

A303 Amesbury to Berwick Down

TR010025

Deadline 4

**8.30.1 - Written summaries of oral submissions put at
Development Consent Order hearing on
4th June 2019**

APFP Regulation 5(2)(q)

Planning Act 2008

The Infrastructure Planning (Examination Procedure) Rules 2010

June 2019



Infrastructure Planning

Planning Act 2008

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A303 Amesbury to Berwick Down

Development Consent Order 20[**]

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1 Introduction

- 1.1.1 This document summarises the oral submissions made by the Applicant at the Issue Specific Hearing dealing with matters relating to the draft Development Consent Order held on Tuesday 4 June 2019.
- 1.1.2 Where the Examining Authority requested further information from the Applicant on particular matters, or the Applicant undertook to provide further information during the hearing, the Applicant's response is set out in or appended to this document.
- 1.1.3 This document does not purport to summarise the oral submissions of parties other than the Applicant, and summaries of submissions made by other parties are only included where necessary in order to give context to the Applicant's submissions in response, or where the Applicant agreed with the submissions of another party and so made no further submissions itself (this document notes where that is the case).
- 1.1.4 The structure of this document follows the order of items as set out in the agenda for the issue specific hearing dealing with matters relating to the draft Development Consent Order ("the Agenda"). Numbered agenda items referred to are references to the numbered items in the Agenda.

2 Written summary of the Applicant's oral submissions

3 EFFECTS ON STONE-CURLEW AND ADEQUACY OF PROPOSED MITIGATION MEASURES

<u>Agenda Item</u>	<u>Highways England response</u>
<p>3.1 Consideration of the definitions and descriptions as currently drafted and whether they encompass all necessary matters and work in a form that allows all parties to understand the fundamental parameters, structure, approach and limitations of the consent sought.</p> <p>3.2 Extent of the works, provisions and powers sought, and the implications or proportionality of rights sought over any land on a temporary or permanent basis</p>	<p>Gordon McCreath for the Applicant explained that the DCO encompasses all necessary matters, expressed in a way to allow all parties to understand the parameters, structure, approach and limitations to the consent, as well as the extent of the works, provisions and powers sought. This Scheme adopts a well established approach to highways schemes. This allows a proportionate degree of flexibility to allow for the detailed design to take account of unforeseen ground conditions and other unforeseen matters and a limited amount of flexibility for value engineering and allows for potential improvements, for example in respect of archaeological and ecological mitigation. However, the flexibility is not without its restrictions – those restrictions in this case have taken account of the particular sensitivities in respect of the site around it. .</p> <p>The restrictions mentioned may not be apparent when one particular part of the documentation is reviewed. It is for this reason that the Applicant has submitted a signposting document [AS-009] that explains on a step by step basis how the documentation works together. In addition, there are site specific restrictions, and design commitments, which have been specifically designed coming out of ongoing consultation with key stakeholders.</p> <p>In respect of Applicant approval, the Applicant explained that there is a split between matters that are for the approval of the Secretary of State and matters which are ultimately for the approval of Highways England. In the latter case, in almost all circumstances this is after consultation with key stakeholders. Those matters for the approval of the Secretary of State are what can be seen as the key 'agenda setting' items. For example, this applies to the documents certified by the Secretary of State under the DCO, should it be made, including the plans, the Outline Environmental Management Plan ("OEMP") and the Detailed Archaeological Mitigation Strategy ("DAMS").</p> <p>Taking a further step, in respect of what can be seen as more detailed matters and plans (including the detailed management plans, Construction Environmental Management Plans ("CEMP") and the Handover Environmental Management Plan), the approach taken is that as the frameworks for these is already set out in the OEMP and DAMS, there are already sufficient controls approved by the Secretary of State. As such, taking a more pragmatic approach, the Applicant considers that it makes sense for these to be subject to ultimate approval by Highways England. This means the Applicant does not have to seek approvals from the Secretary of State which may delay the Scheme and, indeed, may not be something the Secretary of State wishes to consider.</p> <p>In response to comments made by the Wiltshire Council, the Applicant explained that Highways England would not be producing a management plan or similar and then approving it – instead, it would be the contractor which produces the plan in consultation with key stakeholders. As regards Wiltshire Council's suggestion that they should be approving certain documents in line with a normal planning permission, the Applicant submitted that this is not a normal planning application – it is a nationally significant infrastructure project</p>

	<p>("NSIP"). It is not standard on highway NSIPs for such approvals to sit with the local planning authority, given the particular need to deliver the scheme in an efficient and effective manner. In respect of the comment that the Secretary of State should approve the CEMP, the Applicant referred to previous submissions that this is not necessary given the Secretary of State would have approved the overall framework in the OEMP. The Applicant also submitted in response to a suggestion that the DAMS should be approved by Wiltshire Council that the DAMS is considered a 'top tier' document, given its importance, so approval by the Secretary of State is appropriate through the certification process under the Development Consent Order.</p> <p>The Applicant noted Historic England's submission that it seeks both consultation and approval on any aspect of the Scheme that could give rise to heritage effects and responded by observing that such measures would impose a considerable burden on Historic England and would risk delay to the delivery of a nationally significant infrastructure project. The Applicant also confirmed that a 'box' had been assessed, as confirmed in paragraph 2.3.1 of the Environmental Statement [APP-040]. However, there are a variety of restrictions on what can be done within that 'box', as submitted earlier.</p> <p>In respect of consultation points made by the National Trust, the Applicant directed interested parties to the revised version of the OEMP submitted at Deadline 3 [REP3-006], which contained a number of provisions around consultation in respect of detailed design. Taking matters of detail to the Secretary of State is unnecessary and unduly onerous given the framework set out in the documentation. The Applicant also responded to a further point from the National Trust on enforcement risk if there is not sufficient detail set out now, explaining that through ongoing engagement with Wiltshire Council, it is hoped that such a situation would not arise.</p> <p>The Applicant further noted that the updated OEMP submitted at deadline 3 [REP3-006] includes further design principles and design commitments that have been developed through the continuation of the extensive consultation with key stakeholders that has been ongoing through the development of the Scheme. The Applicant noted that, while a draft had been shared with the heritage stakeholders, they would have had limited opportunity to review the document submitted for deadline 3, and that the Applicant looked forward to discussing it further with them with a view to address any outstanding concerns.</p>
<u>Part 1 - Preliminary</u>	
<u>3.3 Article 2 – Interpretation</u>	
<u>Agenda Item</u>	<u>Highways England response</u>
<p><i>i. The extent of definitions, including the definitions of “authorised development”, “commence” and “maintain”.</i></p>	<p><u>Article 2(1) – definition of “commence”</u></p> <p>The Applicant noted that the definition of "commence" was longer than is sometimes the case with development consent orders and explained that this is because the draft Order takes a novel, but not unprecedented, approach to authorising preliminary works. Each of the elements excluded from the definition have precedent in other orders, save for "ecological mitigation".</p> <p>The effect of items being excluded from the definition of commence is to except them from the need to await the discharge of pre-commencement requirements before they can be undertaken. There are two categories of matters excluded from the definition of</p>

"commence" (i) the "preliminary works", as defined in paragraph 11 of Schedule 2, (save for the highways works) and (2) de minimis activities that have been assessed as not likely to give rise to significant environmental effects. The Applicant explained that it is usually the case that all matters excluded from the definition of "commence" would be subject to no further regulation. This is not the case for the draft Order.

Those works excluded from the definition of commence, but within the scope of the definition of the "preliminary works" (defined in paragraph 1(1) of Schedule 2 to the draft DCO) including "site clearance" as raised by Wiltshire Council, would be subject to the controls of the preliminary works OEMP by virtue of requirement 4(2). The Environmental Statement, at paragraph 2.4.7 [APP-040], confirms that with the implementation of these measures there would be no significant environmental effects. All works, whether included or excluded from the definition of "commence" would be subject to compliance with the DAMS, secured by requirement 5. This additional level of control reflects a significant improvement over what would normally be the case for matters excluded from the definition of "commence" in other Orders. The matter is discussed further in the Applicant's responses to the Examining Authority's first written questions DCO.1.8 [REP2-030].

The Applicant explained that other activities excluded from the definition of "commence", which were not within the definition of "preliminary works" (identified in the Applicant's response to question DCO.1.8(iv) [REP2-030]), are de minimis, have been assessed and would not give rise to significant environmental effects. In response to the Examining Authority's questions the Applicant undertook to review, in the light of the Draft Detailed Archaeological Mitigation Strategy [REP2-038] the reference to "archaeological investigations" in the matters excluded from the definition of "commence".

The Applicant submitted that it was necessary and proportionate to provide for the preliminary works to proceed ahead of the discharge of pre-commencement requirements, subject to the controls in the OEMP and DAMS. This would enable the detailed archaeological mitigation secured by the DAMS to be commenced ahead of the start of the main works and would enable other preliminary works to go ahead while the detailed design of the main works is being developed.

Post Hearing Note: the Applicant considers it appropriate to retain "archaeological investigations" within the exclusions from the definition of "commence" and has retained this drafting in revision 3 of the DCO. This is because although it is clear from the DAMS that archaeological mitigation includes archaeological investigation, this may not be clear to the ordinary reader. The definition of commence therefore retains the carve out of both terms and Schedule 2 makes it clear that the preliminary works includes both

In response to Historic England's submission that the normal way that preliminary works are secured is via a development consent obligation, this not accepted by the Applicant. Firstly, the Applicant notes the Order, together with its controls, take effect from the date the Order comes into force. The only practical effect of works being excluded from the definition of "commence" is that those works could proceed before the discharge of the pre-commencement requirements. Secondly, the Applicant notes that the concept of preliminary works being authorised on the face of a DCO via excepting them from the definition of commence is well precedented. The approach proposed for this scheme goes further than that standard approach in regulating those activities via the Preliminary Works OEMP.

Definition of "maintain"

	<p>The Applicant noted that the definition of "maintain" contained in the draft DCO is well precedented (see the list of precedents in DCO.1.12(i) [REP2-030]). The Applicant confirmed that the power to "maintain" in article 5 is limited to a power to maintain the "authorised development", within the limits of deviation set by article 7, and confirmed that the scope of the definition of "maintain" has been assessed in the Environmental Statement. The Applicant noted that the "maintain" is defined inclusively to convey its ordinary and natural meaning, inclusive of the items further mentioned in its definition. The Applicant confirmed that the power to maintain could be used to alter the authorised development from what is initially constructed, although any alteration must be within the scope of the definition of "authorised development" including the limits of deviation. For further information see the Applicant's response to DCO.1.12 [REP2-030].</p>
<p>ii. The justification for the degree of flexibility that reliance upon 'illustrative' plans would allow?</p>	<p>In response to the Examining Authority's query, whether the phrase "<i>shown illustratively on sheet... of the rights of way and access plans</i>" could be removed from Schedule 1; the Applicant noted that the use of the word "illustratively" in respect of the private means of access and public rights of way shown on the Rights of Way and Access Plans [APP-009] was necessary to allow those plans to 'work' alongside the works plans and engineering sections and did not afford an unacceptable degree of flexibility.</p> <p>The Applicant explained that those works are controlled by (i) the detailed descriptions of each item given in Schedule 3 which describes a start point, a length, a direction and an end point all by reference to existing landmarks (ii) the bounds of the numbered work to which they relate (iii) the need to have the appropriate land use power in order to deliver them and (iv) in the case of private means of access, the need to serve the land to which they relate. While what is shown on the plans may be illustrative, the descriptions in Schedule 3 are fixed, subject only to those distances being "approximate" per article 2(4). This is the key restriction on flexibility.</p> <p>This degree of flexibility is required because the Rights of Way and Access Plans set out a considerable amount of detail in terms of ways and accesses to be stopped up, replaced and created such that it would be impractical to also show the lateral limits of deviation. Consequently, if the limits of deviation were exercised it could render the rights of way undeliverable unless there was a limited degree of flexibility to enable the corresponding adjustment. The matters shown on the Rights of Way and Access Plans, including the degree of flexibility, have been assessed as set out in chapter 2.3 of the ES.</p> <p>In response to Historic England's submission that clearly defined parameters ought to be provided at this stage, the Applicant noted that such parameters are already included in the draft Order and the Applicant has produced a signposting document [AS-009] to assist participants to the examination with where those parameters are located.</p> <p>Further written submissions on this point can be found in the Applicant's response to DCO1.1 [REP2-030].</p>
<p>iii. Whether the scope of the 'ancillary' works should be further defined, for example, in relation to the Order limits?</p>	<p>The Applicant submitted that the approach to the "ancillary works" listed at the end of Schedule 1 of the draft Order is widely precedented. The Applicant noted that the alternative approach would be to list all of the potential ancillary works at the end of the description of each numbered work. Noting that the majority of the numbered works each require the majority of the ancillary works, this would lead to the descriptions of the works becoming very long, very cumbersome and considerably more difficult to understand.</p>

