

A303 Sparkford to Ilchester Dualling Scheme TR010036

9.41 Statement of Final Position

Planning Act 2008

June 2019



Infrastructure Planning

Planning Act 2008

A303 Sparkford to Ilchester Dualling Scheme

Development Consent Order 201[X]

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1 Introduction

1.1.1 This statement has been prepared by the Applicant at Deadline 8 to assist the Examining Authority, and the Secretary of State, in their consideration and determination of the Development Consent Order (DCO) for the A303 Sparkford to Ilchester Dualling Scheme (hereafter referred to as ‘the scheme’). The statement identifies the key matters and issues for consideration and summarises the case for the scheme.

1.1.2 In addition, and notwithstanding the considerable efforts made by the Applicant, it was not possible to reach agreement on all matters with statutory consultees and third parties. For ease of reference and clarity, this statement clearly sets out the Applicant’s position on those matters.

1.1.3 The statement is organised as follows:

- Section 2 - sets out the key tests for the determination of DCO applications and demonstrates the over-arching compliance of the scheme with the National Policy Statement for National Networks (NPSNN).
- Section 3 – sets out the key tests for the use of requirements within DCOs and the established best practice for national network Nationally Significant Infrastructure Projects (NSIPs).
- Section 4 – identifies the proposals by third parties for amendments to the submitted scheme to be made and justifies their non-inclusion from the scheme on ground of procedure, cost, design and environmental impact.
- Section 5 – sets out the key areas where the Applicant was unable to reach agreement with Somerset County Council and the Parish councils during the Examination. These matters remain areas of disagreement at the close of the Examination and the Applicant requests that the Examining Authority and the Secretary of State adjudicate on these matters.
- Section 6 - provides the Applicant’s final position on the Protective Provisions sought by Somerset County Council.

2 The Statutory Provisions for the Determination of DCO Applications

2.1 The Planning Act 2008

2.1.1 The Planning Act 2008 (hereafter referred to as “the Act”) sets out the decision-making process for NSIPs. The proposed development is a NSIP falling within sections 14(1)(h) and 22(1) of the Act and should therefore be assessed and determined in accordance with section 104 of the Act.

2.1.2 Section 104(3) of the Act requires that the Secretary of State (SoS) must decide the application in accordance with any relevant National Policy Statement (NPS), except to the extent that s104(4) to s104(8) apply. These subsections apply if the SoS is satisfied that deciding the application in accordance with any relevant NPS:

- would lead to the United Kingdom (UK) being in breach of its international obligations (s104(4));
- would lead to the SoS being in breach of any duty imposed on him by or under any enactment (s104(5));
- would be unlawful by virtue of any enactment (s104(6));
- the adverse impact of the proposed development would outweigh its benefits (s104(7)); or
- any condition prescribed for deciding an application otherwise than in accordance with a national policy statement is met (s104(8)).

2.1.3 Section 104(2) of PA2008 sets out the matters to which the SoS must have regard in deciding an application. These include:

- any relevant NPSs;
- the appropriate marine policy documents (if any);
- any Local Impact Report (LIR) submitted to the SoS;
- any matters prescribed in relation to development of the description to which the application relates; and
- any other matters the SoS considers are both important and relevant to the decision.

2.2 The Relevant National Policy Statement

2.2.1 The relevant NPS for the proposed development is the NPSNN which was designated in December 2014. Accordingly, the determination of the application must be in accordance with that NPS and the NPSNN is intended to prevail unless a legislated exception arising from the Planning Act 2008 s104(4) – (8) applies.

2.2.2 NPSNN paragraphs 1.2 (Purpose and Scope) and 4.1 (Assessment principles) reinforce its status as the primary basis for making decisions on development consent applications for national networks NSIPs in England. Paragraph 4.2 of the NPSNN makes it clear states that:

2.2.3 *“Subject to the detailed policies and protections in this NPS, and the legal constraints set out in the Planning Act, there is a presumption in favour of*

granting development consent for national networks NSIPs that fall within the need for infrastructure established in this NPS.”

- 2.2.4 Importantly, the NPSNN also recognises that “some developments will have some adverse local impacts on noise, emissions, landscape/visual amenity, biodiversity, cultural heritage and water resources.” Paragraph 3.4 goes on to state that “whilst applicants should deliver developments in accordance with Government policy and in an environmentally sensitive way, including considering opportunities to deliver environmental benefits, some adverse local effects of development may remain”. The critical point here is that minor adverse local effects should not outweigh the overarching benefits of a national networks NSIP.
- 2.2.5 With reference to the Joint LIR submitted by South Somerset Council (SCC) and South Somerset District Council (SSDC) (REP2-019), it is significant to note that there was no in principle objection to the development proposed, nor do the Councils submit that there is any non-compliance with the NPSNN.
- 2.2.6 The compliance of the proposed development has been examined against policy detail and tests applicable to individual planning issues as set out in relevant NPSNN paragraphs, and this analysis was set out in The Case for the Scheme (APP-149). This compliance is summarised below against the key policy tests in the NPSNN.

Overarching Need

- 2.2.7 The NPSNN identifies a critical need for development to improve the strategic road network to address existing congestion points and the forecast rises in road traffic to provide safe, expeditious and resilient networks that better support social and economic activity; and to provide a transport network that is capable of stimulating and supporting economic growth (paragraph 2.2). Improvements to the national networks will facilitate economic growth by bringing businesses closer to their workers, their markets and each other which can help to rebalance the economy (paragraph 2.6). The impact of congestion on the strategic road network is identified by the NPSNN (paragraph 2.16) as constraining the economy and impacting negatively on quality of life
- 2.2.8 The scheme will relieve traffic congestion on a vital link to the south west of England, provide more reliable journey times and improve safety through the grade separation of Hazlegrove Roundabout and the removal of the five existing at-grade junctions and direct accesses along the A30.
- 2.2.9 Therefore, in terms of the test of overarching need set out in the NPSNN, the scheme is entirely compliant as it will deliver the following benefits:
- relieving traffic congestion and providing increased journey time reliability on a vital link to the south west of England.
 - supporting the local economy to grow through the creation of a modernised and reliable road that reduces delays and makes the south west more accessible for tourism and businesses.
 - improving safety and reducing driver stress by providing a more free-flowing network.

- providing safer local access facilities for pedestrians, cyclists and other NMUs.
- deliver a net present value (NPV) of £51.6m producing a Benefit Cost Ratio (including monetised reliability and wider economic benefits) of 1.95.
- improving the environment by reducing pollution from queuing traffic, particularly during the busy summer months.

2.2.10 Without the improvements that the scheme will deliver, the performance of the route will deteriorate, congestion and delays will increase, and road access will be an ever-bigger barrier to economic growth and prosperity. In this light, the NPSNN provides (at paragraph 4.2) a presumption in favour of granting development consent for national networks NSIPs that fall within the need for infrastructure established in the NPS.

The Planning Balance

2.2.11 The NPSNN provides guidance to the Examining Authority (ExA) and the SoS on what factors to take into account in the planning balance. Paragraph 4.3 states:

2.2.12 *“In considering any proposed development, and in particular, when weighing its adverse impacts against its benefits, the Examining Authority and the Secretary of State should take into account:*

- *its potential benefits, including the facilitation of economic development, including job creation, housing and environmental improvement, and any long-term or wider benefits;*
- *its potential adverse impacts, including any longer-term and cumulative adverse impacts, as well as any measures to avoid, reduce or compensate for any adverse impacts.*

2.2.13 This clarification is important as it demonstrates the approach to assessment that the ExA and SoS must take.

2.2.14 The proposed development complies with the NPSNN. As set out above, the scheme will deliver the following benefits:

- **Capacity:** reduced delays and queues during peak hours at seasonal times of the year;
- **Safety:** improved safety for all users of the A303 between Sparkford and Ilchester, as well as the wider A303 / A358 corridor
- **Economic growth:** supporting growth in jobs and housing through the provision of a free-flowing and reliable connection between the south east and the south west;
- **Environment:** avoiding unacceptable impacts on the surrounding natural and historic environment and landscape and optimizing opportunities for enhancement;
- **Local communities:** reducing community severance and promoting opportunities for improvements to quality of life;
- **Connectivity:** improving the connectivity of the south west to the rest of the UK and thereby enhancing business and growth prospects;

- **Resilience:** improving journey time reliability and resilience, and minimising disruption by providing extra capacity to facilitate more effective traffic management and incident responses.

Policy Compliance

2.2.15 In addition to the high-level strategic compliance, the scheme is also in accordance with the policy detail and tests that are applicable to the individual planning issues set out in the NPSNN. A summary of compliance with the tests set out in the NPSNN is provided in Table A.1 included in Appendix 1 to this Statement. The technical data on which the summary is based is provided within the suite of technical documents submitted with the application and during the Examination. The summary does not seek to repeat the technical data and conclusions but draws together the key findings.

2.2.16 In summary, the schedule in Appendix 1 demonstrates that the scheme is compliant with the NPSNN in the following technical and policy areas:

- Good Design
- Climate Change Adaptation
- Pollution Control and Environmental Protection
- Common law nuisance and statutory nuisance
- Safety
- Security Considerations
- Health
- Air Quality
- Carbon Emissions
- Biodiversity & Ecological Conservation
- Waste Management
- Civil and military aviation and Defence interests
- Dust, odour, artificial light, smoke, steam
- Flood Risk
- The Historic Environment
- Landscape & Visual Impacts
- Land use including open space, green infrastructure and Green Belt
- Noise and Vibration
- Impact on Transport Networks
- Water Quality and Resources

2.2.17 The aims of the scheme are directly in line with the Government's policies and illustrate the need for the scheme on a national level. The Government has highlighted the express need for further growth and improvements to the national networks within the NPSNN. The Road Investment Strategy (RIS), which explores these needs in further detail, has supported the scheme as a required improvement to the network.

2.2.18 The proposed scheme is entirely in accordance with the NPSNN and should be approved.

3 The Use of Requirements

3.1 Introduction

3.1.1 The requirements proposed within the DCO for the scheme have been considered at length during the Examination. The Applicant is concerned that the host authorities have requested that certain matters are dealt with by requirement in instances where such an approach is entirely inappropriate and would fail the established tests for the use of requirements. For ease of reference, this section sets out the key tests for requirements established by the relevant statutes and guidance. The instances of particular concern are set out, and appraised against the tests, in section 5 of this statement.

3.2 Principles

3.2.1 Section 120 of the Planning Act 2008 as amended, provides for the use of requirements within a DCO.

3.2.2 Paragraph 15.1 of PINS' Advice Note 15 'Drafting Development Consent Orders' recognises that "[s]uch requirements may correspond with conditions which could have been imposed on the grant of any permission... (for example planning permission under the Town and Country Planning Act 1990) which would have been required for the development if it had been consented through a different regime.

3.2.3 Paragraph 15.2 of PINS' Advice Note 15 goes on to state:

The law and policy relating to planning conditions¹, imposed on planning permissions under the TCPA 1990, will generally apply when considering Requirements to be imposed in a DCO in relation to the terrestrial elements of a proposed NSIP.

3.2.4 PINS' Advice Note 15 states on page 1 that it also reflects the views on DCO drafting of those government departments that are most involved with the Planning Act process and that applicants and others are strongly advised to follow this advice.

3.2.5 Therefore, when considering the proposed requirements, the Examining Authority should also be applying the law and policy relating to planning conditions as set out below.

3.2.6 Paragraph 55 of the National Planning Policy Framework states:

"Planning conditions should only be imposed where they are:

- necessary;
- relevant to planning and;
- to the development to be permitted;
- enforceable;
- precise and;

¹ In particular, in England, relevant paragraphs of the National Planning Policy Framework and associated Planning Practice Guidance

- reasonable in all other respects.”
- 3.2.7 Government guidance on the use of conditions² states that any proposed condition that fails to meet any of the 6 tests should not be used.

3.3 Discharging Authority for DCO requirements

- 3.3.1 During the Examination, the role of the County Council in the discharge of requirements was raised by the Council and the Examining Authority. The Applicant has maintained its position that the SoS is the appropriate discharging authority for requirements given the scheme’s national network status and in line with the tested and accepted approach for national network DCOs.
- 3.3.2 Significantly, out of the 7 Highways England DCOs that have been confirmed to date, it is only the A19/A1058 Coast Road Junction Improvement (January 2016) that included the LPA as the discharging authority. That scheme was determined at the time the Highways Agency was transitioning into Highways England. It should be noted that the Applicant’s draft DCO identified the ‘undertaker’ (Highways Agency / Highways England) as the discharging authority as opposed to the SoS, but the approach was imposed upon Highways England as it was considered that in those transitional circumstances, the local planning authority (LPA) was best-placed to act as the discharging authority until a suitable new approach was established. The urban nature of the area around the scheme and the proximity of residential areas was also identified by the Examining Authority as a scheme-specific matter of particular weight in support of the LPA-based approach.
- 3.3.3 Notwithstanding the above, and somewhat tellingly, the four Highways England NSIPs subsequently consented (since January 2016) all included provisions for the SoS to act as discharging authority (not the ‘undertaker’ or the ‘relevant planning authority’ as was the case for the A19/A1058 DCO).
- 3.3.4 This is therefore not only an established and tested approach but one that has consistently been taken by the SoS with one exceptional circumstance. This is evidenced further by the fact that all 4 of the Highways England DCOs currently at application stage (including this one) propose the SoS as discharging authority.
- 3.3.5 For completeness and to assist the Examining Authority and the Secretary of State, the Highways England confirmed DCOs and the respective discharging authorities are listed in Table 3.1.

