

A303 Amesbury to Berwick Down

TR010025

Deadline 8

**8.52.4 – Written summary of oral submissions put at
draft Development Consent Order hearing on
30 August 2019**

APFP Regulation 5(2)(q)

Planning Act 2008

The Infrastructure Planning (Examination Procedure) Rules 2010

September 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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Table of Contents

Introduction	1
3 DRAFT DCO ARTICLES	2
3.1 Article 2 – Interpretation	2
4 SCHEDULE 2 - REQUIREMENTS	14
5 SCHEDULE 11 – PROTECTIVE PROVISIONS	36
6 SCHEDULE 12 – DOCUMENTS TO BE CERTIFIED	37

Introduction

- 1.1.1 This note summarises the submissions made by Highways England ("the Applicant") at the draft Development Consent Order hearing held on 30 August 2019 ("the Hearing") in relation to the Applicant's application for development consent for the A303 Amesbury to Berwick Down project ("the Scheme").
- 1.1.2 Where the Examining Authority ("the ExA") requested further information from the Applicant on particular matters, or the Applicant undertook to provide further information during the hearing, the Applicant's response is set out in this document. This document does not purport to summarise the oral submissions of parties other than the Applicant, and summaries of submissions made by other parties are only included where necessary in order to give context to the Applicant's submissions in response, or where the Applicant agreed with the submissions of another party and so made no further submissions itself (this document notes where that is the case).
- 1.1.3 The structure of this document follows the order of items published by the ExA on 22 August 2019 ("the Agenda"). Numbered agenda items referred to are references to the numbered items in the Agenda. The Applicant's substantive oral submissions commenced at item 3 of the agenda, therefore this note does not cover items 1 and 2 on the agenda which were procedural and administrative in nature.

Written summary of the Applicant's oral submissions

3 DRAFT DCO ARTICLES	
3.1 Article 2 – Interpretation	
Agenda Item	Highways England response
The extent of definitions, including the definition of “commence”.	<p><u>Definition of “Cycleway”</u></p> <p>Mr Paul Brown QC, on behalf of Wiltshire Council, noted that the Council had raised in representations that it was concerned that the term "cycleway" is not defined in statute and it is grateful to the Applicant for providing a definition in revision 5 of the DCO and which shows that what is intended is different to a "cycle track" as defined in the Highways Act 1980 and noted that Wiltshire Council will consider the definition further and discuss any concerns arising with Highways England.</p> <p><u>Definition of “commencement”</u></p> <p>Mr Paul Brown QC submitted on behalf of Wiltshire Council to the effect that the Council is content with the definition in revision 5 of the DCO, save for the reference to the “receipt and erection of construction plant and equipment”. Wiltshire Council are not concerned with the receipt and storage of materials but feel that once it has reached the level of the erection of plant, that should properly constitute "commencement".</p> <p>In response Mr Gordon McCreath, on behalf of the Applicant, noted that this particular definition is well precedented as detailed in the Applicant's responses to questions DCO.1.8(vi) [REP2-030] which identifies precedents for the matters excluded from the Applicant's definition of “commence”. The particular exclusion of "receipt and erection of construction plant and equipment" has been accepted across the spectrum of development consent orders, in recent decisions such as the Millbrook Gas Fired Generating Station Order 2019, the Port of Tilbury (Expansion) Order 2019, Silvertown Tunnel Order 2018 and older decisions such as in the White Moss Landfill Order 2015 and the East Northamptonshire Resource Management Facility Order 2013.</p> <p>The reason for the wide adoption of the exclusion of “receipt and erection of construction plant and equipment” is that in almost all cases such an activity would not hit the thresholds for development set out in case law, because of the size, mobility and impermanence of the plant and equipment. In response to further questions from the Examining Authority Mr McCreath noted that the exclusion for the receipt and erection of construction plant and equipment from the definition of “commence” is required by the Applicant for the expedient implementation of Nationally Significant Infrastructure Projects, that the activity would the vast majority of cases not be material due to the nature of the works and equipment and, even were it to be material, the impacts would be limited and temporary in any event. That was the reason that the various precedents for the use of this carve out – all</p>

	<p>of which could also have resulted in erection of the type of construction plant and equipment that Wiltshire Council claim require regulation – were not subject to exclusion for material works. The core justification is the expediency of being able to do these restricted site set-up activities without having to discharge pre-commencement requirements and the fact that the impacts will necessarily be limited and temporary pending the commencement and full regulation of the development proper that the plant and equipment is designed to serve.</p> <p>In response to the submission by Ms Beth Harries, on behalf of Historic England, in respect of the timing of archaeological mitigation works, Mr Gordon McCreath confirmed that the Applicant and Historic England are holding positive discussions on the issues of concern to Historic England in relation to the definition of "commence" and that the issues are capable of resolution.</p>
<h3>3.2 Article 3 – Disapplication of legislative provisions</h3>	
Agenda Item	Highways England response
<p>i. Whether there are any outstanding concerns as regards Protective Provisions and amendments for the protection of drainage authorities?</p>	<p>Ms Kath Burt on behalf of the Environment Agency, confirmed that the protective provisions included in the DCO are to the Environment Agency's satisfaction.</p> <p>Mr Paul Brown QC, on behalf of Wiltshire Council, confirmed that protective provisions have been agreed.</p> <p>Mr Gordon McCreath, on behalf of the Applicant, confirmed that this is the case and that the agreed form of protective provisions will be included in the Deadline 8 submission of the DCO.</p>
<p>ii. The proposed disapplication of the provisions of the Neighbourhood Planning Act 2017 insofar as they relate to Temporary Possession of land under Articles 29 and 30.</p>	<p>Mr Gordon McCreath, on behalf of the Applicant, noted that the Applicant has responded to the Examining Authority's questions on the length of the notice required under article 29 for temporary possession of land, and has responded to the submissions of the National Farmer's Union on the same. Those representations can be found in DCO1.18 and DCO.1.19 [REP2-030], agenda item 3.1(i) of the Applicant's summary of representations made at the first DCO ISH [REP4-029] and 8.2.3 of [REP7-021].</p> <p>In summary, and in relation to the matters on this topic re-iterated in the NFU's latest submission [AS-094], Highways England's agreement to the 28 day notice period in the Chiverton to Carland Cross DCO is an exception to Highways England's corporate position – and the long established practice in DCOs - that 14 days is the appropriate time frame. The 14 day period is required to aid the efficient delivery of nationally significant infrastructure projects and the effect of imposing a longer period will simply be</p>

	<p>that more land will be taken temporarily, since decisions on what land to take will necessarily be taken earlier in order to allow entry at the required target date (which will not change because a longer notice period is required). This is therefore in the interests of neither Highways England, nor the landowner. The three month period agreed by HS2 can be distinguished from this Applicant's scheme as HS2 is of such a scale that it may engender sector wide regional effects.</p> <p>Additionally, it must be noted that the 14 days specified in article 29 is a minimum and needs to be seen in the context of the obligations in Table 2.1 of the OEMP. In particular the responsibilities placed on the Agricultural Liaison Officer to liaise with affected landowners/occupiers about activities which may affect their land/business prior to public release of information and to arrange quarterly meetings with agent representatives of owner/occupiers.</p> <p>Mr Howard Smith, on behalf of his landowner/occupier clients, submitted that 14 days was too short a period of time to organise the movement of livestock, 28 days is a reasonable time frame and that the ALO provides no comfort as Mr Smith has little faith that those measures would be complied with.</p> <p>Responding Mr Gordon McCreath, for the Applicant, noted that the reasons for 14 days are set out in the submission previously referred to. Mr McCreath noted that Mr Smith can have confidence that the measures in the OEMP referred to will be complied with. They have been developed in close liaison with the National Farmer's Union and can be relied upon, as a failure to comply by Highways England would be a breach of the OEMP, therefore a breach of Requirement 4 and therefore a criminal offence.</p>
<p>3.3 Article 7 – Limits of deviation</p>	
<p>Agenda Item</p>	<p>Highways England response</p>
<p>i. The tunnel Limits of Deviation (LoD) and the relevant mitigation measures within the DAMS and the OEMP including the interaction between the vertical tunnel LoD of the proposed tunnel and</p>	<p>Mr Ben Hayball, on behalf of the Environment Agency, confirmed that the Environment Agency is satisfied that OEMP measure MW-WAT10 contains sufficient controls.</p> <p>Mr Paul Brown QC, on behalf of Wiltshire Council, confirmed that it is broadly satisfied that MW-WAT10 is sufficient, subject only to point (c) covering telemetry. Subject to that point, Wiltshire Council is satisfied.</p> <p>Ms Emma Harling-Phillips, on behalf of the Applicant, welcomed the confirmations from the Environment Agency and Wiltshire Council and noted that the additional wording requested by the Council to MW-WAT10 is agreed and will be included in the next iteration of the OEMP. Ms Harling-Phillips also noted that it is now the Applicant's intention to amend the downwards vertical limits of deviations for Work No.1F (the bored tunnel) to provide a lower limit that will reflect the vertical alignment in the Ground</p>

