

# A303 Sparkford to Ilchester Dualling Scheme TR010036

## 9.35 Responses to Action Points for Midday 22 May 2019

Planning Act 2008

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## Infrastructure Planning

Planning Act 2008

# A303 Sparkford to Ilchester Dualling Scheme

Development Consent Order 201[X]

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**Responses to Action Points by Midday 22 May 2019**

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## **Table of Contents**

<b>1</b>	<b>Introduction</b>	<b>4</b>
<b>2</b>	<b>Action Point 36</b>	<b>5</b>
<b>3</b>	<b>Action Point 37</b>	<b>27</b>
<b>3.1</b>	<b>Introduction</b>	<b>27</b>
<b>3.2</b>	<b>DCO Articles</b>	<b>27</b>
<b>3.3</b>	<b>Protective Provisions</b>	<b>28</b>
<b>3.4</b>	<b>Other Issues</b>	<b>30</b>

# 1 Introduction

- 1.1.1 This report provides responses to Hearing Actions Points 36 and 37 associated with the Development Consent Order (DCO) Examination for the A303 Sparkford to Ilchester Dualling Scheme ('the scheme').
- 1.1.2 Each Action Point relates to the table of action points issued by The Planning Inspectorate (EV-032 and EV-033) following the issue specific hearings (ISH), open floor hearings, and compulsory acquisition hearings held on Tuesday 14 May 2019 and Wednesday 15 May 2019. Responses to each of the Action Points are contained within Chapters 2 and 3 of this report. The numbering adopted below corresponds to the numbering in the Action Points issued by the Examining Authority.

## **2 Action Point 36**

2.1.1 Action Point 36 requests: *Provide response to SCC's response to Applicant's note on protective provisions (Action Point 31) Including: consider need for definition of completion and how this could be addressed having regard to SCC proposal and propose alternative(s).*

2.1.2 Table 2.1 below details the Applicant's response to this action point.

**Table 2.1: Applicant's response to Action Point 36**

	Applicant's comment on SCC draft Protective Provisions	SCC Response to comment	Applicant's further response
1	<p>Definition of Commuted Sum</p> <p><b>2.2.1 The Applicant has agreed with SCC that a commuted sum will be paid towards the maintenance of any new, non-standard assets which are to be transferred to SCC under the DCO. The Applicant had understood that this was to be included in an agreement between the Parties, not the Protective Provisions, however as SCC have included it in their draft without notifying the Applicant and despite the ongoing meetings between them, the Applicant now assumes SCC are not seeking the separate agreement. The Applicant has accordingly included commuted sum provisions within the draft submitted with this note.</b></p> <p><b>2.2.2. The Applicant rejects the reliance proposed in the SCC definition on the SCC technical note and the inclusion of "or any replacement or modification of that document for the time being in force". Apart from the technicality that guidance cannot be 'in force' as it is not legislation, this document is purely a SCC guidance document and any part of it could be changed unilaterally by SCC at any time; that is not acceptable to the Applicant and leads to uncertainty. The Applicant has therefore included a definition of "Non-standard Highway Assets" which aligns with the approach currently taken by the technical</b></p>	<p>Agreed, 'new' can be deleted from the definition of Commuted Sum.</p>	<p>Agreed, 'new' can be deleted from the definition of Commuted Sum.</p>

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	<p><b>note but is separate to and not reliant on that guidance.</b></p>		
<p><b>2</b></p>	<p>Definition of detailed information</p> <p><b>2.2.3 The Applicant rejects the changes made by SCC to the definition of “detailed information”. There is no reason that SCC cannot specify what information they require rather than reducing the certainty of this definition to include a vague provision for ‘any information they require’. Provided that the list of “detailed information” is prescribed in the Protective Provisions (and therefore certain), the Applicant is willing to provide it.</b></p> <p><b>2.2.4. SCC’s addition to item (o) in the detailed information definition, requiring a schedule of condition of other local highway which SCC consider will be affected by the works, is also rejected. That would by its nature include areas outside the redline boundary of the consent and therefore the DCO. The Applicant is, however, willing to provide a schedule of condition for the affected public highway within the scheme limits, which is thought to be reasonable.</b></p> <p><b>2.2.5. SCC’s definition of “Detailed information” item (q) provides “where highway is to be de-trunked under this Order, a specification of the condition of the de-</b></p>	<p>Whilst it is not possible be sure about the scope of the detailed information required given the absence of a detailed design, SCC would consider its list of detailed information (set out in its version of the Protective Provisions at 2(a) to (q)) to be adequate, and in the interests of progressing an agreement would therefore be content to remove reference to ‘any other information which it might reasonably require’ in its version of the Protective Provisions .</p> <p>Local highways may be affected by the movement of construction traffic outside the scheme limits, emphasised by the absence of detail in relation to the Construction Traffic Management Plan. It would be in the interests of both parties for a schedule of condition to be agreed of those local highways which might be affected by the works. Any damage caused by construction traffic would need to be remedied by the undertaker.</p> <p>Item (q) will also ensure the provision of a specification of the condition of a de-</p>	<p>This point appears to be agreed. SCC to delete reference to ‘any other information which it might reasonably require’ in its version of the Protective Provisions.</p> <p>The Applicant agrees that surveys outside the DCO limits may be a good idea but not that they should be prescribed by the DCO where it then becomes binding.</p> <p>Item (q) is simply not necessary. “local highway” is defined to include any highway which will vest in SCC so includes areas to be detrunked; item (p) covers any local highway occupied but not</p>

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	<p>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". In the Applicant's view this is unnecessary. The definition of local highway under the Applicant's drafting includes sections to be de-trunked and for which detailed information is required – the proposed (q) is therefore duplication. standard before it is passed to the Local Highway Authority to maintain". In the Applicant's view this is unnecessary. The definition of local highway under the Applicant's drafting includes sections to be de-trunked and for which detailed information is required – the proposed (q) is therefore duplication.</p> <p><b>2.2.6. Further, the inclusion of "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" in this item is rejected. The Applicant cannot and will not agree to the inclusion of 'such other works' in any of the forms it appears in the SCC draft (please see the response to paragraph 5(1) detailing why this is unacceptable). The Applicant has asked SCC to advise of design measures it would wish to have included to address anti-social behaviour so that these can be considered as part of the development of the detailed design; SCC has not advised of any measures and has advised in its written submissions</b></p>	<p>trunked section of highway that may not be subject to any works.</p> <p>It is essential that the detailed design process takes into account the need to design out as far as possible the risks associated with unauthorised use and anti-social behaviour, and the wording proposed by the Local Highway Authority seeks to ensure that these specific matters are actively considered in relation to de-trunked roads. The Applicant has highlighted itself that the detailed design process will need to flow after the close of the Examination. SCC believes that it will not be possible to design out these risks in their entirety, but it will be for the Applicant to develop and propose such detailed designs, not the LHA. SCC wishes to be actively</p>	<p>worked on. Item o) requires a schedule of condition of affected local highway and items a-k are the specification of works which include surfacing (e), markings(g) etc – there is no omission to rectify here.</p> <p>As a compromise the Applicant would propose that o) could be amended from 'affected local highway' to 'all local highway within the order limits'.</p> <p>The Applicant considers that the principle of this can be agreed; the Applicant is willing to insert provision for SCC to be invited to attend design meetings up to submission for approval – but will not pay fees for the council to attend.</p> <p>Proposed new wording:</p> <p>X.—(1) The undertaker will allow and facilitate an appropriately qualified officer of the local highway authority to participate in the design process for the detailed design of those parts of the authorised development which are local highway,</p>