² MHCLG ‘Use of planning conditions’ published 6 March 2014, updated 15 June 2018

Table 3.1: Approval Mechanisms involving the Secretary of State, for requirements within made 'Highways England' Development Consent Orders

Consented Schemes		
Name of Scheme	Date of decision	Approval Mechanism
A556 Knutsford to Bowdon Scheme	28 August 2014	<p>Schedule 2 of the made Development Consent Order sets out the requirements that require discharge by the Secretary of State. These include the following:</p> <ul style="list-style-type: none"> • Detailed design; • Environmental Management Plan; • Implementation and maintenance of landscaping; • Contaminated land and groundwater; • Protected species; • Archaeological remains; and • Traffic management.
A160 - A180 Port of Immingham Improvement	4 February 2015	<p>The following documents, schemes or works must be submitted to and approved by the Secretary of State:</p> <ol style="list-style-type: none"> 3. Construction Environmental Management Plan; 4. Landscaping; 5. Implementation and maintenance of landscaping; 6. Fencing; 7. Contaminated land and groundwater; 8. Archaeology; 9. Ecological Management Plan; 10. Water vole, badgers and bat roosts; 12. Traffic Management; 14. Detailed design; and 16. Surface and foul water drainage.
A19/A1058 Coast Road Junction Improvement	28 January 2016	<p>Paragraph 37 of the Secretary of State's decision letter, states that in relation to the mechanism for the approval of details under the requirements, the Secretary of State agrees with the Examining Authority for the reasons given at ER 7.3.1- 12 that it is appropriate in the particular circumstances of this case to provide for the relevant planning authority to approve those matters, except in relation to requirement 10 (traffic management) (see ER 7.3.31-32).</p> <p>Schedule 2 sets out the DCO requirements and identifies those to be discharged by the relevant planning authority. These include:</p> <ul style="list-style-type: none"> • Construction environmental management plan; • Landscaping; • Implementation and maintenance of landscaping; • Fencing; • Contaminated land and groundwater; • Archaeology (requirement 8); • Ecological management plan (requirement 9); • Detailed design; and • Surface and foul water drainage (requirement 12). <p>It should be noted that the requirement relating to traffic management requires the scheme to be submitted to and approved in writing by the undertaker.</p>
A14 Cambridge to Huntingdon Improvement Scheme	11 May 2016	<p>Schedule 2 of the DCO sets out the requirements and identifies those to be discharged by the Secretary of State:</p> <ol style="list-style-type: none"> 3. Preparation of detailed design; 5. Protected Species; 6. Contaminated land and groundwater; 7. Implementation and maintenance of landscaping; 8. Archaeology; 9. Traffic management;

Consented Schemes		
Name of Scheme	Date of decision	Approval Mechanism
		<p>10. Surface water drainage; 12. Noise mitigation; 13. Brampton Meadows SSSI mitigation areas; 14. Highways lighting scheme; 16. Air quality monitoring and mitigation; and 18. Details of consultation.</p>
M4 Junctions 3 to 12 Smart Motorway	2 September 2016	<p>The DCO states, in Schedule 2, the Secretary of State must approve specific features of the scheme, which include the following:</p> <ul style="list-style-type: none"> • Detailed design; • Gantry design; • Carriageway surfacing; • Engineering drawings, sections and other information; • Environmental management plan; • Construction environmental management plan; • Implementation and maintenance of landscaping; • Fencing; • Ecological mitigation; • Contaminated land and groundwater; • Protected species; • Surface water drainage; • Archaeological remains; • Construction traffic management; • Permanent lighting; • Control of noise during construction of the scheme; • Acoustic barriers; • Flood risk; • Biodiversity management strategy; and • Air quality monitoring and management.
M20 Junction 10A	1 December 2017	<p>DCO identifies the following as requiring approval by the Secretary of State:</p> <ul style="list-style-type: none"> • Construction Environmental Management Plan; • Details of consultation; • Landscaping; • Fencing; • Contaminated land and groundwater; • Archaeology; • Traffic management; • Detailed Design; • Surface and foul water drainage; and • Flood compensatory storage.
A19 / A184 Testos Junction Improvement	12 September 2018	<p>Schedule 2 sets out the requirements of the Development Consent Order. Part 1 refers to the requirements and part 2 details the procedure for discharge of requirements. Requirement 3 of part 1 sets out that: <i>“the authorised development must be designed in detail and carried out in accordance with the preliminary scheme design shown on the engineering drawings and sections unless otherwise agreed in writing by the Secretary of State”.</i></p> <p>The matters to be approved by the Secretary of State include:</p> <ul style="list-style-type: none"> • Construction Environmental Management Plan; • Landscaping; • Surface and foul water drainage; • Archaeology; and • Traffic management

Consented Schemes		
Name of Scheme	Date of decision	Approval Mechanism
		<p>If, following pre-construction surveys, a protected species is shown to be or likely to be present, a significant effect not previously identified in the Environmental Statement, or an effect is not addressed by a prior approved scheme, relevant works must cease until a protection and mitigation scheme has been submitted to and agreed in writing by the Secretary of State.</p> <p>In addition, the Secretary of State must be notified as soon as reasonably practicable alongside the relevant planning authority and the Environment Agency “...if contaminated land, including groundwater, is found at any time when carrying out the authorised development which was not previously identified in the Environmental Statement”</p>

3.3.6 In light of the above, it is clear the approach proposed by the Applicant for this scheme is entirely appropriate and in line with best practice. The A303 Sparkford to Ilchester Dualling Scheme does not present any exceptional circumstances which justify a deviation from this approach.

4 The Consideration of ‘Alternatives’

4.1 Introduction

4.1.1 During the Examination, submissions have been made by third parties (primarily the three Parish Councils) proposing alterations to the design of the scheme as submitted. The two main suggestions being that:

- a parallel local road (PLR) should be provided as part of the scheme; and
- alterations should be made to the design of the proposed Hazlegrove junction layout.

4.1.2 Notwithstanding the fact that the Examining Authority was willing to explore the proposals put forward by the Parish Councils, it is abundantly clear to the Applicant that the proposals cannot be construed as an “alternative” within the meaning of that term set out in case law. Concerns have been raised by the Applicant during the Examination over the Examining Authority’s use of the word “alternative” and its questions to the Applicant relating to these proposals.

4.1.3 Despite the fact that the Parish Councils’ sketch layouts do not take account of topography, ecological and landscape constraints, mitigation requirements or landscaping, the Applicant has sought to assess the proposal against the mandatory elements of the standards TD9/93 and TD27/05 set out in the Design Manual for Roads and Bridges (DMRB). It is clear from that assessment that the proposal is sub-standard and does not meet the standards contained within DMRB (see response to Second Written Question 2.7.3 (REP5-025)), nor is there any justification to depart from those standards.

4.1.4 Fundamentally, and as has been made clear in written and oral submissions, both amendments proposed by the Parish Councils constitute significant changes to the scheme as proposed with the effect that they would result in a materially different scheme to that submitted and therefore could not be incorporated into the current application even if the Applicant agreed that they would benefit the scheme (which it does not). The changes requested are so fundamental that they would require the current application to be withdrawn, re-designed, re-consulted upon, and re-submitted to the SoS for determination. As the Applicant made clear on numerous occasions in its written and oral submissions, any delay to the scheme through the withdrawal of the current application is likely to have a detrimental impact on funding and may put the delivery of scheme in doubt.

4.1.5 The Applicant has previously made submissions, with reference to relevant case law³, on why the proposals put forward by the Parish Councils cannot be considered to be “alternative” designs (see the Applicant’s response to Second Written Questions 2.0.1 and 2.7.3 (REP5-025)). By way of summary,

³ *R. (on the application of Langley Park School for Girls Governors) v Bromley LBC* [2009] EWCA Civ 734; *R. (on the application of Mount Cook Land Ltd.) v Westminster City Council* [2003] EWCA Civ 1346; *Lisle-Mainwaring and the Secretary of State for Communities and Local Government v Carroll* [2017] EWCA Civ 1315

the Applicant submits that (1) the facts and circumstances of this application are not exceptional within the meaning of the case law so that the requirement to consider alternatives does not arise; and (2) even if the circumstances were exceptional, the drawings that have been provided by the Parish Councils are inchoate, vague and have no realistic possibility of coming about and therefore cannot form a material consideration in this determination. The Parish Councils raised their concerns during the pre-application consultation, and the Applicant took full account of these as the scheme was developed. As was made clear to the Parish Councils at that time, and as reported in the Consultation Report (APP-023) the proposed scheme amendments were considered by the Applicant but were not taken forward as they would have resulted in marginally greater environmental impacts, incurred higher costs, and required the acquisition of additional MoD land than the scheme as submitted.

- 4.1.6 For ease of reference, a summary of the Applicant's specific concerns with the proposals put forward by the Parish Councils are set out below.

4.2 The Hazlegrove Junction

- 4.2.1 The Parish Councils submitted a sketch layout to the Examination showing their proposed amendments to the submitted scheme design. The sketch layout did not, however, demonstrate any less harm to the Hazlegrove Registered Park and Garden (RPG) than the proposed scheme. The Applicant raised the following specific concerns with the Parish Councils' proposal in its response to Second Written Questions 2.0.1 and 2.7.3 (REP5-025) and in the Applicant's response to Action Point 12 (REP5-020):
- (a) The junction is situated in the most sensitive part of the RPG;
 - (b) The sketch layout does not consider the impact of earthworks required, including to address topography as well as for mitigation, screening and landscaping;
 - (c) There has been no consideration by the Parish Councils of the impacts of the sketch layout on the requirement for road lighting, which could have an adverse impact on the RPG, particularly its landscape character and visual setting;
 - (d) The submitted sketch layout is 2D and is therefore entirely untested from an engineering point of view. The levels in this area require careful design to be undertaken. Due to the layout, it is possible retaining solutions/structures may be required. If retaining solutions were required, costs would increase and the visual effect on the RPG could be worsened;
 - (e) The sketch layout proposes two underpasses, compared to the one being proposed in the submitted scheme; and
 - (f) The sketch layout has not been assessed through detailed traffic modelling, meaning that any claims made by the Parish Councils relating to traffic issues are entirely speculative.

- 4.2.2 Given the lack of consideration and assessment, no evidence was put before the examination to support the Parish Councils' assertions that there would be less harm to the RPG with their sketch layout.
- 4.2.3 The Applicant is the strategic highway authority. It has carefully assessed the options for design in this location over a number of years. It has arrived at the Hazlegrove junction design through an iterative process of consideration of the various and competing constraints. That process is set out in detail in the Hazlegrove Junction topic paper (REP2-005).
- 4.2.4 By way of summary (and as set out in REP5-002), the evolution of the Applicant's submitted design in this location has been driven by the need to minimise the environmental impacts on the RPG, and the objective of achieving a safe, high quality grade separated junction. Discussions throughout the design development with statutory consultees have identified the specific sensitivities of the site and aimed to sympathetically blend the junction into the landscape as much as possible. The design has evolved to reflect local environmental and technical constraints that have become evident to the project team during design development and consultation, whilst maintaining compliance with the mandatory requirements of the DMRB.
- 4.2.5 As has been previously noted by the Applicant, even if this is unintentional, the Parish Councils' submissions ultimately amount to an objection to the scheme on the basis of design.

4.3 The Parallel Local Road

- 4.3.1 As most recently set out by the Applicant at the second set of hearings, and as summarised in the Applicant's written summary of oral submissions (REP7-028), the Applicant undertook a lengthy design exercise prior to submission of the scheme application. As part of that exercise, a PLR was considered, however, the benefits of such a provision were found to be marginal at best. The design process that was undertaken by the Applicant is set out in detail in REP3-003 from paragraph 1.3.6 – 1.3.20.
- 4.3.2 If the Applicant had concluded that a PLR was a necessary, and appropriate, part of the scheme, it would have accommodated a PLR within the submitted application. However, the PLR was simply not a feasible option on grounds of increased environmental impact, increased costs and increased timescales for delivery. In addition, and more fundamentally, there was no identified need for the PLR to be included within the scheme, either from a traffic modelling or cost perspective.
- 4.3.3 The Applicant has also previously 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. The potentially extended timeframes for negotiation have been demonstrated during the Examination in connection with the proposed footpath across MOD land, where the MoD has declined, despite requests from the Applicant, to agree bridleway status on this route.
- 4.3.4 The Applicant fundamentally disagrees with the Parish Councils' submissions on the cost saving to the scheme in providing a parallel local road. The

Applicant continues to maintain its position that inclusion of a PLR would increase costs and potentially lengthen the construction period.

