

From: [A303 Sparkford to Ilchester](#)
To: [Anderson-Rowe, Asha](#)
Subject: FW: TR010036 - A303 Sparkford to Ilchester Dualling - SCC Deadline 3 Submission
Date: 11 February 2019 12:39:24
Attachments: [TR010036_SCC_Review_of_HE_answers_to_FWO_Deadline_3.pdf](#)
[TR010036_SCC_confirmation_of_attendance_at_ASI.pdf](#)
[TR010036_SCC_Deadline_3_Cover_Letter.pdf](#)
[TR010036_SCC_Review_of_Draft_DCO_Deadline_3.pdf](#)

From: Tessa Bond [mailto:TBond@somerset.gov.uk]
Sent: 08 February 2019 15:58
To: A303 Sparkford to Ilchester
Subject: TR010036 - A303 Sparkford to Ilchester Dualling - SCC Deadline 3 Submission

FAO Lesley Coffey

YOUR REF: - TR010036

Application by Highways England for an Order Granting Development Consent for the A303 Sparkford to Ilchester Dualling Submission made by Somerset County Council pursuant to Deadline 3 of the Examination Timetable

Please find attached the following documents submitted in accordance with the Examination Timetable published on the 21st December 2018:-

- Cover Letter
- Somerset County Council's review of the draft Development Consent Order
- Somerset County Council's commentary on the applicant's response to First Written Questions
- Accompanied Site Inspection – confirmation of attendance

If you have any queries in respect of the above please do not hesitate to contact me. Confirmation of receipt would be appreciated.

Kind regards,

Tess Bond
Senior Planning Officer
Infrastructure Programmes
Somerset County Council

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My working days are Wednesday, Thursday and Friday

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The Planning Inspectorate
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Please ask for
Andy Coupe

Direct line
01823 355145

My reference

Your reference:
TR010036

Sent by e-mail

8 February 2019

Dear Ms Coffey

**PLANNING ACT 2008
APPLICATION BY HIGHWAYS ENGLAND FOR AN ORDER GRANTING DEVELOPMENT
CONSENT FOR THE A303 SPARKFORD TO ILCHESTER DUALLING**

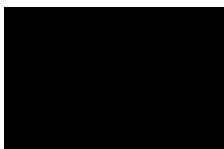
SUBMISSION MADE PURSUANT TO DEADLINE 3

This submission is in response to the Examining Authority (“ExA”) Rule 8 letter dated 21st December 2018 and comprises the relevant information requested from Somerset County Council (SCC)

The submission includes the following: -

- 1. Somerset County Council’s review of the draft Development Consent Order**
SCC has reviewed the draft Development Consent Order dated January 2019 - Rev C, issued by the applicant at Deadline 2. Our comments are attached.
- 2. Somerset County Council’s commentary on the applicant’s response to First Written Questions**
SCC has reviewed the applicant’s responses to the ExA’s First Written Questions. There are some instances where we consider commentary on the applicant’s answers is necessary to assist the ExA in understanding the Council’s latest position. Our comments are attached.
- 3. Accompanied Site Inspection – confirmation of attendance**
As requested in Annex C of the Rule 8 letter, our notification in respect of attendance at the Accompanied Site Inspection is provided under separate cover and attached to this response.

Yours sincerely,



Andy Coupe
Strategic Manager (Infrastructure Programmes)

Application by Highways England for an Order Granting Development Consent for the A303 Sparkford to Ilchester Dualling

Planning Inspectorate Reference: - TR010036

Deadline 3 – Comments on the Draft DCO (Document 3.1 dated January 2019 – Rev C)

Ref:	Item	Comment and/or draft amendment
1.	Article 2. Drafting of “local planning” and “relevant planning authority”	<p>Drafting inconsistency in relation to the definition of “local highway authority”, “local planning authority” and “relevant planning authority”. The former is specified as Somerset County Council (SCC), but no clarification is given in relation to the latter two expressions. Both SCC and South Somerset District Council are local planning authorities for the purposes of the Town and Country Planning Act 1990. The definitions need to make clear whether references to the local planning authority and relevant planning authority are references to both authorities or different authorities in each circumstance.</p> <p>The Planning Inspectorate’s guidance on Drafting Development Consent Orders states:</p> <p>“6.2 Where there is more than one relevant planning authority (or other authority), this should be made clear in the definitions”</p> <p>The Model Provisions¹, which whilst repealed are still useful as guidance, deal with this in relation to the relevant planning authority as follows:</p> <p>“relevant planning authority” means—</p> <p>(i) the district planning authority for the area in which the land to which the provisions of this Order apply is situated unless the provisions relate to the construction or alteration of a hazardous waste facility, in which case it means the county planning authority;</p> <p>.....</p>
2.	Article 2 Definition of “trunk road”	<p>The current drafting requires clarification as the roads which are trunk roads pursuant to this definition will change through the course of the authorised development. Some roads will remain trunk roads throughout the process, some will become classified as trunk roads and some will be de-trunked pursuant to Article 14.</p>

¹ The Infrastructure Planning (Model Provisions)(England and Wales) Order 2009 S.I. 2009/2265