<p>groundwater flows and whether the assessment of any further numerical modelling in the event of any deviation from the specific vertical alignment used to represent the tunnel in the numerical groundwater model should be specified as being addressed by the Groundwater Management Plan (MW-WAT10)?</p>	<p>Water Risk Assessment, Figure 1.3 [APP-282], which will be included in the next iteration of the DCO due for submission at deadline 8.</p> <p>Post hearing Note: <i>article 7(5)(c) in revision 6 of the draft DCO, submitted for deadline 8, has been amended to provide that no part of Work No.1F may exceed a depth below 36 meters AoD.</i></p>
<p>ii. The proposed LoD of up to 200m in a generally westerly direction for the western portal and whether any additional controls would be necessary to address any potential adverse visual impact that might result?</p>	<p>Dr Helen Woodhouse, on behalf of Historic England, outlined that there have been further discussions between the Applicant and the members of HMAG on design principles and additional discussions relating to the DAMS which have been helpful. Those discussions are ongoing and Historic England is not yet in a position to confirm its final position.</p> <p>Mr Patrick Robinson, on behalf of the National Trust, noted that it had raised concerns some time ago around whether or not there is sufficient provision for consultation, and discussions with the Applicant around that issue are progressing well. The National Trust is satisfied that there is adequate assessment of the limits of deviation.</p> <p>Mr Gordon McCreath, on behalf of the Applicant, confirmed that those discussions are ongoing. The Applicant's position remains as set out in its submissions (see chapter 2 of the ES [APP-040], response to DCO.1.25 [REP2-030], LV.1.21 [REP2-033] and the Applicant's summary of the first issue specific hearing [REP4-029] under agenda item 3.5 and the appended technical note) that the limits of deviation have been assessed and are reported in the Environmental Statement. In relation to</p>

	<p>the 200m westerly deviation, there are no further adverse visual impacts, not least as the Environmental Statement assesses the position before the exercise of that limit of deviation as the worst case, so far as visual impacts are concerned.</p> <p>In response to Mr Howard Smith, on behalf of his client Mrs Sandell, Mr McCreath confirmed that limit of deviation for the commencement/termination point of the eastern portal is 30 metres in an easterly direction and 1 metre in a westerly direction.</p> <p>In response to the Examining Authority's query, Mr McCreath confirmed that the intention behind the drafting of article 7(7) is that the default position is that start/commencement points of numbered works may deviate 3m from the positions shown on the Works Plans, save for those listed in the table, which may only deviate as set out in that table. Mr McCreath confirmed that the Applicant would review the drafting in the next iteration of the DCO.</p> <p><i>Post hearing note: the Applicant has amended article 7(7) of revision 6 of the DCO, submitted for Deadline 8, to clarify this point.</i></p>
<p>iii. The provision made by the revised dDCO Article 7(6) for consultation by the Secretary of State in relation to the disapplication of the maximum vertical limits of deviation and whether any further amendment and/or provision for consultation would be required?</p>	<p>The representatives for the Environment Agency, Wiltshire Council, National Trust and Historic England confirmed they were satisfied with drafting in revision 5 of the DCO in respect article 7(6).</p>

<p>iv. Whether within the World Heritage Site (WHS) and its setting the LoD should be permitted to be exercised where it would simply be “convenient” to do so?</p>	<p>Ms Beth Harries, on behalf of Historic England, outlined its concerns with the use of the phrase “necessary or convenient” in article 7.</p> <p>Mr Gordon McCreath, on behalf of the Applicant, noted the Applicant's position is that the limits of deviation have been assessed, examined in detail and tested throughout the examination of the Scheme. If the Order is made, the exercise of the limits of deviation would be considered to be reasonable by the Secretary of State. It follows that the Applicant ought then to have the discretion to use the limits of deviation as it sees fit within the constraints of the requirements and other controls on the exercise of Order powers. Mr McCreath noted that other development consent orders do not generally qualify the exercise of the limits of deviation, at all, in terms of necessity or convenience, see for example the A19/A184 Testo’s Junction Alteration Development Consent Order 2018 and the M20 Junction 10a Development Consent Order 2017. In this regard the Applicant is imposing upon itself a restriction that goes beyond commonly accepted practice by including the “necessary or convenient” qualifier. The proposed deletion of “convenience”, requiring the exercise of limits of deviation only where “necessary” would significantly undermine the carefully crafted and assessed, proportionate degree of flexibility that is essential for the delivery of this nationally significant infrastructure project.</p> <p>Mr McCreath confirmed in response to the Examining Authority’s questions that the fact the Scheme is within the WHS does not justify a different approach in this case. This is because the effects of the exercise of the limits of deviation within the WHS have been assessed and reported in terms of their impacts on the WHS, considered in detail and tested through the examination. The ExA and the SoS are therefore fully equipped to approve their use without restriction, and so they can – and ought - also to approve their use subject to their being necessary or convenient.</p>
<p>v. Whether there are any other outstanding concerns as regards the proposed LoD?</p>	<p>No further matters were raised by those present.</p>

3.4 Article 13 - Discharge of Water

Agenda Item	Highways England response
<p>i. Whether it is necessary to amend sub-paragraph (5) of this Article as proposed by the Environment Agency to include reference to groundwater and dissolved pollutants in the text?</p>	<p>Mr Ben Hayball, for the Environment Agency explained that the amendments the Environment Agency seek to article 13 are sought because of the sensitivity of the groundwater environment.</p> <p>Mr McCreath, for the Applicant summarised the Applicant's submissions why it considers the proposed amendments to be unnecessary (REP4-036 12.2.2, REP6-036 item 31, REP6-027 DCO.2.19). Firstly, in relation to the addition of the word "ground"; article 13 does not authorise discharges to the ground, it includes only discharges to public sewers or drains and watercourses, all being defined in terms that do not include discharge to the ground. Secondly, the addition of the words "dissolved pollutants" to the end of the duty for the discharge to be free from "gravel, soil or other solid substance, oil or matter in suspension" would duplicate the controls preserved in article 13(6) of the Environmental Permitting Regulations. Mr McCreath noted that the purpose and effect of article 13 is to regulate the terms upon which the undertaker may make use of a public sewer or drain, or watercourse for the discharge of water, as between the undertaker and the owner of the watercourse or public sewer or drain. The reason why article 13(5) requires the undertaker to take steps to ensure that the water so discharged is free of "gravel, soil or other solid substance, oil or matter in suspension" is that these matters are likely to block or interfere with the drainage system. It is not, and should not, be concerned with pollution control which is otherwise regulated. In response to the Examining Authority's queries Mr McCreath confirmed that article 13 does not permit discharges to ground nor does it prohibit them. It does not need to prohibit discharges to ground as those would be regulated under the environmental permitting regime.</p> <p>Mr Ben Hayball, responded to indicate that another reason why the Environment Agency is seeking these amendments relates to a memorandum of understanding between the Environment Agency and the Applicant relating to regulation of discharges by highways authorities.</p> <p>Mr McCreath indicated that he would take instructions on this point.</p> <p>Post hearing note: the Applicant has further reviewed the position and notes that the provisions of the Highways Act 1980 that authorise discharges to water, sections 100 and sections 299, both adopt a similar formulation to that adopted by the Applicant in article 13, which is to say, they are expressed to be without prejudice to any enactment the purpose of which is to protect water against pollution. This suggests that the consenting gap that the Applicant understood the Environment Agency to be referring to (and which the MoU also seems to refer to, in error) may not actually exist, and therefore the amendments to article 13 would not serve a purpose. The Applicant, however, is continuing to discuss the matter with the Environment Agency.</p>

<p>ii. The clarification of the process whereby the connection to a drain would operate in practice and whether that should be set out in further detail in the OEMP?</p>	<p>Mr Gordon McCreath, on behalf of the Applicant, noted that some further additions have been made to the role of the ALO to address the concerns of the National Farmers Union, following discussions with it.</p> <p>Post hearing note: <i>the OEMP [AS-086] was amended to include responsibilities on the ALO to liaise with landowners prior to any proposed discharges to existing drains. This obligation is in addition to the requirements in article 13 itself that owners of drains and watercourses must give their consent before the discharge can be made and may impose reasonable terms and conditions on its use. Additionally, significant further amendments were made to measure MW-COM7 in respect of agricultural land drainage including obligations to record the location, condition and characteristics of drains disturbed by the construction of the Scheme.</i></p>
<p>iii. Whether it is necessary to amend sub-paragraph (6) of this Article as proposed by the Wiltshire Council to include the words, “<i>or the need for any application pursuant to Wiltshire Council’s protective provisions in Schedule 11 Part 3 of this DCO</i>”?</p>	<p>Mr Paul Brown QC, on behalf of Wiltshire Council, confirmed that it remains Wiltshire Council's view that article 13(6) should contain an express reference to the requirement to obtain the consent of the Council under its protective provisions.</p> <p>In response Mr Gordon McCreath, on behalf of the Applicant, noted that the issue is one of technical and legal drafting. The Order, including all of the protective provisions which are given effect by article 55, must be read as a whole. This principle is well understood. The Applicant's concern is that nowhere else does the DCO make any particular provision subject to any particular protective provision. If one were to be inserted here as sought by Wiltshire Council it would give rise to a question of interpretation – whether other protective provisions not referred to are trumped by the terms of the Order - which would not otherwise exist. This could only be remedied by peppering the Order with references to the protective provisions but that would not aid legibility or clarity.</p> <p>Mr Brown QC noted the response but confirmed that the Council would still prefer to see the amendment it seeks in the DCO.</p>

