

A303 Sparkford to Ilchester Dualling Scheme TR010036

9.37 The Applicant's Written Submissions of Oral Case at Second Round of Hearings

Planning Act 2008

May 2019



Infrastructure Planning

Planning Act 2008

**A303 Sparkford to Ilchester Dualling
Scheme**

Development Consent Order 201[X]

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Oral Case at Second Round of Hearings**

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1 Introduction

1.1.1 A summary of each of the issue specific hearings, open floor hearing and compulsory acquisition hearing held in May 2019 are provided below.

2 Issue Specific Hearing 1: Traffic and Transport; Socio-Economic Impacts, Biodiversity, Flooding, Heritage, Noise and Air Quality (14 May 2019)

2.1 Landscape and Visual Effects

Key Views

Viewpoints 14 and 17

2.1.1 The Applicant confirmed that it will amend the Outline Environmental Management Plan (OEMP) to require consideration at detailed design of how gaps in planting to allow long range views could be provided without detriment to the screening proposals.

Viewpoints 28 and 29

2.1.2 The Applicant confirmed that it has updated the OEMP to investigate other means of screening the proposed A303 from Camel Hill Farm that would be more in keeping with the rural character, such as a stone-faced bund, to be considered in consultation with South Somerset District Council as part of detailed design. However, the Applicant is not able to remove the possibility of the environmental barrier consisting of a fence (which would be a wooden fence and not an aluminium one) as it needs to retain flexibility until the detailed design has been progressed. The Applicant also confirmed that any fence would be screened by planting. The Applicant confirmed that it would explain the reasoning behind its position in more detail in its post-hearing note and that is set out at Action Point 1.

2.1.3 The Applicant explained that it is obliged, pursuant to the DCO requirements, to consult SSDC on the detailed design and this will ensure that the Applicant is able to fully consider SSDC's views at that stage.

Viewpoint 38

2.1.4 The Applicant confirmed that it has updated the environmental masterplan to show additional planting by the gap in the bund at this location. The Applicant is also proposing more mature planting. The updated Environmental Masterplan has been submitted at Deadline 7.

Landscape and visual effects, particularly on Hazlegrove area, and viewpoints to north of scheme

2.1.5 The Applicant confirmed that it had no comment on the summary provided by Historic England setting out Historic England's position on the landscape impacts of the non-material changes to the scheme made by the Applicant.

Construction effects, including artificial lighting

2.1.6 The Applicant confirmed that it will update its assessment of visual impact receptors that would be affected by the relocated construction compound to include visual receptor 6. This is included in the Applicant's Responses to Action Points for Deadline 7 (document 9.36, Volume 9, Revision A).

2.2 Traffic and Transport

Parallel Local Road

- 2.2.1 The Applicant provided a summary of its position with regards to the potential parallel local road being raised by the Parish Councils and others. The Applicant spent some time reviewing the position as the design of the scheme was progressed and has concluded that, at best, the benefits of a parallel local road are marginal. The Applicant has set this out in writing and discussed it at hearings previously, see in particular REP3-003 at paragraph 1.3.6 onwards. If the Applicant had concluded that a parallel road was a necessary part of the scheme, it would have tried to accommodate it. However, that was not the conclusion reached; the more obstacles that the proposal ran into, the quicker the Applicant reached the conclusion that it was not worth the risk of delay and extra cost of including it in the scheme.
- 2.2.2 The Applicant explained the scheme could not be amended to include the parallel local road now – the Applicant would need to withdraw the current scheme, which would involve major delay of at least a year. In any event, the Applicant is of the view that it would not reach a different conclusion in relation to whether, in traffic or budget terms, it is necessary or justified to include the parallel local road i.e. even if the position were reconsidered now, the parallel local road would still be very unlikely to form part of the scheme. The Applicant made it clear that it is entirely content with its decision-making in this regard.
- 2.2.3 Accordingly, the Applicant is content to assist the Examining Authority in its decision making where it can, but the key point is the absence of need for the parallel local road in the first place.
- 2.2.4 In relation to the Applicant's view that the parallel local road would be considered a "link" road (as that term is used in DMRB), the Applicant explained that the geometric design standards in DMRB are based on the road network being a series of junctions and interconnecting links. The links are linear features that run continuously between each junction. Links can be different types of roads – it is a fairly generic term that describes a linear part of the road network with a consistent cross section rather than a junction. The parallel road would be a link and so would be designed in accordance with TD9/93 for horizontal and vertical alignment and in accordance with TD27/05 with cross-sectional design. It is a fairly intuitive part of the highway design process that links run between two nodes of the network in a linear fashion.
- 2.2.5 The Applicant explained its position on the mandatory nature of the standards set out in DMRB. There are a range of requirements in the DMRB, and for each requirement the manual will specify if that requirement is mandatory or flexible and what degree of relaxation may be acceptable. TD9/93 at paragraphs 1.24 and 1.26 provide that the range of relaxations permitted under that standard and TD27/05 paragraph 4.13 does the same for cross-sectional requirements.
- 2.2.6 The Applicant confirmed that its previous assessment of the parallel road used a design speed of 100kph.

- 2.2.7 The Applicant explained that, with reference to DMRB paragraphs 1.21 and 1.22, it was treating the parallel road as an associated connector road. The Applicant explained that DMRB is used fairly universally across trunk road network but also the rural road network.
- 2.2.8 The Applicant advised that Manual for Streets 2 defers to DMRB for most rural roads outside built up areas where drivers expect a high standard of geometry. The Applicant agreed to provide the ExA with references with the Manual for Streets 2 which direct the reader to DMRB. These are set out in the response to action point 4.
- 2.2.9 The Applicant explained its position that the decision-making on the A30 scheme to include a parallel road on that scheme would have been dependent on the facts and circumstances of that scheme. For example, that scheme is largely offline, in comparison to this scheme which is primarily online. It is not correct or credible to adopt a position that because one scheme made a particular decision with regard to its facts and circumstances, other schemes must make the same decision despite different considerations applying.
- 2.2.10 The Applicant also explained the risks of relying on the inclusion of land belonging to the MOD in the scheme design, over which it would have no compulsory acquisition powers. Negotiations with the MOD would have been lengthy with no guaranteed outcome, as shown by the experience with the footpath which has been under discussion for some time and which the Applicant had sought to be a bridleway. The Applicant reiterated the point that its discussions with the MOD were confidential and the Applicant's position is that those discussions should remain confidential.
- 2.2.11 The Applicant also made the point that it fundamentally disagrees with the Parish Councils submissions on the cost saving to the scheme in providing a parallel local road. The Applicant maintains its position that inclusion of a parallel local road would increase costs and potentially lengthen the construction period.

NMUs Routes, Convenience and Safety

- 2.2.12 The Applicant outlined a summary of its approach to provision of NMU routes. It revolves around removal of 4 at grade crossings. Currently there are 4 or 5 ways of crossing the existing A303 carriageway. A number of those involve crossing the carriageway at grade in locations where the road is three or four lanes wide which together with the speed of traffic is considered to make these crossings un-safe and uncomfortable. In removing those crossings and providing two new considerably safer crossings, the Applicant considers that to be a significant safety improvement.
- 2.2.13 In relation to the issues raised by the County Council and others regarding the provision of a NMU route near Eastmead Lane, the Applicant confirmed that its position is set out in the topic paper submitted on this issue (REP4-018). There is no current public right of way crossing at Eastmead Lane and Higher Farm Lane is not within the Order limits. The provision of such a route is not required as mitigation for the scheme.

2.2.14 In relation to the proposed footpath on the MOD land, the Applicant explained that the MOD has refused to allow a bridleway through the parcel of land, but has consented to a footpath. The Applicant considers it more appropriate if the MOD provides the reasoning behind this decision.

Provision for Bridleways and Byways

2.2.15 In relation to the proposed revocation of the 1996 Side Roads Order, the Applicant confirmed that an error was made in the DCO drafting, which should have excluded the revocation in relation to a small area within the Order limits. This will be corrected for Deadline 7. The Applicant set out its position that it has provided adequate mitigation for any impact on public rights of way caused by the scheme.

