

M5 Junction 10 Improvements Scheme

Applicant written summaries of oral case for
Issue Specific Hearing 2 (ISH2)
TR010063 – APP 9.32

Regulation 5 (2) (q)

✓ Planning Act 2008

Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations
2009

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M5 Junction 10 Improvements Scheme Development Consent Order 202[x]

Applicant Written Submission of Oral Case for Issue Specific Hearing 2 (ISH2)

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1. Introduction

- 1.1.1. The purpose of this document is to set out the Applicant's written summary of the oral case for Issue Specific Hearing 2 (ISH2) held on Thursday 6 June 2024 in Cheltenham and virtually via Microsoft Teams.
- 1.1.1. This document does not propose to summarise the oral summaries of parties other than the Applicant, summaries of oral submissions made by other parties are only included where necessary in order to give context to the Applicant's summary.
- 1.1.2. Where the Examining Authority requested further information from the Applicant on particular matters, or the Applicant undertook to provide further information during the Hearing, the Applicant's response is set out.
- 1.1.3. This document follows the order of the Agenda published by the Examining Authority on Tuesday 28 May 2024.
- 1.1.4. For defined terms and abbreviations, please refer to Section 14 of the Introduction to the Application (APP-001).

2. Item 1 - Welcome, introductions and arrangements for the Hearing

2.1.1. Gary Soloman of Burges Salmon confirmed that he represents the Applicant and introduced the following members of the Applicant's project team, who would speak as required on the agenda items:

- Douglas Haycock, Solicitor, Burges Salmon; and
- Colin Cartwright, Environment Lead, AtkinsRéalis.

3. Item 2 - The Draft DCO

- 3.1.1. The Examining Authority asked the Applicant to provide an explanation of the approach taken to the draft DCO (“dDCO”) and a brief overview of the Articles.
- 3.1.2. The Applicant explained that the dDCO takes the form of a Statutory Instrument which, if made, authorises an NSIP under the Planning Act 2008. It is a legal requirement that a project which is an NSIP requires a DCO. The M5 Junction 10 Scheme is an NSIP which includes 3 elements that were discussed at ISH1. The dDCO is essentially a planning permission for the Scheme and includes controls to ensure the project is carried out within clear parameters. It is more detailed than a planning permission and sets out powers and consents to ensure the project can be built, operated and maintained. It also includes powers to acquire land and rights. The dDCO follows a conventional format and is based on the model order contained in the (now repealed) Infrastructure Planning (Model Provision) Statutory Instrument as well as other DCOs. The current dDCO is dated March 2024. The front end of the dDCO contains articles which authorise the development, grant the powers necessary to deliver it, and set the parameters for the development.
- 3.1.3. The Applicant explained that there are 47 articles split into seven parts:
- **Part 1** contains definitions and interpretations, including disapplication of certain statutory provisions.
 - **Part 2** contains the principal powers:
 - Article 5 grants development consent for the authorised development (Schedule 1 - there are 35 elements of works which are listed and required by the order).
 - Article 8 provides limits of deviation of the project (i.e. the maximum extent of the boundaries of the project).
 - Articles 9 and 10 confirm that the powers granted under the DCO are for the benefit of Gloucestershire County Council as undertaker, except where consent is granted for express benefit of others (for example in relation to statutory utilities), there is also the ability for the undertaker to transfer the benefit of the order with the consent of the Secretary of State, save in relation to a number of works where consent of the Secretary of State is not required.
 - **Part 3** deals with Streets:
 - Article 11 allows the undertaker to enter into streets and execute works.
 - Article 13 requires that streets constructed under the order that become public highways and are maintained by Highway Authority.
 - Articles 15 and 16 allow for the stopping up or diversion of streets, either temporarily or permanently for the authorised development to be carried out (permanent stopping up or diversion are set out in schedule 4).
 - Article 16 also covers the stopping up of private means of access and the provision of replacement access.
 - **Part 4** contains supplemental powers.
 - **Part 5** contains powers of acquisition:
 - Article 21 to 35 allows Gloucestershire County Council as undertaker to compulsorily acquire land permanently, or acquire rights over land, or create new rights, or take temporary possession of land in order to deliver the Scheme. The different powers of acquisition are shown in different colours on the land plans powers to compulsorily acquire land permanently (pink), land subject to acquisition of permanent rights and temporary possession (blue), land subject to temporary possession only (green). There is no special category land in the order.
 - Article 23 provides that any acquisition pursuant to the DCO must be undertaken within 5 years of making the order.
 - **Part 6** deals with operations which are permitted:

- Articles 36 and 37 relate to the management of trees and hedgerows, and allow for cutting back or removal insofar as that's necessary (the trees identified are in Schedule 8).
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- **Part 7** provides miscellaneous and general provisions, for example:
 - Article 41 provides a defence where statutory nuisance arises as a result of the authorised development which cannot reasonably be avoided.
 - Article 46 provides that any differences under the DCO are to be resolved by arbitration.
 - Article 47, which is a new Article in the dDCO, deals with inconsistent planning permissions.

3.1.4. The Applicant explained that there are a number of Schedules to the dDCO:

- **Schedule 1** describes the authorised development by listing and describing the proposed works which will be authorised by the DCO.
- **Schedule 2** deals with requirements. Part 1 contains the requirements themselves, which regulate how the development must be carried out. Part 2 contains the mechanism for how the requirements are discharged. The main requirements are:
 - Requirement 2, which provides the 5 year implementation time limit on the of the authorised developments which must commence within 5 years of the order coming into force, requirement 3 relates to the Environmental Management Plan (“EMP”), it requires that the EMP 2nd iteration is prepared to align with the 1st iteration which was contained within the application documents, it incorporates the measures and commitments from the ES the REAC and needs to include another number of other specified management plans which will be certified as part of application. The requirement is that the 2nd iteration must be prepared in consultation with the local planning authorities and National Highways, as currently drafted it needs approval of all of the county planning authority and the development must be constructed in accordance with the EMP 2nd iteration. Once completed there is a 3rd iteration EMP that must be prepared and approved, and the authorised development must be operated and maintained in relation to that.
 - Requirements 5 to 10 regulate the development, for example:
 - Requirements 5 to 6 require landscaping works to be approved, implemented and maintained.
 - Requirements 8 to 10 deal with protection against contamination and protected species respectively.
 - Requirement 11 deals with detailed design and provides that the detailed design must follow the works plans, General Arrangement plans, EMPs and engineering section drawings, it is currently drafted that any departure must be agreed with County Planning Authority in consultation with the Local Planning Authority, and National Highways where related to the SRN and only where there won't be any materially new or materially worse environmental effects to those already assessed in the ES as currently drafted.
 - Requirement 17 deals with the procedure for discharging requirements and how the discharging authority (currently specified to be the County Planning Authority) should deal with the application. Schedules 3 and 4 deal with matters relating to speed limits, traffic regulation, stopping up of highways and public rights of way. Schedules 5 and 6 identify the land over which new rights are to be acquired, and the reasons for such acquisition, as well as the land over which temporary possession is to be taken.
- **Schedule 9** contains protective provisions, Part 1 deals with protective provisions in relation to gas, water and sewerage undertakers, Part 2 deals with protective

provisions in relation to electronic code system operators and Part 3 deals with protective provisions in relation to National Highways.

- 3.1.5. In response to National Highways comments regarding Work Numbers, the Applicant confirmed that the issues will be resolved in the next iteration of the dDCO.