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	<p>that it cannot propose any. It is not reasonable to require the Applicant to include works which SCC has already stated it cannot specify.</p> <p><b>2.2.7. Where any requests to include measures are made before approval of detailed design the Applicant will consider these, such requests cannot however be accommodated post such approval without creating unacceptable risk to the project programme. It is not reasonable for SCC to have the ability to refuse to allow works to start under an approved detailed design because design or traffic management measures they have not previously specified have not been included in the design.</b></p>	<p>engaged in the design process and can assist the undertaker based on its extensive experience of dealing with unauthorised use or anti-social behaviour on the local highway network.</p> <p>There is currently a lack of detailed information about both the design of the scheme and the associated traffic management plan. The Applicant's proposed wording for Requirements 11 and 12 rely on a consultation process regarding the traffic management plan and detailed designs in accordance with Requirement 4. But Requirement 4 provides for in effect only a notification process rather than a process of meaningful consultation where the Local Highway Authority would be fully engaged during development of the scheme and is able to inform and influence detailed matters. That is both unacceptable and unreasonable. SCC proposes a model which enables it to engage actively and iteratively in development of the detailed designs and the traffic management plan that would both protect the interests of the Local Highway Authority, and minimise the potential long term risks of delays to the project.</p> <p>Irrespective of whether SCC is the approving body pursuant to Requirement 12, SCC would expect this detailed information to be provided prior</p>	<p>and will have reasonable regard to any views of that officer in finalising the detailed design prior to any element reaching design fix or freeze; provided always that it will be the decision of the undertaker whether it implements such views and for the avoidance of doubt any such view shared by the officer will not be an instruction, requirement or authorisation under this Order.</p> <p>(2) Participation under sub-paragraph (1) will be in the form of invitations to attend design meeting not less than once per calendar month and the provision to the local highway authority of such drawings, cross sections and design proposals as are required to allow the local highway authority to provide views on detailed design proposals to the undertaker.</p> <p>(3) Any involvement by the local highway authority (or its appropriately qualified officer) will be at the cost of the local highway authority</p> <p>The Applicant doesn't agree that the SCC model is collaborative – rather it is an approval process which moves decision making to SCC rather than involving them in iterative design as claimed. The Applicant rejects the SCC drafting but is willing to accommodate participation in design as above.</p> <p>SCC appears to have misunderstood the process. The detailed information is the final design information which has to be complied with in undertaking the works (see para 3) – it therefore cannot be provided ahead of detailed design being approved as it has to follow on from the detailed design. Only draft details and</p>

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		to Requirement 12 approval in order that it may give proper consideration to the proposed works in its consultation response. The definition of "Detailed Information" proposed by the Applicant indicates that this information will not be provided until after Requirement 12 approval. If the detailed information is provided prior to Requirement 12 approval SCC can ensure any design measures it recommends are raised in a timely manner.	proposals can be provided ahead of approval. Opportunities to review drafts as they evolve is set out in the proposed new paragraph above, the right to review the detail to be submitted for approval is set out in the requirements requiring consultation.
3	<p>Definition of local highway</p> <p><b>2.2.8. The extension of the definition of local highway to include public rights of way is rejected. These Protective Provisions were proposed to provide SCC with protection on discrete points related to vehicular highways, not all rights of way.</b></p>	The Protective Provisions should apply equally to all highways (including public rights of way) on the basis that maintenance responsibility of the majority of these routes will pass to the local highway authority pursuant to article 13.	The Applicant does not agree, maintains its position as per its previous comment and notes that many of these provisions are inapplicable or inappropriate to PROWs.
4	<p>Definition of maintenance period</p> <p><b>2.2.9. The Applicant does not agree with the inclusion of SCC's proposed definition of "maintenance period". The local highway authority is statutorily charged and funded to maintain its highways and it is inappropriate for it to be trying to pass that responsibility to third parties. The Applicant has already agreed that it will be liable for a 52 week defect remediation period for its works from completion of those local highway works (this</b></p>	It is unreasonable for the Applicant to suggest that SCC should be responsible for maintenance of the local highways during the 52 week defect period. The nature of the contract between the Applicant and its main contractor is not a material consideration. The purpose of the maintenance period is to expose the new highway infrastructure to a reasonable period of public use to ensure that it is fit for purpose once any initial defects and works arising from the	<p>It is not unreasonable for the local highway authority to be responsible for maintenance of local highways.</p> <p>The highways will have to have been assessed as safe under RSA3 before they are open to traffic.</p>

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	<p><b>is secured through paragraph 13(1) of the draft Protective Provisions). The Applicant will not agree to be liable for the normal, day to day maintenance of local highways following completion of the works and it is not reasonable to expect it to do so. Given that the Applicant will not take on the routine maintenance of SCC highways the definition of "winter maintenance" is also unnecessary as there is no need to distinguish that.</b></p>	<p>safety audit have been addressed. A maintenance period of 12 months is the norm, but this may be extended depending on the scale of any defects or safety works and the speed with which they are addressed. During this maintenance period the liability for maintaining the road remains with the undertaker, save for winter maintenance where responsibilities will need to be defined within the Detailed Local Operating Agreement that has yet to be drafted or agreed, but which both parties have suggested is included within the Protective Provisions.</p> <p>SCC considers that a minimum 52 week maintenance period is appropriate but this should only commence after the Works have been carried out to the reasonable satisfaction of the Local Highway Authority including any defects and works resulting from the Stage 3 Road Safety Audit.</p> <p>The issue of the Final Certificate would signify the completion of the Stage 4 road safety audit and the completion of all necessary works following the end of the Maintenance Period, and the transfer of the maintenance responsibility would at that point transfer to SCC from the undertaker.</p> <p>It would be an untenable and confused legal position if highway became</p>	<p>This is precisely the Applicant's proposal – the SCC drafting moves this 52 week defect liability period to after RSA4. The Applicant maintains that the SCC drafting does not follow this explanation.</p> <p>The DCO transfers maintenance by operation of its articles – a final certificate is not required.</p>

