

## A303 Amesbury to Berwick Down

TR010025

**Deadline 6**

**8.39 - Comments on any further information requested by the ExA and received to Deadline 4 and 5 regarding the draft Development Consent Order**

APFP Regulation 5(2)(q)

Planning Act 2008

The Infrastructure Planning (Examination Procedure) Rules 2010

July 2019



## Infrastructure Planning

Planning Act 2008

### The Infrastructure Planning (Examination Procedure)

Rules 2010

## A303 Amesbury to Berwick Down

Development Consent Order 20[\*\*]

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**Comments on any further information requested by the ExA and received to Deadline 4 and 5 regarding the draft Development Consent Order**

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<b>Regulation Number:</b>	Regulation 5(2)(q)
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# 1 Introduction

- 1.1.1 This submission sets out the Applicant's responses to the submissions on the topic of the draft DCO made by interested parties at Deadlines 4 and 5. The Responses are presented in a tabula format and arranged under the article, requirement or Schedule to which the comment relates. Column 1 includes a reference, column 2 identifies the party making the comment, and column 3 includes the document paragraph references to where the comment can be located in submissions and includes either a summary of the issue raised or a quotation. Column 4 sets out the Applicant's response.

Reference	Interested Party	Reference and Summary/Extract	Applicant's Response
<b>Article 2 (Interpretation)</b>			
1	Historic England	<p><b>[REP4-084] paragraphs 37 to 40 in respect of the definition of "commence"</b></p> <p>Whether the preliminary works require development consent and whether they would benefit from the disapplication of the legislation specified in section 33(1) of the Planning Act 2008 (including in particular section 35 of the Ancient Monuments and Archaeological Areas Act 1979).</p>	<p>The Applicant notes that discussions with Historic England are continuing and that its comments relate to the second revision of the draft DCO submitted at Deadline 3 [REP3-002]. A third revision was submitted at Deadline 4 [REP4-018] contemporaneously with the submission of Historic England's written submission.</p> <p>The development that would be authorised by the Order would either be part of the Nationally Significant Infrastructure Project for which development consent is required under section 31 Planning Act 2008, or it would be associated development within the meaning of section 115 Planning Act 2008. Section 115(5) Planning Act 2008 confirms that "<i>To the extent that development consent is granted for associated development or related housing development, section 33 applies to the development as it applies to development for which development consent is required.</i>" Consequently the disapplications in section 33 would apply to the development authorised by the Order, whether it formed part of the NSIP or is associated development. Please also see the Applicant's response to question DCO.2.2 regarding the approach to associated development within Schedule 1.</p>
2	Historic England	<p><b>[REP4-084] paragraph 41 in respect of the definition of "commence"</b></p> <p>The interaction between section 154 of the Planning Act 2008 and the execution of works under the Order that are excluded from the definition of "commence" and any implications for the controls contained within the Order.</p>	<p>In respect of this matter raised in respect of the definition of commence:</p> <p>Section 154 Planning Act 2008 is a default provision that would impose time limits within which development must begin, or compulsory acquisition powers exercised, or the authorisation would lapse. Both limbs take effect unless the Order specifies otherwise. The draft DCO does specify otherwise. The time limit for the exercise of compulsory acquisition and temporary possession powers is set out in article 21 and the time limit for</p>

			beginning development under the Order is established by requirement 2. It follows that the default provisions contained in section 154 are not relevant to the Order, as it makes its own provision. In respect of those time limits, requirement 2 is clear that the authorised development must be "commenced" not later than 5 years from the date of it coming into force.
3	Historic England	<p><b>[REP4-084] paragraph 42 in respect of the definition of "commence"</b></p> <p>The controls that would apply to works excluded from the definition of "commence";</p>	The practical effect of works being excluded from the definition of "commence" is to permit them to be carried out without first having discharged the pre-commencement requirements. It does not take such works out of the scope of requirements 4 (Outline Environmental Management Plan) or 5 (Archaeology, including the DAMS). Although excluded works which are not included in the definition of Preliminary Works are not covered by the Preliminary Works OEMP they are still regulated by the DAMS under Requirement 5. As explained at the DCO issue specific hearing, they do not require to be regulated by the Preliminary Works OEMP because they are <i>de minimis</i> and can be carried out without likely significant effects that would justify the imposition of additional controls. With regards to advertisements, this is intended to permit the posting of site notices and similar and is not intended to include commercial advertisements. The Applicant has amended the definition to clarify this point in revision 4 of the DCO to be submitted at deadline 6.
4	Historic England	<p><b>[REP4-084] paragraphs 44-46 in respect of the definition of "commence"</b></p> <p>That excluded works could be undertaken with no requirement thereafter to the deliver the Scheme;</p>	It is the case that there is no positive obligation on the Applicant to carry out the Scheme. It would be unusual were it to do so. However, as noted above adequate measures are in place to ensure that works authorised by the Order are appropriately regulated.
5	Historic England	<p><b>[REP4-084] paragraph 47 in respect of the definition of "commence"</b></p>	The Order is drafted in the form of a statutory instrument, and like any statutory instrument, it takes effect when it comes into force. Typically, the Secretary of State will specify the date of coming into force three weeks in advance of the date the Order is made.

		Whether works under the Order need to be "commenced" for its provisions to take effect.	From the date it comes into force the Order will take full effect on its own terms, including the requirements.
6	Historic England	<p><b>[REP4-084] paragraphs 48 to 49 in respect of the definition of "commence"</b></p> <p>Whether both archaeological mitigation and archaeological investigations are within the definition of "preliminary works" and thus caught by requirement 4(2) ensuring the preliminary works are carried out in accordance with the preliminary works OEMP.</p>	The Applicant amended the definition of "preliminary works" in requirement 1 in revision 3 of the DCO [REP4-019] to include both "archaeological investigation and archaeological mitigation works", ensuring that they would be caught by requirement 4(2).
7	Historic England	<p><b>[REP4-084] paragraphs 53 to 58 in respect of the definition of "maintain"</b></p> <p>Concern that the definition of maintain, including its ordinary and natural meaning, in addition to those matters specifically listed in the definition, could be wider than is assessed in the Environmental Statement. Historic England suggests adding the phrase "<i>to the extent assessed in the environmental statement</i>" to the definition.</p>	<p>The Applicant has answered detailed questions on the definition of "maintain" in the Examining Authority's first round of written questions, see in DCO.1.12 [REP2-030] sub-paragraph (iv) in particular; as well as in Issue Specific Hearing 1 on the Development Consent Order, held on 4th June 2019 (see Part 1 Preliminary Article 3.3 Article 2 Interpretation (i) [REP4-029]).</p> <p>The Applicant has further considered the point in response to the Examining Authority's second written question DCO.2.5 and has amended in revision 4 of the draft DCO the definition of "maintain" in article 2(1) to include the phrase "<i>provided such works do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement</i>".</p>
8	Historic England	<p><b>[REP4-084] paragraphs 59 to 72 in respect of the use of the term "illustrative" on the notes to certain plans that would be certified under article 56</b></p> <p>"Illustrative" - there are a number of plans which are "illustrative" which is an issue as they are presently unable to finalise their view and to advise the EA and SoS. Further details are required.</p>	Please see the Applicant's response to the Examining Authority's question De.2.6 in respect to the reference to the use of the term "illustrative" on some plans.

9	Historic England	<p><b>[REP4-084] paragraph 75 in respect of the definition of the "Order limits"</b></p> <p>"Order limits" - to ensure minimal effect include a provision within d2DCO to reduce upon completion of the construction operations the extent of the order limit. No more extent can be justified in the context of the Site and its unparalleled landscape.</p>	<p>The Applicant has carefully drawn the Order limits to ensure that no more land than is necessary to deliver the Scheme is included within the Order limits and the Applicant considers the powers that may be exercised within the Order limits are necessary and appropriately regulated.</p> <p>On this basis the Applicant considers that it is unnecessary to provide for the retraction of the Order limits. In any event, retraction of the Order limits in the manner proposed would be unprecedented in development consent orders and, as far as the Applicant is aware, in any statutory authorisation regime.</p>
10	Historic England	<p><b>[REP4-084] paragraphs 76 to 82 in respect of the definition of "authorised development" and in respect of construction compounds</b></p> <p>Concerns raised in respect of the location of ancillary works</p> <p>Suggestion that construction compounds should be a numbered work, and that an illustration of the compounds ought to be provided.</p>	<p>The Applicant has responded in detail to the Examining Authority's first written questions on the location and assessment of the ancillary works, see [REP2-030], DCO.1.2 and in its summary of oral submissions put at the DCO ISH [REP4-029] under agenda items 3.3(iii) and (iv).</p> <p>In respect of the approach to ancillary works generally, in summary, the approach of listing ancillary works at the end of Schedule 1 of the draft Order is widely precedented. This is because the alternative approach would be to list each of the ancillary works under each of the numbered works to which they apply. Noting that the majority of the numbered works each require the majority of the ancillary works, this approach would lead to the descriptions becoming very long, very cumbersome and considerably more difficult to understand. The Applicant's approach in Schedule 1 provides 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" works in Schedule1. 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,</i></p>

			<p><i>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". 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. The Applicant amended article 7 of DCO in revision 3 [REP4-019] to more clearly express that the authorised development can only be constructed within the Order limits.</i></p> <p>In respect of construction compounds, at deadline 4 the Applicant updated measure MW-G28 of the OEMP [REP4-021] and, having considered discussions to date on this point, Highways England wishes to simply commit to the location of the construction compounds. This is reflected in the Deadline 6 OEMP in measure MW-G28. The Applicant's response to DCO.2.1 provides further details on this point.</p>
11	Historic England	<p><b>[REP4-084] paragraphs 83 to 86 in respect of the rule of interpretation in article 2(4) that all distances, directions, areas and lengths are to be taken as being "approximate"</b></p> <p>Provision 2(4) - query as to the potential degree of approximation that may be applied to the matter. Meaning of the word "approximate" is vague, but could be resolved by excluding the relevant work number from the approximation.</p>	<p>The rule of interpretation contained in article 2(4), specifying that distances, directions, areas and lengths are approximate is well established (see paragraph 5.7 of the Explanatory Memorandum [APP-021]). This is because without it, any departure from the precise measurements contained, would lead to non-compliance with the Order and therefore a criminal offence, no matter how minor. As explained at the DCO ISH [REP4-030] (agenda item 3.3(vi)), approximate takes its ordinary meaning, which would be proportionate to the measurement in question.</p> <p>In acknowledgement of the particular sensitivities of this Scheme, the Applicant amended article 2(4) and included a new paragraph (9) in article 7 (Limits of deviation) of revision 3 of the draft DCO [REP4-019]. These amendments make it clear that the limits of deviation in article 7 are not to be taken as being approximate. In response to Historic England's concerns the design commitment in the OEMP, measure D-CH4 has been amended in the Deadline 6 update to give a range for the width of Green Bridge Four.</p>