Ref:	Item	Comment and/or draft amendment
		<p>Consequently, this impacts on the interpretation of provisions such as article 13 which relates to the construction and maintenance provisions of highways other than trunk roads, where it would appear that the intention is that these provisions apply to all roads which will not become trunk roads or will not remain trunk roads as a result of the authorised development.</p> <p>An amendment is required to this definition and article 13 (below) to clarify that reference to trunk roads means roads which are trunk roads and will remain trunk roads following completion of the authorised development or will become trunk roads as a result of the authorised development.</p>
3.	Article 3 Disapplication of Legislative Provisions	The provision under the Land Drainage Act to regulate activities in watercourses is applied by SCC (for ordinary watercourses outside Internal Drainage Board areas). The Explanatory Memorandum notes in para 4.12 that the consent of the Environment Agency and the relevant drainage authorities is required for the inclusion of these provisions and these consents are being sought. SCC is in consultation with the Environment Agency and the Internal Drainages Boards with a view to providing a co-ordinated response to this provision.
4.	Article 4 Maintenance of Drainage Works	It is noted that this is not a Model Provision but is considered by the undertaker “to be a sensible inclusion” to clarify who has responsibility for the maintenance of drainage works” (para 4.16 of the Explanatory Memorandum). SCC agrees that it is sensible to clarify who has responsibility for the maintenance of drainage works carried out as part of the scheme or affected by the scheme, and in principle this is expected in general to reflect current responsibilities, but detailed design has not been provided and a requirement for the undertaker to seek the approval of SCC to the detailed drainage needs to be included.
5.	Article 5(1)	<p>After “(requirements)” insert “attached to this Order” for clarity.</p> <p>Article 2 of the Model Provisions differentiate between the “authorised development” and the “ancillary works”, and grants consent to each, whereas in the draft DCO it appears that the two have been amalgamated into Schedule 1. It is considered that distinction serves a useful purpose in terms of clarifying those ancillary works for which consent is sought but which are not development within the meaning of section 32 of the Planning Act 2008 and which are not the subject of a separate provision in the Order.</p>
6.	Article 5(2) development consent etc	This is not within the Model Provisions and in any event relates to the modification or disapplication of legislative provisions rather than the grant of consent to the development, as referred to in the heading of this article. On this basis it would seem better placed within Article 3.

Ref:	Item	Comment and/or draft amendment
		<p>This provision is drafted extremely widely on this basis it does not fall within the provisions of section 120(5) of the 2008 Act which states:</p> <p><i>An order granting development consent may—</i></p> <p><i>(a) apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the order;</i></p> <p>Furthermore, para 25.2 of the Drafting Development Consent Orders states:</p> <p><i>25.2 The power to apply, modify or exclude an existing statutory provision should be set out in an Article in the main body of the draft DCO. Those provisions that are proposed to be applied, modified or excluded by a DCO should be clearly identified, and, if extensive, identified in a Schedule or Schedules.</i></p> <p>The current drafting of this provision does not conform with the statute and guidance and needs to be amended. Furthermore, clarification needs to be provided as to the extent to which it could or should apply to land outside the order limits as currently the drafting refers to land “adjacent to the Order limits”.</p> <p>If this provision is accepted, it is suggested that it is stated that the limitation on enactments on adjacent land is effective only insofar as it is necessary for the Development permitted by the Order to be carried out.</p>
7.	Article 9(2) Benefit of Order	<p>The need for this provision is queried given the scope of Article 10(1). The undertaker is requested to confirm whether there are any works which are granted for the express benefit of the parties specified. The concern would be that the provision allows others to carry out works on adjacent to or in the vicinity of a highway and which may impact on the safety of those using the highway.</p>
8.	Article 11(1) Street Works	<p>It appears from paragraph 4.34 of the Explanatory Memorandum and from our own investigations that this article does not feature in other DCOs securing highway infrastructure other than the M4 order.</p> <p>Furthermore, whilst a similar provision appears in the Model Provisions it is noted that the Model Provisions do not contain an article equivalent to article 12 of the draft DCO. Instead the Model Provisions provide for the undertaker to agree with the street authority the carrying out of street works in such streets as are specified in a schedule, with the provisions of sections 54 to 106 applying to any such works thereby ensuring that the street authority has sufficient control over the carrying out of the works on streets for which it is ultimately responsible.</p>

Ref:	Item	Comment and/or draft amendment
		<p>It would therefore appear that this article is unnecessary and should be deleted, or alternatively an explanation provided as to why it has not been sought in other highway DCOs.</p>
9.	<p>Article 12 Application of the 1991 Act</p>	<p>SCC is required under the Traffic Management Act and the Network Management Duty of the Local Traffic Authority to consider the impact of the works on the local highway network. The disapplication of certain provisions of the 1991 Act by article 12(3) restricts SCC's ability to perform these duties. This is unacceptable as this takes away SCC's powers and duty to manage our highway network and protect its highway assets.</p> <p>The provisions of the draft Traffic Management Plan are not sufficient to allay SCC's concerns in this respect, and consequently SCC will require requirement 11 to be amended to ensure that its approval is sought to the traffic Management Plan and that it is not just consulted on its provisions.</p>
10.	<p>Article 13 Construction and maintenance of new altered or diverted streets and other structures</p>	<p>The maintenance provisions in paragraphs (1), (2), (3) and (4) are subject to the maintenance provisions in (5) and (6), so each paragraph should be amended to include "Subject to maintenance provisions in paragraphs (5) and (6)" at the start. This was the drafting adopted in relation to the A14 DCO.</p> <p>Furthermore, to ensure that all the highways for which the local highway authority will ultimately become responsible are completed to its reasonable satisfaction, the wording in brackets in the first line of article 13(1) and 13(2) should be amended to read "(other than a highway which will become a trunk road or will remain a trunk road under the provisions of this Order)". This is to ensure that de-trunked sections of road are in an acceptable condition prior to SCC becoming responsible for their maintenance.</p> <p>SCC would expect the highways in paras (1) - (6) for which it will be responsible to be open to traffic for a minimum period of 12 months to ensure that they have been completed to its satisfaction, and would require the undertaker to maintain the highways in question for this period, as is provided in relation to streets for which SCC may also be responsible as street authority in para (3).</p> <p>The provision of a maintenance period or Defects Liability Period (DLP) is an Industry accepted practice and one applied to all new development infrastructure within Somerset secured via a traditional means (TCPA S278, S106).</p> <p>The standard maintenance period / Defects Liability applied by SCC is 12 months. This is considered to be an appropriate period to enable defects within the construction to become apparent. Whilst it is acknowledged that the</p>

