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Cc: A303_Sparkford_to_Ilchester
Subject: FW: TR010036 - SCC"s response to Deadline 6
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Attachments: [TR010036_SCC_Deadline_6_Cover_Letter..pdf](#)
[190501-D-DCOcomments..pdf](#)
[Annex_1_to_Explanatory_Note_Protective_Provisions_-_Commuted_Sums_Protocol_STAN_14_18_v3.pdf](#)
[explanatory_Note_Protective_Provisions_\(003\)..pdf](#)
[Protective_Provisions_190430..pdf](#)

**PLANNING ACT 2008
APPLICATION BY HIGHWAYS ENGLAND FOR AN ORDER GRANTING
DEVELOPMENT CONSENT FOR THE A303 SPARKFORD TO ILCHESTER
DUALLING
SUBMISSION MADE PURSUANT TO DEADLINE 6**

PLANNING INSPECTORATE REFERENCE TR010036

Please find attached relevant documents from Somerset County Council in respect of Examination Deadline 6.

Kind regards,

Tess Bond
Senior Planning Officer
Infrastructure Programmes
Somerset County Council

01823 357147
tbond@somerset.gov.uk

My working days are Wednesday, Thursday and Friday

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The Planning Inspectorate
National Infrastructure Planning
Temple Quay House
2 The Square
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Please ask for
Andy Coupe

Direct line
01823 355145

My reference

Your reference:
TR010036

Sent by e-mail

1 May 2019

Dear Ms Coffey

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

SUBMISSION MADE PURSUANT TO DEADLINE 6

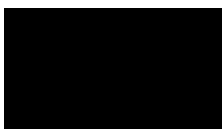
This submission is in response to the Examining Authority ("ExA") Rule 8 letter dated 21st December 2018, and comprises the relevant information requested from Somerset County Council (SCC).

The submission consists of: -

- Somerset County Council's review of the draft DCO dated April 2019 submitted by the Applicant at Deadline 5.
- Proposed Protective Provisions for the Highway Authority.
- Explanatory Note to the Protective Provisions.
- Annex 1 to the Explanatory Note.

The County Council strongly supports the need for the single carriageway section of the A303 between Sparkford and Ilchester to be upgraded to dual carriageway as part of an end-end whole route improvement of the A303/A358 between the M3 and the M5 at Taunton. If designed appropriately, the improvement will improve connectivity and access to the South West Region, improve the resilience of the strategic road network and help to promote economic growth in the region.

Yours sincerely,



Andy Coupe
Strategic Manager (Infrastructure Programmes)

SCHEDULE 8

PART 4

FOR THE PROTECTION OF THE LOCAL HIGHWAY AUTHORITY

1. For the protection of the Local Highway Authority the following provisions have effect unless otherwise agreed in writing between the undertaker and the local highway authority.

2. In this Part of this Schedule—

“Commuted Sum” means a payment by the undertaker to the Local Highway Authority in accordance with the Somerset Technical Advice Note 14/18 – Commuted Sums Protocol for Highway Infrastructure or any replacement or modification of that document for the time being in force as a contribution towards the future maintenance and upkeep of that part of the Local Highway which is intended upon the completion of the Works to be maintainable by the Local Highway Authority but is not currently so maintainable “Stage 3 Certificate” means a certificate issued by the Local Highway Authority to certify that the Works to which the certificate relates have been undertaken to the Local Highway Authority’s reasonable satisfaction in accordance with this Part and are available for use by the public;

"Detailed Information" means such drawings, specifications and other information which the Local Highway Authority might reasonably require relating to works on the Local Highway including the following:

- (a) boundary, environmental and mitigation fencing;
- (b) road restraint systems (vehicle and pedestrian);
- (c) drainage and ducting;
- (d) earthworks;
- (e) road pavements;
- (f) kerbs, footways and paved areas;
- (g) traffic signs and road markings;
- (h) road lighting (including columns and brackets);
- (i) electrical work for road lighting and traffic signs;
- (j) highway structures;
- (k) landscaping, planting and any boundary features which will form part of the highway;
- (l) utility diversions;
- (m) a schedule of timings for the works, including dates and durations for any closures of any part of the public highway;
- (n) traffic management proposals including any diversionary routes;

- (o) a schedule of condition of the Local Highway to which the Works relate or which may in the Local Highway Authority’s opinion be affected by the Works and
- (p) where highway is occupied under this Order in connection with any Works but is not itself subject to Works, specification of the condition in which the highway will be returned post occupation
- (q) where highway is to be de-trunked under this Order, a specification of the condition of the de-trunked section of highway, the works to be undertaken to ensure the existing road is brought up to an appropriate standard before it is passed to the Local Highway Authority to maintain and other such works and traffic management measures as the Local Highway Authority reasonably consider necessary to minimise the risk of unauthorised use and anti-social behaviour.

“DMRB” means the Design Manual for Roads and Bridges published by Highways England or any replacement or modification of that standard for the time being in force;

"Final Certificate" means a final certificate to be issued by the Local Highway Authority when the Maintenance Period for the Works to which Stage 3 Certificate relates has expired;

“Local Highway” means any public highway including public right of way which is maintainable or is intended upon the completion of the Works to be maintainable by the local highway authority and for the avoidance of doubt shall include any section of trunk road which will be de-trunked pursuant to the provisions of this Order;

“Local Highway Authority” means Somerset County Council;

“Maintenance Period” means a minimum period of 12 months commencing from the date of issue of the Stage 3 Certificate and ending at the issue of the Final Certificate during which the undertaker is required to maintain the Works, excluding any Winter Maintenance necessary which shall be the sole responsibility of the Local Highway Authority;

"Winter Maintenance" means any salt spreading, gritting or other such treatment of ice or snow conditions on the Local Highway, or other such work or maintenance required in connection with the treatment of such ice or snow conditions;

“Works” means those works or any part thereof carried out by the undertaker pursuant to the provisions of this Order which involves interference with a Local Highway (including interference with the use by the public of a local highway and temporary or permanent stopping up of any part of a local highway and shall include any associated or consequential works reasonably required by the Local Highway Authority.

3. (1) Before commencing the construction of, or the carrying out of any Works the undertaker shall agree with the local highway authority a detailed local operating agreement covering the following:
 - (a) Communications and Customer Care: communication with stakeholders and identification of which party is responsible for each activity;
 - (b) Operational Areas – Scheme Operational Areas: definitions and scheme extents for the works areas, zone of influence and Free Recovery Area;

- (c) Asset Handover: describing the scheme existing assets and activities to be undertaken to enable commencement and completion of works, and the party responsible for each;
 - (d) Asset Inspection;
 - (e) Routine Maintenance and Repair;
 - (f) Winter Maintenance and Severe Weather;
 - (g) Continuity of Technology;
 - (h) Occupancy Management;
 - (i) Incidents;
 - (j) Traffic Management: provides the key activities to be undertaken with regard to the design, installation, maintenance and removal of Traffic Management; and
 - (k) Claims made by and against the undertaker.
- (2) Any agreement completed under sub-paragraph (1) will continue in force until the completion of the works or the removal of the undertaker from all local highways, whichever is the earlier.
- (3) Where agreement cannot be reached under sub-paragraph (1), the terms of the detailed local operating agreement will be resolved by arbitration under article [45] (arbitration)
4. (1) Before commencing the construction of, or the carrying out of the Works authorised by this Order on the Local Highway the undertaker shall provide to the Local Highway Authority the Detailed Information relating to the Works for its approval.
- (2) The undertaker must not commence construction of the Works to which the Detailed Information relates until approval, unconditionally or conditionally, has been given by the Local Highway Authority as provided in this paragraph.
- (3) The works must not be constructed except in accordance with such Detailed Information as may be approved in writing by the Local Highway Authority.
- (4) Any approval of the Local Highway Authority required under this paragraph must not be unreasonably withheld or delayed.
5. (1) Subject to sub-paragraph (2), in executing and maintaining any Works, together with any other works that the Local Highway Authority might reasonably require, the undertaker must:
- (a) complete the works without unreasonable delay in accordance with the approved Detailed Information and to the reasonable satisfaction of the Local Highway Authority; and
 - (b) take such precautions for the protection of public and private interests as would be incumbent on the undertaker if it were the local highway authority
- (2) The undertaker must give to the Local Highway Authority—
- (a) not less than 14 days' notice in writing of its intention to commence construction of any specified Works; and
 - (b) notice in writing of its completion not later than 7 days after the date of completion

6. (1) Any officer of the Local Highway Authority duly appointed for the purpose may at all reasonable times, enter upon and inspect any part of the authorised development which—
 - (a) is in, over, under or adjacent to any local highway, or
 - (b) which may affect any local highway or any property of the Local Highway Authority,during the carrying out of the works, and the undertaker shall give to such officer all reasonable facilities for such inspection
 - (2) The testing of materials used in any Works affecting Local Highways shall be carried out at the expense of the undertaker in accordance with Manual of Contract Documents for Highway Works Appendix 1/5 (Specification for Highway Works). The Local Highway Authority shall receive copies of all test certificates and results which have been requested by it in writing as soon as reasonably practicable. Notwithstanding the foregoing, the Local Highway Authority shall have full power to test all or any materials used or proposed to be used in any work to the Local Highway at the undertaker's expense and the undertaker shall provide such information and materials as is reasonably required by the Local Highway Authority to facilitate such testing.
 - (3) Without prejudice to the powers conferred on the undertaker by this Order the undertaker shall not alter, disturb or in any way interfere with any property of the Local Highway Authority on or under any local highway, or the access thereto, without the prior written consent of the Local Highway Authority.
7. (1) The undertaker will procure that an appropriately qualified safety auditor has undertaken road safety audit stages 2, 3 and 4 on the Works in accordance with DMRB Volume 5 Section 2 Part 2 (GG 119) and shall provide copies of the reports of such audits to the Local Highway Authority as soon as practicable.
 - (2) The Local Highway Authority will be invited to participate in the stage 2, 3 and stage 4 road safety audits conducted under sub-paragraph (1).
 - (3) The undertaker must carry out at its own expense any works which the stage 3 and 4 road safety audit reports identify to the reasonable satisfaction of the Local Highway Authority and prior to any local highway being transferred or returned to the control of the Local Highway Authority.
 - (4) The undertaker will use reasonable endeavours to agree with the Local Highway Authority a programme for any works to be carried out under sub-paragraph (3), which programme must include timing of any closures of any part of the highway, traffic management arrangements, signage and diversion routes where required.
 - (5) The carrying out of works under sub-paragraph (3) are Works under this Order.
8. Provision shall be made in accordance with the Local Highway Authority's reasonable requirements at the site of the Works to prevent mud and other materials from being carried on to the adjacent highway by vehicles and plant. The operational highway in the vicinity of the site of the Works shall be swept as required to ensure its safe use at all times as a public highway.
9. The undertaker shall not, except with the consent of the Local Highway Authority, erect or retain on or over a local highway to which the public continues to have access any scaffolding or other structure which obstructs the local highway.

10. Except in an emergency or where necessary to secure or maintain the safety of the public, no direction or instruction may be given by the Local Highway Authority to the contractors, servants or agents of the undertaker regarding any Works without the prior consent in writing of the undertaker.
11. In exercising the powers conferred by the Order in relation to any local highway the undertaker shall have regard to the potential disruption of traffic which may be caused, shall seek to minimise such disruption so far as is reasonably practicable and shall at no time prevent or unreasonably impede access by emergency service vehicles to any property.
12. The undertaker must, if reasonably so required by the Local Highway Authority, provide and maintain during such time as the undertaker may occupy any part of a local highway for the purpose of the construction of any part of the authorised development, temporary ramps for vehicular or pedestrian traffic, or both, and any other traffic measures required to protect the safety of road users in accordance with chapter 8 of the Traffic Signs Manual or as may be necessary to prevent undue interference with the flow of traffic in the local highway
13. (1) The undertaker shall execute and complete at the undertaker's expense a transfer to the Local Highway Authority of any land and rights compulsorily acquired by the undertaker pursuant to articles [23 and 26] of the Order or otherwise for the construction, operation and maintenance of the Local Highway or to facilitate it, or as is incidental to it, at nil consideration PROVIDED THAT the undertaker has completed to the Local Highway Authority's satisfaction all necessary works within the Local Highway for which that land and rights were acquired.

(2) Paragraph (1) above does not apply in relation to any land within the local highway compulsorily acquired by the undertaker that has been or is proposed to be permanently stopped up and rights extinguished pursuant to article 16 of the Order.
14. (1) Where the undertaker carries out any Works to any Local Highway it shall make good any defects in those works, including those defects notified to it by the Local Highway Authority prior to the issue of the Final Certificate to the reasonable satisfaction of the Local Highway Authority.

(2) The carrying out of any remedial works required under sub-paragraph (1) are Works under this Order.