12	NFU	<p><b>REP4-052 DCO ISH Summary, paragraph 2.1</b></p> <p>Construction Compounds were discussed and the NFU raised the issue that landowners were concerned about the size and location of compound sites and the works that will be undertaken in each compound. Under Schedule 7 of the draft DCO areas to be taken for compound sites, the purpose set out states <i>‘to provide temporary storage, lay down areas and working space’</i>. This is too vague and the works which are to take place in each compound should be set out under this schedule. It is known that the waste soil arisings will be treated in one of the compounds. This needs to be stated clearly in the schedule within the draft DCO. Reference is made to the location of slurry treatment plant and batching plant in the OEMP on page 50 ref: MW-CH4. It is this detail that the NFU would like to see detailed in the schedule in the DCO for each compound.</p>	<p>In relation to construction compounds, please see the Applicant's written summary of oral submissions at the DCO ISH [REP4-029], under agenda item 3.3(iv). Please note that Highways England now wishes to simply commit to the location of the construction compounds. This is reflected in the Deadline 6 OEMP in measure MW-G28. The Applicant's response to DCO.2.1 provides further details on this point.</p> <p>In relation to specifying more detail in Schedule 7 the purposes for which temporary possession is taken for the provision of temporary storage, lay down areas and working space;;at this stage the Applicant's design is sufficiently advanced to enable the proper assessment of its environmental impacts and to ascertain its land requirements. The detailed construction methodology would be developed when a contractor is appointed. Consequently, at this stage the Applicant is not able, on a plot by plot basis, to give the detailed information sought by the NFU. The NFU can be reassured that the Applicant takes the effect of the Scheme on its members seriously, and a range of measures are included in the OEMP</p> <p>In addition, the measure MW-COM4 of the OEMP updated for deadline 6 includes an obligation on the contractor to produce preconstruction soils statements for areas for agricultural land temporarily possessed to inform the development of the soil management strategy [MW-GEO3] and provide a baseline for the soil condition against which the restoration of soil will be assessed.</p>
13	National Trust	<p><b>[REP4-054] paragraph 1.1.1 in respect of construction compounds</b></p> <p>The Trust stated a point in relation to confirmation that no main construction compounds would be within the WHS. The ES has assessed construction compounds outside of WHS, but absolute clarity was sought on the</p>	<p>The Applicant gave this commitment in the updated OEMP, submitted at deadline 4 [REP4-021], in measure MW-G28. Following further consideration the Applicant has updated MW-G28 in the OEMP to be submitted at deadline 6 to simply specify the locations of the construction compounds. Please see the Applicant's response to question DCO.2.1 for further details.</p>

		commitment for no construction compounds within the WHS.	
14	Wiltshire Council	<p><b>[REP4-039], Comments on the DCO, section 2.2 in respect of the absence of a definition for Lead Local Flood Authority and definition of planning authority</b></p> <p>The Council notes that planning authority, highway authority, street authority and traffic authority are defined terms, but lead local flood authority is not, and it considers it should be for completeness.</p> <p>The Council also considers that the definition of planning authority should acknowledge that Wiltshire Council is a unitary authority.</p>	Please see the Applicant's response to question DCO.2.7, which addresses this point.
15	Wiltshire Council	<p><b>ISH 1 Article 2, para 1.2.1</b> - The Council expressed concern that some of the things excluded from the definitions may have potential impacts. For example, remedial work on contaminated land conditions could result in extensive impact and site clearance activities could impact on ecology, and depending on what this entails, there could also be an impact on the landscape. The Council indicated that clarity was required, although it did not wish to tie conditions unnecessarily in this regard.</p>	Please see the Applicant's response to question DCO.2.32.
16	Wiltshire Council	<p><b>ISH 1 Article 2, para 1.2.2</b> - With respect to the definition of "maintain", the Council indicated that if the intention is for it not to go beyond the DCO, it may be sensible for the word "record" to be inserted so that it evidences where the starting point is.</p>	The Applicant's intention regarding the definition of "maintain" is as set out in that definition, that is to say the power to maintain the authorised development in article 5 includes the power to "inspect, repair, adjust, alter, remove or reconstruct" the authorised development, subject to the corresponding limits of deviation in article 7. See also the Applicant's detailed responses to the Examining Authority's written questions DCO.1.12 [REP2-030] and DCO.2.5 (to be submitted at deadline 6). The key point is that the

			authorised development being maintained is as set out in the Order, so it is unnecessary to further record it.
17	Wiltshire Council	<b>ISH 1 Article 2, para 1.2.3</b> The Council confirmed that it was pleased to hear that the intention for “ancillary works” would that they would fall entirely within the order limits. The Council suggested that some fine tuning of the language would be helpful to address the confusion, specifically with regard to Article 7. It was suggested that this could be incorporated into the specific definition of “ancillary works”.	The intention for the ancillary works to be constrained to the Order limits is confirmed in the Applicant's written summary of its oral submissions at the DCO ISH [REP4-029], under agenda item 3.3(iii). The Applicant included an amendment to article 7(1) (Limits of deviation) in revision 3 of the DCO [REP4-019] to make this clear.
<b>Article 3 (Disapplication of legislative provisions)</b>			
18	EA	<b>REP4-049 Paragraphs 1.1.1 to 1.1.2</b>  We note the removal of Section 24 (restrictions on abstraction) of the Water Resources Act 1991, which we support. Consequently any abstraction (including dewatering), unless covered by exemption will require an abstraction licence.  The version of the draft DCO submitted at Deadline 3 does not include the latest Protective Provisions agreed between the EA and Highways England. However, we have now agreed Protective Provisions to be included in the draft DCO to cover EA flood risk permitting activities. We understand that these are to be included in the next version of the draft DCO.	The Applicant notes that the revision 3 of the draft DCO submitted at deadline 4 [REP4-019] contained the agreed form of the Environment Agency's protective provisions.

19	Wiltshire Council	<p><b>[REP4-081] section 1.3 in respect of article 3 (Disapplication of legislation provisions)</b></p> <p>The Council is concerned with the disapplication of the provisions of the Land Drainage Act 1990 proposed in article 3((1)(b), (c) and (d), particularly in relation to dewatering activities during the tunnelling works, and notes it is proceeding on a precautionary basis.</p> <p>The Council raises concerns that Highways England has not specified a closed face tunnel boring machine and that there remains potential for extensive dewatering during tunnelling and wishes to retain control for consent.</p> <p>The Council works closely with the Environment Agency and notes that protective provisions have been agreed to regulate the effect of the proposed disapplication of legislation and requires similar protective provisions to be extended to Wiltshire Council.</p>	<p>The Applicant, in the update to the OEMP submitted at DL4 has committed through design commitment D-CH32, to the use of closed face tunnelling techniques for the bored section of the tunnel. From discussions with Wiltshire Council at the DCO ISH, the Applicant understands that this should give the necessary comfort to allow the Council to withdraw its comments on these disapplications.</p> <p>As set out in the Applicant's comments on Wiltshire Council's response to the Examining Authority's first written question DCO.1.7 [REP3-016] and the Applicant's response to item 22.5.22 in its Written Representations Report [REP3-013], there is no prospect of large scale dewatering taking place in respect of the Scheme, although some localised and temporary groundwater control could be required for the construction of the tunnel portal slab to launch the closed face tunnel boring machines, and also potentially for some of the cross passages for mechanical and electrical services at Stonehenge Bottom when groundwater levels are exceptionally high. The OEMP contains measures to mitigate impacts of dewatering (MW-WAT8), which have been agreed with the Environment Agency, confirmed in their comments submitted at deadline 4 (see paragraph 7.1.5 [REP4-049]).</p> <p>The Applicant notes that Wiltshire Council, in its Deadline 5 submission [REP5-009] at paragraph 2.3 states that in light of the Applicant's commitment to the use of a closed face tunnel boring machine it agrees to the disapplications sought, subject to agreeing adequate protective provisions. The Applicant received Wiltshire Council's comments on the draft protective provisions shortly before deadline 6 and is actively considering them.</p>
<b>Article 4 (Development consent, etc. granted by the Order)</b>			
20	Historic England	<p><b>[REP4-084] paragraphs 87 to 96 in respect of the scope of the authorised development</b></p>	<p>It is not the case that the Order would permit the authorised development defined in Schedule 1 to be constructed outside of the Order limits so the concerns raised in these paragraphs would</p>

		<p>Suggests that the Order would enable the authorised works to be constructed outside of the Order limits and remain perpetually on the landscape.</p> <p>Suggests the Order limits should reduce following completion of construction to limit scope of the maintenance power.</p>	<p>not arise. The Applicant has spelt this out for avoidance of doubt in revision 3 of the DCO, submitted at deadline 4 [REP4-019]. Article 7(1) has been amended to read "<i>The following provisions of this article have effect subject to the requirement that the undertaker must construct the authorised development within the Order limits.</i>" The remainder of the article, when read together with the corresponding plans and Schedule 1 fixes the vertical and horizontal limits of deviation within which the authorised development may be constructed or <i>maintained</i>.</p> <p>It is evidently necessary for the Applicant, having constructed the authorised development, to also be authorised to maintain it. It is important to note that the power to maintain is limited to maintaining the <i>authorised development</i> and is subject to the limits of deviation in article 7, which have been assessed in the Environmental Statement (see Chapter 2 APP-040)).</p> <p>As noted above, it would be unprecedented for Order limits to subsequently retract in the manner suggested by Historic England, on completion of the authorised development. It would also be wholly unnecessary; the environmental effects of maintaining the authorised development been assessed in the Environmental Statement. See the Applicant's response to DCO.1.12 [REP2-030] and see also DCO.2.5 for further information on the changes made at deadline 6 to this definition.</p>
21	Historic England	<p><b>[REP4-084] paragraphs 97 to 104 in respect of Article 4(2)</b></p> <p>Suggestion that article 4(2) is unnecessary and would disapply general legislation, including heritage legislation, on land adjacent to the Order limits and that the provision would authorise works on the Stonehenge Monument that would be outside of the controls of Ancient</p>	<p>The Applicant's summary of its oral submissions at the DCO ISH [REP4-029] addresses the scope of article 4(2), under agenda item 6.3.</p> <p>In summary, article 4(2) ensures that any <i>local</i> enactment (being one "<i>applying to land within or adjacent to the Order limits</i>") has effect subject to the provisions of the DCO. The provision has absolutely no effect on <i>general</i> enactments that apply across a jurisdiction. Local enactments are used to authorise projects. Development consent Orders, Transport and Works Act Orders and are examples of local enactments. One of the purposes of</p>