	<p>In preparing Schedule 1 the Applicant has sought to provide a clear and concise description of each numbered work, supported by a detailed list of ancillary works supporting the numbered works.</p> <p>This does not lead to disproportionate flexibility. The key control is in the introductory wording to the list of "ancillary works" in Schedule 1. This limits the authorisation of the ancillary works to being "<i>For the purposes of or in connection with the construction of any of the works and other development mentioned above, ancillary or related development which does not give rise to any materially new or materially worse adverse environmental effects to those assessed in the environmental statement</i>". This ensures the ancillary works are (i) for the purposes of, or in connection with, the numbered work and (ii) do not give rise to any materially new or materially worse adverse environmental effects than those assessed.</p> <p>Further written submissions on this point can be found in DCO.1.2 [REP2-030].</p> <p>The Applicant confirmed that the ancillary works are constrained to the Order limits, the constraint being contained in article 7(1) but agreed to consider if this could be expressed more clearly on the face of the Order.</p> <p>Post Hearing Note: <i>the Applicant has amended article 7(1) in order to more clearly express that the authorised development can only be constructed within the Order limits.</i></p>
<p>iv. Whether the construction compounds should be listed as specific numbered works and shown on the works plans, rather than including them as 'ancillary works'?</p>	<p>The Applicant explained that the detail of the layout and precise scale of construction compounds remains to be determined as part of the contractor's construction methodology and that this would be prepared at detailed design stage. The Environmental Statement has assessed the general location and scale of the construction compounds (ES 2.4.2 and 2.4.12 [APP-040]).</p> <p>The Applicant submitted that it is not necessary to further restrict the already limited degree of flexibility afforded for the location of the construction compounds by identifying them as a specific numbered work. The reason for that is that flexibility of their location is already quite restricted. Construction compounds are listed as ancillary works and so are subject to the restriction previously mentioned to not give rise to materially new or materially adverse environmental effects than those assessed in the Environmental Statement. Their location will be further constrained by the powers available to occupy land and by the need for the compounds to be within the Order limits. The combination of these factors means that in practice, the ability to make changes to the compound locations shown in the ES will be limited.</p> <p>Recognition of this justification can be seen throughout other highways DCOs. The approach of including construction compounds in the ancillary works is well established practice having been followed in every highway DCO made to date and with one exception, construction compounds have not been identified as specific numbered works.</p> <p>Mitigation related to construction compounds is set out in the OEMP, references MW-G26 and, in respect of landscape and other impacts, MW-G28. Compliance with the OEMP is secured by requirement 4. Further written submissions on this point can be found in response to the Examining Authority's written question DCO.1.2 [REP2-030].</p> <p>In response to the National Trust's submission, that its primary concern is to ensure that no construction compounds could not be established within the World Heritage Site, the Applicant confirmed that this is the intention and agreed to consider how further reassurance could be given that this principle will be observed.</p>

	<p>Post Hearing Note: Item MW-G28 of the updated OEMP prepared for submission at deadline 4 includes additional measures relating to the location of construction compounds, including a commitment for them to be located outside of the WHS.</p>
<p>v. Whether 'associated development' should be separately described in Schedule 1?</p>	<p>The Applicant referred to its response to the Examining Authority's first written questions DCO.1.4(i) [REP2-030]. The Applicant explained that it is not necessary for the Secretary of State to categorise each element of the Scheme into NSIP or associated development, rather it is for the Secretary of State to be satisfied that all of the development that would be authorised by the Order would be either part of the NSIP or associated development.</p> <p>There are practical difficulties for highway schemes in separately identifying elements forming part of the NSIP and those comprising associated development. An example of these difficulties is given in the Applicant's response to CA.1.1(i) [REP2-029]. The Applicant explained that the sorts of complexities considered in that submission would mean that separately identifying associated development would result in Schedule 1 of the Order becoming very difficult to follow. It would require the reader to refer to the NSIP elements of one work, then jump to the associated development aspects of that work, having to piece together the jigsaw to deduce what is actually authorised at each location.</p> <p>The Applicant acknowledged that this approach has been questioned, but ultimately accepted, on other highway DCOs, for example the A14 Cambridge to Huntingdon Improvement Scheme Order 2016 and the Silvertown Tunnel Order 2018.</p> <p>In response to the Trail Rider's Fellowship ("TRF") querying whether Work Nos. 3 and 6 were associated development or an NSIP the Applicant noted that the matters raised by the TRF were due to be discussed at Issue Specific Hearing 6 and that it would be better addressed at that hearing.</p>
<p>vi. Whether any other definitions should be included within Article 2?</p>	<p><u>"tree and hedgerow plans"</u></p> <p>The Applicant referred to its answer to the Examining Authority's first written questions DCO.1.38[REP2-030].</p> <p><u>Article 2(4)</u></p> <p>In response to Historic England's submission whether the distances specified in the limits of deviation are intended to be "approximate", the Applicant noted that article 2(4) is a standard provision that has been included in other DCOs. The Applicant would expect "approximate" to be given its ordinary and natural meaning that would be sensitive to the context in which the distance or measurement is used. The Applicant indicated that it would review article 2(4) in the context of article 7 and consider whether any amendments were necessary.</p> <p>Post Hearing Note: the Applicant has amended article 2(4) and introduced a new paragraph to article 7 that clarifies that limits of deviation are not "approximate".</p>

Part 2 – Work Provisions

3.4 Article 3 – Disapplication of legislative provisions

<u>Agenda Item</u>	<u>Highways England response</u>
<p><i>i. Whether there would be sufficient regulation of the activities that fall within Article 3(1) (a) to (f) of the revised dDCO?</i></p> <p><i>ii. The progress of discussions between the Applicant and the Environment Agency and Wiltshire Council as regards Protective Provisions and amendments for the protection of drainage authorities.</i></p>	<p>The Applicant confirmed that the disapplication of section 24 Water Resources Act 1991 was removed from the draft DCO in revision 1 submitted for deadline 2. This was removed following receipt of correspondence from the Environment Agency confirming that it would not grant its consent under section 150 Planning Act 2008 to that disapplication. The Applicant noted that the Applicant's preferred form of the Environment Agency's protective provisions are included in Revision 2 of the Draft DCO, submitted for Deadline 3. Subsequent to that submission some further minor amendments were agreed between the parties. The Applicant and the Environment Agency have now agreed protective provisions and the agreed form will be included in revision 3 of the draft DCO to be submitted at Deadline 4.</p> <p>In respect of the remaining disapplications for which Wiltshire Council is the body responsible, discussions between the parties on the disapplication and protective provisions are ongoing. The Applicant welcomed Wiltshire Council's submission that it is content to agree to the proposed disapplications, provided that sufficient protective provisions are agreed.</p> <p>In respect of the disapplication of the temporary possession provisions of the Neighbourhood Planning Act 2017, the Applicant referred to its response to DCO.1.18 [REP2-030] and noted that the provisions are not yet in force, there is no indication of when, or even if, they will come into force and that the consultations on the regulations necessary to take the provisions forward have yet to be published. In common with other projects that have gone through, or are going through, the Planning Act 2008 process, the Applicant seeks to disapply the relevant provisions to ensure there is certainty as to the applicable temporary possession regime at the time the Order is made. Were the Order to adopt the temporary possession provisions in the NPA 2017 requiring greater notice to be given, or to specify the duration of the temporary possession, the likely outcome of this would be for the Applicant to take a precautionary approach and temporarily possess more land at an earlier stage than it may necessarily require at that point in time, and may specify conservative durations of temporary possession. The Applicant considers this would not be in the interests of either landowners or the Applicant.</p> <p>In response to the NFU's submission that a longer three month period had been accepted for the HS2 project, the Applicant noted that the 14 day period is a minimum and that where it is possible to do so the Applicant would give more notice than the minimum. The Applicant further noted that HS2 is a different scheme to the Applicant's Scheme. The Applicant also noted the obligations in the OEMP, updated for deadline 3 [REP3-006], to appoint an Agricultural Liaison Officer, and the specific measures in references PW-COM1, MW-COM1 and MW-COM3 in respect of liaising on the contractors programme for works and related matters.</p> <p><i>Post-hearing note: the Applicant notes that in the circumstances of the HS2 scheme and the discussions and negotiations around Select Committee proceedings, the promoter of HS2 gave NFU an assurance that three months notice would be given. However the Applicant considers that the circumstances of the Scheme are quite different from HS2, which is of a size to potentially have a</i></p>

	<p><i>regional sector-wide effect on the agricultural industry. In addition, the explanation given by the Applicant at the hearing and confirmed above, that the precautionary approach that would likely result from a longer notice period would only result in a less proportionate approach and greater burden on land interests, continues to apply.</i></p> <p><i>For these reasons and since the justification of using a minimum 14 day period – that it is necessary for the effective delivery of the nationally significant project in a manner that ensures proportionate land take – has been accepted throughout DCOs for nationally significant highways projects, the Applicant believes that the current approach is justified.</i></p>
<p><u>3.5 Article 7 – Limits of deviation</u></p>	
<p><u>Agenda Item</u></p>	<p><u>Highways England response</u></p>
<p><i>i. The extent of and justification for the limits of deviation (LoD) set out in the dDCO, including those in respect of the bored tunnel, the cut and cover section of the tunnel and the green bridges.</i></p> <p><i>ii. Whether provision should be made for consultation with stakeholders before the proposed LoD for the tunnel could be invoked?</i></p> <p><i>iii. Whether the deviations from the specified limits permitted by Article 7(6) should include provision for public consultation?</i></p>	<p>The Applicant noted that article 7(6) was amended in revision 2 of the draft DCO to require consultation with the planning authority before the Secretary of State certifies that a departure from the vertical limits of deviation would not lead to any materially new or materially adverse environmental effects from those reported in the Environmental Statement. The Applicant noted Wiltshire Council's submission that this addressed its concern, subject to its general comment on whether the term "planning authority" is the appropriate term to use in reference to the functions of Wiltshire Council. The Applicant agreed to review the definition and use of the term "planning authority" to ensure that it operates appropriately and as intended in the next iteration of the DCO.</p> <p><i>Post Hearing Note:</i> <i>the Applicant has reviewed each instance of "planning authority" in the draft DCO and considers that for expediency, the definition in article 2 of the DCO should be amended to simply refer to Wiltshire Council. This amendment has been made in the revised draft of the DCO submitted into the examination at Deadline 4.</i></p> <p>In respect of Green Bridge Four, the Applicant noted that its position would not be affected should the full extent of the 200m westward lateral limit of deviation of the tunnel portal were to be exercised. It is positioned such that the necessary distances, for highway safety, between the tunnel portal and Green Bridge Four, would be observed were the limit of deviation exercised. In terms of the locations of the Green Bridges generally, the position of the crossing of the Green Bridges over the A303 is shown by reference to the chainages on the Engineering Section Drawings (Plan and Profiles). Please see the Applicant's answer to Written Question DCO.1.6 [REP2-030].</p> <p>The Applicant confirmed that the full extent of the limits of deviation have been assessed in the Environmental Statement, referring to chapter 2 of the ES [APP-040].</p> <p>The Applicant disagreed with the National Trust's submission that the exercise of any of limits of deviation should be subject to consultation with HMAG. The limits of deviation form part of the scope of the consent for which the Applicant seeks authorisation, the effects of which are already assessed in the ES and which will be the subject of detailed examination to ensure that all parties understand their limits and effects. To impose a further requirement to consult on the exercise of those limits of deviation would be disproportionate and unjustified, and risk delaying the delivery of this nationally significant project and the wider public benefits that it secures. The Applicant noted that it hoped the provision for stakeholder consultation on detailed design on aspects of the Scheme</p>

within the World Heritage Site, included in the updated OEMP [REP3-006] would go some way to addressing the National Trust's concerns, once they have had the opportunity to consider the detail in the updated OEMP.