(3) The carrying out of any remedial works required under sub-paragraph (1) shall require the submission of, for the Local Highway Authority's approval, such items of Detailed Information to the Local Highway Authority as the Local Highway Authority deems to be reasonable in the circumstances but always including a description of the works to be carried out, a schedule of timings for the works, including dates and durations for any closures of any part of the local highway and traffic management proposals.
15. (1) The undertaker will hold the Local Highway Authority harmless and indemnified from and against any liability, loss, costs or claims whatsoever arising under any statute or common law in respect of damage to property or personal injury or of the death of any person whomsoever arising out of or incidental to the carrying out of the Works (other than those arising out of or in consequence of any negligent act of the Local highway Authority) provided that no claim shall be settled or liability accepted by the Local Highway Authority without first obtaining the written approval of the undertaker, such approval not to be unreasonably withheld or delayed AND FURTHER to indemnify the Local Highway Authority in respect of any claims costs or proceedings

whatsoever arising under Part I and Part II of the Land Compensation Act 1973 in respect of the use of the Works or any part thereof.

(2) The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved or deemed to be approved by the Local Highway Authority, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve the undertaker from any liability under this Part.

16. (1) When the undertaker considers that the Works have reached completion (which shall include the carrying out of a Stage 3 safety audit in accordance with GG19 of DMRB and the completion of works resulting from the audit) it shall notify the Local Highway Authority and shall allow the Local Highway Authority the opportunity to inspect the Works and the undertaker shall give proper consideration to any representations that are made by the Local Highway Authority

(2) On completion of the Works to the satisfaction of the Local Highway Authority and in accordance with this Part the Local Highway Authority shall issue the Stage 3 Certificate to the undertaker.

17. (1) The Maintenance Period shall begin upon the date of the Stage 3 Certificate.

(2) During the Maintenance Period the Works shall be maintained by the undertaker to the Local Highway Authority's satisfaction, excluding any Winter Maintenance necessary which shall be the sole responsibility of the Local Highway Authority.

(3) If for any reason the maintenance of the Works (excluding any Winter Maintenance necessary) is not completed to the reasonable satisfaction of the Local Highway Authority in accordance with this Part the Local Highway Authority may require:

- (a) the undertaker procures, at its own expense, the carrying out of such maintenance necessary in order for the Local Highway Authority to be so satisfied; or
- (b) the Local Highway Authority shall carry out such necessary works and the undertaker shall indemnify the Local Highway Authority for its costs in doing so.

(4) The undertaker shall indemnify the Local Highway Authority against all claims for damages and compensation which may be brought against the Local Highway Authority arising out of the maintenance of the Works during the Maintenance Period, excluding any claims resulting from Winter Maintenance (or lack of Winter Maintenance) of the Works.

(5) The undertaker shall give the Local Highway Authority not less than 14 days' notice of any access required for the maintenance of the Works and access will be subject to the Local Highways Authority's control and approval.

(6) The undertaker and the Local Highway Authority shall at all times co-operate with each other to enable the maintenance of the Works to be carried out promptly, effectively and without undue disruption to the existing highway network and in particular shall assist each other in the promotion and publication of any necessary traffic regulation orders and dealing with any other statutory requirements including those of any utility companies.

18. No earlier than 52 weeks from the date of issue of the Stage 3 Certificate and provided that:

- (a) all identified defects requiring remediation have been completed such that the Local Highway Authority consider the Final Certificate may be properly issued;

- (b) a Stage 4 safety audit has been carried out (if such Stage 4 safety audit is required in accordance with GG19 of DMRB in connection with the Works) and any additional works, alterations or amendments to the Works reasonably required by the Local Highway Authority as a result of the Stage 4 safety audit are completed to the Local Highway Authority's satisfaction;
- (c) the undertaker has given the Local Highway Authority an opportunity to inspect the Works and has given proper consideration to any representations that are made by the Local Highway Authority; and
- (d) the undertaker has paid to the Local Highway Authority any Commuted Sum due in relation to the Local Highway to which the Stage 3 Certificate relates
- (e) all costs charges, expenses payable to the Local Highway Authority pursuant to this Part have been paid

the Local Highway Authority shall issue the Final Certificate.

19. The undertaker must indemnify the Local Highway Authority in respect of all costs, charges and expenses which the Local Highway Authority may reasonably incur, have to pay or sustain—
 - (a) in the examination or approval of Detailed Information under this Part; and
 - (b) in inspecting the construction of the Works including any works required by the Local Highway Authority under this Part; and
 - (c) in carrying out any surveys or tests by the Local Highway Authority which are reasonably required in connection with the construction of the Works
 - (d) in the transfer pursuant to paragraph 13 to the Local Highway Authority of the land and rights acquired by the undertaker.
20. Nothing in this Part of this Schedule prevents the Local Highway Authority from carrying out any work or taking such action as deemed appropriate forthwith without prior notice to the undertaker in the event of an emergency or danger to the public.
21. Any difference arising between the undertaker and the Local Highway Authority under this Part of this Schedule (other than in difference as to the meaning or construction of this Part of this Schedule) shall be resolved by arbitration under article [45] (arbitration).

SCHEDULE 8[X] - PART 4

FOR THE PROTECTION OF THE LOCAL HIGHWAY AUTHORITY

Explanatory Statement

1. Summary

- 1.1 This Explanatory Statement explains the purpose and effect of the protective provisions which the County Council proposes are included within Schedule 8 of the draft A303 Sparkford to Ilchester Dualling Development Consent Order (“the Order”). The Applicant has accepted in principle the inclusion of protective provisions for the protection of the local highway authority in the draft Order, and the parties have drafted and considered draft provisions, but an agreement has not yet been reached on the scope of these provisions and the detailed wording. This Statement and the draft provisions to which it relates is being submitted by the County Council to ensure that there is an opportunity to consider at the next issue specific hearing how such protective provisions might work.

2. Purpose of the Protective Provisions

- 2.1 Article 42 of the draft Order gives effect to Schedule 8 of the Order, which contains provisions protecting the interests of third parties. As noted in the Explanatory Statement, it was not included in the Model Provisions but is a standard article in development consent orders that contain protective provisions.
- 2.2 At present, the draft Order contains protective provisions for the benefit of electricity, gas, water and sewerage undertakers (part 1), electronic communications code networks (part 2) and drainage authorities (part 3). The rationale for including these provisions from the Applicant’s perspective is that the Order if confirmed will enable the Applicant to interfere with the apparatus for which these third parties are responsible. It would be unreasonable to be able to do so without inserting provisions to ensure that these parties suffer no detriment as a result of this interference. Were the Applicant not to do so, these third parties would suffer financial losses and would be likely to object to the Order.

- 2.3 The position of the highway authority is no different from that of the third parties whose interests are currently protected under Schedule 8. The Order will enable the Applicant to make alterations to the local highway network for which the County Council is responsible, construct new highway the responsibility for which will be transferred to the County Council, and de-trunk sections of the A303 which it is proposed will become the County Council's responsibility. It is entirely appropriate that there should be protective provisions which enable the County Council's interest in the local highway network to be protected.
- 2.4 Whilst in other DCOs the local highway authority's interest has been protected by way of a separate legal agreement with the Applicant, in which the Applicant has agreed to make financial contributions towards matters such as air quality mitigation, design check fees, de-trunking maintenance, monitoring traffic impacts and delivering highway improvement mitigation and other highway works, inspection fees (see Somerset County Council's response at Deadline 5 in relation to the payment for undertaking approvals and/ or monitoring – specifically DCOs relating to A556 Knutsford to Bowden Improvement Scheme and A14 Cambridgeshire to Huntingdon Improvement Scheme), there is a residual concern that the relationship between the DCO and the legal agreement is untested in law, and to the extent that the two conflict, the DCO as a statutory instrument would take precedence and the legal agreement would be set aside.
- 2.5 The Applicant and the County Council have agreed in relation to this DCO that the measures designed to protect the interests of the local highway authority are best placed with the protective provisions for other third parties in Schedule 8. The issue between the parties remains the scope of those provisions and the detailed wording, and this note aims to set out the Council's position in relation to those parts of the protective provisions where no consensus has been reached at this stage.
- 2.6 It is practice for the Applicant to enter into a S6 Agreement with a Local Highway Authority where the Local Authority is undertaking works on the Strategic Road Network. The standard provisions of this Highways England Agreement has been incorporated into Somerset County Council's proposed Protective Provisions. In this

way, the County Council is not asking for anything different to that which the Applicant would request of a Local Highway Authority working on the Strategic Road Network.

3. Commuted Sums

- 3.1 The rationale for seeking commuted sums is to ensure that highway authorities have sufficient financial resources to fund the future maintenance, associated works and, where appropriate, replacement of these additional assets which it will inherit as a result of the Order, for which any funding received from Government through the Revenue Support Grant is insufficient. In this way, the purpose of securing commuted sums is to fund the future maintenance of non-standard assets.
- 3.2 For many years Somerset County Council, as highway authority, has secured commuted sums from developers as a financial contribution towards the future maintenance of new highway infrastructure delivered by them in the County and have done so with due regard to prevailing national best practice.
- 3.3 In recognition of the considerable variation in approach by local highway authorities to the collection and use of commuted sums, The Association of Directors of Environment, Economy, Planning & Transport's (ADEPT) published a guidance document on 'Commuted Sums for Maintaining Infrastructure Assets' in November 2009. This document has been widely adopted by local highway authorities and has been broadly accepted as national standard procedures and principles for the assessment and collection of commuted sums.
- 3.4 Further guidance by ADEPT in September 2014 reported that 'when authorities followed the process and principles (in their 2009 guidance document) and added local supplementary guidance, a robust, auditable methodology had been demonstrated'. Their summary recommendations to authorities were therefore to both adopt their 2009 guidance as best practice but to also consider producing a supplementary guidance document outlining local policy and/or procedures. The Somerset Technical Advice Note 14/18 – Commuted Sums Protocol for Highway Infrastructure is closely aligned to ADEPT's 'accepted national standard,' and has

been adopted in recognition of the benefits to all parties of introducing local guidance. A copy of the Advice Note is contained in Annex 1 and is reference in the protective provisions to offer some comfort to the Applicant as to the basis on which Commuted Sum will be sought.

- 3.5 The Applicant has accepted the principle that commuted sums should be payable, but the definition/ scope of which is currently under discussion given that the detailed design process has not been concluded.

4. Detailed Information

- 4.1 Schedule 2 Requirement 12 of the Order sets out in the broadest terms a requirement on the undertaker to submit the detailed design for the development to the Secretary of State for approval following consultation with the relevant planning authority and the local highway authority. Requirement 4 of Schedule 2 sets out in similarly broad terms the basis on which that consultation will be undertaken. Whilst paragraph 2 of requirement 12 specifies two elements of that detailed design, it is not set out anywhere in the order precisely the extent of the documents which should be submitted for consultation.
- 4.2 On the basis that some of the detailed design will relate to sections of highway which the County Council is currently responsible for, or will become responsible for under the terms of the order, it is reasonable to expect that the County Council should be provided with whatever information it reasonably requires in order to satisfy itself as to the construction of the asset for which it will ultimately be responsible. This principle is recognised in the drafting of Article 13, which requires that those parts of the highway are completed to the reasonable satisfaction of the County Council. However, in order to be so satisfied the Council should be provided with the detailed information prior to construction and be able to comment upon the design, rather than leaving the issue to be considered by the Council once construction works are completed.

- 4.3 The County Council's proposed protective provisions provide for the submission of detailed information for the Council's approval prior to construction of the works, and will enable the Council to approve the detailed designs pursuant to Requirement 12.
- 4.4 The list of detailed information was prepared by the Applicant save for the last item relating to the de-trunked road. This has been added by the Council to ensure that the de-trunked sections of road which it will be inheriting are dealt with in a similar way to the new sections of road. It would be unreasonable for the Applicant to handover to the Council a section of de-trunked road which is needing major repairs. To avoid this, the Council has proposed that the Applicant provide a specification of the condition of the de-trunked section of highway and the works to be undertaken to ensure that it has been brought up to an acceptable standard.

5. The Local Highway and the Works

- 5.1 The Protective Provisions are intended to apply to the Local Highway, this being any part of the highway network which is currently vested in the local highway authority, any new road to be constructed which will form part of such network and the de-trunked sections of road which the Applicant is proposing will become vested in the highway authority. It also includes public rights of way which are the responsibility of the County Council to maintain, and sections of the Local Highway which may be affected by the works, to ensure that any damage caused by construction traffic for instance is remedied.
- 5.2 With respect to the Works it is anticipated that there is a possibility that once the detailed design is prepared and consultations proceed with the County Council, there may be other works identified which may be required in addition to the authorised works. The majority of these works will fall within the list of ancillary works appearing at the end of Schedule 1, but it may be that there are additional works required which for which either the Applicant or the County Council can rely on its permitted development rights or require a change or correction to the Order or even require separate planning consent. The Council does not accept that these additional works should not be carried out simply because they are not specified as authorised works

within the terms of the order, particularly where those works are identified as part of the safety audit process.

