highways england

European Union
European Regional Development Fund

A30 Chiverton to Carland Cross
TR010026

8.3 POST HEARING SUBMISIONS INCLUDING WRITTEN SUBMISSIONS OF ORAL CASE

Volume 8

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1 Introduction

1.1 Purpose of this document

1.1.1 This document sets out Highways England's (the Applicant) written summary of oral submissions made at Issue Specific Hearing 1 into the draft Development Consent Order for the A30 Chiverton to Carland Cross scheme, which took place at the Alverton Hotel in Truro on Wednesday 6 February 2019.

2 Written Summary of Case

Table 2-1 Written summary of case

Q. No	Directed to	ExA Question	Summary of Oral Submissions
1.5.1	Applicant	**Classification of the Scheme under Section 22 PA 2008** Paragraph 2 of the EM identifies the proposed scheme as an NSIP pursuant to paragraphs 14(1)(h) and 22(1)(a) of the PA 2008. This relates to construction of a highway. Section 22(1)(b) PA 2008 relates to alteration of a highway and section 22(1)(c) PA 2008 to improvement of a highway. Are you satisfied that this application relates entirely to construction of a highway and no part of this application should proceed under either, or both, s22(1)(b) and/or (c)?	The Applicant is satisfied that the Scheme should proceed as a construction scheme for the purposes of section 22 PA 2008. The Applicant has given extensive consideration to the definition of NSIP in section 22 in the past in relation to all of its schemes. That consideration has included discussions between the Applicant's Development Consent Orders and Statutory Processes team and the Inspectorate about the interpretation of and correct approach to section 22. As a result of those discussions, the Applicant is of the firm view that the categories in section 22 are mutually exclusive and therefore, the Scheme must fall into only one of the three categories. This approach is based on the wording of section 22, which states that a development may be construction, alteration **or** improvement. In the Applicant's view it is appropriate for this Scheme to fall into the category of a construction NSIP, given that it involves the construction of a new dual carriageway. While the Applicant accepts that the Scheme involves some alterations to the existing road network to make the Scheme workable, the Applicant is of the view that it is not appropriate or legally correct to seek to allocate separate elements of the Scheme differently for the purpose of section 22.
1.5.2	Applicant	**Table of contents** The table details the page numbers but the individual pages are not numbered. Ensure that the dDCO is paginated (preferred option) or remove the references in the table of contents.	The Applicant's preference is also for the dDCO to include page numbers. However, including page numbers causes the DCO validation report to display each page number as an error. To ensure that an acceptable validation report can be submitted it has therefore been necessary to delete the page numbers. The Applicant proposes to leave the draft as it is for now without page numbers, on the understanding that page numbers will be added by the Inspectorate/The Stationery Office immediately before the order is made (should that be the case).
1.5.3	Applicant	**Article 2, Interpretation, 'commence'** The definition would permit certain works to be carried out without commencing the	The works that are proposed to be excluded are: 1. Archaeological investigations 2. Investigations for the purpose of assessing ground conditions