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		maintainable by the local highway authority when responsibility for defects or safety issues remained with the undertaker. For instance, if a repair were required to a section of new highway, then it may not be apparent whether the repair was required as a result of a defect in the construction or design, or as a result of extraordinary use, or a mixture of both, and therefore whether the highway authority or undertaker is responsible. It is SCC's proposal that the undertaker is only responsible for that section of highway on which it has worked until the issue of the Final Certificate.	The Applicant entirely disagrees. The date on which roads become classified under the DCO is entirely clear. From that date, the Applicant would be liable for defects in the works for a period of 52 weeks or defects in the design as holder of the relevant professional guarantees. SCC would be liable for routine maintenance. This is not in any way a confused or untenable legal situation. This situation arises in many construction contexts where liability for the design of a project and defects, and liability for routine maintenance are separate. SCC objects to the Applicant occupying or having any control over the local highway but want to pass all the normal liabilities (for which they are funded) accruing to that highway to the Applicant. This is inconsistent and unreasonable.
5	<p>Definition of works</p> <p><b>2.2.10. The SCC definition of "works" is rejected. No special definition is needed for this schedule. Further, the inclusion of "any associated works or consequential works reasonably required by the Local Highway Authority" is completely rejected – please see the reasoning set out for the rejection of similar wording in paragraph 5(1) which applies equally to this wording.</b></p>	It would be in the interests of all the parties to ensure that the definition of 'works' in the Protective Provisions that limits it to local highways. The term "works" is used in a variety of different contexts in the DCO and therefore by giving the term a specific meaning for the purposes of the Protective provisions provides clarity.	<p>The Applicant is willing to agree to a definition to close this point. The Applicant suggests:</p> <p>"Works" in this Part of this schedule means any works authorised by this Order undertaken on, to or under any local highway within the Order limits.</p>
6	<p>Paragraphs 4(1) and (2)</p> <p><b>2.2.11. This paragraph requires the approval of SCC for all of the detailed information, which duplicates most of the detailed design</b></p>	It is not SCC's intention to introduce an additional approvals process. There may be the opportunity to streamline the	The SCC drafting clearly and inarguably introduces a further approval process. The approval of detailed design and the approval of

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	<p><b>matters for works relating to the local highway. This replicates the approval also sought by SCC as discharging authority under requirement 12 (which the Applicant does not accept). In practice the drafting suggested by SCC for these provisions and requirement 12 would, when taken together, mean that 3 approvals are required; from the Secretary of State as discharging authority, from SCC as discharging authority and from SCC under the Protective Provisions. The Applicant strongly objects to this approach which is contrary to the intention of the Planning Act to streamline consenting for NSIPs. The Applicant maintains its position that the discharging authority should be the Secretary of State alone and objects to any approval equivalent to that discharge by SCC being required through Protective Provisions.</b></p> <p><b>2.2.12. With reference to the specific drafting of the SCC draft provisions, the Applicant objects to SCC requiring a separate approval under Protective Provisions for matters which have already been approved under a detailed design. This is unnecessary duplication which creates delay and is not necessary given that all of the detailed design already requires to be approved under requirement 12. While not accepting that any approval should be required at all, the Applicant also objects to the SCC provision allowing approval to be conditional and thereby allow SCC to impose controls outside the DCO which have not been</b></p>	<p>Protective Provisions but this will depend on the wording of Requirement 12. SCC 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. This is, in effect, one approval process.</p> <p>SCC would however be pleased to amend its paragraph 4 within its version of the Protective Provisions to remove any concern around a double approvals process in the event that SCC were the discharging authority for the local highway element within Schedule 2 Requirement 12 of the Order.</p> <p>The ability to grant conditional approval enables SCC to approve the detailed design where some amendments are required. If this were not the case, it would leave SCC with only two options: to approve the design as submitted or to reject it.</p>	<p>detailed information under PPs as drafted by SCC are two separate processes. If this is not the SCC's intention the drafting of its version of the PPs needs to be revisited.</p> <p>The Applicant rejects approval of any detail by SCC under either process.</p> <p>The Applicant does not agree that SCC should be the discharging authority so it is unlikely that the drafting of the protective provisions can be agreed.</p> <p>The Applicant rejects approval of any detail by SCC This response however demonstrates why the SCC statement earlier in their response does not make sense – the Applicant cannot provide the detailed information ahead of approval of detailed design where the ability to approve conditionally is available as the final detailed design is not fixed until the conditions are known.</p>

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	<p><b>subject to any consideration in the examination.</b></p>		
<p><b>7</b></p>	<p>Paragraph 5(1)</p> <p><b>2.2.13. The Applicant objects to the insertion of a requirement under 5(1)(a) to complete the works “without unreasonable delay in accordance with the approved Detailed Information and to the reasonable satisfaction of the Local Highway Authority”. The Applicant is already obliged by the DCO to complete works to the local highway to the reasonable satisfaction of the local highway authority and so there is no need or utility to repeat that.</b></p> <p><b>2.2.14. The detailed information to be submitted includes a programme of works and a requirement to carry out works in accordance with the detailed information (and therefore in accordance with the programme of works). It is therefore unclear what utility SCC consider is served by insertion of ‘without unreasonable delay’. Further, it is not clear how SCC would determine that any delay was unreasonable or what they would propose to do if they did consider a delay to be unreasonable.</b></p> <p><b>2.2.15. The Applicant objects and has advised SCC it objects to the inclusion of the words “together with any other works local highway authority might reasonably require”. Wording to this effect appears several times in the SCC</b></p>	<p>It is hoped that the Applicant would not unreasonably delay the completion of the works and the wording should therefore not give cause for concern. However, SCC would be content to amend the wording 5(1) to remove reference to completing the works ‘without unreasonable delay’ to address the Applicant’s objection but would highlight the need for SCC to approve the Traffic Management Plan.</p> <p>The reference to permitted development was in error. However, it is anticipated that there is a possibility that once the detailed design is prepared and consultations proceed with SCC, there</p>	<p>This point appears to be agreed. SCC to delete ‘without unreasonable delay’ in its version of the Protective Provisions.</p> <p>The Applicant sees no logical connection between the unnecessary SCC drafting and the approval of the TMP, these matters are not interdependent.</p> <p>The Applicant rejects approval of the TMP by SCC.</p> <p>The Applicant agrees that it is theoretically possible that minor works may be required by the RSAs which are not in the authorised development – it does not agree that SCC should be able to <u>require</u> any works it wishes. These are two separate issues. The SCC drafting would</p>

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	<p><b>draft, in the definitions of detailed information and works and in this section. All of these insertions are rejected in principle. Not only is it unreasonable to seek to bind the Applicant to carry out undefined, unprogrammed, uncosted works simply on demand by SCC, but the DCO may not necessarily consent such works; the Applicant cannot be bound in the Protective Provisions to carry out unconsented works.</b></p> <p><b>2.2.16. It has been repeatedly explained to SCC that, contrary to their explanatory note submission, permitted development rights do not apply to EIA projects. The DCO is clearly an EIA project. Permitted development rights are set out in the Town and Country Planning (General Permitted Development) (England) Order 2015 Article 3 (10) of that Order provides that schedule 1 or schedule 2 development within the meaning of the Town And Country Planning (Environmental Impact Assessment) Regulations 2017 is not permitted by this order. Those EIA regulations provide in Schedule 1 that works to various strategic roads will be Schedule 1 development and in Schedule 2 that Schedule 2 development will include construction of roads (unless already included in schedule 1) where the works exceed 1 hectare. The DCO scheme is considerably in excess of 1 hectare. The scheme is therefore clearly an EIA project under those regulations. Permitted development rights are therefore not available. The DCO can therefore only require works which are within the scope of</b></p>	<p>may be other works identified which may be required in addition to the authorised works. SCC 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.</p>	<p>oblige the Applicant to carry out such other works as SCC required – the Applicant strongly objects to that drafting.</p>