6. Stage 3 Certificate and the Maintenance Period

- 6.1 Prior to the highway being opened to the public it is a requirement of the Protective Provisions that a Stage 3 safety audit is completed and any required works completed. It is the completion of these works to the County Council's satisfaction which triggers the issuing of a Stage 3 Certificate, a formal record that the works have been satisfactorily completed and the start of the maintenance period where the road is open to the public.
- 6.2 It is standard practice for the highway to be open to the public for a minimum period of 12 months to ensure that there are no defects in construction which might only become evident upon use. During this maintenance period the liability for maintaining the road remains with the undertaker, save for winter maintenance which might be more easily carried out at the same time as it is carried out to the rest of the local highway network. Otherwise there is a risk of parts of the highway being gritted at different times from other parts, which would give rise to safety issues.

7. Inspection and Test of Materials

- 7.1 In order for the Council to be satisfied as to the construction of the road, it will need to carry out inspections at various stages and test materials if the undertaker has not done so. As the Council is required to inspect the works and review test results or test materials itself in order to confirm that the highway works have been satisfactorily completed it is reasonable to expect that its costs and expenses in so doing will be met by the undertaker.
- 7.2 The Council may also need to inspect parts of the highway which the undertaker is working on to resolve issues on other parts of the network. It is not unusual for third parties to be working on the highway at different times, but this does not override the Council's powers as highway authority. The Order should not therefore have this effect in relation to the authorised works, as otherwise this would leave a void in

terms of an authority with responsibility for the highway network where the works are carried out.

8. Final Certificate

8.1 The issue of the Final Certificate signifies the completion of the Stage 4 road safety audit and the completion of all recommended works, and the transfer of maintenance responsibility to the County Council from the undertaker. It would be an untenable and confused legal position if highway became maintainable by the local highway authority when safety issues remained unresolved.

9. Payment of Costs

9.1 In accordance with the protective provisions for the other third parties it is reasonable to require that the undertaker meets the County Council's reasonable costs in approving the detailed design, overseeing the works, inspecting the road and testing materials. As mentioned above, this principle has been accepted in relation to the Cheshire East and Cambridgeshire DCOs, and the difference in this case is only that this issue is being secured in the Explanatory note. This ensures that the Council can secure the additional resources to deal with any issues arising from the works and is consistent with the practice adopted in the Council's Section 106 and section 278 agreements and the Section 6 Agreement the Applicant has with the County Council for the improvement works to the M25.

INFRASTRUCTURE PROGRAMMES GROUP

Somerset Technical Advice Note 14/18

Commuted Sums Protocol for Highway Infrastructure



WWW.SOMERSET.GOV.UK



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Document Control Sheet

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Revision History

This document has the following history:

Version No.	Version Date	Summary of Changes	Changes marked
3	June 2018	Approved by NSMP	
2	9 th May 2018	Appendices added	No
1	12 th January 2018	Minor formatting amendments	No

Approvals

This document has been approved by the Somerset County Council Network Standards Management Panel.

If you have any comments or observations or spot any errors please email the Development Engineering team at developmentengineering@somerset.gov.uk

Review Date

2 years from approval

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1 Introduction

- 1.1 For many years Somerset County Council, as highway authority, have secured commuted sums from developers as a financial contribution towards the future maintenance of new highway infrastructure delivered by them in the County and have done so with due regard to prevailing national best practice.
- 1.2 In recognition of the considerable variation in approach by local highway authorities to the collection and use of commuted sums, The Association of Directors of Environment, Economy, Planning & Transport's (ADEPT) published a guidance document on 'Commuted Sums for Maintaining Infrastructure Assets' in November 2009. This document has been widely adopted by local highway authorities and has been broadly accepted as national standard procedures and principles for the assessment and collection of commuted sums.
- 1.3 Further guidance by ADEPT in September 2014 reported that 'when authorities followed the process and principles (in their 2009 guidance document) and added local supplementary guidance, a robust, auditable methodology had been demonstrated'. Their summary recommendations to authorities were therefore to both adopt their 2009 guidance as best practice but to also consider producing a supplementary guidance document outlining local policy and/or procedures. Whilst Somerset County Council's current approach to commuted sums is closely aligned to ADEPT's 'accepted national standard,' the recognition of the benefits to all parties of introducing local guidance form the catalyst for this document.
- 1.4 As such this documents aims to provide a transparent and consistent approach to the seeking of and calculation of Commuted Sums for developer funded highway assets in Somerset. The guidance outlines the clarity of approach in order to:
- Remove uncertainty and risk for developers at an early stage in the process
 - Provide greater scrutiny for overstretched highway maintenance budgets
 - Enable developments to progress with much more certainty about the overall requirements and commitments for all parties involved
 - Provide a more flexible approach to the adoption of new and alternative 'non-standard' layouts without stifling innovation and the desire to create better places to live

2 Background

- 2.1 The highway authority has a statutory responsibility for the management and maintenance of the highway network which includes the need to keep the network safe for all road users.
- 2.2 Highway assets and infrastructure in Somerset delivered by developers are continually transferred to Somerset County Council, as the highway authority; through legal agreements securing 'adoption' whereby the highway authority then assumes responsibility for the future maintenance and upkeep at the public expense. These assets would typically consist of carriageways, footways, drainage systems, traffic signals, bridges, culverts and lighting systems and by accepting these assets a further financial burden is placed upon the authority for their management and upkeep.
- 2.3 The rationale for seeking commuted sums is to ensure that highway authorities have sufficient financial resources to fund the future maintenance, associated works and, where appropriate, replacement of these additional assets, for which any funding received from Government through the Revenue Support Grant is insufficient.
- 2.4 Regardless of the potential offer of a commuted sum payment, the highway authority will retain discretion as to what it is prepared to adopt, particularly where a proposal may not be acceptable in principle (e.g. on the grounds of highway safety) or where it would be inappropriate for it to do so (e.g. street art, play areas) or where materials are considered to be of an unacceptable or inappropriate specification.

3 What are commuted sums?

- 3.1 Commuted sums are a payment of a capital sum by an individual, authority or company to the highway authority, local authority or other body, as a contribution towards the future maintenance and upkeep of an asset to be adopted or transferred.
- 3.2 A commuted sum does not need to be a single payment and can, by agreement with the relative authority, be a series of payments and may include issues other than maintenance such as planned and unplanned inspections, repair and relocation of the asset.
- 3.3 In the main, a commuted sum is expected to relate to a payment by a developer to the highway authority as a contribution towards the future capital maintenance of 'non-standard' and 'extra-over' features of that development.

- 3.4 The payment of a commuted sum discharges the responsibility of a developer of any obligations to the future maintenance of that asset following the issue of the final completion certificate (adoption). The obligation and associated risks then lie with the highway authority to maintain the asset.

4 What is the legislation under which commuted sums are charged?

- 4.1 Highway Authorities can agree to adopt new roads and secure improvements to existing roads by entering into agreements with developers under Sections 38 and 278 of the Highways Act 1980.
- 4.2 Section 38 Agreements relate to the adoption of private internal estate roads built on the developer's own land which the developer, upon completion, wishes to be adopted by the highway authority as highway maintainable at the public expense.
- 4.3 Section 278 Agreements provide developers with a mechanism to either fund works, or undertake works themselves, to the existing public highway. The works are often termed 'off site works' as they are usually separate from the developer's site and the works are necessary to provide improved access to, or mitigate the effects of, the new development.

5 Commuted sums in relation to Section 38 agreements

- 5.1 Section 38 Highways Act 1980 sub-section (6) provides the power to seek commuted sums for the maintenance of any highway, road, bridge or viaduct covered by an agreement made under that section. The clause allows for payment to be sought by the highway authority, not only for maintenance prior to adoption but also other relevant matters as the authority making the agreement sees fit, which may include a commuted sum for the future maintenance following adoption. With the increased application of Sustainable Urban Drainage Systems (SuDS) the additional costs of maintaining different and less well known forms of highway drainage systems can be included within the definition.
- 5.2 Section 38 (6) Highways Act 1980 states:
“An agreement under this section may contain such provisions as to the dedication as a highway of any road or way to which the agreement relates, the bearing of the expenses of the construction, maintenance or improvement of any highway, road, bridge or viaduct to which the agreement relates and other relevant matters as the authority making the agreement thinks fit.”

6 Commuted sums in relation to Section 278 agreements

- 6.1 Section 278 Highway Act 1980 provides that if a highway authority is satisfied that it would be of benefit to the public for them to enter into an agreement under this section with any person then they may do so. The agreement would be for carrying out, on the existing public highway, works that would be of benefit to the public, and the cost of those works are to be borne by the developer. The majority of the time, the work to be undertaken is carried out by the developer as they will usually have some effect on his development.
- 6.2 There is an express provision in S278 (3) for payments for the maintenance of the works, and this may be applied by the highway authority if it chooses to do so: “An agreement under this section may provide for the making to the highway authority by the other party to the agreement of payments in respect of the maintenance of works to which the agreement relates and may contain such incidental and consequential provisions as appear to the highway authority to be necessary or expedient for the purposes of the agreement.

7 What principles are applied when exercising the provisions in these legal agreements relating to the securing of commuted sums?

- 7.1 The principles that Somerset County Council apply when exercising the provisions in these legal agreements that relate to commuted sums are:
- This guidance is equally applicable to both Section 278 and Section 38 agreements, albeit that they are different situations, as detailed above.
 - For newly constructed infrastructure commuted sums are not generally considered appropriate where there are other sources of funding to cover on-going maintenance.
 - Commuted sums are generally payable for ‘extra over’ costs which are deemed, by the highway authority, to be placing an extra burden on the maintenance budget.
 - As far as possible, all assets should be treated on the same basis for commuted sum calculation purposes.
 - Where new lengths of road and/or footway/cycleway are created the premise of this guidance is that the Revenue Support Grant system recognises increased highway length in its grant allocation to local highway authorities and that, as such, commuted sums for ‘standard’ network adoptions are not appropriate to be charged. However, they

should be applied for the 'extra over' areas and 'extra over' costs of exceptional items and specialist materials etc.

- All new works that do not entail the creation of a new length of road and/or footway/cycleway, including SUDS, carried out as part of a Section 278 Agreement, are appropriate for the application of commuted sums.
- There should not be any requirement to calculate any 'degree of benefit' to the local authority in respect of commuted sums for Section 278 works, even where such works are considered to provide some benefit to the general public (e.g. an improved junction layout with enhanced pedestrian facilities being provided).
- Under Section 278, commuted sums are not applicable to additional works, required by the highway authority, which are merely for aesthetic rather than for design reasons (e.g. full width resurfacing where only part width would be necessary to accommodate a new junction).
- If there is a net reduction in any asset type, this will have no reducing effect on the total of the commuted sums being calculated.
- For older existing infrastructure, adoption or transfer of ownership of any asset may require substantial pre-adoption remedial work, or for the impaired condition to be reflected in the commuted sum calculation (if appropriate).
- The historic acceptance of the basis of application of commuted sums in respect of adoption of bridges and structures should remain.
- Although there is not any legal requirement to provide lighting, the provision of 'standard' street lighting along new lengths of road or footway/cycleway will not generally be subject to commuted sums.

8 What infrastructure assets will potentially be subject to a commuted sum payment?

8.1 The circumstances relating to the seeking of commuted sums for future maintenance can generally be divided into four broad situations as summarised below. This is not an exhaustive, detailed list but is intended to illustrate the basic principles.

- (a) 'Additional' areas of carriageway, footway, landscaping etc. over and above the minimum requirements required, in the opinion of the highway authority,

for the safe functioning and operation of the highway. Examples can include additional areas of carriageway, such as a square surrounding a turning head.