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		development, identified in the EM, paragraph 4.5(a), to be related to preparatory works prior to submission of relevant details for approval under the requirements. This appears to provide a wide flexibility with potential impacts on local residents, businesses and visitors to the area depending on the location of the works and the interpretation of 'temporary'. Please provide information on the expected type, scale and duration of such 'exemption works' to fall outside 'commencement', identifying any potential impacts.	3. Remedial work in respect of any contamination or other adverse ground conditions 4. Erection of any temporary means of enclosure 5. Temporary display of site notices or advertisements The Applicant has given careful consideration to these works. Due to their nature it is not considered that any of these activities have the potential for significant impacts on residents, businesses or visitors. They are all considered to be de minimis or low impact preparatory works. Each has been accepted on numerous occasions in previously made orders. At the time of writing seven out of the ten most recently made DCOs (Eggborough CCGT; M20 J10a; Silvertown Tunnel; Wrexham; Richborough Connection; Glyn Rhonwy Pumped Storage; North London Heat and Power) have excluded these or similar works, or in some cases more intrusive or extensive works (see e.g. Glyn Rhonwy Pumped Storage and North London Heat and Power) from the definition of 'commence' (e.g. removal of buildings and structures; installation of temporary facilities). The Applicant considers that it has struck a reasonable balance in this case in terms of the works that it is seeking to exclude.
1.5.4	Applicant	**Article 2, Interpretation, 'cycle track'** The term 'cycle track' is included but does not appear to be relevant to the dDCO. The term 'restricted byway' is not included but appears to be relevant to the dDCO. Please check all interpretations and include those relevant to the dDCO.	The term 'cycle track' will be deleted from the definitions in Part 1 as it is not used elsewhere in the dDCO. The term 'restricted byway' is used to identify a number of routes. A definition of restricted byway will be added to the dDCO as follows: *"restricted byway" has the meaning given in Section 48(4) of the Countryside and Rights of Way Act 2000* The Applicant proposes to correct this point in the next revision of the dDCO to be submitted at Deadline 2.
1.5.5	Applicant, any affected parties	**Article 2, Interpretation, 'Secretary of State'** PINS Advice Note 15 indicates that "generally, a definition for 'The Secretary of State' should not be provided (government departments ask for a general Secretary of State to be assumed to allow for future changes to government machinery)".	The Applicant has considered the definition and on balance, is of the view it is more helpful to include the definition. It is used throughout the document, particularly in Schedule 2 where the Secretary of State is charged with discharging the requirements. However, the Applicant would not strongly object to the deletion of the definition of 'Secretary of State' by the ExA to allow for future changes to government departments in line with para 6.1 of Advice Note 15 if that is the ExA's preference.

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		Are you satisfied it is appropriate to interpret the Secretary of State as set out?	
1.5.6	Applicant	**Paragraph 4.5(b) of the EM refers to the 'power to maintain in article 5'.** Please check that the correct article is referred to in the EM.	The power to maintain is provided in article 6 of the dDCO so para 4.5(b) of the EM will be amended accordingly. The Applicant proposes to correct this point in an updated EM to be submitted at Deadline 2 with the next revision of the dDCO.
1.5.7	Applicant	**Article 4, Disapplication of legislation, etc.** In relation to the disapplication of provisions of the Neighbourhood Planning Act 2017 (the 2017 Act) it is noted that that Act (section 18) would (on commencement) give the power to take temporary possession of land, or a new right over land, by agreement or compulsorily. Are you satisfied that the express provision you refer to in the dDCO is appropriate given that the 2017 Act provisions aim to provide a consistent regime for the use of temporary possession powers including additional protection for affected landowners?	The primary reason for disapplying the provisions of the 2017 Act is that these provisions are not in force and so cannot be applied and a date has not yet been appointed to bring them into force. As noted in the EM, the provisions in the 2017 Act are new and untested, whereas the provisions that are included in the dDCO in articles 33 and 34 have their roots in the model provisions and a host of previously made orders, including the recent A19 Testos scheme. They are therefore well established and have been tested on numerous schemes which have already been carried out. In many respects they therefore offer a more consistent regime than the provisions in the 2017 Act. It would be unwise for the Applicant to proceed on the assumption that the provisions of the 2017 Act will come into force at some point during the examination, and the Applicant therefore considers it appropriate for the existing provisions in the dDCO to remain. The Applicant will give consideration to the National Farmers' Union (NFU)'s request that 3 months' notice be given in relation to taking temporary possession of land under the dDCO.
1.5.8	Applicant	**Reference to temporary possession of land in DCO** Paragraph 4.12 of the EM refers to the temporary possession of land being 'dealt with by articles 32 and 33'. Please check that the correct articles are referred to in the EM.	Temporary possession of land is dealt with by articles 33 and 34 so para 4.12 of the EM will be amended accordingly. The Applicant proposes to correct this point in an updated EM to be submitted at Deadline 2 with the next revision of the dDCO.