2.2.16 The Applicant confirmed that there is an insufficient demand for a Pegasus crossing at Hazlegrove roundabout and so there is no justification for providing that at this location.

Matters of Clarification

2.2.17 The Applicant confirmed that AADT (annual average daily traffic) represents 24 hour daily traffic flows averaged over all of the days in a year. AAWT (annual average weekday traffic) represents 24 hour daily traffic flows averaged for Monday – Friday over the whole year. This approach averages out the peaks and the troughs.

2.2.18 The Applicant confirmed that the traffic flows that have been represented in relation to Podimore roundabout during peak summer periods cover Fridays – Sundays during the July/August peak periods and are also used to represent bank holidays. Generally, flows are higher on Fridays than at other times of the year.

2.2.19 The Applicant confirmed that, in relation to Podimore roundabout, the degrees of saturation in the scheme opening year (2023) for summer peak traffic on the A303 is 97%. By 2031 on the A303 eastbound this reaches 107% and rises to 119% on the A37 approach. By 2038 the degree of saturation is around 110% on A303. There is a table in the supporting information submitted at Deadline 4 (REP4-018 section 1.3) which sets this out (this was extracted from the LIR document ref REP2-049). The scheme has been designed to cater for traffic flows throughout the year but the Applicant has not designed the scheme to cater for the very highest traffic flows of the year, and in any case Podimore roundabout is not part of the scheme.

2.2.20 The Applicant confirmed that it is usual to design a scheme on the basis of AADT and to look at the operational assessment of the scheme during neutral month weekday commuter traffic peaks (Monday – Friday based on weekday averages). To design any scheme to cater for the very highest traffic peaks would be likely to lead to substantial overprovision for the majority of the time, very high impacts that wouldn't be justified and high cost resulting in poor value for money for the taxpayer.

2.2.21 The Applicant confirmed that the operational assessment of weekday traffic flows included an average of AM and PM peak hours Monday – Friday. Friday

PM (but not AM to the same extent) would be higher than the rest of the week.

2.2.22 The Applicant confirmed that traffic management on its network is part of its core licence obligations as an organisation. There is no identified need for any traffic management at Podimore roundabout to be included in the DCO, and in any event that roundabout is outside of the Order limits. There is an existing arrangement and relationship between the Applicant as strategic highway authority and local highway authorities regarding junctions on the two networks and the DCO should not seek to supersede that for one particular junction. The Applicant agreed to submit a joint note with SCC for Deadline 7, setting out each party's position on this matter. The Applicant has also provided a summary of its operational functions in response to action point 8.

Local Traffic Effects / Mitigation

2.2.23 In relation to local traffic impacts, the Applicant reiterated that one of the key benefits of this scheme once operational is that the number of incidents which would encourage rat running will be very substantially reduced. This is because dual carriageways are, by their nature, more resilient than single lane carriageways allowing running on one lane or with a contra-flow where incidents do occur. The removal of several at grade junctions will also reduce the potential for collision incidents. Secondly, various points were made about traffic management during construction. The Applicant is well aware of the need to look at that carefully in conjunction with SCC. The Applicant will submit further details of how it reached its conclusions around traffic calming and mitigation for Deadline 7.

2.2.24 The Applicant confirmed that the Outline TMP would be amended to clarify that the traffic management group would (not should) be established and to indicate who must be included in that group. The Applicant also agreed to amend the outline to require regard to be had to the views and concerns of others, including the community representatives.

Safety Issues

2.2.25 The Applicant confirmed that in relation to any works recommended by a road safety audit, if these are required and outside the scope of the DCO, the Applicant would need to get planning permission and carry out and necessary EIA at that point.

Underbridge

2.2.26 In relation to the lighting of the underbridge, the Applicant explained that it is not usual practice to illuminate an underpass in isolation from the rest of the approaching road network (REP5-025). The Applicant has already provided an explanation of why it considers this inappropriate. As requested, further information on the lighting assessment which was used to reach the conclusions previously set out by the Applicant is provided in the Applicant's Responses to Action Points for Deadline 7 (document 9.36, Volume 9, Revision A).

2.2.27 The Applicant confirmed that it has taken a route-wide approach to design of the NMUs, which will bring significant benefits in terms of connections from

south to north, including to the RPG. In doing that, the Applicant concludes that the proposed route is high quality. The Applicant has undertaken a security assessment and the quality of the route from a security perspective in hours of darkness would not suffer an adverse effect.

Air safety

2.2.28 The Applicant confirmed that discussions with the Ministry of Defence (MOD) / Defence Infrastructure Organisation (DIO) have been progressing an updated SOCG, including references to agreed maximum heights for the construction compound concrete batching plant (likely to be 16 metres). The Applicant will seek to submit as part of that SOCG a plan showing the acceptable areas for the batching plant. The Applicant confirmed that in principle it was happy to provide a height limit for this plant in the DCO.

2.2.29 Further discussions in relation to bird strike will be taking place with the MOD/DIO, which the MOD confirmed can be appropriately dealt with at detailed design stage. Again, the Applicant confirmed that this would be addressed in the updated SOCG.

2.3 Socio Economic Effects

Effects on Individual Farms and Local Businesses

2.3.1 The Applicant confirmed that its position is set out in its previously submitted ES (APP-095) and topic paper (REP5-024). It confirmed that "local" in this context meant the district of South Somerset. Economic effects on individual businesses have not been assessed as this is not covered by the methodology. Most of the economic benefits are derived from savings in time.

Design of cul-de-sac at Mattia Diner

2.3.2 The Applicant submitted that Parliament has set up a highway arrangement with a two-tier structure (the strategic road network, which sits with Highways England, and the local road network, which in this case sits with SCC as local highway authority). Part of the Applicant's obligations under its licence involve maintaining and improving the strategic road network. This scheme does that, has necessary funding and is supported by the NPSNN. It is always the case that a scheme like this will have incidental effects on the local road network.

2.3.3 If the Mattia Diner cul-de-sac does not meet the test of being part of the strategic road network, Parliament must be directing that the road be de-trunked and pass to SCC. In headline terms, that is the end of the discussion. Having received the de-trunked road, SCC is responsible to decide what it wishes to do with it. The local plan scenario (future developments being encouraged in this location) would imply that if the suggestion of development in the vicinity had serious prospects then it would be obvious that it would need to continue as a local road. If, however, SCC took the view that it was not appropriate to be a local road, it could seek to stop up the road and address whatever objections were made to such an application. That is the inevitable analysis.

2.3.4 It is not appropriate for the Applicant to provide SCC with an indemnity.

Cumulative Effects

2.3.5 The Applicant confirmed that there had not been a specific assessment of the effects on RNAS Yeovilton.

2.4 Archaeology and Cultural Heritage

Hazlegrove House and RPG

2.4.1 In relation to the location of Pond 5, the Applicant pointed out that there are limits to what can be done due to the overriding topography.

2.4.2 In relation to the fencing around the pond, the Applicant confirmed that this would be of a rail parkland style and in keeping with for example an existing gate in the middle of the parkland. The Applicant is seeking to positively use the fencing in this location. The Applicant confirmed that the fence is required to keep grazing animals out and ensure safe access for maintenance of the asset. The OEMP contains a commitment (at CH10) for a landscaping scheme including fencing to be prepared in consultation with SSDC, Historic England and Gardens Trust.

2.4.3 The Applicant confirmed that it would update the environmental masterplan to show the increased area of woodland planting in this location, together with updated details of Pond 5 for example extent of permanently wet areas. The Applicant has also updated the biodiversity metric.

2.4.4 In relation to the potential for a conservation management plan (CMP) for the RPG, the Applicant confirmed that it is progressing this its role as landowner for the overall management of the RPG, not just that part affected by the scheme. However, the Applicant does not accept that a CMP is necessary to make the scheme acceptable in planning terms and accordingly cannot be secured through the DCO. The Applicant has always been very clear that, on the basis if the assessment undertaken, a conservation management plan is not justified. Even if it were to be found to be justified such a plan could only cover the part of the RPG affected by the scheme, not the whole area. The Applicant has separately entered into discussion as landowner to consider the whole of its ownership of the RPG and seek to address that as a whole as part of its responsibility to manage the RPG as landowner, it does not accept that this can or should be secured through the DCO.