		<p>Monuments and Archaeological Areas Act 1979.</p>	<p>article 4(2) is to ensure that any project proceeding under a local enactment has to take account of the Order and specifically address any conflict between the two instruments. A recent example of where this has arisen in practice is with the Millbrook Gas Fired Generating Station Order 2019, which included specific provisions (see article 37) to address the interactions between it and the development authorised under the Rookery South (Resource Recovery Facility) Order 2011. Another purpose of article 4(2), as noted in the Explanatory Memorandum [APP-021] at paragraph 6.2 is to protect the Scheme from the effect of the redundant Georgian and Victorian instruments authorising turnpike roads. Article 4(2) is therefore a necessary and proportionate measure and does not have the effect attributed to it by Historic England.</p> <p>It is necessary for article 4(2) to apply to land adjacent to the Order limits to address any interaction between the Scheme and a local enactment that applies adjacent to, but does not overlap with, the Order limits.</p> <p>The scenario outlined in paragraph 102 of Historic England's DL4 comments, suggesting that works could occur on the Stonehenge monument and that those works would be outwith the controls of the AMAA 1979, could not arise under the Order. This is because the monument is not adjacent to the Scheme – it is more than 150m from the Order limits at its closest point; also as set out above article 4(2) does not disapply general legislation, such as the AMAA 1979, only local enactments.</p>
<p><b>Article 7 (Limits of deviation)</b></p>			

22	EA	<p><b>[REP4-049] section 1.2 in respect of Article 7 (Limits of deviation)</b></p> <p>It is noted that Limits of Deviation to the vertical and lateral alignment of the tunnel are to be set by the DCO to allow for changes in the currently proposed design during detailed design by the contractor.</p> <p>The Bored Tunnel Limits of Deviation Plan (TR010025-2.16 Rev P02) submitted with the DCO application indicates an upper limit for the crown of the tunnel at 70 mAOD at the lowest point of the tunnel - beneath Stonehenge Bottom - and no lower limit to its vertical alignment.</p> <p>The groundwater risk assessment to date (most recently updated in Implications of 2018 Ground Investigations to the Groundwater Risk Assessment, P04. AECOM, Mace, WSP, April 2019) has assessed the impacts of an alignment where the crown, at its lowest point – beneath Stonehenge Bottom – is 55 mAOD. This assessment places the tunnel beneath the expected elevation of the Whitway Rock which is thought to act as a preferential flow horizon (although the presence of these and exact location has not been confirmed to date). Due to the risk of the tunnel impeding flow along this horizon should its alignment, design or construction methodology change, it is essential that any changes to the detailed design are adequately risk assessed. The EA should be consulted on any updated design and risk assessment and agreement reached with the</p>	<p>The Applicant has responded to this point in a post hearing note included in its summary of oral submissions at the DCO ISH [REP4-029] under agenda item 3.5, reproduced below for ease of reference:</p> <p><i>"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].</i></p> <p><i>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."</i></p> <p>The Applicant further notes that the limits of deviation in article 7 establish the parameters for the authorised development for which the Applicant seeks development consent and it would be unnecessary to require consultation on their exercise for the reasons that the limits of deviation have been thoroughly assessed in the Environmental Assessment (see Chapter 2, [APP-040]) and that further detailed consultation continues to take place throughout this Examination. This position is consistent with that set out at Issue Specific Hearing 1 on the Development Consent Order, held on 4 June 2019 and contained within the Written</p>
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23	Historic England	<p><b>[REP4-084] paragraphs 105 to 110 in respect of Article 7(2) (limits of deviation)</b></p> <p>Concerns raised with where the term of "limits of deviation", defined in article 2(1), elsewhere in the Order other than in article 7.</p> <p>Concerns raised that the limits of deviation may be exercised where "necessary or convenient", suggestion this should be amended to read only where "necessary".</p>	<p>The Applicant confirms that the phrase "limits of deviation" is used only in articles 2 and 7 in the operative provisions of the draft DCO. The phrase is also used in Parts 3 and 5 of Schedule 11, the protective provisions for the drainage authorities and the Environment Agency respectively, in respect of the Applicant's duty to maintain drainage works.</p> <p>The use of the phrase "necessary or convenient" in the drafting of limits of deviation provisions is considered in detail in the Applicant's response to question DCO.2.11.</p>
24	Historic England	<p><b>[REP4-084] paragraphs 111 to 115 in respect of Article 7(6) (limits of deviation)</b></p> <p>Suggestion that the exceedances of vertical limits of deviation that could be certified by the Secretary of State under this provision could restrict future archaeological research and that the exercise of the provision ought to require consultation with Historic England.</p>	<p>The Applicant does not accept the suggestion that the project assessed in the Environmental Statement differs from the project for which the Applicant seeks development consent. Despite the suggestion in paragraph 112, the draft DCO clearly includes requirements, in Schedule 2, design principles in the OEMP [REP4-021] (which are being developed with Historic England and other heritage stakeholders) and protective provisions, in Schedule 11.</p> <p>With respect to the suggestion that this provision could restrict future archaeological research, it is not clear to the Applicant how this could be the case. The tunnel restrictions imposed under article 27 are to protect the integrity of the tunnel, would apply from the tunnel bore to the surface. The precise level below ground of the bored tunnel would not affect the extent of land that would be subject to the tunnel restrictions.</p>

			<p>It should further be noted that the vertical limits of deviation for surface infrastructure within the World Heritage Site have deliberately been drawn very narrowly. For example Work Nos. 1D(i) (Green Bridge Four), 1E(i) (the western cut and cover tunnel) and 1G(i) and (ii) (the eastern cut and cover tunnel and tunnel service building) are only permitted to deviate by 0.25m from existing ground levels. Regarding consultation arising from any application for a certificate under article 7(6), please see the Applicant's response to the Examining Authority's question DCO.2.12.</p>
25	Historic England	<p><b>[REP4-084] paragraphs 116 to 120 in respect of Article 7(7)(a) (limits of deviation)</b></p> <p>Raises concerns with the perceived degree of flexibility in the limits of deviation as they relate to the Green Bridge 4.</p> <p>Advises that the width of Green Bridge Four should be no less than 150m, and this must be secured in the DCO.</p>	<p>As confirmed at the DCO ISH (see REP4-029 under agenda item 3.5), the location of Green Bridge Number 4 would not be affected if the 200m westward limit of deviation for the commencement/termination of points Work Nos. 1E, 1D and 1F is utilised. Please also see the Applicant's response to DCO.2.13 which confirms the location, by reference to its chainage, of where Green Bridge Four would cross the new A303.</p> <p>In determining the width and location of Green Bridge No. 4, Highways England has carefully assessed the benefits of reconnecting heritage assets against the disbenefits of doing so, including the fact that a bridge of more than 150m would be classified as a tunnel under Highways England's Design Manual for Roads and Bridges (DMRB), Volume 2, Section 2, Part 9 (Design of Road Tunnels – BD78/99), resulting in significant and disproportionate implications for the scheme in terms of design standards and costs. Highways England believes the proposed solution achieves the appropriate balance of these matters.</p> <p>Reference D-CH4 of the OEMP [REP4-021] secured the width of Green Bridge Four at "approximately 150m". To address Historic England's concerns regarding the term "approximately" this measure has been updated in the OEMP submitted for deadline 6 to give a range for the width of Green Bridge Four.</p>

26	Historic England	<p><b>[REP4-084] paragraphs 121 to 125 in respect of Article 7(7)(b) (limits of deviation)</b></p> <p>Expresses concerns that article 7(7)(b) authorises departures from the design of any tunnel or tunnel structure and vary the number of tunnel cross passages shown on the engineering section drawings (plan and profiles and the engineering section drawings (cross sections)</p>	<p>Article 7(7)(b) serves two purposes. Firstly, it enables the detailed design of the bored and cut and cover tunnels to be developed, within the limits of deviation, without being constrained to the reference design shown illustratively on the Engineering Section Drawings (Cross Sections) and (Plans and Profiles). It must be noted that this applies only to the <i>design</i>, the levels from which the vertical limits of deviation are drawn, remain fixed. Secondly, it enables the detailed design to vary the number of cross passages between the tunnel bores. In either case, the degree of flexibility afforded is constrained by the requirement for the variation to not give rise to any materially new or materially worse adverse environmental effects in comparison with those reported in the environmental statement.</p> <p>The provision is necessary as at this stage the detailed design and engineering detail of the cut and cover and bored tunnel has yet to be determined. Similarly, the precise location and number of cross passages between the bored tunnels has yet to be finally determined. The provision is proportionate as it is constrained to not giving rise to any materially new or materially worse adverse environmental effects. In addition this provision remains subject to the requirements, in particular the design commitments, design principles and process of stakeholder consultation on aspects of the detailed design specified in the OEMP, compliance with which is secured by requirement 4.</p>
27	National Trust	<p><b>[REP4-054] section 1.2 in respect of consultation on the limits of deviation</b></p> <p>The Trust stated that it would be important to secure HMAG consultation on any proposed use of LoDs.</p> <p>The Trust stated a need for clarity on the assessment of impacts of any</p>	<p>Please see the Applicant's written summary of its oral submissions at the DCO ISH [REP4-029], under agenda item 3.5.</p> <p>The limits of deviation in article 7 have been carefully crafted to allow a proportionate degree of flexibility within which the authorised development would be delivered, and this degree of flexibility has been assessed in the Environmental Statement, which is being examined and discussed in detail by all Interested Parties during the current examination process. As such, should the DCO be made, the limits of deviation would have been</p>

		proposed us of LoDs.	<p>accepted by the Secretary of State so should be able to be utilised when the beneficiary of the DCO sees fit.</p> <p>In terms of consultation with HMAG on elements of the design of the Scheme, section 4 of the OEMP includes a process for stakeholder consultation on detailed design as set out therein, although it is acknowledged that this is not intended to extend to the level of granularity that would apply to the exercise of any of the LoDs.</p>
<b>Article 11 (Temporary stopping up and restriction of use of streets)</b>			
28	Wiltshire Council	<p><b>[REP4-039] Comments on the DCO, section 2.1 in respect of Article 11 (Temporary stopping up and restriction of use of streets)</b></p> <p>Notwithstanding use of the phrase “temporary stopping up” in other made DCO’s, or indeed in the DCO Advice Note, highways cannot be temporarily stopped up. The act of stopping up is a permanent act, whereby the land which was stopped up highway reverts to having no such status, and the surface rights reverting to the rightful owners (the sub-soil owners). With no registered owner, this would normally be the frontage owners.</p>	<p>The Applicant responded to this point when raised by Wiltshire Council in its response to the Examining Authority’s First Written Question DCO.1.31, see REP4-036 at 6.2.4. For ease of reference that response is reproduced below:</p> <p><i>“The Applicant acknowledges that, in Highways Act 1980 terms, “stopping up” is understood to be a permanent extinguishment of a highway. However, the development consent order if made, would be made under the Planning Act 2008. The term “temporary stopping up” is used in article 11 of the Infrastructure Planning (Model Provisions) 2009 upon which article 11 of the draft development consent order is based. The term has been used in the majority of highways development consent orders, such that the Applicant considers its use to be widely accepted and understood in orders under the 2008 Act and sees no reason to depart from the established precedent in this case.”</i></p> <p>The Applicant notes that Wiltshire Council, in its Deadline 5 submission [REP5-009] at paragraph 2.4, indicates that it no longer has objects to the use of the term. This point is also the</p>