3.5 Article 15 – Authority to survey and investigate land

Agenda Item	Highways England response
<p>i. Whether there are any outstanding concerns as regards this provision and the means by which any intrusive surveys would be regulated by the OEMP and DAMS?</p>	<p>Ms Beth Harries, on behalf of Historic England, in response to the Examining Authority's questions noted the changes made to article 15(1) by the Applicant in revision 5 of the DCO but noted that Historic England have outstanding concerns. Ms Harries noted that there have been positive discussions with the Applicant and confirmed that Historic England remains concerned with the reference to land "adjacent to" the Order limits.</p> <p>Mr Patrick Robinson, on behalf of the National Trust, confirmed that the National Trust is content with the drafting. It has concerns around the "adjacent to" point but those concerns relate more to consultation on its exercise and the National Trust is confident those issues can be agreed.</p> <p>Mr Gordon McCreath, on behalf of the Applicant confirmed that the Applicant is in discussions that are ongoing. The amendment to article 15(1) narrows its scope so that it may only be exercised for the purposes of the construction, maintenance or operation of the authorised development, rather than "for the purposes of the Order." In response to the Examining Authority's questions Mr McCreath confirmed that surveys carried out under article 15(1)(b)(ii) would be subject to Site Specific Written Scheme of Investigation, to be approved by Wiltshire Council in consultation with the heritage bodies, and that is therefore where the protection of heritage assets lies. Mr McCreath also clarified that the Applicant's response to DCO.2.22 [REP6-027] ought to have referred to paragraph 5.2.51 and 5.2.52 of the DAMS [REP4-024].</p>
<p>ii. Whether there are any additional matters that the notice required under Article 15(2) should specify such as who would be entering the land; the duration of the survey or investigation and the type of equipment, if</p>	<p>Ms Rachel Hosier, queried whether there is a period of notice specified before surveys can be carried out.</p> <p>Mr Gordon McCreath, on behalf of the Applicant, confirmed that a minimum of 14 days notice must be given as specified in article 15(2). As previously noted the measures in the OEMP would apply to such surveys, in particular the duties of the ALO to liaise with affected landowners. Mr McCreath outlined the Applicant's response to the matters raised in the National Farmers Union's latest submission [AS-094] which have previously been addressed at item 39 of [REP6-035]. The National Farmers Union sought 4 matters to be covered in respect of surveys carried out under article 15 and the Applicant considers all but one of those issues matters to be addressed in table 2.1 of the OEMP [AS-086] in relation to the duties of the Agricultural Liaison Officer. This requires the ALO to "provide preconstruction survey information to landowners including company name, survey type and equipment to be used". The Applicant also introduced a new paragraph 15(3) in revision 3 of the draft DCO [REP4-019] that requires the notice given under article 15 to indicate the nature of the survey or investigation that the undertaker intends to carry out. The only issue that has not been addressed is in relation to the duration of the surveys. The reasons for not agreeing to this are the same as those given by the Applicant in connection with the duration of temporary possession under article 29; if required to specify a binding duration, the Applicant would prudently take a precautionary approach to that duration. In response to further submissions by Ms Rachel Hosier, Mr McCreath indicated that that Applicant would consider whether it could to commit to giving a non-binding estimate to the duration of surveys, if that would assist.</p>

any, that would be used?	Post hearing note: The OEMP submitted at Deadline 8 includes provision for an estimate of how long the surveys will take to be provided by the ALO.
3.6 Article 22 – Compulsory acquisition of rights	
Agenda Item	Highways England response
Whether there are any outstanding concerns as regards the scope of restrictions that would be imposed upon the use of land above the tunnel and the implications that might have for archaeological investigations in the WHS?	<p>Mr Paul Brown QC, on behalf of Wiltshire Council, indicated that this matter had now been moved into the "agreed" category, subject to how the matters agreed are reflected in the DCO and it may be that offline discussions will address that.</p> <p>Mr Patrick Robinson, on behalf of the National Trust, noted that at the heart of this issue is the negotiation of the restrictive covenant that would govern the tunnel protection zone. There is a high level of agreement and the parties are in the final phases of agreeing that. The National Trust is satisfied that the provision for future archaeology is protected. The areas under discussion relate to the shallow areas where the tunnel comes to the surface and in relation to drafting of certain "catch all" phrases. Regarding how it is to be secured in the DCO, that will need to follow the negotiated form of the restrictive covenant. In respect of the concerns previously raised by the National Trust in respect of the exercise of the acquisition of rights by statutory undertakers these are resolving itself into an issue of consultation on the exercise of the power. The National Trust does not have concerns in respect of the drafting of article 22 and expects its issues can be addressed elsewhere. In respect of article 27 the National Trust is seeking to be in the same position as it currently is, which is to say, it is the owner of land crossed by a highway. The National Trust understands the principle is agreed by the Applicant.</p> <p>Dr Helen Woodhouse, on behalf of Historic England, noted that its concerns are reflected in those outlined by Mr Robinson and that Historic England is aware of the need to confirm its position.</p> <p>Mr Gordon McCreath, on behalf of the Applicant confirmed the status of discussions as outlined by the previous speakers.</p>
3.7 Article 29 – Temporary use of land for constructing the development	
Agenda Item	Highways England response
i. Whether there are any outstanding	Mr Patrick Robinson , on behalf of the National Trust, confirmed that the National Trust is content with the drafting in article 29. Its issues relate to the circumstances in which it is exercised. The National Trust understands that Highways England has determined that it does not require temporary possession of plot 5-37. The second issue is that it is understood that the

<p>concerns in relation to the scope of the powers sought and the extent of land that would be subject to powers of Temporary Possession?</p>	<p>Applicant does not intend to exercise powers of temporary possession over the surface of the land that is required for the bored tunnel, and that any monitoring required at the surface would be carried out under article 15 and not article 29.</p> <p>Mr Gordon McCreath, on behalf of the Applicant, confirmed that is Highways England's position.</p> <p>Ms Beth Harries, on behalf of Historic England, at the invitation of the Examining Authority outlined that it remains concerned with aspects of article 14 and 15, particularly around the use of the term "building" and its definition in article 2(1) and would explain those concerns in submissions shortly. Ms Harries notes that discussions with the Applicant are progressing, the matter was discussed before the hearing, and Historic England hope that the matter can be resolved.</p>
<p>ii. Whether the 14 days' notice period set out in sub-paragraph 29(2) would be reasonable?</p>	<p>This subject matter was discussed under agenda item 3.2(ii) and no person present raised any further issues.</p>
<p>iii. Whether the notice served pursuant to sub-paragraph 29(2) should also specify the total period for which the land might be subject to Temporary Possession?</p>	<p>Mr Gordon McCreath, on behalf of the Applicant, noted that it has responded to this issue in response to DCO.1.19(ii) [REP2-030]. In summary, the provisions of the Neighbourhood Planning Act 2017 that would require a duration to be specified are not in force and there is no indication of when, or even if, they would come into force. The supporting regulations have not been consulted upon, let alone made. If the Applicant is required to specify a duration for temporary possession it would be forced to adopt a precautionary approach on its estimate of the duration, in which case the additional information is unlikely to be of assistance to the landowner or occupier. The duration of temporary possession under article 29 is not unlimited and the land must be returned within one year of the completion of the relevant works for which possession was taken.</p>

3.8 Article 31 – Statutory undertakers	
Agenda Item	Highways England response
The present state of negotiations with all Statutory Undertakers, including whether the Protective Provisions in Schedule 11 and/or asset protection agreements between various parties have been agreed?	Mr Gordon McCreath , for the Applicant, noted that its response to CA.2.23 included the wrong table. An update was submitted on 29 August 2019 [AS-100]. Mr McCreath provided a brief summary of the positions reported in the update.
3.9 Article 38 – Crown land	
Agenda Item	Highways England response
Whether the necessary consents from the Secretary of State for Defence and the Secretary of State for Digital, Culture, Media and Sport have been obtained?	Mr Gordon McCreath , for the Applicant, noted that Crown consent has been received from the Department of Culture, Media and Sport. Consent has also been received from the Ministry of Defence in respect of the plots over which it has a freehold interest. Consent is still being sought in respect of those plots where the MoD has the benefit of rights. The Applicant understands that this consent will be forthcoming imminently.
3.10 Article 55 – Operational land for the purposes of the 1990 Act	
Agenda Item	Highways England response
Whether the exercise of permitted development rights under the Town and Country Planning (General	Mr Gordon McCreath , outlined the Applicant's position, set out in response do DCO.2.31 [REP6-027] that it is appropriate for it to retain the benefit of the permitted development provision it enjoys under the General Permitted Development Order, to ensure it is able to carry out its functions as the strategic highway company responsible for operating the trunk road network in England. The Applicant would not rely on permitted development to carry out development authorised by the Order. In response to further

<p>Permitted Development) Order 2015 within the WHS would be appropriately regulated or whether there is justification to restrict permitted development rights within the WHS given the particular circumstances of this project and site?</p>	<p>queries from the Examining Authority, the Applicant agreed to review this position in the light of Parts 9 and 16 of that development order.</p> <p>Post Hearing Note: <i>the Applicant has carefully reviewed the Town and Country Planning (General Permitted Development) (England) Order 2015 generally and parts 9 and 16 specifically. As a result the Applicant proposes amendments to article 6 (planning permission) of the DCO. Please see revision 6 of the DCO submitted at Deadline 8 and the accompanying explanatory document for further details.</i></p>
<h2>4 SCHEDULE 2 - REQUIREMENTS</h2>	
<h3>4.1 – Requirement 1(1) - Interpretation</h3>	
<h4>Agenda Item</h4>	<h4>Highways England response</h4>
<p>i. Whether “OEMP” is now satisfactorily defined by the revised dDCO and/or whether any further definitions of the supporting plans are required? For example, the Construction Environmental Management Plan (CEMP), the Handover Environmental Management Plan (HEMP)</p>	<p>Mr Paul Brown QC, on behalf of Wiltshire Council, noted that the Council is broadly content with the amendments to requirement 4 but has some concerns in relation to sub-paragraph (13) which refers to HEMPs being "in accordance with" the OEMP. Wiltshire Council considers that the HEMPs should be in accordance with the approved CEMP, rather than the OEMP. Subject to that, Wiltshire Council is broadly satisfied.</p> <p>Mr Gordon McCreath, on behalf of the Applicant, noted that the principle for HEMPs to accord with the approved CEMP is accepted and agreed to review requirement 4(13). Mr McCreath confirmed that the effect of the new drafting in requirement 4(11) is that the Secretary of State would approve the main works CEMPs which would contain the documents listed in sub-paragraph (11). The exceptions to this are the HMPs, SWSIs and archaeological method statements, which are listed in paragraph (11) as forming part of the CEMP, although, as is made clear by paragraph (10), those documents would be approved by Wiltshire Council and not the Secretary of State.</p> <p>Post hearing note: <i>the Applicant has reviewed requirement 4(13) and made amendments to more clearly reflect the progression from OEMP, to CEMPs and then HEMPs. Please see revision 6 of the DCO submitted at Deadline 8 and the accompanying explanatory document for further details.</i></p>