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		<p>majority of defects will manifest themselves relatively quickly when subjected to traffic, some items are more gradual in appearing.</p> <p>Example:</p> <p>A residual defect might be “inappropriate compaction of sub base in an area of carriageway” This area could be inspected at completion without a defect being apparent as the area would not have been subject to trafficking, however upon trafficking during the maintenance period the carriageway may show signs of failure resulting in deformations within the surface course’</p> <p>The 12 month maintenance period / DLP ensures that this defect is suitably captured and rectified, by the developer’s contractor, prior to becoming the responsibility of the local highway authority.</p> <p>SCC would propose to issue a certificate upon the expiry of the maintenance period which would record the date from which SCC became responsible for the maintenance of the highway. The inclusion of wording in the article to confirm that the highway has been completed to SCC’s satisfaction upon the issue of a certificate to that effect removes any ambiguity as to whether and on what date a highway has been completed and which authority is responsible for its maintenance. The article needs to be amended accordingly.</p> <p>A mechanism needs to be provided in relation to paragraphs (1) (2) (3) (4) (5) and (6) whereby the undertaker pays a commuted sum to the LHA where the LHA will become responsible for the maintenance of structures, and other non-standard assets, as a result of the scheme.</p> <p>The A14 DCO also makes provision for altered or diverted public rights of way, where they were diverted over private vehicular routes, to be maintained by the person with responsibility for the vehicular route. Some of the proposed rights of way are coincidental with, or adjacent to, vehicular access tracks and are more suited to being privately maintained by the undertaker or owner of the route as part of their estate management. It would be logical to document those rights of way that will be privately maintained in the DCO to provide clarity and avoid confusion.</p>
11.	Article 14(2) Classification of Roads	The draft DCO in Article 14, paragraph 2 refers to a date of de-trunking to be set by the Undertaker (“On such day as the undertaker may determine”). It is not acceptable to the County Council that a date for de-trunking can be unilaterally set by the Undertaker. The County Council should only become responsible for the de-trunked sections of road when due diligence processes, and all remedial repairs, alteration, conversion, and improvement works have

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		<p>been completed to the County Council reasonable satisfaction, and all redundant assets, cables, services, plant and equipment have been removed. This needs to be provided for in the DCO. It is understood that the same issue arose in relation to the A14 DCO and a legal agreement between Highways England and the County Council was negotiated and the DCO amended to address these concerns.</p> <p>In accordance with the drafting of the A14 DCO, paragraph (2) should be amended and a new paragraph added as follows: (2) Subject to paragraph (X), on such day as the undertaker may determine, the roads described in Part 2 (roads to be de-trunked) of Schedule 3 are to cease to be trunk roads as if they had ceased to be trunk roads by virtue of an order made under section 10(2) of the 1980 Act specifying that date as the date on which they were to cease to be trunk roads. (X) The undertaker may only make a determination for the purposes of paragraph (2) with the consent of the Secretary of State, who must consult the local highway authority before deciding whether to give that consent.</p> <p>An obligation should be introduced either in the DCO or the legal agreement that would enable the County Council to draw down from a contingency to deal with any anti-social use of any length of highway that is proposed to be detrunked – the length between Hazelgrove roundabout and the Mattia Diner being a case in point.</p>
12.	Article 14(6) Classification of Roads	Reference to the relevant planning authority should be amended to refer to the local highway authority. The DCO currently provides for the routes to be open for use from the date on which the authorised development is open to traffic. As various sections of the authorised development will be open for traffic at different stages, the reference to a single date is ambiguous. Providing there is no impediment to lifting the temporary closure/ making the route available earlier, then that should be done, and this paragraph needs to be amended to reflect this.
13.	Article 26(2) Compulsory acquisition of rights	The undertaker's powers' in relation to land specified in column (1) of Schedule 5, which includes land required to form public highway, are limited to the acquisition of rights. However, in the creation of public highway the subsoil must vest in the highway authority and the inclusion of such land in Schedule 5 is considered inappropriate and inconsistent with the undertaker's approach in relation to the acquisition of land for the trunk road. An amendment is sought to remove the land required for highway from Schedule 5 to include it as part of the Order land.
14.	Article 27 (2) Public Rights of Way	Prior to the extinguishment of any public rights of way the undertaker should, where applicable, have provided the relevant alternative section of public right of way identified in column (4) of Part 2 and 4 of Schedule 4 and shown on the rights of way and access plans. This provision was included in the A14 DCO and ensures that the interference

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		<p>with use of public rights of way and the inconvenience caused to the users of such rights as a result of the authorised development is minimised.</p> <p>Sparkford to Ilchester improvement and slip roads Side Roads Order 1996 made changes to a number of different roads and rights of way, a notable addition being bridleway Y 30/29 (presumably as mitigation for Y 30/28 terminating at a dual carriageway at grade). There is the possibility that the 1996 Sparkford to Ilchester Side Roads Order has some validity even though the scheme was not constructed. It is recommended that the order is revoked prior to conclusion of the DCO examination. If it is not, then a mechanism will need to be established within the DCO to give effect to such.</p>
15.	Article 33 Temporary use of land for carrying out the authorised development	<p>This article relates to Schedule 7, which lists in it works relating to the construction of highway links, improvements to road junctions and the diversion of public rights of way. It is not clear why some sections of highway are included in Section 5 and some in Section 7, as the compulsory acquisition powers available to the undertaker vary in accordance to which Schedule the land is included. The inclusion of land which is to become part of the public highway in Schedule 7, which relates only to the temporary use of land is an anomaly, as the owner is to all intents and purposes dispossessed of the land permanently as a result of the construction and use of the land as a public highway.</p> <p>The permanent works which need to be retained should be identified in the DCO and a provision included that the owner of the land in which the permanent works are located will not interfere with them.</p>
16.	Schedule 1	<p>The model provisions suggest that the definition of authorised development, to include associated development, is correct, but includes a separate definition for ancillary development and lists it in a separate part of the Schedule to the authorised development. There is no definition of ancillary development in the draft DCO, and it is queried whether some of the works specified in Schedule 1 are actually ancillary works, comprising works which are not development within the meaning of section 32 of the 2008 Act.</p>
17.	Schedule 2 Requirement 1. Interpretation and Requirement 3	<p>As identified in the LIR, SCC seeks the amendment of requirement 3 so that its approval is required to the CEMP and Traffic Management Plan, and it is not just consulted.</p> <p>The definition of the “HEMP” notes that it will be developed towards the end of the construction period, whereas requirement 3(4) suggests that the conversion of the CEMP into the HEMP will not occur until completion of construction. Requirement 3(4) should be amended to reflect the provisions of the definition.</p>