Camel Hill Scheduled Monument (SM)

2.4.5 The Applicant confirmed that its view that there would be less than substantial harm to Camel Hill SM applies to the SM itself and its setting.

Listed Milestone

2.4.6 The Applicant confirmed that the OEMP makes provision for the re-siting of the missing listed milestone in case it is subsequently found. The Applicant confirmed it would consider SSDC's request to provide a replica milestone in this location. A response on this is set out in response to action point 23.

2.4.7 The Applicant confirmed that the general power in article 33(4) to remove buildings from land and not replace them is, as with all DCO powers, subject to the requirements. If the requirements provide for buildings (for example the

Howell Hill stone wall) to be retained or replaced then the Applicant would have to comply with this.

2.5 Biodiversity and Ecology

Biodiversity Off-Setting

2.5.1 The Applicant confirmed that there is increased biodiversity benefit as a result of the non-material changes made to the scheme. The Applicant has submitted updated biodiversity off-setting metrics contained within the Biodiversity Offsetting Report (document reference 9.16, Volume 6, Revision B) submitted for Deadline 7.

Protected Species (bats)

2.5.2 In relation to bat surveys, the Applicant confirmed that these are required for research purposes to inform mitigation for other schemes. The first surveys were undertaken in 2017.

Veteran trees

2.5.3 The Applicant confirmed that as a result of the non-material changes to the scheme, there is now only one veteran tree that is being removed. The OEMP and Biodiversity Offsetting Report have been updated and submitted along with this report.

Amenity grassland

2.5.4 The Applicant and SCC confirmed that agreement has been reached on how to approach amenity grassland.

European sites

2.5.5 The Applicant confirmed that it has no comments on the RIES and is content with the conclusions.

2.6 Flooding and Drainage

Maintenance of drainage systems

The Applicant confirmed that the current provision for maintenance access for all ponds is a 4-metre-wide track with verges either side meaning that, including the verge 5 metres is already available.

2.6.1 The current proposal is in excess of CIRIA guidance and is consistent with the likely size of plant that would be required to undertake maintenance, which is likely to be similar in size to a road legal vehicle rather than a tracked vehicle. The Applicant notes that the plant shown in the Somerset Drainage Board submission (REP6a-007) is a large tracked excavator and is larger than required for the maintenance of the ponds. In practice, a smaller wheeled excavator or a mini-tracked excavator is likely to be more suitable, allowing for easy relocation between ponds. In addition, there are a number of assumptions that the Applicant does not accept. The need for a 1.5 metre offset and 1 metre counterweight is not accepted as there is an acceptable

range of more suitable plant available which does not need this provision. The need to maintain 1m working area behind plant is also not accepted as works can be carried out safely through other means, for example by using a banksman. Diagrams of where and how 6 metre could be provided have been submitted in response to action point 25.

- 2.6.2 In summary, the provision the Applicant has made is more than adequate and provides plenty of flexibility. Nevertheless, the Applicant confirmed that it would consider whether a 6 metre maintenance access could be provided at detailed design stage and whether this will impact on bird strike risk. That response is set out in the response to action point 26.

2.7 Noise Vibration and Air Quality

Outstanding issues and matters of clarification

- 2.7.1 In relation to the proposed mitigation for Annis Hill Farm and The Spinney, the Applicant confirmed that secondary glazing of these properties was being offered as mitigation. The effectiveness of such glazing is related to how effective the existing glazing is. If properties already have very effective double glazing then adding another layer won't produce a significant benefit. The Applicant is not seeking to achieve a particular level of noise reduction as a result of the mitigation, although it confirmed that any additional layer of glazing would reduce noise levels. The Applicant notes that it owns The Spinney so can ensure that any appropriate glazing is installed but cannot force other owners to accept glazing.
- 2.7.2 The Applicant confirmed that it would check the expected noise impact on Pepperhill Cottage and confirm for Deadline 7; this is set out in the Applicant's Responses to Action Points for Deadline 7 (document 9.36, Volume 9, Revision A). However, the Applicant confirmed that there are only two receptors which were identified in the ES as being subject to significant adverse noise impact, which are the two mentioned above.
- 2.7.3 The Applicant confirmed that no noise monitoring for operation of the scheme is proposed, although noise monitoring during construction would take place under a section 61 Control of Pollution Act consents which will require to be obtained. The scheme has been designed to mitigate noise and no significant adverse impacts are predicted. There is accordingly no requirement to monitor or mitigate as there is no significant adverse impact to address.
- 2.7.4 The Applicant confirmed that no noise mitigation is proposed to the south of the A303 as no significant adverse noise impacts are expected in that location. The Applicant confirmed that it will respond to the Parish Councils' query in relation to the landscape impact of bund 4 at Deadline 7. This is set out in the response to Action Point 29.

2.8 AOB

- 2.8.1 The Applicant provided an update on progress with Statements of Common Ground. Several had already been signed and submitted in final form and the Applicant was targeting Deadline 7 for final versions of the remaining Statements of Common Ground.

3 Issue Specific Hearing 6: Draft Development Consent Order (15 May 2019)

3.1 SSDC Ecology comments

- 3.1.1 The Applicant noted the SSDC submission at deadline 6 that the OEMP should be amended to include reference to 'no topsoil'. The Applicant advised that from ecological perspective, they would generally agree however, they need to understand these specific circumstances of each location before making a final decision. In some locations it may be appropriate to include topsoil. The Applicant would therefore prefer to retain the flexibility of 'minimal topsoil' being specified. The Applicant agreed to amend the wording in the OEMP to reflect this.
- 3.1.2 The Applicant noted the SSDC request for hop over planting pots can be provided overnight. The Applicant advises that at the location in question it is not intended to undertake the works at night during the periods when bats will be flying and therefore are unlikely to come into contact with vehicles. Accordingly, the Applicant does therefore not consider that hop over pots are necessary.
- 3.1.3 SSDC had suggested that all vegetation to be removed should be checked by a licensed dormouse ecologist prior to removal. The Applicant noted that all works required to be ecologically supervised and that it considers this requirement is sufficient to address that point.
- 3.1.4 SSDC have suggested measures are required for the protection of barn owls. The Applicant believes that this matter can be addressed at detailed design and notes that the protection for barn owls is planting which will be specified in the landscaping scheme. The Applicant understands that SSDC accepts that approach as appropriate provided that matters relating to hedgerows are specified in the detailed design.

3.2 Proposed new requirement to separate the LEMP from the CEMP and HEMP

- 3.2.1 The Applicant agreed to provide a response to the wording suggested in 3.10.18 at deadline 7; that response is set out in the response to Action Point 42.
- 3.2.2 The Applicant noted that the LEMP is part of a process of control documents which fit together. The OEMP outlines the content of the CEMP, LEMP and HEMP. The LEMP has stages in it which will need to flow through into the HEMP. There are then operational principles in the OEMP and LEMP which will flow through into the permanent maintenance in operation in the HEMP.
- 3.2.3 The Applicant agreed that the outline LEMP in the outline CEMP lacks detail and agreed to bring detail from the REAC into the LEMP and would aim to do so by deadline 7. An explanation of the action taken is set out in response to action point 41.
- 3.2.4 The Applicant noted the discussion regarding separate approval of the HEMP. The Applicant noted that the HEMP is not a new or standalone document. The

principles set out in the OEMP are carried forward into the CEMP which is approved. At the end of construction the CEMP is converted into the HEMP by removing the construction phase elements and adding in the as built details which are required to inform the ongoing management commitments. The conversion from the CEMP to the HEMP does not create a new document, it is the continuation of one document from one stage to the operational stage.