Relevant reference	Agenda item	Written Summary of Oral Submissions
Part 1 - Preliminary		
(i) Article 2 - Interpretation		
Additional query	<p>The Examining Authority raised a query regarding the definition of Authorised Development and the wording “and any other development authorised by this Order which is development within the meaning of section 32”. The Examining Authority asked whether this wording was necessary, and what wording was not covered in Schedule 1 which it is seeking to allow.</p>	<p>The Applicant confirmed that it will respond to the Examining Authority in writing.</p>
<p>Response to Action Point 2: The ExA requested clarification on the definition of “authorised development” as set out in Article 2 of the dDCO.</p> <p>Having revisited the dDCO, whilst the above definition ensures that the dDCO captures all development authorised by the Order whether or not it falls within Schedule 1, there are no apparent works of development which would fall outwith Schedule 1 and therefore the wording shown deleted below is unnecessary. This mirrors the approach taken in the recent M3, Junction 9 Order 2024.</p> <p>Proposed amendment: “authorised development” means the development and associated development described in Schedule 1 (authorised development) or any part of it and any other development authorised by this Order which is development within the meaning of section 32 (meaning of “development”) of the 2008 Act;</p>		
First bullet	<p>The justification for the definition of commence and the inclusion of preconstruction and ecological works.</p>	<p>The Applicant confirmed that the list of activities within the definition of “commence” is a standard list which varies slightly from DCO to DCO, but it is not unusual. The works are designed to be minor works which are unlikely to have significant effect and are therefore ordinarily included.</p> <p>In response to a follow up question about the meaning of “and provision of access points”, the Applicant confirmed that the definition refers to access points for construction compounds.</p> <p>In response to National Highways’ comments about pre-construction ecological mitigation works and their request for a breakdown of those works, the Applicant confirmed that these works are intended to capture works for a range of ecological measures including walkover surveys, limited vegetation</p>

Relevant reference	Agenda item	Written Summary of Oral Submissions
		clearance and other works designed to be minor in nature. The Applicant is aware of National Highway’s query regarding works in the SRN and noted that the side agreement which is currently ongoing between the Applicant and National Highways will deal with the works in detail.
Second bullet	Whether reference to the County Planning Authority should be added.	The Applicant confirmed that the term County Planning Authority appears only in Schedule 2 and is defined in Paragraph 1 of Schedule 2.
(ii) Article 3 - Disapplication of legislative provisions		
First bullet	The justification for Article 3(1)(a) of the draft DCO which seeks to disapply section 23 of the Land Drainage Act 1991.	The Examining Authority noted that the Explanatory Memorandum refers to the internal drainage board and relevant drainage board and asked whether there are any internal drainage boards or other drainage boards in the area. The Applicant confirmed that it is not aware of any, but the clause has been drafted cautiously to capture any organisation. It is standard drafting.
Second bullet	The progress of discussions between the Applicant and the drainage authorities.	The Applicant confirmed that it has requested consent from Gloucestershire County Council as the local lead local drainage authority and it will provide an update at Deadline 1.
	<p>Response to Action Point 3: The ExA requested confirmation of the roles and approvals required in relation to Articles 3 and 18 of the dDCO, and section 23 of the Land Drainage Act 1991. Confirmation required that Gloucestershire County Council is the lead local flood authority and able to grant section 23 dispensation.</p> <p>As explained in the Applicant’s Explanatory Memorandum (EM), Article 3 provides for the disapplication in relation to the authorised development of certain requirements which would otherwise apply under specific legislation. The Article seeks to disapply section 23 of the Land Drainage Act 1923 (which would allow obstructions in watercourses without obtaining a separate consent from the lead local flood authority), section 80 of the Building Act 1984 (which would avoid the need to serve a notice of the local planning authority in relation to any proposed demolition works) and the provisions of the Neighbourhood Planning Act 2017 (in so far as this relates to the temporary possession of land).</p> <p>The justification for these exclusions is generally to reduce the number of consents which are needed alongside a DCO. The approach is permitted under section 120(5) of the Planning Act 2008 and is a standard approach.</p> <p>In terms of Section 23 Land Drainage Act 1991, in so far as this is relevant to the authorised development, this prevents the erection of any mill dam, weir or other like obstruction or any culvert in an ordinary watercourse without the written consent of the drainage board. It is likely that works</p>	

Relevant reference	Agenda item	Written Summary of Oral Submissions
	<p>in watercourses will be required which may cause obstructions which is why this section is being disapplied. In order to disapply it, it needs the consent of the lead local flood authority, Gloucestershire County Council (as it is a prescribed consent under Paragraph 1 of Schedule 2 to the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015). That consent has been and that has been requested. We will provide an update once this has been progressed. It should be noted that where other consents may be required, for example from the Environment Agency, these will need to be obtained as required. A list of possible consents are contained in Appendix C to this note.</p> <p>Confirmation was requested from the ExA that GCC is the lead local flood authority for the purposes of the Land Drainage Act and the body from which consent to disapply section 23 is required. We are informed that the LLFA are content in principle with this disapplication provided that certain consultation requirements are met and the Applicant is engaging with the LLFA to reach further agreement in this regard.</p> <p>The reason to disapply section 80 of the Building Act 1980 is to avoid the need for separate notice should demolition works be intended. This is not a disapplication which needs the prior consent of the local planning authority / building control. This disapplication appears in the A417 Missing Link Order 2022.</p> <p>The provisions of the Neighbourhood Planning Act 2017 relating to temporary possession of land are not yet in force but, should they be brought into force during the lifetime of the Order, could conflict with the temporary possession arrangements in the dDCO and therefore are being disapplied on a precautionary basis. These provisions have been disapplied in the A417 Missing Link Order 2022 and the M3, Junction 9 Order 2024.</p> <p>Article 18 allows the undertaker to use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out, maintenance or use of the authorised development and allows pipes to be laid etc and connections with watercourses, drains or sewers. However, any such discharge must be with the consent of the landowner or body authorised to give consent. The body authorised will depend whether it is a drain, public sewer or watercourse which is being discharged into or being opened. Article 18 does not seek to disapply any necessary consents. Article 18 is dealing with a different issue to Article 3 (which essentially is dealing with obstructions in watercourses). Article 18 is a standard provision in a DCO and is justified as it provides a necessary power to discharge water where required in order to deliver, maintain and use the authorised development.</p>	
Part 2 – Principal Powers		
(i) Article 5(2) Development Consent etc.		
First bullet	The justification for Article 5(2) of the dDCO and the extent of 'adjacent	The Applicant confirmed that Article 20 doesn't make reference to "adjacent" but provides the power for the undertaker to enter land within the order limits or which may be affected by the authorised development (a wider basis than