In respect of the 200m westward lateral limit of deviation for the western tunnel portal and associated works, and the 30m eastward limit of deviation for the eastern tunnel portal and associated works the Applicant summarised the technical requirement for this degree of flexibility. In summary, a Tunnel Boring Machine ("TBM") is a long and complex apparatus that bores through the ground at its leading edge whilst forming the concrete lining of the tunnel behind it. In a similar way to an oil tanker, a TBM requires a considerable distance in order to effect adjustments to trajectory to deal with ground conditions or other risks to the project that can only be known properly once 'on site'. A more detailed explanation is set out in response to the Examining Authority's first written questions, DCO.1.25. The technical need for the 200m lateral limit of deviation to the tunnel portals and associated infrastructure exists at both tunnel portals. However, due to the constraints at the eastern end of the Scheme, which includes the existing Countess Roundabout, the proposed Countess flyover and heritage assets such as the Avenue, are such that the Applicant considered it to be inappropriate to seek the equivalent degree of flexibility. The Applicant has prepared a technical note, **appended to this submission (APPENDIX A)**, that gives further detail on the technical requirement for the 200m and 30m limits of deviation for the bored tunnel and neighbouring works (including additional information explaining how the location of potential difficult geological conditions means that less adjustment is likely to be required at the eastern portal).

In response to Historic England's submission, which queried whether the exercise of the 200m limit of deviation would have any knock-on effects to the geometry of the highway outwith the tunnel; the Applicant confirmed that the bored tunnel (Work No.1F) is required to tie into the centreline of the neighbouring works (Work Nos.1E and 1G) which are subject to 3m centreline limit of deviation. There would therefore be no "knock-on" effects to the highway geometry.

In response to the National Farmers Union ("NFU") query, whether a similar limit of deviation has been granted in any other highway scheme, the Applicant noted that it was not aware of a similar precedent. However, the key point must be whether the extent of the limit of deviation is justified in the particular circumstances of this Scheme. The Applicant is clear that it is for the reasons stated and set out in the material before the examination.

The Applicant noted that no party present, when invited by the Examining Authority, expressed any concerns about the downward limits of deviation for Work No.1F.

Post Hearing Note: *in response to concerns raised by the Environment Agency in relation to the interaction between the vertical limits of deviation of the proposed tunnel and groundwater flows, it should be noted that the Applicant responded to this point in part at Deadline 3, as part of its comments on written representations [REP3-013].*

The Environmental Statement has assessed the impacts on groundwater flows as a result of the Scheme, including the tunnel. A precautionary approach was taken in respect of the tunnel alignment and depth. The Outline Environmental Management Plan includes controls in respect of groundwater impacts, particularly by reference to the obligation in item MW-WAT10 to produce a Groundwater Management Plan in consultation with the Environment Agency. This would include a risk assessment in relation to the final design, as well as a monitoring regime with trigger levels and actions. There are therefore sufficient controls in place to ensure any impacts on groundwater flows would be mitigated adequately. It should also be added that the Environment Agency has further

	controls by virtue of the protective provisions for its benefit contained in Part 5 of Schedule 11 to the draft Development Consent Order.
<u>3.6 Article 12 – Access to works</u>	
<u>Agenda Item</u>	<u>Highways England response</u>
<p><i>i. The scope of and necessity for the general power sought by Article 12.</i></p> <p><i>ii. Whether the drafting of this provision should make the exercise of the power subject to third party approval?</i></p>	<p>The Applicant noted that the effect of article 12 is to ensure that the undertaker of a nationally significant infrastructure project can layout a new, or improve an existing, access to the works authorised by the Order, without having to require the consent of a third party such as the street authority. The justification is to avoid delay or impediment to the delivery of the nationally significant infrastructure project that would deliver wider public benefits. However, it is not the case that article 12 would give the undertaker an unfettered power to form or improve accesses to the works.</p> <p>The exercise of power in the article is subject to the requirements, including the OEMP. Relevant measures include MW-G30, which provides for the removal of accesses and the re-instatement of the land. Also of key importance is MW-TRA4 which requires the provision of a Site Access Plan, as part of the Traffic Management Plan that requires the approval of the Secretary of State under requirement 8, following consultation with Wiltshire Council.</p> <p><i>Post Hearing Note:</i> <i>the drafting of MW-TRA4 and MW-TRA5 has been rationalised in the updated draft OEMP submitted at Deadline 4 to make clear that accesses to construction sites are to be covered in the Site Access Plan.</i></p> <p>The Applicant noted that the locations of permanent <i>private</i> means of access are addressed under article 10, and shown on the Rights of Way and Access Plans [APP-009] and described in detail in Schedule 3.</p> <p>The Applicant confirmed the intention for article 12 to apply only to means of access to the works during the Scheme's construction and agreed to reconsider the drafting of article 12 to reflect this.</p> <p><i>Post Hearing Note:</i> <i>the Applicant has amended article 12 in the updated draft DCO submitted at Deadline 4 to make it clear that it may only be exercised for the purposes of carrying out the authorised development.</i></p> <p>In response to the submissions of the National Trust, echoed by Historic England, the Applicant confirmed that as there are no construction compounds proposed within the World Heritage Site, the Applicant does not anticipate there being a need for it to be exercised within the World Heritage Site, and re-iterated that its exercise would be subject to the requirement 8 and the OEMP as previously outlined.</p> <p>In response to the National Trust's expressed desire for haul roads to be constrained to the footprint for the construction of the Scheme, the Applicant agreed to consider this point further.</p> <p><i>Post Hearing Note:</i> <i>the Applicant has made provision for this in the updated OEMP submitted at Deadline 4, item D-CH31.</i></p>

	Further written submission in relation to article 12 can be found in the Applicant's response to the Examining Authority's first written question DCO.1.32 [REP2-030].
<u>Supplemental powers</u>	
<u>3.7 Article 13 – Discharge of water</u>	
<u>Agenda Item</u>	<u>Highways England response</u>
<i>i. The progress of discussions between the Applicant and the Environment Agency</i>	<p>The Applicant noted that it has yet to receive from the Environment Agency its proposed amendments to article 13.</p> <p>The Applicant thanked the Environment Agency for clarifying in the hearing that the proposed amendments relate to groundwater and looked forward to receiving these shortly so it can consider them in detail.</p>
<i>ii. Whether any amendments to Article 13 are necessary to ensure adequate protection?</i>	<p>The Applicant noted that minor amendments were made to article 13 in revision 2 submitted for deadline 3. These amendments consisted of the removal of wording relating to consent not being "unreasonably withheld" as these matters are now dealt with in article 59.</p> <p>The Applicant noted that it considers the drafting of article 13 to be appropriate and well precedented, and notes that its exercise would be subject to the requirements, including the pollution control and water resources protection measures secured in the OEMP through requirement 4 and through the Environmental Permitting regime in respect of discharges to the water environment.</p> <p>In response to the NFU's query whether article 13 would apply to private agricultural land, the Applicant now confirms that article 13 would apply to "public sewers or drains" as defined in article 13(7)(a) <u>and</u> to any "watercourse" as defined in the Water Resources Act 1991.</p> <p><i>Post hearing note:</i> <i>This definition includes ditches and drains through which water flows and so would include field drains that include those features. The Applicant further notes that connections to such drains, public sewers or watercourses would only be authorised within the Order limits, that the connection is subject to the consent of the owner (which must not unreasonably be withheld) who may impose reasonable conditions on that consent. The Applicant is confident that this well precedented provision, that has been included in the majority of development consent orders made to date, strikes the appropriate balance between the interests of the undertaker and the landowner and is appropriate in the circumstances of this Scheme. The Applicant further notes that the updated OEMP [REP3-006] includes a new measure, MW-COM7, relating to agricultural land drainage.</i></p> <p>The Applicant further noted that the discharge of water into the water environment would be regulated by the Environment Agency under the Environmental Permitting (England and Wales) Regulations 2016.</p>

<u>3.8 Article 14 – Protective works to buildings</u>	
<u>Agenda Item</u>	<u>Highways England response</u>
<i>The scope of, necessity for and reasonableness of the powers sought including in relation to buildings outside the Order limits.</i>	<p>The Applicant noted that, while the power is compulsory, and not taken lightly, it is a benign compulsory power, where the effect of its exercise to prevent or repair damage to third party property.</p> <p>The Applicant noted that the principal reason for the inclusion of this power in the Order, on a precautionary basis, is to ensure that the Applicant could appropriately safeguard Stonehenge Cottages in the unlikely event of damage being caused during construction. The power would be exercisable outside of the Order limits, in respect of any buildings which may be affected by the authorised development. No existing buildings outside of the Order limits have been identified where there is a possibility of damage, but the Applicant seeks the power in order to address any future buildings erected that could be affected by the Scheme.</p> <p>The Applicant confirmed that "Stonehenge Cottages" in this context refers to the group of buildings at that locality, rather than any specific building within that grouping.</p> <p>The Applicant confirmed that protective works are generally not expected to be necessary, whether within or without the Order limits. The article is included on a precautionary basis such that if it appeared necessary to carry out protective works, the Applicant would be able to do so in order to avoid damage being caused, or repair damage if appropriate. Further written submissions on this matter can be found in response to first written question DCO.1.35 [REP2-030].</p>
<u>3.9 Article 15 – Authority to survey and investigate land</u>	
<u>Agenda Item</u>	<u>Highways England response</u>
<i>The need for and intended operation of this provision.</i>	<p>The Applicant noted that the power is necessary to undertake a range of ecological, ground conditions and surface and groundwater surveys mandated by the requirements of the OEMP and the requirements themselves, in particular requirement 7.</p> <p>The Applicant noted that the power is reasonable in that it requires notice to be given and requires compensation to be paid.</p> <p>The power is drafted in terms that would authorise surveys on land adjacent to but outside the Order limits, where reasonably necessary. This is necessary to survey for any potential effects of the authorised development outside the Order limits, particularly with respect to ecological receptors that are liable to move into and out of the Order limits.</p> <p>In response to the Examining Authority's questions and the submissions of the National Trust and Historic England, the Applicant noted the intention is that any intrusive surveys would be regulated as relevant under the relevant measures in the OEMP and DAMS (in respect of archaeological investigations).</p> <p><i>Post Hearing Note:</i> for clarity, the relevant provisions in the DAMS in respect of intrusive survey controls would include those contained in Section 5 which set out in detail how specific archaeological investigation and mitigation works would be undertaken.</p>

	<p><i>This is supported by a requirement to produce site specific written schemes of investigation under item PW-CH3 of the OEMP. In respect of other intrusive surveys, the Applicant anticipates that these would be covered by the relevant detailed management plans to be produced under the OEMP, for example the Groundwater Management Plan, amongst others, which would be developed in consultation with key stakeholders. In addition, the updated DAMS submitted at Deadline 4 makes provision in Section 5.2 for any intrusive surveys to be carried out with appropriate regard to archaeological considerations.</i></p> <p>In response to the National Farmers Union's submission that the notice under article 15 should specify the nature of the survey intended to be undertaken, to enable agricultural landowners to adapt their use of the land, the Applicant agreed to consider this point further.</p> <p>Post Hearing Note: <i>the Applicant has amended article 15 in Revision 3 of the DCO submitted at Deadline 4 to require the notice to indicate the nature of the surveys or investigations that are intended to be carried out.</i></p>
<p><u>3.10 Article 16 – Removal of human remains</u></p>	
<p><u>Agenda Item</u></p>	<p><u>Highways England response</u></p>
<p><i>The necessity for and the reasonableness of this provision.</i></p>	<p>The Applicant noted that it expects to encounter human remains during the course of the development of the Scheme, particularly while the measures set out in the DAMS are carried out. The power is necessary, as without it, should human remains be encountered during construction of the Scheme, it would be necessary to obtain a licence from the Secretary of State under the Burial Act 1857 before the remains are removed. This would risk delaying delivery of the Scheme.</p> <p>The provision is reasonable and is based on the model provision which has been included in numerous orders. The departures from the model provision relate to the disapplication of the requirement to give notice under paragraph (3) if the undertaker is satisfied that the remains were interred more than 100 years ago, or that no relative or personal representative is likely to object to the removal. The purpose of the notice under paragraph (3) is to afford relatives of the deceased and personal representatives the opportunity to come forward and claim the remains. Where remains were interred more than 100 years ago, it is significantly less likely that anyone will have an interest in claiming the remains. In those circumstances, or where it is otherwise clear that it is unlikely that any relative or personal representative would object to the removal, it is reasonable in the circumstances of delivering this national significant project that the 56 days notice provisions do not apply.</p> <p>In response to the Examining authority's queries, the Applicant confirmed that human remains would be removed in accordance with the Strategy for the Recovery of Human Remains set out in paragraphs 5.3.61 to 5.3.72 of the DAMS [REP2-038].</p> <p>In response to Historic England's submission, the Applicant confirmed that article 15 does not require all human remains within the Order limits to be removed before any development authorised by Order can be carried out. Article 16(2) is clear that remains must be removed before the development or works which will disturb the remains is carried out.</p> <p>The Applicant welcomed Wiltshire Council's general support for the inclusion of article 16 and agreed to review the reference to "planning authority" to ensure it appropriately reflects Wiltshire Council's functions.</p>