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	<p>the consent. Any other works would require separate planning permission to be obtained, and, where necessary, having regard to the nature of the works and the relationship to the DCO scheme, those works would be subject to further environmental assessment for those consents. The SCC suggested explanation in paragraph 5.2 of its explanatory note is therefore, in the Applicant's view, wrong in law.</p> <p><b>2.2.17. Highways England as a responsible highway authority will undertake works which are required to comply with road safety audits. Road safety audits identify works which may be required to address identified concerns, however, it is acceptable for the designer to propose alternatives or not implement specific works. As the designer of the scheme with the full understanding of it, it is Highways England's responsibility to determine which of the works identified in the road safety audit should be implemented. In any case SCC has not limited this provision to any other works which are identified in road safety audits but has provided for any other works it requires. This is unacceptable to the Applicant. Not only does this introduce an obligation into the DCO to undertake works which are not specified in the DCO or shown on the plans and which are not costed or programmed, but it is not limited to works which fall within the scope of this consent.</b></p> <p><b>2.2.18. The Applicant objects to the insertion of 5(1)(b) that "the undertaker must:... (b) take</b></p>	<p>The Applicant appears to accept that there may be works necessary as a result of RSA 3 and RSA 4 (which will need to be determined by the Project Sponsor – not the Designer), and that these may require a separate consent if they give rise to any new or materially different effects from those identified in the Environmental Statement. SCC would highlight that 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 wording in paragraph 5(1)(b) is taken from the Section 6 agreement</p>	<p>The Applicant does not accept that the legal position is any way confused.</p> <p>The Applicant would again note that RSA4 is designed only to address issues which have arisen once the road is open to public use – the road will have already been assessed as safe in design terms at RSA3.</p> <p>The section 6 agreement is simply that – an agreement between two parties – it is entirely</p>



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	<p><b>such precautions for the protection of public and private interests as would be incumbent on the undertaker if it were the local highway authority". The protection of public and private interests in relation to works under the DCO is already secured in the DCO – this insertion is unnecessary and attempts to apply a legal regime to the scheme which does not apply because these matters have been dealt with separately.</b></p>	<p>between the Applicant and SCC in which SCC is carrying out work in part to the strategic road network and simply emphasises the approach that would be expected of a competent highway authority. The Council is not aware that it is expressed as clearly anywhere else within the DCO.</p>	<p>separate and different to a DCO and comparing the two does not assist. The DCO has already adequately covered the protection of public and private interests. The Applicant continues to reject the SCC drafting.</p>
8	<p>Paragraph 5(2)</p> <p><b>2.2.19. The Applicant has already provided that SCC must be given a programme of works under the detailed information and notified of completion under the Applicant's paragraph 14(3) within 5 working days of such completion. The Applicant therefore considers SCC's paragraph 5(2) to be unnecessary.</b></p>	<p>SCC would be content to delete 5(2), but would highlight the need for the County Council to approve the Traffic Management Plan.</p>	<p>This point appears to be agreed. SCC to delete paragraph 5(2) in its version of the Protective Provisions.</p> <p>Again, the Applicant sees no logical connection between this and the TMP approval.</p>
9	<p>Paragraph 6(1)</p> <p><b>2.2.20. The Applicant notes that SCC is asking for the right to inspect works on demand. The Applicant has already advised SCC that it is happy to facilitate the inspection of works but it requires 2 working days' notice. That 2 days' notice can be of more than one planned inspection and notification of a proposed programme is entirely acceptable. The 2 days' notice is required to ensure that the sections of the site SCC wishes to inspect are safe and access can be provided acceptably. It also</b></p>	<p>As with any development, SCC's expectation is that it will be afforded full access to the site and that its representative will be inducted into the site health and safety procedures. SCC is unclear why the principal contractor would have to stop any works in order to facilitate inspection by the Local Highway Authority representative.</p>	<p>The Applicant maintains its position as per its comment.</p> <p>The Applicant finds the assertions regarding the correctness of SCC remaining the local highway</p>

	Applicant's comment on SCC draft Protective Provisions	SCC Response to comment	Applicant's further response
	<p><b>allows the Applicant to ensure that any person inspecting the site can be appropriately briefed, that the health and safety management of the site can be properly undertaken, and that the relevant personnel can be available on site to assist the SCC officers and answer any questions they may have.</b></p> <p><b>2.2.21. It is not reasonable that SCC can demand access to any part of a large, active construction site at any time without notice being given and where the principal contractor may then have to stop works in order to facilitate that. It is entirely reasonable that SCC can put forward a schedule of proposed inspections which the Applicant would facilitate, having received notice. The Applicant has proposed an alternative right to inspect in its draft Protective Provisions.</b></p>	<p>SCC remains the local highway authority in relation to these sections of highway. The DCO does not expressly seek to disapply the LHA's powers under the Highways Act 1980 and it is right that it should not do so. Although public access may be restricted whilst the undertaker is carrying out works there may still be infrastructure within the highway which serves the wider road network, such as drainage culverts, to which the LHA may require access for inspection and maintenance.</p> <p>The Applicant is not proposing to accept the LHA's responsibilities for the sections of road over which it temporarily has possession (see its comments in 2.2.34), and therefore a form of wording which would seek to restrict the powers of the LHA in such circumstances is inappropriate.</p>	<p>authority to be completely inconsistent with SCCs drafting which moves all liability for normal maintenance to the Applicant given that one of the core responsibilities of a highway authority is to maintain its highway.</p> <p>SCC has never explained what responsibilities it considers the Applicant should be taking on. The Applicant maintains it is entirely appropriate to control access to a live construction site and that the temporary possession power in the DCO fully allows it to do so.</p>
10	<p>Paragraph 6(2)</p> <p><b>2.2.22. The Applicant does not accept that there is any need for secondary testing to be carried out by SCC where it is already entitled to receive the results of the testing which will be carried out on behalf of a highway authority in accordance with DMRB. If SCC wishes to carry out such secondary testing, it is not reasonable that the Applicant should have to pay for that, having already carried out and shared the results of the primary testing. The</b></p>	<p>It is noted that the Applicant has deleted SCC's proposed wording for the testing of materials to be undertaken in accordance with the Manual of Contract Documents for Highway Works which the industry standard so it is unclear why this is not agreed.</p> <p>The local highway works are to be undertaken to the reasonable</p>	<p>The Applicant deleted reference to the standard only while it sought technical advice on this point. The Applicant agrees that the standard is appropriate and will insert reference to it into its drafting.</p> <p>Given that the standard of testing is now agreed, the Applicant remains of the view that it should not have any liability for the cost of any testing carried</p>