5 Matters not agreed with SCC

5.1 Introduction

5.1.1 During the Examination, a number of areas of disagreement were evident between the Applicant and SCC. As it was not possible, despite continued efforts and detailed written and oral submissions by the Applicant, to reach agreement, the Applicant has set out its position on these matters below. Where appropriate, relevant cross-references are included to other submitted documents where detailed submissions were made on the issues raised. Whilst all of the points raised by the Applicant have previously been made during the Examination, it is considered that the summary provided in this statement will assist the Examining Authority and the SoS in their decision-making process.

5.1.2 The key issues relate to the following:

- SCC's requested role in the discharge of requirements; and
- The request for the payment of fees to administer the requested role.

5.2 Role of SCC as Discharging Authority

5.2.1 There is a fundamental disagreement between the Applicant and SCC over the discharge of Requirement 13⁴ of the DCO (detailed design).

5.2.2 SCC has suggested that the SoS could remain responsible for approval of certain aspects of the detailed design (the trunk road) with SCC being the discharging authority for aspects related to the local highway network. When the detailed design is undertaken by the Applicant, SCC is seeking the ability to review and approve those aspects that will form part of the local highway network and become maintainable at the expense of the local highway authority.

5.2.3 The Applicant has maintained its position throughout the examination that the discharging authority for all requirements (including Requirement 13) should be the SoS and not SCC⁵. The Applicant has always said that it is content for SCC to be consulted on any of the requirements and the DCO already includes SCC as a consultee under Requirement 13 (and various other requirements).

5.2.4 The justification for the Applicant's position is set out below and is informed by the principles and established best practice identified in section 3 of this statement.

⁴ Was previously Requirement 12

⁵ See the Applicant's response to First Written Question 1.10.5 (REP2-004); paragraphs 1.2.10 – 1.2.14 of the Applicant's response to the LIR (REP3-003); paragraphs 7.1 and 7.31 of the Applicant's written summary of oral submissions (REP4-020); The Applicant's responses to Second Written Questions 2.10.2 and 2.10.3 (REP5-025); paragraphs 1.2.16 – 1.2.20 of the Applicant's Deadline 6 Report (REP6-007); the Applicant's response to Additional Written Question 3.10.13 (REP6a-002); and paragraphs 3.5, 3.6.3, 7.1.2 – 7.1.4, 7.2.7 – 7.2.8 and 7.2.15 of the Applicant's written summary of oral submissions (REP7-028)

5.2.5 Whilst it may be common for parties in the DCO process to prepare “agree to disagree” drafting, the Applicant believes that, in this case, the splitting of the discharging authority role is fundamentally unviable.

Provision for Consultation

5.2.6 SCC’s concerns over the level of engagement that will take place as part of the discharge of requirements are misconceived and their continuing characterisation of the process set out in requirements as notification only is demonstrably erroneous.

5.2.7 Requirement 5 requires that an account of the consultation on design (including changes sought and whether they have been made and where changes have not been made why not) must be submitted to the SoS as part of the application for approval of the detailed design. The SoS will therefore have the views of SCC before him when making any decision on the detailed design.

5.2.8 Requirement 13 was also amended (at Deadline 5, REP5-006) to make it clear that SCC will be consulted on the whole of the detailed design, rather than only on any departures from the preliminary design.

5.2.9 The Applicant will take SCC's responses on detailed design into account and would expect the SoS to give considerable weight to those, especially when considering elements which will become local highway authority assets. There is therefore a great deal of incentive for the Applicant to seek agreement with SCC on the design. It is not appropriate, however, for a consultee to be able to refuse details preventing application(s) for discharge of requirements being made as that would endanger the timing of the delivery of a NSIP and create an impasse in the project.

5.2.10 SCC will also be provided with the opportunity to influence the scheme design outside of any formal consultation. It is standard practice on national network NSIPs for the Applicant to engage with the host authority on matters of design both during the DCO process and detailed design development. Unfortunately, SCC has declined to continue to participate in technical working groups during the Examination. The Applicant is ready to restart that process at any time. The Applicant has also drafted into its protective provisions a right for SCC to participate in the detailed design process before they are formally consulted.

SCC Approval and the Mechanism for Appeal

5.2.11 Discharge by the local planning authority of DCO requirements would need to be accompanied by an ability to appeal any refusal, in this case to the SoS.

5.2.12 It is entirely appropriate that, where SCC is not satisfied with any aspect of the detailed design, the SoS is asked to make the decision, having SCC’s comments and the Applicant’s response before him. This is what would happen under other planning regimes if SCC refused an application and the Applicant appealed and is therefore in line with planning practice.

5.2.13 Accordingly, in addition to being contrary to the ethos of the DCO regime, the proposal for SCC to act as discharging authority would, in practice, cause entirely unnecessary delay without achieving the result they seek. Any

aspects of detail that SCC refuse to consent would be appealed by the Applicant to the SoS to protect the integrity of the overall design. The decision would accordingly be made at the level proposed by the Applicant in the DCO as drafted but with attendant, avoidable delay.

- 5.2.14 Further, the SoS's internal team deals with Highways England 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 exempted from a national process without a very compelling reason; and the Applicant does not consider such a compelling reason exists for this scheme.
- 5.2.15 The request by SCC to share responsibilities with the SoS for the discharge of Requirement 13 is both inappropriate and impractical. It would simply result in a 'double approval' process which would unnecessarily lengthen the time taken to discharge requirements. The SoS's role as discharging authority is well-established in Highways England DCOs and there are no exceptional circumstances which justify any deviation from that for this scheme.
- 5.2.16 The Applicant does not agree that it is appropriate to have more than one discharging body for separate elements of the project and feels strongly that this creates a risk of conflict. The Applicant does not consider that it is practical to split the project into elements to be approved at the local level and at the SoS level. The various elements of the project are intrinsically linked and the separation suggested is artificial and impractical. The project has been designed as a whole and changes to one section will have consequences for another. Changes cannot be made to the local highway sections without considering the impact of those on the trunk road sections and vice versa. It is therefore artificial and unhelpful to attempt to separate out elements of a project for differing methods of discharge under requirements.
- 5.2.17 The Applicant does not consider it practical, helpful or reasonable to have two discharging authorities for a DCO, especially given that the underpinnings of the DCO regime include an objective of reducing the number of consenting authorities from which a single project needs to obtain consents. The DCO regime streamlines consenting in part to help to prevent conflicts between the requirements of different authorities, not to create new ones.
- 5.2.18 For clarity and the avoidance of doubt, the Applicant maintains its firmly held position that the discharging authority for all requirements (including Requirement 13) should be the SoS and not SCC. SCC will be consulted on the detailed design under Requirement 13 and the details of that consultation (including changes sought and whether they have been made and where changes have not been made why not) must be submitted along with the application for approval of the detailed design. The consultation response provided by SCC will be submitted to the Secretary of State and will therefore be accounted for in the decision-making process.
- 5.2.19 The mechanism proposed for the discharge of requirements within the draft DCO for the scheme is well-established and is bespoke to the unique circumstances within which Road Investment Strategy are delivered. The approach has been approved by the SoS for six of the Applicant's seven consented NSIPs.

5.2.20 It is the Applicant's view that SCC seeking a role as discharging authority diverges from established and tested DCO provisions. In addition, the fact that SCC is seeking to recover its costs for undertaking this role from the Applicant clearly highlights that SCC does not have the resources to act as discharging authority and therefore cannot justifiably request this role. Simply put, SCC cannot seek payment for a role which it does not need to undertake.

5.2.21 It is clear that the approach which places the SoS as the discharging authority is accepted and established (see detail provided in section 3 earlier) and has been thoroughly tested at Examination. There is no justifiable reason to deviate from this approach for the A303 Sparkford to Ilchester Dualling DCO.

Proposed Amendments to Requirement 13 and Protective Provisions

5.2.22 The Applicant notes the County Council's suggested amendment to requirement 13⁶ in the cover note to the protective provisions submitted at deadline 7 (REP7-045). The Applicant advises that the County Council's drafting simply does not function. The County Council have suggested that requirement 13 could be amended in isolation and has had no regard whatsoever to how the DCO actually functions, or to the process of discharge of requirements as set out in Part 2 of Schedule 2 in particular.

5.2.23 The Applicant has serious concerns regarding the preciseness and enforceability of the drafting suggested by the County Council. Given that non-compliance with the DCO is a criminal offence, it is vital that the drafting is precise. The County Council's drafting that any part "which relates to changes to the local highway network" must be approved in writing by the local authority lacks any specification and gives the Applicant no notice of which parts must be submitted to the local highway authority. As the Applicant has previously submitted, changes to one element of the scheme will have consequential effects on others.

5.2.24 The process for discharge by the Secretary of State is set out in Part 2 of Schedule 2 to the DCO. This includes the timescales for making decisions, the timescales for requesting further information, the parties who must be notified of decisions and various other procedural matters. The County Council has proposed no equivalent for discharge of conditions by it. The County Council appears to have overlooked that this is not a Town and Country Planning application and that there are no regulations in place to cover discharge of requirements under a DCO: that process must be provided for in the DCO itself by reference or in full.

5.2.25 The County Council has also not engaged with the question of fees but has instead provided in its draft protective provisions that all of its costs in discharging approvals must be met by the Applicant before the County Council will issue the Final Certificate. It should not be required of an Applicant to write a blank cheque to the County Council through protective provisions.

5.2.26 While not agreeing that the County Council should be a discharging authority, the Applicant notes that the County Council has made no provision in its

⁶ Referred to in that submission as requirement 12, in line with the previous numbering of requirements in the DCO

drafting for appeals where the Applicant is unhappy with any determination the Council makes. Where elements of the trunk road are approved by the Secretary of State but not approved by a local highway authority, the Applicant, under the SCC draft provisions would be required to go to arbitration which would then bind the Applicant and SCC but could not bind the Secretary of State. That is inappropriate. Where there is disagreement, the entire development should be taken before the Secretary of State to make a cohesive decision on the whole.

5.3 Payment of fees and charges to Somerset County Council

5.3.1 SCC has requested that it receives payment / financial contributions from the Applicant for the following:

- all officer time including in participating in detailed design, participating in RSAs, responding to consultation, agreeing the DLOA and/or discharging requirements under the DCO;
- monitoring/supervising works, and testing materials,
- section 278 agreement in relation to sections of highway de-trunked under the DCO; and
- contingency fund for anti-social behaviour.

5.3.2 In addressing SCC's request for fees, the Applicant considers that it is important to remember that the context of this development is one of a vastly experienced and responsible highway authority constructing a trunk road. The Applicant is not primarily a commercial developer who has to deliver highway works only as an ancillary element of their main project. The Applicant is entirely qualified to bring forward a safe and suitable detailed scheme.

5.3.3 The Applicant entirely understands SCC's position that as a public authority its resources are limited and constrained, however, the Applicant notes that it is also funded through public funds, must account for the use of these and should not be required to use its public funds to redress funding constraints elsewhere in the public sector. For the avoidance of doubt the Applicant rejects SCC's requests for payments as listed above.

Payment for consultation and/or discharging requirements

5.3.4 There is no requirement or mechanism under the Act for SCC to be paid any fee for responding to consultation under DCO requirements or for SCC discharging those requirements (which the Applicant submits is not appropriate in any event). Parliament, in passing the Planning Act 2008, did not see fit to provide any regime for the payment of fees to any statutory consultee or discharging authority, including local authorities. To prescribe for payment of fees to consultees would be contrary to the general planning approach in both the DCO and the Town and Country Planning Act (TCPA) regimes. The Applicant therefore does not accept the request to provide for the payment of fees to SCC in relation to consultation or review.

Payment for monitoring, supervision and approval of works

5.3.5 SCC's approach of treating this development as analogous to other developments' ancillary road works is unrealistic. The Applicant is a highway authority and will require its contractors to deliver the project safely and to the

required standards. Inspection of road works by SCC is not necessary to ensure that the works are completed to the required standard as Highways England as a highway authority will supervise these.