	Further written submissions on this article can be found in the Applicant's response to question DCO.1.37 [REP2-030] and its response to open floor hearing submissions, paragraph 3.2.5 [REP3-012].
<u>3.11 Article 18 – Maintenance of drainage works</u>	
<u>Agenda Item</u>	<u>Highways England response</u>
<p><i>i. Clarification of the intended purpose of Article 18.</i></p> <p><i>ii. Whether it is anticipated that the effect of Article 18 would be to maintain the status quo as regards maintenance responsibilities of riparian owners for drainage?</i></p>	<p>The Applicant noted, as confirmed in its response to the Examining Authority's first written question DCO1.39 [REP2-030], the purpose and effect of article 18 is to preserve the status quo in respect of liabilities to maintain drainage, except as otherwise agreed in writing between the undertaker and the person responsible.</p>
<u>Part 3 – Powers of acquisition and possession of land</u>	
<u>3.12 Article 22 – Compulsory acquisition of rights</u>	
<u>Agenda Item</u>	<u>Highways England response</u>
<p><i>i. The scope of and justification for this provision.</i></p>	<p>The Applicant noted that article 22, is essential for the delivery of the Scheme and outlined the structure of the provision. Article 22(1) enables the acquisition of rights or imposition of restrictive covenants over land that the Applicant would otherwise be authorised to acquire outright. This enables a proportionate exercise of compulsory powers if only rights and restrictions prove sufficient. This responds to the policy requirement in para 8 of DCLG CA guidance (September 2013) to consider alternatives to outright CA. An illustration of how this could work in practise is provided in the Applicant's response to the Examining Authority's first written questions, reference DCO.1.42(v) [REP2-030].</p> <p>The Applicant explained that in addition to the general power to acquire only rights and restrictive covenants over land otherwise authorised for compulsory acquisition outright, Article 22(4) requires that rights and restrictive covenants over the land shown in blue on the land plans may only be acquired for the purposes specified in Schedule 4.</p>

	<p>The justification for this provision is therefore one of proportionality, allowing a lighter touch approach to compulsory acquisition when it is all that is required. Specific justification in relation to the land in question is set out on a plot by plot basis in the Annexes to the Statement of Reasons [APP-023].</p> <p>The Applicant outlined that the changes to article 22 made in revision 1 of the DCO [REP2-003] were made in response to developments in practice. Where other schemes are being implemented problems have been encountered with the precedent drafting where it is used to establish rights for the benefit of land belonging to third parties. The amendments to article 22 address these difficulties by (i) expressly providing for rights to be acquired for the benefit of land belonging to third parties and (ii) by allowing statutory undertakers already entrusted with compulsory powers, to exercise article 22 directly for their own benefit, with the consent of the Applicant. Without these provisions there is a real risk that the necessary rights to ensure private rights of vehicular access are enjoyed by the affected landowners and to ensure that statutory undertaker's apparatus is appropriately diverted and protected, would prove ineffective.</p> <p>In response to the National Trust's submission, that it wishes to ensure that any intrusions into the land within the WHS by statutory undertakers are appropriately regulated, the Applicant notes that the OEMP contains specific measures in respect of the excavation of utilities corridors (MW-CH6). The Applicant will consider whether any further drafting in article 22 is necessary to clarify that the exercise of article 22 is subject to restrictions in the Order.</p> <p>Post Hearing Note: <i>the Applicant is content that the draft DCO makes appropriate provision to ensure that powers exercised by statutory undertakers under article 22 would be subject to the requirements in the Order. This is because (i) article 4 makes it plain that development consent is granted for the authorised development, subject to the requirements and (ii) article 51(3) is clear that the exercise by a person of any benefit of the Order is subject to the same restrictions, liabilities as would apply to the undertaker.</i></p>
<p>ii. Whether it is intended that there would be restrictions on access to and excavation of land over the tunnel that would prevent archaeological investigation in this location from taking place in the future?</p>	<p>The Applicant clarified that the Applicant seeks only the restrictions necessary to protect the structural integrity of the tunnel. It is not its intention or desire to prohibit or restrict archaeological investigations that do not pose a risk to the tunnel. The Applicant referred to its response to the Examining Authority's first written questions CH1.27 [REP2-025] which outlines the intended approach which would, in summary, be at its core an obligation to consult Highways England. The Applicant noted that the matter remains under discussion with National Trust and Wiltshire Council.</p>

3.13 Article 24 – Power to override rights and other easements

<u>Agenda Item</u>	<u>Highways England response</u>
<i>The necessity for and reasonableness of this provision.</i>	The Applicant noted that article 24 needs to be seen in context with article 23. Article 23 addresses the conflict between existing rights in land with powers to acquire land, temporarily possess land, acquire rights over land or impose restrictive covenants. Article 24 principally deals with other Order powers exercisable over land belonging to others, such as articles 14 (protective works to buildings) and article 15 (authority to survey and investigate land). It is therefore necessary in order to be clear that the exercise of the powers in the Order to deliver the project and the wider public benefits that it secures will not be obstructed by conflicting rights and easements. The reasonableness of the article flows from that justification and the right to compensation that it provide for, including for interference with a contractual restriction as to the user of land (the latter not being a "right" in land that would be caught by article 23). For further written submissions in relation to this article please see the Applicant's response to question DCO.1.45 [REP2-030].

Temporary possession of land

3.14 Article 29 – Temporary use of land for constructing the development

<u>Agenda Item</u>	<u>Highways England response</u>
<i>The justification for and reasonableness of the scope of the powers sought.</i>	<p>The Applicant outlined that the justification for and structure of article 29 is similar to that for article 22. It allows for temporary possession of land where that would be sufficient for the purposes of the Scheme in order to allow for a proportionate exercise of compulsory powers.</p> <p>The power is exercisable over (i) the land specified in Schedule 7 (a plot by plot justification for which is set out in the Statement of Reasons [APP-023]) only for the purposes set out in that schedule and (ii) other Order land for which the Applicant has justified a greater imposition of the acquisition of land outright, or rights over land and the imposition of restrictive covenants (again the plot by plot justification for those more onerous acquisitions is set out on a plot by plot basis in the Statement of Reasons).</p> <p>The general power is necessary to (i) allow access to land prior to the exercise of compulsory acquisition powers to allow the subsequent exercise of those powers when the full extent of the detailed land requirements is known and (ii) permit the temporary use of land where it proves to be sufficient for the purposes of the Scheme.</p> <p>Like Article 22, then, the article is driven by the need for a proportionate approach. Beyond this, the Applicant noted that the reasonableness of article 29 can be seen in the obligations contained in the Article to give notice, pay compensation, and restore the land to the satisfaction of the landowner prior to its return.</p>

	<p>The Applicant also referred to its earlier submissions, in respect of the disapplication of the temporary possession provisions of the Neighbourhood Planning Act 2017 under agenda item 3.4.</p> <p>In response to the duration of temporary possession, the Applicant noted that the duration is limited by reference to the completion of the works for which temporary possession is taken, plus one year to allow for restoration of the land. The Applicant would be under every incentive to keep temporary possession to the minimum period necessary for the purposes of the Scheme as it would be liable to pay compensation for the duration of the period temporary possession. The longer the landowner is displaced from the land, the greater the compensation that would be due.</p> <p>In response to the representations and submission of the National Farmers Union; the Applicant noted that additional measures, based on the National Farmers Union's proposals were included in the OEMP updated at deadline 3 [REP3-006]. Supplementing the restoration obligation in article 29(4), the OEMP provides for communications and liaison with landowners (measures MW-COM1 to MW-COM8), include:</p> <ul style="list-style-type: none"> • PW-COM1/MW-COM1 – to give notice of intended dates of commencement of works on land adjacent to agricultural holdings; • MW-COM3 – obligations to liaise with landowners, through the Agricultural Liaison Officer; • MW-COM4 – liaison in respect of restoration of agricultural land and after care; • MW-COM8 – obligation to carry out a condition survey. <p>Further written submissions in respect of this provision can be found in the Applicant's responses to questions DCO.1.18, DCO.1.19, DCO.1.41 and DCO.1.48 [REP2-030].</p>
Supplementary	
3.15 Article 31 – Statutory undertakers	
<u>Agenda Item</u>	<u>Highways England response</u>
<p><i>The scope of Article 31 and the agreement of Protective Provisions with relevant statutory undertakers.</i></p>	<p>The Applicant noted that an update on the status of negotiation with statutory undertakers and other parties with whom protective provisions are proposed was submitted at deadline 3. Since that submission the Applicant and the Environment Agency have reached agreement on the terms of the Environment Agency's protective provisions. These will be updated in the next iteration of the DCO.</p> <p>The Applicant outlined that negotiations are progressing at varying speeds amongst the parties but the Applicant is now increasing the pace of communications to reflect the progress of the examination.</p>

3.16 Article 34 – Special category land	
<u>Agenda Item</u>	<u>Highways England response</u>
<i>Whether the proposed mechanism for providing the replacement land, including provision for consultation with the planning authority, would be satisfactory?</i>	The Applicant welcomed Wiltshire Council's confirmation that it considers article 34 to be an appropriate mechanism for securing provision of replacement land. For the Applicant's further written submissions on this article please see its responses to questions CA.1.35 and CA.1.36 [REP2-029].
3.17 Article 38 – Crown land	
<u>Agenda Item</u>	<u>Highways England response</u>
<i>Whether the necessary consents from the Secretary of State for Defence and the Secretary of State for Digital, Culture, Media and Sport have been obtained?</i>	The Applicant noted that the Ministry of Defence has given its consent to the inclusion within the Order of plots where it is the freehold owner. However, the process has been complicated by the need to also obtain consent for plots for which the Ministry of Defence is not the freeholder, but enjoys rights over land. The Applicant is continuing to work with the Ministry of Defence to obtain its consent. In respect of the Department for Culture, Media or Support the Applicant continues to seek consent but notes that Highways England is disappointed that the Department has to date proven unresponsive to its requests. Further written submissions can be found in response to questions CA.1.39 [REP2-029], DCO.1.56 and DCO.1.57 [REP2-030].
Part 4 – Operational provisions	
3.18 Article 51 – Consent to transfer the benefit of the order	
<u>Agenda Item</u>	<u>Highways England response</u>
<i>The scope of the powers sought as drafted in the revised dDCO.</i>	The Applicant noted that the submission version of article 51 was drafted with the Private Finance Initiative arrangement in mind but, following the cancellation of PFI by the Treasury, the Applicant re-drafted article 51 to reflect a more standard article.