3.3 Requirements 5 & 6

- 3.3.1 The Applicant noted the query whether landscaping for the RPG is appropriately secured in the LEMP given the limit of 5 years. The Applicant advises that there is no limit of 5 years. Requirement 5 sets out the detail of the landscaping scheme. Requirement 6 is the implementation of it. The maintenance of it beyond that will be covered by the CEMP and HEMP as appropriate. There is no intention to limit landscaping maintenance to 5 years. The principle of ongoing maintenance is secured in the CEMP/LEMP which must be carried through to the HEMP. This also includes hedgerows.
- 3.3.2 The Applicant noted it would have no objection to the wording of requirement 5 being made more explicit that the landscaping scheme should be carried out in accordance with the LEMP.
- 3.3.3 Requirement 5 paragraph 5. The Examining Authority queried whether reference should be included to British standards and hedgerow regulations. The Applicant does not consider that to be necessary. The requirement to have regard to such sources is so hard wired into the process of preparing a scheme that it would be incompetent to prepare a scheme without doing that. The Applicant would not expect a scheme which has been prepared without reference to the appropriate sources to be capable of being approved.
- 3.3.4 The Applicant agreed to add the wording "and profiles of any proposed bunds and cuttings" to requirement 5 paragraph (5)(c).
- 3.3.5 The Applicant agreed to add the wording "and surface materials to bunds" under minor amendment to the wording of requirement 5 paragraph (5)(d).
- 3.3.6 The Applicant noted the suggestion that requirement 6 should be made explicit that landscaping must be maintained in accordance with the approved maintenance program. The Applicant advised it is confident that maintenance is already covered by requirement 6(1) because the LEMP sets out the maintenance program.

3.4 Requirement 10

- 3.4.1 The Applicant noted that European Protected Species will already be covered by the licencing requirements. The priority species includes a wide range of species to which different approaches and responses may be suitable. The Applicant therefore submits the correct response to any suspected presence of any priority species is for the ecological clerk of works to assess the situation and determine what action requires to be taken. The action to be taken could be very minor or could stretch up to a need to go and obtain a new protected species licence. The obligation to obtain a protected species

licence in order to carry out any works which may affect such species is a legal obligation and does not require to be duplicated in the DCO.

- 3.4.2 The Applicant noted that the Applicant does not consider that there would be any utility in separating out nesting birds from the remainder of species in requirement 10.

3.5 Requirement 12

- 3.5.1 The Applicant notes SCC's statement that it supports the scheme. The Applicant also notes that SCC clarified that the estimate of their fees for the project are not 0.01% but 0.1%. The Applicant notes that the precise level of the fee, however small, is not the issue.
- 3.5.2 The Applicant responded to the Examining Authority's question regarding whether the Applicant is asking for the scheme to be refused if the Examining Authority did not consider it appropriate to follow the Applicant's preference for the Secretary of State to be the single discharging authority. The Applicant clarified that it is not asking for a refusal but is submitting that it would be a very serious matter and would cause the scheme to be revisited in the way that was set out in its written response.
- 3.5.3 With regard to the process flowcharts handed out by SCC, the Applicant agrees that flowcharts 1 and 3 (AS-037) reflect the two competing proposals currently in front of the Examining Authority. The Applicant considers that flowchart 2 is a hybrid option of which is not previously put before the Examining Authority. The Applicant's position on the discharging authority point remains as previously advised. The Applicant notes that it retains its position that the Secretary of State, having previously granted DCOs on the basis of the Secretary of State approving the detailed matters, will wish to continue that practice. If the Examining Authority recommends against this and the Secretary of State unexpectedly goes with that recommendation, the Applicant would require to undertake consideration of how to deal with the consequences of that.

3.6 DMRB Introduction

- 3.6.1 The Applicant noted that Examining Authority sought the Applicants views on the DMRB introduction concerning interactions with local roads. The Applicant's response is set out in response to action point 44.
- 3.6.2 The Applicant notes the Examining Authority's question that, should there be a split of responsibility for discharging detailed design, would it make sense for the split to be as set out in the limits of responsibility drawings. The Applicant noted that these drawings cannot be prepared until detailed design is completed. Therefore that could not be provided for at this stage. The Applicant notes SCC's submission that the definition of a limit would be achievable; as previously set out the Applicant does not agree and considers that the various elements of the project are so interconnected that any proposed delineation would be entirely artificial and unworkable. The Applicant noted that given that position, it is not the Applicant's intention to facilitate drafting to demonstrate the split of responsibility as they

fundamentally disagree with the proposed approach. The Applicant will therefore not be providing any drafting of such a requirement.

- 3.6.3 The Applicant noted that it is common for parties in the DCO process to prepare “agree to disagree” drafting. The Applicant however believes that, in this case, the splitting of the discharging authority role is fundamentally unviable. The Applicant accordingly takes the view that it is for SCC, as the party promoting this, to demonstrate how it is workable and provide the drafting. The Examining Authority will have to determine whether or not it agrees with one party or the other or to recommend drafting of its own.

3.7 Article 10 and abilities to transfer the Benefit of the order

- 3.7.1 The Applicant has noted its status as a highway authority many times in its written submissions to this process. The Applicant does not agree that article 10, which allows transfer of the benefit of the Order, in any way undermines this status. The Applicant considers that in order to understand this article, it is necessary to look at the regime as a whole, and at the model order despite it no longer being in force. The model order contained transfer of benefit provisions, and this drafting is absolutely routine. There are two scenarios in which these provisions are commonly used, neither of which routinely apply to highways schemes but are however common for example in electricity generation schemes. The Applicant considers it is very unlikely to need the ability to transfer the whole order. The Applicant also notes that it has included duplicate powers for statutory undertakers to divert apparatus so that pre-approved transfers to named statutory undertakers for specified works is included. It considers this is prudent given that there are a number of cases where statutory undertakers are likely or have indicated a wish to carry out works or parts of works themselves rather than allowing the Applicant to carry them all out.
- 3.7.2 To transfer the benefit of the entire order requires the approval of the Secretary of State. The Applicant considers that the Secretary of State would be surprised to receive a request to transfer the DCO for a highways project. In practice that is only ever likely to be sought where there had been a fundamental change in the Government's approach to highway authorities. The Applicant does not consider it appropriate that anything of particular substance is read into the power which is standard DCO drafting.
- 3.7.3 The Applicant agreed to suggest a drafting change to the DCO at deadline 7 to add provision of the signing strategy to Requirement 12.
- 3.7.4 The Applicant notes its SSDC's submissions that it should be notified of discharge of conditions or other approvals under the DCO by the Applicant. The Applicant noted that it has already agreed to make any certified documents electronically available. The Applicant has not agreed that it would notify parties of Secretary of State decisions. It would normally be incumbent on the determining body to notify of its own decisions. The Applicant noted SSDC's request that provisions are inserted requiring the Secretary of State to notify all decisions. The Applicant has agreed to consider that matter further and to explain what is happening in practice on other schemes. That response is set out in the response to action point 47.

3.8 Protective Provisions

3.8.1 The protective provisions were deferred until the hearing on Thursday 23 May in order to allow SCC to respond in writing to the Applicant's deadline 6a submission. The parties also undertook to seek to clarify in writing the points of difference between them ahead of the hearing on Thursday 23 May.

3.9 Other issues relating to Articles

3.9.1 The Applicant agreed to review the DCO to remove the term non-motorised user which is not defined. The Applicant notes this is only used in the work descriptions and that these would be amended by deadline 7.

3.10 Definition of adjacent

3.10.1 The Applicant agreed to provide some further information to SCC regarding how it considers these powers would actually apply. That information was provided by email on Monday 20 May.

3.11 Drainage issues

3.11.1 SCC, speaking on behalf of the Lead Local Flood Authority advised that their concern related to the consistency in the way drainage authorities are treated in the DCO. The Applicant agreed to consider whether the protective provisions should also apply to the Lead Local Flood Authority as well as the IDB. The Applicant having considered this has determined that this would not be appropriate as the provisions are designed to protect bodies with physical assets affected by the scheme. Please see the response to action point 49.

3.11.2 The Applicant confirmed that a former offer was made to SCC that the Applicant would retain the maintenance of pond 4 on the basis that it drains a small area of the landscaping for the trunk road network as well as the local highway.