Relevant reference	Agenda item	Written Summary of Oral Submissions
	<p>Response to Action Point 4: The ExA requested an explanation of and justification for the term “adjacent” in Articles 5(2) and Article 20 of the dDCO.</p> <p>Article 5(1) is the principal power granting development consent for the authorised development within the Order limits. Article 5(2) provides that any enactment which applies to the land within the Order limits has the effect subject to the Order. Essentially, the dDCO provisions will ‘trump’ any law applicable to the land which is inconsistent with the provisions of the Order. This is necessary to ensure that other legislation, such as local acts or bylaws, will not compromise or prevent the authorised development being carried out. It is precautionary provision found in a number of other DCOs (as per the Explanatory Memorandum but also including A417 Missing Link Order 2022 and M3, Junction 9 Order 2024).</p> <p>Article 5 not only excludes land within the Order limits from the effect of other legislation but also land ‘adjacent’ to the Order land, that is to say land close or near to the land included within the dDCO. The reason for this is to ensure that any powers contained in the dDCO but which extend outwith the Order limits are also not compromised by other legislation. Examples include Article 15 (which allows the undertaker to temporarily stop up and/or restrict any street in order to carry out the authorised development), Article 15 (which allows the undertaker to carry out protective works to any building) and Article 20 (which allows the undertaker to enter on and survey land etc). All of these activities potentially can take place outside of the Order land and if they are on carried out on land ‘adjacent’ to the Order land the protection given by 5(2) will apply.</p> <p>The term “adjacent” is not possible to define to any quantified measure. The extent of “adjacent land” should be judged on a case by case basis in the context of what is necessary for the construction and operation of the authorised development and depending upon what Article / power is being relied upon. It is important to recognise that Article 5(2) does not of itself confer powers on the undertaker to carry out any works on ‘adjacent’ land. It simply clarifies the relationship between the Order and other legislation. The term adjacent is used in many DCOs including the A1 Birtley to Coal House Order 2021; A19 Downhill Lane Junction Order 2020; M42 Junction 6 Order 2020; A585 Windy Harbour to Skipool Highway Order</p>	<p>the order limits). The term adjacent has been used to communicate within that limit and it is not possible to define adjacent by a quantified measure. It will be determined on a case by case basis depending on the power it is communicating with. For example, in respect of Article 20, the use of the power will need to be justified through Article 20. In terms of precedent, it does not feature in the Model Articles, but has been included in previous DCOs such as M3 Junction 9 and A417 Missing Link.</p> <p>The Examining Authority raised a comment that it would it be clearer to a third party if the wording in Article 20 was the same in Article 5 and the Applicant confirmed they would consider this.</p>

Relevant reference	Agenda item	Written Summary of Oral Submissions
	<p>2020; A63 (Castle Street Improvement, Hull) Order 2020; A30 Chiverton to Carland Cross Order 2020; A47 Blofield to North Burlingham Order 2022; A428 Black Cat to Caxton Order 2022; A417 Missing Link Order 2022; and M3, Junction 9 Order 2024</p> <p>The ExA raised the question of whether the wording of Article 5(2) could be brought in line with Article 20. Article 20 includes land ‘which may be affected by the authorised development’. If the ExA considered the term ‘adjacent’ too vague, it would be open for it to amend Article 5(2) to read “Any enactment applying to the Order limits or to any land which may be affected by the authorised development land within or adjacent to the Order limits has effect subject to the provisions of this Order.”</p>	
(ii) Article 7 and Article 47 - Planning permission and inconsistent planning permissions		
First bullet	Justification for and explanation of the two articles and the relative timings of when they would take effect	<p>The Applicant confirmed that it is reviewing Article 47 in the context of recent applications. The Article does not currently feature in any granted DCOs and it seeks to address “<i>Hillside risk</i>”. There is current learning, not least in the Lower Thames Crossing proposed DCO, on the best way of drafting. The Applicant provided a summary of how the article is intended to operate as drafted.</p> <p>Article 7 provides reassurance that any further permission under the 1990 Act which is not in and of itself NSIP and is not required to complete or enable any part of the development authorised by this order can do so without breaching the terms of the Order. The Article is clarificatory and provides additional reassurance for future development within the order limits. It is forward looking and will apply to planning permissions within the order limits following the coming into force of the DCO. The Applicant confirmed that Article 47(3) as currently drafted operates in the same way as Article 7 and so the Applicant proposes to strike Article.47(3) from the next version of the dDCO.</p> <p>Article 47(1) and (2) are to cover Hillside risk. The Applicant explained that “<i>Hillside risk</i>” refers to the principle raised in <i>Hillside Parks v Snowdonia NPA</i>, which confirmed a general principle established in <i>Pilkington v Secretary of State for the Environment</i>, whereby a permission can no longer be relied upon where development pursuant to a later permission renders that original permission impossible to implement. The Article is designed to protect third parties as well as the Applicant to ensure that they are not at risk of</p>

Relevant reference	Agenda item	Written Summary of Oral Submissions
		<p>enforcement proceedings as a result of an inconsistencies between the authorised development and any third party planning permissions, where that inconsistency means that the planning permission is not capable of physical implementation. It essentially introduces severability to third party planning permissions.</p> <p>In respect of triggers, Article 47(1) applies from when the authorised development is commenced and will apply to both pre-existing planning permissions and post-commencement planning permissions. The reason Article 47(1) is tied to commencement is that it looks at the impact physical implementation of the DCO may have on third party planning permissions and so it doesn't need to bind at grant. Article 47(2) is being reviewed by the Applicant to consider whether it is appropriate, it applies in much the same way as Article 7 being forward looking. Article 7 is confirmation that where a third party planning permission comes forward after the grant, which are separate to the DCO, it can be commenced without being drawn in to the protections of the Planning Act 2008.</p> <p>The Applicant confirmed it will be amending the wording of these clauses and will provide a written explanation of the Article 7 and 47 and the interaction between one another.</p>
<p>Response to Action Point 5: Please see Appendix A for analysis of Article 7 and 47.</p>		
<p>(iii) Article 8 - Limits of Deviation</p>		
<p>First bullet</p>	<p>The extent of and justification for the limits of deviation (LoD) set out in the draft dDCO, including those in respect of the Strategic Road Network (SRN), Flood Storage and Flood compensation areas.</p>	<p>The Applicant confirmed that the drafting seeks to control how far the LoD can be taken in relation to the Environmental Assessment and simply reflects the Rochdale envelope used in the Environmental Assessment.</p>
<p>Second bullet</p>	<p>The consistency of the LoD with what has been assessed in the ES in respect of flood storage and flood compensation.</p>	<p>See response to first bullet above</p>

Relevant reference	Agenda item	Written Summary of Oral Submissions
Third bullet	Justification for the term ‘materially worse adverse	<p>The Applicant noted that the Secretary of State has taken the view in recent decisions that the most appropriate wording, given recent understanding of the function of EIA regulations, is “materially different” rather than “materially worse adverse”. The Applicant confirmed that it is proposing to make this change in the next iteration of the dDCO. Therefore, any flex beyond the LoD will only be appropriate if it does not generate additional environmental effects, which would be within the Environmental Assessment already carried out.</p> <p>The Examining Authority noted that the Explanatory Memorandum may need updating in relation to the references to “materially different” wording, and the Applicant noted that whilst there isn’t a requirement to update the Explanatory Memorandum during examination that it will ensure that the Explanatory Memorandum is updated prior to close of the examination.</p>
Fourth bullet	How the LoD as drafted corresponds with the ES in respect of the River Chelt Bridge and Withybridge underpass.	<p>The Applicant confirmed that whilst the LoD set out maximums which may be used in any given setting, there may be other design challenges which limit the extent to which an undertaker may rely on those maximum LoDs. However, given the design restraints set out at paragraph 2.5.1. at Chapter 2 of the Environmental Statement the Applicant does not consider that these elements would be able to use any limits of deviation regardless and would be content to introduce clarification into the article.</p>
(iv) Article 10 - Consent to transfer of benefits		
First bullet	Consideration of whether there should be an exception applied to the SRN?	<p>In reply to National Highways’ comments regarding the suitability of transfer of benefits within the SRN the Applicant reiterated that it understood that National Highways relevant representation is in relation to a number of specific works in the SRN; being</p> <p>In relation to Gigaclear Limited, at article 10(5)(b) – Work No. 10</p> <p>In relation to Openreach Limited, at article 10(5)(c) – Work No. 27</p> <p>In relation to Severn Trent Water Limited, at article 10(5)(d) – Work No. 14</p>