			subject of the Examining Authority's second written question, DCO.2.16.
<b>Article 12 (Access to works)</b>			
29	Historic England	<p><b>[REP4-084] paragraphs 126 to 130 in respect of Article 12 (Access to works)</b></p> <p>As the provision is currently drafted there is the power for means of access to be provided at any such location within the order limits as may be reasonably required. Too wide of a scope. The provision doesn't consider the current drafting works if Highways England is referring to OEMP and TMP as safeguards. Further engagement required.</p>	<p>Following the DCO ISH the Applicant updated article 12 at deadline 4 [REP4-019] to clarify that means of access may be formed or improved within the Order limits <i>for the purposes of carrying out the authorised development</i>.</p> <p>The Applicant also rationalised the drafting in the OEMP submitted at deadline 4 [REP4-021], measures MW-TRA4 and MW-TRA5 to make it clear that accesses to construction sites are to be covered in the Site Access Plan, which forms part of the Traffic Management Plan, that must be approved by the Secretary of State following consultation with Wiltshire Council, before the relevant part of the authorised development commences. The location of the accesses that may be formed under article 12, and the process for their removal once no longer required, would therefore be subject to the Secretary of State's approval.</p> <p>In any event, the works comprised in the formation or improvement of accesses under this power would be subject to the requirements, including requirements 4 and 5 which secure compliance with the OEMP and DAMS respectively.</p> <p>The Applicant considers this to be a proportionate approach.</p>
30	National Trust	<p><b>[REP4-054] DCO ISH summary, in respect of haul roads</b></p> <p>The Trust stated our understanding that within the WHS haul roads will be contained within the footprint of the final construction, and there will be no creation of additional haul routes across the WHS. The Trust sought a reference for clarity on this matter.</p>	<p>The Applicant notes that article 12 relates to the formation of accesses, rather than haul roads.</p> <p>The Applicant's written summary of oral submissions [REP4-029] (agenda item 3.6(i)) gives the requested confirmation and a new design commitment, reference D-CH31, was included in the updated OEMP at deadline 4 [REP4-021]. See also DCO.2.17</p>

<b>Article 13 (Discharge of water)</b>			
<b>31</b>	EA	<p><b>[REP4-049] section 1.3 in respect of Article 13 (Discharges of water)</b></p> <p>We recommend that this article be amended to include groundwater and dissolved pollutants in the text. This is required because groundwater is a sensitive resource in the vicinity of the A303 Amesbury to Berwick Down site and requires particular protection. Here is our recommended amended wording:</p> <p>“Discharge of water (5) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain <u>or to the ground</u> under this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension or <u>dissolved pollutants.</u>”</p> <p>This amendment is in line with the draft DCO recently discussed at the A303 Sparkford to Ilchester DCO Examination in Somerset. Please see Part 4 (Supplemental Powers) Article 20 Discharge of water of the A303 Sparkford to Ilchester DCO.</p>	<p>The Applicant responded to this suggested drafting in its deadline 4 submission [REP4-036] at reference 12.2.2. For ease of reference, that response is reproduced below:</p> <p><i>"The Applicant notes the Environment Agency's concerns which the Applicant considers to be unwarranted in the context of article 13.</i></p> <p><i>The purpose and effect of article 13 is to establish a procedure whereby the Applicant can obtain the necessary proprietary right to discharge water, either to public sewers or drains, or watercourses. It does not authorise discharges to the</i></p> <p><i>ground. It imposes duties on the Applicant to obtain the consent of the appropriate owner before doing so (who may impose reasonable conditions) and to ensure that the water so discharged is visibly clear from "gravel, soil or other</i></p> <p><i>solid substance, oil or matter in suspension" to ensure that the Applicant is prevented from adversely affecting the functioning of the drainage system to which it connects.</i></p> <p><i>However, the article is not concerned with pollution control, as is expressly acknowledged in paragraph (6), which makes clear that nothing in this article overrides the requirement to obtain an environmental permit.</i></p> <p><i>Any discharge to a watercourse that constitutes a water discharge activity would be subject to the regulation of the Environment Agency under the Environmental Permitting (England and Wales) Regulations 2016. The Applicant further notes that the drafting of this article in the form contained in the draft development consent order is very well precedented, having been included in the majority of development consent orders made to date and has been subject to only modest</i></p> <p><i>changes (principally the change in paragraph (6) to reflect changes in the regulation of the discharges of water and in</i></p>

			<p>paragraph 7(a) to reflect the change in name of the Homes and Community Agency).</p> <p>As such, the Applicant considers that the change requested is unnecessary as it would duplicate regulation."</p>
32	Historic England	<p><b>[REP4-084] paragraphs 132 to 134 in respect of Article 13 (Discharges of water)</b></p> <p>Potential for unintended consequence and where the laying down and taking up of pipes in a landscape which has a wealth of archaeological remains with no appropriate safeguarding provisions are in place. Further engagement needed from HBMCE.</p>	<p>The Applicant understands Historic England's concerns in respect of article 13 but considers them to be unwarranted in this case. As outlined in the row above, the purpose and effect of article 13 is to provide a right to connect to existing means of drainage and a mechanism to control the terms upon which that connection is made as between the Applicant and the owner/operator of that system. The laying down, taking up or alteration of pipes would form part of the authorised development (see ancillary works (b)(ii) in Schedule 1) for which development consent is granted and would therefore be subject to the requirements in Schedule 2, including requirements 4 and 5 that require compliance with the OEMP and the DAMS.</p> <p>It should be noted that the OEMP makes specific provision requiring the excavation of service/ utility corridors to avoid significant archaeological remains wherever possible and implement appropriate archaeological mitigation measures in accordance with the DAMS where impacts are unavoidable (see reference MW-CH6 of the OEMP [REP4-021]).</p>
33	NFU	<p><b>[REP4-052] DCO ISH Summary, paragraph 2.2 in respect of article 13</b></p> <p>States that water should not be discharged on land adjacent to the Order limits and the waters being discharged into ought to be capable of managing addition flows without flooding.</p>	<p>In respect of article 13, please see the Applicant's written summary of its oral submissions at the DCO ISH [REP4-029] under agenda item 3.7(ii) and our response above to Wiltshire Council.</p> <p>Article 13 does not authorise the discharge of water to land, but to watercourses, public sewers or drains. The power is exercisable only within the Order limits. As noted above the purpose of the power is to regulate the terms under which the Applicant may connect to an existing drainage system.</p>

			The discharge of water into the water environment would be regulated by the Environment Agency under the Environmental Permitting (England and Wales) Regulations 2016.
34	Wiltshire Council	<p><b>[REP4-081] DCO ISH Summary, section 1.6 in respect of article 13 (Discharge of water)</b></p> <p>The Council considered this linked to the disapplication of provisions. As previously stated, the Council believes that land drainage consent should remain with the Council. Wiltshire Council is the Lead Local Flood Authority (LLFA) and consultation should be undertaken with the Council, and for it to be engaged in all processes, detailed under Article 13.</p> <p>The Council stated that this should be linked to the OEMP, especially regarding the need for monitoring of water quality and any concerns regarding water courses.</p>	Please see our response to Wiltshire Council above in relation to the disapplication of legislation. We understand that the commitment to closed face tunnelling should resolve the Council's concerns here. In addition, the updated OEMP submitted at Deadline 6 provides for the Council to be consulted on all water management plans.
35	Wiltshire Council	<p><b>[REP5-009] Response to Highways England's Comments on Deadline 3 Submissions, paragraph 2.5, in respect of article 13 (Discharge of water)</b></p> <p><i>"...reference should also be added to section 3 of the Land Drainage Byelaws 2014 which deals with the "control of introduction of water and the increase in flow or volume of water". Wiltshire Council as Land Drainage Authority regulates discharges into watercourses, along with the EA. HE is reminded that this not a function solely within the EA's remit."</i></p>	<p>The Applicant acknowledges Wiltshire Council's land drainage and flood risk functions, but notes that it is seeking Wiltshire Council's agreement to the disapplication of its land drainage bylaws under article 3 of the DCO.</p> <p>The Applicant welcomes Wiltshire Council's confirmation at paragraph 2.3 of [REP5-009] that it is prepared in principle to the proposed disapplications, subject to protective provisions being agreed.</p> <p>The Applicant anticipates that the parties will be able to agree appropriate protective provisions enabling Wiltshire Council to consent to the disapplication of its land drainage bylaws. That being the case, the introduction of the requested amendment would lead to article 3 and article 13 being in conflict.</p>

<b>Article 14 (Protective works to buildings)</b>			
<b>36</b>	Historic England	<p><b>REP4-084] Comments on rev 2 of the DCO, paragraphs 135 to 139, in respect of article 14 (Protective works to buildings)</b></p> <p>Unclear as to why this article is required due to their understanding that no designated heritage assets have been identified which would require the application of this provision.</p> <p>Due to the uncertainty around the need for this provision, and in particular with regards heritage assets that might be inadvertently caught by the provisions, the issue that therefore arises is the extent to which HBMCE may discharge its statutory duties if there are no provisions for this within the development consent order, and we would advise that the next iteration of the dDCO makes provision for this.</p>	<p>The Applicant has addressed the justification for article 14 in its summary of oral representations made at the DCO ISH [REP4-029] under agenda item 3.8. In summary, within the Order limits the provision is included, on a precautionary basis, to ensure that the Applicant could appropriately safeguard Stonehenge Cottages in the unlikely event of damage being caused during construction. While compulsory in nature, the provision is essentially benign, intended to allow the Applicant to take steps to prevent or limit damage to buildings arising from the construction of the Scheme. It is not required as a measure specifically to protect heritage assets. The DAMS includes extensive measures to mitigate the effects of the Scheme to cultural heritage and the exercise of this power would not supersede the requirement 5 which requires the Applicant to carry out the authorised development in accordance with the DAMS.</p> <p>The Applicant notes the concerns that Historic England raises in respect of protective works to listed buildings, and further observes that the grant of listed building consent for the works within the scope of article 14 would, in the ordinary course of events, be a function of the local planning authority, rather than Historic England whose functions in relation to listed building consent relate to demolitions. Article 14 only authorises "protective works", defined in article 14(12) which do not include demolition.</p> <p>The purpose of authorising protective works to buildings beyond the Order limits is to address the situation where new development comes forth, such development almost certainly would not become listed within the duration of the power. Consequently, the Applicant while understanding the concerns of Historic England, considers that those concerns are not warranted in this case.</p>