- 5.3.6 The Applicant however understands SCC's desire to be able to inspect works to the local highways and raise any concerns. The Applicant has therefore proposed to add to the DCO a set of Protective Provisions for SCC which would allow, inter alia, inspection to be undertaken of the works which will become local highway (these protective provisions have been discussed with SCC and the parties are unable to reach agreement on all of the proposed drafting so have submitted separate versions to the Examining Authority). The provisions proposed by the Applicant will not provide for payment of fees for such inspections, as they are being offered to SCC following their request - they are not a service being requested from them.
- 5.3.7 The DCO already provides that altered highways which are not trunk roads must be completed to the reasonable satisfaction of the local highway authority (Art 13(2)). The Applicant has already advised and confirmed in the hearings that there will be a 52-week defect period for all of the works. The Applicant has set this out in its proposed protective provisions. The Applicant does not agree that local approval beyond that already required by Article 13 is necessary, appropriate or reasonable.
- 5.3.8 The Applicant does not consider that it is appropriate for SCC to be paid to 'approve' works and that it is unnecessary and unreasonable for SCC to be paid to supervise an experienced highway authority in carrying out highway works, especially where a defect liability period will be in place.
- 5.3.9 The Applicant is aware that SCC is unhappy with the process but advises that this process is entirely acceptable under the Act and has been followed in other DCOs. This is not an adoption process. SCC is already protected by draft DCO Article 13 which requires work to the local highway to be to their reasonable satisfaction.

Cost of testing of materials

- 5.3.10 The Applicant has amended its proposed 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 under DMRB. The Applicant has previously confirmed it is happy to provide requested samples to SCC for testing by SCC and notes 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 has agreed to share the results of that testing with SCC.
- 5.3.11 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.

Section 278 Agreement

- 5.3.12 The Applicant rejects the necessity for a section 278 as the issues raised by SCC can be appropriately addressed within the DCO. The conclusion of a separate legal agreement for matters which can be adequately covered within a DCO runs counter to the principles of the DCO regime to streamline consenting for NSIPs. The Applicant also notes that the local councils for the A14 scheme (which SCC has suggested as a comparative example) contributed towards the costs of that scheme, which is a very different set of facts and circumstances to the present case and is therefore not a reasonable comparator unless SCC wishes to contribute to the cost of this project.
- 5.3.13 SCC have not acknowledged that the process which is set out in the DCO is not adoption and is not being carried out under the Highways Act and therefore that their 'normal' process does not apply. This is another attempt by SCC to put in place unnecessary processes which increase their control over the works and for which they wish to be paid fees. SCC's position is therefore rejected by the Applicant.
- 5.3.14 The Applicant does not consider that it is appropriate for SCC to be paid to 'approve' works and that it is unnecessary and unreasonable for SCC to be paid to supervise an experienced highway authority in carrying out highway works, especially where a defect liability period will be in place.

Contingency fund for anti-social behaviour

- 5.3.15 The Applicant reiterates that it is happy to discuss any design measures which could be incorporated to address potential anti-social behaviour with SCC before detailed design is finalised for approval, however, no suggestions have been put forward for discussion or consideration by SCC so far.
- 5.3.16 The Applicant will not provide a fund as requested by SCC and reiterates it is not proposing a legal agreement in the terms sought by SCC. The Applicant cannot be held liable for the behaviour of others. It is not reasonable or proportionate to expect the Applicant to meet the costs of dealing with others' anti-social behaviour or to fund SCC's statutory duties.
- 5.3.17 The Applicant submits that the obligation for a contingency fund suggested by SCC is not necessary to make the development acceptable in planning terms nor is it directly related to the development and as such would not meet the tests set by Reg. 122 of the Community Infrastructure Levy Regulations 2010 and cannot and should not be imposed.

Detailed Local Operating Agreement (DLOA)

- 5.3.18 The Applicant has no objection to entering into an appropriate DLOA with the local highway authority at the appropriate time. That agreement will not, however, just relate to the local highway assets but is wider in scope and covers the maintenance of the Applicant's assets as well. That DLOA will be entered into with SCC rather than approved by them. The DLOA for the scheme will also cover assets which are removed from the Applicant's operational maintenance programme and maintained as part of the carrying out of the works during the construction period.

5.3.19 The Applicant considers that it is unreasonable for SCC to require fees to be paid to it for entering an agreement which reduces its maintenance responsibility by transferring that responsibility to the Applicant's cost for the duration of the works (and ultimately therefore still at the cost of the public purse not that of a private developer).

Examples of payments to local authorities

5.3.20 In its response to Action Point 34 (REP6-007) the Applicant responded to the examples given by SCC of DCOs where payment has been made to authorities undertaking approvals and/or monitoring. SCC had provided the following examples (in its submission at REP5-032):

- A14 Cambridge to Huntingdon Improvement Scheme DCO
- A556 Knutsford to Bowden Improvement Scheme DCO
- A30 Temple to Higher Carblake Improvement Order DCO (where the Applicant is an Interested Party / Prescribed Consultee)
- A1 – South East Northumberland Link Road: Morpeth Northern Bypass) (where the Applicant is an Interested Party / Prescribed Consultee)
- M5 J25 Improvement Scheme
- Hinkley Point C Development Consent Order
- Hinkley Point C Connection Project DCO

5.3.21 With respect to the examples cited by SCC, the Applicant is of the view that these are either not comparable to the scheme or are irrelevant. The Applicant's detailed position was set out in REP6-007.

5.3.22 A summary of the discharge and fee payment provisions of consented Highways England schemes are set out in Table 1.1 at REP6-007. Significantly, the single DCO secured by the Applicant where the LPA had a role as discharging authority did not include any provisions or legal agreements in respect of the payment of fees by the Applicant to the LPA. In those instances where the payment of fees was agreed, these were either related to future maintenance or highway works and were considered necessary to make the development acceptable in planning terms, which is not the case for this scheme, or related to minor costs such as inspections. In light of this, the examples provided by SCC are clearly isolated incidents which do not justify the role and payment provisions sought by the Council.

5.3.23 In comparison to other made Highways England DCOs, there are far more examples of the SoS being the discharging authority where no payment of fees has been agreed for either a discharging function or for consultation responses. On this basis, the Applicant submits that there is no justification for SCC's position.

5.4 Works Outside the DCO

5.4.1 Throughout the DCO Examination, it has been suggested by various third parties that the DCO should secure (by the imposition of requirements) certain works which are outside the remit of the application as submitted. These include:

- (a) The provision of traffic calming measures in the villages of Sparkford and West Camel;
- (b) The upgrade of the current footpath Y30/UN which runs across Higher Farm Overbridge to bridleway status; and
- (c) The provision of a Conservation Management Plan (“CMP”) of the Hazlegrave Registered Park and Garden (“RPG”).

- 5.4.2 The Applicant has maintained throughout the Examination that none of the above items are required mitigation for the scheme being delivered by the DCO. The works could therefore not be secured by requirement through the DCO as they would fail to meet the relevant legal tests (see).
- 5.4.3 The tests for imposition of requirements in DCOs is set out in section 3 of this statement.
- 5.4.4 The Applicant is of the view that none of the works listed at 5.4.1 above are necessary to make the scheme acceptable in planning terms. Therefore, they do not meet the legal test and should not be imposed as requirements in the DCO.
- 5.4.5 However, the Applicant has previously indicated that it will look to seek to deliver some or all of these works outside of the DCO if possible, as it acknowledges that the works are likely to be beneficial. The Applicant has already applied for designated funds to be made available for the majority of the proposed works and these applications are currently being considered centrally within Highways England.
- 5.4.6 Further details of each item of works and why the Applicant considers the works are not necessary mitigation for the scheme and why the relevant legal tests are not met is set out below.

Traffic calming

- 5.4.7 The Applicant confirmed in its response to Action Point 11 at REP7-027 that consideration of traffic calming involves assessment of the following aspects: capacity, safety and environment (specifically air quality and noise). Whilst there are no fixed thresholds against which to consider the need for traffic calming or mitigation, a requirement for such measures would be considered more likely to be needed if significant effects on capacity, safety, air quality and noise were predicted as a result of the scheme. These four aspects have been assessed in detail, for both West Camel and Sparkford, and a summary of the key conclusions is included in Appendix 2.
- 5.4.8 As detailed in the Applicant’s response to question 2.7.8 (REP5-025), while there is no standard criteria for assessing the need for traffic calming, the Applicant does not believe it to be necessary in this situation due to the fact that the inclusion of the scheme and the associated additional traffic does not cause any significant impacts in terms of the performance of the nearby junctions; the air quality; the noise levels; or the rate of accidents.
- 5.4.9 In addition to not being necessary to make the scheme acceptable in planning terms, at no point has the detail of any suggested traffic calming measures been suggested by any third party. It would therefore not be possible to set

out precisely in a requirement what would be required by way of traffic calming measures, which of course brings into doubt the ability to enforce such a requirement. The Applicant is therefore of the view that the imposition of a requirement to secure traffic calming would not meet the appropriate legal tests.

Higher Farm Overbridge

- 5.4.10 As previously submitted in the Applicant's response to Additional Written Question 3.10.23 (REP6a-002), it is the Applicant's position that an upgrade to footpath Y30/UN is not required as mitigation for the DCO scheme.
- 5.4.11 As the Applicant has set out in Topic Paper: Right of Way Y30-28 (Eastmead Lane) (REP3-006) there is currently no public right of way connection over the A303 between the southern section of Eastmead Lane and the existing local road on the other side of the A303. Therefore, the Applicant should not be expected to remedy this missing link as part of its DCO scheme. A westerly connection (as advocated by SCC, SSDC and SSBA) has not been identified as required mitigation for the DCO scheme and does not form part of the current design.
- 5.4.12 The Applicant would strongly object to the inclusion of a Grampian style requirement to secure this upgrade. Not only is this footpath outside of the Order limits but there is no guarantee, even if the Applicant were to make an application for this upgrade, that (a) such an application would be granted; and (b) it would be dealt with in a timely manner by SCC. The latter point is of particular concern given the large backlog of applications and likely processing time of such applications that was indicated by the County Council at the hearings in February.
- 5.4.13 The result of imposing such a Requirement would be the scheme not being delivered because the funding timescales could not be complied with resulting in the scheme funding being lost.
- 5.4.14 The Applicant notes that SCC has all of the necessary powers to promote this change, yet it has chosen not to do so to date. The Council can, and has been able for decades to, promote an upgrade of this path, but it has clearly not considered that to be necessary.
- 5.4.15 If the ExA is of the view that the route is a diversion, the Applicant would seek that the change to the original footpath is considered as being stopped up with no reasonably convenient alternative provided. This would then need to be weighed into the planning balance by the ExA and the SoS in determining whether or not to grant the DCO.
- 5.4.16 Again, if these works were to be secured by requirement, it is the Applicant's position that the requirement would not meet the relevant legal tests. Such a requirement would not be enforceable as it is dependent on third party consent, is not necessary to make the scheme acceptable and is not reasonable.

Conservation Management Plan

- 5.4.17 As set out in the Applicant's written summary of oral submissions (REP7-028), in relation to the potential for a conservation management plan (CMP) for the

RPG, the Applicant has previously confirmed that it is progressing this in its role as majority 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.

5.4.18 The Applicant has always been very clear that, on the basis of the environmental assessment undertaken, a CMP is not justified as scheme mitigation. Even if it were to be found to be justified (which the Applicant disputes), such a plan could only cover the part of the RPG affected by the scheme, not the wider area. The Applicant has separately entered into discussions with Historic Buildings and Monuments Commission for England (HMBCE) 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.

5.4.19 The Applicant has previously provided details of how any impacts of the scheme on the RPG are already adequately mitigated (in its response to Additional Written Question 3.0.4 (REP6a-002)). The impacts from the scheme on the area within the DCO limits are managed through the DCO already, particularly through the inclusion of mitigation set out in Table 3.1 Register of Environmental Actions and Commitments (REAC) within the OEMP (REP5-013). During construction, proposed mitigation measures include the layout of the soil storage area at Hazlegrove House RPG to be designed in such a way to minimise the impact on views south west from the house and across the park. A detailed landscaping scheme in line with the proposals included within the environmental masterplan is required by the OEMP. This will help to mitigate permanent and operational impacts. Consultation on the detailed design with Historic Buildings and Monuments Commission for England (HBMCE), South Somerset District Council (SSDC) and The Gardens Trust is also included in the OEMP. The Applicant does not agree that a Management Plan for that part of the RPG within the Order limits is required in order to ensure that the special character of the Hazlegrove House RPG is protected from the impacts of the scheme.

5.4.20 A requirement to secure a CMP for the whole RPG would not meet the legal tests as it would not be enforceable (due to much of the area being located outside the DCO boundary), it is not necessary to make the scheme acceptable in planning terms and it is therefore not reasonable to impose such a requirement.

