

**A303 Sparkford to Ilchester Dualling Scheme
TR010036**

**9.10 Table of Amendments to the Draft
Development Consent Order Revision 0.2 to
Revision 0.4 as Submitted At Deadline 5**

April 2019



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ExA's Second Written Questions

1 ExA's Second Written Questions – For Deadline Five				
	Question Number	Section/ Paragraph	Question	Proposed amendments
1.1	2.10.1	Preamble	As the Examining Authority is a Panel the Preamble in the draft DCO should be amended to refer to section 74(2) rather than section 83(1).	The DCO has been amended as requested.
1.2	2.10.5	Article 2 – Definitions	Further to the discussions at ISH4, the applicant is asked to include changes to the dDCO to include a definition of “landscaping” and to ensure that “written material” includes “drawings”.	<p>The Applicant considers that the definition of written material only has any application in the Requirements and has added a definition to schedule 2 as follows:</p> <p><u>“written” includes plans, sections and drawings and any similar material which is submitted in compliance with any requirement.</u></p> <p>The Applicant considers that the scope of landscaping is suitably set out by the matters which must be included in the landscaping scheme under requirement 5 which includes finished ground levels, surfacing, trees and planting, boundary treatments, fencing and gates. The Applicant does not consider that trying to define landscaping would add any clarity given the comprehensive nature of that list.</p>
1.3	2.10.13	Article 14(6) – Classification of roads, etc.	Refers to relevant planning authority – this will be the local highway authority. Could this please be amended.	The DCO has been amended as requested.
1.4	2.10.15	Article 38 - Felling or lopping of trees and removal of hedgerows	<p>There were discussions at the Hearing as to whether this power should be limited to works directly required to facilitate the works. This is to be responded in at Deadline 5.</p> <p>In addition, there was discussion as to whether there should be reference to the Natural Environment and Rural Communities Act 2006 which was not referenced</p>	<p>The Applicant has proposed additions to Article 38 to address the concern as follows;</p> <p>(6) Except where necessary to prevent or remove a danger to persons using the authorised development, the powers set out in this article may not be used to remove any tree, shrub or hedgerow which is</p>

			in the Deadline 4 material. Could this point please be responded to.	<p>shown on the works plans or the approved detailed design for the authorised development as being retained.</p> <p>(7) Except where the removal and replacement of any tree, shrub or other planting which fails to establish, dies or becomes diseased is required, the powers set out in this article may not be used to fell or lop any tree or shrub or remove any part of any hedgerow planted in accordance with the approved detailed design for the authorised development other than in accordance with the provisions of the LEMP or HEMP as applicable.</p> <p>The NERC has been added to Article 38(2)(c):</p> <p>(c) take steps to avoid a breach of the provisions of the Wildlife and Countryside Act 1981and, the Conservation of Habitats and Species Regulations 2017or any successor actsand the Natural Environment and regulationsRural Communities Act 2006.</p>
1.5	2.10.16	Schedule 1	In re-locating Work 10, the “9” from Work “39” has been deleted in error. Can it please be put back?	The DCO has been amended as requested.
1.6	2.10.20	Schedule 2 – Requirement 4	<p>At the hearing there were two points discussed. Firstly, relating to the level at which approval should be made. This is to be the subject of further representations by the Councils at Deadline 5. In addition, there was discussion over the use of the word “reflect” which the Applicant agreed to reconsider.</p> <p>What alternative wording is the Applicant considering as opposed to “reflect”?</p>	<p>The DCO has been amended as follows:</p> <p>Details of consultation</p> <p>4—(1) With respect to any requirement which requires details to be submitted to the Secretary of State for approval under this Schedule following consultation with another party, the details submitted must be accompanied by a summary report setting out the consultation undertaken by the undertaker to inform the details submitted and the undertaker’s response to that consultation, <u>and enclosing a copy of all consultation responses received</u>.</p> <p>(2) At the time of submission to the Secretary of State for approval, the undertaker must provide a copy of the summary report referred to</p>

				<p>under sub-paragraph (1) to the relevant consultees referred to in the requirement in relation to which approval is being sought from the Secretary of State.</p> <p>(3) The undertaker must ensure that any consultation responses are reflected<u>which request alterations to the details proposed by the undertaker are addressed</u> in the details submitted to the Secretary of State for approval under this Schedule, but<u>however the undertaker must amend the details proposed in response to consultation</u> only where it is appropriate, reasonable and feasible to do so, taking into account considerations including, but not limited to, cost and engineering practicality.</p> <p>(4) Where the <u>requests made in</u> consultation responses are not reflected<u>incorporated</u> in the details submitted to the Secretary of State for approval, the undertaker must state in the <u>summary</u> report referred to under sub-paragraph (1) the reasons why the<u>any requests made in</u> consultation responses have not been reflected<u>included</u> in the submitted details.</p>
1.7	2.10.21	Schedule 2 – Requirement 8(3)	In the penultimate line there would appear to be a typographic error “undertaker” should be “undertake”. Can this be checked.	The DCO has been amended to “undertake”.
1.8	2.10.22	Schedule 2 – Requirement 9	Two typographic queries - Replace “County Archaeologist” with “Somerset County Council’s archaeological advisor” and “Watching Brief” with “Archaeological Monitoring”.	<p>“County Archaeologist” has been replaced with “Somerset County Council’s archaeological advisor” throughout the requirement.</p> <p>“Watching Brief” has been replaced with “archaeological monitoring”.</p>
1.9	2.10.24	Potential additional requirement	In its Deadline 4 representation [REP4-035] SCC records that the Applicant has indicated that it would set out clear documentation of rights of way that will be privately maintained to provide clarity and avoid confusion.	<p>A change has been made to Article 13 of the DCO to add a new paragraph 9 as follows:</p> <p>(9) Any way, street or highway formed on the Order land which is not open to vehicular use by the public, and which is to be used by the undertaker for the purposes of maintaining the authorised development, will be maintained by and at the expense of the</p>

			Could the Applicant please confirm where this is set out?	undertaker or any successor in title as the landowner of the relevant land.
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Representations

2					
CONSULTEE: Environment Agency					
	Representation	Section/ Paragraph	Comment	Consultee Proposed Revision	Applicant's Response
2.1	REP4-028	Requirement 3	The Agency is essentially satisfied with the Highways England response however, it is the Agency's preference for Requirement' 3 to be amended, to include a specific need to submit a Pollution Incident Control Plan.	-	Pollution Incident Control Plan has been added to the list in requirement 3(2)(f).
2.2	-	Article 3 and protective provisions	The agency has advised that protective provisions for their interests are not required provided that items a and b of article 3(1) are removed.	Delete items a and b of article 3(1)	Items a and b of article 3(1) and all of 3(2) have been deleted.