Ref:	Item	Comment and/or draft amendment
	Construction Environmental Management Plan	
18.	Schedule 2 Requirement 3 CEMP	Amend reference to “carriageways” in requirement 3 (f)(iii) to “highways” to be more complete because as presently drafted it excludes tie-ins to existing rights of way. Typographical error: point 2(f) should be 2(e)(i) and the points following re-numbered.
19.	Schedule 2 Requirement 4 Details of Consultation	The requirement to consult needs to be extended to the detailed design of those sections of road which will be de-trunked on completion of the authorised development. The undertaker should be required to provide a complete copy of any consultation response if the consultee requests it and requirement 4(2) should be amended to provide for this.
20.	Schedule 2 Requirement 8(3) Land and Groundwater contamination	Typographical error: replace undertaker with undertake in the penultimate line
21.	Schedule 2 Requirement 9 Archaeology	The term “County Archaeologist” is not appropriate in this context as SCC does not employ a county archaeologist. This term should be replaced with “Somerset County Council’s archaeological advisor”. The term “Watching Brief” should be replaced with “Archaeological Monitoring”. In respect of requirement 9(6) it is considered that a clear timescale should be provided as the current wording is not precise and is considered open ended. The following is proposed <i>“within two weeks of the completion of the authorised development, details associated with the provision of long-term storage of the archaeological archive including suitable resources will be submitted to Somerset County Council’s archaeological advisor for approval. The approved details will be implemented in full.”</i>
22.	Schedule 2 Requirement 11 Traffic Management	The Statement of Common Ground records that Highways England has developed an outline Traffic Management Plan and that the main contractor will continue to develop these proposals throughout 2019 and leading up to commencement on site. As a result, details for the management of traffic during construction are not yet clear though provisions of Articles 15, 16 and 19 of the DCO and Requirement 11 are noted regarding implementation of temporary traffic regulatory measures and approval of the Traffic Management Plan.

Ref:	Item	Comment and/or draft amendment
		<p>A requirement stipulating the need for a Detailed Local Operating Agreement (DLOA) to be entered into prior to commencement is needed to protect local road network assets during the construction phase.</p> <p>SCC considers that the TMP and DLOA should be approved at the local level with the Local Planning Authority and Highway Authority, rather than by the Secretary of State. The TMP should also fully incorporate the management of off-road traffic. Requirement 11 should be amended accordingly.</p> <p>In the absence of any commitment/ clarity regarding detailed construction traffic management proposals, a mechanism should be secured for measures to be undertaken by Highways England for it to address any unintended or unassessed impacts which arise as a result of carriageway closures. A financial contingency should also be secured for Somerset County Council to be able to undertake any road repairs that become necessary as a result of diverted and/ or rat running traffic.</p> <p>The traffic management plan has no consideration of off-road highway network. Other documents do recognise the need for temporary closure and temporary alternatives for those public rights of way that will be affected during the construction phase, however there is limited detail, and this is an area that will need to be considered in full alongside the temporary road closures.</p>
23.	Schedule 2 Requirement 12. Detailed Design	<p>The LHA is only consulted on departures from the preliminary scheme design and not the detailed design itself. Requirement 12 should be amended to require the undertaker to seek the approval of the LHA to the detailed design. It is assumed in developing the mitigation proposals that current governmental design guidance has been followed for road junctions and crossings, particularly in relation to equestrians. Details of surfacing and any other structures are still to be agreed with SCC.</p> <p>In relation to the A14 DCO, HE agreed with the LHA in the SoCG that it would consult with the LHA on the detailed design and adopt its reasonable comments. There was reference in the proceedings that HE would enter into a legal agreement with the LHA which would make provision relating to the handover of the de-trunked roads, the design and construction and alteration of the new local roads and rights of way to the satisfaction of the LHA, in order that the Council could continue to perform its statutory functions as LHA. The agreement included the payment of a design and check fee and inspection fees. The existence of such a legal agreement would offer SCC some comfort that it would be properly consulted on the detailed design and reimbursed its costs for doing so.</p>

Ref:	Item	Comment and/or draft amendment
		<p>Requirement 12 wording should be amended to be inclusive of Rights of Way & Access Plans to ensure that the design of the junctions and crossing points for NMUs and the surface treatments are captured under this requirement and that details relevant to SCC in relation to Local Road Network and Rights of Way Network are submitted to SCC for approval.</p>
24.	<p>Schedule 2 Requirement 13 Surface Water Drainage</p>	<p>13(1) should also include the IDB, not just EA and LLFA or be more generalised, e.g. “appropriate drainage authorities”. The minimum standards in 13(5) (a) – (c) are not necessary and are covered more appropriately in 13(6) if the reference to climate change in 13(5) (d) is added.</p> <p>Requirement 13 must be amended to include the need to submit detailed designs of the drainage systems for approval, including the phasing of construction and stages at which the drainage system will become operational. Requirement 13 should also be amended to reflect the drainage design criteria in the agreed Flood Risk Assessment.</p> <p>Requirement 13 should also be amended to include the need to provide details of the arrangement to maintain the drainage systems for approval. This will be important to ensure the drainage system continues to perform as originally designed, for the lifetime of the scheme and to meet the requirements of Paragraph 5.100 of the NPSNN and the National Standards and the National Standards published by Ministers under Paragraph 5(1) of Schedule 3 to the Flood and Water Management Act 2010. The undertaker should be obliged to secure adoption and maintenance arrangements for any SUDS.</p>
25.	<p>Schedule 3 Classification of Roads and 4 Highways to be stopped up</p>	<p>Several amendments have been identified in the LIR in relation to the rights of way provisions.</p> <p>Typographical errors:</p> <p>1) Omission of path sections from DCO (Sheets 3 & 4 Rights of Way & Access Plans) AW-AY, AZ-BA-BB-?, BZ-CA-CB-CD-?, BL-BK, BD-BY-BN, BY-BE has been omitted from these Schedules</p> <p>2) Incorrect path status (Ref. Draft DCO Schedule 4 Part 2 & Schedule 3 Part 11. Sheet 4 Rights of Way & Access Plans.) BM-BN referenced as new bridleway. BO-BP referenced as new footpath. BN-BO omitted. BR-BS and BT-BU referenced as footway/ cycleway Amend DCO to reference BM-BN-BO-BP as new footpath. BR-BS and BT-BU - amend to bridleway or</p>