5.5 Local Highway (Mattia Diner road)

5.5.1 In previous submissions (see, for example REP5-032), SCC has raised concerns that the area of road passing Camel Hill Services would be liable to anti-social behaviour including illegal gypsy and traveller encampments. The Applicant has already agreed to investigate design measures to ensure that this road is not used at excessive speed in progressing the detailed design of this section. However, the Council has not sought any other design changes nor made any proactive or positive suggestions as to how their concerns of anti-social behaviour could be addressed.

- 5.5.2 In addition (and as set out in the Applicant's Deadline 6 Report (REP6-007)), the Applicant submits that the Council has produced no evidence for the conjecture that anti-social behaviour will be a serious or substantial problem. The submission made by the District Council at D7 (REP7-051) shows only one location on the relevant part of the A303 affected (at Queen Camel) and clearly demonstrates that any problem in the District is concentrated in the area to the south east of the scheme and particularly in the area between the A303 and A30 south-east of Yeovil, not in the vicinity of the scheme
- 5.5.3 SCC has also suggested that this road should remain part of the strategic road network or should become a private road. The Applicant objects to these suggestions and has responded in REP6-007.
- 5.5.4 The strategic road network in England is made up of motorways, trunk roads and the most significant A-class roads. The purpose of the strategic road network is to move large volumes of traffic safely and efficiently, not to provide localised access.
- 5.5.5 The Applicant notes SCC's submission that this road would provide little if any public utility. The Applicant disagrees. Part of the purpose of the local highway network is to provide access to properties. In this instance, not only does this road provide access to private property, it also provides public access to two operational businesses and one consented business use site. The Applicant's position on this is set out in detail in REP6-007 at paragraph 1.2.6 on.
- 5.5.6 It is clear that this road should form part of the local highway network to be maintained by the local highway authority, and not part of the strategic road network. It serves a clear public purpose by providing the public with access to local businesses. 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. It is also inappropriate to expect the Applicant to underwrite the un-evidenced potential future costs of the local highway authority in undertaking its statutory role in managing this area of highway.

5.6 Transfer of Benefit of the Order

- 5.6.1 The Applicant notes that the prospect of the benefit of the order being transferred to someone other than the Applicant was raised repeatedly in the May hearings. The Applicant accordingly wishes to ensure its position on that point is entirely clear.
- 5.6.2 Article 10 of the draft DCO allows the benefit of the order to be transferred to a person other than the Applicant only with the consent of the Secretary of State. The power to transfer the benefit of the order is accordingly not exercisable by the Applicant unilaterally or with no oversight.
- 5.6.3 The exception to the requirement for consent is the ability for the parties listed in subsection (4) to carry out the listed works. That subsection allows utility undertakers to carry out some or all of the works required for their own utility diversions, particularly the connections into live networks. That subsection would not allow any other party to construct the highways which are the core purpose of the scheme. The Applicant sees no realistic prospect of the whole benefit of the order being transferred. The Applicant has not identified any

party to whom it would wish to transfer the benefit of the whole DCO or who would have the necessary statutory powers and remit to deliver the scheme. The transfer of benefit provisions would only realistically be needed or used were the Government to undertake root and branch reform of how and by whom highways in England are delivered, managed, maintained and operated. The Applicant is not aware of any proposals to undertake such a fundamental review or reform.

5.6.4 The Applicant is the strategic highway authority appointed under licence⁷ by the UK Government. That licence sets out at general condition 3.1 that:

*“The Licence holder **must**, without prejudice to the Licence holder’s legal duties or other obligations, comply with or have due regard to (as appropriate) the conditions set out in this document, which constitute statutory directions and guidance issued by the Secretary of State to the Licence holder as provided for in section 6 of the Infrastructure Act 2015.” (original emphasis)*

5.6.5 One of the objectives to which the Applicant as the licence holder is required by general condition 3.1 to comply is 4.2 c: “Ensure the improvement, enhancement and long-term development of the network”. The Applicant is promoting the scheme in furtherance of that objective to improve and enhance the network.

5.6.6 The Applicant, as the body appointed by government to deliver strategic road schemes, does not consider it likely that the Government, having appointed and funded the Applicant to carry out schemes such as this, would allow the Applicant to transfer the consent in anything other than very unusual and exceptional circumstances. The provisions of Article 10 have been included in the draft DCO because they were in the model provisions and have been included in every consented Highways England DCO⁸ and Highways Agency DCO⁹. They are included in the draft DCO as a reserve power which is not anticipated to be needed or used. The Applicant submits that allocating any substantial weight to the incredibly small likelihood of the benefit of the transfer of the benefit is unreasonable given that no party has identified any credible proposal to do so, the Applicant advises they have no intention of doing so and no recipient party for the benefit has been identified.

⁷ Highways England: Licence, Secretary of State for Transport statutory directions and guidance to the strategic highways company. Department for Transport, April 2015

⁸ A19/A184 Testo’s Junction Alteration Development Consent Order 2018, Article 8; M20 Junction 10a Development Consent Order 2017, Article 10; A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016, Article 9; M4 Motorway (Junctions 3 to 12) (Smart Motorway) Development Consent Order 2016, Article 8; A19/A1058 Coast Road (Junction Improvement) Development Consent Order 2016, Article 7

⁹ A160/A180 (Port of Immingham Improvement) Development Consent Order 2015, Article 7; A556 (Knutsford to Bowdon Improvement) Development Consent Order 2014, Article 7

6 Application of Protective Provisions

6.1 Introduction

- 6.1.1 The Applicant notes that very little has evolved in the County Council's position on protective provisions from that previously advised to the Examining Authority. Contrary to the covering submissions made by the County Council, these protective provisions continue to seek to create new layers of approval and control by the County Council.
- 6.1.2 For ease of reference, and the avoidance of doubt, this section of the Statement sets out the Applicant's position on the protective provisions put forward by SCC.

6.2 General Approach

- 6.2.1 The County Council's proposals would require approval of various matters prior to the commencement of development. It would then create the right for the County Council to require various elements of works to be carried out under the ill-defined term "Maintenance" throughout the construction period. Inspection, and by inference approval, is then required at various points throughout. Approval is again necessary at road safety audit stage 3 and despite the minor alterations to the Council's drafting to try and avoid the objectionable wording of obliging the undertaker to carry out any works it requires, the same principle clearly underlies its current drafting approach.
- 6.2.2 Following the approvals necessary at pre-commencement and road safety audit stage 3, a further approval would then need to be given at Provisional Certificate stage. Again, this requires the carrying out of works although the County Council has attempted to cast that in the guise of addressing safety deficiencies or defects. The County Council is not the authority charged or legally liable for identifying and rectifying those; it is the Applicant who is legally liable for the highway design.
- 6.2.3 Yet another approval point comes at road safety audit 4 and, again, another opportunity for the local highway authority to seek to impose works on the Applicant without respecting the legal liability of the Applicant.
- 6.2.4 A further approval comes with the inspections necessary to meet the requirements for the issue of the Final Certificate. Again, the wording of the issue of the Final Certificate, while attempting to cast works as remedying defects, is nothing more than yet another obligation to try to force the Applicant to carry out any works sought by the local highway authority regardless of what the Applicant's design and overseeing organisation teams think of them and regardless of the impact that that design team think they could have on road safety. It is not appropriate that the County Council is seeking so many opportunities to put undue pressure on the Applicant to carry out works where the Applicant has and maintains legal liability for the highway design.
- 6.2.5 Finally, the costs sought by the County Council are entirely rejected by the Applicant in all their guises. Furthermore, holding certificates to ransom to the

payment of these undefined, uncapped, uncosted and unknowable costs is unreasonable.

6.3 Applicant's response to SCC's Protective Provisions cover note (REP7-045)

Articles 13 and 14 and Requirement 13

- 6.3.1 The Applicant strongly objects to the County Council's proposed amendments to the DCO Articles 13 and 14 and Requirement 13 (as now numbered) of Schedule 2. The Applicant has set out in detail its objection to the County Council being a discharging authority for the DCO in its submission at 5.2 above.
- 6.3.2 The Applicant entirely objects to the definition of Completion being proposed by the County Council for Articles 13 and 14. This definition of Completion is dependent on not only a number of factors solely within the control of the County Council, but also on the issue of a certificate by them. The Applicant continues to submit that its definition of Completion as submitted at Deadline 7 should be preferred if that can be identified by the taking place of a number of events under the DCO rather than issue of a certificate by Council for which there is no process or timescale and, as there is no right of appeal against non-issue, where any dispute has to go to arbitration.
- 6.3.3 In response to the County Council's submission at 3.3 of its cover note, the Applicant notes the Council's submission that public rights of way should not be treated differently to other forms of highway. The Applicant is surprised to read this. The Applicant refers the Examining Authority to the Council's submission during the first set of hearings where the County Council has taken a different view stating that highways and PRoWs are subject to separate legal regimes and that highways power do not apply to PRoWs .
- 6.3.4 The Applicant maintains its position as submitted at Deadline 7 that protective provisions for particular highways and public rights of way are subject to different considerations, different regimes and different needs and should be addressed separately. The Applicant considers that the combining of the two is unhelpful and requires a level of provision of information and control over public rights of way which is inappropriate. The County Council has not fully addressed the various concerns already raised by the Applicant with regards to this at previous deadlines. The Applicant has suggested alternative drafting for the protection of the Council in so far as public rights of way are concerned at D7 and continues to submit that that is a more appropriate and proportionate way to deal with it than the confused and incomplete drafting proposed by the County Council.

3.4 Maintenance

- 6.3.5 The Council's suggestion that its drafting simplifies the maintenance issue is simply wrong. The Council has submitted that its drafting defines the Applicant's responsibilities by location and then later claims (in 3.9) that the Applicant's liabilities are also clearly defined in time. Both of these submissions are completely erroneous.

6.3.6 The Applicant's drafting not only transfers any statutory responsibility they have for the maintenance of their own highway to the Applicant without regard for anything agreed in the DLOA, it also does so for an unspecified, unlimited amount of time. This is because the maintenance is transferred unless and until the Final Certificate is issued by the County Council. As already set out, the issue of that final certificate is dependent on not only a number of matters in this sole control of the County Council, but also a number of matters which are completely inappropriate to the Applicant being requested or required to retain maintenance liability for local highways. Those matters include, worryingly, the payment of monies to the County Council. It is inappropriate and unreasonable that the County Council could hold the Applicant to ransom for payment of fees which the Applicant has already explained in detail the County Council is not legally entitled to demand.

3.5 Approvals

6.3.7 The Council suggests that its amendments to its drafting do not introduce a further approval process on top of that secured by Requirement 13 (previously 12). The Applicant suggests that this is entirely inaccurate and that the drafting of the protective provisions as submitted by the Council are very clear in their terms that further approvals from the County Council would be required. With reference to the version submitted where the SoS is the discharging authority, the Applicant would refer the ExA to paragraph 5(2) of the SCC draft which provides that the undertaker must not commence construction until approval has been given by the local highway authority. That is clearly an approval process. It is also clearly intended to operate as a suspensive, pre-commencement condition and therefore creates a secondary level approval of information outside of the requirements which is unnecessary and unreasonable.

3.7 Other works

6.3.8 The Council states that its position is that where works are identified in the recommendations of the safety audit, the Applicant should undertake these even if this requires changes to the environmental statement or a separate planning permission. The Applicant has explained repeatedly that the need to obtain any relevant planning permissions would not be a decisive factor in determining whether or not to take forward any works, rather these will be safety driven decisions.

6.3.9 The Applicant has explained repeatedly that the recommendations made in road safety audits are for the design team and the overseeing organisation to consider, they are not mandatory. The wording of the County Council's proposed protective provisions would result in those recommendations becoming mandatory by operation of the DCO contrary to the DMRB. The Applicant, its design team and its internal approval process acting as overseeing organisation (being the organisation legally liable for the design of the highway) would have no control over the determination of which works were to be carried out further to a road safety audit. This is not only contrary to the principals and practices of road safety audits, it is also unreasonable. To so fetter the Applicant's discretion in determining how to respond to a road safety audit where the Applicant is legally liable for the design is simply unreasonable and should not be permitted.

3.8 Access

6.3.10 The County Council continues to insist that for some unknown reason it would serve notice to inspect works every day. The Applicant has made clear, and again makes clear, that it is happy to allow a schedule or programme of inspections to be accommodated, provided that schedule or programme is given with at least two days' notice before it commences so that it can be ensured that the officers of the Council inspecting the site are properly inducted and the health and safety procedures are followed. The Applicant does not agree that this is an unreasonable request on its part. The Applicant strongly objects to the Council's unreasonable demand that any officer be given access to its construction site at any time without notice and with no requirement to adhere to the Applicant's health and safety procedures.