3.11.3 The Applicant does not concur with the Somerset Drainage Board's submission that a 6 metre wide access track is needed to maintain drainage. The Applicant notes that it is taking responsibility for all of the ponds in this scheme which have 4 metre wide access and it is entirely confident that it can maintain those ponds appropriately with a 4 metre access, this is also discussed in section 2.6 of this report. The Applicant agreed to advise on considerations of landscape impact and bird strike impact of changing the drainage access tracks from 4 metres to 6 metres at deadline 7. That is set out in the response to action point 25.

3.12 Article 11

3.12.1 The Applicant notes that it considers that Article 11 is entirely clear that it applies within the Order limits only. The Applicant does not consider that Article 5(2) would extend the ability to use the power set out under Article 11 outside the order land. Outwith the Order limits, the normal arrangements would apply and any street works which were required would have to be consented by the appropriate street authority in the normal manner.

3.13 Article 13 definition of completion

3.13.1 The Applicant notes that Somerset County Council consider this requires to be looked at along with the protective provisions and concurs with that point.

3.14 Article 14

3.14.1 The Applicant noted it is unlikely that the Applicant and SCC are going to agree on this point given the different approaches being taken in the drafting of protective provisions. This discussion was therefore postponed until the hearing to discuss the protective provisions on Thursday 23 May.

3.15 Articles 15 & 19

3.15.1 The Applicant notes SSDCs request to be consulted before consent is sought under these articles. The Applicant advised that it had no objection to that change and will amend the drafting of the DCO for deadline 7.

3.16 Article 16

3.16.1 The Applicant agreed that the omission of highways from the title of this article is an error and will be rectified at deadline 7.

3.17 Article 21

3.17.1 The Applicant considers it inappropriate that it is responsible for notifying the LPA of any damage to a listed building rather than the owner given that, while it is liable for compensation, the Applicant cannot compel the owner to undertake any works to rectify such damage.

3.18 Article 26(2)

3.18.1 The Applicant confirmed that it cannot give SCC the reassurance it seeks that no new highway is constructed on land in schedule 5. Schedule 5 contains a number of plots where small areas of local highway such as turning heads will be constructed.

3.18.2 The Applicant confirmed at schedule 7 land is land that will be temporarily occupied in order to complete the works to existing highway but does not involve the creation of new highway.

3.19 Article 38

3.19.1 The Applicant agreed to make minor amends to article 38 as requested by SSDC to clarify that the power granted under article 38(1) is subject to the limitations in (6) and (7).

3.20 Temporary possession

3.20.1 There was some discussion regarding the restoration of land occupied under temporary possession and how that interacts with the landscaping scheme.

The Applicant wished to clarify land occupied under temporary possession powers is that which is necessary to construct the development but which does not form part of the permanent works. The land will be occupied during construction and, in accordance with article 33, restored to the reasonable satisfaction of the landowner and returned to their control. The Applicant will not be constructing any permanent elements of landscaping on land temporarily possessed.

3.21 Other matters relating to Schedule 2 Requirements

3.21.1 Requirement 8(3). The Applicant agreed to amend the wording of this requirement to include reference to land as well as material. This change will be made by deadline 7.

3.22 Requirement 13 and long term maintenance of SuDS

3.22.1 The Applicant considers it is clear that the ponds would be maintained by them. The ponds are not however the only drainage assets required by the scheme. The Applicant agreed to provide a note on the drainage features to SCC by lunch time Monday 20 May 2019. That note was provided (AS-034).

3.22.2 The Applicant notes the Examining Authority's stance that there is nothing on the face of the DCO which provides that elements such as noise mitigation or highway lighting need to be completed. The Applicant has previously advised that these are parts of the detailed design and will be constructed along with the scheme. The Applicant advised that where the Examining Authority were to seek a back stop on this point it would require proper discussion and thought. To date the standard approach has been followed. Any back stop provision would have to be carefully considered. The Applicant agreed to submit an update on this position on deadline 7 and that is set out in response to action point 56.

3.23 Requirement 14

3.23.1 The Applicant notes the discussion that there is no definition of low noise road surfacing. The Applicant agreed to make minor amends to requirement 14 that has been done for deadline 7.

3.24 Suggested additional requirements

3.24.1 The Applicant noted it considers its position on the Higher Farm Lane right of way and the upgrading of the overbridge to bridleway to be fully set out in the written submissions and that it has nothing additional to add.

3.24.2 The Applicant advised that it cannot agree the proposed wording sent by SCC on unrecorded routes. The Applicant undertook to provide a full response to that at deadline 7 and that is set out in the response to action point 61.

3.25 Traffic modelling and monitoring

3.25.1 The Applicant notes the SCC submission that it is not querying the outputs of the modelling; it simply does not fully understand and therefore cannot accept

how the outputs of that have led to the conclusions that there is no impact and no need for mitigation. The Applicant notes that the Council's position is that it is not advocating that traffic calming is required, but that the interpretive work to lead to that conclusion has not been fully set out by the Applicant. The Applicant has provided further details on how its modelling and assessment methodology conclusions have been relied upon to reach the conclusion that there is no need for monitoring or mitigation in the villages in response to action point 11.

3.26 Proposed additional requirement for section 278 agreement

3.26.1 The Applicant notes the SCC's submission that the minor works necessary to the local highway as a result of the acceptance of the non-material change request deleting the Podimore turning head should be secured in the DCO. The Applicant does not accept that this should be secured in the DCO. The Applicant noted the Examining Authority's request that a list of matters which the County Council consider should be secured by section 278 agreement was provided ahead of the next hearing. The Applicant will respond to that once it is provided.

4 Additional Land Open Floor Hearing (23 May 2019)

- 4.1.1 The Applicant was invited to respond to the submission made on behalf of the South Somerset Bridleways Association (SSBA) that the drawings of the Steart Hill overbridge and the underpass don't show the bridleway or physical separation from the carriageway. The Applicant advised that the indicative engineering drawings and sections are indicative at this stage and will not be finalised until detailed design. The DCO schedules list the status of each section of public right of way to be created including bridleways. The rights of way and access plans reflect that drafting. Those rights are secured in the DCO drafting; the detailed design will bring forward the specifics of physical provision of those.
- 4.1.2 The Applicant notes the SSBA desire for tracks 4 and 9 to be extended and used to create a public right of way along the south of the realigned A303. The Applicant advised that it has investigated that however as the proposal would require creation of retaining wall which would take up much of the space which appears to be available on drawings, it does not fit within the space available within the red line. Accordingly, this cannot be accommodated within the DCO.
- 4.1.3 The Applicant was asked to advise on the latest position regarding Designated Funds and the application for Higher Farm Lane Overbridge. The Applicant is currently undertaking feasibility work relating to this proposal, which is entirely outside the Development Consent Order process. Following the outcome of that work, the Applicant will consider whether or not to apply for further funding from the funding panel. The Applicant explained that currently there is not a set programme of future meeting dates.

5 Additional Land Compulsory Acquisition Hearing (23 May 2019)

- 5.1.1 In relation to the legal tests for authorisation of compulsory acquisition and the justification for the inclusion of the additional land, the Applicant confirmed that they had nothing to add to what has been submitted including the Statement of Reasons Addendum.
- 5.1.2 The Applicant notes the legal point raised by SCC regarding creation of rights through the compulsory acquisition provisions of the DCO. The Applicant did not make any submission as it was agreed that this was more appropriately dealt with in Issue Specific Hearing 7.

6 Additional Land Issue Specific Hearing (23 May 2019)

6.1.1 The Examining Authority raised a number of queries regarding where specified properties have been assessed for noise impacts in the Environmental Statement. The Applicant advised that these have been assessed however the use of receptor numbers may be making that complicated to track. Having reviewed, the Applicant advises that the relevant receptor numbers are as follows;

Property	Construction number	Operational number
Pepper Hill Cottage	R10	R459
Blue Haze	R8	R284
Sheira Leigh	R6	R527

6.1.2 The detail of the noise assessments for these properties is set out in the Applicant's response to action point 1 of 23 May 2019 action points.