Ref:	Item	Comment and/or draft amendment
		<p>restricted byway to be more inclusive provided a safe equine crossing can be achieved across the A359</p> <p>Further amendments required:</p> <p>1) In order to update the Definitive Statement that accompanies the Definitive Map it is best practice to include the width and limitations of the new rights within the order. It can be very difficult to interpret such information from order plans, hence reference to this information is best placed in a schedule.</p> <p>The Public Path Orders Regulations 1993. Schedule 1 sets out the form of each type of Highways Act order (creation, extinguishment, diversion). The schedule to the order must 'Describe position, length and width of path or way...'. In addition to the Regulations, paragraph 5.13 of Circular 1/09 states that '...authorities should specify widths in every 1980 Act order'. This is supported by the Planning Inspectorate's advice note on widths, paragraph 4 seems to be of particular relevance. While there is no strict requirement for provision of limitations within path orders, by doing so it avoids a subsequent authorisation process after the development has been completed and is also more transparent as to what is being proposed as part of the new path network. It is assumed, but not known, that the inclusion of widths and limitations within the DCO will not be contrary to any Planning Act 2008 regulations.</p> <p>The DCO should therefore be amended to include a schedule of limitations and widths. This could be a pre-commencement requirement if not attainable prior to examination. Work has already commenced on such a schedule. Inconsistencies exist that require resolution.</p> <p>2) When the Ilchester bypass was provided there was a Side Road Order made in 1974. This made a number of changes to the rights of way. These changes have only recently been legally evented to bring the Definitive Map and Statement up to date (see Legal Event Modification Order attached as appendix 5(a), 5(b), and 5(c) to the LIR). Explore Somerset website now shows updated nomenclature. Nomenclature of paths in Schedules 3 & 4 will need to be updated accordingly.</p> <p>3) Two applications have been received for upgrades/ addition of public rights to the Definitive Map & Statement that are impacted upon by the development. It is not known if these higher rights exist until they are fully investigated, and any possible subsequent order is made and confirmed beyond legal challenge. This process would not align with the DCO timetable. Therefore, a separate solution will be required. There are also two applications in close vicinity to the schemes. A plan showing the applications is attached as Appendix 4 to the LIR. A mechanism is needed within the DCO to provide a detailed legally binding commitment of how these additional rights, if found to</p>

Ref:	Item	Comment and/or draft amendment
		<p>exist, will be appropriately mitigated for that would include provision of PRow to appropriate widths. Such a mechanism should ensure any mitigation is achieved to the satisfaction of the County Council.</p> <p>4) Schedule 3 Part 11 - The column header needs to reflect all of the highway statuses referred to in the column. It currently omits bridleway, and subject to possible amendments, may need to include restricted byway as well.</p> <p>5) Non-motorised users (NMUs) is a term referenced in some of the DCO documents with regards to the provision and improvements that will be made as part of the development. The term doesn't appear to be defined, but in its broadest sense would be taken to include walkers, cyclists, horse riders and carriage drivers. The horse and rider census revealed a few carriage drivers in the area. The DCO does not provide for any off-carriageway routes that would cater for carriage drivers, i.e. restricted byway status. There are no recorded restricted byways that the development impacts upon, however the (recently submitted) application 861M to modify the Definitive Map & Statement is for an upgrade of the existing bridleway Y 30/28 to a restricted byway status. If the higher rights exist and are simply not recorded, then the scheme will be impacting on restricted byway rights and will need to provide for appropriate mitigation. It should also be noted that carriage driving is an accessible form of off-road transport for those less able.</p> <p>The applicant to review if any of the proposed bridleways identified in the Schedule could be re-designated as restricted byways to be more inclusive with regards to NMUs.</p> <p>6) The construction road between Steart Hill and Camel Hill and Tracks 4 & 9 would further serve to provide an NMU route across the scheme, were they to be designated as public bridleway or restricted byway. An additional link would be required between the Podimore turning head and the minor road to the west to facilitate this. The Schedule should be amended to provide this.</p> <p>7)The impact of the development is to stop up the connection of Y 30/28 with the A303 and therefore the applicant has to mitigate for that loss. The current proposal from the applicant is provision of a route east to the nearest new vehicular overbridge. The proposed development creates an adverse effect on this section of Public Right of Way because the length of the alternative route proposed is c.5.2km for walkers, cyclist and equestrians. If instead the alternative was over Y 30/31, this length would be reduced to c.1.5km. This is a considerable difference in length and convenience. A connecting bridleway to, and the upgrading of public footpath Y 30/31 to bridleway status would be viewed by the Council as necessary; directly related to the development; and, fairly related in scale and kind for the loss of the Y30/28 terminus. This could be secured by either an amendment to the DCO or a planning obligation.</p>

Ref:	Item	Comment and/or draft amendment
		<p>This would not require a new over/underbridge, simply an improvement to an existing Highways England structure.</p> <p>8) There are two proposed routes between Traits Lane and Gason Lane shown on Sheet 3 of the Rights of Way and Access Plans. This is considered excessive and it is assumed that only one route is required. The Schedule may need to be amended once this has been clarified.</p>
26.	Schedule 4 Permanent Stopping Up of Highways	<p>It is often inappropriate that dead end de-trunked sections of road remain open to public vehicular traffic in their entirety. This often creates an opportunity for unauthorised traveller encampments and anti-social behaviour. The making of traffic regulation orders on its own is often not sufficient to prevent this arising, and SCC considers that this may be better addressed in some circumstances by the reduction in the carriageway width by stopping up. Reference to the need for HE to engage with SCC on the de-trunking provisions has been referred to above. To this extent this gives rise to the need for sections of de-trunked road to be narrowed this would require amendment to Schedule 4.</p>
27.	Schedule 5 Land of which temporary possession may be taken and only new rights etc may be permanently acquired	<p>The inclusion of land which appears to be required to form public highway within this schedule has been queried. It is understood that HE's position is that one of the permanent rights it may acquire pursuant to the Planning Act 2008 is the public right of passage, and therefore it does not need to acquire the freehold interest in the land. However, if this were possible, and a right in the land were sufficient to create a public highway, then it is not clear why HE is not acquiring by way of a permanent right the land required for the A303 dualling. This issue will be discussed with HE further.</p>
28.	Schedule 7 Land of which temporary possession may be taken	<p>Please could the applicant confirm that the land listed in this section is not going to form part of the public highway. If it is, then the inclusion of it within this Schedule is queried as the use of the land as public highway permanently dispossesses the owner of the surface and part of the subsoil until the highway is stopped up.</p>