37	National Trust	<p><b>[REP4-054] DCO ISH summary, paragraph 1.4.</b></p> <p>The Trust stated a request for appropriate consultation to ensure that should the need arise for protective works to be carried out at Stonehenge Cottages there would be no impacts of these works on archaeological assets within this area (including the directly adjacent Scheduled Monuments of New King Barrows).</p>	<p>Please see item MW-NO115 of the updated draft OEMP submitted at Deadline 6, which provides for consultation regarding any remedial works required at Stonehenge Cottages.</p>
<b>Article 15 (Authority to survey and investigate land)</b>			
38	Historic England	<p><b>[REP4-084] paragraphs 140 to 143 in respect of Article 15 (Authority to survey and investigate land)</b></p> <p>Discussions are ongoing regarding the works that are proposed to take place within the Order limits and the potential parameters for these works being set out in the OEMP and DAMS. It is not clear how this will then relate to works "adjacent to" and how this will be regulated and controlled.</p>	<p>This concern has been addressed. As noted in the Applicant's summary of its oral submissions at the DCO ISH [REP4-029]:</p> <p><b>"Post hearing Note:</b> 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>The Applicant's response to DCO.2.22 provides further detail.</p>
<p><b>39</b></p>	<p>NFU</p>	<p><b>[REP4-052] DCO ISH summary, paragraph 2.4 in respect of the notice requirements of article 15 (Authority to survey and investigate land)</b></p> <p>The NFU has asked that when notices are served that Highways England within the notice state the following:</p> <ul style="list-style-type: none"> <li>• Who will be taking entry</li> <li>• The date of entry and for how long</li> <li>• The types of survey to be carried out</li> <li>• The type of equipment if any will be used.</li> </ul> <p>This would then follow details which have to be provided under the Housing and Planning Act 2016 section 174 when surveys are carried out.</p>	<p>Following the DCO ISH the Applicant considered the representations of the NFU and amended article 15 of the draft DCO to include a new paragraph (3) that states:</p> <p><i>"(3) The notice required under paragraph (2) must indicate the nature of the survey or investigation that the undertaker intends to carry out."</i></p> <p>Further details are contained in the Applicant's response to agenda item 3.9 in the oral submission report from ISH1 regarding the draft DCO [REP4-029] and revision 3 of the draft DCO [REP4-019]. The Applicant considers that the amendment already made is sufficient to address the third and fourth bullet point.</p> <p>The Applicant further notes that the first and second bullet points exceed what is required under section 174 of the Housing and Planning Act 2016. There is no requirement for a section 174 notice specify the duration of the survey nor for the notice to identify the identity of the persons authorised to take entry. The issue of identity of persons authorised to enter the land is addressed in paragraph (4) of article 15 and is not addressed at all in section 174.</p>

40	National Trust	<p><b>[REP4-054] Deadline 4 Submission, section 1.5 in respect of article 15 (Authority to survey and investigate land)</b></p> <p>The Trust stated the level of consultation is a matter of concern with regard to our landholding, due to potential impacts on OUV of any intrusive works. We requested specific provision for appropriate consultation.</p>	See response to agenda item 3.9 in the oral submission report from ISH1 regarding the draft DCO [REP4-029].
<p><b>Article 16 (Removal of human remains)</b></p>			
41	Historic England	<p><b>[REP4-084] paragraphs 144 to 148 in respect of Article 16 (Removal of human remains)</b></p> <p>Unclear as to whether there is an overlap with the Preliminary Works that are to be carried out and whether it is envisaged that all archaeological work would be completed first.</p> <p>The provision is inappropriate for the order due to the natural of the SAAS WHS and the surrounding area.</p> <p>The removal of archaeological artefacts is subject to ongoing discussions and it will be important to have the right provisions captured in the dDCO as well as in the Preliminary Works OEMP, OEMP and DAMS.</p>	<p>The Applicant considers that article 16 is justified, precisely because the Scheme is located in an area where there is a possibility of encountering human remains in the carrying out of the Scheme.</p> <p>The Applicant notes the concerns raised by Historic England in respect of the Preliminary Works. The effect of works falling within the definition of "preliminary works" as defined in paragraph 1(2) of Schedule 2 of the draft DCO is to require compliance with the preliminary works OEMP, rather than the full OEMP. Preliminary Works would still be subject to requirement 5 which secures compliance with the DAMS. Article 16 does not circumvent these requirements, whether or not the removal is carried out in relation to the preliminary or main works.</p> <p>Rather, its purpose and effect is to disapply provisions that prohibit the removal of human remains and replace them with a streamlined procedure, which respects the interests of persons that may be related to the deceased, that would avoid delay to the delivery of this nationally significant infrastructure project.</p>

			<p>Article 16 does not require the removal of all remains in all circumstances. Rather it requires their removal before carrying out "any development or works which will or may disturb any human remains". In view of the extensive archaeological measures required to be carried out under the DAMS, the Applicant would be well positioned to come to an informed view whether its works would, or may, disturb human remains. If retention in situ is the appropriate archaeological approach to avoid disturbing remains, nothing in article 16 would require their removal.</p> <p>The Applicant notes that it is unaware of any precedent in a development consent order, or in other statutory consenting regimes, where the existing burial provisions are disapplied without the application of a substantially similar regime as that set out in article 16. It is also relevant to bear in mind that the Secretary of State retains a broad supervisory function over the exercise of article 16 and can, under paragraph (14) give directions as to the removal of human remains.</p> <p>The Applicant notes that removal of remains must be in accordance with the DAMS, in particular the Strategy for the Recovery of Human Remains. The Applicant looks forward to continuing to engage with Historic England on the treatment of remains, including any specific proposals thought appropriate by Historic England.</p>
42	Wiltshire Council	<p><b>[REP4-081] DCO ISH Summary, section 1.7 in relation to Article 16 (Removal of human remains)</b></p> <p>The Council indicated that reference within paragraph 11(b) should be to the "burial authority" and not the "planning authority". HE's agreement to accommodate this was welcomed.</p>	<p>The Applicant amended article 16 so as to refer to the "burial authority" defined paragraph (1) as "<i>the burial authority for the specified land, being Wiltshire Council;</i>", in revision 3 of the DCO [REP4-019].</p>

<b>Article 17 (Felling or lopping of trees and hedgerows)</b>			
<b>43</b>	Historic England	<p><b>[REP4-084] paragraphs 149 to 152 in respect of Article 17 (Felling or lopping of trees and hedgerows)</b></p> <p>While accepting the thrust of the provision, Historic England is concerned of the potential for harm to arise to Scheduled Ancient Monuments where trees or hedgerows are removed without appropriate controls.</p>	<p>The Applicant intends to make explicit provision for such works being regulated by the DAMS alongside other intrusive works in section 5.2 of the DAMS.</p>
<b>Article 29 (Temporary use of land for constructing the authorised development)</b>			
<b>44</b>	Historic England	<p><b>[REP4-084] paragraphs 153 to 157 in respect of Article 29(1)(b)</b></p> <p>Concerns raised that the removal of buildings under article 29(1)(b) would not constitute archaeological mitigation, and the potential for heritage impacts in view of the disapplication under section 33 Planning Act 2008 of the consent requirements of the Planning (Listed Buildings and Conservation Areas) Act 1990</p>	<p>The purpose and effect of article 29 is to authorise the temporary use of land for the purposes of constructing the authorised development. While cultural heritage remains an important consideration, the article has a broader purpose than carrying out archaeological mitigation alone. The provision is required to (i) allow the use of land temporarily where there is no permanent requirement for the land listed in Schedule 7 and shown in green on the Land Plans [APP-005] and (ii) to allow access to other land within Order limits where there is a requirement to acquire land, or rights over land, on a permanent basis, prior to the exercise of the corresponding permanent acquisition power. This latter use is important as it would allow a more proportionate exercise of compulsory powers whereby the permanent acquisition is refined in light of the land ultimately required for the Scheme.</p> <p>Article 29(2)(b) is a standard provision that would authorise the removal of buildings and vegetation on land within the Order limits. The construction of the authorised development on land possessed temporarily is subject to the requirements in the DCO,</p>

			including the measures in the OEMP and DAMS compliance with which is secured by requirements 4 and 5.
45	NFU	<p><b>[REP4-052] DCO ISH summary, section 2.5 in respect of the application of the Neighbourhood Planning Act 2017 to article 29 (Temporary use of land for constructing the authorized development)</b></p> <p>The NFU maintains its position that article 29 ought to align with the temporary possession provisions of the Neighbourhood planning Act 2017 to give no less than 3 months notice before possessing land. The NFU refers to the acceptance by HS2 limited, through an Assurance, of the 3 month notice period.</p>	The Applicant has responded to this point in its response to DCO.1.18 [REP2-030] and in its written summary of oral submissions at the DCO ISH [REP4-029] (under agenda item 3.14).
46	National Trust	<p><b>[REP4-054] DCO ISH summary, paragraph 1.5.1</b></p> <p>The Trust stated the location of a small construction compound (lay down area) on Trust land (Plot 5-37), which we would seek appropriate consultation about any use.</p>	See response to agenda item 3.6 in the oral submission report from ISH1 regarding the draft DCO [REP4-029]. The Applicant notes that measure MW-COM1 and MW-COM3 of the OEMP [REP4-021] requires liaison with landowners. The Applicant will of course be in regular consultation with the Trust throughout the detailed design and construction of the Scheme.
<b>Article 31 (Statutory undertakers)</b>			
47	Historic England	<p><b>[REP4-084] paragraphs 158 to 162 in respect of Article 31(1)(b)</b></p> <p>Concerns raised that article 31 would authorise the removal or repositioning of statutory undertakers apparatus without appropriate cultural heritage safeguards.</p>	<p>Like Article 29, this article is part of the general powers required to carry out the authorised development and so the general provisions contained cultural heritage safeguards apply.</p> <p>Article 31 is a compulsory acquisition power tailored to deal with the <i>legal</i> rights and interests of statutory undertakers and their apparatus. The physical works of development required to give effect to the removal or repositioning of such apparatus is</p>

			authorised via article 4 (Development consent, etc. granted by the Order) and such works are described in the ancillary works listed in Schedule 1 (a)(iv) and (b)(ii). Development consent for those works, which form part of the "authorised development" is subject to the requirements, including requirements 4 and 5 that secure the measures in the OEMP and DAMS respectively. As noted above, in respect of utility corridors there are specific measures addressing cultural heritage impacts (see MW-CH6) in the OEMP [REP4-021] in addition to the DAMS, which caters for archaeological action areas specifically for utility corridors (para 5.2.32ff and Appendix D).
<b>Article 31 (Classification of Roads)</b>			
48	Wiltshire Council	<p><b>[REP5-009] Response to Highways England's Comments on Deadline 3 Submissions, paragraph 2.6</b></p> <p>Wiltshire Council note that it considers its proposed amendment to article 47 to be reasonable in the circumstances of a side agreement having not yet been finalised.</p>	The Applicant notes the Council's comments but maintains its position at Deadline 3 [REP4-035], paragraph 6.3.16, that the proposed amendment is inappropriate. The Applicant and Wiltshire Council are making progress on the side agreement and the Applicant anticipates that this would be concluded before the close of the examination. Should that appear not to be the case the Applicant reserves its position to make further representations on this point.
<b>Article 56 (Certification of plans, etc.)</b>			
49	Historic England	<p><b>[REP4-084] paragraphs 163 to 168 in respect of Article 56</b></p> <p>Advice the consideration be given for the frameworks to be listed in a new "Schedule of Parameter Frameworks" together with a new article provision.</p>	The Applicant notes Historic England's reference to <i>Trump International Golf Club Scotland v Scottish Ministers</i> [2016] which stresses the irrelevance, in an administrative law context, of the shared intent of the parties and its caution on reliance on extrinsic documentation due to the need for interested members of the public being able to access those documents to understand their terms.