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1.5.9	Applicant, EA	**Ancillary works** Paragraph 4.14 of the EM indicates that there are not considered to be any ancillary works in this case. However, Schedule 9, Part 3, article 21 refers to ancillary works. If satisfied that there would be no ancillary works would there be a need for this reference within the dDCO?	The term 'ancillary works' is used in the definitions in the EA protective provisions in a general sense and is not referring to works forming part of the authorised development. In any event, it is proposed that the EA protective provisions be deleted at the EA's request, so this wording will not be included in the next revision of the dDCO.
1.5.10	Applicant, CC	**Adjacent land in article 5** As explained in paragraph 4.15 of the EM article 5 paragraph (2) of the dDCO would provide that any enactment applying to land within or adjacent to the Order limits would have effect subject to the provisions of the Order. (a) Are you satisfied that it would be appropriate to simply refer to the term 'adjacent' without greater clarity on the extent and limit? (b) Are there any specific enactments causing concern in relation to the proposed Order land?	(a) Yes, since it would be difficult to specify a precise distance from the Order limits for the purposes of this provision. In practice, the extent of 'adjacent' land would need to be judged on a case by case basis, but would only be to the extent necessary for the construction and operation of the authorised development, so is not likely to extend a great distance beyond the Order limits. This article has been accepted in other orders and is well precedented. The only obvious example of where activity may take place on 'adjacent' land under the DCO, thereby potentially engaging the provisions of this article, is in article 22, which gives the Applicant authority to enter land for the purpose of carrying out surveys and investigations. For the purpose of article 22, the term 'adjacent' would mean the land that was required to be surveyed because it would or might be affected by the authorised development. Paragraph 2 of article 22 requires the Applicant to give owners and occupiers at least 14 days' notice before entering land for this purpose. It is important to recognise that Article 5(2) does not of itself confer powers on the undertaker to carry out any works on 'adjacent' land. It simply clarifies the relationship between the Order and other legislation. It would therefore be an arbitrary and largely unnecessary exercise to try and specify the limits of the term 'adjacent' in this article. (b) The Applicant has carried out a proportionate search for local legislation and has not found any that it considers needs to be disapplied or modified by the Order. However, that is not conclusive and it is possible that such legislation exists. The Applicant has therefore taken a precautionary approach in including article 5(2) to ensure that if an enactment comes to light at a later stage which has not been included in the dDCO, it does not create any issues at a later stage.

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1.5.11	Applicant, CC	**Planning permissions within the Order limits** (a) In relation to article 7 of the dDCO, are there any known planning permissions within the Order limits? (b) If so, is there any reason to suspect that implementation of them may lead to a breach of the Order if granted?	This article is not concerned so much with third party developments as development that might in future be carried out by the Applicant pursuant to a grant of planning permission. It ensures that the Applicant would not breach section 161 of the 2008 Act in carrying out development pursuant to a grant of planning permission provided that the development in question is not of itself an NSIP or part of one, or required to complete the authorised development or enable the use or operation of any part of it. The Applicant is not at present seeking planning permission for any other development within the Order limits.
1.5.12	Applicant, CC, EA, any affected parties	**Deviation from the Order limits** Paragraphs 4.22 – 4.25 of the EM refer to article 8 of the dDCO, which provides for deviation laterally or vertically from the authorised development with respect to certain specified works. Although reference is made to recent example Orders where this was used, it is my understanding that in the M20 and A14 the ability to exceed the maximum limits of deviation was limited to vertical, not lateral and in the M4 no such power was set out. (a) Would it be appropriate to exceed the vertical and horizontal limits of deviation without applying for a change to the DCO in accordance with the processes set out under the 2008 Act? (b) Given that the limits of deviation are themselves designed to permit flexibility to deviate from the proposed scheme, what processes would be put in place for the Secretary of State to determine whether or not the development proposed, in excess of the limits, would give rise to any new or worse environmental effects? Although there	In the M20 and A14 orders the ability to exceed was limited to vertical. The lateral limits of deviation were defined by reference to the works plans however, rather than distances specified in the limits of deviation article. Those orders therefore took a different approach to the one that is proposed here. The M4 scheme was significantly different in that it related to the improvement of an existing road that was not being repositioned, rather than the construction of a new road. (a) The Applicant has given very careful consideration to the limits of deviation that it considers are required in this case. As the scheme is currently a preliminary design, the challenge for the Applicant has been to strike an appropriate balance between including an appropriate degree of flexibility, reflecting that the scheme will not reach the detailed design stage until after consent is granted (if this is the case), and a sufficient degree of certainty and clarity about what the scheme will look like and where it will be positioned. The limits of deviation, and the ability to exceed those limits if the Secretary of State certifies their approval of such an exceedance, have been informed by the wording that has been approved in previously made orders. Although there is a high level of confidence that the scheme can be constructed within the limits of deviation included in article 8, it is possible that the detailed design process may lead to minor exceedances being necessary and there is therefore still a need for an additional degree of flexibility. It is not anticipated that the Applicant would need to rely on the ability to exceed these limits regularly, due to the considerable amount of design work that has already been undertaken and the attention that has been paid to the limits of deviation. However, it cannot be ruled out that there may be occasions where it does prove necessary for the limits to be exceeded and the Applicant has sought to be make this explicit within the DCO. In such cases, if the Applicant can demonstrate that the exceedance would not be so significant as to cause materially new or worse environmental effects compared to