4 SCHEDULE 2 – REQUIREMENTS	
Interpretation	
4.1 Requirement 1(1) – Interpretation	
<u>Agenda Item</u>	<u>Highways England response</u>
<p><i>i. The scope of the definition of “preliminary works”.</i></p> <p><i>ii. Whether the items listed within that definition are themselves adequately defined?</i></p>	<p>The Applicant noted that the justification for and operation of the provisions related to the preliminary works were discussed under agenda item 3.3.</p> <p>The Applicant went on to give an explanation of the approach to defining "archaeological mitigation works" and "ecological mitigation". In that regard the Applicant submitted that it was appropriate to define the term "ecological mitigation" inclusively rather than exhaustively, in order to convey its normal meaning. This ensures that no form or technique of mitigation is inadvertently excluded from its definition (see DCO.1.5 [REP2-030]).</p> <p>"Archaeological mitigation" is not defined by reference to the DAMS or given any further definition in order for it to convey its ordinary and natural meaning. The Applicant noted that seeking to define the term exhaustively would risk closing off options for mitigation. The consequence of this is that were something inadvertently excluded from an exhaustive definition of "archaeological mitigation works" then the Applicant would be prohibited from implementing that measure until such time as the pre-commencement requirements were discharged. This would needlessly frustrate the intention of the Preliminary Works, that all archaeological mitigation of this sensitive site is complete before the main works commence. The Applicant further noted that the term takes its ordinary and natural meaning subject to the measures set out in the DAMS.</p> <p>In response to the submissions of Historic England and the invitation of the Examining Authority, the Applicant agreed to consider the use of the term "archaeological investigations" in the Order. Please see the response contained in the post hearing note at agenda item 3.3 above.</p> <p>Further written submissions can be found in the Applicant's responses to questions DCO.1.8 and DCO.1.9 [REP2-030].</p>
Preparation of detailed design etc	
4.2 Requirement 3(1) and (2) – Preparation of detailed design etc	
<u>Agenda Item</u>	<u>Highways England response</u>
<i>i. The justification for and reasonableness of the</i>	The Applicant noted that its justification for requirement 3 is further explored in its response to first written questions DCO.1.80 to DCO.1.83 [REP2-030]. The Applicant added that a series of further design commitments, design principles and mechanism for

<p>degree of flexibility sought by this requirement?</p>	<p>consultation with heritage stakeholders on aspects of the detailed design within the WHS was included in the updated OEMP submitted at deadline 3 [REP3-006] and was discussed under agenda item 3. The Applicant looks forward to discussing further those updates with the heritage stakeholders in due course.</p> <p>In response to the Environment Agency's submission that it ought to be consulted should an application be made to the Secretary of State under this requirement, the Applicant noted that the requirement in this form is well precedented and it would not normally require consultation with the Environment Agency. Nonetheless, the Applicant would consider whether it would be appropriate in this case.</p> <p><i>Post Hearing Note: The Applicant does not consider it appropriate to specify that the Environment Agency must be consulted by the Secretary of State when he or she is considering whether to approve a departure from the plans specified in that requirement, which would not give rise to materially new or materially worse adverse environmental effects from those reported in the Environmental Statement. By its nature any application under this requirement would necessarily be for a minor change. In this regard it is proportionate that the planning authority only is consulted.</i></p> <p><i>The Applicant further notes that this justification is borne out by the fact that there is no precedent for the Environment Agency to be consulted on this form of requirement on other highways DCOs and that there are no particular circumstances in relation to this Scheme that would appear to support a different justification. In the event that the limited degree of flexibility afforded by an application under requirement 3 were to be exercised, construction of the Scheme would still be subject to the requirements, in particular requirement 4 which secures compliance with the OEMP under which the Environment Agency is consulted as specified, on matters relating to its functions.</i></p> <p>In response to the Examining Authority's queries, the Applicant confirmed its view that the Environmental Masterplan should not be included in this requirement as a document which the Scheme must be designed in detail. The Applicant explained that aspects of the Environmental Masterplan are secured through the OEMP and through requirement 8, but beyond that the Environmental Masterplan is indicative only. It would not be appropriate to constrain flexibility of the detailed design to the Environmental Masterplan when it is the Scheme as shown in the Works Plans, Engineering Section Drawings (Plan and Profiles) and (Cross Sections) that has been assessed.</p> <p>In response to Historic England's submissions that there ought to be a design parameters document, the Applicant referred Historic England to the "signposting document" [AS-009] for further details on how the parameters of the Scheme are secured through the DCO. The Applicant also noted that within those parameters, a variety of specific design commitments and design principles are specified within the updated OEMP submitted at Deadline 3, secured through requirement 4.</p>
<p>ii. Whether key stakeholders could be confident that the detailed design of the scheme would be carried out appropriately including</p>	<p>The Applicant noted that the updated OEMP [REP3-006] includes further design commitments, design principles and a stakeholder consultation mechanism that has emerged from ongoing consultation with heritage stakeholders. The Applicant noted that it looked forward to continuing those discussions once the parties had sufficient opportunity to review the updated draft.</p>

<p><i>the need for consultation with statutory stakeholders on key aspects of the detailed scheme design that relate to their functions and the means whereby this could be satisfactorily secured by the dDCO?</i></p> <p><i>iii. The progress of discussions with heritage stakeholders as regards a mechanism to achieve that aim including provision for consultation, the setting out of design principles and committing to additional key aspects of design?</i></p>	<p>The Applicant noted the National Trust's submissions that it hoped that sufficient design principles could be agreed such that it could be confident that the dispute mechanism proposed in section 4 of the updated OEMP would be adequate. In response the Applicant noted that its intention is to reach that point will all heritage stakeholders prior to the close of the examination.</p>
<p><i>iv. Whether the Authorised Development should be required to be carried out in accordance with certain dDCO plans, as stated in the Explanatory Memorandum, rather than simply requiring the detailed design to be 'compatible' with those plans?</i></p>	<p>In response to the Examining Authority's queries, whether requirement 3 should require the detailed design to be carried out "in accordance with" the listed plans, rather than "compatible with" those plans; the Applicant noted that the current wording was required to make the requirement 'work'. This is because the limits of deviation are expressed in article 7 by reference to those plans, rather than being shown on the plans themselves. A requirement to design the scheme "in detail in accordance with" the listed plans would contradict the limits of deviation. The Applicant acknowledged that "in accordance with" might at first blush be perceived as providing greater certainty than "compatible" but explained that when tested, it was difficult to conceive of an example where an element of detailed design would not be in accordance with a works plan or engineering section but would be compatible with it.</p> <p>The Examining Authority queried whether 'in compatible with' could result in something "completely different" being implemented, by reference, as an example, to a departure from the principle of the layout of a right of way. The Applicant agreed to consider this point further and respond following the hearing.</p> <p><i>Post Hearing Note:</i> <i>having considered this further, the Applicant is still clear in its view that the requirement that the detailed design is compatible with the plans could not result in something completely different from what is set out in the relevant plans being implemented works. Indeed in the Applicant's view the requirement would result in no more flexibility than that required for limits of deviation, applying the works plans and engineering sections. The Applicant would remain constrained to provide each numbered work within the vertical limits of deviation defined in article 7 by reference to the levels shown on the Engineering Section Drawings</i></p>

	<p><i>(Plan and Profiles) and (Cross Sections), within the lateral extents defined by reference to the "bowties" shown on the Works Plans [APP-008] and conform to the centreline limits of deviation defined by reference to the centrelines shown on the Works Plans.</i></p> <p><i>The Oxford English Dictionary defines the term "compatible" as "able to exist...without...conflict" and "consistent or in keeping". Implementation of the Scheme that e.g. departed beyond the applicable limits of deviation from the centreline shown in the works plans or from the levels shown in the engineering sections would not be "consistent" with those plans, nor would it be "able to exist without conflict" with those plans. Implementation would not be compatible with the plans, read alongside the terms of Article 7. The built-out part is built within the limit of deviation for its centreline or level, or it is not. If it is not, it is not compatible with it. Indeed, it should also be noted that constructing any part of the authorised development outside of the limits of deviation would constitute a breach of article 7 and therefore the DCO. Under section 161 of the Planning Act 2008 this is a criminal offence. This is therefore a major constraint in terms of what can be constructed.</i></p> <p><i>The approval of the justification for this wording can be seen in other made Highways England DCOs, see for example the A14 Cambridge to Huntingdon Improvement Scheme Development consent Order 2016 and the M20 Junction 10a Development Consent Order 2017.</i></p>
<p>Outline Environmental Management Plan</p>	
<p>4.3 Requirement 4 – Outline Environmental Management Plan (OEMP)</p>	
<p><u>Agenda Item</u></p>	<p><u>Highways England response</u></p>
<p><i>i. Whether the proposed means of securing implementation, adherence to and enforceability of the preliminary works Construction Environmental Management Plans (preliminary works CEMPs), the Construction Environmental Management Plans (CEMPs), the management plans included within the CEMPs and the Handover Environmental Management Plans (HEMPs) ultimately by way of</i></p>	<p>The Applicant noted that it considers that the approach is clearly set out in the OEMP, compliance with which is secured by requirement 4.</p> <p>In response the National Trust's submission, that it is concerned that the OEMP requires the Contractor to "update" tables 3.2a and 3.2b which could lead to the dilution of the measures secured; the Applicant noted the requirement on the Contractor to update the tables when producing the CEMP is appropriate to take into account the greater level of detail that would be available. The OEMP is clear that each CEMP must be prepared "in accordance with the principles of the original OEMP" (see paragraph 3.1.2 [REP3-006]), which is further expanded upon in paragraphs 3.2.8 and 3.2.10. Each CEMP requires the approval of Authority, in consultation with the relevant stakeholders, as set out in the OEMP. The Applicant further noted that measure MW-G6 of the OEMP makes it clear that consultation is required if a CEMP is being materially revised.</p> <p>In response to Wiltshire Council's submissions, that it is content for Highways England to be the approval authority in respect of aspects of the CEMP but consider that Wiltshire Council ought to be the approval authority for matters related to cultural heritage; the Applicant noted the position of Wiltshire Council, a position that the Applicant does not at this stage agree, and welcomed its invitation to continue dialogue such that agreement can be reached on this point.</p>

<p><i>compliance with the OEMP [APP-187] and Requirement 4, subject to enforcement by Wiltshire Council, would be satisfactory?</i></p>	
<p><i>ii. Whether the definition of and requirement for the CEMPs and HEMPs should be more clearly set out in the dDCO itself?</i></p>	<p>The Applicant noted its view that it considers the position set out in the OEMP, secured by requirement 4, to be sufficiently clear.</p> <p>In response to Wiltshire Council's submission that it needs to be clear that a CEMP is approved prior to the commencement of works and that ideally this would be secured by a requirement; the Applicant noted that this is clearly stated in the OEMP at measure MW-G5, compliance with which is secured by requirement 4. A further requirement would in the Applicant's view, be unnecessarily duplicative.</p>
<p><i>iii. Whether the need for and means of consultation with Wiltshire Council and the Environment Agency in the development of the preliminary works CEMPs, the CEMPs, the HEMPs and changes to the REAC tables would be satisfactorily secured by this Requirement in the light of the amended OEMP submitted at Deadline 3?</i></p>	<p>The Applicant noted that the parties present may not have had the opportunity to fully consider the updated OEMP [REP3-006] submitted at deadline 3.</p> <p>The Applicant highlighted the key updates which include provision for consultation with English Heritage, the Environment Agency, Historic England, the National Trust and Wiltshire Council on preparation of the preliminary and main works CEMPs (measures PW-G1 and MW-G5), variations to the CEMPs (MW-G6), preparation of the management plans (MW-G7) and on the Handover Management Plan (MW-G11).</p>
<p><i>iv. The proposed methodology of consultation with relevant stakeholders and whether this has been agreed?</i></p>	<p>The Applicant noted that an outline of the methodology for consultation on detailed design, including its scope, was shared with English Heritage, Historic England, the National Trust and Wiltshire Council prior to its inclusion in the OEMP at deadline 3. Highways England understands that those bodies were broadly supportive of the proposed approach.</p> <p>The Applicant further notes that duty to consult is well understood by Highways England, and in law. The duty is to have regard to what is said. The Applicant noted that Revision 2 of the DCO includes a new requirement 11 which requires the production of a summary consultation report, to be submitted with an application for approval under requirement. The new requirement would require</p>

the report to set who has been consulted, what they have said and, where the details submitted do not reflect the comments received, the Applicant must state why this is the case. The Applicant noted that this principle is already agreed in respect of the requirements and it would consider whether it would be appropriate to extend this approach to the extensive consultation that is required under the measures in OEMP.

Post Hearing Note: the OEMP to be submitted at deadline 4 now incorporates this principle, see measures PW-G1, MW-G5, MW-G6 and MW-G7.

In response to Wiltshire Council's submissions, that it has concerns that the Applicant would be the body responsible for approving the CEMPs and that it would be the judge in its own cause, a situation that would not exist were the Scheme proceeding under the Town and Country Planning Act 1990; the Applicant noted the following:

- The Applicant would not be approving its own documentation, it would be approving the documentation produced by the contractor following consultation with stakeholders as directed by the OEMP;
- The Scheme is proceeding under the Planning Act 2008, not the Town and Country Planning Act 1990, and it is well established for Applicants that carry out public functions to have an approval role on CEMPs or Codes of Construction Practice on such schemes, thus ensuring that the discharge of pre-commencement requirements proceeds without delay.
- The approval function would not be unconstrained, it is within a detailed regulatory framework, developed in consultation with stakeholders and approved by the Secretary of State, in the form of the OEMP. This would not be the case were the Scheme proceeding under the Town and Country Planning Act 1990.
- That the Applicant, as the strategic highway company has the expertise, experience and resources to carry out this function in relation to a trunk roads scheme;
- That the Applicant in carrying out its public functions would be under a duty to act reasonably and that duty would be subject to the supervision of the courts.

The Applicant noted Wiltshire Council's concerns and hoped that through the examination process the parties will be able to reach agreement on this point.