3					
CONSULTEE: South Somerset District Council					
	Representation	Section/ Paragraph	Comment	Consultee Proposed Revision	Applicant's Response

3.1	REP3-015	Article 2	For purposes of consistency	Reference to the “successor acts and amendments” is inserted in relation to the Acts referred to in Article 2 or delete “successor acts and amendments” from Article 38(2)(c) in reliance on the Interpretation Act 1978	The reference in Article 38(2) has been deleted as it is not required.
3.2	REP3-015	Article 2 Definition of “authorised development”	The wording in the model provisions should be used and therefore the wording in the next column added to the end of the definition	“..which is development within the meaning of section 32 of the 2008 Act”	No change made. The DCO is made under the Planning Act and there is therefore no requirement to provide that it falls within the scope of that Act. Its inclusion is therefore unnecessary and would result in the DCO not reflecting any change made to the Planning Act in the future.
3.3	REP3-015	Article 2 Definition of “commence”	The pre-commencement works could have a detrimental effect on existing ecology and as such the commencement works should be subject to ecological supervision of a suitably qualified person	-	HE confirm that a suitably qualified person will supervise all of the works, including any pre-commencement works. An amendment has been made to requirement 10 to secure this as follows: 10(1) No part of the authorised development may be undertaken unless the ecological effects are supervised by an appropriately qualified person appointed by the undertaker, which person may be the Ecological Clerk of Works.
3.4	REP3-015	Article 2 Definition of “relevant	Guidance note 15 paragraph 6.2 states where there is more than one relevant planning authority (or other	Relevant planning authority” means— (i) the district planning authority for the area in which the land to	“relevant planning authority” is defined in the Planning Act 2008 and the definition in the DCO has been deleted. The suggested definition simply repeats the definition given in s173 of the Planning Act 2008. Its inclusion is

		planning authority”	<p>authority), this should be made clear in the definitions.</p> <p>In order to provide clarity the definition should be amended in line with the model provisions as set out in the next column. Where the County Council involvement is required, over and above being the Local Highway Authority, then this should be expressly stated as such in the DCO</p>	<p>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</p> <p>the county planning authority;</p> <p>(ii) a National Park Authority;</p> <p>(iii) the Broads Authority; and</p> <p>(iv) the Greater London Authority if the land to which the provisions of this Order or requirements apply is situated in Greater London A definition for and reference to the County Council over and above its role as the highway authority as appropriate.</p>	<p>therefore unnecessary and would result in the DCO not reflecting any change made to the Planning Act in the future.</p>
3.5	REP3-015	Article 2(5)	<p>It’s not clear that this provision should remain. It is expected that if points/numbers on a plan are being referred to in the DCO that reference should also include the drawing/plan number in question.</p>	Suggested deletion	<p>The article has been amended to provide:</p> <p>(5) References in this Order to points identified by letters or numbers are to be construed as references to points so lettered or numbered on the relevant plans specified plan(s).</p> <p>(6)</p>
3.6	REP3-015	Article 5(2) development consent etc.	<p>This is not within the model provisions and appears to be a significant power. Is there good reason why the enactments applying to land adjacent to the Order Limits should be limited by the Order? If so, the term adjacent should be defined. If this provision is accepted it is suggested that it is stated that the</p>	To be considered – possible deletion or limitation on the power	<p>No change made.</p> <p>The Applicant strongly disagrees with the suggested deletion. The Applicant also suggests that the District Council is reading the provision more broadly than the drafting actually allows. Art 5(2) only limits enactments where the provisions of the Order would have effect to prevent conflict of law.</p>

			<p>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>		<p>For example the provisions of the Order allowing the Applicant to make traffic regulation orders on adjacent land would apply rather than the normal legislative position which reserves that power to the highway authority which will in many cases not be the applicant.</p> <p>It is noted that the District Council suggested in the hearings that the Applicant could make temporary road traffic regulation orders to assist with traffic management in villages during construction – that suggestion is entirely inconsistent with this suggested deletion.</p>
3.7	REP3-015	Article 8	<p>A 1m Vertical Limit of Deviation for the Works could render screening mitigation measures inadequate where unsynchronised vertical adjustments occur for adjacent works. For example, where a carriageway is raised by up to a metre and the adjacent bund lowered by a metre.</p> <p>A number of the screening bunds do not currently achieve screening of the tops of HGVs, signs or lamp columns, so the relationship between the design levels of adjacent authorised Works is critical.</p> <p>In addition, the Engineering Sections (APP-016) for the main line, slip roads and structure, bunds and false cuts are technical drawings with long</p>	Amendment in accordance with the comment is sought	<p>No change made.</p> <p>The Applicant refers the District Council to the project description chapter of the ES where it is clearly stated that the height of bunds is form the carriageway level, if that level changes the bunds move with it. The scenario posited by the District Council cannot happen.</p> <p>The Applicant provided cross sections including limits of vertical deviation at deadline 4 to assist on this point.</p>

			<p>sections for individual features and do not include cross-sections of adjacent features, so there is no easy means for interested parties to determine the impact of potential deviations.</p> <p>On that basis an amendment to the DCO should make it clear that a variation in the vertical level should not give rise to a relative reduction in height of a designed screening measure.</p>		
3.8	REP3-015	Article 10(c)	The registered address for Instalcom Limited currently listed at Companies House is 462 Raynes Lane, Pinner, England, HA5 5ET	Amend the address as appropriate	<p>Outstanding: change to be made.</p> <p>Instalcom is now owned by Communications UK Limited (“CenturyLink”), a SoCG is in progress with them and the reference in the DCO will reflect the details they advise.</p>
3.9	REP3-015	Article 21	<p>This article provides a blanket consent for unspecified works to designated heritage assets (listed buildings, schedule monuments, registered parks and gardens) and to undesignated heritage assets, with no regulation from an authoritative body.</p> <p>These works could be harmful to a heritage asset, including its curtilage, and should be subject to consultation with the relevant planning authority, Historic England for scheduled</p>	Amend to include consultation provisions as per the comment	<p>The Applicant has suggested an amendment to requirement 12 to address this concern:</p> <p>(2) Where protective works under article 21 are required to a listed building within the meaning of the Planning (Listed Buildings and Conservation Areas) Act 1990, and such works would cause or require to be caused permanent change or alteration of the listed features, the protective works must be set out in the detailed design submitted under subparagraph (1) and consultation on the relevant details must be undertaken with the Historic Buildings and Monuments Commission for</p>