Relevant reference	Agenda item	Written Summary of Oral Submissions
		<p>In relation to Wales and West Utilities Limited, at article 10(5)(e) – Work No. 16</p> <p>In relation to National Grid Electricity Distribution plc, at article 10(5)(f) Work No 20</p> <p>The Applicant confirmed that it understood that National Highways are looking to either disapply the transfer of benefit for the purposes of the SRN or introduce Secretary of State consent for that transfer.</p> <p>The Applicant confirmed that within article 10 there is a process of Secretary of State consent to transfer the benefit of the Order but for those works specifically set out in that article no Secretary of State consent is needed. The Applicant noted it is continuing to engage on this. The Applicant questions the purpose of applying an exception to the SRN, the purpose of the transfer is to allow the statutory undertaker the benefits and rights under the order and to ensure they are under the same restrictions liabilities and obligations that would apply to the undertaker. It's not the case that the Applicant will, without doubt, deliver the diversions themselves, often undertakers will insist on carrying out the works, for example electricity distributors often insist on carrying out their own connections for safety reasons, and for gas undertakers it is often required to be handled by the gas undertaker themselves. Therefore, the order has to allow for flexibility in relation to the transfer. On the suggestion around introducing the Secretary of State consent, the Applicant is not clear on the purpose that would have as that would add a staged consent and the Applicant considers that the information is available to the Secretary of State currently within the Order. The Order has set out exactly who the statutory undertaker is who is proposed to take the benefit in relation to what works. Those undertakers are registered statutory undertakers. It is not clear what adding a further stage would be considering in that circumstance.</p> <p>National Highways clarified that the concerns sit around that there will be an ancillary agreement with the current Applicant, but if a third party steps in, the</p>

Relevant reference	Agenda item	Written Summary of Oral Submissions
		<p>protective provisions in the order will apply but any protections in the side agreement will not. National Highways confirmed it was happy with the work numbers being included in the DCO on the basis of a contractual solution being agreed. It was discussed that the solution will likely lie in the side agreement rather than the DCO and the Applicant confirmed that the contractual position will likely be the neatest way forward.</p>
<p>Part 3 Streets</p>		
<p>(i) Article 11 - Street Works</p>		
<p>Additional query</p>	<p>The Examining Authority raised an additional question about whether there should be a restoration clause included.</p>	<p>The Applicant explained that it will take this issue away and respond separately. The Applicant noted that it will carry out works within highway under its general powers of maintenance whilst works to the SRN will be governed by the side agreement with National Highways.</p>
<p>First bullet</p>	<p>What is the justification for the departure from the model provision which would allow for interference with any street?</p>	<p>The Applicant noted that highway DCOs generally follow the form set out in the dDCO. The Applicant explained that the concern is primarily around the definition of street and how broad that definition is. The dDCO defines street within the meaning of section 48 of the 1991 Act together with any land on the verge of the street between two carriageways, and includes part of the street. Section 48 of the 1991 Act defines street as being the whole or any part of any of the following: highway, road, lane, footway, alley or passage, any square or court, and any land laid out as a way whether it is for the time being formed as a way or not. The definition is quite broad and there is no register of streets which the Applicant might be able to list with any certainty to the extent that it needs to use or break open. The power also reflects the power a local highway authority would generally have, contained in Part 5 of the Highways Act 1980 being sections 75, 76 and 77, and are not seen as going demonstrably beyond what a Highways Authority might have access to in other circumstances.</p>

Relevant reference	Agenda item	Written Summary of Oral Submissions
	<p>Response to Action Point 6:</p> <p>The ExA requested clarification of the approach taken regarding Article 11 of the dDCO and why it includes a blanket definition of streets rather than include a specific schedule of streets.</p> <p>Article 11 allows the undertaker to interfere with and execute works in or under streets within the Order limits for the purposes of the authorised development. This provision departs from the model provisions in that it does not refer to a schedule of streets to which this Article applies. However, the interference is confined to the those streets within the Order limits, the interference must be for the purposes of the authorised development and it is adopts an approach which is now commonplace in a number of other highway DCOs (for example, the A38 Derby Junctions Order 2023; A417 Missing Link Order 2022, M4 Motorway (Junctions 3 to 12) (Smart Motorway) Order 2016; A47 Blofield to North Burlingham Order 2022; and M3 Junction 9 Order 2024). It needs to be acknowledged that there is no register of streets that might enable the undertaker to list with any certainty the full extent of all streets within the Order limits. It is therefore necessary to acquire this power on the proposed basis to enable the undertaker to construct the authorised development.</p> <p>Whilst non-highways DCOs often contain a separate Schedule for those streets subject to this power, in these cases it is a private actor who is being granted this power rather than a body which holds among its respective powers and duties that of a local highway authority and so embodies significant knowledge and responsibility over the local highway network regardless. As such, the Applicant considers its approach justified.</p>	
Additional query	<p>The Examining Authority raised an additional question regarding the extent of the SRN.</p>	<p>The Applicant explained that the dDCO does not define, with any precision, the exact apparatus to be adopted and Article 13 provides enough flexibility for agreement to be reached between the Applicant and National Highways. The Agreement over structures will be dealt with in a separate side agreement.</p> <p>The Examining Authority and National Highways raised comments regarding the possibility of marking the boundary of the SRN and local road network on a plan. The Applicant explained that it is not possible to draw a line as the project is going to be subject to detailed design and so agreement may not be possible at this stage. The Applicant explained that it may be possible to define a process for agreeing what goes into the SRN and what assets are part of that. The Applicant explained that meetings have been set up shortly to discuss this item.</p>
	Response to Action Point 7:	

Relevant reference	Agenda item	Written Summary of Oral Submissions
	<p>The ExA requested an update in relation to the progress with the Strategic Road Network and Local Road Network discussions. The update should also cover future maintenance of assets and approvals in relation to National Highways. The agreed position between the parties is set out below.</p> <p>A meeting was held between the Joint Councils, National Highways and the Applicant on 11 June 2024 to discuss the proposed approach to discharging the Requirements in the dDCO. This included a discussion around establishing the extent of the SRN and LRN. It was agreed that the precise boundaries of the SRN and LRN can only be identified through detailed design. Given that detailed design needs to be approved as part of the Requirements, it was agreed that it would not be possible before then to say precisely what part of the authorised development falls within the SRN and what part of the authorised development falls with the LRN. As such, the current view of the County Planning Authority, National Highways and the Applicant is that it would be better to have one organisation taking on the role of discharging authority with other parties having a role as consultee. It was recognised that the relevant district councils, as local planning authorities, must also have adequate opportunity to comment on aspects relevant to them through consultation. The parties are investigating the scope for Secretary of State for Transport, through the Department for Transport’s Transport Infrastructure Planning Casework Unit taking on this role. The Joint Council’s representative is seeking instructions from the County Council and district councils as to the acceptability of this as an approach. In addition, a mechanism for identifying and agreeing what highway assets will fall within the SRN, and therefore the extent of maintenance on NH, and what highway assets will remain with the undertaker needs to be agreed. Discussions are continuing on this aspect. The Examining Authority will be kept updated on progress.</p>	
Second bullet	Should consent be required from National Highways for works on land forming part of the SRN?	See Article 17 second bullet
(ii) Article 12 - Application of the 1991 Act		
First bullet	Clarify the role of the Highway Authority and Street Authority as explained in the Explanatory Memorandum (EM) [APP-032] paragraph 4.42	The Applicant explained that paragraph 4.42 of the Explanatory Memorandum seeks only to clarify that Article 13 is not determinative of the status of a street authority over that road. Article 12(7)(b) reads that “Nothing in article 13 (construction and maintenance of new, altered or diverted streets and other structures)— means that the undertaker is by reason of any duty under that article to maintain a street to be taken to be the street authority in relation to that street for the purposes of Part 3 of that Act”. This means that when determining the street authority for a street, one must not base it on a duty of maintenance under Article 13, which might point to the article being responsible for the maintenance of a particular street, including particular streets for a set amount of time (for example, a 12 months maintenance