Post Hearing Note: approval of this justification for Highways England approving the CEMP can be seen in the the A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016, in which a Code of Construction Practice (the equivalent of the OEMP) was certified by the Secretary of State. Within the framework contained in this document, Highways England was required to produce Local Environmental Management Plans (to which detailed topic management plans were appended) and Construction Environmental Management Plans in consultation with key stakeholders, but no further approval by those stakeholders or the Secretary of State was required.

In response to Historic England's submission that it would prefer there to be a standardised consultation mechanism, the Applicant referred it to section 4 of the updated OEMP which sets out a clear mechanism for consultation on aspects of the detailed design of aspects of the Scheme within the World Heritage Site.

<p><i>v. Whether there should be provision in the dDCO for a process of approval of details of surfacing materials and fencing including from heritage consultees in line with an agreed and approved set of design and construction principles?</i></p>	<p>The Applicant noted that detailed design of the public rights of way within the WHS have attracted representations from a diverse range of parties.</p> <p>The process of consultation on these details was already catered for and has been strengthened with further detailed design commitments, design principles and a commitment to consult, set out in the update OEMP submitted at Deadline 3. The Examining Authority accepted the Applicant's invitation to list out all relevant provisions in its written summary, rather than spend time on it at the hearing, and this follows.</p> <p>Commitments to consult on surfacing and fencing in the originally submitted OEMP include: PW-CH4 (fencing of heritage assets), PW-CH5 (limiting landtake), PW-LAN1 (retained vegetation), MW-CH1 (scheme wide Heritage Management Plan), MW-CH3 (fencing in the WHS and the WHS setting) and D-CH14 (fencing and surfacing in the WHS).</p> <p>Further design commitments in respect of surfacing and fencing within the World Heritage Site were made in the updated OEMP submitted at deadline 3. These include:</p> <ul style="list-style-type: none"> • D-CH24 – boundary fencing and gates in the WHS to be visually recessive and have a low reflectivity finish. Fencing within the WHS above the top of the cuttings to be post and wire with stock-proof netting and be consistent with other fencing within the WHS. Gates within the WHS to be timber, unless otherwise agreed. • D-CH25 – the top of the new highway boundary fencing within the wester cutting to be no higher than the ground level at the top of the cutting alongside which it runs. • D-CH26 – bound surface within WHS to be a maximum of 3m in width, must be suitably coloured to be visually recessive and sympathetically integrated within the WHS. Trial panels to be constructed at least one year in advance of the surface being laid and a duty to consult HMAG on the proposed colour, taking into account the results of the trial panels. No raised edgings, surface markings, lighting, benches, litter bins or other street furniture. <p>The updated OEMP also includes new Design Principles:</p> <ul style="list-style-type: none"> • P-PRoW1 Public Rights of Way to have a bound surface where appropriate to their use. Within the WHS, materials sympathetic to the setting of the WHS to be used to accommodate use by, as appropriate, agricultural and land management vehicles, carriages, equestrians, cyclists and pedestrians, including people with impaired mobility, wheelchair users and parents with buggies and children. Appropriately vegetated verges to be provided between the surfaced area and adjacent land boundaries. • P-PRoW 2 Timber posts and strained wire fences to be used to separate PRoWs from adjacent private land in accordance with Highway Construction Details in the Manual of Contract Documents for Highway Works (MCHW) and Design Manual for Road and Bridges (DMRB). Where necessary for adjacent land use, appropriate stock-proof netting to be added to strained wire fences. • P-PRoW 4 - No gates on byways open to all traffic. On restricted byways full width gates with Kent Carriage Gaps to be used based on details in the Manual of Contract Documents for Highway Works - Highway Construction Details, and in accordance with the Design Manual for Roads and Bridges and the relevant elements of the 'Advice on Gate installation' and 'Advice on
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	<p>Vehicle Barriers' published by the British Horse Society. Gates to be sufficiently wide to accommodate authorised users as necessary, including agricultural vehicles and other agricultural machinery and appropriate locking measures to be employed to ensure that those entitled to exercise rights of vehicular access over restricted byways would be capable of doing so freely. Equestrian gates to be provided on bridleways, while on footpaths, pedestrian gates would be installed.</p> <p>These design commitments and principles are coupled with an obligation to consult on fencing and surfacing of PRoWs in the WHS in section 4.4.3(c).</p> <p>In response to Wiltshire Council's submissions, that it will become the highway authority for the public rights of way liable to maintain them, the Applicant noted the following:</p> <ul style="list-style-type: none"> • Article 9 of the draft DCO recognises that the highways for which Wiltshire Council will become liable to maintain must be completed to Wiltshire Council's "reasonable satisfaction" and • The Applicant and Wiltshire Council are negotiating a side agreement that would make appropriate provision for handover, maintenance and other matters arising. <p>Taking all of these measures into account the Applicant believes no further requirement is necessary.</p>
<p><i>vi. Whether the circumstances in which the different types of working hours might apply should be set out in the OEMP?</i></p>	<p>The Applicant noted that Wiltshire Council agree, in its response to the Examining Authority's first written question DCO.1.91 [REP2-046] that the circumstances in which working hours apply are clear in the OEMP. The Applicant welcomed Wiltshire Council's confirmation of this point.</p> <p>The Applicant noted in its response to the Examining Authority's first written question DCO.1.90 [REP2-030] that it would consider if it could be made clearer in the OEMP when the different hours apply. The Applicant concluded, like the Council, that it was clear enough although a definition of "summertime" was provided in the updated at deadline 3 [REP3-006].</p>
<p><i>vii. Whether there is a need for a proactive requirement for the Environmental Manager or Community Relations Manager (as detailed in the OEMP) to report all or any transgressions of working hours to the Wiltshire Council and local community?</i></p>	<p>The Applicant noted that the OEMP sets out a wide range of liaison measures are set out in item MW-G31 of the OEMP [REP3-006], which has been further developed at Deadline 3, which arrive at the appropriate level of control. Additional topic specific measures apply, for example MW-NOI6 which requires noise and vibration monitoring as necessary to demonstrate compliance with the Noise and Vibration Management Plan (MW-NOI3), to be developed in consultation with Wiltshire Council. The OEMP also requires the main works contractor to appoint a Community Relations Manager to work closely with local communities and be a point of reference for complaints.</p> <p>In response to the National Farmers Union's submission, that there was nothing in the OEMP on agricultural field drainage nor the reinstatement and aftercare of soils; the Applicant noted that further measures were added to the existing measures in the updated OEMP [REP3-006] based on the National Farmers Union's suggestions, see references:</p> <ul style="list-style-type: none"> • MW-COM7 on agricultural land drainage; and • MW-COM8 on record of condition surveys,

	These measures complement those measures already in place under references MW-COM4 (restoration of agricultural land) and MW-COM5 (monitoring of agricultural land).
Archaeology	
4.4 Requirement 5 – Archaeology	
<u>Agenda Item</u>	<u>Highways England response</u>
<i>i. The need and justification for Requirement 5(2)?</i>	<p>The Applicant noted that requirement 5(2) was drafted prior to the availability of the draft Detailed Archaeological Mitigation Strategy [REP2-038]. In those circumstance requirement 5(2) it was considered to be necessary and appropriate to ensure that the measures set out in the DAMS could take place prior to the approval of requirements, even if they did not qualify as archaeological mitigation works within the definition of Preliminary Works.</p> <p>It has since become clear that the DAMS only caters for archaeological mitigation works and so Requirement 5(2) can be deleted.</p>
<i>ii. Whether any additional provisions within the dDCO are necessary to secure the required level of archaeological mitigation?</i>	<p>The Applicant noted its view that, subject to its submission above on requirement 5(2), it considered requirement 5, securing compliance with the DAMs, to be sufficient.</p> <p>The Applicant noted Wiltshire Council's submission, that although Appendix F of the DAMS outlines the measures for Public Archaeology and Community Engagement Strategy, and requirement 5 secures compliance with the document, Wiltshire Council consider it needs measures to secure timeframes within which the activities are to be carried out. In response the Applicant outlined its intention to continue to develop the DAMS, including Appendix F, in consultation with heritage stakeholders during the course of the examination, including whether any adjustments were necessary to the provisions for approvals.</p>
Protected Species	
4.5 Requirement 6 – Protected Species	
<u>Agenda Item</u>	<u>Highways England response</u>
<i>The scope of this Requirement and whether it should include both the permanent and temporary works?</i>	<p>The Applicant noted that requirement 6 applies to the "authorised development" and so would be effective against both temporary and permanent works.</p> <p>The Applicant welcomed the Environment Agency's confirmation that the drafting is sufficient to include both permanent and temporary works.</p>

Contaminated land	
4.6 Requirement 7 – Contaminated land	
<u>Agenda Item</u>	<u>Highways England response</u>
<p><i>i. Whether this Requirement is appropriately drafted to ensure the submission of the completed risk assessment and the approval of an agreed timetable for approval and implementation of remedial measures?</i></p>	<p>The Applicant noted that it considers requirement 7 is drafted appropriately, see DCO.1.99 [REP2-030], responses to the Environment Agency's Written representation [REP3-13] , the Applicant's comments on the Environment Agency's response to the Examining Authority's question DCO.1.100 [REP3-016] and response to B1.17 of Wiltshire Council's Local Impact Report [REP3-014].</p> <p>In response to the Examining Authority's queries, the Applicant noted that it would not be logically possible to complete a risk assessment in consultation with a party without them having received the risk assessment. The Applicant further noted that any timeline for the carrying out of remediation would be set out in the "programme" that is required to be submitted for approval.</p> <p>The timeline for approval of requirements is set out in Part 2 of Schedule 2. Any timeline for remediation work would be part of the programme for remedial measures already required by Requirement 7. Both the EA and Wiltshire Council noted that it is not usually necessary to stipulate a timeline in the requirement or condition.</p> <p>The drafting of requirement 7 allows for a proportionate, risk based approach to previously unidentified contamination.</p>
<p><i>ii. Whether any additional requirements are necessary in relation to the risk from contaminated land and, if so, what form could they take?</i></p>	<p>In response to the Examining Authority's queries, whether the requirement should require the cessation of works where previously unidentified contaminated land is encountered, the Applicant noted that the drafting in requirement 7 takes a risk based approach, consistent with the underlying statutory regime for contaminated land. The Applicant considers this to be unnecessary in light of the low risk identified in the Environmental Statement and the existing statutory obligations to avoid causing pollution and notes that, in areas where there is known to be slightly elevated risks relating to contaminated land, the Applicant intends to carry out surveys prior to the commencement of the main works. The Applicant further noted the obligations in the OEMP, MW-GEO2 in particular which requires compliance with CLR11.</p> <p>The Applicant in its response to the Wiltshire Council's Local Impact report [REP3-014] suggested measure B1.17, noted that the cessation of works in all circumstances when previously unidentified contaminated land is encountered would be disproportionate. In effect it provides a single solution to a problem which would not always be the appropriate solution and could unnecessarily delay the implementation of this nationally significant infrastructure project and the wider public benefits that it would deliver.</p> <p>Taken together, the Applicant is of the view that the overall approach of requirement 7 is an appropriate measure that ensures that a proportionate risk based approach is adopted to previously unidentified contaminated land. The Applicant noted that it considers requirement 7 is drafted appropriately, see DCO.1.99 [REP2-030], responses to the Environment Agency's Written representation [REP3-13] , the Applicant's comments on the Environment Agency's response to the Examining Authority's question DCO.1.100 [REP3-016] and response to B1.17 of Wiltshire Council's Local Impact Report [REP3-014].</p>