			monuments and approved by the SoS		England in addition to the bodies listed in subparagraph (1).
3.10	REP3-015	Article 21(8)(b)	Article 21(8)(b) If the works to a designated heritage asset causes damage, the undertaker shall notify the relevant planning authority of the damage and agree a schedule of works to be completed by the undertaker to the relevant planning authorities satisfaction.	Amend as per comment	No change made. The Applicant is unlikely to own the building and will not therefore be in a position to be able to agree or undertake such works. Art21(8) secures compensation is payable for such damage, that compensation will allow the owners to have the necessary works carried out. Such works will require listed building consent from the local planning authority which can control them in the normal manner.
3.11	REP3-015	Article 22	Part (b) of this article allows for 'any excavations, trial holes and boreholes' and part (c) includes 'archaeological investigations'. These works could be harmful to a designated heritage asset, including its curtilage, or undesignated heritage asset as well as ecology and should be in consultation with the relevant planning authority, or Historic England for scheduled monuments and approved by SoS	Amendment in line with the comment is sought	No change made. This is a general surveying and investigatory power. The Applicant explained at the hearings and maintains that use of this power is required to allow it to establish what is present in the area so that appropriate plans for protection can be put in place.
3.12	REP3-015	Article 38	The Article allows for the removal of veteran trees and historic hedgerows from the RPG where trees and hedgerows are in conflict with the construction operations beyond that	Amend as per the comment	The Applicant has proposed new paragraphs to Art 38 as set out in line 1.4 of this table.

			<p>envisaged by the outline plan and those in conflict with the measures permitted by Regulation 5 (Landscaping). For example, a construction compound is proposed in the southwest corner of the RPG which includes a number of veteran trees.</p> <p>The removal of a tree or hedge should be subject to consultation with the relevant planning authority and approved by the SoS</p>		
3.13	REP3-015	Article 38(2)(c)	Section 40 of the Natural Environment and Rural Communities Act 2006 places a duty on local authorities to have a regard for the conservation of "priority species".	Article 38(2)(c) should also include the Natural Environment and Rural Communities Act 2006 in the list of Acts to which it refers	The NERC has been added to Art 38(2)(c)
3.14	REP3-015	Article 43	To ensure clarity and a clear understanding and effectiveness of the Article the undertaker should submit the plans to the SoS within a defined time, not as stated in the current draft, as soon as practicable	Amend as per comment	The Applicant has added "within ten working days" to the Article.
3.15	REP3-015	Article 44	<p>Again, to ensure clarity and a clear understanding and effectiveness of the Article the timeframe within which the undertaker must provide the paper copy documents should be changed to a specified time.</p> <p>7 days response period is placed on the person served with the notice in</p>	Amend as per comment	The Applicant has added "within ten working days" to the Article.

			the article so a similar period for all parties might be appropriate		
3.16	REP3-015	Article 47	As a result of its function as a protector of public health the District Council is usually advised about the removal of human remains when approval is sought from the SoS. The District Council accepts the wish to expedited the process but would want be consulted by the undertaker	Amend to require consultation of the District Council prior to the removal of human remains	The Article has been amended to require consultation as follows: (3) Before any such remains are removed from the specified land the undertaker must consult with South Somerset District Council on the intended removal , following which the undertaker must give notice of the intended removal describing the specified land and stating the general effect of the following provisions of this article by
3.17	REP3-015	Requirement 1 Definition of HEMP	The model provisions do not define HEMP. The wording of the definition should be more precise insofar as the HEMP is to be “developed towards the end of the construction of the authorised development”.	To be amended	No change made. The HEMP is the package of information that needs to be handed over to those responsible for future management and operation of the scheme. The HEMP will provide the relevant information on existing and future environmental commitments and objectives that need to be honoured, ongoing actions and risks that need to continue to be managed. It will include as built information and other details in a form that can be utilised by the body responsible for long term management so they can update their environmental management plans for the operational phase. In order to be ready to be converted on completion as required by Requirement 3(4) the preparation of the HEMP must logically have been undertaken in advance of completion. To be able to include ‘as built’

					details in the HEMP, works require to have been built. The HEMP therefore could not be prepared before the late stages of the works but must be prepared before completion in order to allow conversion from the CEMP to the HEMP at the required time. The wording 'towards the end of construction' is therefore correct.
3.18	REP3-015	Requirement 3(b)	In accordance with the Local Impact Report issue reference BH4, BH6 and BH7, the Pre-Worboys Cross Roads Sign, the Canegore Corner Listed Milestone (MM30) and Listed Milestone MM13 should be referred to in the DCO to ensure awareness of these vulnerable features.	At the end of requirement 3(b) insert "including but not limited to the Pre-Worboys Cross Roads Sign, the details for the safe removal and storage of the Canegore Corner Listed Milestone MM30 and Listed Milestone MM13"	No change made. The Applicant notes that these assets are dealt with in the OEMP and the outline WSI where this level of detail is appropriate. It is therefore unnecessary to add them to the requirement.
3.19	REP3-015	Requirement 3(f)	The list omits 'protected and priority species, and priority habitats'. A method statement and mitigation and or compensatory methods needs to be added to the CEMP.		Priority species are already covered by the CEMP through the LEMP.
3.20	REP3-015	Requirement 4(3) and 4(4)	The requirement for the undertaker to "reflect" the consultation responses in the details submitted to the Secretary of State involves a subjective judgement by the undertaker.	The references to "reflected" should be amended to "followed" throughout	"Followed" is too restrictive as it requires the Applicant to make any changes sought by a consultee regardless of the consequences of that change. It would also create difficulty where consultee responses conflicted. The Article has been amended as set out at line 1.6.
3.21	REP3-015	Requirement 5(1)	The requirement states "a landscaping scheme for that part".	As per comment	No change made. The Applicant disagrees with the request. It is practical and creates flexibility to be able to