6.1.3 The Applicant confirmed that table 12.21 of ES Chapter 12 People and Communities (APP-049) should reference units in metres squared not metres cubed. This has been amended for deadline 7.

6.1.4 The Applicant was asked to provide a note in relation to Table 12.21 explaining what the figures comprise in terms of the relevant plots and how this aligns with the Book of Reference entries. That has been submitted in the response to action point 3.

6.1.5 The Applicant was asked to amend the Rights of Way and Access plans to represent the schedules set out within the DCO, in different colours for clarity. The Applicant confirmed that these updates to the plans would be provided as part of Deadline 8.

7 Continuation of Issue Specific Hearing 6: Draft Development Consent Order (23 May 2019)

- 7.1.1 The Applicant noted the County Council's submission that they are confused as to how the powers of the local highway authority are affected by the DCO within and without the redline. The Applicant considers that it has fully addressed this point already, most recently and fully in the note of 20 May 2019 [AS-034]. The Applicant has however, at deadline 7, again tried to clarify this for the benefit of the County Council through revision of the Explanatory Memorandum.
- 7.1.2 The proposed scheme has to be delivered in the context of the existing network. That necessarily means that adjustments have to be made to local highways. It is not possible or practical to try and separate the scheme out from the reality of connections to the existing network. A split of responsibility in the discharge of requirements is not normal practice and creates a serious issue of workability. The Applicant noted the County Council's submission that they have no desire to have any say on the trunk roads. The Applicant submits that this is a change from SCC's initial position that they wanted to be discharging authority for all of the detailed design.
- 7.1.3 The Applicant maintains that the County Council being discharging authority for the local highways in isolation from the trunk road is unworkable as these elements are inseparably linked. The Applicant is concerned by SCC's submissions of 'not caring' about the trunk road; that is a concerning position for a body which is seeking the authority to make decisions on parts of the project which would necessarily have repercussions for the trunk road.
- 7.1.4 In response to SCC submissions, the Applicant advised that safety is one of the three overriding objectives of Highways England in the discharge of its licence obligations, which include safety. The Chief Executive has made safety the *raison d'être* of everything that Highways England do as an organisation. It is an overriding consideration in this project and every other project the Applicant is promoting. The idea, as raised in the County Council's submissions, that the Applicant would prioritise time or budget over safety is supported by no evidence.

7.2 Protective Provisions

Commuted sum

- 7.2.1 The Applicant understands the position on the commuted sum towards the maintenance of non-standard assets transferred to SCC to be reasonably agreed. The Applicant has revised its version of the protective provisions for deadline 7 accordingly.

Surveys outside the DCO Limits

- 7.2.2 The Applicant does not consider it necessary within the DCO to secure surveys of local highways outside the DCO limits. The Applicant again noted that the outline TMP currently before the Examination is precisely that, an outline; it is not a detailed document. The detailed document will be brought

forward at the appropriate stage for approval following consultation with the County Council.

- 7.2.3 The Applicant noted that SCC has powers under the Highways Act 1980 to address use of local highway by construction traffic. Those powers include, in section 59, an ability to recover expense incurred in maintaining highway due to extraordinary use or traffic from the party responsible for the extraordinary use or traffic. Local highways inside the redline also have to be returned to SCC in a condition which is to their reasonable satisfaction in accordance with the DCO. The County Council accordingly has all of the security and control over the condition of local highway subjected to use by construction traffic that it could reasonably need. It is therefore not a credible position that, without the ability to require surveys in any location, SCC have no recourse.
- 7.2.4 It is simply not the case and there is no reasonable basis for the County Council to submit that the drafting of the DCO somehow removes all of the highways powers outside the redline. Article 5(2) is perfectly clear that the limitation imposed is that which is subject to the provisions of the Order. In response to the ongoing discussion in this hearing the Applicant agreed to revise the section of the Explanatory Memorandum dealing with article 5(2) and how it operates in order to try and clarify this further.
- 7.2.5 The Applicant noted that the purpose of the DCO is to try and deliver the scheme in a proportionate and efficient way. Where the Applicant has powers outwith the redline, these are very limited and very clear on the face of the DCO. Where these exist they have been included because they are considered proportionate and necessary to carry out the development in an efficient way. These powers allow delivery of the scheme without having to obtain separate consents for minor or ancillary matters through other routes. It is one of the core principles of the DCO regime that it includes as many consents as is necessary and reasonable to enable the delivery of nationally significant infrastructure projects.
- 7.2.6 The Applicant again explained that it is a highways authority, it acts under a licence from the Government and under the regulatory oversight of the Office of Rail and Road. The Applicant is a responsible public sector developer with vast experience of delivering highways schemes and maintaining a positive working relationship with the relevant local highway authority.
- 7.2.7 Further to discussion on the TMP, the Applicant entirely rejects the County Council's continuing statements that SCC's role in the process for approval of detailed matters is notification. The County Council's responses require to be had regard to and the Applicant is required to report on how they have addressed those responses, or if they had not, why not, in seeking approval from the Secretary of State. It is not notification where a party is invited to comment, those comments have to be taken into account and the decision maker has to be advised of how comments have been addressed.
- 7.2.8 The Applicant noted the County Council's submission that the Secretary of State would have no information on the specific circumstances pertaining to Somerset when making its decision on discharging requirements. The Applicant does not agree that this is a correct position. The team acting for the Secretary of State will be aware of any concerns the County Council wishes to

raise because they will have the County Council's consultation responses in front of them when considering any application for discharge. Further, this team deals with schemes across the whole of England and is experienced in dealing with a wide variety of circumstances. It is not reasonable to argue that one county should be excepted from a national process without a very compelling reason; which compelling reason the Applicant does not consider the County Council has put forward.

Definition of local highway: inclusion of PRowS

- 7.2.9 The Applicant notes the County Council's position that inclusion of PRowS in the protective provisions is necessary to protect the whole of the network. The Applicant however considers that the protective provisions have been drafted to address specific issues in relation to the vehicular highways only. The protective provisions are very clearly not set up to deal with PRowS. They would be disproportionate and, in the majority of cases, fundamentally inapplicable to PRowS. The Applicant noted that the detailed information on PRowS is required to come forward under requirement 121. That detail to be approved includes a list of width and limitations for PRowS as requested by the County Council in addition to the normal design detail such as surfacing and construction materials.
- 7.2.10 The list of detailed information required under protective provisions very clearly relates to the vehicular highways. The information listed there simply would not be available for PRowS because it is not relevant or would be disproportionate to provide, given that the detailed information signed off at requirement 12 has adequately addressed the relevant points.
- 7.2.11 The Applicant notes the County Council's submission that their intended wording of 'and other information the local highway authority might reasonably require' would have allowed them to exclude these categories. The Applicant does not agree; the inclusion of 'and other information the local authority might reasonably require' very clearly would allow the local highway authority to extend the list, not exclude items from it.
- 7.2.12 To address the very limited issues which would apply to PRowS the Applicant has, at deadline 7, proposed wording in the protective provisions of the draft DCO as a new part 5 of schedule 8.

Definition of works

- 7.2.13 The Applicant understands that the definition of works is agreed under deletion of the words 'within the Order limits' from the end of this definition. The Applicant has made that change to its draft for deadline 7.
- 7.2.14 The Applicant notes that the County Council references works outside the redline. The Applicant has not proposed any works outwith the redline in the Order; all of the works are within the redline. The Applicant notes the Examining Authority's request that SCC provide examples of the works they are referring to and the Applicant awaits sight of that list.

¹ Now numbered as requirement 13 post introduction of the new LEMP requirement requested by the Examining Authority.