Relevant reference	Agenda item	Written Summary of Oral Submissions
		<p>period). One must instead look into the overall classification of the road, which is set out in Article 14. The issue is around how the term “street authority” is interpreted since “street authority” means one of two options under section 49 of the New Roads and Street Works Act 1999: if the street is maintainable highway, the highway authority, or if the street is not maintainable highway, the street managers (frontages, landowners etc.). Because one of the requirements of the definition of street authority is that the street is maintainable highway, the article seeks to clarify that just because Article 13 provides that the Applicant is maintaining a street for a set period of time, it does not mean it has become the street authority for that road.</p> <p>The Joint Councils noted that paragraph 4.42 Explanatory Memorandum could be updated to clarify that Gloucestershire County Council is the street authority and highways authority. The Applicant agreed to make the amendment.</p>
(iii) Article 13 – Construction and Maintenance		
First bullet	Clarification of what would form part of the SRN	Please see Article 11 third bullet.
(iv) Article 14 – Classification of roads		
First bullet	Clarification of the consequences if Protective Provisions with National Highways are not agreed	<p>National Highways noted that the consequences would be that, by operation of the order, they are required to become Highways Authority for assets which may or may not have been completed to their satisfaction. This is because the article would take effect on the Applicant’s certification of completion without reference back to National Highways, which may have cost and time resource implications if works are required to bring the works to National Highway’s operational standards.</p> <p>The Applicant explained that this must be read in conjunction with Article 13, which provides that works must be completed to the reasonable satisfaction</p>

Relevant reference	Agenda item	Written Summary of Oral Submissions
		of the Strategic Highway Authority. In any event, the Applicant has received National Highways protective provisions and are seeking to agree them.
Article 17 – Access to works		
First bullet	Does the wording in the dDCO align with the explanation in the EM para 4.68 and is there justification for the extension of the powers as sought?	<p>The Applicant explained that, in terms of alignment of the Explanatory Memorandum and the dDCO, the Explanatory Memorandum provides an example of the types of accesses to be taken out which are temporary, whereas the dDCO does not limit the power to temporary access. The dDCO is not intended to be limited to temporary access and should apply to temporary and permanent access. Where the Applicant is proposing to do permanent access, this is set out in Schedule 1. The Explanatory Memorandum is simply making it clear that it does apply to temporary access as well and is intended to be clarificatory in that respect.</p> <p>The Applicant explained that its approach aligns with many other highway dDCOs, in terms of its intended use in this respect, and is considered to be appropriate as it will help ensure the authorised development will be carried out expeditiously by allowing the Applicant to create new accesses as and where required, particularly in response to landowners, occupiers and other affected parties. There are separate controls over the limit of the power in relation to the Environmental Statement and what has been accessed (for example in relation to hedgerows). The REAC also includes relevant entries (G10, PHH2, 11, 12, and 13, and LV1 and 2). The entries are bound into how the Applicant is going to be able to deliver the authorised development through requirement 3, and the power must be read across those environmental constraints.</p>
Second bullet	Does there need to be further restriction as suggested by National Highways in their Relevant Representation [RR-026] to exclude this power from the SRN?	The Applicant explained that access to the SRN is provided through Article 17. The Applicant’s understanding from National Highway’s relevant representation is that they would like to include an exclusion of access from the SRN and the Applicant confirmed it will engage with National Highways in that respect. The Applicant’s position is that a blanket exclusion would not

Relevant reference	Agenda item	Written Summary of Oral Submissions
		benefit either party and so it will seek to agree a consent process where access is suitable.
Part 4 – Supplemental Powers		
(i) Article 18 – Discharge of Water		
Art 18	Refers to Joint Planning Board, Internal Drainage Board and Urban Development Corporation – are any of these relevant to this scheme?	The Applicant confirmed that it will consider this point in terms of joint planning boards, internal drainage boards and urban development corporations. The Applicant does not consider there are any but the dDCO has been drafted on a forward-looking basis to react to future circumstances and referred to the A417 Missing Link which also uses the same wording. The Applicant confirmed it will review the interaction between Article 18 and the disapplication of legislative provisions and will provide some narrative on how it works.
	The Applicant does not consider that any Joint Planning Board, IDB, or UBC owns a sewer or drain in the vicinity of the Scheme. However, the Order should be forward looking and cover all watercourses within its Order limits equally. It should be noted that this approach is the same as in other DCOs, see in particular the A417 Missing Link DCO which also included the same wording as found at Article 18(6)(a).The Applicant has noted the interaction between article 3 and 18 at Action Point 3 above.	
Article 20(2) - Authority to survey and investigate the land		
Additional query	The Examining Authority asked an additional question on whether the 14-day notice period is appropriate or should it be longer bearing in mind the possible consequences on the landowner whom you would be serving notice.	The Applicant confirmed it will review its position and respond in writing.
	<p>Response to Action Point 8: The ExA requested an explanation of and justification for the 14-day notice period set out at article 20(2) of the dDCO which deals with the authority to survey and investigate the land.</p> <p>Article 20 provides the undertaker with the power to enter land to survey and investigate including leaving on or removing apparatus on the land for such purposes. Article 20(2) requires a minimum of 14 days notice to be served on all owners and occupiers before such entry can take place. 14 days is a standard time frame found in other DCOs (and found in the recent A417 Missing Link Order 2022 and M3 Junction 9 Order 2024). It</p>	