			It's not a phased development so "for that part" should be removed.		address this in parts, for example to allow works to start on the main construction compound while the very different needs of the RPG mean those details are still being finalised.
3.22	REP3-015	Requirement 5(4)	As raised in the LiR issue reference BH3, the DCO should recognise that the Howell Hill Stone Boundary Wall should be retained through its repair or retention on its current alignment or rebuilt on the alignment of the revised boundary to the Howell Hill carriageway	The list of issues at requirement 5(4) should include details of retention, repair or rebuilding of the Howell Hill Stone Boundary Wall and the alignment	No change made. The Applicant notes that this asset is dealt with in the outline WSI where this level of detail is appropriate. It is therefore unnecessary to add this to the requirement.
3.23	REP3-015	Requirement 5(4)	As per the issue raised in the LiR reference L5, detail for the design of and material used for the highways and landscape features should be included	The list at 5(4) should be expanded to include environmental barriers, fences, stone walls, gates, stiles, all other means of enclosure, access roads, track surfaces, drainage ditches and culverts.	The list at what is now Requirement 5(5) has been expanded to read as follows; The landscaping scheme prepared under sub-paragraph (1) must include details of hard and soft landscaping works, including— <ul style="list-style-type: none"> (a) location, species, size and planting density of any proposed planting; (b) cultivation, importing of materials and other operations to ensure plant establishment; (c) proposed finished ground levels; (d) hard surfacing materials, <u>including surfacing of access tracks and roads;</u> (e) details of existing trees to be retained, with measures for their protection during the construction period; and

					<p><u>(f) details of boundary treatments, environmental barriers, stone walls, fencing, gates and stiles, and</u></p> <p><u>(f)(g) _____ implementation timetables for all landscaping works.</u></p>
3.24	REP3-015	Requirement 6	<p>The planting needs to be in place promptly to provide the screening envisaged by year 15 in the ES and as a result the DCO should set out a commencement date for implementation of the planting scheme.</p> <p>Given the importance of the landscaping in this case the Council would ask that a requirement is considered which provides that [relevant parts of the development] cannot be brought into use until the landscaping works for [that part] are completed.</p> <p>The provision suggested in the paragraph above would be the Council's preference but if it is not considered workable, the Council would request that the model requirement 8(2) which requires the landscaping to be carried out in accordance with the agreed timescale is inserted into the DCO.</p>	As per comment	<p>No change made.</p> <p>The Applicant strongly objects to the proposed amendment.</p> <p>Requirement 5 requires an implementation timetable for landscaping to be submitted and approved prior to commencement.</p> <p>The suggestion is impractical. As discussed in the DCO hearing the project involves works to sections of the existing carriageway – preventing those from being used until all landscaping works are completed would mean completely closing sections of the highway contrary to Applicant's proposals and the ES assessment which has only considered full closures which are short-term and infrequent.</p> <p>The suggestion is disproportionate, preventing use of the highway until all landscaping works (including minor works) are completed would create adverse effects by preventing use of a completed carriageway because (for example) marginal planting to drainage ponds was not complete.</p>

3.25	REP3-015	Requirement 7	<p>Fencing and other means of enclosure are a key aspect of the works along the A303 corridor and within the RPG.</p> <p>The current draft departs significantly from the model requirements which appear in the next column. The model requirements provide for the removal of fencing as well as protection and maintenance. The local planning authority role as consultee has also been removed in the current draft and should be reinserted.</p> <p>On that basis the District Council is seeking the model requirement be used as the basis for the Order.</p>	<p>As per comment – for ease, the model requirement states:</p> <p>13.—(1) No authorised development shall commence until written details of all proposed permanent and temporary fences, walls or other means of enclosure have, after consultation with the relevant planning authority, been submitted to and approved by the Commission.</p> <p>(2) The [insert description], and any construction sites, must remain securely fenced at all times during construction of the authorised development.</p> <p>(3) Any temporary fencing must be removed on completion of the authorised development.</p> <p>(4) Any approved permanent fencing of the new [insert description] must be completed before the [insert description] is brought into use.</p>	<p>No change made.</p> <p>Requirement 5 requires details of fencing and other means of enclosure to be submitted and approved prior to commencement in consultation with the District Council.</p> <p>Requirement 7 relates to ensuring that fencing meets safety standards for the construction and operation of highways not its appearance. In addition to already being addressed in requirement 5, the insertions sought are inappropriate in this requirement.</p>
3.26	REP3-015	Requirement 8(3)	replace undertaker with undertake in the penultimate line	As per comment	The DCO has been amended to “undertake”.
3.27	REP3-015	Requirement 10	The requirement should be amended as set out in the next column in order to meet the duty in relation to protecting priority species in accordance with the Natural	<p>Amend as follows:</p> <p>10.—(1) In the event that any protected or priority species which were not previously identified in the environmental statement or otherwise or nesting birds are found at any</p>	<p>Requirement 10 has been amended but not as requested.</p> <p>The change sought to sub-paragraph (1) is too restrictive and is rejected. The drafting suggested would require work to stop where any species already identified is found – that</p>

			<p>Environment and Rural Communities Act 2006</p> <p>The amendment also provides protection for species not included in the ES but subsequently found.</p>	<p>time when carrying out the authorised development the undertaker must cease construction works near their location and report it immediately to the Ecological Clerk of Works.</p> <p>(2) The undertaker must prepare a written scheme for the protection and mitigation measures for any protected and priority species that were not previously identified in the environmental statement or otherwise or nesting birds found when carrying out the authorised development. Where nesting birds are identified works should cease within 40 metres the evidenced zone of likely disturbance of the nest for that species until birds have fledged and the nest is no longer in use. The zones and periods when disturbance to nesting birds, and in the case of birds within Schedule 1 of the Wildlife and Countryside Act 1981 whilst with dependent young, is likely to occur will be set out in the CEMP</p> <p>(3) remains unaltered</p>	<p>species would already have been identified, planned for in the LEMP and the necessary licences sought where required. There is no justification for stopping work in those circumstances where the necessary protection measures are already in place. The mitigation required for identified schedule 1 birds is also set out in the LEMP and the definition of LEMP has been amended to make that clearer.</p> <p>The Applicant has however agreed that where priority species not previously identified are found works should cease and this be reported to the ECoW in order that the appropriate action can then be taken by the ECoW.</p> <p>The change sought to sub-paragraph (2) is also too restrictive and is rejected – disturbance of schedule 1 birds is an offence and is therefore addressed through that regime. Duplication of that in the DCO requirements is unnecessary and contrary to the principle that planning conditions should not duplicate other controls already in place.</p> <p>This requirement has been renamed Ecology, Priority and Protected species.</p> <p>In addition to the insertion of new paragraph (1) set out at line 3.3 above, the following amends have been made;</p> <p>(2) In the event that any protected <u>or priority</u> species which were not previously identified in the environmental statement or nesting birds</p>
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					<p>are found at any time when carrying out the authorised development the undertaker must cease construction works near their location and report it immediately to the Ecological Clerk of Works.</p> <p>(3) The undertaker must prepare a written scheme for the protection and mitigation measures for any protected species that were not previously identified in the environmental statement or nesting birds found when carrying out the authorised development. Where nesting birds are identified works should cease within 10 metres of the nest until birds have fledged and the nest is no longer in use <u>the evidenced zone of likely disturbance of the nest for that species until birds have fledged and the nest is no longer in use. Specific mitigation measures for Schedule 1 birds recorded within the proposed development site, comprising barn owl and hobby, must be set out in the LEMP. The LEMP will state that appropriate buffer zones for any other nesting bird species found during construction works will be determined by the Ecological Clerk of Works, dependent on the nesting bird species and nature of works in proximity to the nest.</u></p> <p>(4) The undertaker must implement the written scheme prepared under sub-paragraph (3) immediately and construction in the area specified in the written scheme must not recommence until any necessary licences are</p>
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					obtained to enable mitigation measures to be implemented.
3.28	REP3-015	Requirement 11	The requirement should include consultation with the relevant planning authority on the basis of the social impact the traffic management will have on the residents as well as the potential to effect other functions of the relevant planning authority such as noise and light pollution.	Amend to include consultation with the relevant planning authority as well as the other bodies	The DCO has been amended as requested.
3.29	REP3-015	Requirement 12(1)	Unlike the model provision, the current draft does not include a restriction on commencement of the development until the approval of the of the detail design. This restriction should be inserted.	Insert a restriction on commencement of the development until the approval of the of the detail design	This requirement has been amended and requires approval.
3.30	REP3-015	Requirement 12(2)	It should be ensured that the relevant planning authority and local highway authority are also informed electronically of any approved amendments to the development	As per comment	No change made. Any approvals would be issued by the Secretary of State through PINs and noted on their website. They are not individually notified by the Applicant. Provided that the Councils have opted in to electronic updates from PINS they would be automatically notified when the any decision was issued.
3.31	REP3-015	Requirement 14	The District Council has a number of issues with this requirement which include those listed below. On that basis the District Council is seeking the model provisions 23 and 24 are utilised as the base. The model provisions are in the next column.	maintenance has been submitted to and approved by the Commission. (2) The scheme shall set out the particulars of— (a) the works, and the method by which they are to be carried	No change made. The requirement relates to operational noise as provided the specification of the plan is to be for use and operation, not construction. Construction noise will be controlled through the CEMP and COPA licences.