Application by Highways England for an Order Granting Development Consent for the A303 Sparkford to Ilchester Dualling

Planning Inspectorate Reference: - TR010036

Deadline 3 – Comments on the applicant’s answers to First Written Questions

Somerset County Council has reviewed the applicant’s responses to the Examining Authority’s First Written Questions. There are some instances where we consider commentary on the applicant’s answers is necessary to assist the Examining Authority in understanding the Council’s latest position. Please see the relevant comments listed below.

Ref	ExA Question	HE response	SCC Comments
1.1.21	<p>Archaeology and Cultural Heritage</p> <p>a) It is noted in paragraph 6.5.2 of Chapter 6 Cultural Heritage of the ES [APP-043] that field evaluation (trial trenching and/or geophysical survey) has been undertaken as regards archaeology with the results submitted as other environmental information to support the DCO application during the examination period. When are the results likely to be available?</p> <p>b) What arrangements are in place to disseminate these results and take the results into account, if necessary, within the ES and dDCO?</p>	<p>The Geophysical Survey Report (document reference 9.4, Volume 9, Revision A) and Full Archaeological Evaluation Report (document reference 9.5, Volume 9, Revision A) have been submitted as part of this submission for Deadline 2.</p> <p>The Geophysical Survey Report (document reference 9.4, Volume 9, Revision A) and Full Archaeological Evaluation Report (document reference 9.5, Volume 9, Revision A) were finalised in January 2018 and have subsequently been submitted as part of this submission for Deadline 2 and have been shared with Historic England and South West Heritage Trust (advisors to Somerset County Council).</p>	<p>SCC can confirm that we have received the Documents (Geophysical survey Report, 9.4 Vol 9, Revision A and the Full Archaeological Evaluation Report ref. 9.5, Vol 9, Rev A).</p> <p>The reports are acceptable in terms of professional standards and contain sufficient information to describe the significance of the archaeology.</p>
1.6.23	<p>Socio-economic Effects on surrounding Communities: - NMU effects</p> <p>a) It is not clear how the mitigation measures and new proposed routes for NMUs have been determined.</p>	<p>A topic paper regarding Right of Way Y30-28 (Eastmead Lane) will be produced and submitted as part of Deadline 3.</p>	<p>Noted. SCC will review the topic paper when available and provide comments to the ExA.</p>

Ref	ExA Question	HE response	SCC Comments
	<p>b) The CoMMA report [APP-151] states that journey lengths would increase by more than 500m for 8 journeys and by 0 - 250m for 2 journeys. It is noted that due to the proposed stopping of connection Y30/ 28 with the A303, the proposed new route is 5.2km where as an alternative route proposed by the LPA's reduces the distance by 1.5km.</p> <p>c) Could the Applicant explain the methodology used for determining the new routes for non-motorised users, with respect to the shorter alternative Y30/28 to A303 route proposed by the SSDC and SCC?</p>		
1.6.26	<p>Socio-economic Effects on surrounding Communities: - NMU effects</p> <p>a) SCC and SSDC in their representations [RR 40 and RR 41] suggests that there may be unrecorded rights of way.</p> <p>b) What steps have been taken to identify such rights of way?</p>	<p>Chapter 12 People and Communities (APP-049) identified all public rights of way (PRoW), cycle routes and footways within 250 metres of the scheme. PRoW were identified from the Somerset County Council website: http://www.somerset.gov.uk/policies-and-plans/plans/rights-of-way/, Sustrans (https://www.sustrans.org.uk/ncn/map) was used for identification of all national cycle routes and footways were identified using google maps. Any additional unrecorded rights of way have therefore not been identified.</p>	<p>Highways England have been notified by SCC of 2 applications to modify the Definitive Map which the development will impact upon. Once investigated these applications may result in the recording of unrecorded public rights.</p> <p>See LIR Reference – P6</p>
1.7.9	<p>Traffic and Transport: - Traffic Management Plan</p> <p>b) What is proposed to mitigate the effects of the temporary suspension?</p>	<p>This question relates specifically to the effect of additional heavy goods vehicles along the A359 as a result of using this road as a diversion route when the A303 is closed. Whilst the Applicant acknowledges that heavy goods vehicles are a particular concern, the impact of increased volume</p>	<p>Submission of the updated Traffic Management Plan to be included within the Outline Environmental Management Plan is noted.</p>

Ref	ExA Question	HE response	SCC Comments
		<p>of all vehicle types along the A359 during diversions will also need to be managed carefully.</p> <p>During the early stages of scheme development the focus has been on the development of design solutions that minimise the requirement to close the A303, and the agreement of arrangements for the planning of significant traffic management works well in advance of their implementation. The applicant has been in discussion with Somerset County Council regarding the management of traffic during the construction period. An outline traffic management plan has been prepared which is included as Appendix B5 of the Outline Environmental Management Plan (APP-148). In paragraph 1.2.2 "Challenges and considerations" the document acknowledges the potential for increased traffic through local communities as a result of the works. This will ensure further development of the plan as described below focusses on this potential as a priority.</p> <p>Highways England have appointed a contracting organisation to provide advice on the buildability of the scheme through its development. The minimisation of the overall construction duration and anticipated number of times the A303 will need to be closed are a direct result of this advice. Table 2.6 of Chapter 2 The Scheme of the Environmental Statement (ES) (APP-039) provides details of the current expected worst case scenarios for closure of the A303 and associated use of the A359 as a diversion route. It is intended to improve on this worst case as the construction strategy develops. It is currently expected that the majority of any closures that are necessary will take place in 2021. The development of the Traffic Management Plan in advance of the commencement of the works will be driven by Highways England's main contractor. The contractor will be in the best position to refine</p>	<p>SCC will review these documents once available and issue comments to the ExA.</p>