Relevant reference	Agenda item	Written Summary of Oral Submissions
	<p>is a period sufficient to effect adequate notice but also short enough to allow swift entry to ensure the project is not held up by impending surveys. 14 days is justified as a minimum period and it should be noted it is longer than the powers of survey given to local highways authorities which is 7 days (see s289 and s290(3) Highways Act 1980) and the same as the survey powers given to acquiring authorities under the Housing and Planning Act 2016 (see s172 and s174(1)).</p>	
<p>Article 24 - Compulsory acquisition of rights and imposition of restrictive covenants</p>		
<p>Art 24</p>	<p>Justification for the approach that would allow the undertaker to impose restrictive covenants, acquire existing rights and create new rights over all the land, rather than specific plots described in the Book of Reference and whether all parties have been notified on this basis.</p>	<p>The Applicant’s position is that the dDCO does not purport to permit the undertaker to impose restrictive covenants, acquire existing rights and create new rights over all the land, that power being restricted to specific plots in the Book of Reference and parties have been notified on that basis.</p> <p>The interpretation of Article 24 must be read within the context of the definition of “order land”, which means the land shown on the land plans which is within the limits of land to be acquired or to be used permanently or temporarily and described in the Book of Reference. Therefore, there is not an immediate comparison between order land as defined and the general redline boundary.</p> <p>Article 24.1 reads “the undertaker may acquire such rights over the Order land or impose restrictive covenants affecting the Order land as may be required for any purpose for which that land may be acquired under article 21”.</p> <p>Overall, Article. 24.1 starts with the basic position that rights can be imposed on any plots in the order land. However, Article. 24.2 reads “in the case of the Order land specified in column (1) of Schedule 5, which can be seen as blue plots on the land plans, the Applicant’s power to acquire such rights are limited to the acquisition of wayleaves, easements and new rights or imposition of restrictive covenants as set out in Schedule 5.</p> <p>Also, Article. 24.3 reads that “the power to impose restrictive covenants under paragraph (1) is exercisable only in respect of plots specified in column (1) of Schedule 5”. Therefore, for blue plots, only rights can be acquired and only restrictive covenants. can be imposed. This does not affect the generality of</p>

Relevant reference	Agenda item	Written Summary of Oral Submissions
		<p>24.1. Therefore, reading just Article. 24.1, 24.2, 24.3 you have a general position for the ability to impose rights over red land and green plots.</p> <p>It is therefore necessary to turn to article 31.8 which read, “the undertaker may not compulsorily acquire under this Order the land referred to in paragraph 31(1)(a)(i)” This is the land shown in column 1 of schedule 7 and is green on the land plans. What this means is there cannot be compulsory acquisition over the green land and thus this article excludes the green land from the generality of Article 24.1.</p> <p>In terms of notification, the Applicant confirmed that parties of blue land have been notified on the basis of rights being acquired and the parties of the red land have been notified to the extent of freehold acquisition (a higher category of right).</p>
(ii) Article 30 - Rights under or over streets		
Art 30	Should subsoil and airspace be excluded for the SRN?	<p>National Highways noted that this issue forms part of the wider ongoing engagements around how SRN assets are treated. The Applicant did not comment on the ongoing engagement but noted that the interaction with the SRN will be dealt with in agreements to be agreed upon.</p> <p>The Applicant clarified that Article 30 is not a compulsory acquisition power and needs to read in line with Article 29, which confirms you can carve out airspace and land from the general compulsory acquisition. Article 30 is therefore the operational power to help you to use the compulsory acquisition powers which have been used through Article 29, but the position with the SRN is to be agreed.</p>
Article 32 - Temporary use of land for maintaining the authorised development		
Article 32(3)	The Examining Authority asked an additional question on whether the 28-day notice period is appropriate.	The Applicant confirmed that the 28-day notice period is a standard period for highways DCOs. The Applicant confirmed that it would review how an undertaker might go about achieving that outside of a DCO.

Relevant reference	Agenda item	Written Summary of Oral Submissions
	<p>Response to Action Point 9: The ExA requested an explanation and justification of the 28-day notice period set out at article 32(3) of the dDCO which deals with the temporary use of land for maintaining the authorised development.</p> <p>Article 32 provides the undertaker with powers to enter on and take temporary possession of land during the maintenance period (which under Article 32(12) is expressed to be 5 years beginning with the date on which that part of the authorised development is first opened for use) if such possession is reasonably required for the purposes of maintaining the authorised development. Article 32(3) requires that not less than 28 days notice must be served on the owners and occupiers of the land. 28 days is a standard time frame found in other DCOs (and found in the recent A417 Missing Link Order 2022 and M3 Junction 9 Order 2024). It allows a reasonable period of notice in order to enter land to maintain works. Effectively it will only apply to open land as it expressly does not apply to entry to any house/ garden nor to any occupied building (Art 32(2)). The 28 day period is therefore justified.</p>	
Article 32(12)	<p>The Examining Authority noted the maintenance period of 5 years and asked whether 5 years is an appropriate period. The Examining Authority noted that there are several elements which could potentially do with a longer period, noting that the Environmental Statement Woodland Element specifically refers to a 15-year period, also noting the maintenance of the highways and ongoing elements linked to that.</p>	<p>The Applicant confirmed that the 5-year period for re-planting as secured in the requirements is principally how the maintenance period would be applied, which applies to all land, temporary land and other.</p> <p>In respect of the elements requiring a longer period, as set out in the REAC such as hedgerow replacement for dormice, the Applicant will be acquiring the necessary easement rights to maintain that accordingly. In respect of the highway, separate temporary powers of maintenance will not be required as the highway authorities will rely on their powers of maintenance in the Highways Act 1980.</p> <p>The Examining Authority queried whether the Highways Act 1980 powers grant sufficient certainty of maintenance for both National Highways and the local road network. The Applicant explained that it is not aware of any specific concerns by National Highways and the Examining Authority noted that its main concern is that the relevant maintenance periods are the appropriate period for each element. The Applicant explained that it will review and respond on the temporary use issue. In terms of landscaping, 5 years is a standard provision to ensure landscaping across the scheme is established and you have provided replacement within the 5-year period. The 10/15 years is concerned about ongoing management, and there are specific requirements mentioned in the REAC which have to be delivered. The Applicant's position</p>

Relevant reference	Agenda item	Written Summary of Oral Submissions
	<p>Response to Action Point 10:</p> <p>The ExA requested and explanation of and justification for the 5-year maintenance period regarding temporary use of land as well as an explanation of the other maintenance time periods.</p> <p>Requirement 6(3) states that any tree or shrub planted as part of the landscaping scheme that within a period of 5 years after planting is removed, dies, or becomes in the opinion of the relevant planning authority seriously damaged or diseased must be replaced in the first available planting seasons with the specimen of the same species and size as that originally planted. This is a standard landscaping requirement found in both DCOs and planning conditions and the five years is an accepted period to allow landscaping to become established and to ensure any landscaping which does not take, which is generally in the early stages of planting, is replaced. This Requirement applies to all landscaping across the scheme.</p> <p>Separately there are 10 year hedgerow and 15 year woodland management periods specifically for dormice (REAC, Item B13 – this ensures mitigation for dormice and contains a number of management measures which need to be undertaken such as maintaining a weed free zone and annual pruning - see paragraph 7.8.155 of Chapter 7 of the ES [App-066]). These 10 and 15 year periods are specifically for ecological/fauna mitigation. These measures are required to go in the EMP 2nd Iteration (Requirement 3(2)) and are secured through Requirements 3(1) and 3(3).</p> <p>Finally, there is the 5 year maintenance period contained in Article 32(12). This relates to maintenance of the works within the scheme as a whole and ensures that the authorised development is maintained for 5 years following it being open for use and Article 32 allows the undertaker to gain temporary access as required to ensure such maintenance can be carried out. Article 32(12) would also allow temporary access for landscaping maintenance across the scheme where permanent rights have not been acquired.</p>	<p>is that the maintenance of the landscaping and management of the two extended periods in relation to hedgerows and woodland are sufficient.</p> <p>In response to the Examining Authorities further query about the REAC and dDCO saying different things, the Applicant confirmed that it is not aware of any conflict between the two. The Article relating to maintenance of landscaping is a broad requirement across the scheme and the two specific requirements don't refer to maintenance but instead management, they refer to the hedgerow and woodland and are bound by the REAC. There is no conflict between the two.</p>

