraph 1.3.1(b) states that the CEMP must be in accordance with the principles of the OEMP, and item MW-G5 requires the CEMP to be developed. Paragraph 1.1.6 of the OEMP requires that the construction of the Scheme shall be subject to measures and procedures defined within the Construction Environmental Management Plans. Item MW-G7 states that the plans shall be appended to the CEMP as appropriate so no requirement wording is needed. ii. No, for the same reasons as set out above. As a subsidiary point, the Applicant also considers that this would not be appropriate as it is only currently <u>envisaged</u> that there will be seven CEMPs - there may be more or less than this dependent on the results of the procurement exercise, requiring that specific number could therefore hamper that process.
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		<p>iii. The Additional Submission document 3 also states that just one CEMP is expected to be required for the main works, but if more than one is necessary at a later stage, what provisions are there to secure this?</p> <p>iv. A visual aid of the plans has been provided at section 4 of the Additional Submission document, could this be incorporated within an updated examination version of the OEMP to be certified, for ease of reference and to ensure the version to be certified clearly sets out the relationships between sub-documents?</p>	<p>iii. Item MW-G5 refers to CEMPs being prepared for the relevant 'project phase'. So if more than one is required, this item provides for that and is secured as set out at (i) above.</p> <p>iv. Yes, this will be included in the next iteration of the OEMP to be submitted at Deadline 3.</p>
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DCO.1.88	Applicant	<p>Requirement 4 – Outline Environmental Management Plan</p> <p>For the proposed HEMPs:</p> <ul style="list-style-type: none"> i. Should the dDCO also define HEMPs and require their provision? ii. What forms would that plan take and how many HEMPs would there be? iii. Would there be an overall HEMP and sub-HEMPs? iv. What would be the procedure for the approval of “<i>the</i>” HEMP? 	<ul style="list-style-type: none"> i. As the HEMPs are a requirement of the OEMP (item MW-G11), their provision is secured through Requirement 4 of the dDCO. ii. Highways England's Interim Advice Note 183/14 (http://www.standardsforhighways.co.uk/ha/standards/ians/pdfs/ian183.pdf) provides guidance on the structure and content of HEMPs. It is expected that the contractor would follow this guidance. It is anticipated that HEMPs would be produced prior to the completion of major phases of works which are signed over to the Applicant to become operational, e.g. the Winterbourne Stoke bypass. There may therefore be several HEMPs, depending on the works phasing. Prior to completion of all works, a consolidated HEMP will be produced which incorporates all HEMPs for the Scheme. This process is outlined within item MW-G11 of the OEMP [APP-187]. iii. This has been addressed in answer ii. iv. The Authority would be responsible for approval of HEMPs prior to handover of the Scheme (or relevant phase) to the body responsible for the long-term management and operation of the Scheme.
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		<p>v. Would HEMPs be provided in relation to the completion of the preliminary works?</p>	<p>v. It is not anticipated that HEMPs would be produced for the preliminary works, as these discrete works are relatively minor and unlikely to require long-term management or, if so, the management measures will be captured within those required for the main works, e.g. maintenance of the ecological mitigation areas.</p>
DCO.1.89	Applicant	<p>Requirement 4 – Outline Environmental Management Plan</p> <p>The diagram provided in Figure 1-1 of the Additional Submission document 2 [AS-010] implies that there is a link between the main works Heritage Management Plan, Method Statements and the HEMP. However, Chapter 6 [APP-040] makes no reference to the HEMP or its relevance in terms of the cultural heritage operational effects assessment, and the OAMS does not specify how the HMP, Method Statements, OWSI and SSWSI specifically interact with the HEMP.</p> <p>Please explain how the HEMP would relate to the various archaeological management plans as set out in the OAMS.</p>	<p>In respect of cultural heritage and archaeology, the HEMP will identify heritage assets within land to be retained by the Applicant and, where relevant, any restriction or constraint on maintenance regimes necessary to ensure the continued retention or preservation in situ of the asset. These assets will previously have been identified within the Scheme’s Heritage Management Plans and Method Statements, which will have incorporated information from the OWSI and SSWSIs, where relevant. This is outlined within the Detailed Archaeological Mitigation Strategy (DAMS), submitted at Deadline 2 (please refer to section 4.1.17 of the DAMS).</p>