			<ul style="list-style-type: none"> • The reference to “use and operation” of the site should be clarified. It is not clear if this refers to the control of noise during construction phase and during the operational phase • The requirement does not include a provision for the approved scheme to be implemented before construction. • It should be clarified that the approved mitigation scheme the operational phase of the development will be maintained for the duration of the use of the authorised development. 	<p>out;</p> <p>(b) the noise attenuation measures to be taken to minimise noise resulting from the works, including any noise limits; and</p> <p>(c) a scheme for monitoring the noise during the works to ensure compliance with the noise limits and the effectiveness of the attenuation measures.</p> <p>(3) The approved noise management scheme must be implemented before and maintained during construction and maintenance of the authorised development.</p> <p>(4) The construction and maintenance works must be undertaken in accordance with the approved noise management scheme.</p> <p>Control of noise during operational phase</p> <p>25.—(1) No authorised development shall commence operation until, after consultation with the relevant planning authority, a written scheme for noise management including monitoring and attenuation for the use of the authorised project has been submitted to and approved by the Commission.</p>	<p>The scheme cannot be ‘implemented’ before construction as many of the noise mitigations have to be created during construction – eg noise bunds and road surfacing cannot be in place before.</p> <p>The maintenance of the project, including mitigation is covered by the HEMP not this plan.</p>
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				(2) The noise management scheme must be implemented as approved and maintained for the duration of use of the authorised project.	
3.32	REP3-015	Requirement 15	<p>Requirement 15(1) The wording in line 2 “for that part” should be deleted as the development is not phased.</p> <p>The requirement currently lacks the provision for implementation of the approved scheme before and maintenance during the operation of and for the duration of the use of the authorised development. This should be inserted following the wording of model provision 27(2)</p>	As per comment	<p>No change made.</p> <p>The Applicant disagrees with the request. It is practical and creates flexibility to be able to address this in parts, for example to allow works to start on other sections such as the main construction compound, utility diversions or rights of way while the specific needs of the RPG are still being discussed.</p>
3.33	REP3-015	Requirement 16	The words “or agreed” should be removed from the last line as superfluous	As per comment	Change made as requested.
3.34	REP3-015	New Requirement	The Council requires a new requirement for the preparation and implementation of a conservation management plan for the RPG approved by Secretary of State in consultation with the relevant planning authority.	As per comment	<p>No change made.</p> <p>As set out in other submissions the Applicant does not agree that a CMP for the RPG is required.</p>
3.35	REP3-015	New Requirement	An Air Quality Management Plan. There are two areas of concern to the Council, West Camel and Sparkford High Street where it is predicted the scheme will result in significantly increased traffic	A requirement for an Air Quality Management Plan should be inserted. It could use model provisions for environmental protection issues as its base (SI requirements 27-30)	<p>No change made.</p> <p>As discussed in the hearings, the Applicant does not consider that there is potential for any air quality effect which would create any need for such a plan. As there is no realistic</p>

			<p>movements which may have an adverse effect on air quality.</p> <p>The undertaker should carry out further investigation to ensure these areas will not exceed air quality limits and to determine whether appropriate mitigation measures are necessary.</p>	<p>The relevant planning authority should be consulted on the plan to be approved by the SoS</p> <p>The requirement should secure the implementation of the scheme prior to the commencement of the development and in accordance with the timetable agreed as part of that management plan.</p> <p>The requirement should include a list of issues to be secured in the Air Quality Management Plan such as further assessments and appropriate mitigation</p>	<p>prospect of the air quality limits being exceeded there is no justification for such a requirement.</p>
3.36	REP3-015	Requirement 3(f)	The list should include the Air Quality Management Plan	Update the list to refer to the Air Quality Management Plan	
3.37	REP3-015	New Requirement	In accordance with the issue raised in the LiR referenced BH2, the District Council is seeking the inclusion of a new requirement to protect the W Sparrow Road Gullies as set out in the next column	<p>Insert</p> <p>“Prior to the removal of the W Sparrow Ltd gully grates and frames located at Camel Cross a scheme for their removal and offer for accessioning to the museum collections of the South West Heritage Trust or other appropriate local museum shall be submitted to and approved in writing by the Local Planning Authority. The removal and accession shall take place in accordance with the approved plan.”</p>	<p>No change made.</p> <p>The Applicant notes that this asset is dealt with in the outline WSI where this level of detail is appropriate. It is therefore unnecessary to add this to the requirement.</p>