Relevant reference	Agenda item	Written Summary of Oral Submissions
Article 36 - Felling or lopping of trees and removal of hedgerows		
Article 36	The Examining Authority noted that the Joint Councils had raised a point in the relevant representations regarding Article 36 and hedgerow removal.	<p>The Joint Councils confirmed that their question was “Compensation arrangements for tree works and hedgerow removal – Paragraphs 4.134 and 4.136 of the Explanatory Memorandum to the draft DCO do not specify who the compensation is payable to for the tree works and if compensation is payable in relation to hedgerow removal pursuant to Article 36 of the draft DCO.”</p> <p>The Applicant explained that compensation provisions are set out in Articles 36 and 37. The Explanatory Memorandum does not attempt to categorise those persons as there’s not a restriction of any category of persons in the DCO. The DCO introduces a general compensation liability for loss or damage and it not practice in DCOs to categorise persons. The method of the DCO is to establish a principle of liability and leave it to third parties to bring forward valid claims. The Applicant confirmed that they would set this out in the response to the Joint Councils’ relevant representation.</p>
Schedule 1 – Authorised Development		
First bullet	Justification for the structure of the dDCO in respect of Works and clarity of what might be regarded as associated development.	The Applicant agreed to provide a written submission explaining the discrepancy between the structure of the dDCO and Advice Note 13 from PINS with regard to the description of the development and any associated development.
<p>As set out in the Applicant’s Explanatory Memorandum [APP-032] the approach taken in the drafting of Schedule 1 to the dDCO of not separately defining elements of the Scheme as forming part of either NSIP or as associated development is deliberate and is in line with precedent for highways DCOs including A19/A184 Testo’s Junction Alteration DCO 2018, M25 Junction 10/A3 Wisley Interchange DCO 2022, A417 (Missing Link) DCO 2022, A47 Wansford to Sutton DCO 2023, M3 Junction 9 DCO 2024.</p> <p>There is no requirement in law to separate the works comprising NSIPs from those constituting associated development and nor does the <i>Planning Act 2008: associated development applications for major infrastructure projects, guidance on what constitutes associated development under the Planning Act 2008 (DCLG, 2013) (DCLG Guidance)</i> require an applicant to do so.</p>		

Relevant reference	Agenda item	Written Summary of Oral Submissions		
	<p>Paragraph 10 of the DCLG Guidance recommends an applicant should explain as far as practicable in their Explanatory Memorandum which parts of the development are associated development and why. Paragraph 2.11 of the Applicant’s Explanatory Memorandum performs that function.</p> <p>As a matter of law, all the works identified within Schedule 1 to the dDCO either form part of the NSIP or are associated development within either or both of them within the meaning of section 115(2) Planning Act 2008. In England, once development consent is granted there is no distinction made in law between NSIP and associated development and so any distinction is purely academic. The Applicant acknowledges that the Secretary of State will need to be satisfied that the various elements of the Scheme fall within one of the categories set out in section 115 of the Planning Act 2008 but this analysis will be limited to ensuring that the various elements are “either NSIP and/or associated development” rather than having to provide a distinction between NSIP or associated development.</p> <p>The Applicant remains of the view that separating out the works listed in Schedule 1 to the draft DCO into the 'nationally significant infrastructure project' ("NSIP") and 'associated development' is impracticable. This is predominantly because, as set out in previous submissions, determining this is more an 'art' than a 'science' - for example, development that 'is' a NSIP, compared to development that is 'part of ' a NSIP (some of which could also be said to be associated development) is not always clear cut. The Applicant does not consider there to be any benefit in explicitly categorising a particular element of the scheme in a particular way given this. In addition, the Guidance referred to, whilst helpful and needing to be taken into account, is just that – guidance – and not legally binding.</p> <p>However, that being said, the Applicant does recognise that there could be some benefit to the Secretary of State of having an indicative list as to what parts of the development might constitute the NSIP and what might constitute 'associated development'. The Applicant would note that this is the same as the list provided to the Secretary of State in the application for the A303 Stonehenge Order. As such the Applicant has included a table below which lists types of development authorised in Schedule 1 and states, indicatively, whether this constitutes the NSIP, 'associated development' or both. It should be noted however, that the Applicant does not propose to amend Schedule 1 to the DCO. As is clear from the below, there are a number of instances where development could potentially be both part of the NSIP and associated development and from a legal perspective, there is no need to separate out the development. Indeed, it is important to note that for ease of interpretation (particularly by reference to the plans), the Work Numbers in Schedule 1 are not split out into types of development, but rather into packages, which in a number of instances contain elements of the NSIP and associated development. As such, any complete restructure of Schedule 1 would also require wholesale revisions to the plans. This would have consequences in terms of ease of Interested Parties commenting on submissions, given, for example, previous references to documents would be invalid. This is considered an unnecessary burden on interested parties given the legal context and precedents available.</p>	<table border="1" data-bbox="367 1302 1998 1359"> <tr> <td data-bbox="367 1302 1182 1359">Type of Development</td> <td data-bbox="1182 1302 1998 1359">NSIP, Associated Developer or both</td> </tr> </table>	Type of Development	NSIP, Associated Developer or both
Type of Development	NSIP, Associated Developer or both			

Relevant reference	Agenda item	Written Summary of Oral Submissions
	Any alteration, improvement or construction of a highway for which National Highways is highway authority (including the widening and realignment of existing trunk roads, and associated slip roads and structures)	NSIP
	Any alteration, improvement or construction of slip roads, local roads, rights of way and NMU routes (including associated structures) for which National Highways is not responsible	Associated Development
	New and altered means of access	Associated Development
	Landscaping	Both, could be integral to the newly construction, altered or improved highway for which National Highways are the highway authority and so part of the NSIP or in any other context as part of the associated development.
	Utility Diversions	Both – for the reasons set out above.
	Drainage Works	Both – for the reasons set out above.
	Ecological Mitigation	Associated Development
	Construction Compounds	Associated Development
Schedule 2 - Requirements		
First bullet	Justification for the undertaker being the appropriate organisation responsible for the discharge of and determining body in respect of Requirements	The Applicant explained that the approach taken in the dDCO proposes that Gloucestershire County Council as county planning council is discharge authority for the requirement. It is the approach taken in non-highway DCOs and well as highway DCOs which are not promoted by National Highways. There are numerous examples which can be provided. In terms of the principle, a question was raised as to whether it is appropriate for Gloucestershire County Council to be both promoter and county planning authority. However, they have two separate and distinct functions and