DCO.1.90	Applicant	<p>Requirement 4 – Outline Environmental Management Plan</p> <p>Please explain further the justification for the core working hours, site specific working hours, additional working hours and the continuous nature of the tunnelling operation set out in the OEMP.</p> <p>Should these working hours be set out in Requirement 4 to provide clarity and to assist in their enforceability?</p>	<p>The core working hours (07:00 – 19:00 Monday to Friday and 07:00 – 13:00 Saturday) identified within item MW-G12 of the OEMP [APP-187], are proposed to allow the contractor to work over a reasonable timeframe in locations which are remote from large numbers of sensitive receptors.</p> <p>The site specific working hours (07:30 – 18:00 Monday to Friday and 07:30 – 13:00 Saturday), as identified within item MW-G13 of the OEMP [APP-187], are based on Wiltshire Council’s standard hours for noisy activities. These would be applied at specific locations to reduce the impact of works in areas in close proximity to large numbers of residential properties, i.e. Amesbury and Winterbourne Stoke.</p> <p>Additional working hours are required to allow the Contractor to undertake works, outside of the core working hours or site specific working hours, for reasons of safety or operational necessity, the maintenance of essential equipment, and to allow for work required in response to an emergency or which if not completed would be unsafe or harmful to the works, staff, public or local environment. Item MW-G14 of the OEMP [APP-187] provides further detail on additional working hours.</p> <p>Once the Tunnel Boring Machine (TBM) commences boring, it is required to be continuously operational to prevent ground closure and the TBM becoming trapped within the bored passage. This therefore requires the TBM and ancillary works, such as slurry treatment and supply of materials, to be operational on a 24 hours 7 days/week basis, as described within item MW-G12 of the OEMP [APP-187].</p>
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			It is not necessary to include these hours in Requirement 4 – they are already set out clearly in the OEMP, where they are enforceable under Requirement 4. The Applicant will consider whether it would aid clarity to set out the circumstances in which the different types of working hours might apply in the updated OEMP to be submitted at Deadline 3.
DCO.1.91	Wiltshire Council	<p>Requirement 4 – Outline Environmental Management Plan</p> <ul style="list-style-type: none"> i. Please comment generally on the proposed core working hours, the additional hours and the proposed suspension of works for solstices apart from the tunnelling operation, tunnel related activities or transport of tunnel arisings set out in the OEMP and the means whereby these would be monitored and enforced. ii. Please identify any apparent discrepancies and omissions in relation to core working hours. iii. Please comment upon whether any core working hours should be specifically 	N/A

		<p>identified by way of a requirement in the dDCO.</p> <p>iv. Please comment generally on the proposed means of preparation, implementation, monitoring and enforcement of the CEMPs and management plans as provided for by the OEMP.</p>	
DCO.1.92	Environment Agency	<p>Requirement 4 – Outline Environmental Management Plan</p> <p>i. Please explain in detail your concerns in relation to the deficiencies of the OEMP including those in relation to the drainage strategy, the River Avon floodplain, and the risk of impact on the Rivers Till and Avon during construction.</p> <p>ii. Please state exactly what changes would be needed to the OEMP and/or dDCO Requirements for those concerns to be overcome.</p>	N/A