	Applicant's comment on SCC draft Protective Provisions	SCC Response to comment	Applicant's further response
	<b>Applicant therefore objects to the SCC drafting creating financial liability on the Applicant for unnecessary secondary testing.</b>	satisfaction of the local highway authority (Article 13). A component of this will relate to the testing of materials. SCC seeks the ability to undertake additional testing not adequately covered by the specification document for the scheme in cases where SCC has concerns about the quality of the material and/ or workmanship. In these circumstances, the cost of the testing should be met by the Applicant. SCC does not wish to undertake secondary testing (i.e. additional testing to confirm/validate the outcomes of any test. The Protective Provisions could be clarified on this point.	out by SCC as it has already paid for testing to be carried out to the standard specified by SCC.
11	Paragraph 7  <b>2.2.23. The Applicant has not included RSA 2 in its drafting (although it will be carried out because it is mandatory) because this audit is undertaken at detailed design stage and SCC has declined to continue participation in the technical working groups which would lead up to that. The Applicant would be content to allow SCC to participate in RSA2 but will not agree to pay SCC any fee to do so. The Applicant understands that this means SCC will not, in practice, participate at that stage so there is no utility including it.</b>	Upon conclusion of the Examination, SCC would wish to engage in the detailed design process of the scheme with the Applicant. The matter of fees is an area of disagreement, but it would be appropriate for the RSA 2 to be included within the Protective Provisions irrespective of whether agreement can be achieved on this matter.	Agreed. The Applicant is happy to add participation in RSA2 to the drafting.  The position on fees remains not agreed.
12	Paragraph 7(3)		

	Applicant's comment on SCC draft Protective Provisions	SCC Response to comment	Applicant's further response
	<p><b>2.2.24. The Applicant disagrees with the SCC wording of this paragraph. Road Safety Audits identify recommended works. The road will be approved as being safe to use by RSA3 before it is opened. No highway authority or other developer is obligated to carry out all of the works identified in any road safety audit; it is for the appropriately qualified design team to consider the outcomes of the road safety audit and which of its recommended works should be undertaken and whether any alternatives would be preferable. The wording proposed by SCC would require any work identified to be carried out. That is unreasonable, does not accord with DMRB and should not be included within the Protective Provisions.</b></p> <p><b>2.2.25. In addition, while the Applicant, as a highway authority, has a duty under the Road Traffic Act to ensure the highways it constructs are safe, it is up to the Applicant as to how it complies with that duty. The safety of the road in accordance with road safety audits will be assured by RSA3 prior to any road opening to traffic. RSA4 addresses any concerns which have arisen following the opening of the road. RSA4 is not always required if there are no incidents in the 12 months following opening. The Applicant has agreed to carry out RSA4 regardless in this case so that SCC has the certainty of knowing that, even where there are no incidents, a final check is carried out at RSA4. That does not mean that the Applicant should be obliged to implement any recommendation, regardless</b></p>	<p>The Applicant appears to accept that there may be works necessary as a result of RSA 3 and RSA 4 and that these may require a separate consent if they give rise to any new or materially different effects from those identified in the Environmental Statement.</p> <p>SCC recognises that the decision about the recommendations resulting from the Audit will rest with the Project Sponsor, and that there may be circumstances where it is reasonable to implement alternative works as a result of the safety audit findings. However, as any works must be completed to the reasonable satisfaction of the LHA and responsibility will pass to the LHA upon completion, it is reasonable that the Project Sponsor should seek to agree the scope of the works with the LHA , so that it may be satisfied that the recommendations of the safety audit report have been properly considered and observed. It is therefore proposed that paragraph 7(3) could be amended as follows to address the Applicant's concerns:</p> <p>"Where the report of the stage 3 and stage 4 road safety audit identify any recommended works to the highway, the undertaker must use reasonable endeavours to agree with the local highway authority which works or alternative proposals require to be implemented and must carry out at its</p>	<p>The Applicant considers that this point is covered by the responses in line 7.</p> <p>The Applicant agrees that it is appropriate for it to have an obligation to seek to agree works to be carried out to local highway following the RSA 4 with SCC and will amend its draft to include that. The Applicant does not agree to the timing element at the end of the SCC proposed drafting is appropriate. The amendment is accordingly</p>

	Applicant's comment on SCC draft Protective Provisions	SCC Response to comment	Applicant's further response
	<p><b>of what that would mean in practice, of any road safety audit. The DCO cannot require the Applicant to undertake works which are out with the scope of the DCO. Where the Applicant, as the responsible RSA body under DMRB, agrees such works are required outside the scope of the DCO ES, further consent for those works will have to be sought.</b></p>	<p>own expense such works 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”.</p>	<p>only agreed under deletion of “and prior to any local highway being transferred or returned to the control of the Local Highway Authority”.</p> <p>As is previously noted the Applicant does not consider it appropriate or reasonable for it to remain in occupation until post RSA4.</p>
<p>13</p>	<p>Paragraph 14</p> <p><b>2.2.26. All of SCC's amendments to paragraph 14 are rejected. The Applicant has already agreed that it will be liable for a 52 week defect remediation period from completion of local highway works. The defect remediation will be carried out under the Applicant's contract with its main contractor and any concerns raised by SCC will be directed to the Applicant. The Applicant does not agree that this period should be tied to the issue of various certificates by SCC. Highways England is entirely content that SCC can identify or flag to it any defects or any other issues that they are unhappy with, however, the defects liability period must be limited to 52 weeks. It cannot be indefinite unless and until SCC issues certificates. That is not reasonable in the context of the Applicant being a highways authority using public funds.</b></p>	<p>SCC considers that a minimum 52 week maintenance period is appropriate but this should only commence after the Works have been completed to the reasonable satisfaction of the Local Highway Authority (including any defects), and the completion of any works resulting from the Stage 3 Road Safety Audit. The nature of the contract between the Applicant and its main contractor is not a material consideration.</p> <p>The issue of certificates at the start and end of the maintenance period is standard practice, and creates a record of the duration of the maintenance period for any specific section of highway. This is important to ensure transparency and clarity with regard to where at any particular point in time for a specific section of the highway network the maintenance responsibility rests.</p>	<p>The 52 week defect liability period from completion of RSA3 works is agreed in principle. The Applicant does not agree that this is what the SCC drafting provides for.</p> <p>The Applicant entirely disagrees that issue of notices by SCC is necessary and notes that clear dates will be provided by the classification of roads provisions.</p>