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		is a process in place for the discharge of requirements set out in Part 2 of Schedule 2 (requirements 16 and 17) there is no similar provision for the submission of any information to the Secretary of State in accordance with article 8.	those assessed in the ES, the Applicant would need the approval of the Secretary of State in order to avoid having to seek an amendment to the DCO, as set out in article 8. If the Secretary of State was unable to approve the exceedance because it was considered to cause materially new or worse effects, the Applicant would then need to follow the process for seeking an amendment to the DCO. There are currently two systems for making amendments to DCOs (one for material and one for non-material amendments). However, these procedures are time-consuming and would both cause a significant amount of delay to the delivery of the Scheme. In the Applicant's view, a requirement to use either of these procedures to obtain approval for a minor exceedance would be disproportionate. (b) As noted above it is not expected that the Applicant would be relying on this article to exceed the limits of deviation regularly, and it is only anticipated to be by exception. That reduces the need for there to be a prescribed process as is proposed for the requirements. Although there is no prescribed process as exists in Part 2 of Schedule 2, it is considered that an appropriate process would be followed in the event that the Applicant needed to seek the Secretary of State's approval of an exceedance under this article. In practice, the Applicant would assess the potential impacts arising from the exceedance and compile the relevant environmental information for submission to the Secretary of State, along with an explanation of the change and why it is needed. The Applicant would then consult the local highway authority and the local planning authority to seek their approval of the proposal prior to making an application to the Secretary of State. The Secretary of State would be at liberty to request any additional information they considered necessary to decide whether or not to grant a certificate. There is also a separate process for submission of detailed design proposals and it is likely that the approval of any deviation to the Order limits would also be incorporated into this process.
1.5.13	Applicant, stat undertakers	**List of persons considered to benefit from the DCO** Paragraph 4.27 of the EM provides a list of the works (to fall under article 9 paragraph (2) of the dDCO) and persons considered to benefit. There appear to be discrepancies	The Applicant will double check the relevant parts of the EM and dDCO and will make any necessary amendments. The updated documents will be submitted at Deadline 2.