<p>DCO.1.93</p>	<p>Applicant</p>	<p>Requirement 4 – Outline Environmental Management Plan</p> <p>The OEMP, Table 3.2b D-CH1 to DCH13, sets out various action/commitments including (D-CH14) that there would be no tunnel shafts within the WHS and the responsible person is stated to be the main works contractor.</p> <p>Should any of these commitments such as the provision of visual screening earth bunds (D-CH1) and those actions relating to lighting (DCH8-12) include provision for consultation and/or be the subject of specific Requirements in the dDCO?</p>	<p>The Applicant considers that these OEMP measures are appropriately and adequately secured by requirement 4 through their inclusion in the OEMP. They are clear and unambiguous and should the Applicant be in breach, that breach would be enforceable under requirement 4. There is no need for consultation on their terms because these commitments will be the subject of the examination of the application. Please see the answer to question DCO.1.81(ii) for more detail on the Applicant’s intentions regarding consultation on development of detailed design.</p>
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DCO.1.94	Applicant	<p>Requirement 4 – Outline Environmental Management Plan</p> <p>The OEMP, Table 3.2b (D-LAN2), provides a commitment that there would be a 1.5m high environmental barrier along the southern aspect of the River Till viaduct westbound bridge deck.</p> <p>Should this be the subject of a specific requirement in the dDCO and include provision in relation to consultation and/or approval of design?</p>	<p>The Applicant considers that D-LAN2 is appropriately and adequately secured by requirement 4 through its inclusion in the OEMP. It is clear and unambiguous and should the Applicant be in breach, that breach would be enforceable under requirement 4. The Applicant intends to insert an obligation to consult Wiltshire Council on the detailed design of the viaduct in the update of the OEMP to be submitted at Deadline 3.</p>
DCO.1.95	Applicant	<p>Requirement 4 – Outline Environmental Management Plan</p> <p>The OEMP, Table 3.2b (D-LAN2), provides a commitment that the provision of fencing and surfacing within the WHS shall be developed in consultation with the National Trust, Historic England, English Heritage, and Wiltshire Council and approved by The Authority.</p> <p>Should this be the subject of a specific Requirement in the dDCO?</p>	<p>The Applicant understands that the question refers to measure D-CH14 in Table 3.2b of the OEMP [APP-187].</p> <p>The Applicant considers that D-CH14 is appropriately and adequately secured by requirement 4 through its inclusion in the OEMP. It is clear and unambiguous and should the Applicant be in breach, that breach would be enforceable under requirement 4. Please see the answer to question DCO.1.81(i) for more detail on the Applicant's intentions regarding consultation on development of detailed design.</p>

DCO.1.96	Applicant	<p>Requirement 5 - Archaeology</p> <p>Requirement 5 makes provision for the authorised development to be carried out in accordance with the detailed archaeological mitigation strategy.</p> <ul style="list-style-type: none"> i. Should that Requirement also set out the means whereby that strategy must be prepared, submitted to and approved by the relevant authority before the commencement of any work? ii. Why do the Requirements not specifically provide for the approval of and the carrying out of development in accordance with the other proposed management/mitigation strategies? Please explain this omission. 	<ul style="list-style-type: none"> i. No, as is set out in paragraph 1.2.4 of the Applicant's '<i>Additional Submission 2</i>' [AS-010] the intention is that the Detailed Archaeological Mitigation Strategy will be submitted to the examination and examined in public, before being certified in the final DCO, if made. On submission of the DAMS, the OAMS would be superseded. As the intention is for the DAMS to become the "final" document and certified, there is no need to make provision for it to be further developed. ii. Requirement 5 already secures that the development must be carried out in accordance with the DAMS, which will itself include the other archaeological management and mitigation strategies.
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		<p>iii. Please consider whether the reference to a detailed archaeological and heritage outreach and education programme within the detailed archaeological mitigation strategy should be included in Requirement 5?</p>	<p>iii. This will be featured in the certified DAMS, therefore it is already secured by the existing drafting of Requirement 5. Please see Appendix F of the draft DAMS submitted at Deadline 2.</p>
DCO.1.97	Wiltshire Council	<p>Requirement 5 - Archaeology</p> <p>i. Please explain why a detailed archaeological and heritage outreach and education programme within the detailed archaeological mitigation strategy should be included in Requirement 5 and provide an amended draft of that Requirement showing how that might be achieved.</p> <p>ii. Please suggest how any additional mitigation required to minimise the adverse impacts of the scheme on the setting of asset groups in the western part of the WHS might be secured by the dDCO.</p>	N/A