Approval mechanisms

7.2.15 The Applicant noted that the Examining Authority requested parties each to provide two versions of their protective provisions, one where the Secretary of State is discharging authority and one where the County Council is discharging authority. The Applicant advised that the identity of the discharging authority would not make any difference to its version of the protective provisions. This is because the protective provisions do not interact with the approval of detailed design but side alongside (where SCC are entitled to participate in the evolution of that design) and then follow on from that process, covering matters during construction and in the defects period. The SCC version of the protective provisions requires two versions because they are seeking approval rights under their version and, as the Applicant has pointed out, that would mean double approval of the detail, and double approval by SCC were they also discharging authority. The Applicant does not accept that is appropriate, detailed design will already have been approved before the detailed information can be provided, that information is simply more technical specification of the detailed design, it does not require to be approved. Creating a second layer of approval is also antithesis to ethos of the DCO regime to streamline consenting.

Conditional approval

7.2.16 The Applicant was surprised at the County Council's explanation that its references to conditional approval were intended to allow the development to come forward in parts. It is noted that conditional approval is not provided for in the protective provisions and it is therefore assumed that the County Council is referring to discharge of requirements in this case.

7.2.17 The Applicant submitted that it is not appropriate for there to be conditional approval under protective provisions. This is because the detailed information to be provided under the protective provisions is based upon the detailed design already approved under requirements. To allow conditional approval at that later stage would not only create a double approval process, but would also create a situation where the County Council could condition changes to the details of the already approved detailed design which would then lead to a conflict with that approved detailed design. This proposal amounts only to the County Council seeking to have a second opportunity to approve the detail of the scheme. That is not the purpose of the protective provisions.

Article 10 transfer of benefit

7.2.18 As the Applicant has previously explained, article 10 is a standard provision drawn from the model provisions and is there very much as a fall back. Highways England is the strategic highway authority under licence from the government. In order to transfer the benefit of the Order, the Secretary of State's consent would be required. The Applicant sees no reasonable likelihood of the Secretary of State ever approving such a transfer without a fundamental change in approach to the management of the strategic road network by the Government. Highways England is a government owned company which has been set up, in part, to deliver schemes such as this. It is one of the reasons the government funds the Applicant.

7.2.19 The Applicant considers that in the current circumstances the only credible recipient of the transfer of the benefit of this order would be SCC as it is the only other highway authority for the area. The Applicant advises that it has no intention of trying to transfer the benefit of this Order to SCC.

Inspection of works

7.2.20 The Applicant noted with some confusion the SCC assertion that they would serve a notice for access for inspection every day. The Applicant has made it very clear that it is happy to facilitate SCC access to inspect the works and that this could be done through service of a single notice of a programme or schedule of intended visits. There is simply no need to serve a notice every day.

7.2.21 The reason that the Applicant is seeking a two day notice period is so that they can ensure that any personnel, who will be on the Applicant's construction site where the Applicant is responsible, are properly inducted. This is necessary to ensure everybody's safety and allow the Principal Contractor to control access to the site. The Applicant does not agree that any County Council personnel should be able to turn up ad hoc with no safety induction and no briefing whenever they choose and demand access to a site for which they are not responsible. The Applicant noted that it would have no concern whatsoever about inducting a number of people from the County Council early in the project so that they are properly authorised to inspect the site. The Applicant does however need two days' notice in order to set up that induction and therefore the drafting should remain as it is.

Secondary testing

7.2.22 The Applicant has confirmed that it was amending the protective provisions to ensure that its testing is carried out to the agreed standard; which it understands the County Council accepts as being the appropriate standard. The Applicant confirmed it is happy to provide requested samples to SCC for testing by SCC and noted that this is already provided for in its drafting of the Protective Provisions. The Applicant will not however meet the costs of SCC carrying out further testing. This is not reasonable given that the Applicant has already agreed to carry out testing to the standard sought by the County Council and to share the results of that testing with SCC.

7.2.23 The Applicant notes the County Council's submission that the testing it would seek to carry out would be to address 'gaps' in the Applicant's testing. The Applicant submits that as the approach and standard of testing has been agreed as set out in the Manual of Contract Documents for Highway Works Appendix 1/5 (Specification for Highway Works) all of the testing which would be required will have been carried out in accordance with the standard sought by SCC.

Road Safety Audit stage 2

7.2.24 The Applicant advised it is entirely happy to reintroduce the obligation to invite the County Council to participate in RSA stage 2 in the Protective Provisions if SCC are advising they do intend to participate.

- 7.2.25 The Applicant advised that RSA 2, as with all of the RSAs for this scheme, will be paid for by Highways England. The dispute over payment in relation to RSAs relates to the County Council's request that the Applicant fund SCC's participation. The Applicant will not agree to do so. It is happy to allow the County Council to participate as the Council has requested however, it will not pay a fee or reimburse officer time costs for that.
- 7.2.26 The Applicant agreed to review the drafting of the Protective Provisions to ensure that the County Council are included in and get copies of the reports of road safety audit stages 2, 3 and 4. The Applicant notes that there is already drafting in the protective provisions which requires the Applicant to seek to agree works coming out of the road safety audit with the County Council. The Applicant does not consider that the County Council would be in a position to meaningfully engage with that were they not provided with the documentation. Not providing the documentation would therefore not meet the test of using reasonable endeavours and the Applicant considers that is already secured; however it has been clarified for deadline 7.
- 7.2.27 The Applicant clarified the process of road safety audits. In undertaking an audit, the RSA auditors identify any road safety problems and propose measures to solve the problem. If the design team accept the measures suggested by the auditors, a report is produced accepting those recommendations and setting out how they will be implemented.
- 7.2.28 If the recommendations of the auditors are not considered to be appropriate by the design team, for example because of implications elsewhere on the network, the design team would, in consultation with Highways England, produce an exception report. The exception report would be escalated to the overseeing authority who would determine whether or not the decisions made by the design team were appropriate. In this case, the overseeing authority would be the project sponsor within Highways England. Under the drafting of the protective provisions the County Council would be entitled to see and comment on that exceptions report. The decision on acceptance of that report remains with Highways England as the body liable for the design of the project.
- 7.2.29 It was noted that road safety audits are not about traffic, they are only about road safety. Road safety audits would not pick up or address any traffic issues.
- 7.2.30 On the entirely separate point of the consenting of works identified by road safety audits, the Applicant advised and advises as follows. Where the works fall within the redline boundary and the scope of the DCO they can be carried out under the DCO. Where works fall outwith the redline or the scope of the DCO ES they will require separate consent in order to be implemented. The Applicant has set out in previous responses that works required outwith the DCO limits or outwith the scope of the DCO and its ES will require other consents to be obtained as required. The Applicant is fully aware of that.
- 7.2.31 The Applicant confirmed that the decision as to whether or not works will be implemented will be made on road safety grounds. The cost of these works has been allowed for within the project budget if they are required and cost would not be an issue or barrier to delivering them. The consenting route for

these works would again not be a determining issue in whether or not Highways England sought to take them forward.

7.2.32 Where outside consents are required, the County Council as local highway authority would by necessity be involved in that process. It is simply not the case that the Applicant will be making amendments to the local road network outside the DCO boundary under the power of the DCO in response to road safety audits and without any ability of the County Council to control those works. That is simply not a realistic position and there is no drafting in the DCO which seeks to create that position.

Maintenance

Definition of completion

7.2.33 The Applicant agrees that, given the ongoing discussions, it would be of assistance to insert a definition of completion into the DCO. The definition proposed by the Applicant was that highways are complete once RSA stage 3 and any works required by that audit have been carried out, and the classification of roads under the DCO takes effect. The Applicant noted the County Council's submission that this could occur a considerable period of time before roads being opened to traffic. While the Applicant does not agree at all that this is a realistic prospect in any way, particularly given that this is a mostly online scheme, the Applicant has agreed to add an open to traffic element to the definition of complete. This amendment has been made for deadline 7.

7.2.34 On the point as to whether the whole scheme could be completed on a single date or parts of it completed individually, the Applicant agrees in principle that all of the local highway works could be completed on one date. The Applicant however requested to take the point of whether or not the whole scheme could be complete on one day a way for discussion internally. The Applicant has responded to this it is response to action point 13 from 23 May 2019.