<p>and the Landscape and Ecological Management Plan (LEMP).</p> <p>ii. The definition of “preliminary works” including whether the erection of plant equipment on site should be incorporated within the definition?</p>	
<p>4.2 – Requirement 3(1) and 3(2) – Preparation of detailed design etc.</p>	
<p>Agenda Item</p>	<p>Highways England response</p>
<p>i. Whether Requirement 3 should require the detailed design to be carried out so that it is “in accordance” with the listed plans rather than that it is “compatible” with them and include</p>	<p>Mr Paul Brown QC, on behalf of Wiltshire Council, confirmed its position remains that it considers "in accordance with" is a phrase that is well understood and it is less clear precisely what "compatible with" means. Wiltshire Council accept that, if used, "in accordance with" ought to recognise the flexibility provided by the limits of deviation.</p> <p>Mr Gordon McCreath, on behalf of the Applicant, noted that it had explained the reasons why it considered "compatible with" to be appropriate and has justifiably been used in the other DCOs referred to in its submissions (DCO.2.38 [REP6-027], DCO1.80 [REP2-030] and DCO ISH1 written submission agenda item 4.2(iv) [REP4-029]). Since, however, that wording would have much the same effect in relation to the plans in question as the wording desired by the Council and ExA, the Applicant is now content to update requirement 3 to reflect "in accordance with" subject to limits of deviation.</p> <p>Post hearing note: Please see revision 6 of the DCO submitted at Deadline 8 and the accompanying explanatory document for further details.</p>

reference to the LoD, as suggested by Wiltshire Council?	
<p>ii. Whether the revised draft OEMP includes appropriate and specific design principles and dispute mechanism or whether there are key aspects of design to which commitment should be made in the dDCO, for example, by way of the provision of a specific design parameters document secured by a dDCO Requirement and to be approved by the Secretary of State?</p>	<p>Dr Helen Woodhouse, on behalf of Historic England, noted that design principles in the OEMP are actively being discussed with the Applicant and heritage partners and will look to provide the Examining Authority with an update on its position.</p> <p>Mr Paul Brown QC, on behalf of Wiltshire Council, noted that it can see a role for design parameters but they are not essential. The Council is content for them to be dealt with in the OEMP.</p> <p>Mr Patrick Robinson, on behalf of the National Trust, confirmed that the National Trust were part of the discussions on the design principles in the OEMP and are very close to agreeing the design principles. The outstanding matters relate to the process of consultation and dispute resolution and the ultimate objective is to reach agreement.</p> <p>Mr Gordon McCreath, on behalf of the Applicant, confirmed that the Applicant is working closely with heritage partners with a view to reaching agreement on the design principles. The Design Vision reflects a consistent thread, developed in discussion with heritage stakeholders over several years and from a very early stage of the Scheme's development. The Design Principles, together with Stakeholder Design Consultation Group mechanism has been developed in discussion with heritage stakeholders over the course of the examination. In respect of a further design parameters document, the Applicant's position is that such a document would be unnecessary; section 4 of the OEMP and the design commitments perform the desired function.</p> <p>Mr Gordon McCreath, on behalf of the Applicant, in response to the Examining Authority's questions, confirmed the Applicant's position that the Secretary of State should not be responsible for approving the final design coming out of the disputes resolution procedure in section 4 of the OEMP. Mr McCreath noted that this matter was discussed at the Cultural Heritage ISH held on 21 August 2019. The reasons for this are that the approach in the Applicant's DCO reflects the standard approach for the approval of highways schemes which dates back to approvals under the Highways Act 1980. That standard approach is for the applicant to define an envelope within which a proportionate degree of flexibility is assessed at the consent stage. The consent, and its flexibility and the detailed controls on its flexibility are ultimately approved by the Secretary of State through the granting of the Order. The Environmental Statement provides sufficient information at this stage to understand the environmental effects of the Scheme within the envelope of assessment. The Secretary of State would also be responsible for discharging requirements and approving the controls on the construction of the Scheme taking into account the changes to requirement 4. Beyond this, however, the Secretary of State does not become involved in the approval of the detailed design. Requirement 3(1) is consistent</p>

	<p>with this approach. The Secretary of State would only be asked to make a determination under requirement 3(1) where the Applicant sought to go beyond the envelope assessed in the Environmental Statement, and such a departure can only be approved if the Secretary of State is satisfied that to do so would not give rise to materially new or materially worse adverse environmental effects to those reported in the Environmental Statement. Similarly, it would not be appropriate for the Secretary of State to be responsible for adjudicating on disputes on items of detailed design within the assessed envelope arising from the dispute resolution procedures from the Stakeholder Design Consultation Group, as set out in section 4 of the OEMP. The Applicant's view, consistent with other made Highways England DCOs, is that it is entirely appropriate that it, as the government owned company with statutory duties to operate the England's trunk road network, should take the final decision on the detail design of the Scheme, within the parameters of the consent and subject to the provisions of the OEMP.</p> <p>Mr Frank Cain, on behalf of Wiltshire Council, confirmed that the Council is content that the Secretary of State would be responsible for approving the OEMP through making the Order and that the Council is content that there is no need for the Secretary of State to also approve matters of the detailed design when it is within the envelope.</p> <p>Dr Helen Woodhouse, on behalf of Historic England, noted that the focus of discussions has been around ensuring that framework provided by the OEMP, which will lead to the CEMPs will lead to it being of the highest quality.</p> <p>Mr Patrick Robinson, on behalf of the National Trust, noted that the National Trust is satisfied that there shouldn't be a requirement for the Secretary of State to approve the final design.</p>
<p>iii. Whether Requirement 3(1) as amended at Deadline 6 makes satisfactory provision for consultation with relevant parties on key aspects of the detailed design or whether any further amendment of</p>	<p>Mr Gordon McCreath, on behalf of Highways England, in response to the Examining Authority's questions noted that it is aware of requests for changes to the periods of time for Wiltshire Council's approvals under the DAMS and will be considering those. These matters are fairly mechanistic and are capable of being agreed.</p> <p>Dr Helen Woodhouse, on behalf of Historic England, noted that it is concerned to ensure that there is sufficient time afforded to consultees to provide meaningful input.</p> <p>Mr Patrick Robinson, on behalf the National Trust, confirmed its focus is on the processes for consultation in OEMP measures PW-G1 and MW-G7 and that the Trust is working to provide the Applicant with its comments on this imminently.</p>

<p>this Requirement and/or the OEMP is necessary?</p>	
<p>iv. Whether Requirement 3(1) should be further amended, as proposed by the Environment Agency, to require the Secretary of State to consult both the planning authority and any other person considered appropriate, having regard to the proposed amendments in question <u>and the statutory roles and responsibilities of the Interested Parties?</u></p>	<p>Mr Ben Hayball, on behalf of the Environment Agency, confirmed that it still seeks to be expressly identified as a consultee in requirement 3.</p> <p>Mr Gordon McCreath, on behalf of the Applicant, noted that Applicant amended requirement 3 in revision 4 of the DCO [REP6-006] to require the Secretary of State to consult any other person he or she considers appropriate having regard to the proposed change for which approval is sought. The Applicant's position remains that it considers it is not necessary to expressly identify the Environment Agency, or any other statutory bodies beyond the planning authority. It is clear that the Secretary of State acting in accordance with public law principles would take into account the statutory roles and responsibilities of those bodies when considering the proposal in question. Further comfort can be taken from the extensive obligations in the OEMP to consult the Environment Agency on matters relating to its functions.</p>

4.3 – Requirement 4 – Outline Environmental Management Plan	
Agenda Item	Highways England response
<p>i. Whether it is appropriate for Highways England to be the approving body for the CEMP and other management plans/documents?</p> <p>ii. Whether the Wiltshire Council should be the approving body for the DAMS and all the Site Specific Written Schemes of Investigations; the Emergency Preparedness and Response Plan; the Noise and Vibration Management Plan and Noise</p>	<p>Mr Gordon McCreath, on behalf of the Applicant, at the invitation of the Examining Authority gave an overview of the changes made to requirement 4 in revision 5 of the DCO. The Applicant has amended requirement 4 to reflect that both preliminary works and main works CEMPs would now be approved by the Secretary of State, save for SSWSIs, HMPs and archaeological method statements, which would be approved by Wiltshire Council. New definitions have been added to paragraph 1(1) of "main works", "main works CEMP", "preliminary highways works" and "preliminary works CEMP".</p> <p>In overview, the principle of compliance with the OEMP is preserved through sub-paragraphs (1) and (2). Sub-paragraph (3) ensures that the preliminary highways works are carried out in accordance with the design vision and design principles set out in section 4 of the OEMP. This is appropriate as those highways works are more substantial than the other development within the definition of "preliminary works". Sub-paragraph (4) ensures that the preliminary works are not to begin until a preliminary works CEMP for that part has been approved by the Secretary of State, following the consultation specified in the preliminary works OEMP. Sub-paragraph (5) reflects the principle that the listed HMP, SSWSIs and archaeological method statements are to be approved by Wiltshire Council. Sub-paragraph (6) requires a preliminary works CEMP to be prepared substantially in accordance with the preliminary works OEMP and sub-paragraph (7) ensures compliance with the approved preliminary works CEMP. Sub-paragraphs (8) to (12) mirror for the main works the principles described in sub-paragraphs (4) to (7) in respect of the preliminary works. Sub-paragraph (13) requires the CEMPs to be converted into HEMPs and requires the authorised development to be operated and maintained in accordance with the HEMP. There is no need for the Secretary of State to also approve the HEMPs as he or she will have previously approved the CEMPs that are then to be converted into the HEMPs. This approach is consistent with other highways DCOs. HEMPs would be approved by Highways England, following the consultation required by MW-G11 of the OEMP.</p> <p>Mr Paul Brown QC, on behalf of Wiltshire Council, welcomed the Applicant's change of approach reflected in the amendments to requirement 4 subject to some fine tuning. Firstly, the Council notes that the Tunnel Ventilation Strategy and the Invasive Non-Native Species Management Plan are not listed in requirement 4(11). Secondly, while the Council does not object to the Applicant approving HEMPs it has some concerns around maintenance of highways which are capable of being addressed through the side agreement. The third point relates to the approval of the DAMS for which Wiltshire Council maintains it should be the approving body and that the Applicant shouldn't be responsible for deciding its own application.</p>