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		between the list in article 10(4) and that provided in the EM. Please confirm that the correct information is provided in both the EM and dDCO.	
1.5.14	Applicant, stat undertakers	**Security for compensation costs following a transfer** Article 10 paragraph (4) of the dDCO sets out that the benefit of the Order could be transferred or leased to others by the undertaker. How can it be confirmed that these parties would be able to meet the CA compensation costs if the DCO permitted transfer of the CA powers and TP powers to these bodies without further consideration by the Secretary of State?	This is a precautionary provision as most statutory undertakers already have broad powers, including compulsory purchase powers, to relocate equipment themselves. However, the Applicant acknowledges that this point has not been dealt with expressly in this Order or previous orders. In practice, there are three options for dealing with this point: 1. Keep the dDCO as it is, given it has not been considered necessary to provide for this issue in previous orders; 2. Include a provision in the dDCO which requires the consent of the Secretary of State before a transfer to a statutory undertaker can take place; or 3. The dDCO could be amended to provide that the transferee would have the ability to use the works powers but if the compulsory purchase powers were going to be used, the Secretary of State would have to be satisfied that there was sufficient security for compensation. In practice, evidence would need to be submitted to the Secretary of State to confirm that funds for compensation were available. If the ExA is not satisfied with Option 1, the Applicant will consider putting forward a proposed amendment to the dDCO in relation to Option 3. The Applicant is reluctant to propose Option 2, given the delays to the delivery of the Scheme this is likely to cause. It is also important to note that the compensation involved in diverting utilities and services is unlikely to be particularly significant.
1.5.18	Applicant, CC	As explained in paragraph 4.51 of the EM the purpose of article 14 paragraph (9) of the dDCO is to confirm that the matters covered in paragraphs (1) to (7) could be varied or revoked in the future without the need to apply under the 2008 Act for an amendment to the Order.	The Applicant considers that this provision is appropriate and does not defeat the purpose of the provisions in the 2008 Act. Article 14 relates to the classification and regulation of highways. It would be unnecessarily burdensome for an amendment to the order to be required when the change would otherwise normally be dealt with under the provisions of the Highways Act or the Road Traffic Regulation Act. It is not anticipated that this provision would be used to make any changes to the authorised development in the short term and it is aimed more at regulating the long term position, should changes to the network be required in the future (e.g. a change to the speed limit on a road).

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		Are you satisfied that this would be appropriate or would it circumvent the provisions of the 2008 Act?	This provision has been accepted in all previous Highways England orders that have included this article.
1.5.23	Applicant, Tregothnan Estate	**Minerals and compulsory acquisition** Taking account of The Cornwall Minerals Safeguarding Development Plan Document (2018) would article 24 of the dDCO, incorporating Parts II and III of Schedule 2, Minerals, to the Acquisition of Land Act (ALA) 1981 appropriately address the concerns raised by [RR-060]?	The Applicant has had regard to The Cornwall Minerals Safeguarding Development Plan Document (2018) and notes that the Scheme is not in a safeguarded area for the purposes of the DPD. The Applicant is aware that the Estate is concerned about the potential sterilisation of minerals due to the scheme and a meeting between the Applicant and the Estate took place on 4 February 2019. The Applicant considers that the incorporation of the minerals code via article 24 of the dDCO addresses the concerns raised in the Estate's Relevant Representation. The minerals code is contained in Schedule 2 to the ALA 1981. Part 2 of Schedule 2 provides, as a default position, that minerals are excluded from the scope of compulsory acquisition unless they are expressly conveyed. Part 3 prescribes a process whereby if an owner of minerals wishes to work them, a notice is served on the relevant authority. If the authority considers that the working of minerals has the potential to adversely affect the development, it can then serve a counter notice to prevent the owner from working the minerals, in which case compensation provisions are engaged.
1.5.24	Applicant	**Justification for compulsory purchase powers** Article 26 would allow for rights over land to be acquired as well as the land itself, and also for new rights to be created over land, including the power to impose restrictive covenants. (a) Please provide justification for this wide power, bearing in mind that the CA tests must be satisfied in order for the DCO to authorise the CA sought. (b) Is it the intention to permit the creation of the new rights listed in schedule 5 as well as	This article is a standard power in relation to the acquisition of rights and sits alongside article 23 of the dDCO which deals with the acquisition of land outright. Whenever the need for compulsory acquisition arises, the Applicant is obliged to choose between these two powers and decide whether the land needs to be acquired outright or if acquiring rights over the land only is sufficient. The article has its roots in the model provisions and has been included in a significant number of previous orders. (a) The justification for this article is set out in the Statement of Reasons and Explanatory Memorandum. In summary, there is a significant public benefit in including this article in that it prevents the Applicant from having to acquire outright all of the land that is needed for the scheme. There is an obligation on any acquiring authority to only seek compulsory purchase powers for the land that they need to acquire for the scheme. It is therefore necessary to have this intermediate position provided for in article 26 which allows the acquiring authority to acquire rights over the land as an alternative to outright acquisition. It is in essence a 'lesser' form of