DCO.1.98	Applicant	<p>Requirement 6 – Protected species</p> <p>The Environment Agency states that Requirement 6 should be for both the permanent and temporary works.</p> <p>Please confirm that to be the agreed position and indicate whether any and, if so, what changes to the draft requirement are necessary to reflect this.</p>	<p>The Applicant's view is that requirement 6 does not need to be amended to apply to temporary and permanent works. Its terms already include all works carried out under the Order, whether permanent or temporary, save for those that are excluded from the definition of "commence" and all of the preliminary works.</p> <p>Please see DCO.1.8 for further information on the definition of "commence" and "preliminary works". In summary, the works excepted from the definition of commence are not material enough to merit being subject to Requirement 6 and the preliminary works are already subject to appropriate provisions regarding protected species in items PW-BIO1 to PW-BIO10 of the preliminary works OEMP. These measures includes species specific measures for great crested newts, reptiles, breeding birds (Schedule 1 protected birds and other birds), badgers, bats, otters, water voles and other notable species.</p>
DCO.1.99	Applicant	<p>Requirement 7 – Contaminated land</p> <p>i. Should this requirement include provision for the submission of the risk assessment once completed to the relevant authority?</p>	<p>i. In the Applicant's view the drafting in requirement 7 already caters for this, as it requires the Applicant to "complete a risk assessment ... in consultation with" the relevant authority. Necessarily if it is must be completed in consultation with the relevant authority, the authority will receive a copy of the completed assessment.</p>

		<p>ii. Should this Requirement contain a timeline for approval of the scheme/programme and for remedial measures to be carried out in accordance with a timetable agreed as part of the approved scheme?</p>	<p>ii. The provisions relating to the timelines for the discharge of requirements are set out in Part 2 of Schedule 2 and in the Applicant’s view there is no need to duplicate those provisions in the body of this requirement. In respect of a timetable for the remedial measures to be carried out, this is already catered for in the requirement in sub-paragraph (2) that the undertaker must consult with the planning authority and the Environment Agency on a programme for remedial measures to be taken, which must then be approved by the Secretary of State.</p> <p>It should be noted that Chapter 10 of the Environmental Statement (Geology and Soils) [APP-048] concludes that no significant effects are expected and it is likely that this requirement, which deals only with unexpected contamination that has not previously been identified in the Environmental Statement, will not be used.</p>
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		<p>iii. Please comment on the Environment Agency’s proposed additional requirements relating to a strategy for dealing with risk from contaminated land from the historic uses and the submission and approval of a verification report. Please indicate whether the inclusion of requirements along those lines are agreed and, if not, why not.</p>	<p>iii. The Applicant understands that this question relates to the Environment Agency's relevant representation and an initial response is provided on page 20-4 of the Applicant's Response to Relevant Representations [AS-026]. The Environment Agency's relevant representation indicates that it would seek a requirement for the Applicant to undertake a strategy for dealing with risk from contaminated land from historic uses. The Applicant is discussing this matter with the Environment Agency but responds as follows.</p> <p>The ES at paragraph 10.6.90 and 10.6.91 and Appendix 10.2 [APP-274] indicates that the risks arising from these historic sites is likely to be low. It would be disproportionate to the risks assessed to impose a pre-commencement requirement that would require the completion of any strategy prior to the commencement of any part of the Scheme. The OEMP, secured by requirement 4, includes enforceable measures to regulate the risks from contaminated land, see in particular MW-GEO1 in respect of the main works and PW-GEO1 in respect of the preliminary works.</p> <p>As foreshadowed by the ES (paragraph 10.8.2), since the ES submission a package of ground investigation referred to as Phase 7 has been scoped by the Applicant to provide geotechnical, hydrogeological and geo-environmental information for detailed design. This scope includes exploratory boreholes and geo-environmental testing along the route alignment specifically targeting key potentially contaminative sites including the former RAF Oatlands Hill, former RAF Stonehenge and current Countess filling station.</p> <p>These investigations would precede construction and, in the</p>
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			<p>event that contamination not identified in the ES was discovered, remediation options and strategies would be developed in liaison with the EA, pursuant to the process set out by the DCO requirement at Schedule 2 paragraph 7 of the DCO.</p> <p>On that basis, and on the basis that the Applicant would expect that any requirement for a verification report would be included in the written scheme and programme already catered for under sub-paragraph (2), the Applicant's view is that the Environment Agency's proposed additional requirements are not justified. The matter is being discussed with the Environment Agency and is anticipated that agreement will be reached during the course of the examination.</p>
DCO.1.100	Environment Agency	<p>Requirement 7 – Contaminated land</p> <ul style="list-style-type: none"> i. Please explain further the need for the dDCO to include specific Requirements for further investigation, risk assessment, remediation and verification of areas identified as having potentially contaminative past uses and the submission and approval of a verification report. ii. Explain why Requirement 7, as drafted, is regarded as being insufficient provide a 	N/A