<p>Insulation and Temporary Rehousing Policy; the Pollution Incident Control Plan; any contaminated land remediation proposals or schemes; the Traffic Management Plan; fencing design; the detailed design plans/drawings/specifications of all new public rights of way where maintenance responsibility would pass to the Council; the LEMP; the Arboricultural Mitigation Strategy; the Heritage Management Plan; the Ground Movement Monitoring</p>	<p>Mr Patrick Robinson, on behalf of the National Trust, noted that this matter has been discussed at Issue Specific Hearing 8 on cultural heritage on 21 August 2019. It had understood that the DAMS would be a certified document approved by the Secretary of State through the making of the Order. Approvals under the DAMS would be the responsibility of Wiltshire Council, with recourse to the Secretary of State. The National Trust consider that the appeal procedures in the DAMS should be open to any consultee and not just the Applicant.</p> <p>Mr Gordon McCreath, on behalf of the Applicant, responded as follows. In respect of the list of documents in requirement 4(11) the Invasive Non-Native Species Management Plan was not included on the basis that such a plan is only required if such species are found to be present. The Applicant will review the drafting for revision 6 of the DCO to be submitted at Deadline 8. In relation to the Tunnel Ventilation Strategy this would remain with Highways England to approve.</p> <p>Post hearing note: <i>the Applicant has included the Invasive Non-Native Species Management Plan if one is required in the list of documents in requirement 4(11). It remains the Applicant's position that it is the appropriate body to approve the Tunnel Ventilation Strategy the principal concern of which is to ensure that the tunnels remain safely ventilated for construction workers. The Applicant considers itself to be the appropriate body to approve that strategy in view of its statutory responsibilities for the safe operation of the trunk road network in England and understands that to be consistent with the Council's views too.</i></p> <p>The Applicant is aware of the concerns of Wiltshire Council in connection with the maintenance of highways for which the Council will become liable to maintain and is confident that those concerns can be addressed through the legal agreement which is close to being concluded.</p> <p>In respect of Wiltshire Council's submissions on the DAMS, Mr McCreath confirmed that the Applicant's position is, and has always been, that the DAMS would be approved by the Secretary of State through the making of the Order and would become a document certified under article 56 (certification of plans, etc.).</p> <p>In respect of the National Trust's submissions that the appeals procedures under 8.6 of the DAMS ought to be available to parties other than the Applicant; Mr McCreath confirmed the Applicant's position that it is appropriate and in accordance with the well-settled principles that there is no third party right to appeal on planning matters. The final decision made by the Secretary of State on any appeal would take into account the views of consultees, including National Trust. The Secretary of State would be in possession of a consultation report setting out how such consultee responses have been taken into account and, where they have not, the reasons for that.</p>
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<p>Strategy and the Soil Management Strategy?</p>	
<p>iii. Notwithstanding the existing provision within the revised OEMP for consultation with the Environment Agency, whether the OEMP and/or Requirement 4 should be amended to require the Applicant to “consult with Environment Agency to ensure all environmental risks have been adequately assessed and that suitable mitigation measures are proposed and implemented to offset any impacts predicted”?</p>	<p>Mr Ben Hayball, on behalf of the Environment Agency, confirmed it no longer seeks the previously requested amendment.</p>
<p>iv. Notwithstanding the provision within the revised OEMP for consultation</p>	<p>The representatives for Wiltshire Council, National Trust and Historic England indicated that the issues of concern had been discussed during the course of the second round of issue specific hearings and had nothing further to add.</p> <p>Mr Paul Brown QC, on behalf of Wiltshire Council, confirmed that the Council's proposed drafting relating to the approval of CEMPs is no longer sought in the light of the Applicant's changes to requirement 4 in revision 5 of the DCO.</p>

<p>with various stakeholders, whether there are any other outstanding concerns in this respect including the means whereby this would be secured by the dDCO?</p>	<p>Mr Ben Hayball, on behalf of the Environment Agency, confirmed it was content that its concerns have been addressed in the latest version of the OEMP [AS-085].</p>
<p>v. Whether the revised OEMP (MW-G11) in relation to the HEMP should require the contractor to submit a summary report of the consultation to the Authority including reasons should the consultee's comments not be reflected in the submission?</p>	<p>Post hearing note: item MW-G11 the revised OEMP submitted on August 20 already requires a summary consultation report including reasons in relation to the production of the HEMP [AS-085]</p>

<p>vi. Whether the revised OEMP satisfactorily deals with the detailed design of the public rights of way within the WHS or whether the relevant design commitments and principles remain to be agreed and a further specific Requirement in relation to this matter is necessary?</p>	<p>Mr Roger Upfold, on behalf of Cycling Opportunities UK, outlined concerns that the DCO does not give much in the way of detail on the public rights of way. The measures in the OEMP, requiring public rights of way to have a bound surface appropriate to their use is too vague. Cyclists need a surface that is at least as good as a metalled road surface. Widths should be more generous than the 3m specified in the OEMP, particularly the restricted byway through the World Heritage Site which should be at least 4m in width. A 4m width is sought because there will inevitably be vegetation encroachment and greater width would reduce maintenance costs and 4m would allow cyclists to pass any authorised motorised vehicles using the restricted byway. Additionally proper drainage is required to limit deterioration of the surface and to avoid ponding, which is particularly relevant in view of climate change. The form of road crossing should also be more clearly defined as objectives and not just principles. The safety concerns around cyclists using the tunnels, and the need to prevent this, are understood and not disputed.</p> <p>Ms Myra Bennet, on behalf of the British Horse Society, endorsed Mr Upfold's submission. Mr Paul Brown QC, on behalf of Wiltshire Council, confirmed it considered the OEMP adequately addresses the issues raised on detailed design of public rights of way within the WHS.</p> <p>Mr Gordon McCreath, on behalf of the Applicant, indicated that a response to the matters raised will be included in the Applicant's summary.</p> <p>Post hearing note: <i>Highways England have developed the design to a level that enables it to identify the Scheme's land requirements and to assess its environmental impacts. However, the detailed design of the Scheme will follow, if development consent is granted, with the appointment of the contractor. This is the industry standard approach to developing significant highways projects.</i></p> <p><i>Highways England requires a proportionate degree of flexibility, within the limits of deviation which delimit the parameters of the environmental assessment, to develop the detailed design of the Scheme. It is imperative that the consent has sufficient flexibility built-in to ensure that the Scheme can be implemented, to deliver value for money while still ensuring the high level of mitigation required. As such the development consent order itself does not specify widths of public rights of way or other aspects of its detailed design. This is the industry standard approach to developing significant highways projects.</i></p> <p><i>In this context, Highways England has given a number of legally binding commitments to aspects of the design of public rights of way for the Scheme. These are set out in the Outline Environmental Management Plan [AS-086] ("OEMP"), which Highways England would be under a legal duty to comply with by virtue of paragraph 4 of Schedule 2 to the DCO.</i></p> <p><i>The key commitments are as follows (reflecting the updates in the OEMP submitted at Deadline 8):</i></p> <ul style="list-style-type: none"> • <i>D-CH14 – provision of fencing and surfacing within the World Heritage Site ("WHS") shall be developed in consultation with the National Trust, Historic England, English Heritage Trust and Wiltshire Council;</i>
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- *D-CH 26 Any bound or unbound surface on new PRow within the WHS shall be a maximum of 3m in width. The surface on the PRow in the WHS shall be suitably coloured at year one of operation to be visually recessive and sympathetically integrated within the WHS. Trial panels or areas shall be constructed early in the construction period and at least one year in advance of the surface being laid. Consultation with the SDCG on the proposed location, colour and materials of the bound and unbound surfaces of the PRow in the WHS shall take into account the results of the trial panels or areas. PRow/PMA in WHS shall not have raised edgings, surface markings, lighting, litter bins or other such street furniture. PRows within the WHS shall be suitably drained. The surface of PRow shall be agreed with the adopting authority following consultation with the SDCG, where relevant.*

In addition to the design commitments, the OEMP sets out further design principles:

- *P-PRoW1 – Public Rights of Way (PRow) and Private Means of Access (PMA) to have a surface that is appropriate to their use and location, developed in consultation with SDCG. Within the WHS, the surface and material finishes of PRows / PMAs to be visually recessive and sympathetic to the landscape character and setting of the monuments and suitable to accommodate use by, as appropriate, agricultural and land management vehicles, carriages, equestrians, cyclists and pedestrians, including people with impaired mobility, wheelchair users and parents with buggies and children. Appropriately vegetated verges to be provided between the surfaced area and adjacent land boundaries.*
- *P-PRoW4 – No gates on byways open to all traffic. On restricted byways full width gates with Kent Carriage Gaps to be used based on details in BS5709, the Manual of Contract Documents for Highway Works - Highway Construction Details, and in accordance with the Design Manual for Roads and Bridges and the relevant elements of the 'Advice on Gate installation' and 'Advice on Vehicle Barriers' published by the British Horse Society. Gates to be sufficiently wide and appropriately placed to accommodate users with restricted mobility and authorised users as necessary, including agricultural vehicles and other agricultural machinery and appropriate locking measures to be employed to ensure that those entitled to exercise rights of vehicular access over restricted byways would be capable of doing so freely. All gates and barriers, where required as limitations on the free passage of the public along footpaths, bridleways and restricted byways to comply with the current British Standard 5709; Gaps gates and stiles. Equestrian gates to be provided on bridleways, while on footpaths, pedestrian gates to be installed.*

Further design commitments and principles in relation to the public rights of way are set out in the OEMP. Additionally, the OEMP sets out a process for consultation with heritage bodies on the detailed design of the public rights of way within the WHS.