		<p>Suggests that to avoid confusion rather than the Environmental Statement be certified in its entirety, extracts of the ES are more likely to be appropriate for certification.</p>	<p>In response the Applicant notes:</p> <ol style="list-style-type: none"> <li>1. That a development consent order can be distinguished from the section 36 Electricity Act 1989 consent that was the subject of that case on the basis that, if made, the DCO would become a statutory instrument. A statutory instrument is of a different character to a record of an administrative decision to grant consent under the Electricity Act 1989 (or indeed a planning permission under the Town and Country Planning Act 1990) and is subject to the rules of interpretation that apply to the construction of legislation;</li> <li>2. The documents listed in Schedule 12 to the Order and certified under article 56 are incorporated within the Order. They would be <i>intrinsic</i> documents and not <i>extrinsic</i> so the rule of interpretation limiting the use of extrinsic documents does not apply. The incorporation of the documents in Schedule 12 within the Order, and their admissibility as evidence, is the purpose of article 56.</li> <li>3. The public would have ready access to the certified documents because article 56(4) requires the undertaker to make those documents available to the public for inspection in an electronic form.</li> <li>4. Similarly the public would have ready access to the CEMPS and HEMPS produced in accordance with the OEMP because requirement 4(3) imposes a duty on the Applicant to make those documents available in an electronic form to the public for inspection.</li> <li>5. The same principle applies to the other requirements that require approval, where provision for public inspection is made in paragraph 14 of Part 2 of Schedule 2.</li> </ol>
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<p><b>Article 58 (Arbitration)</b></p>			

50	Historic England	<p><b>[REP4-084] paragraphs 169 to 172 in respect of Article 58</b></p> <p>Concern that the arbitration article, in default of agreement between the parties to the dispute as to the identity of the arbitrator, would be appointed by the President of the Institution of Civil Engineers.</p> <p>Suggestion of bespoke protective provisions for the benefit of Historic England that would be subject to arbitration for the Secretary of State for the Department of Culture, Media and Sports.</p>	<p>The Applicant notes that Historic England do not raise concerns with article 58 per se, but with its application to matters in which it is interested.</p> <p>The Applicant takes the Scheme's potential effects on the WHS very seriously and will continue to engage with Historic England to address its concerns. The Applicant has no intention of ending up in arbitration with another Government body. The Applicant considers that this engagement would most appropriately be focussed by continuing the extensive engagement that has already taken place on the primary means of controlling those effects, being the DAMS and the OEMP.</p> <p>In this regard the Applicant notes that its update to the OEMP to be submitted at deadline 6 will build upon the design commitments, principles and stakeholder engagement on detailed design included at deadline 3 [REP3-007] with a design vision for the Scheme. The consultation procedures set out in section 4 of the OEMP include measures for the resolution of disputes. Compliance with these measures is secured by requirement 4.</p>
<p><b>Schedule 1 (Authorised Development)</b></p>			
51	Historic England	<p><b>[REP4-084] paragraphs 73 and 74 in respect of the ancillary works listed in Schedule 1</b></p>	<p>In response to the Examining Authority's Second Written Questions, reference DCO.2.2, the Applicant has provided a break down of the types of development comprising the Scheme as to whether they would comprise part of the NSIP, associated development or both.</p>

		"Ancillary works" - may be issues in disaggregating and discretely justifying each of the works that is to be included in the order, therefore enabling clarity on which provisions were to apply.	It should be noted that if the Order is made there is no regulatory distinction between works forming part of the NSIP or associated development, all would be authorised under the terms of the Order.
52	Historic England	<p><b>[REP4-084] paragraphs 177 to 178 in respect of Work Nos. 1D(i)-(vii)</b></p> <p>Notes that discussions are continuing regarding the details for these structures due to their location within the WHS. Advises that Work No.1D(i) (Green Bridge Four) ought to be carefully considered.</p>	The Applicant has given very careful consideration to the heritage effects of Green Bridge Four throughout the development of the Scheme. Its size and location were changed from the Scheme initially consulted upon pre-application as a direct result of the feedback it received from that statutory consultation. The Applicant will continue to engage with Historic England and other heritage stakeholders on this matter during the examination, and , if development consent is granted, on the detailed design of Green Bridge Four as set out in section 4 of the OEMP [REP4-021].
53	Wiltshire Council	<p><b>[REP4-039], Comments on the DCO, section 2.3 in respect of "ancillary works"</b></p> <p>In this section, the word "cycleway" is used three times ((a)(i) and (b)(iii)). There is no legal definition of "cycleway". Section 329 of the Highways Act 1980 defines "cycle track" as meaning a way constituting or comprised in a highway, being a way over which the public have the following, but no other, rights of way, that is to say, a right of way on pedal cycles</p> <p>[F3 (other than pedal cycles which are motor vehicles within the meaning of [F4 the Road Traffic Act 1988]] with or without a right of way on foot.</p>	<p>The Applicant notes the Council's helpful comments and observes that the purpose of Schedule 1 is to describe the authorised development for which the Applicant seeks development consent. It is not necessary for each element to have a definition recognised in statute.</p> <p>In itself, Schedule 1 does not afford any particular status to a way. The provisions that have that effect are contained in article 9 and Schedule 3 and, as neither use the term "cycleway", the Applicant's initial response is that it does not consider it necessary to define the term in the manner suggested.</p> <p>The Applicant would however welcome continued dialogue with Wiltshire Council on this point.</p>

<b>Schedule 2 (Requirements)</b>			
Requirement 1 (Interpretation)			
<b>54</b>	Historic England	<p><b>[REP4-084] paragraphs 179 to 181 in respect of requirement 1(2)(b)</b></p> <p>Concerns that requirement 1(2)(b) does not provide for a procedure where amendments to approved details are considered by the Secretary of State. Further discussions will be needed regarding the extent of engagement.</p>	<p>The Applicant acknowledges Historic England's concerns but considers them to be unwarranted in respect of this provision. Requirement 1(2)(b) merely accommodates the situation where the Secretary of State, having approved details submitted under a requirement (for example the Traffic Management Plan required under requirement 9), subsequently approves revised or amended details. In those circumstances, paragraph 1(2)(b) confirms that the requirement is to be interpreted as including the approved revised or amended details.</p> <p>An application to amend or revise details previously approved under a requirement would take the same form and follow the same procedure as any other application made to the Secretary of State for the approval of details under a requirement of the Order. In terms of duties to consult, these are set out in the body of the requirement and the procedures that apply are set out in Part 2 of Schedule 2. Article 1(2) is necessary to provide clarity of interpretation.</p>
Requirement 3 (Preparation of Detailed Design etc.)			

55	Historic England	<p><b>[REP4-084] paragraphs 182 to 183 in respect of requirement 3 (Preparation of detailed design)</b></p> <p>Discussions with Highways England ongoing following the ISH regarding the preparation of detailed design with the intention to agree clearly defined parameters for the design. Discussions continuing regarding the OEMP which would further inform the development of appropriate principles and assist the potential application of the illustrative drawings/plans of elements of the scheme.</p>	The Applicant will continue to engage with Historic England.
56	EA	<p><b>[REP4-049] section 1.4 in respect of requirement 3 (Preparation of detailed design, etc.)</b></p> <p>With regard to the requirement for approval to be sought for changes to the detailed design we note that as it stands, there is no requirement for public consultation if the changes are deemed to “<i>not give rise to any materially new or materially worse adverse environmental effects from those reported in the environmental statement</i>”. It is not clear that the Environment Agency would be involved in making the judgement as to the likely degree of impact of any changes.</p> <p>We would therefore recommend the EA should be consulted on any changes to the</p>	<p>The Applicant responded to this point when raised by the Environment Agency in its response to the Examining Authority's first written question DCO.1.83. The Applicant's comments on that response are contained in its Deadline 4 submission [REP4-036] at 12.1.6. For ease of reference the response is reproduced below:</p> <p><i>"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.</i></p> <p><i>The Applicant further notes that the robustness of this justification is borne out by the fact that there is no precedent for the Environment Agency to be consulted on this kind of requirement</i></p>

		<p>construction design or methodology and no development should take place until written agreement by the EA is provided that all apparent environmental risk have been considered and mitigated.</p>	<p><i>and that there are no particular circumstances in relation to this Scheme that would appear to justify the departure from established precedent. In the event that the limited degree of flexibility afforded by an application under requirement 3 were to be exercised, construction of the</i></p> <p><i>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>The Applicant does recognise the unique nature of this scheme and that, in certain, appropriate circumstances, a minor change may nevertheless be of potential significance to certain interested parties. As such revision 4 of the DCO amends this requirement to require the Secretary of State to consider this and consult both the planning authority and any other person considered appropriate, having regard to the proposed amendments in question. Further detail is provided in the Applicant's response to the Examining Authority's Second Written Question DCO.2.35.</p>
<p><b>Requirement 4 (Outline Environmental Management Plan)</b></p>			

<p>57</p>	<p>EA</p>	<p><b>[REP4-049] section 1.5 in respect of requirement 4 (Outline Environmental Management Plan)</b></p> <p>Requirement 4 (3) of the draft DCO dated May 2019 states:</p> <p>“The undertaker must make each construction environmental management plan and each handover environmental management plan produced in accordance with the OEMP available in an electronic form suitable for inspection by members of the public.”</p> <p>There does not appear to be any other requirement in the draft DCO to ensure a CEMP and HEMP are produced and implemented. We consider that more specific mention of these plans should be included in the DCO. This is required to ensure that adequate measures are put in place during the construction stage to protect the environment and then appropriate maintenance put in place for the longer term. We would wish to be consulted on the CEMP and HEMP documents, and included as a consultee in any proposed Requirements for these and no works should commence until written agreement that these plans provide appropriate measures and mitigation to protect the environment during construction and operation of the scheme.</p> <p>We consider the definition and requirement for a CEMP and HEMP should be more clearly stated in the DCO.</p> <p>In addition - item MW-G5 of the OEMP requires that the Environment Agency is consulted during preparation of the CEMP. We would</p>	<p>The OEMP requires the production of the CEMPS and HEMPs. The definition of OEMP in Schedule 2 of the draft DCO submitted at Deadline 6 has been amended to make this clearer. There is multiple provision for consultation of the Environment Agency throughout the provisions of the OEMP. See SWQ DCO.2.44 and 47 for the explanation of why Highways England approving the CEMP and HEMP is required and reasonable and is sufficiently regulated.</p>
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		request that the wording is amended to require our approval or “agreed in writing with the Environment Agency” to ensure that risks to the environment are adequately managed. It would seem that as it stands, the only approval required is that of the applicant. We do not consider that this provides assurance that the CEMP will be adequately scrutinised prior to approval.	
58	Historic England	<p><b>[REP4-084] paragraph 184 in respect of requirement 4 (Outline Environmental Management Plan)</b></p> <p>Discussions between HBMCE and Highways England ongoing regarding the outline environmental management plan and Historic England will submit further comments on the OEMP on 21 June.</p>	The Applicant looks forward to continuing discussions with Historic England and its comments on the OEMP.
59	National Trust	<p><b>[REP4-054] DCO ISH summary, paragraph 1.7.1</b></p> <p>The Trust stated the OEMP has been updated with an important new section (section 4) which includes mechanism for consultation on some areas of detailed design. Adequate and consistent consultation on matters of detail is a key concern for the Trust and we will endeavour to work with the Applicant to develop this within the OEMP.</p>	The Applicant is continuing to engage with the National Trust and other heritage stakeholders, on the development of section 4 of the OEMP and the vision, which is to be included in the update of the OEMP to be submitted at deadline 6.