	Applicant's comment on SCC draft Protective Provisions	SCC Response to comment	Applicant's further response
		<p>SCC refers to its comments above in relation to the definition of the maintenance period which apply here.</p>	
<p>14</p>	<p>Paragraph 15</p> <p><b>2.2.27. The Applicant does not agree that the additions made by SCC to paragraph 15(1) add anything of substance or are necessary.</b></p> <p><b>2.2.28. The last part of paragraph 15(1) beginning “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...” is simply not necessary as SCC has no liability under that Act. This is appropriately covered by the 1973 Act itself and does not need to be addressed separately in the DCO. The reasoning for this is set out below.</b></p> <p><b>2.2.29. The 1973 Act at Section 1 (Right to Compensation) provides:</b></p> <p><b>“(1) Where the value of an interest in land is depreciated by physical factors caused by the use of public works, then, if—</b></p> <p><b>(a) the interest qualifies for compensation under this Part of this Act; and</b></p> <p><b>(b) the person entitled to the interest makes a claim after the time provided by and otherwise in accordance with this Part of this Act, compensation for that depreciation shall, subject to the provisions of this Part of</b></p>	<p>These provisions are provided for added clarity.</p> <p>The definition in section 19 applies only to Part 1 of the Act, and would negate the need for the indemnity in relation to Part 1 claims if the works are completed in their entirety by the Applicant. However, it is possible that SCC may complete the works, such as the surface layer, if it needs to carry out other works to the highway at the same time as the Applicant, to minimise inconvenience to road users for instance. In such cases it might be possible for an injured party to claim that SCC is liable to meet the Part 1 claim, and therefore an indemnity is required to provide for this eventuality.</p> <p>The definition of responsible authority does not apply to Part 2, under which an affected party may seek soundproofing from the LHA. The indemnity proposed is required to deal with this.</p>	<p>The Applicant does not agree with the SCC submission.</p> <p>The Applicant is not aware why or how SCC would purport to carry out scheme works considering that it would have no planning consent to do so. The scenario posited is therefore rejected.</p> <p>If SCC carry out works to their own highway then the 1973 Act would apply to them – that is how the Act is drafted and there is no reason for the undertaker to indemnify SCC for carrying out its own works to its own highway.</p> <p>SCC’s submission that they would be liable under Part 2 of the 1973 Act is simply incorrect. Section 2 in Part 2 of the 1973 Act concerning soundproofing provides at subsection 12 “In this section “<i>public works</i>” and “<i>responsible authority</i>” have the same meaning as in section 1 above except that “<i>public works</i>” does not include an aerodrome and except that “<i>responsible authority</i>” in relation to a highway, includes any authority having power to make an order in respect of that highway under section 1 or 6 of the Road Traffic Regulation Act</p>

	Applicant's comment on SCC draft Protective Provisions	SCC Response to comment	Applicant's further response
	<p><b>this Act, be payable by the responsible authority to the person making the claim...</b></p> <p><b>(4) The responsible authority mentioned in subsection (1) above is, in relation to a highway, the appropriate highway authority and, in relation to other public works, the person managing those works."</b></p> <p><b>2.2.30. Section 19 provides who the appropriate highway authority is:</b>  <b>"(1) In this Part of this Act—</b>  <b>"the appropriate highway authority" means—</b>  <b>(a) except where paragraph (b) below applies, the highway authority who constructed the highway to which the claim relates or any other authority to which the functions of that authority in relation to that highway are transferred by virtue of the Local Government Act 1985 or the Local Government (Wales) Act 1994;</b>  <b>(b) if and so far as the claim relates to depreciation that would not have been caused but for alterations to the carriageway of a highway, the highway authority who carried out the alterations or any other authority to which the functions of that authority in relation to that highway are transferred by virtue of either of those Acts"</b></p> <p><b>2.2.31. Highways England is a highway authority by virtue of the Highways Act 1980 section 1A and the Appointment of a Strategic Highways Company Order 2015 (SI 2015/376).</b></p>		<p>1984(traffic regulation orders)." Highways England is according the responsible authority for part 2 under the same definition as in part 1 and the liability for claims lies with it not SCC. An indemnity is not required or justified.</p>

	Applicant's comment on SCC draft Protective Provisions	SCC Response to comment	Applicant's further response
	<p><b>2.2.32. Therefore, it is clear that the Applicant (Highways England) would be the highway authority who constructed the highway for any new areas of local highway and altered the highway for any other works. Accordingly any claims under the 1973 Act could only be made against the Applicant and not SCC.</b></p>		
<p>15</p>	<p>Paragraph 17</p> <p><b>2.2.33. The Applicant rejects all of SCC's paragraph 17. The Applicant entirely rejects the SCC proposed process of stage three and final certificates which have to be issued by SCC. These are not required under the DCO, which provides when highways occupied or altered as part of the works transfer to SCC, and should not be superseded by Protective Provisions.</b></p> <p><b>2.2.34. Although SCC is calling it a maintenance period, the period of 52 weeks from completion of the works, which the Applicant has agreed to, is a defects liability period only. The Applicant will not be responsible for normal highways maintenance as it is not the highway authority for the road. The Applicant is entirely content to maintain liability for any defects in the works carried out. It will not, however, be responsible for maintenance required as the result of, for example, normal traffic incidents damaging the surface of the highway. It is not reasonable for SCC to attempt to make the Applicant responsible for the normal day to</b></p>	<p>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 inclusive of all associated liabilities. The Applicant appears to refute this point. The nature of the contract between the Applicant and its main contractor is not a material consideration.</p> <p>SCC refers to its comments above in relation to the definition of the maintenance period (in response to para 2.2.9) which apply here. As with the maintenance of the highway it would lead to a confused and untenable legal position if liability were to be determined by reference to whether the claim arose out of the defect in the construction, the maintenance of that defective construction or maintenance of the road in which the defective works were constructed. The Applicant should be</p>	<p>The standard practice cited by SCC is its standard practice which it imposes on other parties under other legislation – it is not a requirement in the Planning Act or a standard requirement under DCOs.</p> <p>The Applicant is liable for its works – it is not liable for the local highway. As SCC have pointed out in earlier lines that is their responsibility. There is no confused legal position.</p>



	Applicant's comment on SCC draft Protective Provisions	SCC Response to comment	Applicant's further response
	<p><b>day maintenance of local highways (for which SCC will be responsible).</b></p> <p><b>2.2.35. The Applicant does also not consider it acceptable as proposed under 17(4) that it should indemnify the local highway authority for claims arising out of the maintenance of the works. The Applicant will accept liability for any defects due to its construction however it will not, as it is not the relevant highway authority, accept any other liability for any other maintenance. Maintenance for local highway authorities is by statute a matter for the local highway authority and it receives funding from central government to undertake it. It should not attempt to pass this to a third party.</b></p>	<p>primarily liable for any claims arising from the works it has carried out and the maintenance of those works until the expiry of the maintenance period, and should indemnify the LHA accordingly.</p>	
16	<p>Paragraph 18</p> <p><b>2.2.36. The timing set out by SCC in paragraph 18 does not work. RSA4 cannot be carried out until the road has been open to traffic for 12 months. The Applicant has already advised it will provide a 52 week defect liability period. The timing proposed by SCC would in effect extend the defect liability period and the various liabilities for maintenance and indemnification which SCC is attempting to foist onto the Applicant to an unknown date in the future. The Applicant's liability would only end when SCC chose to issue the final certificate. That is entirely unacceptable to the Applicant.</b></p>	<p>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 SCC from the undertaker. The nature of the contract between the Applicant and its main contractor is not a material consideration. It would be an untenable and confused legal position if highway became maintainable by the local highway authority when responsibility for defects or safety issues remained with the undertaker. The DCO is clear that the maintenance of the local roads transfers to SCC upon completion to its reasonable satisfaction, and SCC has</p>	<p>The issue of the final certificate would be some time after works identified in the RSA4 were completed and therefore considerably in excess of 52 weeks from the road opening to traffic. To specify the issue of the final certificate as completion means that the Applicant is responsible for the normal maintenance of SCC highways for an unknown period and one which could be considerably in excess of the defect liability period. The Applicant does not accept that is reasonable.</p>