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		the creation of any new right over any of the order land? (c) Would the dDCO achieve this? (d) If not, what amendments would be sought?	compulsory acquisition, which minimises interference with property rights and consequently reduces the cost of the scheme. The Applicant is not at liberty to create any right or impose any restrictive covenant it wishes over the Order land; any new right or restrictive covenant must be required to carry out, or facilitate, the authorised development, and so cannot be completely unrelated to the scheme. Paragraph (3) limits the imposition of restrictive covenants to the plots specified in Schedule 5, so the Applicant cannot impose restrictive covenants in relation to any of the other Order land. (b) No. The position is that the plots referred to in Schedule 5 can only be subject to the creation of new rights or the imposition of restrictive covenants as referred to in that Schedule. The rest of the Order land not included in Schedule 5 can be subject to the creation of new rights if that should prove to be appropriate at a later stage. As explained in the EM, although the Applicant has sought to identify all of the plots which it considers can be subject to the creation of rights and has set these out in Schedule 5, the wording of this article ensures that the Applicant retains the flexibility to create rights over the rest of the land. Removing this flexibility could force the Applicant to acquire land outright in the future even if it became apparent that that was not necessary. The provision in article 33 allowing the Applicant to create new rights over land currently identified for temporary possession is taken directly from article 28 of the model provisions and has been included in previous orders.
1.5.25	Applicant	**Disapplication of the 2017 Act** (a) In relation to article 30 are you satisfied that this would be appropriate given that the 2017 Act provisions aim to provide a consistent regime for the use of temporary possession powers including additional protection for affected landowners? (b) Would it be better to more closely reflect that regime? (c) Alternatively could the EM explain why not?	See the Applicant's response to Q1.5.7 above.

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1.5.26	Applicant, Tregothnan Estate	Taking account of The Cornwall Minerals Safeguarding Development Plan Document (2018) would articles 31 and 32 of the dDCO, acquisition of subsoil or airspace only and rights under or over streets, appropriately address the concerns raised by [RR-060]?	As per Q1.5.23, the Applicant considers that the incorporation of the minerals code via article 24 of the dDCO appropriately addresses the concerns raised in the Estate's Relevant Representation.
1.5.27	Applicant, any affected parties	**Article 33, Temporary use of land for carrying out the authorised development.** (a) Are you satisfied that the provisions of paragraph 1(a)(ii) of the dDCO would not affect the compensation payable when that land was, eventually, compulsorily acquired? (b) As 33(8) permits the CA of new rights in land listed in schedule 7 the CA tests would still have to be met, although this land is described as being for temporary use. Please ensure such justification if provided. (c) Are you satisfied that this should not reflect the 2017 Act provisions, which aim to provide a consistent regime for the use of temporary possession powers, including additional protection for affected landowners?	The Applicant is of the view that the Order clearly provides for compensation to be payable whatever compulsory acquisition powers are used, whether this is acquiring land outright, creating new rights or exercising powers of temporary possession. It is certainly the intention of the Applicant to provide compensation in all of these situations. The DCO also provides for the possibility that the Applicant may take temporary possession of land and then subsequently acquire it and the DCO provides for compensation in both of those eventualities. (a) Yes. Paragraph 1(a)(ii) allows the Applicant to enter on and take temporary possession of any of the Order land not included in Schedule 7, provided that the process to acquire that land has commenced by the service of a notice of entry or the making of a general vesting declaration. The Applicant does not consider that this would affect the amount of compensation payable and notes that paragraph 5 of this article requires the Applicant to pay compensation to the owners and occupiers of land temporarily possessed under this article for any loss or damage arising. Any loss that may arise that may not be covered by this provision would be covered by the general principles of compensation embodied in the 'compensation code', in that the claimant should not be in any worse position as a result of the scheme as far as money can provide compensation. The affected parties would be compensated in the normal way for the subsequent acquisition of the land. All effects of the Scheme are accounted for under the provisions of the compensation code, even if they occur before formal notices or acquisition takes place. (b) See the Applicant's response to Q1.5.24 above. The Statement of Reasons sets out how the Applicant considers the CA tests are satisfied in relation to the land that is proposed to be subject to temporary possession and use (see section 5, the case for compulsory acquisition). (c) See the Applicant's response to Q1.5.7 above