		<p>safeguard in relation to all relevant aspects of contaminated land and groundwater and submit any alternative or additional Requirements covering this topic in draft form.</p>	
DCO.1.101	Applicant	<p>Requirement 8 - Landscaping</p> <p>Please amend to include as part of the elements of the landscaping scheme set out in Requirement 8(2) a timetable for carrying out the agreed scheme.</p>	<p>In the Applicant's view, it is not necessary for a timetable for carrying out the works to be included in the Requirement. The key point is that the works are carried out according to the landscaping scheme, not that they are delivered to a particular deadline. This key point is already secured by the provisions of Requirement 8.</p>
DCO.1.102	Applicant	<p>Requirement 8 - Landscaping</p> <p>Why does Requirement 8(2)(b) only specify "<i>noise fences and walls</i>" as opposed to fences or walls designed for other purposes?</p>	<p>Requirement 8(2)(b) refers to <i>noise fences and walls</i> to ensure that their final location is secured in accordance with an approved plan. Fences and walls for other purposes are generally not of sufficient import to landscape and visual effects so as to require their final location to be approved as part of landscaping plan. It should be noted that, in the particular circumstances of this Scheme, within the World Heritage Site where the location and appearance of fences could be important, the Applicant has committed in reference D-CH14 of the OEMP, that "<i>The provision of fencing and surfacing within the WHS shall be developed in consultation with the National Trust, Historic England, English Heritage and Wiltshire Council.</i>". Compliance with the OEMP is secured by requirement 4.</p>