	Applicant's comment on SCC draft Protective Provisions	SCC Response to comment	Applicant's further response
	<p><b>2.2.37. The Applicant also objects to 18(e) that all costs, charges, and expenses payable to the local highway authority have to have been paid before a final certificate can be issued. As has been repeatedly submitted by the Applicant it is not intended to pay SCC to carry out its statutory role. The Applicant does not require SCC's inspection, it does not require SCC's supervision and it will not pay SCC to respond to consultation.</b></p>	<p>proposed amendments to Articles 13 and 14 to clarify that completion is in accordance with the provisions for completion in the Protective Provisions. To suggest that SCC could unreasonably withhold the issue of the Final Certificate to sidestep its usual maintenance responsibility would be contrary to the terms of the DCO.</p> <p>In relation to 18(e), the drafting reflects that provided in Part 3 of the Protective Provisions whereby the Applicant agrees to meet the costs of the drainage authority in approving plans, inspection of works and carrying out surveys and tests. This is also the standard position in relation to works carried out by developers under section 278 or section 106 agreements, and was agreed by the Applicant on other occasions as previously submitted by SCC at deadline 5.</p>	<p>The Applicant does not accept that SCC should be paid for undertaking engagement it has requested.</p>
17	<p>Paragraph 19</p> <p><b>2.2.38. As noted for paragraph 18(e) above, the Applicant rejects the principle of paying SCC the costs sought in paragraph 19.</b></p>	<p>Noted. As explained above, SCC has a different view.</p>	<p>Not agreed.</p>

## **3 Action Point 37**

### **3.1 Introduction**

3.1.1 Action Point 36 requests: *Provide summary of differences on parties' positions on protective provisions and associated matters.*

### **3.2 DCO Articles**

#### **Article 13**

(a) Classification of and responsibility for the cul-de-sac road forming former A303 west of Hazlegrove.

3.2.1 SCC, at deadline 6, proposed amendment to Article 13 and schedule 3 to create a category of trunk roads which are not part of the realigned A303 but are not detrunked; the entire content of that category is the area of old A303 from Hazlegrove roundabout past the Mattia Diner and Services (points AN and EI). The Applicant objects to this proposal as this area of highway should form part of the local highway network.

(b) Definition of completion

3.2.2 SCC, at deadline 6, proposed amendment to Article 13 to relate this to the definition of completion in the protective provisions. The Applicant does not agree that SCC's proposed definition is appropriate as it relates to a process of issues of certificates by SCC that the Applicant does not accept is suitable. SCC submit that, in order for the highway to be completed to their reasonable satisfaction, a certificate of that must be issued, the Applicant does not agree. It is entirely common for planning conditions to specify that various matters must be completed to an authority's satisfaction without a need for that to be certified.

3.2.3 The Applicant proposes that completion is defined as: "Complete" means the date upon which the classification of roads under this Order takes effect, which classification may not take effect unless and until all works to a section or part of the highway have been carried out in accordance with approved detailed design, the highway has been subject to road safety audit stage 3 and any works to be carried out as a consequence of that audit have been completed.

#### **Article 14**

3.2.4 SCC have proposed amendments to Article 14 to require the consent of the Secretary of State to the date to be determined and to tie completion in that article to their definition in protective provisions. The Applicant has no particular concern with the consent of the Secretary of State being required. As set out above the Applicant does not however agree with the definition of completion proposed.

#### **Article 33**

3.2.5 SCC seek insertion of Article 33(12) 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. That 'confirmation' cannot be given as the assumption underlying it is incorrect. The DCO is clear that where there is a conflict with any other enactment the DCO takes precedence, this would include powers under the Highways Act and it would be inappropriate and create legal confusion to include the insertion requested by SCC. While in temporary possession of the land the Applicant can occupy it exclusively. Highways Act powers cannot be used to interfere with that possession; for example the Applicant cannot be removed from the land by SCC under the provisions of the Highways Act which prevent unauthorised occupation of the land or require anything deposited on the highway to be removed.

### **Schedule 2 Parts 1 And 2; Approval of Requirements**

3.2.6 The Applicant seeks a single discharging authority of the Secretary of State, SCC want to be discharging authority failing which SCC are seeking a split discharging authority role with SCC to approve various requirements believed to include detailed design of local highways and the traffic management plan and possibly drainage.

### **Schedule 2**

3.2.7 SCC proposed an amendment to requirement 3(4) to delete "Upon completion of construction of the authorised development" and provide that the CEMP must be converted into the HEMP "prior to completion of construction of the authorised development". As the Applicant has explained, the conversion from the CEMP to the HEMP removes the construction phase obligations, add as built details and sets out the ongoing operational requirements. It will be developed towards the end of construction once the as built details are known however the CEMP cannot logically or sensibly cover until the end of construction. Please see Appendix A Management Plan Approach in order to assist in explaining the process.

### **Schedule 5**

3.2.8 SCC have sought confirmation that no new highway is to be constructed on land in Schedule 5 – that cannot be given as new highway is to be constructed on land within that schedule. SCC accordingly seek removal from Schedule 5 any plots where it is proposed that highway rights are acquired. The Applicant rejects that proposed deletion as unnecessary, entirely inappropriate and inconsistent with securing delivery of the scheme.

### **Additional Requirement to Secure a Section 278**

3.2.9 As discussed at the hearing the Applicant objects to an additional requirement to secure a s278 but awaits sight of SCC's list of matters it considers should be secured before making detailed comment.

## **3.3 Protective Provisions**

### **Detailed Information**

- 3.3.1 Detailed information cannot be provided until the detailed design is approved. SCC has requested that detailed information is provided earlier in one response, and then (correctly) notes that detailed design may require amendments. It therefore cannot logically follow that detailed information can be provided before approval of detailed design as the content of the detailed information is predicated on the detailed design.
- 3.3.2 SCC participation in detailed design process. The Applicant has no objection to SCC participating in detailed design evolution prior to consultation before approval is sought, the difference between the parties relates only to fees, The Applicant will not pay SCC to participate. SCC's suggested process is rejected as it requires multiple approvals from SCC. The Applicant has proposed alternative wording in its response to the draft protective provisions.