3.9 Defect liability period

6.3.11 As already set out above, the County Council's submission that its proposed drafting of 'maintenance' somehow provides more clarity in terms of the time for which the Applicant would be responsible for the maintenance of local highway is inaccurate. That is because there is no defined end period under the County Council's proposals. Rather than taking on maintenance in accordance with a DLOA during construction, as is the normal and common practice, the County Council are seeking to create a maintenance liability regime where the Applicant is responsible for the normal day to day maintenance of all of the local highways from day one of the project until the County Council is so inclined to issue a Final Certificate. That period is undefined and unlimited in the Council's drafting; it is also therefore unreasonable.

3.10 Indemnities

6.3.12 The County Council's submission on indemnities proceeds on a number of legal errors. As has already been set out, the terms of the Land Compensation Act 1973 are clear and the Applicant bears no liability under that act.

6.3.13 The County Council's submission that it would somehow complete the works either due to the undertaker failing to complete them or simply for practical purposes is predicated on a complete misunderstanding of the law. The DCO consent is personal to the undertaker unless the benefit of the Order is transferred to another person. As has previously been explained to the County Council, permitted development of rights do not apply to the DCO project as it an Environmental Impact Assessment (EIA) project. The carrying out of any part of a NSIP without the benefit of the consent given under the order is a criminal offence. The County Council simply could not carry out any of the works unless the undertaker transferred the benefit of the relevant parts of the order to them as the County Council has no consent to carry out DCO works. The Applicant has no intention of so transferring the benefit. The contention that the Applicant must therefore indemnify the County Council for a process it cannot legally undertake unless the consent to do so is transferred to it by the Applicant is entirely unsustainable.

6.4 Notes on drafting of the Protective Provisions by the Council based on the version where the Secretary of State is the discharging authority (REP7-046)

Definition of Provisional certificate

6.4.1 The definition of provisional certificate is objected to as it requires the County Council to issue a certificate that the Applicant's works are completed and ready for use by the public. The completion of the works and the ensuring that they are ready for use of the public is the responsibility of the Applicant. The County Council is seeking to have control over this project at a number of stages in an inappropriate manner.

Maintenance Period

6.4.2 The Applicant has already, in its response to the covering note for the protective provisions (REP7-045) at 6.3 above, objected to the extension of the maintenance period of the local highway in the terms suggested by the County Council. The Applicant further objects to the drafting of the definition of maintenance period in the suggested protective provisions. The drafting is essentially circular, maintenance ends on the completion of the authorised development or the issue of the Final Certificate, whichever is later, however the County Council has drafted completion to mean that the issue of the Final Certificate.

Paragraph 3 Detailed Design Consultation

6.4.3 The Applicant notes the removal of the caveat from its suggested wording on detailed design consultation. The wording proposed by the County Council now requires the Applicant to have reasonable regard to the views of the County Council's officer but does not include that it is the decision of the undertaker whether or not it implements any views expressed by the officer. This is yet another inappropriate attempt by the Council to have a level of control over design decisions which are the remit and legal responsibility of the Applicant not the County Council. The Applicant objects to this drafting and submits that its version is more appropriate.

Paragraph 4 Detailed Local Operating Agreement

6.4.4 The Applicant notes that there is a complete inconsistency in the County Council's drafting as regards to the DLOA. Paragraph 4 retains the Applicant's drafting that all reasonable endeavours must be used to try and agree a DLOA. Where that fails, it can be resolved by arbitration. The County Council have however included the DLOA in the other detailed information which must be approved by them under Requirement 5. This is logically inconsistent. If, having used all reasonable endeavours, the Applicant and the County Council cannot agree the DLOA and it goes to arbitration it is not then appropriate or reasonable for the Council to have to approve it under paragraph 5 or be able to refuse to approve it. These two paragraphs are logically inconsistent and poorly drafted.

6.4.5 Further, given that the very principal of a DLOA is an agreement it should not be a matter for approval by one of the parties to that agreement.

Paragraph 5 Detailed Design and Other Detailed Information Approval

6.4.6 As the Applicant has already set out, and contrary to the County Council's covering note this paragraph is very clearly an approval provision. The County Council clearly believe it to be an approval provision as they have titled it 'approval'. The Applicant objects in the strongest terms to the County Council creating a secondary layer of approvals under the protective provisions.

Paragraph 6 Inspection, Testing and Materials

6.4.7 Paragraph 6(1) would allow any officer of the County Council to enter any part of the construction site at any time regardless of whether the officer had been attended a health and safety induction or briefing. As noted in paragraph 5.3.6, the Applicant continues to object to this and notes that it does not consider that the creation of such an obligation would comply with the Construction, Design and Management Regulations. The County Council's drafting does not align with the health and safety requirements of running a major construction site and the Applicant does not consider them to be appropriate or reasonable.

Road Safety Audits

6.4.8 In paragraph 7(3) the County Council has drafted that the undertaker must carry out any works which the road safety audits identify. The Applicant submits that this is entirely inappropriate. The Applicant does not accept that it is reasonable, necessary, proportionate or proper for protective provisions to cut across its legal duties liabilities as the designer and overseeing organisation for the road scheme. The Applicant strongly objects to all of the County Council's proposed drafting on road safety audits.

Paragraph 8 Inspection of works

6.4.9 The Applicant notes the County Council has inserted a right for it to inspect and, by proxy, approve any works carried out on highways to which road safety audits do not apply. The Applicant objects to this drafting. The Applicant has already advised it will remedy any defects in works to public rights of way and has proposed protective provisions securing that and protecting the local highway authority. The County Council's drafting simply goes too far and while the drafting attempts to get around the previously objected to requirement to carry out any works demanded by the local highway authority, the result of this drafting is the same. The requirement that all works to be undertaken until the condition is to the reasonable satisfaction of local highway authority is in essence exactly the same provision to that which was previously objected to, that the Applicant would become bound to carry out any works which the local highway authority requested. That is not reasonable.

Paragraph 15 Defects

6.4.10 The Applicant objects to the County Council's proposed wording on defects. The effect of the County Council's drafting would be to create a defect liability period of unknown and undeterminable length. The defects liability period would continue unless and until the issue of the Final Certificate. The issue of that certificate is solely and completely in the hands of the local highway authority. The County Council's drafting therefore provides the Applicant with an unlimited, open ended liability which it cannot control and cannot programme for. This is not acceptable. The Applicant is a highways authority using public funds. The Applicant should not be required or obliged to maintain another highways authority's highway (for which that other highway authority is already funded) nor should it be required or obliged to remedy defects on that highway for an undefined and unlimited period of time.

Paragraph 17 Provisional Certificate

6.4.11 The County Council's drafting for a provisional certificate is predicated on the basis that the issue of the provisional certificate starts the defects liability period. This does not, however, align with the drafting of either the maintenance period or the defects liability period. Further, the particular drafting of this provision, in common with paragraph 7(3) discussed at 6.4.3 above, would oblige the Applicant to carry out any works identified in the stage 3 road safety audit. For the reason previously explained, that is entirely inappropriate.

6.4.12 The drafting of paragraph 17 also includes reference to completion which does not accord with the defined meaning of completion. The term as used in this paragraph relates to further works to address any safety deficiencies or defects. Safety deficiencies and defects are not defined. The local highway authority has to inspect and, in effect, approve the carrying out of the Applicant's works. This is yet another attempt to substitute the objected to wording of being required to carry out any works requested by the local highway authority.

6.4.13 Where the Applicant did not, for entirely proper and defensible reasons, wish to carry out works sought by the County Council, the County Council would have the ability to consider that these works were not complete to its satisfaction and to withhold issuing certificates. Once again, the drafting of these protective provisions would allow the County Council to hold the Applicant's development to ransom. That is not reasonable and it is not a proper planning purpose for these protective provisions.

Paragraph 18 Maintenance

6.4.14 The vague, unlimited and unacceptable maintenance period proposed by the County Council cuts across the need for any DLOA and is contrary to the normal arrangements and relationships between Highway Authorities. The drafting of this provision is objected to.

6.4.15 Firstly, paragraph 18(1) requires the Applicant to maintain the local highway within the order limits and the works to the satisfaction of the local highway authority. 'Maintain' is not defined, however, in its normal sense it would not

include undertaking substantial works to or digging up areas of the local highway. This drafting, therefore, directly conflicts with the purpose of a number of works. It is also not clear how the obligation to maintain would sit with the carrying out of works such as utility diversions which may be partly or almost all undertaken by the utility undertaker. In such circumstances, the Applicant intends to coordinate the works with its own works to ensure that these are carried out in the most sensible and practical manner, it is not clear how that would sit with the obligation to maintain the local highway which requires to be worked on or altered. The drafting, therefore, does not make sense.

6.4.16 Sub-paragraph (2) goes even further and requires that if the maintenance of local highway is not completed to the reasonable satisfaction of the local highway authority, the County Council can require the undertaker to carry out maintenance. There is no limitation on this, no definition and no explanation of how this would work in concert with the powers of temporary possession and the ongoing major works for the scheme. This is imprecise, vague and unlikely to be enforceable in any meaningful sense given that it is not sensible, practical, reasonable or proportionate to be required to maintain local highway which is occupied by the Applicant and due to be dug up in short course.

6.4.17 Further, the local highway authority's attempt to reserve to themselves the ability to carry out works and be indemnified for doing so is not lawful. Not only does the Applicant continue to object to the indemnification of the local highway authority, this provision does not sit with the DCO or the other protective provisions in any logical sense at all. This provision would mean that, at any time, the local highway authority could attempt to come onto land of which the Applicant has legal possession under the DCO to carry out maintenance to a highway on which major works may be due to start. It simply is not a sensible provision.

Paragraph 19 Final Certificate

6.4.18 The Applicant notes the reference in paragraph 19 to 'no earlier than 52 weeks', however, the drafting of the rest of this provision extends to the maintenance period from the 52 weeks which the Applicant has already agreed to, to an undefined, unlimited period controlled entirely by the County Council. That is not acceptable to the Applicant.

6.4.19 The Applicant objects to the drafting of 19(b). The drafting requires and obliges the Applicant to carry out any works that the local highway authority determine are required on the outcome of this stage 4 road safety audit. However, the legal liability for the design and the legal ability to determine what works to carry out in response to a road safety audit lies with the Applicant not the County Council. This provision suffers from the same flaw as that previously identified for road safety audit stage 3 where the Applicant is the body legally responsible as the design team as the overseeing organisation for the purposes of the road safety audit and the County Council is attempting to cut across that legal regime and be able to make all the decisions while taking none of the legal liability. It is not acceptable for the County Council to be able to require works contrary to the decisions of the

design team or the overseeing organisation who are responsible not only for the works but also the scheme and the legal liability for the design thereof.

- 6.4.20 The Applicant notes that the issue of the Final Certificate is dependent upon the payment to the County Council of the commuted sum under 19(d) and all costs, charges and expenses under 19(f). As previously set out the Applicant objects, in principle, to paying the County Council to undertake the roles it wishes to allocate to itself in this process. The Applicant notes that the County Council has no legal basis and has not submitted any claimed legal basis for it to require such payment.
- 6.4.21 The Applicant also objects to the issue of the Final Certificate being held to ransom by the Council against any fees, charges or expenses the Council deems are due to be paid. The Applicant notes that the County Council seeks payment of fees without any process, sum, calculation or term for that payment even being outlined in the draft. That is unfair, unreasonable and unacceptable.
- 6.4.22 The Applicant does not believe that the County Council or any sensible body would ever accept a legal obligation to pay unlimited, undefined sum of money on unknown terms and which is determined solely by another party and it is therefore unreasonable for the County Council to expect the Applicant to be bound by this.
- 6.4.23 This is exacerbated by the various submission on fees which have been made by the County Council at various times and provide no confidence that they have properly considered this in the context of the DCO. For example, the 8.5% of the total highway cost as an inspection fee quoted in the LIR is clearly disproportionate, the 0.1% of project costs quoted is unrelated to any actual work required (the Applicant understands that the 0.01% as stated in hearings is incorrect as advised by the Council as the end of the hearing however the Council has failed to correct the record of that in writing at D7), the contention put forward by the Council that they will serve notice of inspection every day – which is entirely unnecessary work they will then seek to be paid for – all mean that the Applicant has no confidence that costs sought would be fair and reasonable.

6.5 Costs and Expenses

- 6.5.1 The Applicant objects in the strongest terms to being required to indemnify the Local Authority for all costs, charges and expenses which the Highway Authority may incur. The local highway authority has, throughout this process, sought not only to take to itself rights of approval but to guarantee for itself various rights to participate, inspect, approve, sign-off on or otherwise agree various elements. The County Council now wishes to force the Applicant to pay for these things while having absolutely no legal basis whatsoever to require the Applicant to do so. Parliament did not impose a schedule of fees or charges for parties who are consultees to any part of a DCO process. There is no legal right for a Local Authority to require to be paid for the matters which it is insisting it must be allowed to do to fulfil its statutory role. It is not the Applicant's role to fund the activities of the Local Authority in a statutory capacity or to address any constraints in local authority funding and

it is not reasonable to expect the Applicant to use its public funds to address problems elsewhere in the public sector.