DCO.1.103	Applicant	<p>Requirement 8 - Landscaping</p> <p>Please explain why the Outline Landscape and Ecology Management Plan itself [APP-267] is not specifically referred to as part of dDCO Requirement 8? In particular, there are maintenance obligations in section 13 of [APP-267] which the ExA consider may be appropriately set out or referred to specifically in the Requirement itself.</p>	<p>The OLEMP is secured according to the terms of Requirement 8. That requirement refers to the 'mitigation measures set out in the ES'. The OLEMP is part of the ES, as Appendix 8.26 [APP-267]. The OLEMP is also referred to in chapter 7 of the ES:</p> <ul style="list-style-type: none"> • as an assumption in para 7.4.5 – that the establishment of the new planting is supported by an outline landscape and ecology management plan and strategy (OLEMP), which is presented at Appendix 8.26; • in assessing effects in year 15 the assessment assumes that the <i>principal change to the Scheme compared to the year 1 assessment would be from the establishment of the tree and hedgerow planting and the chalk grassland seeding. The establishment of the planting from year 1 of operation is supported by the OLEMP;</i> • to conclude that there are no landscape and visual significant effects requiring monitoring – this <i>being based upon the successful implementation of the OEMP during the construction phase and the OLEMP during the operation phase.</i> <p>The OLEMP is therefore a mitigation measure set out in the ES and is secured according to the terms of Requirement 8.</p>
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DCO.1.104	Applicant	<p>Requirement 9 – Traffic management</p> <p>i. Please consider whether this condition should state the topics to be covered in the plan including items a) to j) listed in Table 3.2b of the OEMP and re-draft in in that form.</p> <p>ii. Please re-draft Requirement 9(2) to read <i>“The traffic management plan approved under sub-paragraph 9(1) must be implemented during the construction of the authorised development”</i>.</p> <p>iii. Should there be an additional Requirement designed to control the use of site access points for haul roads and traffic management measures where the crossing of public roads is required?</p>	<p>i. In the Applicant’s view this is not needed, as that content is already included in the OEMP and therefore secured by requirement 4.</p> <p>ii. In the Applicant’s view this amendment is not necessary - the intent is already captured by the current wording and in any event, the traffic management plan will be appended to the CEMP, which must be approved prior to construction (items MW-G5 - G7) and the OEMP makes clear that construction must be carried out in accordance with the CEMP (para 1.1.6).</p> <p>iii. Site access points and public road crossings are already controlled by items MW TRA7 and MW-TRA9 of the OEMP, as such an additional requirement is not needed.</p>
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DCO.1.105	Wiltshire Council	<p>Requirement 9 – Traffic management</p> <ul style="list-style-type: none"> i. Please comment generally in relation to the means whereby by proposed traffic management control measures would be secured by Requirement 9. ii. Please identify any additional traffic control measures that need to be enforced by way of a specific Requirement in the dDCO or by any other means. 	N/A
DCO.1.106	Applicant	<p>Requirement 10 - Drainage</p> <p>Please consider whether reference to a timetable for carrying out the drainage system works needs to be included in this Requirement.</p>	<p>It is not necessary for a timetable for carrying out the works to be included in the Requirement. The key point is that the works are carried out according to the scheme not that they are delivered to a particular deadline. This key point is already secured by the provisions of Requirement 10.</p>

DCO.1.107	Environment Agency	Requirement 10 - Drainage <ul style="list-style-type: none"><li data-bbox="658 293 1137 655">i. Please comment generally as regards the provisions in the OEMP and drainage strategy and the means whereby the agreement of the detailed design of the drainage infrastructure, monitoring and maintenance could be secured by the dDCO.<li data-bbox="658 679 1137 895">ii. Please submit with reasons any modifications or additions to the drainage strategy or other Requirements that are considered to be necessary.	N/A
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Schedule 11 – Protective Provisions							
DCO.1.108	Applicant	Please provide an update as to the present state of negotiations with the Statutory Undertakers and revised Protective Provisions where appropriate?	<p>The table below provides an update as to the present state of negotiations with statutory undertakers and other persons with the benefit of the protective provisions in Schedule 11. A further more detailed update on the status of the protective provisions negotiations will be provided for Deadline 3.</p> <table border="1"> <tbody> <tr> <td>BT Group plc (Openreach)</td> <td>A letter requesting comments on the draft PPs was issued on 15 February. A letter in response was received on 20 February stating that Openreach is satisfied in principle with the content and wording of the PPs and that it has no amendments to the text. The Applicant has been asked to inform Openreach in the event that the relevant draft PPs are amended to allow for further consideration.</td> </tr> <tr> <td>CenturyLink Limited (managed by Instalcom Limited)</td> <td> <p>A letter requesting comments on the draft PPs was issued to Instalcom Limited on 14 February. Instalcom Limited sent the letter to CenturyLink Limited (as asset owner) on the same day and were awaiting comments (as of 17 April).</p> <p>Follow-up calls and emails (with Instalcom Limited) to the original letter requesting an update on the comments took place on 22 February, 2 April and 16 April.</p> </td> </tr> </tbody> </table>	BT Group plc (Openreach)	A letter requesting comments on the draft PPs was issued on 15 February. A letter in response was received on 20 February stating that Openreach is satisfied in principle with the content and wording of the PPs and that it has no amendments to the text. The Applicant has been asked to inform Openreach in the event that the relevant draft PPs are amended to allow for further consideration.	CenturyLink Limited (managed by Instalcom Limited)	<p>A letter requesting comments on the draft PPs was issued to Instalcom Limited on 14 February. Instalcom Limited sent the letter to CenturyLink Limited (as asset owner) on the same day and were awaiting comments (as of 17 April).</p> <p>Follow-up calls and emails (with Instalcom Limited) to the original letter requesting an update on the comments took place on 22 February, 2 April and 16 April.</p>
BT Group plc (Openreach)	A letter requesting comments on the draft PPs was issued on 15 February. A letter in response was received on 20 February stating that Openreach is satisfied in principle with the content and wording of the PPs and that it has no amendments to the text. The Applicant has been asked to inform Openreach in the event that the relevant draft PPs are amended to allow for further consideration.						
CenturyLink Limited (managed by Instalcom Limited)	<p>A letter requesting comments on the draft PPs was issued to Instalcom Limited on 14 February. Instalcom Limited sent the letter to CenturyLink Limited (as asset owner) on the same day and were awaiting comments (as of 17 April).</p> <p>Follow-up calls and emails (with Instalcom Limited) to the original letter requesting an update on the comments took place on 22 February, 2 April and 16 April.</p>						