Ref	ExA Question	HE response	SCC Comments
		<p>construction sequences that may minimise instances of closure of the A303 even further, and to implement the most appropriate mitigation measures. The Applicant has agreed with Somerset County Council that a Traffic Management Working Group will be established by the main contractor early in the delivery of the scheme in order to ensure these works are planned and publicised well in advance of their implementation, with the involvement of all stakeholders. This will be included within the updated Traffic Management Plan to be included within the Outline Environmental Management Plan, to be submitted as part of Deadline 3.</p>	
1.10.4	<p>Draft Development Consent Order (DCO): - Road closures</p> <p>What provision is there in the dDCO to ensure that detailed measures for road closures are agreed with the Local Highway Authority and Local Planning Authority?</p>	<p>Permanent road closures are specified in Parts 1 and 2 of Schedule 4 of the draft Development Consent Order (dDCO) (APP-017). For temporary road closures which are known to be required as part of construction, the detailed measures for traffic management will require to be set out in the traffic management plan to be submitted for approval under Requirement 11 following consultation with the local highway authority.</p> <p>Both the known and any temporary further temporary road closures under Article 15 require the consent of the street authority (15(4)). Accordingly, the relevant local authority with street authority powers has the ability to approve, attach conditions to or refuse any application to temporarily restrict use of any street, including road closures.</p> <p>No consent of the Local Planning Authority is required as such consent would not be required for any temporary restriction on the use of streets authorised under the highways legislation.</p>	<p>Please see SCC Review of the DCO. Ref: 22 (submitted for Deadline 3)</p>

Ref	ExA Question	HE response	SCC Comments
1.10.5	<p>Draft Development Consent Order (DCO): - Detailed design approvals</p> <p>a) You state that the dDCO will require provisions to address the detailed design elements and agreement for the associated fees associated with some technical elements. Which elements do you refer to?</p>	<p>The Applicant notes that this question is not addressed to it however it consider that it would be useful to reiterate the draft Development Consent Order (dDCO) proposals as they have been communicated to the Councils.</p> <p>The dDCO provides at Requirement 12 that the detailed design will be submitted to the Secretary of State for approval following consultation with the relevant planning authority and local highway authority. Under Requirement 4, details of that consultation, (including changes sought and whether they have been made, and where changes have not been made why not), must be submitted along with the application for approval of the detailed design. The Secretary of State will therefore have the views of the Councils before him when making any decision on the detailed design.</p> <p>There is no requirement or mechanism under the Planning Act for the Councils to be paid any fee for responding to consultation on DCO requirements.</p>	Please see SCC Review of the DCO. Ref: 19 & 23 (submitted for Deadline 3)
1.10.6	<p>Draft Development Consent Order (DCO): - Detrunking</p> <p>a) Has there been any progress on the arrangements with the local highway authority for those parts of the road to be de-trunked?</p> <p>b) If so how is this to be secured?</p>	<p>Somerset County Council have accepted in principle the proposal to de-trunk the elements of existing A303 carriageway identified in the De-Trunking Plans (APP-015) and for them to be incorporated into the local road network.</p> <p>During subsequent discussions between the Applicant and Somerset County Council a timeline has been prepared which details the tasks required in order to identify the quantity and condition of assets within these de-trunked sections, and to agree the extent of work required in order to bring these assets up to an agreeable condition prior to handover.</p> <p>This timeline has been issued to Somerset County Council for review prior to implementation.</p>	Please see SCC Review of the DCO. Ref: 11; 12 & 23 (submitted for Deadline 3)

Ref	ExA Question	HE response	SCC Comments
		<p>A draft timeline of proposed works including advance surveys and agreements on condition at hand-over has been prepared during discussions between The Applicant and Somerset County Council.</p> <p>Ultimately further design development work will be subject to Requirement 12 of the draft Development Consent Order (dDCO), which requires that the local highway authority are consulted on the design prior to approval by the Secretary of State. The dDCO provides at Article 14(2) that, as of a date to be specified, the classifications of roads set out in the dDCO would apply. The dDCO therefore provides that the roads to be detrunked will be reclassified as provided as if that classification had been applied under the Highways Act. At that date any highways which are no longer trunk roads will become highways maintainable by the local highway authority. No adoption or similar procedure by the Highways Authority is required.</p>	
1.10.38	<p>Draft Development Consent Order (DCO): - Requirement 13</p> <p>The Environment Agency [RR-043] indicates that Requirement 13 does not appear to make any provision for the future management/maintenance of the approved drainage details. How does the Applicant wish to respond to this comment?</p>	<p>The Applicant would direct the Examining Authority and the Environment Agency to paragraph 23 of our proposed Protective Provisions which provides that all drainage works within the Order Land held by the Applicant have to be maintained by the Applicant to the reasonable satisfaction of the drainage authority. Accordingly the Applicant does not propose any amendment to Requirement 13 as this matter has already been addressed.</p>	<p>Noted; however, SCC have further comments in respect of Requirement 13 which are outlined in the SCC Review of the DCO. Ref: 24 (submitted for Deadline 3)</p>
1.10.44	<p>Draft Development Consent Order (DCO): - Schedule 3 – part 11, column (2)</p> <p>a) Some of the rights of way are noted as “footway”, but others are “bridleway”. Should any of the footways be designated as a</p>	<p>Where a non-motorised user (NMU) facility is described as a 'footway' this is intended to distinguish this as a facility within the verge of a highway per the statutory definition of a footway set out in s329 of the Highways Act 1980. Under this definition a footway is part of the highway (along with the carriageway) and public rights of passage</p>	<p>Please see SCC Review of the DCO. Ref: 25 (submitted for Deadline 3)</p>