60	National Trust	<p><b>[REP4-054] ISH Summaries, paragraph 1.8.1, in respect of the OEMP</b></p> <p>Trust stated that the Applicant as ‘authority’ would have the ability to authorise variations from outline plans. This is a concern as it may allow dilution of agreed principles.</p>	<p>The Applicant's written summary of its oral submissions at the DCO ISH [REP4-029] considers this point under agenda item 4.3(i).</p>
61	National Trust	<p><b>[REP4-054] ISH Summaries, section 1.9, in respect of the OEMP</b></p> <p>The 1.9.1 Trust stated that in our Written Representation we had already expressed concerns that detailed design may have adverse impacts on the OUV of the WHS. Therefore provision for consultation on detailed design involvement, and relevant opportunity to respond as landowner was required.</p> <p>The Trust stated it considers it is very important that there is a ‘feedback loop’ with key consultees to enable issues that may emerge during construction to be resolved.</p>	<p>This is addressed in the mechanism for stakeholder consultation on detailed design contained in section 4 of the OEMP [REP4-025] through the iterative rounds of consultation it requires. Paragraph 4.4.9 requires the Stakeholder Consultation Group to meet:</p> <ul style="list-style-type: none"> <li>• prior to commencing the development of the detailed design;</li> <li>• during the development of the detailed design; and</li> <li>• on the contractor's submitted detailed design, prior to the Applicant's acceptance of it.</li> </ul>
62	Wiltshire Council	<p><b>[REP4-081] DCO ISH summary, section 1.10 in respect of Requirement 4</b></p> <p>The Council re-iterates its concerns regarding the Applicant's OEMP under which it would approve the contractor's CEMPs. Suggests that the extent a CEMP can be varied ought to be specified when that CEMP is approved, prior to the start of works.</p>	<p>The Applicant maintains that it is the appropriate body to approve the CEMPs. The reasons for this are set out in detail in the Applicant's response to the Examining Authority's Second Written Question DCO.2.44 and 47.</p> <p>Regarding maintenance costs associated with local highways that would be adopted by Wiltshire Council, the parties continue to negotiate the terms of a side agreement, and it is the Applicant's intention that an appropriate commuted sum would be paid to</p>

		<p>In relation to specific details, for example fencing and surfacing of local roads, the Council's concerns relate not only to heritage impacts but also to the ongoing maintenance costs, and on this basis considers it ought to be given the right to approve these aspects.</p> <p>Regarding the requirements requested in its LIR, the Council acknowledged that discussions are ongoing and it accepts that some may be able to be moved to the OEMP.</p>	<p>Wiltshire Council to address maintenance costs. It should be noted that article 9 of the DCO requires new or diverted roads to be completed to Wiltshire Council's reasonable satisfaction.</p> <p>The Applicant is continuing to discuss with Wiltshire how the matters raised in its LIR as potential requirements are, or can be, addressed in the OEMP.</p>
63	Wiltshire Council	<p><b>[REP4-039] Review of revision 2 of the DCO, section 3.3.1</b></p> <p>The Council proposes an additional requirement, the effect of which would require the CEMPs to be approved by the Secretary of State, in consultation with Wiltshire Council. The Council remain of the view that it consider it is inappropriate for the Applicant to approve the CEMPs.</p>	<p>The Applicant maintains that it is the appropriate body to approve the CEMPs. The reasons for this are set out in detail in the Applicant's response to the Examining Authority's Second Written Question DCO.2.44 and 47.</p> <p>In relation to the proposed drafting please see the Applicant's response to DCO.2.65.</p>
64	Wiltshire Council	<p><b>[REP5-009] Response to Highways England's Comments on Deadline 3 Submission, paragraphs 2.12 and 2.13</b></p> <p>Wiltshire Council maintain that it considers the Applicant to not be the appropriate body to approve CEMPS and notes that it will set out in response to second written questions the matter it considers appropriate for it to approve.</p>	<p>Please see the Applicant's response to second written questions DCO.2.44 and DCO.2.47</p>
65	Historic England	<p><b>[REP4-084] paragraphs 185 and 186 in respect of requirement 5 (Archaeology)</b></p>	<p>The Applicant submitted a revised version of the DAMS at deadline 4 [REP4-024] as promised. A further revision has been prepared for deadline 6, which has been shared with HMAG, of which Historic England is a member, prior to its submission.</p>

		Discussion ongoing between HBMCE and Highways England, also discussions taking place through HMAG meetings on the DAMS. Following discussions it was understood that Highways England will be submitting a revised version of the DAMS.	
<b>Requirement 5 (Archaeology)</b>			
<b>66</b>	Wiltshire Council	<p><b>[REP4- 081 DCO ISH Summary, section 1.11 in respect of requirement 5 (Archaeology)]</b></p> <p>The Council acknowledged that discussions on the DAMS were ongoing. However, as things stand, there is currently no timetable aligned with the public engagement strategy contained within Appendix F of the DAMS. Detail is also lacking on when it is submitted or who approves it, and what it is carried out in accordance with. This should be incorporated into the requirement or something along these lines included within the DAMS.</p>	Please see the Applicant's response to DCO.2.54 which considers these points in the context of Wiltshire Council's proposed requirement
<b>67</b>	Wiltshire Council	<p><b>[REP4-039] section 3.3.2 in respect of requirement 5 (Archaeology)</b></p> <p>The Council proposes amendments to requirement 5.</p>	The Applicant's response to the proposed amendments is set out in response to the Examining Authority's Second Written Questions, DCO.2.54.
<b>Requirement 6 (Protected Species)</b>			

68	EA	<p><b>[REP4-049] section 1.6 in respect of Requirement 6</b></p> <p>We believe this requirement should relate to both permanent and temporary works.</p>	<p>The Applicant notes that none of the requirements, including requirement 6, draws a distinction between temporary or permanent works. All form part of the authorised development. This matter was discussed at the DCO ISH where the Applicant understood that the Environment Agency confirmed it was content with the drafting of requirement 6 (see [REP4-029] under agenda item 4.5).</p>
<p><b>Requirement 7 (Contaminated Land)</b></p>			
69	EA	<p><b>[REP4-049] section 1.7 in respect of requirement 7 (Contaminated land)</b></p> <p>We have previously requested inclusion of a pre-commencement requirement in the DCO to undertake investigation and risk assessment of potentially contaminated land along the route alignment, particularly the former military sites. We consider that where contamination may reasonably be expected to exist, risks should be investigated prior to works commencing rather than relying on a less controlled discovery and greater potential for mobilising contamination if found during the main construction works.</p> <p>We understand that ground investigation and risk assessment of these sites has been or is currently being carried out. We would welcome the opportunity to review the results of these assessments at the earliest opportunity and would be in a position to agree discharge of the additional Requirement in the DCO should we</p>	<p>The Applicant has responded previously to this point in its deadline 4 submission. 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>Regarding the additional investigations the Applicant is undertaking, this are summarised in [REP4-036] at 12.1.7. For ease of reference that response is reproduced below:</p> <p><i>"Further to Highways England's response to the Environment Agency's Written Representation [REP2-094], in paragraph 22.2.19 of the Submission - 8.18 -Comments on Written Representations [REP3-013], further explanation on the ground investigation rationale and progress to date is provided here.</i></p> <p><i>The Phase 7 ground investigation is a 2-year ground investigation programme split into two phases (Phase 7A and Phase 7B). The first phase (Phase 7A) is to provide identified supplemental information to inform the main works tender design. . Going forward, it is Highways England's intention to work with tenderers</i></p>

		<p>be satisfied that acceptable risk to controlled waters has been demonstrated prior to construction taking place and appropriate methods are in place to investigate and where appropriate remediate any contamination identified.</p>	<p><i>to finalise the ground investigation scope for Phase 7B to support their design whilst also taking onboard the views of stakeholders.</i></p> <p><i>The Phase 7A ground investigation is split into two parts; Phase 7Ai and 7Aii. Phase 7Ai commenced on Monday 10th June 2019 and is expected to last approximately 5 to 6 weeks. Phase 7Aii is planned to start after the farmers' harvest around August 2019 but precise commencement dates are still to be confirmed.</i></p> <p><i>The Phase 7Ai investigation includes for four boreholes within the former RAF Stonehenge site that is crossed by an approximate 800m length of the proposed Scheme (in tunnel). An additional 12 no. exploratory holes are planned during the Phase 7Aii ground investigation to the west of these boreholes where the proposed Scheme passes directly south of the former RAF Stonehenge site and out of the tunnel through the western tunnel portal.</i></p> <p><i>Phase 7Ai also includes for four boreholes in the area of the former RAF Oatlands Hill site, albeit clustered around the proposed Longbarrow Green Bridge No. 3. However, Phase 7Aii includes for wider coverage of this site with an additional 7 no. boreholes, 3 no. trial pits and 5 no. windowless sample boreholes.</i></p> <p><i>An approved Factual Report is expected at the end of September 2019 for Phase 7Ai."</i></p> <p>The matter was also discussed at the DCO ISH under agenda item 4.6. The Applicant's written summary of its oral submissions [REP4-029] and SWQs DCO.2.56 and FG2.28 set out in further detail why the Applicant considers that the drafting in requirement 7 allows for a proportionate, risk based approach to previously unidentified contamination.</p>
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70	Historic England	<p><b>[REP4-084] paragraphs 187 and 188 in respect of requirement 7 (Contaminated land)</b></p> <p>Provision 7.2 - ongoing discussions as to how archaeology and contaminated land can be adequately addressed in this context considering the DAMS and OEMP.</p>	<p>The Applicant will continue to engage with Historic England on this matter. To address these concerns the Applicant notes that its update to the OEMP at deadline 4 [REP4-021] included an update to MW-GEO7 (excavated materials management) ensures that the Soil Management Strategy must incorporate the soils handling measures outlined within the DAMS and must identify locations where archaeological in-situ preservation is required.</p>
71	Wiltshire Council	<p><b>[REP4-081] DCO ISH summary, paragraph 4.3.5</b></p> <p>With respect to Requirement 7, the Council requires a minor drafting amendment so that it states, "in the event that contamination of land and / or groundwater is identified at any time..." rather than the current wording which seemed confused.</p>	<p>The Applicant has reviewed the drafting in requirement 7 in the light of the Council's comments, its proposed form of the requirement, the comments of other interested parties and as a result of the Examining Authority's second written questions and has made changes to this requirement in revision 4 of the DCO. Please see the Applicant's responses to DCO.2.56 and FG2.28 for further details.</p> <p>In respect of the particular point, having reviewed the requirement further, the Applicant considers the potential for confusion can be resolved by the deletion of the "..., including groundwater,..." and relying on the definition of contaminated land given in requirement 1, which aligns the term with its definition in section 78A Environmental Protection Act 1990, which is sufficiently broad to include contamination to controlled waters (which includes groundwaters).</p>
<p><b>Requirement 8 (Implementation and Maintenance of Landscaping)</b></p>			
72	Historic England	<p><b>[REP4-084] paragraph 189 in respect of requirement 8 (Landscaping)</b></p> <p>Notes the discussion at the DCO ISH regarding a timetable for implementation of the</p>	<p>The Applicant's response to this discussion is set out in the post hearing note under agenda item 4.7 of its summary of oral submissions at the DCO ISH [REP4-029], reproduced below for ease of reference;</p>