			Virgin Media Limited	<p>A letter requesting comments on the draft PPs was issued to Virgin Media Limited on 15 February. The letter has been acknowledged by Virgin Media Limited but no comments have been received yet.</p> <p>Follow-up calls and emails to the original letter requesting an update on when the comments will be received took place on 2 April and 16 April.</p>
			Sky	<p>A letter requesting comments on the draft PPs was issued to Sky on 14 February. The letter has been acknowledged by Sky and Sky provided some initial comments on 5 March.</p> <p>The Applicant expects to be in a position to start discussing the detail of the PPs with Sky shortly.</p>
			SSE plc	<p>A letter requesting comments on the draft PPs was issued to SSE plc on 14 February. The letter has been acknowledged by SSE's solicitors and the Applicant expects to be in a position to start discussing the detail of the PPs with Sky shortly.</p>
			SSE Enterprise Telecoms	<p>A letter requesting comments on the draft PPs was issued to SSE Enterprise Telecoms on 6 March. The letter has been acknowledged by SSE Enterprise Telecoms but no comments have been received yet.</p> <p>A follow-up call to the original letter was made</p>

				on 2 April requesting an update on when the comments will be received.
			Wessex Water Services Limited	<p>A letter requesting comments on the draft PPs was issued to Wessex Water Services Limited on 14 February. No comments have been received yet.</p> <p>Follow-up emails and call to the original letter were made on 22 February and 3 April requesting an update on when the comments will be received.</p>
			Southern Gas Networks plc	<p>A letter requesting comments on the draft PPs was issued to Southern Gas Networks plc on 15 February. Acknowledgement of this letter was received on the same day but no comments have been received yet.</p> <p>A follow-up email to the original letter was sent on 2 April requesting an update on when the comments will be received.</p>
			Esso Petroleum Company Limited	<p>Negotiations ongoing.</p> <p>There is only a limited number of outstanding items between the Applicant and Esso in relation to the PPs and it is the Applicant's view that the parties will reach an agreement on those PPs.</p>
			Environment Agency	<p>Environment Agency has updated its standard form of protective provisions which were received 11 April 2019 by the Applicant. Negotiations are ongoing.</p>

DCO.1.109	Applicant	Please indicate whether the terms of the Protective Provisions set out in Schedule 11 are agreed and, if not, what are the areas of disagreement?	An update on the status of negotiations is provided in response to DCO.1.108. From the discussions with those persons to date, the Applicant has no reason to believe that agreement on protective provisions will not be reached before the close of the examination. A further more detailed update on the status of the protective provisions negotiations will be provided for Deadline 3.
DCO.1.110	Environment Agency Esso Petroleum Company Ltd	Please indicate whether the terms of the Protective Provisions set out in Schedule 11 are agreed and, if not, what are the areas of disagreement?	N/A

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