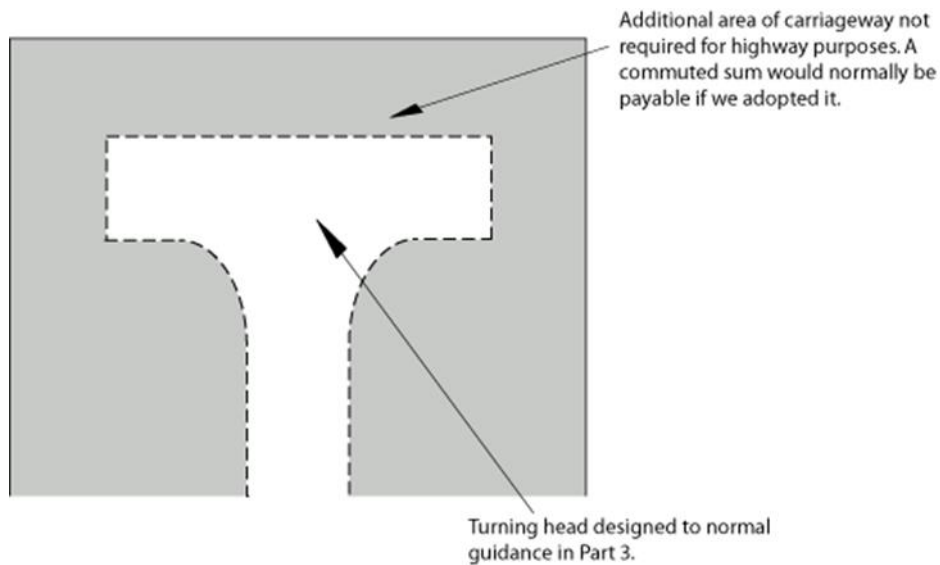


Figure 1a Example of turning head within a square

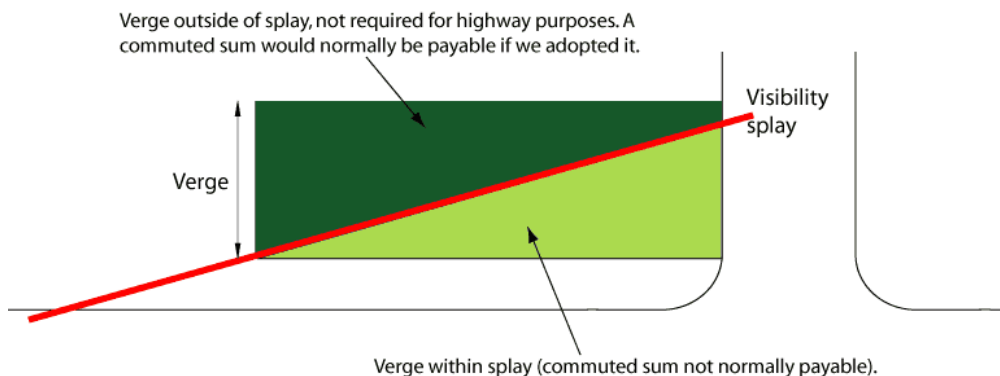


Figure 1b Example of additional area of grass verge adopted under a commuted sum

(b) 'Extra over' items such as:

- Any street furniture not required for road safety purposes (as would normally be the situation on residential streets.)
- Proprietary or coloured surfacing materials not required for highway safety purposes but specified for aesthetic reasons only such as coloured high friction surfacing
- Any culvert, bridge, retaining wall or other structure

- Special features such as noise fencing, vehicle restraint barriers, pedestrian guard railing, knee rails and fences, gates, traffic signals, intelligent warning signs or traffic systems etc.
 - Landscaping features such as planting, trees, hedging etc.
- (c) Permitted alternative materials or equipment to those specified in the definition of standard construction such as:
- The installation of specialist or 'non-standard' equipment (e.g. street lighting equipment) that is not of the authority's standard type, and/or such items as decorative luminaires, or columns with embellishments applied etc.
 - The additional columns (and equipment) from the provision of street lighting to a standard above that which is normally provided by the authority (and indicated in its lighting policy).
 - The use of any materials (e.g. surfacing materials), which whilst being approved will result in maintenance or replacement costs over and above the authority's 'standard' highway construction (as specified in Section 9 below).
 - Any other 'non-standard' construction types or materials.
- (d) Sustainable Drainage Systems (SuDS) or non-standard highway drainage features such as:
- Flow control devices and attenuation storage
 - Sustainable drainage systems (SuDS) including maintenance of any landscaping
 - Oil or petrol interceptors including the disposal of contaminated waste
 - Pumping stations and their energy charges
 - Watercourses and swales

When proposing SUDS the developer must hold early discussions with all relevant parties (and certainly before any planning application) to agree ownership and responsibility for the infrastructure proposed.

9 What is ‘standard’ highway construction?

9.1 ‘Standard’ highway construction in Somerset is defined as follows:

- Carriageways surfaced in concrete asphaltic materials (non-pigmented binder and non-coloured aggregates).
- Carriageways in shared surface roads, courtyards and housing squares surfaced in 200mm x 100mm x 80mm rectangular concrete block paving (optional).
- Footway surfaced in concrete asphaltic materials (non-pigmented binder or coloured aggregates).
- Footways adjacent to block paved carriageways also surfaced in 200mm x 100mm x 65mm thick concrete block paving (optional).
- Cycleways surfaced in concrete asphaltic materials (red pigmented binders and/or aggregates).
- Pre-cast concrete kerbing.
- Gully drainage, connection pipes and gravity draining highway carrier drains.
- Galvanised pedestrian guard railing.
- Standard highway lighting layouts, columns and lanterns.
- Standard illuminated and non-illuminated highway signs.
- Passively safe sign posts where required for road safety.
- Bollards and markers posts manufactured from Plastic derivatives or recycled plastic/rubber.
- Road markings.
- Grass verges.

9.2 ‘Non-standard’ is defined as all construction types or materials that are not included in the definition of ‘standard’ construction as above.

9.3 With the national trend towards innovation, and higher quality design the highway authority are flexible in their approach to asset specification and may reduce, or waive, any commuted sums requirements if it can be proven, or experience has shown, that the specified asset will not present an undue maintenance burden when compared to the ‘standard’ highway defined above.

9.4 The designer is encouraged to consider minimising the future maintenance liability of the asset as part of the design process. This could include enhanced construction (i.e. to reduce any maintenance requirements) or for the provision of higher quality materials, which could then offset all or part of the need for any commuted sum requirement.

10 What is the process to secure the commuted sum payments?

- 10.1 The legal Agreement will include conditions requiring the payment of commuted sums and specify when such payments will need to be made. However, as it is unlikely that the full cost implications of the site will be known by the authority at the time that the legal Agreement is entered into the amounts specified may be 'provisional'.
- 10.2 The Agreement will therefore contain provision for recalculating the 'provisional' commuted sums based on the final infrastructure design, actual quantities, revised time periods to maintenance operations if appropriate, and a price fluctuation factor to adjust current costs and maintenance operations specified in the Agreement.
- 10.3 The time period between the Agreement and completion of the development can be quite long. As such, recalculation of the sum calculated at the time of the Agreement will be necessary to arrive at the commuted sum payable prior to the issue of the Final Certificate.
- 10.4 To secure the provision of commuted sums in default, they should be included in the Bond required under the Agreement, unless payment is made prior to engrossment. This should be based on the 'provisional' commuted sums calculated when the Agreement is completed, and the security will be released following satisfactory completion of the maintenance period and payment of the actual commuted sum due.
- 10.5 In the case of specialist landscaping materials, lighting columns and signs, where finding replacements in future years could prove to be difficult, an alternative option could be for the highway authority to request a stockpile of material and adjust the commuted sum payment requirement accordingly. This option would allow for any replacement specialist paving type materials to 'weather' on the same basis as the original, but may be a problem with storage.

11 How are commuted sum values calculated?

Principles of calculating commuted sums

- 11.1 All commuted sums secured are discounted to allow for the fact that they will be earning interest which will make up part of the maintenance payment when it is required. It is therefore necessary to determine the net present value of a future expense, and the following formula is used to calculate the maintenance obligation:

Net present value = $\sum Mp / (1 + D/100)^T$, where:

Mp = Estimated future maintenance cost T years from now

D = Discount rate (effective annual interest rate) (%)

T = Time period before expenditure will be incurred (years)

Commuted sum = summation of all net present values for appropriate future costs.

Maintenance Cost (Mp)

- 11.2 The maintenance regime applied to the asset are generally based on a 'whole life costing' approach with the frequency of inspection, treatment, and/or the intervals of replacement, based on planned frequencies or historic information. It may also be appropriate to add an agreed percentage to the works costs to cover the highway authority design and supervision costs.
- 11.3 Therefore the associated activities/functions that may be included in the calculation of commuted sums are as follows:
- Inspections and surveys
 - Routine and cyclic maintenance
 - Winter maintenance
 - Energy charges
 - Design and supervision fees
 - Asset replacement
- 11.4 The maintenance unit costs are based on term maintenance contract rates and staff hourly rates as the time of calculation.

Discount Rate (D)

- 11.5 The discount rate (effective annual interest rate) is 2.2%, and is worked out as follows:

$$D = ((1.045/1.0225) - 1) \times 100 = 2.2\%$$

Where:

1.045 is the interest rate (4.5% based on long-term neutral base rate)
1.0225 is the inflation rate (2.25% based on RPI-X that is RPI excluding mortgage payments).

- 11.6 This formula ensures that both the interest earned on the commuted sum, and the effect of inflation in increasing the cash sums eventually required, are taken into account.

Time Period (T)

- 11.7 A time period of 60 years is used as the default period for calculating commuted sums for future maintenance with the exception of highway structures when a 120-year period will apply, in accordance with the standard design life requirement.

12 Early advice to developers

- 12.1 It is acknowledged that many of the current problems experienced by developers in respect of commuted sums, and other procedures, are as a result of inadequate knowledge of the highway authority's requirements, leading to the potential burden of costs at a very late stage in the design process.
- 12.2 Somerset County Council actively encourage developers to establish an early dialogue with both the Estate Roads team and the Development Engineering team as well as the Planning Liaison team at the earliest possible stage in the process and should preferably be before a planning application is submitted. While commuted sums relate to the final scheme design and that design may not be decided on until after land has been purchased, early dialogue can remove many uncertainties. Continuous dialogue throughout the design process ensures that, as the scheme evolves, the financial implications are clearly understood.

13 Bibliography

- Whole Life costing for Option Appraisal of Maintenance Schemes for Local Highway Authorities – Atkins – June 2011
- Commuted Sums for Maintaining Infrastructure Assets – ADEPT – November 2009
- Commuted Sums Levied for Traffic Signals – ADEPT – September 2014

APPENDIX A

Typical Section 38 and 278 Agreement clauses

Typical References to Commuted Sums in agreements under Section 38 and 278 Highways Act 1980

Section 278 Clauses

Definitions

"Commuted Sum(s)" means the sum to be paid by the Developer to the County Council for the future maintenance of an asset which will be adopted by the Council

Financial Provisions

Pay to the County Council the Traffic Signals Commuted Sum prior to the date on which the traffic signals forming part of the Highway Works are commissioned by the County Council's Traffic Management Group and become operative or within 7 days of the issue of the Certificate of Completion, if earlier

Pay to the County Council within 7 days of receipt of a demand in writing from the County Council its reasonable and proper costs for maintenance of the traffic signals forming part of the Highway Works for the period commencing on the date on which the signals are commissioned by the County Council's Traffic Management Group to the date immediately prior to the date on which the Final Certificate for the Highway Works is issued

Pay the Commuted Sum(s) to the County Council prior to [insert timing provision] and not to permit cause or allow [insert timing provision] unless and until the Commuted Sum has been paid to the County Council

Section 38 Clauses

Definitions

"Commuted Sum(s)" means the sum of POUNDS (£) being the amount which the Developer has agreed to contribute towards the costs likely to be incurred by the Council following adoption of the road or roads for the maintenance of the (item in question)

Developer's Liability

"THE Developer shall pay the Commuted Sum to the Council on the date hereof" (hereof being the date the s.38 is signed although sometimes payment has been required on issue of Final Certificate)

STAN 14/18 – Commuted Sums

Alternatively we will add a Clause and Schedule, example as follows:

(Clause No.) Commuted Sum:

On the date hereof the developer shall pay to the Council the sum specified in the second column of Part 3 of the Schedule in respect of the future maintenance of the corresponding item described in the first column of Part 3 of the Schedule

Part 3

Item	Commuted Sum
Description of the highway elements attracting the commuted sum	£(Value)

APPENDIX B
Commuted Sums Schedule of Items and Charges

STAN 14/18 – Commuted Sums

Commuted Sums Schedule of Items and Charges – as at 01 April 2018

Asset Type – Carriageway Surfacing			
Element	Unit	Rate	Basis of calculation/Notes
Surface Dressing	sq.m	£10	Overlay
Hot or cold applied coloured surfacing (resin system) and High Friction Surfacing	sq.m	£70	Overlay
Modular/Tegula paving	sq.m	site specific	Dependent upon type

Asset Type – Footways, Cycleways and Paved Areas			
Element	Unit	Rate	Basis of calculation/Notes
Modular/Tegula paving	sq.m	site specific	Dependent upon type

Asset Type – Fencing and Barriers			
Element	Unit	Rate	Basis of calculation/Notes
Vehicle Restraint System	lin.m	£46	Replacement
Non-standard pedestrian guard railing	lin.m	site specific	Dependent upon type
Knee rail fencing	lin.m	£25	Replacement
Boundary fencing	lin.m	site specific	Dependent upon type

Asset Type – Structures			
Element	Unit	Rate	Basis of calculation/Notes
Bridges	item	site specific	Whole life costs including replacement after 120 years
Culverts and trash screens	item	site specific	Whole life costs including replacement after 120 years
Subways	item	site specific	Whole life costs including replacement after 120 years
Retaining Walls	item	site specific	Whole life costs including replacement after 120 years
Head walls	item	site specific	Whole life costs including replacement after 120 years
Sign/signal gantries and cantilever road signs	item	site specific	60 year life – maintenance and replacement

Asset Type – Highway Lighting			
Element	Unit	Rate	Basis of calculation/Notes
Non-standard columns	number	site specific	Dependent upon type
Non-standard fixings	number	site specific	Dependent upon type
Illuminated street furniture	number	site specific	Dependent upon type
High lighting mast	number	site specific	Dependent upon type

Asset Type – Street Furniture			
Element	Unit	Rate	Basis of calculation/Notes
Bollards	number	site specific	Dependent upon type
Retro-reflective bollards and marker posts	number	site specific	Dependent upon type

Asset Type – Verges and Landscaped Areas			
Element	Unit	Rate	Basis of calculation/Notes
Trees	number	£300	Pruning
Shrubs/ground cover planting	sq.m	site specific	Annual maintenance costs.
Planters/raised beds	sq.m	site specific	Annual maintenance costs.