Paragraph 21 Commuted Sum and Non-Standard Highway Assets

- 6.5.2 The Applicant has no objection, in principle, to the definition of standard and non-standard assets or the calculation of the commuted sum. The Applicant does, however, object to the timing set out in this provision. The timing is the timing shown in the Applicant's draft. This has not been amended or adjusted to reflect the multiple stages of inspection and approval set out in the County Council's draft. It, therefore, does not align with the County Council's other proposals.
- 6.5.3 Under the County Council's drafting this payment could be due some time in advance of the Provisional Certificate being sought and considerably ahead of the Final Certificate. The drafting of the paragraph on the issue of the Final Certificate clearly envisages that the payment of the commuted sum would be closer to the stage at which the Final Certificate was to be issued. The payment of this several years in advance of that date which is, as the Applicant has already noted, undefined and unlimited, makes no sense. Given that the County Council's drafting forces all maintenance for all of its highway assets to stay with the Applicant until the issue of the Final Certificate, there is no need for these funds to be paid to the County Council so far in advance. The County Council will have no maintenance to undertake on which to expend such funds. Accordingly, to seek payment of the commuted sum within several months of approval of detailed design but to also seek to require the Applicant to undertake all maintenance for a period of some years is unreasonable.
- 6.5.4 The commuted sum should not require to be paid until closer to the time on which it is actually needed. Given that the County Council seeks (entirely unreasonably) to make the Applicant responsible for all maintenance until issue of the Final Certificate, there is no need for this payment to be made before the Applicant applies for the final certificate. The timing of the County Council's draft is therefore objected to.

6.6 Further comments on the County Council's version of the Protective Provisions where the Local Highway Authority is the Charging Authority (REP7-044)

- 6.6.1 The Applicant maintains all of the comments made on the other version of the protective provisions for this version. In addition, the Applicant makes the following further comments.

Detailed design and other detailed information approval

- 6.6.2 The Applicant notes that not only is the County Council seeking approval under Requirement 13 on these points, it is also seeking a further approval under the detailed design and other detailed information protective provision. That is created by the wording of sub-paragraph (2) which provides that the undertaker must not commence construction of the works to which the detailed design relates until approval has been given by a local highway

authority to the detailed design and the other detailed information. This is a second stage of approval. It is unnecessary, serves no useful purpose and should not be facilitated.

Costs and expenses

6.6.3 The Applicant notes that not only is the Council seeking to be reimbursed for all the time it is choosing to spend on the various matters that it is asking to be involved in, it is in discussion of protective provisions also seeking to be paid costs for the examination and approval of the detailed design. The Applicant does not consider that there is any basis on which to require it to be paid particularly not on an unspecified basis where discharge of conditions under planning permissions attract a fee of £116. Parliament did not set out, as it very easily could have done, any scale of charges or fees for any part in responding to anything under a DCO. There are no equivalent regulations for requirements for the payment of a fee for discharge of conditions applications.

Appendix 1 – Assessment of Scheme Compliance with NPSNN

Table A.1: A summary of compliance with the NPSNN tests

Planning Issue	Relevant NPSNN paragraphs	Assessment of Scheme against policy tests	Conclusion
NPSNN Chapter 4			
Good Design	4.28 – 4.35	The scheme subject to the DCO represented the culmination of a design process that started with 13 potential route options. The initial options were sifted in line with Transport Analysis Guidance before 4 options were subject to environmental scoping in line with DMRB. This resulted in 2 options being subject to economic, environmental and technical assessment and non-statutory consultation (February and March 2017) prior to the preferred route being identified in October 2017. This iterative design process allowed for the development of a sustainable scheme which would be sensitive to place, durable, adaptable, resilient and efficient in construction with a high aesthetic quality which seeks to minimise landscape and visual impacts.	Compliant with the NPSNN
Climate Change Adaptation	4.36 – 4.47	The scheme has been fully assessed from a climate change perspective. Chapter 13 of the ES (APP-050) details the proposed mitigation to increase the scheme’s resilience to climate change. These include design measures, such as using specific non-frost / heave susceptible layers to reduce the risk of the pavement expanding in the winter due to increased rainfall and shrinking in the summer due to reduced rainfall resulting in the pavement heaving. The ES found that, with appropriate mitigation in place, changes in climate would not have a significantly adverse effect on the scheme.	Compliant with the NPSNN
Pollution Control and Environmental Protection	4.48 – 4.56	The ExA and the SoS are required to focus on whether the development itself is an acceptable use of the land, and of the impacts of that use, rather than the control of processes, emissions or discharges themselves. The Applicant has engaged fully with the Environment Agency and Natural England and Statements of Common Ground with both parties with all matters agreed have been submitted to the Examination (REP5-014 and REP5-015 respectively).	Compliant with the NPSNN
Common law nuisance and statutory nuisance	4.57 – 4.59	The construction activities that have the potential to create a nuisance would be controlled through mitigation as prescribed in the Construction Environmental Management Plan (CEMP) (secured by Requirement 3 of the draft DCO Rev.0.5) and detailed within the Outline Environmental Management Plan (OEMP) (REP7-020) which will be a certified document under Article 43 of the draft DCO. The potential nuisance created through operational lighting would be reduced through the detailed design of the scheme, minimising the impact of road lighting through careful placement where such a system was deemed essential. The use of modern, controllable light sources with good cut-off properties, coupled with dynamic systems of operation, would reduce the effect of lighting on the surrounding environment.	Compliant with the NPSNN

Planning Issue	Relevant NPSNN paragraphs	Assessment of Scheme against policy tests	Conclusion
		With mitigation in place, none of the statutory nuisances identified in Section 79(1) of the Environmental Protection Act 1990 are predicted to arise.	
Safety	4.60 – 4.73	The Transport Report (document reference TR010036/APP/7.3) provides an analysis of accidents, using guidance from DfT (WebTAG), and concludes overall that the scheme will have a beneficial impact in terms of reducing accidents.	Compliant with the NPSNN
Security Considerations	4.74 – 4.78	No national security issues have been identified in developing the scheme. This was confirmed in the Statement of Common Ground with the Ministry of Defence (APP-161).	Compliant with the NPSNN
Health	4.79 – 4.82	Chapter 14 of the ES (APP-051) found that there would be a slight adverse combined effect of human health during construction, and no likely significant combined effects during operation.	Compliant with the NPSNN
NPSNN Chapter 5			
Air Quality	5.3 – 5.15	NPSNN paragraphs 5.10 – 5.13 provide the decision-making tests against which national network NSIPs should be assessed. It states that consent should only be refused if the residual impacts of the scheme result in non-compliance with the Air Quality Directive for a currently compliant zone or it will affect the ability of a non-compliant area to achieve compliance within the most recently reported timescales to the European Commission at the time of the decision. The ES (Chapter 5, APP-042) confirms that the scheme will not have a significant adverse impact on air quality nor would it result in non-compliance with an Air Quality Directive.	Compliant with the NPSNN
Carbon Emissions	5.16 – 5.19	Paragraph 5.17 confirms that it is very unlikely that the impact of a road project in isolation will affect the Government's ability to meet its carbon reduction plan targets. NPSNN paragraph 5.18 provides the decision-making tests against which national network NSIPs should be assessed. It states that an increase in carbon emissions is not a reason to refuse development consent unless the increase is so significant that it would have a material impact on the Government's ability to meet its targets. The ES (Chapter 13, APP-050) confirms that the effects on carbon are anticipated to be Not Significant during construction and operation.	Compliant with the NPSNN
Biodiversity & Ecological Conservation	5.20 – 5.38	NPSNN paragraphs 5.24 – 5.35 provide the decision-making tests against which national network NSIPs should be assessed. In summary, these require that NSIPs should avoid significant harm to biodiversity and geological conservation interests, including through mitigation and consideration of reasonable alternatives, and where significant harm cannot be avoided or mitigated, as a last resort, appropriate compensation measures should be sought. The NPSNN (para. 5.26) requires the SoS to ensure that appropriate weight is attached to	Compliant with the NPSNN

Planning Issue	Relevant NPSNN paragraphs	Assessment of Scheme against policy tests	Conclusion
		<p>designated sites of international, national and local importance, protected species, habitats and other species of principal importance for the conservation of biodiversity, and to biodiversity and geological interests within the wider environment.</p> <p>The ES (Chapter 8, APP-045) confirms that the effects of the scheme are anticipated to be minor adverse during construction and operation. As such, the scheme will not have result in any significant harm to biodiversity and geological conservation interests. In addition, as a result of the Environmental Masterplan submitted at Deadline 7 (REP7-030), the scheme will result in an overall change of 100.98 biodiversity units which represents a 23% from the existing baseline – a significant biodiversity net gain.</p>	
Waste Management	5.39 – 5.45	<p>NPSNN paragraphs 5.43 – 5.45 require the SoS to be satisfied that the scheme incorporate processes for the effective management of hazardous and non-hazardous waste arising from the construction and operation of the development.</p> <p>ES Chapter 10 (APP-047) sets out the proposed mitigation measures to reduce the impact of the use of materials and waste management for the scheme. These include inter alia reducing the length of pipes and making use of surface water channels, sourcing acoustic barriers from sustainable materials, re-using existing signs, chipping green waste on-site to be used in the landscaping, maximizing the use of pre-fabricated units or bridge deck slabs in construction and storing excavated materials and re-using them as fill or landscaping materials. These measures will reduce the amount of waste produced on site and to be disposed of, and are set out in the Outline Site Waste Management Plan annexed to the OEMP (REP7-020) which will be a certified document under DCO Article 43.</p> <p>The ES concluded that there would not be significant impacts from the use of material resources and the generation and management of waste as a result of the construction of the scheme.</p>	Compliant with the NPSNN
Civil and military aviation and Defence interests	5.46 – 5.66	<p>NPSNN paragraphs 5.59 – 5.62 provide the decision-making tests against which national network NSIPs should be assessed. The SoS should not grant development consent for a scheme which (following appropriate mitigation) would prevent a licensed aerodrome from maintaining its license; would result in harm to aerodromes serving business, training or emergency service needs that outweighs the schemes benefits; or would significantly impede or compromise the safe and effective use of defence assets or significantly limit military training.</p> <p>The Applicant has entered into a Statement of Common Ground with the Ministry of Defence (APP-161) which confirms that the scheme will not have an adverse impact on RNAS Yeovilton.</p>	Compliant with the NPSNN
Coastal Change	5.67 - 5.80	Not applicable to A303 Sparkford to Ilchester as scheme is not located in a Coastal Change Management Area.	Not applicable to scheme.

Planning Issue	Relevant NPSNN paragraphs	Assessment of Scheme against policy tests	Conclusion
Dust, odour, artificial light, smoke, steam	5.81 – 5.89	<p>NPSNN paragraphs 5.87 – 5.88 provide the decision-making tests against which national network NSIPs should be assessed. The SoS should be satisfied that all reasonable steps have been taken, and will be taken, to minimise impact on amenity from dust, odour, steam, smoke and artificial light.</p> <p>The ES (Chapters 5 - APP-042 and 8 – APP-045) confirm that the scheme’s effects on amenity and habitat from dust, odour, steam, smoke and artificial light will not be significant subject to the mitigation measures included in the CEMP and OEMP.</p>	Compliant with the NPSNN
Flood Risk	5.90 – 5.115	<p>NPSNN paragraphs 5.98 – 5.109 provide the decision-making tests against which national network NSIPs should be assessed.</p> <p>The existing and proposed A303 alignment are wholly located outside flood zones 2 and 3. The Flood Risk Assessment (APP-059) concludes that the scheme passes the sequential test.</p>	Compliant with the NPSNN
Land Instability	5.116 – 5.118	Not applicable to A303 Sparkford to Ilchester scheme.	Not applicable to scheme.
The Historic Environment	5.120 – 5.142	<p>NPSNN paragraphs 5.128 – 5.138 provide the decision-making tests against which national network NSIPs should be assessed. The SoS is required to consider the impact of a development on heritage assets by taking into account the desirability of sustaining the asset, how the development could positively contribute to the character and local distinctiveness of the historic environment, and the significance of any assets affected. Any harmful impact on the significance of a designated heritage asset should be weighed against the public benefit of development. Development schemes that result in substantial harm or the total loss of a designated heritage asset should be refused consent unless the substantial benefits of the scheme outweigh the loss.</p> <p>The submitted ES (Chapter 6 – APP-043) identified the potential for harm to a small number of heritage assets, including the permanent loss of approximately 14% of the Hazlegrove House Registered Park & Garden. The applicant has worked closely with Historic England to agree appropriate mitigation for this impact and an agreed Statement of Common Ground will be submitted at Deadline 8 to confirm the approach that has been agreed. Importantly, Historic England do not have any in principle objection to the proposed scheme. The scheme was designed to minimise effects on cultural heritage, and mitigation measures have been identified both prior to and during the Examination to further reduce effects on cultural heritage during both construction and operation.</p> <p>Whilst the scheme will result in an overall moderate adverse effect, it is considered that this is outweighed by the significant public benefit that the scheme provides, in terms of increasing</p>	Compliant with the NPSNN