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1.5.28	Applicant, any affected parties	**Private water and sewerage supplies** Article 37 of the dDCO deals with recovery of costs of new connections in relation to statutory undertakers apparatus. How are private water and sewerage supplies to be dealt with?	The Applicant's intention is to ensure that all private water and sewerage supplies are dealt with as part of the detailed design and construction of the scheme (although note the provisions relating to private sewers in article 37). The Applicant is confident that it has identified where all private supplies are. In all cases it is satisfied that an alternative solution is available. In all cases a detailed hydrogeological study will be required before final details can be confirmed, which would be carried out during the detailed design stage. Where the potential for impacts to private water supplies remains unclear, a detailed assessment of groundwater levels and flows will be undertaken during detailed design to fully understand the potential impact upon each feature of interest. Where, following this assessment, the potential for impacts remains unclear or is certain, a new private water supply (e.g. a borehole) will be established following discussion with the landowner. These commitments are secured in the outline CEMP (see Table 16-3 Record of Environmental Actions and Commitments).
1.5.29	Applicant, CC, any affected parties	**Identification of hedgerows to be removed** Following PINS Advice Note 15, paragraph 22.1 and Good Practice Point 6, in relation to article 39, where it is known that specific hedgerows need to be removed they should be listed in a Schedule and this article amended to refer to that Schedule. An additional paragraph should be added to this article to the effect that any other hedgerows should only be removed once the prior consent of the local planning authority has been obtained. Is there any reason not to include this matter within the DCO?	The difficulty with providing a detailed schedule of all of the hedgerows that need to be removed at this stage is that the Scheme has not yet reached the detailed design stage, and it is not yet known for certain the exact lengths of hedgerows that will be affected. The Applicant is seeking some flexibility in the DCO in relation to the Scheme and that has the potential to affect the lengths of hedgerow that are ultimately removed or retained. Any schedule attempting to list all of the hedgerows in turn would be of significant length. The ES reports that approximately 11.5km of hedgerow (including Cornish hedgerow) would be removed (see Chapter 8, table 8-15). The ES does not assess the impacts of removing hedgerows by reference to a precise list of individual lengths of hedgerow within the Order limits. Rather, the total lengths (which are stated to be approximate) have been calculated by reference to plans entitled 'Trees and Hedgerows to be Removed or Managed' (APP-027 and APP-028) which aim to illustrate the location of the hedgerows which are likely to be removed. The ES also notes that approximately 21km of hedgerow is to be planted as part of the Scheme which would result in a net increase of 9.5km of hedgerow. As they were not produced for the purpose of being prescriptive, if the hedgerows identified in these plans were required to be listed in a schedule to the dDCO, the Applicant would request that it is made clear that this list is not definitive and that other hedgerows not listed in the schedule may be identified for removal at the