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Asset Type – Traffic and Pedestrian Management			
Element	Unit	Rate	Basis of calculation/Notes
Puffin/Toucan Crossing	item	site specific	Actual sum depend upon detail but will be based upon 50% of the annual maintenance cost over a 20 year life together with a full refurbishment after 15 years. A provisional estimate of £37,000 can be used for budget purposes.
3 Way Traffic Controlled junction with no pedestrian crossing facilities	item	site specific	Actual sum depend upon detail but will be based upon 50% of the annual maintenance cost over a 20 year life together with a full refurbishment after 15 years. A provisional estimate of £42,000 can be used for budget purposes.
4 Way Traffic Controlled junction with pedestrian crossing facilities	item	site specific	Actual sum depend upon detail but will be based upon 50% of the annual maintenance cost over a 20 year life together with a full refurbishment after 15 years. A provisional estimate of £117,000 can be used for budget purposes.
Vehicle Actuated Signs	item	site specific	Whole life costs including replacement.
Bus gate	item	site specific	Whole life costs including refurbishment.

Asset Type – Drainage			
Element	Unit	Rate	Basis of calculation/Notes
Attenuated highway drainage system	item	site specific	Annual maintenance costs over a 60 year period
Soakaways	item	site specific	Annual maintenance costs over a 60 year period including rebuild
Retention ponds	item	site specific	Annual maintenance costs over a 60 year period
Other SuDS features	item	site specific	Annual maintenance costs over a 60 year period
Connections to highway drains	item	site specific	Additional annual maintenance costs to reflect increased liability.

SCC Review of Draft DCO dated April 2019

	Section/ Paragraph	SCC Comment at Deadline 3	Applicant's Response at Deadline 5	SCC response	SCC Proposed Amendment (note that deletions to the DCO are shown as a strikethrough and proposed wording is shown in italics)
1.1	Article 2 Definition of "adjacent land"	-	-	Defining the term "adjacent land" does not assist as that exact phrase does not appear in article 5(2) which refers to "land within or adjacent to the Order". Also, "Works" and "development of the Works" are not defined terms and so do not assist in our understanding as to what adjacent land is. It is SCC's position that article 5(2) should be deleted (see explanation below) and consequently this definition is unnecessary.	Delete.
1.2	Article 2 Drafting of "commence"			The carrying out of archaeological and ground condition investigations, remedial work in respect of contamination and adverse ground conditions, creation of working areas, temporary means of enclosure, receipt and erection of construction plant and equipment and temporary display of site notices and advertisements are excluded as operations which would be construed as commencing the development. As a consequence, the safeguards in the requirements which are triggered upon commencement do not apply to these activities, yet they could have some material implication in some cases. These include requirements 3 (CEMP), 5 (landscaping), 8 (land and groundwater contamination), 9 (archaeology), 11 (traffic management), 13 (surface water drainage).	An appropriate form of wording needs to be agreed.

SCC Review of Draft DCO dated April 2019

	Section/ Paragraph	SCC Comment at Deadline 3	Applicant's Response at Deadline 5	SCC response	SCC Proposed Amendment (note that deletions to the DCO are shown as a strikethrough and proposed wording is shown in italics)
				<p>SCC is still in discussions with the Applicant on this matter, the Applicant has proposed to amend one of the Requirements to "<i>No part of the authorised development <u>is to commence</u></i>" to "<i>No part of the authorised development <u>may be undertaken</u></i>". However, this still leads to some ambiguity.</p>	
1.3	<p>Article 2. Drafting of "local planning" and "relevant planning authority"</p>	<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>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>	<p>The Planning Act 2008 defines "relevant authority", "local authority", "relevant local planning authority" for the purposes of interpretation of specific sections of the Act. There is no definition of "relevant planning authority", which is the term used in the DCO, in the Act.</p> <p>The County Council and District Council are both planning authorities in Somerset, and in some cases reference in the DCO to the relevant planning authority relates to the District Council and in other cases the County Council (see Schedule 2 Requirements and definition of County Archaeologist). The Planning Inspectorate's guidance and the Model Provisions advise that this issue should be addressed in the DCO definitions.</p>	<p>Insert in Article 2:</p> <p>"relevant planning authority" means the local planning authority for the land and matter in question, being South Somerset District Council or Somerset County Council</p> <p>(Based on drafting from the A14 Cambridge to Huntingdon DCO)</p>

SCC Review of Draft DCO dated April 2019

	Section/ Paragraph	SCC Comment at Deadline 3	Applicant's Response at Deadline 5	SCC response	SCC Proposed Amendment (note that deletions to the DCO are shown as a strikethrough and proposed wording is shown in italics)
		<p>“6.2 Where there is more than one relevant planning authority (or other authority), this should be made clear in the definitions”</p> <p>The Model Provisions1, which whilst repealed are still useful as guidance, deal with this in relation to the relevant planning authority as follows:</p> <p>“relevant planning authority” means—</p> <p>(i) the district planning authority for the area in which the land to which the provisions of this Order apply is situated unless the provisions relate to the construction or alteration of a hazardous waste facility, in which case it means the county planning authority;</p> <p>.....</p>			
1.4	Article 2 Definition of “trunk road”	<p>The current drafting requires clarification as the roads which are trunk roads pursuant to this definition will change through the course of the authorised development. Some roads will remain trunk roads throughout the process, some will become classified as trunk roads and some will be de-trunked pursuant to Article 14.</p>	<p>The Applicant has proposed an amendment to Article 13 as follows:</p> <p>(2) Where a highway (other than a trunk road <u>which is not to be detrunked by this Order</u>) 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</p>	<p>The proposed amendment deals adequately with the issue providing that all roads which are detrunked become the responsibility of the local highway authority.</p> <p>However, at Deadline 5 the County Council reported on the progress of discussions between the parties on potential design changes relating to the road passing Camel Hill Services and other proposed cul-de-sacs. It is the County Council's position that the</p>	<p>Part 2 of Schedule 3 will need to be divided to distinguish between those detrunked sections which will become part of the local road network (say Part 2A) and those which will not (say Part 2B) if the Applicant is not proposing to stop up as part of the DCO the parts of the detrunked sections which are of no/limited public benefit.</p> <p>The amendment should therefore read:</p> <p>(2) Where a highway (other than a trunk road <u>which is not to be detrunked by this</u></p>

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		<p>Consequently, this impacts on the interpretation of provisions such as article 13 which relates to the construction and maintenance provisions of highways other than trunk roads, where it would appear that the intention is that these provisions apply to all roads which will not become trunk roads or will not remain trunk roads as a result of the authorised development.</p> <p>An amendment is required to this definition and article 13 (below) to clarify that reference to trunk roads means roads which are trunk roads and will remain trunk roads following completion of the authorised development or will become trunk roads as a result of the authorised development.</p>	<p>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>	<p>length of the existing A303 between Hazelgrove Roundabout and the Camel Hill Services is of little or no public benefit and should not become part of the local highway network and maintained at the public expense.</p> <p>This section of proposed detrunked road would only serve one or two private properties, and would likely become a focus for antisocial behaviour and traveller encampments, but due to them remaining public highways the best solutions available to resolve the problems are often not available due to the need to respect the rights of public access and the existence of statutory undertaker's equipment.</p> <p>The cost to the local public purse of dealing with the antisocial behaviour and maintaining these dead end sections of detrunked road is not justified given the limited or non-existent public benefit, and the issue should be addressed as part of the DCO process by the Applicant rather than passed on to the local highway authority to resolve.</p> <p>The Applicant, which is the owner of the freehold interest, is in the best position to deal with these issues through stopping up the road, transferring the freehold interest or granting private rights of access and</p>	<p><i>Order or is specified within Part 2B of Schedule 3)</i> 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> <p>Part 2B should consist of the road in Schedule 3 Part 2 described as Former A303 west of Hazelgrove roundabout between points AN and EI on sheet 3 of the Detrunking plans, comprising of 622m. It is also the County Council's view that the point EI should be moved on the Detrunking Plans to point nearer to the roundabout (precise location to be agreed prior to the end of the Examination).</p>

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				compensating any owners of private properties served by these roads accordingly rather than leaving them uncompensated for interference with their use of the road and peaceful enjoyment of their property which would occur as a result of the antisocial behaviour if the roads are not stopped up.	
1.5	Article 3 Disapplication of Legislative Provisions	The provision under the Land Drainage Act to regulate activities in watercourses is applied by SCC (for ordinary watercourses outside Internal Drainage Board areas). The Explanatory Memorandum notes in para 4.12 that the consent of the Environment Agency and the relevant drainage authorities is required for the inclusion of these provisions and these consents are being sought. SCC is in consultation with the Environment Agency and the Internal Drainages Boards with a view to providing a co-ordinated response to this provision.	This Article has been amended in response to comments received from the Environment Agency; no comments have been received from SCC.	SCC will provide a response at the Issue Specific Hearing on the DCO on 15 May 2019.	
1.6	Article 4 Maintenance of	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	No change made. The Applicant notes that the DCO requires drainage from the development to be limited by	SCC will provide a response at the Issue Specific Hearing on the DCO on 15 May 2019	

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	Drainage Works	for the maintenance of drainage works" (para 4.16 of the Explanatory Memorandum). SCC agrees that it is sensible to clarify who has responsibility for the maintenance of drainage works carried out as part of the scheme or affected by the scheme, and in principle this is expected in general to reflect current responsibilities, but detailed design has not been provided and a requirement for the undertaker to seek the approval of SCC to the detailed drainage needs to be included.	<p>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>		
1.7	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</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>	<p>The Applicant's comments are noted. It is for the Applicant to decide whether it would find such a distinction helpful, however it is noted that, contrary to the Applicant's comment, ancillary works are referred to at the end of Schedule 1 (under paragraph (s)).</p>	<p>No change proposed.</p>

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		<p>Planning Act 2008 and which are not the subject of a separate provision in the Order.</p>			
1.8	<p>Article 5(2) development consent etc</p>	<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 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</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 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>SCC can understand the benefits of clarifying within the order which legislative provisions take precedence, but the extension of this provision beyond the order limits to all enactments within an undefined boundary causes uncertainty, and this is the issue which section 120(5) of the 2008 Act and paragraph 25.2 of the Drafting Development Consent Orders seeks to address. The comment that this wording has been included in other DCOs is unhelpful as the issue may have been overlooked or misunderstood in those other DCOs, or simply not an issue based on the circumstances of the DCOs in question.</p> <p>The Applicant has cited only one purpose for this provision, namely that it allows the Applicant to make traffic regulation orders on adjacent land rather than the normal legislative position which reserves that power to the highway authority. This is undesirable since the risk is that, as currently drafted, the Applicant could make traffic regulation orders in addition to those that are currently in place without properly consulting with the local highway authority as to how any</p>	<p>Deletion of Article 5(2) and its replacement within the appropriate sections of the DCO with alternative provisions to deal with specific issues which this article was intended by the Applicant to address.</p>

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		<p>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>If this provision is accepted, it is suggested that it is stated that the limitation on enactments on adjacent land is effective only insofar as it is necessary for the Development permitted by the Order to be carried out.</p>	<p>As noted in the EM this wording has been frequently included in granted DCOs.</p>	<p>possible conflict with existing traffic regulation orders is best addressed. The existence of overlapping traffic regulation orders could lead to difficulties with enforcement.</p> <p>This conflict of laws which the Applicant seeks to resolve is more appropriately addressed within the traffic regulation order provisions rather than through an imprecise and broadly worded general provision which could have a number of unforeseen consequences.</p> <p>Furthermore, it is evident that the Applicant is taking temporary possession on sections of the local highway network under Schedule 7, the Applicant's view is that the local highway authority would have no powers in relation to such land. It may be that the Applicant would rely on article 5(2) to support such a position. The County Council's concern is that if this were correct, there would be areas of highway for which it would remain responsible, or alternatively for which there was no responsible highway authority, yet the County Council would by virtue of article 5(2) be stripped of its powers as local highway authority without any delegation of those powers or transfer of responsibility to the Applicant.</p>	