3.38		New Requirement	<p>The CEMP should include the measures of mitigation and or compensation within the construction period only.</p> <p>The purpose of the LEMP is different in that it sets out how the site would be managed post development and ecological features including enhancements, such as provision of bat boxes, and should include monitoring.</p> <p>On that basis the reference to LEMP should be removed from Requirement 3(f) and have its own standalone requirement along the usual lines including consultation with the relevant planning authority prior to approval of the LEMP by the SoS, implementation of the LEMP prior to the commencement of the development and in accordance with the timetable within the approved document. The requirement should also include a list of issues to be secured in the LEMP.</p>	As per comment	<p>The HEMP is an evolution of the CEMP, both of these will follow the principles set out in the OEMP. The LEMP is an integral part of both the CEMP and HEMP and will carry on from the CEMP to the HEMP under amendments allowing for the completion of the construction phase.</p> <p>The HEMP will be developed as a post-construction plan based on the CEMP and will close off construction issues in its development and develop on-going issues, such as the LEMP into the operational phase. The Applicant submits that given these documents are sequential and the OEMP is developed in the CEMP which is in turn developed in the HEMP, separation of these would not add any value or clarity.</p>
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4	CONSULTEE: Somerset County Council				
	Representation	Section/ Paragraph	Comment	Consultee Proposed Revision	Applicant's Response

4.1	REP3-014	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— (i) the district planning authority for</p>	-	<p>No change made.</p> <p>The Applicant cannot find an instance of ‘local planning authority’ being used in the current version of the DCO outside of the definition of relevant planning authority which has been deleted; “relevant planning authority” is defined in the Planning Act 2008 and the definition in the DCO has been deleted.</p> <p>SCC is prescribed only as the ‘local highway authority’ as that term is not defined in the Planning Act and, as the Applicant is also a highway authority, it was considered helpful to be clear who was being referred to rather than relying on the statutory definition of highway authority alone.</p>
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			<p>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>		
4.2		<p>Article 2 Definition of "trunk road"</p>	<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> <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</p>		<p>The Applicant has proposed an amendment to Article 13 as follows:</p> <p>(2) Where a highway (other than a trunk road which is not to be detrunked by this Order) is altered or diverted under this Order, the altered or diverted part of the highway must be completed to the reasonable satisfaction of the local highway authority and, unless otherwise agreed in writing with the local highway authority, that part of the highway including any culverts or other structures laid under it must be maintained by and at the expense of the local highway authority from its completion.</p>

			completion of the authorised development or will become trunk roads as a result of the authorised development.		
4.3		Article 3 Disapplication of Legislative Provisions	<p>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.</p>		This Article has been amended in response to comments received from the Environment Agency; no comments have been received from SCC.
4.4		Article 4 Maintenance of Drainage Works	<p>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</p>		<p>No change made.</p> <p>The Applicant notes that the DCO requires drainage from the development to be limited by requirement to greenfield rate which is an improvement over the present position.</p> <p>The Applicant has addressed the general request by SCC for it to approve details at in its Deadline 5 response to action points and second written questions.</p>

			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.		
4.5		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>		<p>No change made. The change requested is unnecessary.</p> <p>There are no ancillary works within the Order. The Applicant considers that, in the context of this project, trying to separate out such works would be artificial and serves no useful purpose.</p>
4.6		Article 5(2) development consent etc	<p>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.</p> <p>This provision is drafted extremely widely on this basis it does not fall</p>		<p>No change made.</p> <p>The Council appears to have misinterpreted the article.</p> <p>Art 5(2) only limits enactments where the provisions of the Order would have effect to prevent conflict of law. For example. the provisions of the Order allowing the Applicant to make traffic regulation orders on adjacent land would apply rather than the normal legislative position which reserves that power</p>

		<p>within the provisions of section 120(5) of the 2008 Act which states:</p> <p>An order granting development consent may—</p> <p>(a) apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the order;</p> <p>Furthermore, para 25.2 of the Drafting Development Consent Orders states:</p> <p>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.</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>to the highway authority which will in many cases not be the Applicant. The provisions in Article 3 disapply specific legislative requirements regarding the obtaining other consents in line with the Planning Act powers. Article 5(2) accordingly prevents any power granted under the DCO creating a conflict with other legislative provisions by providing which would prevail while article 3 removes the application of specified measures which should not apply to this scheme.</p> <p>As noted in the EM this wording has been frequently included in granted DCOs.</p>
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			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.		
4.7		Article 9(2) Benefit of Order	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.		No change made. The benefit of the Order does not mean only the ability to carry out works, but also, for example, to benefit from rights created through compulsory acquisition. The ability to transfer the benefit of the Order is a standard provision and is required for this project as it involves the realignment of utilities who require easements and the creation of new private rights. As noted in the EM this wording has been frequently included in granted DCOs.
4.8		Article 11(1) Street Works	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. 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		No change made. A number of works include the diversion of utilities in streets. The scheme will also connect into drains which may require breaking open of streets and drains. Without the statutory right granted by this article, the undertaker would require a street licence to undertake such works or would commit an offence under s51 of the 1991 Act. To obtain a separate street licence runs counter to the objective of the DCO regime of streamlining the number of consents required to carry out a NSIP. Article 11 removes the need to obtain this separate consent.

			<p>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. 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>		<p>The Applicant does not agree that this article is unnecessary in this case and having regard to the specifics of this scheme. It is not for the Applicant to explain why other DCOs made the drafting decisions they did as is suggested as the Applicant is not aware of the particular facts and circumstances of each case.</p>
4.9		<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</p>		<p>No change made.</p> <p>The powers which are disapplied by Article 12 are incompatible with the expedient carrying out of the works under the DCO or would conflict with other requests made by the IP and therefore require to be disapplied.</p> <p>It is not appropriate for the local highway authority to interfere with the carrying out of the NSIP works through the giving of directions under s56 at any time they choose, they should instead raise any concerns at the time they are consulted on the traffic management plan.</p> <p>The power to give direction as to the placing of apparatus (S56A) is not compatible with the DCO. The diversion of utilities are works with the DCO and the diversion routes are shown on the plans. Those works must be carried out under, and therefore in accordance with, the DCO, including on the routes shown on the</p>