In respect of all public rights of way, article 9 of the draft DCO is clear that these must be completed "to the reasonable satisfaction" of the local highways authority, Wiltshire Council, who will ultimately be responsible for maintaining the public rights of way of created or altered by the Scheme. In this regard, Highways England and Wiltshire Council are working to complete a legal agreement which makes appropriate provision for Wiltshire Council to adopt, and maintain, these rights of way. In respect

		<p><i>of highway drainage, paragraph 10 of Schedule 2 requires the Secretary of State to approve drainage details, following consultation with Environment Agency and Wiltshire Council, before construction of that part of the Scheme can be commenced. Taking these measures together, Highways England is confident that appropriate mechanisms will be in place to ensure that public rights of way are constructed to a standard appropriate for their users and that Wiltshire Council will be in a position to maintain them as such.</i></p>
vii.	<p>Whether further amendment of the revised OEMP is necessary in relation to field drainage, soil reinstatement and aftercare, flood risk and drainage as proposed by the National Farmers' Union?</p>	<p>Mr Gordon McCreath, on behalf of the Applicant, noted that widespread amendments had already been made to the OEMP in response to the NFU's comments on these matters, but that it is aware of the matters raised in the National Farmers Union's submission [AS-094] and will consider them for the next draft of the OEMP and respond on them in writing.</p> <p>Post hearing note: <i>The response to the matters is included in the Applicant's Deadline 8 submission responding to the written submissions of parties at Deadline 7.</i></p>
viii.	<p>Whether the revised OEMP would provide sufficient control over the design of lighting at the tunnel portals or should the approval of the design of the lighting scheme be the subject of</p>	<p>Mr Paul Brown QC, on behalf of Wiltshire Council, confirmed that it had sought a lighting requirement at deadline 6, but understands the Applicant intends to amend paragraph 4.5.3 of the OEMP to make it clear that there will be consultation with SDCG on tunnel portal lighting. If this is provided, the Council would be satisfied that no additional requirement would be necessary.</p> <p>Mr Gordon McCreath, on behalf of the Applicant, confirmed that the changes to paragraph 4.5.3 to include tunnel portal lighting are agreed and would be included in the deadline 8 submission of the OEMP.</p>

a specific dDCO Requirement?	
4.4 Requirement 5 - Archaeology	
Agenda Item	Highways England response
Whether any additional provisions within the dDCO would be necessary to secure the required level of archaeological mitigation?	No party present made submissions under this agenda item.
4.5 Requirement 7 – Contaminated Land	
Agenda Item	Highways England response
Whether any additional Requirements would be necessary in relation to the risk from contaminated land and, if so, what form should they take?	<p>Mr Ben Hayball, on behalf of the Environment Agency, recalled the discussion at ISH 10 held on 29 August 2019 and noted that the Environment Agency has considered MW-GEO8 and is generally content with it, but would like to see it require the agreement of the planning authority and the Environment Agency.</p> <p>Ms Emma Harling-Phillips, on behalf of the Applicant, noted that for consistency of approach with other measures in the OEMP, which require consultation with appropriate bodies, rather than approval, a requirement to agree the measures with the planning authority and the Environment Agency would not be appropriate. Furthermore, as discussed at the 29 August hearing, the Applicant is already proactively undertaking investigations and so is clearly aware of its responsibilities in respect of contamination. The reference to the CLR11 process means that MW-GEO8 does require consultation with those bodies, which the Applicant considers appropriate in the circumstances.</p> <p>Post hearing note: Following discussions with the Environment Agency, item MW-GEO8(j) has been updated at Deadline 8 to explicitly refer to consultation with the Agency and Wiltshire Council. It is understood that on this basis, the Environment Agency is no longer seeking a further requirement to be added to the DCO in respect of contamination matters.</p>
4.6 Requirement 8 - Landscaping	

Agenda Item	Highways England response
<p>Whether the provisions in the revised OEMP would provide appropriate standards and consultation obligations in respect of the final design of 'normal' fences and walls within the WHS or should Requirement 8(3)(b) also include reference to such fences and walls?</p>	<p>Mr Gordon McCreath, on behalf of the Applicant, provided an overview of the amendments made to requirement 8 in revision 5 of the DCO. Of substance, the amendments expand the circumstances when Historic England is to be consulted and clarify the drafting. Requirement 8 in revision 4 of the DCO requires consultation with Historic England and the planning authority on the landscaping scheme for works within the World Heritage Site and Work No.4 (the new Longbarrow Junction) before any works within the World Heritage Site or comprised in Work No.4 could be commenced. Crucially, this ensures that a landscaping scheme for all of the works in the World Heritage Site, and Work No.4, is approved as a package, before any of those works are commenced. The drafting has been clarified by switching the positions of sub-paragraphs (1) and (2) and through subsequent amendments. Additionally, the drafting of requirement 8 in revision 5 of the DCO now requires consultation with Historic England in all circumstances, whether the landscaping scheme in question relates to the World Heritage Site, Work No. 4 or any other part of the authorised development.</p> <p>Mr Paul Brown QC, on behalf of Wiltshire Council, confirmed that it still seeks amendments to requirement 8 to ensure that the scheme includes all fences and walls and not just noise fences and walls, but no longer seeks amendments in relation to the maintenance of landscaping.</p> <p>In response to the inclusion within the landscaping scheme of all 'normal' fences and walls, Mr McCreath confirmed that the Applicant's position remains as set out in its response to DCO.2.59 [REP6-027]. The OEMP contains extensive provisions relating to fencing all of which are secured by requirement 4 and which now would be subject to the Secretary of State's approval through the relevant management plans, including the Landscape and Ecology Management Plan. The Applicant agreed to set out in its summary the list of relevant OEMP measures.</p> <p>Post hearing note: the Applicant has reflected on this matter and, in light of the LEMP now being a document to be approved by the Secretary of State under requirement 4 the Applicant considers it can agree to the change requested by Wiltshire Council, which will be made in revision 6 of the DCO to be submitted for Deadline 8. The Applicant also agreed to include the list of key measures in the OEMP pertaining to fencing:</p> <ul style="list-style-type: none"> • 4.5.3 of the OEMP; • P-PRoW2; • P-PRoW4; • P-SL04; • D-CH14.

	In relation to the maintenance of landscaping and in a response to a question from the Examining Authority, Mr McCreath confirmed that the relevant Landscaping and Ecology Management Plan would be approved as part of the CEMPs, which in turn would be converted into HEMPs.
4.7 Requirement 10 - Drainage	
Agenda Item	Highways England response
i. Whether any amendment would be necessary in relation to the matters on which the planning authority is required to be consulted?	<p>Mr Paul Brown QC, on behalf of Wiltshire Council, noted that Wiltshire Council maintain that the reference to consultation with the planning authority should not be qualified as being "in relation to its land drainage functions" but should instead just refer to consultation with the planning authority on matters relevant to its functions.</p> <p>Ms Emma Harling-Phillips, on behalf of the Applicant, noted that an amendment to requirement 10 was discussed at ISH10 held on 29 August 2019 that would see requirement 10 clarified to make it clear that the drainage details must include both measures for pollution control and for the management of flood risk. Mr McCreath noted that in light of that agreed change it would be appropriate to also amend the capacity in which the planning authority is consulted on those details, as requested by the Council.</p> <p><i>Post hearing note: the Applicant has amended requirement 10 as discussed. Please see revision 6 of the draft DCO and the accompanying explanatory document for further details.</i></p>
ii. Whether any related amendments to the drainage provisions set out in the revised OEMP would be required?	No submissions were made under this agenda item.

4.8 Requirement 11 – Details of consultation	
Agenda Item	Highways England response
Whether the wording of this requirement is now agreed or whether any further amendment would be necessary and reasonable?	<p>Mr Gordon McCreath, on behalf of the Applicant, noted that the Applicant amended requirement 11 in revision 5 of the draft DCO to make it clear that the Secretary of State may request copies of the consultation responses, if required. The amendment is in line with general principles of pre-application consultation under the Planning Act 2008 where copies of such correspondence can be requested by the Planning Inspectorate and ensures that the Secretary of State is in a position to review those responses directly if it is considered necessary.</p> <p>Ms Kath Burt, on behalf of the Environment Agency, confirmed it is content with requirement 11.</p> <p>Ms Beth Harries, on behalf of Historic England, indicated that it considers it would be appropriate for consultation responses to be included within the consultation report.</p> <p>Mr Paul Brown QC, on behalf of Wiltshire Council, confirmed it was content with requirement 11.</p>
4.9 Whether any additional requirements are necessary	
Agenda Item	Highways England response
i. The list of suggested Requirements with reasons proposed by Wiltshire Council as submitted within its Deadline 4 Comments on the dDCO [REP4-039] and in response to	