7.2.35 On the point regarding maintenance of local highway roads occupied by the Applicant during construction and the responsibility for routine maintenance in that time, the Applicant noted these are precisely the matters which the detailed local operating agreement (DLOA) required by the protective provisions is intended to address. It is normal and routine practice for a DLOA to be entered into where a party other than the responsible highway authority occupies part of any highway. The DLOA will allow the position on each asset to be agreed in the most appropriate manner. While the Applicant assumes that it will take responsibility for the areas it is occupying, the agreement of the DLOA following detailed design and approval of the TMP will allow a case by case consideration to be carried out where it is considered by either party that some unusual circumstance exists which should be treated differently. The Applicant submits that this is the most sensible and appropriate way to deal with the maintenance of local highway occupied during construction and is a longstanding and well tested approach.

7.2.36 On the point of maintenance during the defects period, the Applicant does not accept the SCC position that it should be responsible for routine maintenance of local highways during the defects period when the roads have been

completed and transferred to the County Council. The Applicant is entirely content that it is reasonable and practical during that period to identify and separate issues of routine maintenance which accrue to the local highway authority and issues which are caused by defects in construction for which liability would remain with the Applicant. The Applicant notes that it considers that it is unlikely that an agreement will be reached on this point and that the Examining Authority will have two versions of the protective provisions before them. The Applicant considers that given the County Council's position of considerable resistance towards any perceived detraction from their local highway authority powers and duties by the DCO, it is inconsistent that they do not want to be in control of their own highway as soon as works are complete.

7.2.37 The Applicant notes the point raised by Ms Bucks of the South Somerset Bridleways Association that defect periods need to apply to PRoWs as, in particular, unsealed surfaces need to settle. The Applicant agrees but does not consider this as appropriate in the protective provisions. The Applicant advises that all of the works carried out by the Applicant under the DCO will have a 52 week defect period. Accordingly, if there is a defect in PRoWS within 52 weeks after completion, the Applicant will be equally liable to remedy those as it would be for vehicular highways. This does not mean that the Applicant in any ways accepts or agrees that it is appropriate that the protective provisions as drafted by either party should be applied to PRoWs. In order to clarify this point and because the Applicant so strongly objects to the application of the vehicular highway protective provisions to PRoWS, the Applicant has proposed a minor amendment to the protective provisions to separately cover PROWs. Although the Applicant does not consider that this is particularly necessary, the Applicant has proposed it simply in order to address the concerns expressed.

Indemnities under the 1973 Act

7.2.38 The Applicant maintains its position as stated in detail in its submissions (AS-030) and (AS-037) that the 1973 Act is perfectly clear who the liable authority is. The County Council's submission that the definition quoted at length in the Applicant's previous comments does not apply to Part 2 is simply incorrect. The concern raised by SCC is that they would be liable for claims for noise insulation related to the scheme. That liability is created by section 20 of the Land Compensation Act 1973. Part 2, Section 20 subsection 12 of that Act provides "in this section "public works" and "responsible authority" have the same meaning as in section 1 above". As previously set out, that definition in section 1 defines the Applicant as the responsible authority, not the County Council. The County Council appear in their response to the Applicant's comments on their protective provisions to accept that this is the effect of the section 1 definition (AS-036). The Applicant therefore does not accept that there is any need or justification for it to provide an indemnity where the law has already clearly and adequately addressed the matter.

7.2.39 The Applicant also noted that Highways England provides indemnities by exception and only where the organisation accepts that they are entirely necessary. In this case, the organisation does not accept they are necessary because legislation has already fully addressed the matter.

Funding

7.2.40 The Applicant confirmed that funding for the project is in place 'end to end' until close out of the whole project. Every stage of the project through completion to defects remediation, RSA stage 4 and any works required and final close off is funded.

Schedules 5 and 7

7.2.41 The Examining Authority asked the County Council whether their position was they were content on article 26(2) subject to confirmation that no new highway would be constructed on the land listed in schedule 5. The Applicant has again advised ahead of the hearings in (AS-034) that new highway will be constructed on land in Schedule 5. The County Council expressed concerned that they were only finding out about this at this stage. The Applicant noted that schedule 5 has been in the DCO since before submission, the rights sought are clearly set out in that schedule. This information has been available on the face of the DCO since submission at the latest and therefore has been available to the County Council since well before the start of the examination.

7.2.42 The Applicant notes the County Council's submission that they know of no way in which the rights the Applicant is proposing to acquire in schedule 5 can be acquired. The Applicant submits that the County Council's position is wrong in law. The Applicant notes that the Examining Authority has asked for detailed legal submissions on these points were made at deadline 8, and has accordingly not made a detailed submission on this for this deadline.

Schedule 7

7.2.43 In response to the Examining Authority's queries on plots the Applicant advised as follows:

- (a) Plot 2/4c – this plot is required to undertake works to existing highway, it does not involve creation of a new highway.
- (b) Plot 4/1c – this is occupation of existing highway to carry out dead ending, utility diversions and works. Although a turning head is to be created and this area used to carry out those works, the turning head so created it is not situated on this plot. This plot does not include new highway.
- (c) Plot 4/8c – this plot is required for temporary diversion, no new highway is to be formed on this plot.
- (d) Plot 4/8e – this plot is required for temporary diversions and the construction and use of the temporary haul route, no new highway is to be formed on this plot.
- (e) Plot 5/3d – Steart Hill link. This is occupation of existing highway in order to carry out works to create an upgraded junction to connect
- (f) Plot 5/5b – Occupation of local highway is required to create accesses to properties and this is not creation of new highway.

- (g) Plot 5/8c – Steart Hill link. Again occupation of this area of local highway is necessary to create private means of access.
- (h) Plot 8/1a and plot 8/1c – Occupation of these plots is necessary to create a diversion of a public right of way and to undertake utilities diversions.

7.2.44 SCC advised that they consider that there will be gaps in the PRoWs created under the Order but they could not advise of the detail. The Applicant agreed that they would be happy to discuss this matter with the County Council.

Area of existing A303 to be de-trunked outside the Mattia Diner

7.2.45 The Applicant clarified in response to Examining Authority's question that the de-trunking and transfer of the old A303 which will become local highway takes place by operation of the DCO. The Examining Authority queried whether the Applicant owns the subsoil or just the surface of this part of the highway. The Applicant has set out the ownership of this area in response to action point 16. The Applicant however noted that the underlying ownership makes absolutely no difference to the proposal. The highway currently vests in the Applicant as strategic highway authority. The change in the classification of the highway to the local road is achieved by the DCO classification of roads provisions. The highway simply changes from being classified as a trunk road to being classified as a local road. Ownership is irrelevant to that process.

Section 278 Agreement

7.2.46 In response to the County Council's apparent surprise at the Applicant's most recent comments on the s278 agreement, the Applicant explained that in the previous hearings the County Council undertook to provide a list of matters it considers requires to be secured in a section 278 agreement. The Applicant's comment was that it would review that list when it was available.

7.2.47 The Applicant remains of the position that it has always taken that there are a number of minor works out with the DCO which it considers are desirable but not strictly needed. These are works which are not necessary to make the development acceptable in planning terms. Accordingly, while the Applicant was and is willing to undertake some of these works it will not agree that they should be secured through the DCO. These are very minor works which include, for example, some signage requested by Somerset County Council which the Applicant does not consider is necessary to make this scheme acceptable.

7.2.48 In relation to works on the local highway in the vicinity of the former proposal for a Podimore turning head, the Applicant noted this turning head was removed at the specific request of the County Council. The Applicant had discussed with the Council undertaking minor works to the stub of local highway which would be left outside the DCO limits through Section 278, however, again, the Applicant considers that this is only desirable and not necessity. The Applicant also notes that the County Council as local highway authority has all of the powers and rights it needs to undertake that work itself should it be considered by the local highway authority to be required. The Applicant does not agree that minor works to a stub of local road left pursuant

to a change specifically requested by the local highway authority is a matter which it is necessary to secure to make this scheme acceptable. A requirement, particularly a Grampian condition style requirement, to enter into a section 278 is accordingly not justified.

7.2.49 The Applicant noted the Examining Authority's request to be provided with an update on the most recent position on a potential section 278 agreement. The Applicant is pursuing that issue.