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				<p>An example of this causing a problem would be if there were a fault (such as flooding) on another part of the local road network and the source of the problem was within the Schedule 7 land. The County Council would have no powers to go on that land. Similarly if there were an accident on another part of the network which could only be accessed via the Schedule 7 land, or the Schedule 7 land was required to provide an alternative route in an emergency, the County Council would have no power to use the Schedule 7 land.</p>	
1.9	Article 9(2) Benefit of Order	<p>The need for this provision is queried given the scope of Article 10(1). The undertaker is requested to confirm whether there are any works which are granted for the express benefit of the parties specified. The concern would be that the provision allows others to carry out works on adjacent to or in the vicinity of a highway and which may impact on the safety of those using the highway.</p>	<p>No change made.</p> <p>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.</p> <p>As noted in the EM this wording has been frequently included in granted DCOs.</p>	<p>SCC understands the need to be able to transfer the benefit of the provisions of the Order and related statutory rights to utility companies. However, the provision is drafted in far more general terms and could include the transfer to an unknown third party of the ability to carry out works to the highway and make traffic regulation orders without consultation with SCC.</p> <p>The Applicant has dismissed on numerous occasions SCC's request to approve the detailed design of the works and to oversee the implementation of the works to its satisfaction on the basis that the Applicant is a "competent highway authority" yet there is nothing to stop it transferring the ability to carry out</p>	<p>If this provision is to be retained, it is essential that SCC is given a role in the DCO to approve and oversee the works.</p>

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				the works and make traffic regulation orders to a third party who will not be a competent highway authority.	
1.10	Article 11(1) Street Works	<p>It appears from paragraph 4.34 of the Explanatory Memorandum and from our own investigations that this article does not feature in other DCOs securing highway infrastructure other than the M4 order.</p> <p>Furthermore, whilst a similar provision appears in the Model Provisions it is noted that the Model Provisions do not contain an article equivalent to article 12 of the draft DCO. Instead the Model Provisions provide for the undertaker to agree with the street authority the carrying out of street works in such streets as are specified in a schedule, with the provisions of sections 54 to 106 applying to any such works thereby ensuring that the street authority has sufficient control over the carrying out of the works on streets for which it is ultimately responsible. It would therefore appear that this article is unnecessary and should be deleted, or alternatively an explanation provided as to why</p>	<p>No change made.</p> <p>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> <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>	<p>We note that the power contained within Article 11 relates only to the Streets as are within the Order Limits, on this basis we do not propose any amendments.</p> <p>We do not consider Article 5(2) if it were to remain, would extend the rights provided by Article 11 to land adjacent to the Order Limits; and subject to the applicant's confirmation of this we don't seek an amendment to Article 11.</p>	

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		it has not been sought in other highway DCOs.			
1.11	Article 12 Application of the 1991 Act	<p>SCC is required under the Traffic Management Act and the Network Management Duty of the Local Traffic Authority to consider the impact of the works on the local highway network. The disapplication of certain provisions of the 1991 Act by article 12(3) restricts SCC's ability to perform these duties. This is unacceptable as this takes away SCC's powers and duty to manage our highway network and protect its highway assets.</p> <p>The provisions of the draft Traffic Management Plan are not sufficient to allay SCC's concerns in this respect, and consequently SCC will require requirement 11 to be amended to ensure that its approval is sought to the traffic Management Plan and that it is not just consulted on its provisions.</p>	<p>No change made.</p> <p>The powers which are disappplied 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 disappplied.</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 DCO plans. To have these redirected to another street, as allowed by that section, would conflict with the DCO. Any concerns with those routes</p>	No change proposed.	No change proposed.

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			<p>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>		
1.12	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</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</p>	<p>The amendments to Article 13 made by the Applicant relate to two discrete issues, namely maintenance of the undertaker's private access tracks and the application of Article 13 to sections of the trunk road to be de-trunked. The Applicant has not addressed the substantive issues raised in SCC's initial proposed amendments, namely:</p> <ul style="list-style-type: none"> - clarification as to when the roads have been completed to the reasonable satisfaction of the local highway authority by way of the issuing of a certificate(s) by the local highway authority to this effect; -the requirement for the new, altered or diverted roads to be maintained by 	<p>The inclusion of the protective provisions contained in Annex 1 within Schedule 8 of the DCO, and Article 13 should be amended to refer to the protective provisions for the definition of 'completion' by the addition of the following:</p> <p>(10) For the purposes of paragraphs (1), (2), (4), (5), and (6) of this Article, 'completion' shall be taken as the date of issue of the Final Certificate in accordance with the protective provisions contained in Annex 1 within Schedule 8 of the DCO.</p>

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		<p>“(other than a highway which will become a trunk road or will remain a trunk road under the provisions of this Order)”. This is to ensure that de-trunked sections of road are in an acceptable condition prior to SCC becoming responsible for their maintenance.</p> <p>SCC would expect the highways in paras (1) - (6) for which it will be responsible to be open to traffic for a minimum period of 12 months to ensure that they have been completed to its satisfaction, and would require the undertaker to maintain the highways in question for this period, as is provided in relation to streets for which SCC may also be responsible as street authority in para (3).</p> <p>The provision of a maintenance period or Defects Liability Period (DLP) is an Industry accepted practice and one applied to all new development infrastructure within Somerset secured via a traditional means (TCPA S278, S106).</p> <p>The standard maintenance period / Defects Liability applied by SCC is 12 months.</p>	<p>can be adequately covered within a DCO runs counter to the principles of the DCO regime to streamline consenting for NSIPs</p> <p>The Applicant has made an amendment to article 13 to address maintenance of rights of way over its maintenance tracks.</p>	<p>the Applicant for a minimum period of 12 months following completion; and</p> <p>- the payment of a commuted sum towards the maintenance of non-standard highway features.</p> <p>There is also a need to factor in the requirement for the Applicant to undertake Stage 3 and 4 Road Safety Audits and for any remedial work to be completed prior to any highway becoming maintainable by the local highway authority, and when the provisions of Article 14 should apply (see below). It would be an untenable and confused legal position if highway became maintainable by the local highway authority when safety issues remained unresolved.</p> <p>The Applicant has proposed that some of these issues may be addressed in protective provisions to be inserted in Schedule 8 but the parties have not yet reached an agreement on these protective provisions. SCC has attached as Annex 1 the protective provisions which it proposes to include within Schedule 8. There is also a need to ensure that “completion” is defined to accord with the Protective Provisions.</p> <p>In relation to the de-trunked sections of road, it is not clear whether 13(1),</p>	<p>Amend article 13(4) to exclude those sections of de-trunked road which are of little or no public benefit by separating Schedule 3 Part 2 into Part 2A (de-trunked roads to become vested in SCC) and Part 2B (de-trunked roads to remain under the control and management of the Applicant):</p> <p>13(4) Where a highway listed in Part 2A of Schedule 3 is de-trunked under this Order—</p> <p>(a) section 265 (transfer of property and liabilities upon a highway becoming or ceasing to be a trunk road) of the 1980 Act applies in respect of that highway; and</p> <p>(b) any alterations to that highway undertaken under powers conferred by this Order prior to and in connection with that de-trunking <i>must be completed to the reasonable satisfaction of the local highway authority and, unless otherwise agreed in writing with the local highway authority, be maintained by and at the expense of the local highway authority from completion the date of de-trunking.</i></p> <p><i>and in the case of any highway listed in Part 2B of Schedule 3 which is de-trunked the provisions of section 265 of the 1980 Act do not apply and the undertaker will remain responsible for its maintenance</i></p>

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		<p>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, 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</p>		<p>13(2) or 13(4) applies, as only the first two require that the road is completed to SCC's reasonable satisfaction. These articles only relate to newly constructed, diverted or altered roads. In contrast, article 13(4) which clearly deals with the de-trunked section, makes no reference to SCC being satisfied with the condition of the road before responsibility for maintenance passes to it.</p> <p>In relation to the de-trunked sections, SCC proposes that article 13(4) is amended so that it is consistent with 13(1) and 13(2). There is also a need to ensure that Section 265 only applies to highway that will become maintainable by the Local Highway Authority. The County Council has proposed to do this by separating Part 2 of Schedule 3 (see Article 2 above).</p>	

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		<p>would record the date from which SCC became responsible for the maintenance of the highway. The inclusion of wording in the article to confirm that the highway has been completed to SCC's satisfaction upon the issue of a certificate to that effect removes any ambiguity as to whether and on what date a highway has been completed and which authority is responsible for its maintenance. The article needs to be amended accordingly.</p> <p>A mechanism needs to be provided in relation to paragraphs (1) (2) (3) (4) (5) and (6) whereby the undertaker pays a commuted sum to the LHA where the LHA will become responsible for the maintenance of structures, and other non-standard assets, as a result of the scheme.</p> <p>The A14 DCO also makes provision for altered or diverted public rights of way, where they were diverted over private vehicular routes, to be maintained by the person with responsibility for the vehicular route. Some of the proposed rights of way are coincidental</p>			

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		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.			
1.13	Article 14(2) Classification of Roads	The draft DCO in Article 14, paragraph 2 refers to a date of de-trunking to be set by the Undertaker ("On such day as the undertaker may determine"). It is not acceptable to the County Council that a date for de-trunking can be unilaterally set by the Undertaker. The County Council should only become responsible for the de-trunked sections of road when due diligence processes, and all remedial repairs, alteration, conversion, and improvement works have 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	<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 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</p>	<p>The amendments which the Applicant has made to article 14(9) and part 12 of Schedule 3 simply introduces a notification period for the de-trunking, which whilst an improvement to the previous drafting, does not address the issue raised by SCC, namely that the undertaker can decide the date of de-trunking without consulting first with SCC to ensure that the de-trunked section of road is in a fit state before it becomes SCC's responsibility.</p> <p>SCC has proposed amendments to article 13(4) above so that it is consistent with the provisions of article 13(2) to which the Applicant makes reference in their response.</p> <p>In relation to the reference that there is a DCO obligation or legal agreement to provide a contingency fund to deal with anti-social behaviour SCC notes the Applicant's</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 Secretary of State, who must consult the local highway authority before deciding whether to give that consent.</p>

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		<p>agreement between Highways England and the County Council was negotiated and the DCO amended to address these concerns.</p> <p>In accordance with the drafting of the A14 DCO, paragraph (2) should be amended and a new paragraph added as follows: (2) Subject to paragraph (X), on such day as the undertaker may determine, the roads described in Part 2 (roads to be de-trunked) of Schedule 3 are to cease to be trunk roads as if they had ceased to be trunk roads by virtue of an order made under section 10(2) of the 1980 Act specifying that date as the date on which they were to cease to be trunk roads.</p> <p>(X) The undertaker may only make a determination for the purposes of paragraph (2) with the consent of the Secretary of State, who must consult the local highway authority before deciding whether to give that consent.</p> <p>An obligation should be introduced either in the DCO or the legal agreement that would enable the County Council to draw down from a contingency</p>	<p>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 others' anti-social behaviour or to fund the Council's statutory duties.</p> <p>The Applicant submits that the obligation suggested would not</p>	<p>rejection and proposes as an alternative its amendment to article 13(4) above.</p>	<p>In addition, Article 14 should be amended to refer to the protective provisions for the definition of 'completion' by the addition of the following:</p> <p>(10) For the purposes of paragraphs (3) and (4), of this Article, 'completion' shall be taken as the date of issue of the Final Certificate in accordance with the protective provisions contained in Annex 1 within Schedule 8 of the DCO.</p>

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		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.	meet either the CIL Regulations or the tests for planning conditions and cannot and should not be imposed.		
1.14	Article 14(6) Classification of Roads	Reference to the relevant planning authority should be amended to refer to the local highway authority. The DCO currently provides for the routes to be open for use from the date on which the authorised development is open to traffic. As various sections of the authorised development will be open for traffic at different stages, the reference to a single date is ambiguous. Providing there is no impediment to lifting the temporary closure/ making the route available earlier, then that should be done, and this paragraph needs to be amended to reflect this.	The article has been amended as follows: (6) Unless otherwise agreed with the relevant planning <i>local highway</i> 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.	A further amendment is proposed to add clarity.	Further amendment proposed: (6) Unless otherwise agreed with the relevant planning <i>local highway</i> 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 <i>as soon as practicable and in any event from no later than</i> the date on which the authorised development is open for traffic .
1.15	Article 15 and 16	-	-	The Applicant has amended article 15 and 16 to include references to highways as well as streets, but these amendments appear to be incomplete in Article 16.	Clarity is requested from the applicant in relation to why the amendments are not fully included in Article 16
1.16	Article 26(2)	The undertaker's powers' in relation to land specified in	No change made.	SCC's comment relates to the inclusion of sections of new highway	No change proposed subject to confirmation from the Applicant that no new highway is to

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	Compulsory acquisition of rights	column (1) of Schedule 5, which includes land required to form public highway, are limited to the acquisition of rights. However, in the creation of public highway the subsoil must vest in the highway authority and the inclusion of such land in Schedule 5 is considered inappropriate and inconsistent with the undertaker's approach in relation to the acquisition of land for the trunk road. An amendment is sought to remove the land required for highway from Schedule 5 to include it as part of the Order land.	<p>The Applicant disagrees that vesting of the subsoil is necessary to create public highway. 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</p>	in Schedule 5, which lists land of which temporary possession may be taken and permanent rights acquired. To avoid duplication, SCC will address the Applicant's comments against this article in the section on Schedule 5, as SCC is not seeking an amendment to article 26, but simply referring to it to demonstrate one of the reasons why the inclusion of new highway in Schedule 5 is inappropriate.	be constructed on the land contained in Schedule 5.