			Plan and that it is not just consulted on its provisions.		<p>DCO plans. To have these redirected to another street, as allowed by that section, would conflict with the DCO. Any concerns with those routes should have been raised during the examination.</p> <p>The other restrictions on works following street works (s58 and s58A) are designed to prevent statutory undertakers breaking open newly laid streets. The Applicant would only be breaking open a street where there was a reason to do so which relates to the works, for example to remedy a defect. Application of these provisions to the undertaker in the current circumstances is therefore inappropriate.</p>
4.10		Article 13 Construction and maintenance of new altered or diverted streets and other structures	<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</p>		<p>The Applicant has made some amendments to Article 13 as previously set out in this table.</p> <p>The Applicant rejects the insertion "Subject to maintenance provisions in paragraphs (5) and (6)" suggested as it is unnecessary.</p> <p>The Applicant has addressed the 52 week defect period in response to second written question 2.10.12.</p> <p>The Applicant rejects the necessity for a section 278 for this issue as it can be adequately addressed within the DCO. The conclusion of separate legal agreements for matters which can be adequately covered within a DCO runs counter to the principles of the DCO regime to streamline consenting for NSIPs</p>

			<p>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 majority of defects will manifest themselves relatively quickly when subjected to traffic,</p>		<p>The Applicant has made an amendment to article 13 to address maintenance of rights of way over its maintenance tracks.</p>
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		<p>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. 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.</p>		
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			<p>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>		
4.11		Article 14(2) Classification of Roads	<p>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</p>		<p>No change made.</p> <p>The Applicant is aware that SCC is unhappy with the process but advises that this process is entirely acceptable under the Planning Act and has been followed in other DCOs. This is not an adoption process. The Council is already protected by Article 13 which requires</p>

		<p>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 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:</p> <p>(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.</p> <p>(X) The undertaker may only make a determination for the purposes of paragraph (2) with the consent of the</p>		<p>work to the local highway to be to their reasonable satisfaction.</p> <p>The Applicant rejects the necessity for a section 278 for this issue as it can be appropriately addressed within the DCO. The conclusion of separate legal agreements for matters which can be adequately covered within a DCO runs counter to the principles of the DCO regime to streamline consenting for NSIPs. The Applicant also notes that the local councils for the A14 scheme contributed towards the costs of that scheme which is a very different set of facts and circumstances to the present case and is therefore not a reasonable comparator unless the Council wishes to contribute to the cost of this project.</p> <p>The Applicant has proposed a notification period in Article 14(9) and part 12 of schedule 3.</p> <p>The Applicant reiterates that it is happy to discuss any design measures which could be incorporated to address potential anti-social behaviour with the Council however no suggestions have been put forward for discussion or consideration by the Council so far.</p> <p>The Applicant will not provide a fund as requested by the Council and reiterates it is not proposing a legal agreement in the terms sought by the Council. The Applicant cannot be held liable for the behaviour of others. It is not reasonable or proportionate to expect the Applicant to meet the costs of dealing with</p>
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			<p>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>		<p>others' anti-social behaviour or to fund the Council's statutory duties.</p> <p>The Applicant submits that the obligation suggested would not meet either the CIL Regulations or the tests for planning conditions and cannot and should not be imposed.</p>
4.12		Article 14(6) Classification of Roads	<p>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.</p>		<p>The article has been amended as follows:</p> <p>(6) Unless otherwise agreed with the relevant planning local highway authority, the public rights of way set out in Part 11 (public rights of way) of Schedule 3 and identified on the rights of way and access plans, are to be constructed by the undertaker in the specified locations and open for use from no later than the date on which the authorised development is open for traffic.</p>
4.13		Article 26(2)	<p>The undertaker's powers' in relation to land specified in column (1) of Schedule 5, which includes land required to form public highway, are</p>		<p>No change made.</p> <p>The Applicant disagrees that vesting of the subsoil is necessary to create public highway.</p>

		Compulsory acquisition of rights	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.		<p>That is legally incorrect. The Applicant does not believe that SCC can demonstrate it owns all of the subsoil to all of its highways and therefore the statement by the Council must be incorrect.</p> <p>The Council does not appear to be saying that any land on which public rights of way will be located must be permanently acquired. If the Council's position were correct, then it would also be the case that all land on which public rights of way (which are themselves "highway" within the legal definition) were located would need to be owned by the Council as local highway authority. That is simply not the case and this further demonstrates why the Council is not correct in asserting that the local highway authority must own the subsoil to any public highway.</p> <p>Once the highway has been created and classified pursuant to the DCO, the highway itself (including any materials and scrapings) automatically vests in the highway authority (section 263 Highways Act 1980). The Applicant therefore does not need to permanently acquire the land on which new highway is to be located in order for that highway to vest in the local highway authority.</p> <p>The Applicant suggests that the Council has confused this process with dedication; the DCO can create highways without separate dedication under the Highways Act being required.</p>
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					The Applicant considers the approach set out is robust and has addressed this in response to first written questions 1.13.10 and 1.13.11 (REP3-003) and second written question 2.13.1.
4.14		Article 27 (2) Public Rights of Way	<p>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 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</p>		<p>No change made.</p> <p>The provision of replacement rights of way prior to stopping up where there is a replacement has been provided for in article 16(2). This article simply relates to how that stopping up happens and when it takes effect.</p> <p>The side roads order will be revoked so far as it is valid and within the order limits.</p>

			mechanism will need to be established within the DCO to give effect to such.		
4.15		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>		<p>No change made.</p> <p>The substance of this point relating the acquisition of permanent rights for highways has been covered at line 4.13 above and in response first written questions 1.13.10 and 1.13.11 (REP3-003) and second written question 2.13.1.</p>
4.16		Schedule 2 Requirement 1. Interpretation and	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. The		No change made.

		Requirement 3 Construction Environmental Management Plan	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.		The point on approval by SCC has been addressed in detail in submissions at D3, D5 and in response to second written questions.
4.17		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.		Change made as requested.
4.18		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.		No change made. The Applicant has responded to the substance of these points in the responses to second written questions.

			<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</p>		
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			<p>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>		
4.19		<p>Schedule 2 Requirement 12. Detailed Design</p>	<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</p>		<p>Requirement 12 has been amended to make it clear that the local highway authority will be consulted on the whole of the detailed design, rather than only on any departures from the preliminary design.</p> <p>As previously stated, the Applicant entirely rejects the suggestion that a separate legal agreement is necessary for this scheme.</p>

			<p>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> <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>		
4.20		Schedule 2 Requirement 13 Surface Water Drainage	<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</p>		<p>The IDB has advised the Applicant it is happy with the DCO.</p> <p>Requirement 13 already requires the detail of the drainage to be approved by the Secretary of State. In response to comments from the Council requirement 13 has been amended to specifically require consideration of sustainable drainage at detailed design.</p> <p>The flood risk criteria have been amended to reflect the flood risk assessment.</p>