ExQ2 DCO.2.66 [REP6-041] relating to:	
(a) CEMP	This matter was discussed under agenda item 4.3(iv).
(b) Traffic monitoring and mitigation	<p>Mr Paul Brown QC, on behalf of Wiltshire Council, confirmed that its proposed requirement in respect of Traffic Management during Tunnel Closures is no longer sought provided the agreed amendments are made to measure MW-TRA12 of the OEMP. In respect of its proposed Traffic Monitoring requirement it is understood that this could be satisfactorily addressed through the side agreement with the Applicant and discussions in this regard are progressing in a helpful way..</p> <p>Mr Gordon McCreath, on behalf of the Applicant, confirmed that the desired amendments will be made to MW-TRA12 to the updated OEMP to be submitted at Deadline 8 and noted that discussions on the side agreement are progressing well.</p> <p><i>Post hearing note: These changes are reflected in the OEMP submitted at Deadline 8.</i></p>
(c) Highway Lighting Scheme	This matter was discussed under agenda item 4.3(viii).
(d) Traffic management during tunnel closures	This item was discussed under agenda item 4.9(i)(b) above.
(e) Flood Risk Assessment	<p>Mr Paul Brown QC, on behalf of Wiltshire Council, noted that one area where the Council maintains its desire for a requirement is in relation to securing compliance with the Flood Risk Assessment, which the Council considers to be of sufficient import to merit elevation to a DCO requirement. Mr Parvis Khansari, on behalf of Wiltshire Council, emphasised that the area is sensitive to flooding and that it considers it appropriate for a requirement to be imposed.</p> <p>Ms Emma Harling-Phillips, on behalf of the Applicant, responded to the matters raised in respect of the proposed requirement to comply with the Flood Risk Assessment. The Applicant considered the Council's proposed drafting received at Deadline 4 and responded to the Examining Authority's written question DCO.2.65 [REP6-027] and responded to Wiltshire Council's answer to the same written question at Deadline 7 under item 3.4.20 of [REP7-021]. The Applicant's position remains that the desired requirement is not needed. The conclusions of the Flood Risk Assessment are secured through the measures that would be provided under requirement 10. The conclusions of the Flood Risk Assessment also need to be borne in mind. It concludes that</p>

	<p>there will be no increase in flood risk and in places there would be a reduction of risk. Despite these clear conclusions, the OEMP contains a comprehensive series of measures in the MW-WAT series. The Applicant further notes that just because a measure is included in the OEMP, rather than in a requirement, it should be considered to be no less secure and no less important. Breach of either will remain a criminal offence. Further, the Applicant notes that the drafting proposed by the Council is adopted directly from the A14 DCO. That was a very different scheme with very different flood risk context which does not apply here. It would not be appropriate to simply adopt it in this case. However, Ms Harling-Phillips explained that, without prejudice to the Applicant's clearly stated position that such a requirement is unnecessary, should it be considered necessary to recommend the inclusion of such a requirement the Applicant would suggest the following drafting is used:</p> <p>Post hearing note: <i>Following the hearing, Highways England was contacted by Wiltshire Council stating that “The Council’s flood and drainage officers have reviewed the proposed wording and following discussion with the Environment Agency have now come to a mutually agreed position. It is now accepted that a separate FRA requirement in the dDCO is not required, provided that additional wording is added to MW-WAT12 in the OEMP.”</i></p> <p><i>MW-WAT12 has been amended in the Deadline 8 submission of the OEMP as follows:</i></p> <p><i>Flood Risk Management Plan:</i> <i>The main works contractor shall prepare a Flood Risk Management Plan, as part of the Water Management Plan. The plan will summarise:</i></p> <ul style="list-style-type: none"> <i>a) any areas within the 1% AEP plus appropriate allowance for Climate Change, susceptible to groundwater flooding, and other flood risk sources, such as sewer flooding;</i> <i>b) any applications made, or likely to be made, pursuant to the Environment Agency’s and Wiltshire Council’s protective provisions in the DCO, where required in relation to flood defence, for temporary and permanent works and the status of the works;</i> <i>c) any specific requirements or conditions of the approval that will be obtained from the relevant consenting bodies;</i> <i>d) any flood risk management or mitigation measures implemented, or to be implemented, in support of temporary and permanent works proposals; and</i> <i>e) a statement on the cumulative flood risk impact of temporary and permanent works.</i> <p><i>The plan shall build on the assessment of flood risk and mitigation recommended within the Flood Risk Assessment and its annexes submitted as part of the DCO examination [REP3-008].</i></p> <p><i>The plan shall be developed and implemented following consultation with the Environment Agency and Wiltshire Council.</i></p>
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<p>i. Whether there would need to be a corresponding amendment of Part 2, Schedule 2 of the dDCO if the Wiltshire Council was to be the approving body in some instances?</p>	<p>No party present made submissions under this agenda item.</p>
<p>ii. Whether the Proposed Development should contribute to improvements to waterbodies including the Countess Channel and Bowles Hatches proposals to fulfil the aims of the River Avon Restoration Plan, to maximise the water environment opportunities in</p>	<p>Ms Kath Burt, on behalf of the Environment Agency, welcomed the letter received from the Applicant regarding the Environment Agency's continued involvement in the relevant steering groups and in relation to the biodiversity designated fund. The Agency is however aware that historically there have been difficulties gaining access to such funds and the Environment Agency maintains its position that the Applicant's scheme ought to contribute to the improvement of waterbodies. Ms Burt made general references to policy supporting biodiversity gain.</p> <p>Mr Gordon McCreath, on behalf of the Applicant, noted that while the Agency was able to point to general thrust of policy, it was not able to justify in what way the Applicant failed to comply with the policy applying to it such that a requirement was necessary. By contrast, the Applicant's submissions on this point together with a detailed review of the applicable national and local policy, are set out in in response to question DCO.2.67 [REP6-027]. In summary, the Applicant's position is that its Scheme meets the requirements in paragraphs 5.23 and 5.33 of the National Policy Statement for National Networks to maximise opportunities for beneficial biodiversity features. The Applicant's Scheme does this, not least through the creation of new calcareous grassland which in turn may offer modest benefits to aquatic biodiversity. The Applicant's Scheme is policy compliant. There is therefore no justification for a requirement. The Applicant is aware of the proposals submitted by the Environment Agency at Deadline 6, those proposals are however outside of the Order limits and so cannot relate to the policy requirements in paragraphs 5.23 and 5.33 of the NPS.</p> <p>Ms Kath Burt indicated that the Agency would submit its proposals at deadline 8.</p>

<p>the vicinity of the Proposed Development and to ensure that it would satisfy the requirements of national and local policies?</p> <p>iii. Whether it would be necessary and reasonable to impose a Requirement for an Environmental Enhancement Plan to be submitted, approved and adhered to, as proposed by the Environment Agency?</p>	
<p>iv. Whether any additional Requirements would be necessary to minimise any impact on the surface and</p>	<p>Mr Ben Hayball, on behalf of the Environment Agency, confirmed that it is content that monitoring of groundwater is addressed adequately through the Groundwater Management Plan (MW-WAT10) in the OEMP.</p> <p>Ms Emma Harling-Phillips, on behalf of the Applicant, confirmed its position discussed at the cultural heritage ISH held on 21 August 2019, that as effects on Blick Mead were considered as part of the Groundwater Risk Assessment, the requirement to update the Groundwater Risk Assessment for the final design and construction plan (measure MW-WAT10 of the OEMP), including any monitoring required, will therefore include consideration of Blick Mead. Highways England welcomes the Environment Agency's confirmation that this provision is adequate. The Applicant remains of the firm view that the OEMP is the</p>

<p>groundwater water quality, quantity (levels and flow) and environment, including the monitoring of ground water levels in the vicinity of Blick Mead and elsewhere and, if necessary, the carrying out of remedial measures?</p>	<p>appropriate place to specify groundwater monitoring requirements and would be consistent with the manner in which all other management and mitigation proposals have been addressed across the Scheme proposals. Further, a measure secured in the OEMP has no less status or importance than a measure set out in a requirement; both must be complied with.</p> <p>Whilst Highways England maintains that consideration of Blick Mead is already provided for in MW-WAT10, for the reasons explained above, it has proposed the following wording in respect of MW-WAT10 within the OEMP submitted at Deadline 8:</p>									
	<table border="1"> <thead> <tr> <th style="text-align: center;">Ref</th> <th style="text-align: center;">Source Ref.</th> <th style="text-align: center;">Action / commitment (including specific location and any monitoring required)</th> <th style="text-align: center;">Reporting criteria</th> <th style="text-align: center;">Responsible person(s)</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">MW-WAT10</td> <td style="text-align: center;">ES Chapter 11, section 11.7</td> <td> <p>Groundwater Management Plan (GMP): The main works contractor shall develop a Scheme-wide GMP, outlining how groundwater resources are to be protected in a consistent and integrated manner. The Plan shall address:</p> <ul style="list-style-type: none"> a) Potential effects on groundwater (resources and quality) that fall outside other regulations such as the Environmental Permitting Regulations. b) An update to the Groundwater Risk Assessment for the final design and construction plan and which demonstrates that the final design and construction plan does not give rise to any materially new or materially adverse environmental effects in comparison with those reported in the environmental statement. c) The groundwater level and water quality monitoring/telemetry and reporting programme. d) Development of baseline groundwater conditions and derivation of trigger levels </td> <td> <p>Secretary of State approval of the GMP as appended to the CEMP, following approval by the Authority.</p> <p>Consultation with the Environment Agency, Wiltshire Council, and Natural England with regard to elements of the GMP which may impact the River Avon SAC).</p> </td> <td style="text-align: center;">Main works contractor</td> </tr> </tbody> </table>	Ref	Source Ref.	Action / commitment (including specific location and any monitoring required)	Reporting criteria	Responsible person(s)	MW-WAT10	ES Chapter 11, section 11.7	<p>Groundwater Management Plan (GMP): The main works contractor shall develop a Scheme-wide GMP, outlining how groundwater resources are to be protected in a consistent and integrated manner. The Plan shall address:</p> <ul style="list-style-type: none"> a) Potential effects on groundwater (resources and quality) that fall outside other regulations such as the Environmental Permitting Regulations. b) An update to the Groundwater Risk Assessment for the final design and construction plan and which demonstrates that the final design and construction plan does not give rise to any materially new or materially adverse environmental effects in comparison with those reported in the environmental statement. c) The groundwater level and water quality monitoring/telemetry and reporting programme. d) Development of baseline groundwater conditions and derivation of trigger levels 	<p>Secretary of State approval of the GMP as appended to the CEMP, following approval by the Authority.</p> <p>Consultation with the Environment Agency, Wiltshire Council, and Natural England with regard to elements of the GMP which may impact the River Avon SAC).</p>
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			<p>and action levels/mitigation/action plans for exceedances and accidents/incidents.</p> <p>e) The management of groundwater flood risk.</p> <p>f) In respect of all of the above matters, the Plan must specifically indicate how Blick Mead and private water supplies are to be considered</p> <p>During the development of GMP, the main works contractor shall consult with the Environment Agency and Wiltshire Council with regard to the groundwater flood risk component and any heritage implications to Blick Mead and Natural England with regard to elements of the GMP which may impact the River Avon SAC (which incorporates a section of the River Till).</p>		
<p>However, noting the ExA's request for requirement drafting and, without prejudice to its clearly stated position, if a requirement is considered to be necessary, the Applicant would suggest that an additional sub-paragraph is inserted after requirement 4(11) that states:</p> <p><i>"(12) The Groundwater Management Plan referred to in sub-paragraph 11(m) must include an indication of how the hydrological effects on the archaeological site known as Blick Mead have been considered in the course of meeting the requirements for what that plan must contain that are set out in the OEMP".</i></p>					
<p>v. Notwithstanding the addition of Requirement 11, whether there would be a need for a specific Requirement to secure the agreement of the Environment Agency to the</p>	<p>Mr Ben Hayball, on behalf of the Environment Agency, confirmed it is content with requirement 11 and no further amendments are sought.</p>				