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			<p>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> <p>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.</p>		
1.17	Article 27 (2) Public Rights of Way	Prior to the extinguishment of any public rights of way the undertaker should, where applicable, have provided the relevant alternative section of public right of way identified in column (4) of Part 2 and 4 of Schedule 4 and shown on the rights of way and access plans. This provision was included in the A14 DCO and ensures that the interference 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>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>	<p>With reference to the provision of a replacement right of way, it is agreed that Article 16(2) is sufficient to address SCC's concerns.</p> <p>SCC recognises that there is a question mark over the validity of the A303 (Sparkford to Ilchester improvements and slip roads) Order 1996 and that it should be addressed in the DCO provisions. There is concern however that partial revocation of the order within the order limits without any consideration being given as to the consequences of the partial revocation (for example whether it leaves dead end private rights of way without any alternative</p>	No amendment proposed to article 27.

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		<p>Sparkford to Ilchester improvement and slip roads Side Roads Order 1996 made changes to a number of different roads and rights of way, a notable addition being bridleway Y 30/29 (presumably as mitigation for Y 30/28 terminating at a dual carriageway at grade). There is the possibility that the 1996 Sparkford to Ilchester Side Roads Order has some validity even though the scheme was not constructed. It is recommended that the order is revoked prior to conclusion of the DCO examination. If it is not, then a mechanism will need to be established within the DCO to give effect to such.</p>		<p>route being provided) is not acceptable. The Applicant has indicated to the County Council that it would undertake this piece of work, but it is not evident from the changes to the DCO as to how the Applicant has addressed the consequences of partial revocation.</p>	
1.18	<p>Article 33 Temporary use of land for carrying out the authorised development</p>	<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</p>	<p>No change made. 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>	<p>SCC's comment relates to the inclusion of sections of new highway in Schedule 7, which lists land of which temporary possession may be taken. To avoid duplication, SCC will address the Applicant's comments against this article in the section on Schedule 7, as SCC is not necessarily seeking an amendment to article 33 for this reason, but simply referring to it to demonstrate one of the reasons why the inclusion of new highway in Schedule 7 is inappropriate.</p>	<p>The Applicant is asked to confirm that no new highway is to be constructed on the land contained in Schedule 7. Article 33(12) is inserted to confirm that nothing in the article limits the County Council's powers as highway authority or in any other way prevents the County Council from exercising those powers.</p>

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		<p>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>Finally, the Applicant has advised that whilst it has temporary possession of any highway land under this Schedule, the Council would not be entitled to enter the land as highway authority or exercise its highway powers in relation to this land. There is nothing in the DCO to suggest this would be the case, but for clarity some additional wording is proposed.</p>	
1.19	Schedule 2 Requirement 1. Interpretation and Requirement 3 Construction Environmental Management Plan	<p>As identified in the LIR, SCC seeks the amendment of requirement 3 so that its approval is required to the CEMP and Traffic Management Plan, and it is not just consulted. The definition of the "HEMP" notes that it will be developed towards the end of the construction period, whereas requirement 3(4) suggests that the conversion of the CEMP into the HEMP will not occur until completion of construction. Requirement 3(4) should be amended to reflect the provisions of the definition.</p>	<p>No change made.</p> <p>The point on approval by SCC has been addressed in detail in submissions at D3, D5 and in response to second written questions.</p>	<p>The Applicant states in its response to the Examining Authority's second round of questions (SCC underlining):</p> <p>"In order to be ready to be converted on completion as required by Requirement 3(4) <u>the preparation of the HEMP must logically have been undertaken in advance of completion.</u> To be able to include 'as built' details in the HEMP, works require to have been built.</p> <p>The HEMP therefore could not be prepared before the late stages of the works <u>but must be prepared before completion</u> in order to allow conversion from the CEMP to the HEMP at the required time. The</p>	<p>Proposed amendment to requirement 3(4):</p> <p><i>(4) Upon completion of construction of the authorised development the CEMP must be converted into the HEMP prior to completion of construction of the authorised development and the authorised development must be operated and maintained in accordance with the HEMP.</i></p>

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				wording 'towards the end of construction' is therefore correct." An amendment to requirement 3(4) is proposed for clarity.	
1.20	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.	No further comments.	No further changes proposed.
1.21	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.	SCC seeks the securing of a DLOA and TMP and their approval at local level through an amendment to requirement 11 and the protective provisions which form part of the County Council's Deadline 6 submission. SCC refers to its comments contained in relation to Article 12 above in support of its amendment. The Department of Transport's Code of Practice for the Co-ordination of Street Works and Works for Road Purposes and Related Matters (Oct 2012) states:	The inclusion of the protective provisions is included in the County Council's Deadline 6 response. In addition, the following amendment to requirement 11(1) is proposed: 11.(1) No part of the authorised development is to commence until a traffic management plan for the construction of the authorised development, substantially in accordance with the draft outline traffic management plan, has been submitted to and approved in writing by the Secretary of State <i>local highway authority</i> following consultation with the local highway authority <i>and</i> relevant planning authority.

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		<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</p>		<p>"The efficient co-ordination of street works is one of the most important aspects of street works legislation, benefiting street authorities, undertakers and road users alike. The New Roads and Street Works Act 1991 (NRSWA) sets out the objectives of the co-ordination function:</p> <ul style="list-style-type: none"> • to ensure safety; • to minimise inconvenience to people using a street, including a specific reference to people with a disability; and • to protect the structure of the street and the apparatus in it. <p>The County Council is the authority responsible for the management of the local road network and the issuing of street works licences and is in the best position to co-ordinate the undertaker's works with other works being carried out in the area. Whilst the expedient completion of the DCO works is undoubtably of importance, it should not eclipse the County Council's role in co-ordinating street works and, if no changes are to be made to this Article it is essential that the County Council is fully and properly consulted on the traffic management plan pursuant to Requirement 11.</p>	

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		<p>diverted and/ or rat running traffic.</p> <p>The traffic management plan has no consideration of off-road highway network. Other documents do recognise the need for temporary closure and temporary alternatives for those public rights of way that will be affected during the construction phase, however there is limited detail, and this is an area that will need to be considered in full alongside the temporary road closures.</p>			
1.22	Schedule 2 Requirement 12. Detailed Design	<p>The LHA is only consulted on departures from the preliminary scheme design and not the detailed design itself. Requirement 12 should be amended to require the undertaker to seek the approval of the LHA to the detailed design. It is assumed in developing the mitigation proposals that current governmental design guidance has been followed for road junctions and crossings, particularly in relation to equestrians. Details of surfacing and any other structures are still to be agreed with SCC.</p>	<p>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>SCC remains of the view that it is the appropriate authority to approve the detailed design of the elements of the authorised works for which it will ultimately be responsible. The proposed amendments to this requirement do not provide for this. The parties have been in discussion as to how this may be addressed by way of the protective provisions to be inserted in Schedule 8, but the Applicant remains fundamentally opposed to allowing SCC to approve the detailed design. Nor has the Applicant provided a mechanism for SCC to be engaged iteratively and collaboratively in the review of the detailed design for those elements of the scheme that will become maintainable by the local highway</p>	<p>The inclusion of the protective provisions is included in the County Council's Deadline 6 response. In addition, the following amendment to requirement 12(1) is proposed:</p> <p>No part of the authorised development is to commence until the detailed design of that part has been approved in writing by the Secretary of State following consultation with the relevant planning authority and local highway authority on matters related to their functions, <i>and insofar as the authorised development relates to changes to the local highway network, the approval of the local highway authority.</i></p>

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		<p>In relation to the A14 DCO, HE agreed with the LHA in the SoCG that it would consult with the LHA on the detailed design and adopt its reasonable comments. There was reference in the proceedings that HE would enter into a legal agreement with the LHA which would make provision relating to the handover of the de-trunked roads, the design and construction and alteration of the new local roads and rights of way to the satisfaction of the LHA, in order that the Council could continue to perform its statutory functions as LHA. The agreement included the payment of a design and check fee and inspection fees. The existence of such a legal agreement would offer SCC some comfort that it would be properly consulted on the detailed design and reimbursed its costs for doing so.</p>		<p>authority. Instead, the only mechanism for engagement of the SCC on detailed design matters currently provided for in the DCO is a single consultation step in accordance with Requirement 4 (Consultation).</p>	
1.23	Schedule 2 Requirement 12. Detailed Design	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		Whilst the widths and limitations of public rights of way has been addressed in part under the revised requirement 12(2)(ii), the Council requires the approval of this detail as they are best placed to ensure that the widths and limitations are	SCC's assumes that its proposed amendment above will enable the County Council to approve those matters under requirement 12(2)(ii).

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		<p>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> <p>In order to update the Definitive Statement that accompanies the Definitive Map it is best practice to include the width and limitations of the new rights within the order. It can be very difficult to interpret such information from order plans, hence reference to this information is best placed in a schedule.</p> <p>The Public Path Orders Regulations 1993. Schedule 1 sets out the form of each type of Highways Act order (creation, extinguishment, diversion). The schedule to the order must Describe position, length and width of path or way...'. In addition to the Regulations, paragraph 5.13 of Circular 1/09 states that '...authorities should specify widths in every 1980 Act order'. This is supported by the Planning Inspectorate's advice note on widths, paragraph 4 seems to be of particular relevance. While there is no</p>		<p>compliant with the relevant Rights of Way and equalities legislation, will be capable of being legally evented onto the Definitive Map & Statement and are not in conflict with the RoW & Access Plans with regard to placement and alignment. Any ambiguity will only cause to create problems for the Council in the future in its roles as Highway Authority and Surveying Authority.</p>	

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		<p>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>			
1.24	Schedule 2 Requirement 13 Surface Water Drainage	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>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</p>	SCC will provide a response at the Issue Specific Hearing on the DCO on 15 th May 2019.	

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		<p>Requirement 13 must be amended to include the need to submit detailed designs of the drainage systems for approval, including the phasing of construction and stages at which the drainage system will become operational. Requirement 13 should also be amended to reflect the drainage design criteria in the agreed Flood Risk Assessment.</p> <p>Requirement 13 should also be amended to include the need to provide details of the arrangement to maintain the drainage systems for approval. This will be important to ensure the drainage system continues to perform as originally designed, for the lifetime of the scheme and to meet the requirements of Paragraph 5.100 of the NPSNN and the National Standards and the National Standards published by Ministers under Paragraph 5(1) of Schedule 3 to the Flood and Water Management Act 2010. The undertaker should be obliged to secure adoption and maintenance arrangements for any SUDS.</p>	<p>sustainable drainage at detailed design.</p> <p>The flood risk criteria have been amended to reflect the flood risk assessment.</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>		

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1.25	Schedule 2 – New Requirement			<p>Podimore Road & proposed turning head</p> <p>In its submission at Deadline 5, the County Council advised as follows:</p> <ul style="list-style-type: none"> • ...there is a significant risk that such a cul-de-sac may be used as an unauthorised traveller encampment. • At the Issue Specific Hearing on Traffic and Transport on 26 February 2019, the County Council sought that the highway between the existing A303 and the junction of Stockwitch Lane and Podimore Road should be stopped up and the land turned to green field. All highway rights should also be removed unless the Applicant was willing to accede to the County Council's request for an NMU route between Access Track and Podimore Road, in which case appropriate rights would need to be retained. The associated TROs would also need to be revoked. • It is understood that the Applicant is developing outline design details in relation to the Podimore slip that should help to address the County Council's concerns on this matter, and that it would be willing to enter into a 	<p>Additional Requirement to secure a S.278 agreement for the necessary works and legal processes associated with a scheme at Podimore Road.</p>

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				<p>S278 agreement to secure the necessary works outside the development boundary. An update on progress will need to be provided at Deadline 6.</p> <p>The Applicant has advised that it is willing to remove the turning head from the scheme and to enter into a S278 agreement to secure these works and other necessary works (including: speed limits, signage, commuted sums) outside the development boundary. The S.278 needs to be secured within the DCO by way of a new Requirement</p>	
1.26	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-?, 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</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>Some queries remain with regard to the revised Schedule 3, Part 11 and the Rights of Way & Access Plans as follows:</p> <ul style="list-style-type: none"> • AW – This is where a bridleway terminates and a footway in verge commences. The Council is concerned that such an arrangement doesn't provide for horseriders to access the verge or carriageway in either direction due to the designation of footway. • BX-BI – Only one route is shown on the RoW & Access Plans, however it is described in the revised DCO as partly bridleway 	<p>Proposed amendments using the numbering adopted for the comments:</p> <ul style="list-style-type: none"> • Suggest that AW is moved slightly south or that AW-AX is re-categorised to bridleway in verge. • Unless it is intended that there will be parallel routes SCC propose the Applicant adds an additional letter reference at the junction of the two routes or moves one of the existing