Ref	ExA Question	HE response	SCC Comments
	<p>“footpath” since it is proposed that they are to be public rights of way?</p>	<p>accordingly exist over it; however use of that part classed as footway is restricted to pedestrians. The description 'footpath' has been used to describe separate rights of way for pedestrians only. The terms used therefore reflect the statutory definitions and the Applicant has not proposed any amendments to these.</p>	
1.13.10	<p>Acquisition and/or Temporary Possession and/or Rights over Land: - Acquisition of rights</p> <p>a) There are a number of plots such as 1/2b, where it is intended to permanently acquire rights over the land, and that the land be used for the construction of the A303 or a turning head. However, the BoR does not indicate which rights are intended to be acquired. The description does not limit the rights to the surface. Could the Applicant please confirm how deep the works will go?</p>	<p>a) Schedule 5 of the DCO set out the areas of land of which temporary possession may be taken and only new rights etc. may be permanently acquired, including specifying the rights which may be acquired in those plots. The precise depth of the highway works required will depend on the ground conditions at each location. The law of public highways states that the public highway status goes as deep as is necessary to ensure the protection and support of the highway (Tunbridge Wells Corporation v Baird (1896) AC 434 – also supported in the recent Supreme Court case of Southwark LBC v TfL [2018] UKSC 63, which described the “zone of ordinary use” as being the road surface, airspace and subsoil required for the operation, maintenance and repair of the highway), and includes such depth as may be used as a highway is used (Coverdale v Charlton (1878) 4 QBD 104). The depth of a highway is therefore fact and location specific, and dependent on amongst other factors the ground conditions (Schweder v Worthing Gas Light and Coke Company (no2) (1913) 1 Ch 118). There is no requirement in law to specify a depth.</p>	<p>Please see SCC Review of the DCO. Ref: 27 (submitted for Deadline 3)</p>
1.13.10	<p>Acquisition and/or Temporary Possession and/or Rights over Land: - Acquisition of rights</p>	<p>b) No, the land itself is not transferred. It is not necessary for a highway authority to own all of the land under a highway and there are innumerable instances where the underlying ownership of land under public highways vests in others, most often</p>	<p>Please see SCC Review of the DCO. Ref: 27 (submitted for Deadline 3)</p>

Ref	ExA Question	HE response	SCC Comments
	<p>b) In some instances it would seem that the intention is to transfer the land to SCC?</p>	<p>the adjoining landowner. The rights to use and maintain the land as highway are sought to be able to be transferred to cover any period between opening the highway and it being entered onto the SCC list of highways maintainable at public expense. The specification of rights also ensures that the owner is entitled to the proper compensation by making it clear what level of interference is caused to their interest. It is not necessary to transfer any right in land once it is designated as public highway as the highway authority has all the rights they need to maintain and control it without requiring the underlying ownership to be interfered with. That means should these sections ever be stopped up for any reason the ownership still vests in the adjoining landowner and there are not isolated sections of ownership which would require to be offered back to the successor of the current owner.</p>	
<p>1.13.11</p>	<p>Acquisition and/or Temporary Possession and/or Rights over Land: - Acquisition of rights</p> <p>b) It would seem that the land over which it is intended to acquire rights is privately owned. Has there been an agreement with the owners to dedicate the land as such?</p> <p>c) Has there been agreement with SCC to dedicate it as public highway?</p>	<p>b) and c) It is not proposed to 'dedicate' the land as public highway – that is an unnecessary step. The DCO allows land to be designated as highway and the classification of that highway to be specified in the DCO. As with other areas of highway being created or re-classified the status of these areas as public highway is created directly by the DCO and a further step (such as dedication or adoption) is not required.</p>	<p>Please see SCC Review of the DCO. Ref: 28 (submitted for Deadline 3)</p>
<p>1.13.11</p>	<p>Acquisition and/or Temporary Possession and/or Rights over Land: - Acquisition of rights</p> <p>d) If not, how will the right to use this land as public highway be secured?</p>	<p>d) The power sought is included within the scope of compulsory acquisition of rights at Schedule 5 of the DCO in order to change the status of the surface layer should the owners not agree. The Planning Act 2008 specifically allows for the acquisition of any interest (s159) as it is clear that the highway interest and the underlying ownership</p>	<p>Please see SCC Review of the DCO. Ref: 27 (submitted for Deadline 3)</p>

Ref	ExA Question	HE response	SCC Comments
		<p>of the solum are different interests, there is no justification to acquire the underlying solum when all that is required is the necessary interest to permit the change in status.</p>	
1.13.11	<p>Acquisition and/or Temporary Possession and/or Rights over Land: - Acquisition of rights</p> <p>e) If the land is to be used permanently as public highway is the acquisition of rights the correct procedure?</p>	<p>e) It is not necessary for a highway authority to own all of the land under a highway and there are innumerable instances where the underlying ownership of land under highways vests in others, most often the adjoining landowner. Interference is only required with interests in the surface layers of the land. The acquisition of rights is a lesser interference than acquisition of full ownership. The acquisition of rights only has therefore been preferred where it is possible in accordance with the guidance that compulsory powers should seek to cause the minimum level of interference which is necessary to deliver the scheme. The acquisition of rights creates a right to compensation for the affected landowner commensurate with the level of interference without acquiring all of their interest</p>	<p>Please see SCC Review of the DCO. Ref: 27 & 28 (submitted for Deadline 3)</p>

Planning Inspectorate Reference TR010036
Deadline 3 submission – 8th February 2019
Notification of wish to attend the Accompanied Site Inspection (ASI)

This notification is in response to the Examining Authority (ExA) Rule 8 letter of 21st December 2018 and comprises the relevant notification requested for Somerset County Council to the Planning Inspectorate regarding Highway England's application for a Development Consent Order (DCO) in relation to the A303 Sparkford to Ilchester project

Somerset County Council wish to notify the ExA that they wish to attend the ASI scheduled for Tuesday 19th February (continuing the 20th February if necessary). The Officer's in attendance will be: -

- Andy Coupé (Strategic Manager – Infrastructure Programmes Group)
- Richard Gorst (Project Manager, Development Engineering – Major Infrastructure Projects); and;
- Ian McWilliams (Development Engineering).