	<p>Post hearing note: the updated draft DCO submitted at Deadline 4 makes clear that the completed risk assessment must be forwarded to the Environment Agency and Wiltshire Council. Regarding the discussion at the hearing on whether the requirement should specify that work cannot proceed until any remediation scheme is approved, the Applicant considered that no change to the Requirement is required because (i) the remediation itself must be carried out in accordance with the approved scheme under Requirement 7(2), meaning that it can only proceed once the scheme is approved and (ii) any work not consisting of remediation work would be adequately controlled by the background statutory obligations applying to the Applicant and the statutory powers held by Wiltshire Council and the EA.</p>
Landscaping	
4.7 Requirement 8 – Landscaping	
<u>Agenda Item</u>	<u>Highways England response</u>
<p><i>i. Whether the proposed landscaping scheme should include a timetable for carrying out the agreed scheme?</i></p>	<p>The Applicant noted its response to the Examining Authority's first written question DCO.1.101 [REP2-030]. In the Applicant's view, it is not necessary for a timetable for carrying out the works to be included in the Requirement. Requirement 8(1) is clear that the scheme needs to be approved prior to the commencement of the part of the works to which it relates. The key point is that the works are carried out according to the landscaping scheme, not that they are delivered to a particular deadline.</p> <p>The Applicant also noted that there was nothing in the ES that required that landscaping was done at a particular phase in the works in order to mitigate effects.</p> <p>The Applicant noted the Examining Authority's view that it would be desirable for the landscaping to be required to be carried out as soon as possible after the phase to which it relates is complete. The Applicant also noted the Examining Authority's view that requirement 8(2)(g) should include the words "seriously damaged" and that the 5 year period should run from the completion of the Scheme as a whole, rather than from the completion of planting. The Applicant agreed to consider these matters further.</p> <p>Post Hearing Note: after considering the points made by the Examining Authority, the Applicant has amended the requirement contained in paragraph 8 of Schedule 2 to the DCO and this is reflected in the revision 3 submitted at Deadline 4. The landscaping scheme submitted to the Secretary of State for approval must include an implementation timetable for the landscaping works, to provide certainty as to when the landscaping would be brought forward. In addition, the provisions in respect of the 5 year 'replacement period' have been updated, so that this runs from the time the relevant part of the authorised development (i.e. the part connected to the landscaping scheme in question) is completed and, further, that if trees or shrubs are seriously damaged as a result of construction works, as well as diseased or dead, they must be replaced within that 5 year period.</p> <p>The Applicant has also updated this requirement in response to points raised by Historic England and discussions generally at hearings around the World Heritage Site as a whole. Specifically, a new provision has been added such that prior to any works commencing within the World Heritage Site or as part of Work No. 4, a landscaping scheme covering the entirety of both those elements must be submitted to the Secretary of State for approval, following consultation with both Wiltshire Council and Historic</p>

	<i>England. This will ensure an overarching landscaping scheme is implemented in these areas, rather than on a part by part basis. The Applicant recognises the importance of this in the context of the sensitivities at the World Heritage Site.</i>
<i>ii. Whether Requirement 8(2)(b) should include reference not only to “noise fences and walls” but also to fences and walls erected for other purposes, particularly those to be provided within the World Heritage Site (WHS)?</i>	<p>The Applicant explained that it considers this to be unnecessary in the light of the specific items, detailed design commitments, design principles and stakeholder consultation mechanism included in the update to the OEMP at deadline 3 [REP3-006], as set out at item 4.3v above. Outside of the WHS there is no justification for requiring fencing to be included in the landscape scheme.</p> <p>In response to Historic England's submissions that it ought to be consulted on any submission for approval under requirement 8 the Applicant noted that it is normally the case that local planning authority would be the consultee.</p>
Drainage	
4.8 Requirement 10 – Drainage	
<u>Agenda Item</u>	<u>Highways England response</u>
<i>i. The revised dDCO has re-worded this Requirement to ensure that the Environment Agency are consulted in addition to the local planning authority prior to approval by the Secretary of State. Has the revised wording been agreed by those parties?</i>	The Applicant welcomed the Environment Agency's confirmation that it was content with the revision at deadline 2 to require consultation with the Environment Agency. The Applicant also welcomed Wiltshire Council's agreement to the drafting, subject to its overarching query regarding the capacity in which it is referred to in the Order, a point the Applicant has previously indicated it would consider further.
<i>ii. Whether any further changes are necessary to this Requirement, as currently drafted, including reference to an approved timetable?</i>	The Applicant welcomed the EA's confirmation that it considered the drafting as it stands to be sufficient without the need to prescribe a timetable. The Applicant outlined to the extent that there is any need for a timetable to be included it would be in the scheme submitted for approval. The Applicant agreed to consider whether the drafting ought to be amended to reflect this but noted that this addition is not sought by the drainage bodies present, being the Environment Agency or Wiltshire Council.

	<i>Post hearing note:</i> requirement 10 has been amended in Revision 3 of the draft DCO submitted at Deadline 4 to specify for the avoidance of doubt that a timetable for implementation must be included in the drainage scheme to be approved by the Secretary of State.
<i>iii. Whether the 'preliminary works' should be exempt from this Requirement in the light of the flood risk that site clearance could introduce?</i>	The Applicant noted that it did not believe this amendment to be necessary. The preliminary works would be regulated by the preliminary works OEMP and the Environmental Statement concludes that, taking into account those measures secured in the preliminary works OEMP, the preliminary works would not give rise to significant environmental effects. See comments on Wiltshire Council's responses to the Examining Authority's first written questions, question DCO.1.9 [REP3-016]. The Applicant welcomed Wiltshire Council's confirmation that, if it can be satisfied that this is the case, then it would be content and agreed to discuss the matter further with the Applicant. The Applicant suggested putting the relevant technical experts in touch on this issue and since the hearing, this has been put in train.
Whether any additional Requirements are necessary	
<u>Agenda Item</u>	<u>Highways England response</u>
<i>4.9 The consolidated list of suggested Requirements with reasons proposed by Wiltshire Council as set out in Appendix B of the Local Impact Report (LIR) [REP1-057] relating to: (i) Archaeology and WHS considerations; (ii) local transport; (iii) Public Rights of Way (PROW); (iv) ecology and landscape; (v) built heritage; (vi) public health and protection; and (vii) flood risk and drainage.</i>	<p>The Applicant welcomed Wiltshire Council's submission that, since the submission of its Local Impact Report [REP1-057] things have moved on and that it no longer seeks the full range of requirements that are set out in Appendix B of that document and that it acknowledges the principle of appropriate mitigation being secured via the OEMP and DAMS and their corresponding requirements, subject to Wiltshire Council and the Applicant reaching agreement on the contents of those documents. The Applicant also welcomed Wiltshire Council's initial assessment that most of the items sought to be covered in additional requirements appeared to be covered in the updated OEMP.</p> <p>The Applicant noted that it has responded to each of the previously proposed requirements [REP-3-014] and that in general terms, it considered that the proposed requirements were unnecessary as their purposes would be achieved by other means, principally through the OEMP and the DAMs.</p> <p>The Applicant looks forward to working with Wiltshire Council during the course of the examination to reach that point.</p>
<i>4.10 Whether any additional Requirements are necessary to ensure mitigation would</i>	The Applicant welcomed the Environment Agency's confirmation that it is content that these matters are adequately addressed elsewhere and that it does not seek a further requirement.

<p><i>be put in place to minimise any impact on the surface and groundwater water quality, quantity (levels and flow) and environment, including pollution prevention measures, at both the construction and operation stages?</i></p>	
<p>4.11 Whether the scheme should contribute to improvements to waterbodies and, if so, whether any such improvements and/or enhancements should be addressed as part of the dDCO?</p>	<p>The Applicant noted the Environment Agency's submissions, consistent with its written representation (to which the Applicant has responded see paragraphs 23.2.42 to 47 [REP3-013]), that it would like to see the Scheme contribute to improvements to waterbodies and noted that it is open to discussion about how such improvements could be secured.</p> <p>In response the Applicant noted, as set out in its response to the Environment Agency's written representations and in its comments on the Environment Agency's response to the Examining Authority's first written questions DCO.1.75 and EC.1.21 [REP3-016] that the Scheme already secures net biodiversity gain, principally through the creation of new connected chalk habitats (and as agreed with stakeholders including Natural England) which would also be of some benefit to watercourses. Similarly the improved drainage regime proposed by the Scheme would improve the water environment over the current A303. As such, the Applicant does not consider it to be necessary or reasonable in the circumstances to impose a requirement securing further biodiversity gain. The Applicant also noted that discussions were continuing around support that could be given by Highways England outside of the scheme to water environment improvements and welcomed the Environment Agency's confirmation that at root they sought comfort that those discussions would continue with a view to providing that support. Finally the Applicant noted that the Environment Agency were not submitting that the Scheme failed to adequately address biodiversity net gain and that the Environment Agency would consider this point further.</p>
<p>4.12 Whether this could be achieved by including a Requirement for an environmental enhancement plan to be produced as part of the dDCO, as suggested by the Environment Agency?</p>	<p>Addressed under agenda item 4.11 immediately above.</p>
<p>4.13 Whether there is a need for Requirements to control the activities excluded from</p>	<p>This item was discussed under item 3.3(i) above.</p>

<i>the definition of 'commence' such as 'site clearance'?</i>	
4.14 Whether any additional Requirements setting specific noise limits during construction or operation are necessary?	The Applicant submitted that no additional requirements are necessary, additional measures have been included in the updated OEMP submitted at deadline 3 [REP3-006]. The Applicant looks forwarding to discussing the updated OEMP with Wiltshire Council during the course of the examination.
5 SCHEDULE 11 – PROTECTIVE PROVISIONS	
<u>Agenda Item</u>	<u>Highways England response</u>
<i>Including an update on any current negotiations and agreements with individual Statutory Undertakers.</i>	See agenda item 3.15 above.
6 PLANNING OBLIGATIONS AND ANY OTHER AGREEMENTS	
<u>Agenda Item</u>	<u>Highways England response</u>
6.1 Whether any planning obligations or agreements to secure mitigation measures are intended to be completed?	The Applicant noted that it does not propose to give any development consent obligations in respect of the Scheme and it considers the development consent obligations proposed in Wiltshire Council's Local Impact Report would not meet the legal and policy tests for the reasons set out in its response [REP3-014]. There are however, a range of issues arising from the adoption by Wiltshire Council of highways that would be created or altered as a result of the Scheme and that a legal agreement is being negotiated between the parties to address matters arising.
6.2 The list of suggested Development Consent Obligations set out at Appendix C to the Wiltshire Council's LIR [REP1-057] relating to: (i) Archaeology and WHS considerations; (ii) impact of the A303 Amesbury to Berwick Down	The Applicant welcomed Wiltshire Council's engagement on these issues and its confirmation that it is content to work with the Applicant to address these matters in the context of an agreement that is not a development consent obligation.

<p>road scheme on local transport; and (iii) flood risk and drainage.</p>	
<p>6.3 Any other measures sought?</p>	<p>In response to Historic England's submission which noted that revision 2 of the DCO was accompanied by a track changes version against revision 1, but did not show changes against the submission version of the DCO; the Applicant confirmed that its approach is in line with the Planning Inspectorate's Advice Note 15 but it would be prepared to also submit a version comparing changes against the submission version in future submission.</p> <p>In response to Historic England's submission that article 4(2) has the effect of disapplying all general law, including the international treaty underpinning World Heritage Site status; the Applicant responded as follows:</p> <ul style="list-style-type: none"> • Article 4(2) ensures that any <i>local act</i> has effect subject to the provisions of the DCO; • Local acts, similar to development consent orders, take effect in relation to a limited geographical area and are used primarily to authorise projects; • As noted in paragraph 6.2 of the Explanatory Memorandum [APP-021], the provision is well precedented and is required to ensure firstly that any future local enactments take account of the DCO, if it is made, and secondly to ensure that the historic and redundant Victorian and Georgian local acts authorising turnpike roads in the vicinity of the Scheme do not frustrate the Order. • The Applicant confirmed that article 4(2) has absolutely no effect on <i>general</i> legislation. <p>The Applicant noted that it is considering the matters contained in Wiltshire Council's review of the DCO [REP3-046] and noted that it had made amendments to Schedule 9 in Revision 2 as a consequence of the Council's comments. The Applicant noted that Wiltshire Council has included its proposed drafting to implement the traffic regulation measures it desires over byways AMES11 and 12, but considered that issue would be better addressed at the appropriate issue specific hearing.</p>

APPENDIX A: TECHNICAL NOTE – TUNNEL LIMITS OF DEVIATION

Technical Note

Project:	A303 Amesbury to Berwick Down				
Title:	Tunnel Limits of Deviation				
Doc ID:	HE551506-AMW-STU-Z3_ML_000_Z-TN-CT-0138				
Date:	June 2019	Version:	01	Status:	
Doc Cat.	<i>Unrestricted</i>	Author:	M Ayliffe		

Revision	Date	Prepared by	Reviewed by	Approved by
P01	17.06.19	M Ayliffe	T Townsend/R Gordon	M Ayliffe
P02	20.06.19	M Ayliffe	N McNab/G McCreath	D Bullock