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		<p>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>in verge and also wholly as footway in verge.</p> <ul style="list-style-type: none"> BH-BG – Only one route is shown on the RoW & Access Plans, however it is described in the revised DCO as bridleway and as footway in verge. Is the intention to have parallel routes, and if so why? A bridleway would provide for walkers and horse riders and could be made up of split surfacing if the intention is to have a metalled width and a non-metalled width. In the event that BR-BS and BT-BU are not amended to bridleway or restricted byway status, consideration should be given to the interrelationship of horse rider movements across the Sparkford roundabout and access to points BX and BH. Whilst some of this may be for detailed design stage it may necessitate the delineation of where horseriders can join the 'old' A303 in the vicinity of BX and the new road in the vicinity of BH and <i>vice versa</i>. <p>Schedule 4 Part 2 of revised DCO and RoW & Access plans require amendment as follows:</p>	<p>references to the junction to remove any ambiguity</p> <ul style="list-style-type: none"> Suggest deletion of description of BH-BG as footway in verge. No amendments proposed at this stage. <p>Schedule 4 Part 2 of revised DCO and RoW & Access plans require amendment as follows:</p>

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		<p>1) When the Ilchester bypass was provided there was a Side Road Order made in 1974. This made a number of changes to the rights of way. These changes have only recently been legally evented to bring the Definitive Map and Statement up to date (see Legal Event Modification Order attached as appendix 5(a), 5(b), and 5(c) to the LIR). Explore Somerset website now shows updated nomenclature. Nomenclature of paths in Schedules 3 & 4 will need to be updated accordingly.</p> <p>3) Two applications have been received for upgrades/ addition of public rights to the Definitive Map & Statement that are impacted upon by the development. It is not known if these higher rights exist until they are fully investigated, and any possible subsequent order is made and confirmed beyond legal challenge. This process would not align with the DCO timetable. Therefore, a separate solution will be required. There are also two applications in close vicinity to the schemes. A plan showing the applications is attached as Appendix 4 to the LIR. A mechanism is needed within</p>		<ul style="list-style-type: none"> • Footpath Y 27/36 should be referenced as Y 27/29 • Footpath Y 27/29 should be referenced as Y 27/UN. This footpath was potentially created as a result of the 1996 SRO and is therefore stopped up by virtue of the revocation of the 1996 SRO under Schedule 3 Part 10, hence it is suggested that the reference to this path under Schedule 4 is unnecessary. <p>This issue still remains.</p>	<ul style="list-style-type: none"> • Footpath Y 27/36 should be referenced as Y 27/29 • Footpath Y 27/29 should be referenced as Y 27/UN.

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		<p>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 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</p>		<p>Resolved.</p> <p>Assuming a review has taken place, it appears no change has been effected.</p>	

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		<p>cater for carriage drivers, i.e. restricted byway status. There are no recorded restricted byways that the development impacts upon, however the (recently submitted) application 861M to modify the Definitive Map & Statement is for an upgrade of the existing bridleway Y 30/28 to a restricted byway status. If the higher rights exist and are simply not recorded, then the scheme will be impacting on restricted byway rights and will need to provide for appropriate mitigation. It should also be noted that carriage driving is an accessible form of off-road transport for those less able.</p> <p>The applicant to review if any of the proposed bridleways identified in the Schedule could be re-designated as restricted byways to be more inclusive with regards to NMUs.</p> <p>6) The construction road between Steart Hill and Camel Hill and Tracks 4 & 9 would further serve to provide an NMU route across the scheme, were they to be designated as public bridleway or restricted byway. An additional link would be required between the Podimore turning head and the</p>		<p>The applicant proposed a potential solution of a new bridleway over tracks 4 & 9 with a connection to Podimore, however it has since been ruled out following a buildability assessment. The Council still views this as a very worthwhile connection for NMUs as it removes them from the B3151.</p>	

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		<p>minor road to the west to facilitate this. The Schedule should be amended to provide this.</p> <p>7) The impact of the development is to stop up the connection of Y 30/28 with the A303 and therefore the applicant has to mitigate for that loss. The current proposal from the applicant is provision of a route east to the nearest new vehicular overbridge. The proposed development creates an adverse effect on this section of Public Right of Way because the length of the alternative route proposed is c.5.2km for walkers, cyclist and equestrians. If instead the alternative was over Y 30/31, this length would be reduced to c.1.5km. This is a considerable difference in length and convenience. A connecting bridleway to, and the upgrading of public footpath Y 30/31 to bridleway status would be viewed by the Council as necessary; directly related to the development; and, fairly related in scale and kind for the loss of the Y30/28 terminus. This could be secured by either an amendment to the DCO or a planning obligation. This would</p>		<p>The applicant is addressing this issue through a possible Designated Funds application. The Council believes it should still form part of the DCO, and if nothing else, a footpath connection should be provided between Y 30/28 and Y 30/31. The revised DCO refers to the revocation of the 1996 SRO in so far as it is in force and within the Order limits. Far greater clarity is required from the applicant as to what the impact of this will be and any legacy issues that may result. Bridleway Y 30/29 may or may not have been created as a result of the 1996 SRO and the development limit clearly interferes with a section of this bridleway, potentially leaving one cul-de-sac bridleway to the east and one entirely isolated bridleway to the west. The revised DCO and plans will create ambiguities for the Council which could be avoided.</p>	<p>The provision of a bridleway connection (or footpath at the very least) between Eastmead Land and Higher Farm Lane and such inclusion in Schedule 3 Part 11 and changes made to the Rights of Way & Access Plans.</p>

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		<p>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>		<p>Further to the submission of a non-material amendment by the applicant the proposal has changed from two possible bridleway options between Traits Lane and Gason Lane to one option of a footpath only. The resulting deviation for horse riders and cyclists would be in excess of 2.1km, or 4.2km if doing a return journey, on lanes and junctions that don't have the best sight lines. Should a bridleway not be achievable through the MOD land then the next best option has to be the alternative bridleway route; i.e.: BZ-CA-CB-CD-CE.</p>	<p>Should the non-material amendment be approved, that the applicant cooperates fully with the County Council to achieve a further amendment to bridleway status on MOD land.</p>
1.27	<p>Schedule 3 Part 10</p> <p>Revocations and Variations of Orders</p>			<p>As stated above, the revocation of the 1996 Orders within the order limits could have undesirable consequences such as leaving cul-de-sac rights of way with no alternative route to follow. The impacts of partial revocation should be investigated.</p>	<p>Column 4 may need amending depending on the Applicant's conclusions as to whether a partial revocation of the order leaves cul-de-sac rights of way.</p>
1.28	<p>Schedule 4 Permanent Stopping Up of Highways</p>	<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</p>	<p>No change made.</p> <p>As set out at line 4.11, the Applicant is happy to discuss any</p>	<p>SCC welcomes discussion with the Applicant on the design measures to address anti-social behaviour in relation to de-trunked sections of road, and has proposed amendments to article 13(4), Part 2</p>	<p>No amendment required subject to SCC's proposed amendments to article 13(4), Part 2 of Schedule 3 and the protective provisions being accepted.</p>

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		<p>traveller encampments and anti-social behaviour. The making of traffic regulation orders on its own is often not sufficient to prevent this arising, and SCC considers that this may be better addressed in some circumstances by the reduction in the carriageway width by stopping up. Reference to the need for HE to engage with SCC on the de-trunking provisions has been referred to above. To this extent this gives rise to the need for sections of de-trunked road to be narrowed this would require amendment to Schedule 4.</p>	<p>design measures which could be incorporated to address potential anti-social behaviour with the Council however in discussion with the Council when this was raised the Council indicated it did not continue to seek the changes in width as requested in the comment.</p>	<p>of Schedule 3 and the inclusion of protective provisions to address the concerns it has raised in this respect. In relation to those dead-end sections of de-trunked road which are of little or no public benefit, SCC proposes that responsibility for these remain with the Applicant so that it may decide whether to stop them up and create private rights of access in place of the highway rights.</p> <p>In relation to those de-trunked sections of road which still have a benefit to the public in being maintained as public highways, it is possible that the narrowing of the carriageway or construction of bunds may be of benefit to prevent traveller encampments or antisocial behaviour. The local approval of the detailed design, as provided by the protective provisions, will enable SCC to look at each of these sections on a case by case basis once the detailed design becomes available.</p>	
1.29	<p>Schedule 5</p> <p>Land of Which Temporary Possession may be taken and only new rights may be</p>			<p>The Applicant has stated (SCC italics):</p> <p>"The plots identified by number in the question <i>mainly consist</i> of very small areas of existing highway and highway verge, agricultural land located at the boundary edge of fields, and existing hardstanding and are proposed to be used primarily as</p>	<p>In the event that the Applicant is unable to confirm that there will be no highway works carried out on the land contained in Schedule 5 which is not already highway land, then remove from Schedule 5 any plots where it is proposed that highway rights are acquired.</p> <p>Delete reference "To transfer responsibility for maintenance of the public highway so designated to Somerset County Council"</p>

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	permanently acquired			<p>turning heads for the public highway.”</p> <p>There are therefore some sections of highway being created outside the existing highway limits.</p> <p>If the land is to be used permanently as public highway, it should not be included in Schedule 5 relating to the temporary possession of land as the owner is permanently dispossessed of the surface and subsoil insofar as it is intended to form part of the public highway maintainable at the public expense. The rights of public access do not fall within the scope of the rights or interests referred to in section 159 of the Planning Act 2008.</p> <p>Below are extracts from two guidance notes on this issue:</p> <p>Firstly, the guidance published in February 2018 by the MHCLG refers to the circumstances in which an acquiring authority can acquire rights over land. In para 263 it states that:</p> <p>“The creation of new rights can only be achieved using a specific statutory power, known as an ‘enabling power’. Powers include (with the bodies by whom they may be exercised) the following:</p>	<p>since this is not a right being acquired under this Schedule.</p>

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				<p>Local Government (Miscellaneous Provisions) Act 1976, section 13 (local authorities)</p> <p>Highways Act 1980, section 250 (all highway authorities) - guidance on the use of these powers is given in Department of Transport Local Authority Circular 2/97.....”</p> <p>The list is not exhaustive, and section 159(3) of the Planning Act 2008, which refers specifically to the acquisition of a right over land including the creation of a new right, is not referred to in this paragraph. However, there is no legislation or government guidance in relation to the Planning Act which sets out what “rights” can be created, and consequently it is necessary to look at other compulsory powers to see how this has been interpreted. Of particular relevance in this regard is section 250 of the Highways Act 1980, given that the A303 scheme is a highways scheme and the rights which the Applicant is seeking to create are highway rights.</p> <p>The second extract therefore is taken from Circular 2/97 and relates to the compulsory acquisition of rights in relation to highways schemes. Paragraph 70 states that highway authorities need not compulsorily acquire the land if it is required for works only and not required to form</p>	

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				<p>part of the public highway. This is on the basis that the owner will not be deprived of the beneficial use of the land in such circumstances.</p> <p>Paragraph 71 of the circular confirms that the rights which may be acquired are in the nature of easements and gives a list of examples. None of the examples relate to the acquisition of public rights of passage. This is because it is not a right in the nature of an easement.</p> <p>Paragraph 72 confirms that the Department of Transport does not envisage the powers being used by the highway authority to form part of a highway on the basis that the landowner is permanently deprived of beneficial use of that land. It states that in such cases the full title to the land should be acquired, and furthermore, that this principle also applies to public rights of way and for new means of access to premises for third parties.</p> <p>In addition to the above, a further reason for acquiring the freehold of the land required for public highway is to ensure that any pre-existing rights which may conflict with the use of the land as public highway are acquired at the same time. The acquisition of the freehold interest effectively "wipes clean" the title of</p>	

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				any interests which would conflict with the use of the land as a highway.	
1.30	Schedule 7 Temporary Possession			<p>If the land is to be used permanently as public highway, it should not be included in Schedule relating to the temporary possession of land as the owner is permanently dispossessed of the surface and subsoil insofar as it is intended to form part of the public highway maintainable at the public expense.</p> <p>In addition to the above, a further reason for acquiring the freehold of the land required for public highway is to ensure that any pre-existing rights which may conflict with the use of the land as public highway are acquired at the same time.</p> <p>If the land were to be used for the carrying out of highway works outside the limits of the highway, there is nothing in the DCO which prevents the owner removing these works. Therefore to include non-highway land for highway works would not be appropriate.</p>	In the event that the Applicant is unable to confirm that there will be no highway works carried out on the land contained in Schedule 7 which is not already highway land, then remove from Schedule 7 any plots where it is proposed that highway works are constructed.