		landscaping scheme, to prevent it being left to the end of the construction programme.	<p><b>"Post Hearing Note:</b> 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 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.</p>
73	National Trust	<p><b>[REP4-054] Deadline 4 submission, section 1.10, in respect of the OEMP</b></p> <p>The Trust stated an amendment to Requirement 8 to clarify all hard landscaping should be included. And further suggested discharge of the landscaping scheme in Requirement 8, requires the inclusion of consultation members of HMAG to ensure</p>	<p>Following the DCO ISH the Applicant considered it appropriate to amend requirement 8 to require a landscaping scheme encompassing the whole of the WHS to be approved by the SoS, following consultation with Wiltshire Council and Historic England as the appropriate regulators. The rationale for the amendment is set out in the Applications written summary of its oral submissions at the DCO ISH [REP4-029], under agenda item 4.7(i).</p>

		consistency from the OEMP through to discharge of requirements.	<p>The Applicant does not consider there to be any inconsistency between the revised requirement 8 and the landscaping measures in the OEMP.</p> <p>Regarding the reference to 'hard landscaping' the Applicant understands this to relate to the surfacing of the PRoWs through the WHS. The Applicant notes that the consultation required under section 4, together with the design principles for the PRoWs provide an appropriate degree of consultation.</p>
74	Wiltshire Council	<p><b>[REP4-039] Review of revision 2 of the DCO, section 3.3.3 in respect of requirement 8 (Implementation and maintenance of landscaping)</b></p> <p>The Council proposes amendments to this requirement.</p>	Please see the Applicant's response to the Examining Authority's Second Written Questions, DCO.2.58.
Requirement 9 (Traffic Management)			
75	Wiltshire Council	<p><b>[REP4-039] Review of revision 2 of the DCO, section 3.3.4 in respect of requirement 9 (Traffic management)</b></p> <p>The Council proposes amendments to requirement 9.</p>	Please see the Applicant's response to the Examining Authority's Second Written Questions, DCO.2.61.
Requirement 10 (Drainage)			

76	EA	<p><b>[REP4-049] section 1.8 in respect of requirement 10 (Drainage)</b></p> <p>We welcome the addition of text requiring consultation and written agreement with the Environment Agency during detailed design of the drainage system.</p>	<p>The Applicant welcomes the Environment Agency's confirmation re the consultation obligation in requirement 10. However the ultimate decision on the drainage design of the scheme to go to the Secretary of State for approval must sit with the Applicant as strategic highways company responsible for the trunk road network, for the reasons set out in SWQ DCO.2.44 and 47. For those same reasons, this structure of consultation and approval of widely precedented in highways DCOs. See the Applicant's response to Fg.2.18 which considers this point in further detail.</p>
77	Wiltshire Council	<p><b>[REP4-082] DCO ISH summary, section 13 in respect of requirement 10 (Drainage)</b></p> <p>Furthermore, normal procedure would be for a timetable for provision to be added into subsection 2, i.e. for the drainage system to be constructed prior to the Scheme being brought into use. This is what the Council requires.</p> <p>Notes that it is considering whether its concerns regarding the control of preliminary works, in particular site, is adequately addressed in the preliminary works OEMP and the respective technical teams are in discussions with a view to resolving this.</p>	<p>Following the DCO ISH the Applicant amended requirement 10 in revision 3 of the draft DCO submitted at deadline 4 [REP-019] 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.</p> <p>The Applicant confirms its intention is for the highway drainage system to be operational before the Scheme is open to public use and has amended to say as much in the Revision 4 of the DCO to be submitted at deadline 6.</p> <p>Regarding the preliminary works, the Applicant maintains its position set out in response to question DCO.1.9 [REP3-016], that the effects of site clearance are appropriately regulated through the preliminary works OEMP. Further detail on the matters excluded from the definition of 'commence' and the preliminary works is set out in response to question DCO.2.32.</p>
Requirement 11 (Consultation)			

78	EA	<p><b>[REP4-049] section 1.9 in respect of requirement 11 (Consultation)</b></p> <p>We would support the addition of Requirement 11, which will ensure where consultation is required to satisfy DCO Requirements, the applicant must provide summary of this to the Secretary of State. Also if consultee recommendations have not been adopted the summary should explain why. This is a good addition to the DCO, however, it only appears to relate to Requirements rather than the more detailed aspects of the OEMP clauses. Therefore we would still wish be consulted and our written agreement obtained on those matters relevant to the EA.</p>	<p>The Applicant welcomes the support of the Environment Agency of this provision.</p> <p>In respect of reporting on consultation, and explaining why consultee recommendations have not been followed, measures that mirror requirement 11 were included in the updated OEMP submitted at deadline 4 [REP4-021] in respect of the CEMP, see in particular measures PW-G1 in respect of the preliminary works CEMP and MW-G1 in respect of the main works CEMP.</p> <p>The Applicant maintains its position that as the strategic highways company, with responsibility for operating, maintaining and improving the strategic road network and for setting the standards for such roads through the Design Manual for Roads and Bridges, it is the appropriate body to approve the CEMPs.</p>
79	Historic England	<p><b>[REP4-084] paragraphs 190 and 191 in respect of requirement 11 (Consultation)</b></p> <p>Notes requirement 11 newly introduced in revisions 2 of the DCO and notes that the provision may be further amended in future iterations.</p>	<p>Noted, the Applicant looks forward to discussing this further with Historic England.</p>
80	Wiltshire Council	<p><b>[REP4-039] review of revision 2 of the DCO, section 3.3.9 in respect of requirement 11 (Details of consultation)</b></p> <p>Wiltshire Council's proposed amendments to this requirement</p>	<p>Please see the Applicant's response to the Examining Authority's Second Written Questions DCO.2.63 for further consideration of Wiltshire Council's proposed requirement.</p>

81		<p><b>[REP5-009] Response to Highways England's Comments on Deadline 3 Submissions, paragraph 2.11 in respect of requirement 11 (Details of consultation)</b></p> <p>Wiltshire Council's proposed amendments to this requirement</p>	<p>Please see the Applicant's response to the Examining Authority's Second Written Questions DCO.2.63 for further consideration of Wiltshire Council's proposed requirement.</p>
82	EA	<p><b>[REP4] section 1.11 in respect of a proposed requirement for an Environmental Enhancement Plan</b></p> <p>As discussed to our previous written representations, we would recommend that a Requirement be included in the draft DCO that states:</p> <p>“(1) No part of the authorised development is to commence until an Environmental Enhancement Plan has been submitted to and approved in writing by the Secretary of State, following consultation with the planning authority, the Environment Agency and Natural England.</p> <p>(2) The Environmental Enhancement Plan must be implemented in accordance with the approved details referred to in sub-paragraph (1).”</p> <p>Alternatively, we would be satisfied for the need for the production of the plan to be included in the OEMP or HEMP. This could be included in the list of plans in OEMP reference MW-G7 and then the implementation/maintenance aspects covered in the HEMP as required.</p> <p>Further information on why we request an Environmental Enhancement Plan to be</p>	<p>The Applicant has previously responded to this point, see paragraphs 23.2.2.42 to 23.2.47 [REP3-013] and the summary of oral representations made at ISH1 regarding the DCO, items 4.11-4.12.</p> <p>In summary, the Applicant considers that its Scheme meets policy requirements on environmental net gain and it would achieve modest improvements to biodiversity of waterbodies.</p> <p>Please also see the Applicant's response to the Examining Authority's Second Written Question DCO.2.68, which sets out why the Applicant considers the requested requirement to be unjustified, as unnecessary in the context of the applicable local and national policy.</p>

		produced is given below in the section relating to Issue Specific Hearing 7 – Biodiversity, biological environment and ecology.	
83	Wiltshire Council	<p><b>[REP4-039] paragraph 1.14.2, in respect of lighting, traffic monitoring and mitigation</b></p> <p>There is a need for an additional requirement to address traffic monitoring and mitigation, which is particularly required to address the potential impact on Amesbury and its town centre. The Council will consider the amendments to the OEMP with respect to highway lighting, but at present there is no requirement within the OEMP for the Council to be consulted (D-CH8 and D-CH12). Furthermore, whilst it is recognised that a limited lighting scheme is proposed, it could affect amenity and dark skies so the Council would need to be satisfied with the proposals from all perspectives.</p>	<p>Please see the Applicant's response to the Examining Authority's Second Written Questions DCO.2.65</p> <p>In respect of lighting, as noted by Wiltshire Council, the Scheme is to be largely unlit. The Applicant has committed to upgrading the lighting system at Countess Roundabout "<i>to minimise light spill</i>" per design commitment D-CH8 of the OEMP. This can only lead to an improvement over the existing situation in respect of dark skies. The design commitment is clear and unambiguous and readily enforceable. Consequently, the Applicant does not consider an additional requirement addressing lighting to be necessary.</p>
84	Wiltshire Council	<p><b>[REP4-039] Review of revision 2 of the draft DCO, sections 3.3.5 to 3.3.8 in respect of additional requirements</b></p> <p>The Council proposes additional requirements in respect of traffic monitoring and mitigation, highway lighting scheme, traffic management during tunnel closures, flood risk assessment and approval of amended details.</p>	<p>Please see the Applicant's response to the Examining Authority's Second Written Questions DCO.2.65</p>

85	Wiltshire Council	<p><b>[REP4-039] Review of revision 2 of the draft DCO, section 3.3.10 in respect of a new requirement relating to approval and amendments to approved details</b></p> <p>The Council suggests an additional requirement, taken from the draft Sparkford to Ilchester Dualling Development Consent Order 201[ ]. The proposed requirement clarifies that where amended details are approved the requirements are to be read as applying to the approved amendments.</p>	<p>The suggested additional requirement is not necessary as paragraph (1) of Schedule 2 already makes appropriate provision for the approval of amended details under the requirements.</p>
<p><b>Schedule 11 (Protective Provisions)</b></p>			
86	EA	<p><b>[REP4-049] section 1.10 in respect of protective provisions</b></p> <p>The EA have agreed with Highways England specific Projective Provisions to be included in the draft DCO. These are not yet in the current version submitted, but we understand they will be submitted within the next version.</p>	<p>The Applicant confirms that the agreed protective provisions were included in revision 3 of the draft DCO, submitted at Deadline 4 [REP4-019].</p>

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