<p>Proposed Development to ensure that the adequacy of the environmental protection measures would be appropriately assessed?</p>	
<p>5 SCHEDULE 11 – PROTECTIVE PROVISIONS</p>	
<p>Agenda Item</p>	<p>Highways England response</p>
<p>i. Whether all Protective Provisions are now agreed?</p>	<p>This item was discussed under agenda item 3.8.</p>
<p>ii. Whether it would be necessary for a Protective Provision to be included in the dDCO which explicitly referred to the Proposed Development as being within the WHS and its setting?</p>	<p>Mr Christian Zwaard, on behalf of Historic England, noted why it now considers it to be necessary to include protective provisions to recognise on the face of the DCO that the exercise of functions under the Order must have regard to the World Heritage Site and that Historic England aims to have a draft of its preferred provision with the Applicant for the early part of next week.</p> <p>In response Mr Gordon McCreath, on behalf of Highways England, emphasised that the Applicant has not acknowledged any purported "gaps" in the scheme of controls relating to the DCO. The key point on the issue is that the envelope for the Scheme, its specific design parameters, and where those can be found in the application documents have been set out in detail from an early stage in the application. Before the application was accepted the Applicant produced a detailed signposting document [AS-009] explaining how the plans and DCO provisions 'work' together to describe the Scheme for which consent is sought, and where the controls on that development are contained. The consent contains flexibility, but that flexibility is proportionate, justified and required to deliver the Scheme. Since the very early stages of the Scheme its design proposals have been led by a vision for the Scheme which has been developed in discussions with heritage stakeholders, now recorded in the OEMP. This has evolved into the design commitments and design principles now secured in the OEMP and will continue to evolve within the consultative framework provided in respect of the Stakeholder Design Consultation Group. How the effects of the Scheme are to</p>

	<p>be regulated is controlled through the detailed measures of the OEMP and DAMS, both of which include a multitude of obligations to consult heritage partners, and others, on a range of matters relevant to their functions. A lot of work, by all parties involved, over a number of number of years has gone in to arriving at the current position. The Applicant has discussed with Historic England its proposals for protective provisions in general terms and has expressed some concern that what is described by Historic England as protective provisions, which do not appear to be what is conventionally understood to be protective provisions, risk undoing much of the careful work done to date. This may prove not to be the case, but the Applicant is not able to confirm at this point as it has not had sight of the proposed drafting.</p> <p>Post Hearing Note: the Applicant has received the proposed provision and is actively considering it in discussions with Historic England.</p>
<p>6 SCHEDULE 12 – DOCUMENTS TO BE CERTIFIED</p>	
<p>Agenda Item</p>	<p>Highways England response</p>
<p>i. The Environmental Statement to be certified including whether this should incorporate:</p>	
<p>(a) The relevant aspects of the Errata Report submitted at Deadline 7 [REP7-022]?</p>	<p>Mr Gordon McCreath, on behalf of the Applicant, explained that its approach for identifying the documents that need to be certified ties back to those documents which are referenced in the provisions of the DCO. For example, the Environmental Statement is key as it sets the baseline for each of the instances of the "not give rise to any materially new or materially worse adverse environmental effects to those identified in the environmental statement" wording. Given the important role played by the OEMP the Applicant considers it to be appropriate for it to be a certified document in its own right. However, there is no need to certify submissions that merely supplement or support the conclusions of the Environmental Statement. The Errata Report will clearly have a bearing on the ES so Schedule 12 will refer to it in so far as it substitutes the ES.</p>

<p>(b) The additional LVIA figures 7.89 to 7.96 [REP7-026 to REP7-033] and 7.103 to 7.107 [REP7-034 to REP7-038] submitted at Deadline 7 and figures 7.97 to 7.102 [AS-079 to AS-084] published on 19 August 2019?</p>	<p>Mr Gordon McCreath, on behalf of the Applicant, outlined that the LVIA figures submitted to the examination post-submission are all supplementary information, which are responses to points raised by the ExA and other interested parties (see brief explanation in the DL7 cover letter - REP7-001). As such, they do not alter the baseline or assessments reported in the ES, and therefore do not form part of them. In that light, and given the references to ES in the DCO (as set out above), it is not considered necessary for these viewpoints to be certified as part of the ES.</p> <p>Post hearing note: the Applicant has considered the additional LVIA figures and confirms that they are supplemental information and do not relate to the baseline or assessment methodology. Therefore the Applicant does not propose that they become certified documents.</p>
<p>(c) The Habitat Regulations Screening Assessment - Clarification Technical Note submitted at Deadline 7 [REP7-011, Appendix A]?</p>	<p>Mr Gordon McCreath, on behalf of the Applicant, outlined that the clarification note was produced to assist Natural England to navigate its way through the HRA, and so since it does not add anything new to it, the Applicant is not proposing that the document is certified.</p>
<p>ii. The OEMP to be certified and the inclusion of Annex A.4 – Illustrated Examples of Key Design Elements [REP7-024].</p>	<p>Mr Gordon McCreath, on behalf of the Applicant noted that the final updated version of the OEMP will be certified in Schedule 12, both as part of the ES and also in its own terms. The OEMP will be updated at Deadline 8 to include the illustrated examples of key design elements, so they will be secured.</p>

<p>iii. Whether any other documents should be certified and included within Schedule 12?</p>	<p>No other documents were referred to.</p>
<p>7 PLANNING OBLIGATIONS AND ANY OTHER AGREEMENTS</p>	
<p>Agenda Item</p>	<p>Highways England response</p>
<p>Whether any other obligations or agreements are intended to be submitted in support of the application?</p>	<p>Mr Gordon McCreath, on behalf of the Applicant confirmed that no development consent obligations are proposed.</p> <p>In response to the Examining Authority's question Mr McCreath gave an update on progress towards securing Stone Curlew breeding plots. Draft agreements have been issued to two landowners this week on specific sites that have been identified in consultation and with the approval of the RSPB. It is the intention that those agreements would be concluded before the close of the examination, to provide a total of 4 Stone Curlew plots. Mr McCreath also noted under 'Any Other Business' at the end of the hearing agenda that both Natural England and RSPB were satisfied that, due to the abundance of available plots and willing landowners in the area, Highways England's commitment to secure the necessary plots before opening of the Scheme gave the required certainty to regarding provision of the plots under the Habitats Regulations.</p>
<p>8 AMENDMENTS TO THE DRAFT DCO CONSEQUENTIAL TO THE PROPOSED CHANGES TO THE APPLICATION SOUGHT BY VARIOUS PARTIES</p>	
<p>Agenda Item</p>	<p>Highways England response</p>
<p>i. The drafting of the proposed changes to the application</p>	<p>Mr Gordon McCreath, on behalf of the Applicant, confirmed that its position was as set out in [REP4a-001].</p>

sought by the Trail Riders Fellowship.	
ii. The drafting of the proposed changes to the application sought by the Applicant.	Mr Gordon McCreath , on behalf of the Applicant, noted that the Applicant's Proposed Changes application includes a mark-up of the DCO showing the drafting changes required by those proposed changes.
9 ANY OTHER MATTERS	
Agenda Item	Highways England response
	<p>Ms Myra Bennet, on behalf of the British Horse Society, raised concerns with the shared use cycleway around and in the vicinity of the new Longbarrow Junction linking the restricted byway crossing the World Heritage Site, and the bridleway reference Z to Winterbourne Stoke. Ms Bennet outlined that she would like to see the shared use cycle way designated as a bridleway but noted that further detail would be provided in written submissions.</p> <p>Post hearing note: <i>The apparent "gap" between the two bridleways proposed (Reference Z and Y) on sheets 4 and 5 the Rights of Way and Access Plans [APP-009] occurs as a result of the dDCO not giving a reference to any shared cycleway routes proposed for the scheme where these are located within proposed highway boundaries, and where highway rights will exist. From a legislative perspective, there is no need to separately identify the shared use cycleways where they are within the highway boundary as both the shared use cycleway and the carriageway form part of the same highway.</i></p> <p><i>As shown illustratively on sheet 4 and 5 of the General Arrangement Plans [APP-012], a shared cycleway is proposed in the area which is located on the north side of the link road east of Winterbourne Stoke to the new Longbarrow southern dumb-bell roundabout. The route crosses the carriageway via a proposed Pegasus crossing and runs adjacent to the roundabout. An additional Pegasus crossing over the A360 link is proposed to provide the connection to the new bridleway. The precise form and layout will be determined during the detailed design of the Scheme, if development consent is granted.</i></p>

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