			<p>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>		<p>Maintenance of drainage will be outlined in the OEMP and set out in the HEMP.</p> <p>Other than pond 4 which is a local highway drainage feature and will transfer to SCC, drainage ponds will be maintained by the Applicant, adoption by any other party is not anticipated or required. SCC will be consulted on the detail of the drainage design.</p>
4.21		Schedule 3 Classification of Roads and 4 Highways to be stopped up	<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-?,</p>		<p>The DCO has been amended to correct the titles, include the omitted sections and make other corrections.</p> <p>The other requests were responded to in the Applicant's D3 submission, REP3-003.</p>

			<p>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 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</p>		
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		<p>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 precommencement 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</p>		
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			<p>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 exist, will be appropriately mitigated for that would include provision of PRoW to appropriate widths. Such a</p>		
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			<p>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</p>		
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			<p>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</p>		
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			<p>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. 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>		
4.22		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,</p>		<p>No change made.</p> <p>As set out at line 4.11, the Applicant is happy to discuss any design measures which could be incorporated to address potential anti-social behaviour with the Council however in discussion with the Council when this was</p>

			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.		raised the Council indicated it did not continue to seek the changes in width as requested in the comment.
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Other changes proposed by the Applicant

5 Changes proposed by the Applicant			
	Section/ Paragraph	Proposed amendments	Reason for proposed amendments
5.1	Article 2 Definitions	Insert new definition: “adjacent land” means that land which is necessary to carry out the development of the Works or ensure the safe construction, maintenance or operation of any section or part of the Works;	To respond to the discussion in hearings regarding IP’s lack of clarity on how this applies.
5.2	Article 2 Definitions Definition of authorised development	“authorised development” means the development and associated development described in Schedule 1 (authorised development); including all of the numbered Works;	For clarity where works is used in the Order
5.3	Article 2 Definitions	Insert new definition: “temporary working site” means any area within the Order limits which is occupied for the purposes of carrying out the Works in the	To respond to the request made by the Examining Authority in hearings

		vicinity of that area and within which materials may only be temporarily stored;	
5.4	Article 10(4)	Various amendments have been made to the details of statutory undertakers	To reflect details advised by undertakers or sale of utilities.
5.5	Article 15	Highways have been added to provisions of this article.	As agreed in the hearings.
5.6	Article 15	A requirement to consult the District Council has been added.	In response to the request by the District Council.
5.7	Article 16	Highways have been added to provisions of this article.	As agreed in the hearings.
5.8	Article 17	The title has been amended as follows: Creation or improvement of means of access to works	To respond to the request made by the Examining Authority in hearings
5.9	Article 19	A requirement to consult the District Council has been added.	In response to the request by the District Council.
5.10	Article 43	A new paragraph 3 has been added: The undertaker must make copies of the certified plans available in electronic form to the public no later than 14 days after certification under paragraph (1) until no earlier than one year after the completion of all of the works.	To respond to the request made by the Examining Authority in hearings
5.11	Schedule 1	Typographical corrections to remove unnecessary capital letters	-
5.12	Schedule 1	Addition of work 105 Work No.105 – The construction of new multi-purpose 'Track 10', shown on sheet 3 of the Works Plans between points EL and EM.	Previously omitted
5.13	Schedule 1	Addition of work 104 and deletion of work 59	Further to acceptance of the change request
5.14	Schedule 2 part 1 Requirements, definitions	Addition to definition of LEMP	For clarity in response to comments raised by the District Council.

5.15	Schedule 2 part 1 Requirements, requirement 3(2)(b)	Cultural heritage features have been added to the matters which must be recorded in the CEMP	For clarity in response to comments raised by the District Council.
5.16	Schedule 2 part 1 Requirements, requirement 3(2)(e)	Carriageway has been amended to highway	As agreed in the hearings.
5.17	Schedule 2 part 1 Requirements, requirement 5	New paragraph (2) has been inserted: (2) Where the written landscaping scheme to be submitted under sub-paragraph (1) relates or includes to any part of the Hazlegrove Registered Park and Garden, consultation must also be undertaken with the Historic Buildings and Monuments Commission for England and the Gardens Trust in addition to the consultees set out in sub-paragraph (1).	As agreed in the statement of common ground with Historic England.
5.18	Requirement 12	This requirement has been amended as follows; Detailed design <u>12.—(1) The No part of the authorised development must be designed in detail and carried out so that it is compatible with to commence until the preliminary scheme detailed design shown on the works plans and the engineering section drawings, unless otherwise agreed of that part has been approved</u> in writing by the Secretary of State following consultation with the relevant planning authority and local highway authority on matters related to their functions. <u>(2) The details to be approved under this requirement must include:</u> <u>(i) plans, with annotations where required, showing the limits of responsibility for the operational maintenance of any work and provided that which person or body is responsible for maintaining any part; and</u>	To address comments by the Council that only departures would be for approval, it has been clarified that all of the detailed design will be subject to approval. A new paragraph (2) has been inserted in response to discussion with the County Council who were seeking confirmation of when these details would be provided. New paragraph (3) is explained at line 3.9 above.

		<p><u>(ii) the width and limitations of any public rights of way which are created or altered by this Order.</u></p> <p><u>(3) Where protective works under article 21 are required to a listed building within the meaning of the Planning (Listed Buildings and Conservation Areas) Act 1990, and such works would cause or require to be caused permanent change or alteration of the listed features, the protective works must be set out in the detailed design submitted under sub-paragraph (1) and consultation on the relevant details must be undertaken with the Historic Buildings and Monuments Commission for England in addition to the bodies listed in sub-paragraph (1).</u></p> <p><u>(4) Following approval of detailed design under sub-paragraph (1), the undertaker may submit amended detailed design for any part of the authorised development in writing to the Secretary of State following consultation with the relevant planning authority and local highway authority on matters related to their functions.</u></p> <p><u>(7)(5) The details to be approved under sub-paragraph (1) or any subsequent amendment of those details approved under sub-paragraph (4) may depart from the preliminary scheme design shown on the works plans and the engineering section drawings only where the Secretary of State is satisfied that any amendments to the works plans showing departures from the preliminary scheme design would not give rise to any materially new or materially worse adverse environmental effects in comparison with those reported in the environmental statement.</u></p> <p><u>(8)(6) Where amended details are approved by the Secretary of State under sub-paragraph (1), those details are deemed to be substituted for the <u>approved details</u>, corresponding works plans or engineering section drawings and the undertaker must make those amended details available in electronic form for inspection by members of the public.</u></p>	
5.19	Requirement 13	The local highway authority has been added to the list of consultees.	As agreed with the County Council in discussion.

		A new item has been added to 13(2)(c) <u>(c) An assessment of the sustainability of the drainage proposals and of the opportunities to increase sustainable drainage provision.</u>	
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