1 Introduction

- 1.1 This Technical Note confirms the rationale for the Horizontal Limits of Deviation of the Tunnel Boring Machine (TBM) bored tunnel as included in Article 7 of the draft Development Consent Order.
- 1.2 The Tunnel Limits of Deviation (LOD) are considered necessary to facilitate the safe construction of the TBM 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 should this be necessary by the contractor. The likely scenarios 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 identification and preservation of archaeology in the originally proposed drive area; the identification of preferred geological and hydrogeological conditions to commence tunnelling in a different area, and the identification of features in the ground that should be avoided as far as reasonably practicable to reduce risks during tunnelling.
- 1.3 Industry guidelines, as published by the British Tunnelling Society (BTS/ICE (2005) Closed-face Tunnelling Machines and Ground Stability, A Guideline for Best Practice) and the health and safety code of practice for tunnelling (BS 6164:2011 Code of Practice for Health & Safety in Tunnelling in the Construction Industry) have been referenced in the development of the Scheme in consideration of the most appropriate means of tunnelling. In addition, the Joint Code of Practice for Risk Management of Tunnel Works in the UK (ABI/BTS (2003) contains measures to ensure best practice in the minimisation and management of risks associated with the design and construction of tunnelling projects.
- 1.4 The development of a preferential approach to geological and hydrogeological conditions to commence tunnelling allows for the results of further specific investigations by the contractor which may identify less risk during tunnelling with a change of alignment locally at the launch and reception portals. The identification of features in the ground that should be avoided as far as reasonably practicable to reduce risks during tunnelling itself would require a change in alignment between the drive and reception portals. This includes potential consideration of an alternative

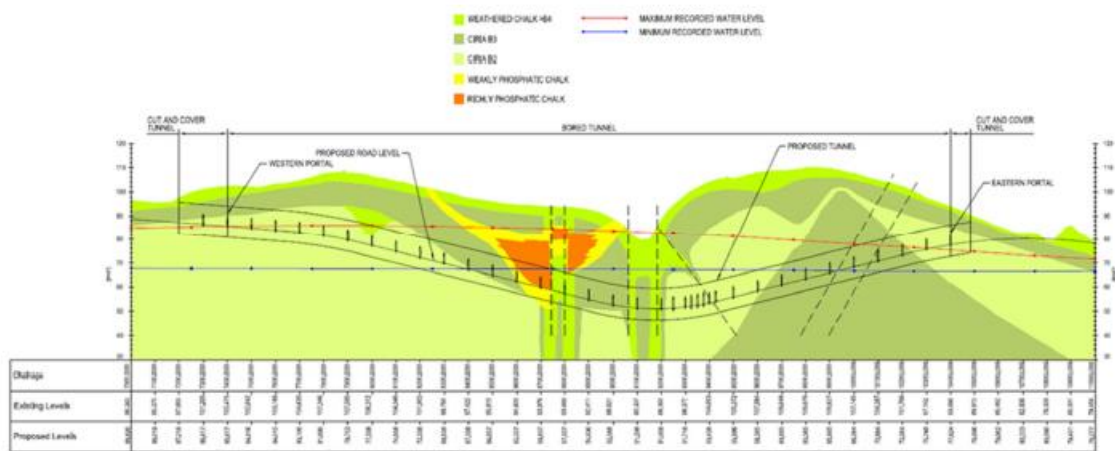
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alignment below the main phosphatic chalk deposits to the west of Stonehenge Bottom to eliminate the need for excavation in phosphatic chalk during cross-passage construction. These changes to the alignment would be made during detailed design, hence the requirement to provide reasoned and considered limits of deviation in the draft DCO. Changes in the detailed design would be driven by compliance with the Construction Design & Management (CDM) Regulations 2015 using the 'ERIC' principle to Eliminate, Reduce, Isolate & Control risks during construction. Therefore, in compliance with CDM, the detailed designer may be able to eliminate/reduce the risk posed by the phosphatic chalk for cross-passage construction by amending the vertical alignment.

2 Tunnel Alignment and Geology

2.1 The Conceptual Geology Model used in the consideration of the Tunnel Alignment is presented below as included in 6.1 Environmental Statement Chapter 2: The Scheme: Figure 2.8 [APP-040]. This shows the location of cross-passages potentially coinciding with the zone of richly phosphatic chalk, Traditional tunnelling for cross-passages within the phosphatic chalk should be avoided where it is safe and reasonably practicable to do so.

Figure 2.8: Conceptual geology model - Cross section of tunnel



(from Mortimer et al, 2017, Ref 2.3)

Figure 1: Extract from ES: Conceptual Geology & Tunnel Alignment

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3 Western Portal LOD

3.1 The likely scenarios for the implementation of the LOD at the western portal have been considered in outline in section 1 and are shown indicatively in Figure 2 below in terms of features to avoid in front, behind and between the portals.

★ Archaeology or feature to avoid
← Alteration to alignment to avoid feature

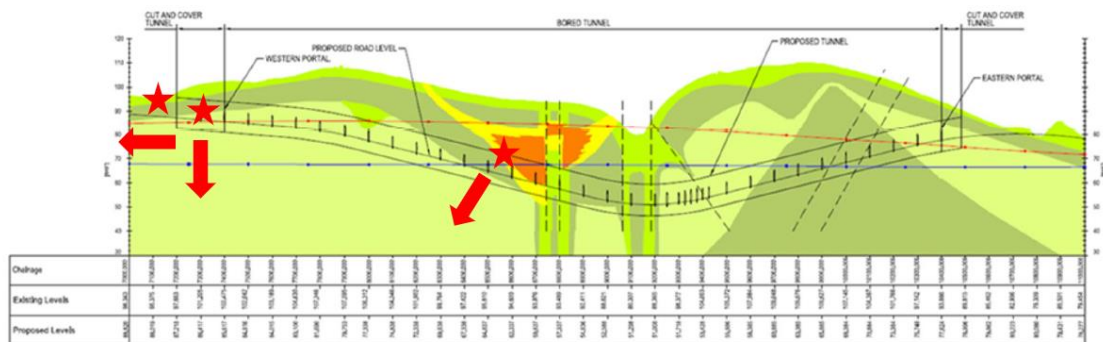


Figure 2: Western Portal Shift

3.2 To understand the need for a 200m LOD at the Western portal, further consideration is required of the following:

- The proposed means of tunnelling and minimum depth on commencement.
- The restrictions to changes in alignment during tunnelling
- The restrictions to changes in gradient in the final tunnel
- Adjustments a contractor can make during the first tunnel drive

3.3 The proposed means of tunnelling and minimum depth on commencement.

The proposed means of tunnelling is based on the assembly and launch of the TBM from the point of commencement of the tunnel in the western portal, 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 very important considerations as part of overall safe tunnel construction and operation of the TBM and flexibility is sought to facilitate this in detailed design.

Tolerances on the line and level of the tunnel will be specified in accordance with best practice established by the BTS/ICE Specification for Tunnelling to +/-80mm. The LOD is therefore not driven by a concern regarding the accuracy in alignment that can be achieved by a large diameter TBM.

Based on the assessment of stability under buoyancy conditions, calculations confirm that tunnelling can commence at a minimum depth of 0.5xdiameter i.e. approximately 6.75m cover to the outside of the tunnel structure. Maintaining the minimum depth at launch helps to reduce the depth in the open cutting before the cut and cover tunnel.

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The cut and cover tunnel length provides a vertical transition zone which allows adequate ground cover for the launch of the TBM at the one end while minimising the depth of the open cut at the other end.

With a gradient of 2.5% on approach to the TBM portal, the 200m LOD at the Western portal adds an additional minimum 5m depth to the tunnel vertical alignment; this is thought to be a sufficient and proportionate allowance to help tunnel below features that we want to avoid.

3.4 The restrictions to changes in alignment during tunnelling

TBM's 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 and are followed by a long train of supporting ancillary trailers supplying all the mechanical and electrical equipment, pre-cast segments and other materials in addition to 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. This means that the angle at which the tunnel can move off an otherwise straight line drive is restricted and therefore if a feature on the tunnel route is to be avoided, whether vertically or horizontally, it may be necessary to start the drive further back in order to get past the feature.

3.5 The restrictions to changes in gradient in the final tunnel

The operational safety of the road tunnel is governed by the geometric design including both the horizontal and vertical alignments. If the road is too curved, the forward visibility can be adversely impacted and reduced for drivers; if the road is too steep then problems can occur for HGV's in that they start to struggle with the incline and can slow down which in itself can cause a potential hazard to other free-flowing traffic. Therefore, the gradient through the tunnel has been established at a maximum of 2.5%.

The geometric and safety design of the road is covered by national and international design standards including DMRB BD 78/99 Design of Road Tunnels, Road Tunnel Safety Regulations and the EU Directive 2004/54/EC Minimum Safety Requirements for Road Tunnels in the Trans-European Road Network (TERN). The A303 is part of the Comprehensive network of the TERN and therefore the EU regulations apply to the tunnel design including geometry.

In accordance with the EU regulations, where gradients exceed 3%, additional safety features may be required in the tunnel and therefore it is important to keep below this gradient to avoid the need for either a larger diameter tunnel due to the inclusion of an Emergency Lane or the need to excavate outside the protection of the primary lining for features such as lay-bys. The current proposed road alignment is based on a maximum gradient of 2.5% which will allow tunnelling below the low-point on the vertical alignment at Stonehenge Bottom at sufficient depth for stability of the tunnel. We therefore have very little flexibility to amend the gradient to avoid features in the ground and thereby reduce the need for additional safety measures that may increase risk during construction by excavation outside of the primary lining and add to the cost of tunnelling construction, operation and maintenance.

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The pragmatic solution to this problem would require either a deeper launch of the TBM or a shift in starting point to the west to maintain the minimum cover for launch and hence minimum depth within the cutting.

3.6 Adjustments during the first tunnel drive

If we are limiting the road gradient for safety and constrained by the characteristics of the TBM, the only way to avoid a feature in the ground, particularly to the west of Stonehenge Bottom, is to start tunnelling earlier and in advance of the current proposed portal position. The tunnel will therefore be physically below any feature when we reach it during the first tunnel drive. Therefore, the 200m westerly deviation is sought at the western portal to help avoid features in the ground and facilitate safe excavation of the cross-passage tunnels (e.g. by avoiding having to excavate those cross passages through problematic geology).

4 Eastern Portal LOD

4.1 The planned adjustments in the detailed design for the first tunnel drive will effectively also accommodate the second drive as the twin bores are largely parallel. The main risks in the ground from the phosphatic chalk and faults to the west of Stonehenge Bottom do not exist to the east and we therefore do not consider that we need the extra depth at the Eastern portal. This is because a tunnel with the maximum gradient described above could avoid the main areas of potentially challenging geology without the need for any more than 30m LOD. We therefore do not need the same 200m LOD at the Eastern portal.

4.2 The 30m LOD at the Eastern portal will also allow for some local adjustment for ground conditions in the portal area without conflicting with traffic flows on the existing A303 during construction. The close proximity of the eastern approach cutting and cut and cover tunnel to the existing A303 and surrounding archaeology and infrastructure naturally constrains the amount of adjustment that can be made to the position of the TBM portal and therefore the 30m LOD at the Eastern portal only allows for some local adjustment.

 Archaeology or feature to avoid
 Alteration to alignment to avoid feature

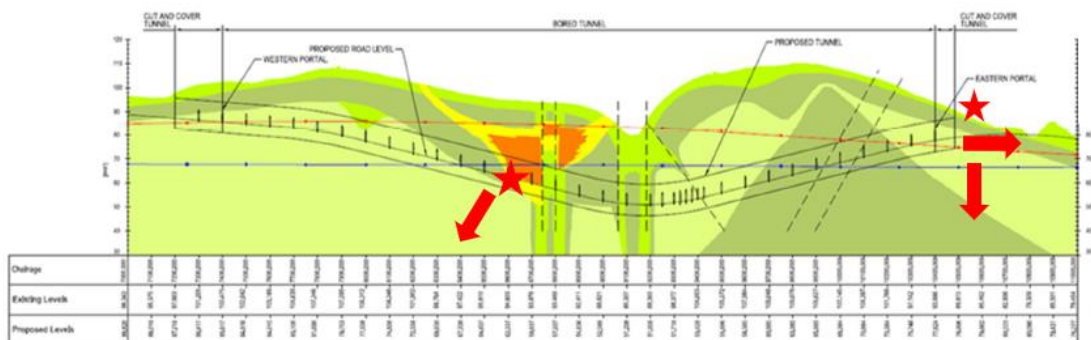


Figure 3: Eastern Portal Shift.

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5 Conclusion

- 5.1 The Tunnel LOD's are considered necessary to facilitate the safe construction of the TBM 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 should this be necessary by the contractor as part of their risk management through the detailed design. The degree of flexibility is therefore considered proportionate in light of the expected ground conditions at each end of the scheme, and to the west of Stonehenge Bottom, has been assessed in the Environmental Statement and is sought only in connection with the works for which it is considered to be necessary.

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