Planning Issue	Relevant NPSNN paragraphs	Assessment of Scheme against policy tests	Conclusion
		capacity, reducing congestion, improving journey time reliability and improved safety, and what this helps to achieve in terms of economic growth and tourism.	
Landscape & Visual Impacts	5.143 – 5.161	<p>NPSNN paragraphs 5.149 – 5.159 provide the decision-making tests against which national network NSIPs should be assessed. For schemes which fall outside of any nationally designated areas, the SoS should consider whether the scheme has been carefully designed, avoids or mitigates adverse effects on the landscape and that the benefits of the scheme outweigh any local visual impact. The NPSNN states that local landscape designations should not be used in themselves as reasons to refuse consent.</p> <p>The submitted ES (Chapter 7 – APP-044) identified that the overall impact of the scheme on landscape and visual impact would not be significantly adverse. There are no nationally designated landscapes within 1km of the proposed scheme. Of the 7 local Landscape Character Areas identified, only 2 would experience significant adverse effects during construction and this would only be for a temporary period. Of the 44 visual impact receptors identified within the study area, 16 receptors would experience significant effects during construction, and these would be temporary with no visual receptors experiencing significant effects in Year 15. Positive effects as a result of the scheme are predicted for 12 visual receptors.</p>	Compliant with the NPSNN
Land use including open space, green infrastructure and Green Belt	5.162 – 5.185	<p>NPSNN paragraphs 5.173 – 5.178 provide the decision-making tests against which national network NSIPs should be assessed. The SoS should not grant consent for development on existing open space, sports and recreational buildings and land, including playing fields, unless an assessment has been undertaken either by the local authority or independently, which has shown the open space or the buildings and land to be surplus to requirements, or the SoS determines that the benefits of the project (including need) outweigh the potential loss. Networks of green infrastructure identified in development plans should normally be protected from development as should the best and most versatile agricultural land (Grades 1, 2 and 3a).</p> <p>The proposed scheme is not located in the Green Belt nor does not require the development of public open space or sports and recreational land. Chapter 12 of the submitted ES (APP-049) assessed the scheme's impacts on People and Communities and focused on NMUs, amenity, driver stress, view from the road land use, community and development land, community facilities, local economy and agricultural land. In overall terms, the impacts of the scheme are predicted to be beneficial.</p> <p>The ES found that during construction, the scheme would result in:</p>	Compliant with the NPSNN

Planning Issue	Relevant NPSNN paragraphs	Assessment of Scheme against policy tests	Conclusion
		<ul style="list-style-type: none"> • effects ranging from slight adverse not significant to moderate adverse and significant during construction as a result of permanent and temporary land take of property and agricultural land holdings; • slight beneficial not significant effect on the economy through local job creation; and • slight adverse not significant effects for NMUs and for severance and health <p>During operation, however, the ES found that the scheme would result in moderate beneficial and significant effects for:</p> <ul style="list-style-type: none"> • driver stress arising from improved flows and speeds during peak periods both on the A303 and local road network; • amenity through provision of safer crossings and changes in traffic flows for journeys where NMUs cross or are alongside the road network; and • relief from congestion on the local road network and improved access to Hazlegrove Preparatory School. <p>A Slight Beneficial and not significant effect was also anticipated on NMUs during operation with permanent changes to journey length and times, for human health as new NMU facilities could have a positive role in preventing obesity and improve the physical activity of NMUs, and for indirect employment opportunities.</p>	
Noise and Vibration	5.186 – 5.200	<p>NPSNN paragraphs 5.193 – 5.196 provide the decision-making tests against which national network NSIPs should be assessed. The SoS should not grant consent unless satisfied that the proposal will meet the following aims:</p> <ul style="list-style-type: none"> • avoid significant adverse impacts on health and quality of life from noise as a result of the new development; • mitigate and minimise other adverse impacts on health and quality of life from noise from the new development; and • contribute to improvements to health and quality of life through the effective management and control of noise, where possible. <p>The ES (Chapter 11 – APP-048) presents the results of the assessment of temporary and permanent noise and vibration impacts using standard methodologies and assessment criteria. The assessment was informed by the National Planning Policy Framework (NPPF) and the National Policy Statement for England (NPSE). The assessment of construction noise showed that:</p> <ul style="list-style-type: none"> • Linear road works and construction of site compounds would only produce potentially significant adverse if they extend beyond a period of 10 or more days of working in any 	Compliant with the NPSNN

Planning Issue	Relevant NPSNN paragraphs	Assessment of Scheme against policy tests	Conclusion
		<p>15 consecutive days or for a total number of days exceeding 40 in any 6 consecutive months. Mitigation measures would be employed to eliminate these effects.</p> <ul style="list-style-type: none"> • Overbridge and underbridge construction would not produce significant adverse effects as there are no nearby sensitive receptors. • Temporary haul routes would not produce significant adverse effects. • Operation of site compounds would not produce significant adverse effects in the daytime or night time. <p>The assessment of construction vibration presented in the ES shows:</p> <ul style="list-style-type: none"> • Piling would produce a significant adverse effect at 1 receptor if it took place over a prolonged period; • Other construction activity would not produce significant adverse effects. • With the specified construction works duration limits, no significant adverse effects will arise due to construction noise or vibration and the scheme therefore meets the aims of NPSE and NPPF. <p>The operational noise assessment presented in the ES shows that:</p> <ul style="list-style-type: none"> • additional compensation in the form of secondary glazing must be offered to the owners of 2 properties. • all other receptors may be subject to minor or moderate increases in the short-term and minor increases in the long-term but none of these are considered to be significant. • the scheme will meet the operational noise aims of the NPSE and NPPF. 	
Impact on Transport Networks	5.201 – 5.218	<p>NPSNN paragraphs 5.211 – 5.214 provide the decision-making tests against which national network NSIPs should be assessed. The SoS is required to consider schemes in the light of relevant local policies and local plans, however the scheme must be decided in accordance with the NPSNN except to the extent that one or more of sub-sections 104(4) to 104(8) of the Planning Act 2008 applies.</p> <p>The scheme is in accordance with the local development plan and will deliver significant benefits to the transport network through reduced congestion, improved journey times and reliability, reduced community severance, and improved safety for NMUs. The Traffic Management Plan (annexed to the OEMP – certified under Article 43) will be implemented during the construction phase to minimise the effects for those travelling along the route, and those delivering the construction works.</p>	Compliant with the NPSNN

Planning Issue	Relevant NPSNN paragraphs	Assessment of Scheme against policy tests	Conclusion
Water Quality and Resources	5.219 – 5.231	A Road Drainage and Water Environment chapter was scoped out of the ES as it was considered unlikely that there would be any significant effects on road drainage and the water environment as a result of the scheme, and there would be no direct impacts on waterbodies due to the location of the scheme.	Compliant with the NPSNN

Appendix 2 – Detailed assessment of need for traffic calming

In relation to West Camel:

Capacity: Parsonage Road in West Camel is forecast to have an increase of 300 vehicles per day (vpd) (AADT) by 2038 as a result of the scheme compared with the base year. The traffic in future years would reduce without the scheme due to the difficulty of using the junctions on the A303 with Howell Hill and Plowage Lane (not Parsonage Lane). Therefore, the forecast increase of 600 vpd referenced in the LIR (REP2-019) compares the 'without scheme' and 'with scheme' traffic forecast in 2038, although the 'with scheme' traffic level is only 300 vpd higher than the base year level. In terms of capacity, the cross-roads between Parsonage Road and West Camel Road is forecast to perform within capacity in all future scenarios, as detailed in Tables 7.1 and 7.2 of the Transport Report (APP-150).

Safety: The safety implications were assessed using COBALT as described in Chapters 13 and 14 of the ComMA Report (APP-151). Due to the lack of any accidents on any of the roads through West Camel (Parsonage Road, Plowage Lane, Keep Street, Fore Street and Howell Hill) in the recorded 5-year period, there are no forecast accident implications on the roads themselves. There were two slight accidents recorded at the cross-roads with Parsonage Road and West Camel Road, at which junction the accident implications were considered to be slight adverse. There was also 1 slight accident recorded at the junction between Howell Hill and the A303, at which location the accident implications of the scheme are slight beneficial as this junction will be superseded with the proposed grade separated junction. Maps showing the accidents recorded in the 5-year observation period and the COBALT results can be found in the Transport Report (APP-150) Figures 9.1 and 9.3 respectively. Although there were only two slight accidents at West Camel crossroads in the 5 year period used for accident analysis, there have been more accidents recorded in recent years - 7 in the 5-year period 2014-2018 - meaning that the crossroads is now a cluster point. This existing problem has been recognised by Somerset County Council who stated during the recent hearings that they will be seeking to address the safety issue.

Environment (air quality): The impact at receptors in West Camel is also considered to be not significant. This is because the predicted change in traffic flows through West Camel is below the criteria for an assessment of air quality, as set out in DMRB guidance. Therefore, the change in traffic would not be sufficient to result in a significant change in pollutant concentrations. Nonetheless, one receptor in West Camel (on Plowage Lane, "The Hollies") has been modelled due to the close proximity of the receptor to the new scheme alignment. This receptor is predicted to experience an improvement in air quality as a result of the scheme due to the change in alignment of the A303 (the A303 moves further away from the receptor).

Environment (noise): Chapter 11 Noise and Vibration of the ES (APP-042) sets out the assessment of noise and vibration associated with the scheme. No significant adverse effects are expected for West Camel as the combination of noise level for the Do-something scenarios and the noise increases from Do-minimum to Do-Something scenarios are insufficient to reach the criteria for significance set out in paragraphs 11.4.36 and 11.4.37 of Chapter 11 Noise and Vibration of the ES (APP-042) except for the 11 receptors that are individually listed in Table 11.39. For these 11 receptors, Table 11.39 sets out the reasons why noise changes are not considered to be significant for all but 2 receptors – Annis Hill Farm and the Spinney. Within West Camel, Howell Hill, Fore Street, Keep Street and Plowage Lane have AAWT flows below the CRTN minimum criterion of 1000 vehicles/18h and have therefore been excluded from the noise model. Flows for Parsonage Road show that the noise increases by 0.6dB in the short-term (do minimum opening year to do something opening year) and by 1.4dB in the long-term (do minimum opening year to do something design year). In both cases these increases are classified by DMRB as negligible.

In relation to Sparkford:

Capacity: The junction between Sparkford High Street and The Avenue is forecast to perform within capacity in all future scenarios, as detailed in Tables 7.1 and 7.3 of the Transport Report (APP-150).

Safety: The safety implications were assessed using COBALT as described in Chapters 13 and 14 of the ComMA Report (APP-151). Due to the lack of any accidents in the recorded 5-year period, there is no forecast accident implication on the High Street itself. There were 2 slight accidents recorded at the junction between Sparkford High Street and the Avenue, at which junction the accident implications are considered to be slight adverse and therefore insufficient to warrant traffic calming measures. There were 9 accidents (some slight and some serious) recorded at Hazlegrove Roundabout, at which location the accident implications of the scheme are significantly beneficial. Maps showing the accidents recorded in the 5-year observation period and the COBALT results can be found in Figures 9.1 and 9.3 respectively of the Transport Report (APP-150).

Environment (air quality): Chapter 5 Air Quality of the ES (APP-042) outlines the assessment undertaken to assess the air quality impact during operation of the scheme at the worst affected receptors. This includes consideration of the impact at Hazel Grove Lodge on Sparkford High Street. The assessment concludes that concentrations of PM10 and NO2 at these human health receptors are expected to be well below the level required by the respective air quality objectives. The predicted effects from the operation of the scheme on local air quality are therefore concluded to be not significant so no mitigation measures are required.

Environment (noise): Chapter 11 Noise and Vibration of the ES (APP-042) sets out the assessment of noise and vibration associated with the scheme. No significant

adverse effects are expected for Sparkford as the combination of noise level for the Do-something scenarios and the noise increases from Do-minimum to Do-Something scenarios are insufficient to reach the criteria for significance set out in paragraphs 11.4.36 and 11.4.37 of Chapter 11 Noise and Vibration (APP-042) except for 23 receptors on Sparkford Road, High Street and Hanyton Close. The maximum increase for any of these receptors in the opening year is 1.3dB which is towards the bottom end of the minor increase classification band (1.0 to 2.9dB). For all 23 receptors, the noise increase in the long-term is negligible and there are no major changes in acoustic character. The noise impact is therefore considered not to be significant.