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			detailed design stage, whether or not that is subject to the prior approval of the Secretary of State (rather than the LPA), in line with the rest of the approval mechanisms in the dDCO. Because of the difficulties in producing a definitive list of all the hedgerows that are to be removed as part of the Scheme, the Applicant is considering whether this can be addressed in the requirements as an alternative. The dDCO currently contains a number of requirements that would be relevant to this point such as those relating to the CEMP, landscaping and the detailed design. The Applicant will provide an update on these considerations at Deadline 2 with the revised dDCO. In response to Cornwall Council's comment that there may be confusion over whether or not Cornish hedgerows are included in the term 'hedgerow', the Applicant is considering amendments to the definitions to clarify which hedgerows are referred to. Any amendments will be included in Revision C of the dDCO at Deadline 2.
1.5.30	Applicant	**Article 41 – the application of landlord and tenant law** Please provide justification for the powers provided by article 41 in the circumstances of this particular scheme, notwithstanding the precedent in other DCOs.	The Applicant is not able to say with any certainty at this stage whether an agreement of the kind referred to in this article will be granted in respect of the scheme. Accordingly the Applicant is not able to provide specific justification for this article at this stage, other than to say that it replicates the wording of the model provisions and has been included in previous Highways England orders. The Applicant would prefer to retain the existing wording on a precautionary basis as the previous schemes have done.
1.5.31	Applicant	**Keeping Schedule 10 up to date** What provisions have been put in place to ensure that Schedule 10, as referred to by article 45 of the dDCO, is up to date should changes arise to the documents to be certified?	The Applicant is aware of the need to keep Schedule 10 up to date as changes to these documents arise, so in each revision of the dDCO we will cross-check against the latest versions of the documents that are referred to and ensure that the references that have been assigned in the examination library are recorded in the Schedule as well.
1.5.33	Applicant	**Associated development** In relation to Schedule 1 to the dDCO and the EM, and notwithstanding the potential for some overlap, please can you clarify the works which form part of the NSIP and the associated development.	The Applicant can confirm that all of the works included in Schedule 1 have been subject to EIA and are considered to be necessary or expedient. There is no consistency with regard to how associated development has been approached in previous orders over the last ten years. The Applicant has chosen not to identify associated development separately from the main works in Schedule 1 as it did not consider there to be sufficient value in such an exercise. Separating out the

Q. No	Directed to	ExA Question	Summary of Oral Submissions
		In particular, there needs to be justification that all of the works would be necessary or expedient and have been subject to EIA.	associated development within the dDCO would be problematic for the Applicant at this stage as a significant number of amendments would be required to re-organise and re-number the works in Schedule 1. Considering that separating out the associated works would not have any impact on the legal operation of the DCO, the Applicant proposes to leave Schedule 1 as drafted. However, the Applicant can provide the ExA with a list of the associated development works if this is considered to be necessary. In response to the query from the NFU regarding the activities that may take place within the construction compounds, further information can be found in Chapter 2 of the Environmental Statement, in particular at paragraphs 2.6.63 to 2.6.69 and 2.7.13.
1.5.35	Applicant, CC, EA	**Protective provisions in favour of the EA** (a) Given the comments by the EA (RR-098] in relation to Schedule 9, Part 3 of the dDCO, should this part of the Schedule be removed from the dDCO? (b) Given that the proposal crosses ordinary water courses is the appropriate consenting regime addressed and, if so, how? (c) If this is not the case how would an appropriate consenting regime be addressed?	(a) The EA has requested the deletion of the protective provisions in its favour from the dDCO. The Applicant understands that this is on the basis that there are no main rivers within the Order limits that stand to be affected and therefore there is no need for protective provisions within the dDCO. The Applicant is content to delete the EA protective provisions and will do so in the next revision of the dDCO. (b) This will be dealt with outside of the DCO via the ordinary consenting process with Cornwall Council: see the Details of other Consents and Licences document, paragraph 2.2.7.
1.5.36	Applicant	**Deemed consent in the dDCO** In relation to applications for consent where the dDCO provides for deemed consent/approval, what measures would be in place to ensure and demonstrate that appropriate consent was sought from the appropriate person/body at the appropriate time?	No formal process is proposed in the dDCO, but in practice the Applicant would have a record of the date on which the written request for consent was sent to the body in question which it could produce if required. The Applicant expects to maintain up to date records for who it will need to contact at each of the bodies in question and it will endeavour to record those details in the SoCGs where applicable.

If you need help accessing this or any other Highways England information, please call **0300 123 5000** and we will help you.

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