### **Scope of Protective Provisions and applicability to PROWs**

- 3.3.3 The Applicant considers that the protective provisions are drafted to deal with discrete points related to vehicular highways and are entirely inappropriate and disproportionate for PROWs. For example, road safety audits do not apply, detailed information is not applicable as a separate schedule of widths and limitations already has to be approved under requirement 12.

### **Maintenance**

- 3.3.4 The Applicant does not agree it is unreasonable for SCC to be responsible for maintaining local highways.
- 3.3.5 It is agreed that works may be required as part of the outcomes of RSAs. RSA3 is the stage which certifies the road is safe to open to traffic – that is carried out before roads transfer to SCC. The Applicant does not accept this proposal creates a confused legal position.

### **Approvals**

- 3.3.6 SCC state that it is not their intention to introduce a further approvals process – their proposed drafting however inserts a number of new approval processes at various times. Please see the process flowchart contained in Appendix B which shows the process SCC are proposing based on the drafting provided.
- 3.3.7 The suggestion that detailed design and detailed information approval is, in effect, one process does not align with the drafting. This is evident from the submission, two paragraphs later, that being able to grant conditional approval is necessary – where conditional approval requires changes to detailed design the detailed information cannot be finalised until after such approval.

### **Lack of connection between claimed need to approve the TMP and substance**

- 3.3.8 The Applicant can see no logical connection between SCC having to approve the TMP and the drafting seeking to curtail unreasonable delay. The Applicant queries whether SCC are suggesting that amendments to the TMP should not be consented if the construction programme slips?

### **Other works**

3.3.9 These cannot be required as part of the DCO if they are not consented.

3.3.10 It is noted that the SCC explanation is that there “May be works which may be required if.”. The Applicant considers that the SCC drafting is too prescriptive compared to this explanation, the drafting to then end of change to 7(3) accordingly goes too far.

### **Access**

3.3.11 The Applicant considers that access should not be on demand but with notice.

### **Defect Liability Period**

3.3.12 The Applicant and SCC agree there should be a 52 week defect liability period, it appears from the protective provisions note that SCC agree in principle that this should start after RSA3, however SCC drafting extends it well beyond 52 weeks which is the Applicant’s concern.

### **Indemnities**

3.3.13 The Applicant rejects in principle giving SCC indemnities.

3.3.14 The Applicant does not accept the SCC position on 1973 Act which is considered to be incorrect in law and does not agree that any indemnity is necessary.

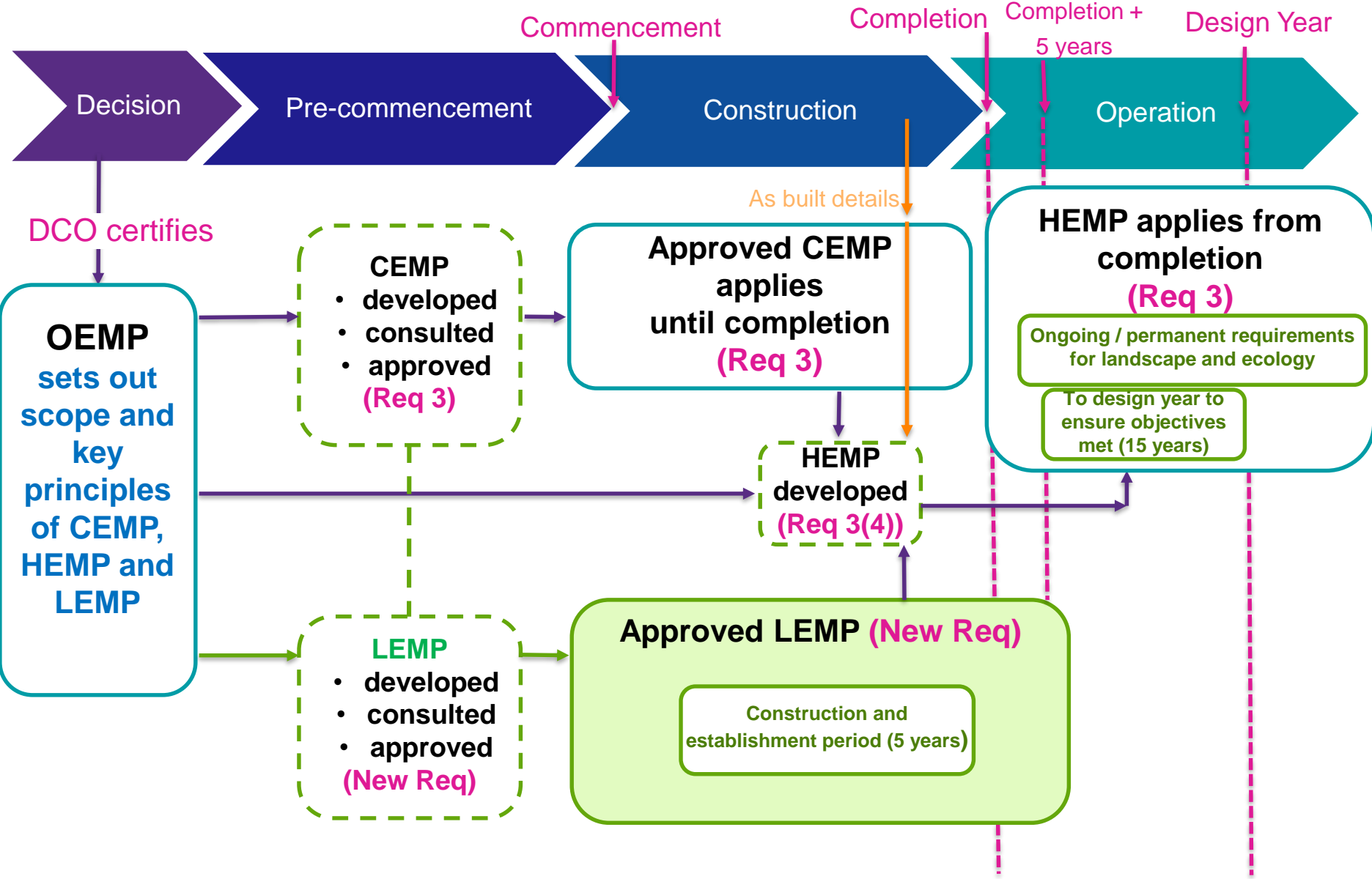
## **3.4 Other Issues**

3.4.1 SCC have requested the provision of a bridleway connection between Eastmead Land and Higher Farm Lane and such inclusion in Schedule 3 Part 11 and changes made to the Rights of Way and Access Plans. The Applicant submits that such a connection already exists and there is accordingly no need for the DCO to create it.

3.4.2 SCC set out at deadline 6 that it is necessary that “the applicant cooperates fully with the County Council to achieve a further amendment to bridleway status on MOD land”. The Applicant notes that this is entirely outwith its control. The Applicant sought a bridleway on this route, the MOD would not agree to that. It is not a matter of lack of co-operation from the Applicant.

## **Appendix A: Management Plan Approach**

# Management Plan Approach





## **Appendix B: Local Highways Timeline**

# Transfer of local highways to SCC