Relevant reference	Agenda item	Written Summary of Oral Submissions
		<p>obligations, it is entirely appropriate for Gloucestershire County Council in its role as country planning authority to be discharge authority. As currently drafted, the requirements involve consultation with various bodies (for example National Highways in respect of works which affect the SRN) there are obligations in the requirements to consult with the relevant planning authorities. The Applicant believes that this approach is appropriate but is aware that there is a specific issue in case of National Highways. The Applicant is not aware of any other body that wishes to be discharging authority but there are some which want consultation, the Applicant is happy to include, for example, the Environment Agency in respect of consultation.</p> <p>For the SRN the Applicant is looking into whether the Secretary of State would be the appropriate body. There are a number of issues as it needs to be workable, it should not cause more problems than it solves, it needs to be consistent in terms of signing off and most importantly the Secretary of State needs to be prepared to take that requirement on. That is part of the ongoing investigations as to whether, if it is not just the county, whether it can also be the Secretary of State.</p> <p>Following comments from National Highways regarding using DfT as the discharging authority, the Applicant confirmed that the discussions it is trying to arrange imminently are to map out the process which will in part involve liaising with DfT. There is an established team and the Applicant understand it works well for National Highways, however the Applicant needs to understand whether DfT would agree to act for a non-National Highways DCO, it would need to explore the cost and willingness and ability to take that role. The Applicant is also aware of the Joint Councils' position as discharging authority for the local road network. There may be two discharge authorities and how that will work will need to be worked through.</p> <p>The Applicant confirmed it would provide the Examining Authority with an update as to the negotiations on the discharging authority at Deadline 1.</p>

Relevant reference	Agenda item	Written Summary of Oral Submissions
	<p>Response to Action Point 11:</p> <p>The ExA requested an explanation of and justification for County Planning Authority or DfT case team being appropriate body for discharge of requirements. To follow the tripartite meeting with the Joint Councils and National Highways.</p> <p>See response to Action Point 6 (above).</p>	
(i) 3. Environmental Management Plan (EMP)		
First bullet	Requirement 3 (2) (a) the EMP 2nd Iteration – justification for whether ‘substantially’ can be regarded as sufficiently clear and precise?	This Agenda item was not discussed.
Second bullet	Requirement 3 (2) (c) if this does not correspond with the REAC – what does it refer to? and where are the details set out?	<p>The Applicant explained that there are two ways of dealing with it. You could delete (c), or it can be dealt with in a different way. As things stand, the EMP 2nd iteration must go through a set of requirements and must be in accordance with substantially in accordance with the EMP 1st iteration. It must contain a record of all the sensitive environmental features that have the potential to be affected by the construction of the development. Skipping over (c), it needs to incorporate the REAC. (c) is designed to do that.</p> <p>Other DCOs don’t have the REAC as a requirement in this section and there isn’t anything in the Environmental Statement that shouldn’t translate through to the REAC. (c) should be deleted. In any case, the Applicant noted that (c) should say 1st iteration rather than 2nd iteration at the end of it.</p> <p>The other management plans are incorporated because they are specified, and in terms of the nuisance management plan, it is covered by the statement of statutory nuisance.</p> <p>The Examining Authority’s noted that the list of plans needs to be consistent with the Environmental Statement and the Applicant agreed to fix this.</p>

Relevant reference	Agenda item	Written Summary of Oral Submissions
Third bullet	Requirement 3 (2) (e) justification for working hours and the list of exclusions including explanation for and clarification of Sunday working?	<p>The Applicant explained that the working hours in requirement 3 say Monday - Saturdays, 7 till 7, this is standard and are the working hours proposed in our documents. The Applicant is not proposing to work on Sundays ordinarily and are happy to add in a clarification, except there are number of exceptions which look at working outside of those ours in appropriate circumstances (for example night working and Sundays). All of the exceptions are there to either avoid greater disruption to users of the network or for safety reasons, so it may be appropriate for Sunday or nighttime working to occur so and are keen for them to be kept in as exceptions.</p> <p>The Examining Authority noted that in terms of the list of exceptions there are specific criteria (1) - (7). The Examining Authority asked whether (8) is a coverall if you have agreement with parties who may be affected? The Applicant explained this is the case. The Examining Authority asked about how this would work in practice. The Applicant explained that it will check the Environmental Statement, but if for instance the work was on the SRN, the affected party would be National Highways and other business depending on the work required and where it is. This is why it is drafted in general terms, since it is not possible to say what the works may be.</p> <p>The Examining Authority noted the practical implications of needing to get agreement of all interested parties and the Applicant agreed to consider this further.</p>
<p>Response to Action Point 12:</p> <p>The ExA requested an explanation of and justification for the approach to affected parties and working hour agreements in Requirement 3 of the dDCO.</p> <p>Requirement 3(2)(e) states that core working hours are between 07:00 and 19:00 on Mondays to Saturdays. These working hours are contained in section 1.6.5 of the EMP 1st Iteration (updated version AS-025). These fall within the standard working hours for most industries. Therefore, unless the work falls within the exceptions set out in sub-paragraphs (i) to (ix) the works are limited to these times / days. It is noted that National</p>		

Relevant reference	Agenda item	Written Summary of Oral Submissions
	<p>Highways sought confirmation that there is to be no working on Sundays. Whilst Sunday working would fall outside the core working hours in Requirement 3(2)(e), the Applicant will be proposing an amendment to this Requirement to make this clear.</p> <p>The working hours are subject to a number of exceptions. The exceptions all to some extent relate to circumstances where it is likely to be better to undertake works at night or out of hours because they will limit disruption to users of the network or where it will be safer to do so. The REAC reflects this and confirms that construction must take place between Monday to Saturday and any working outside of these hours needs to be minimised (G.11 REAC) (updated version AS-027).</p> <p>A specific question was raised in respect of Requirement 3(2)(e)(viii) which provides that any works for which different working hours have been agreed with parties who will or may be affected by those works and recorded in the approved EMP (2nd iteration), in which case the EMP (2nd iteration) must require adherence to those working hours. It is acknowledged that identifying such parties, and seeking agreement with them, would present a number of challenges. It is therefore proposed that this Requirement will be amended.</p> <p>Proposed amendment: to read: any works for which different working hours have been agreed with notified at least seven days in advance to those parties who the undertaker reasonably considers will or may be affected by those works and recorded in the approved EMP (2nd iteration), in which case the EMP (2nd iteration) must require adherence to those working hours. This has been inserted into the revised dDCO.</p>	
Fourth bullet	Requirement 3 (4) Justification or explanation of the relationship to the Strategic Road Network and the role of National Highways.	National Highways noted that there are two points to this matter. Noting that whoever the decision maker ends up being National Highways will want to be consultee to input into design and detail of EMP 3 rd iteration. The Applicant agreed that the issue of the discharge authority is separate but noted that there is no objection to the consultee point, it will be added in.
(ii) 4. Consultation		
First bullet	Requirement 4 (3) does this mean the undertaker can set aside responses if either the cost or the engineering practicality is identified as an issue. If this is a correct understanding of the Article as drafted and is this position justified?	The Applicant noted that this is a standard requirement which is adequate. It ensures a proportionate approach is taken in the details submitted to the county planning authority, as currently drafted. When considering whether to approve the details, need to include measures which are inappropriate, unreasonable or unfeasible, but which have been suggested by a consultee. Part of deciding whether they are inappropriate, unreasonable or unfeasible is looking at the cost and practicality of delivering them. If measures are suggested and not included then the undertaker must explain why under requirement 4(4) in a report that accompanies the application. The consultees

Relevant reference	Agenda item	Written Summary of Oral Submissions
		<p>will get a copy of the report and will be able to make representations if they have an issue. The Applicant is not looking to avoid safety issues and there may be some finessing to this to include the clarification. It is simply to avoid inappropriate, unreasonable or unfeasible suggestions.</p>
<p>(iii) 5. Landscaping</p>		
<p>First bullet</p>	<p>Requirement 5 (3) Justification for and explanation of the language around ‘must be based on’ the Environmental Master Plan</p>	<p>The Examining Authority noted that the environmental masterplan is in two parts, and asked whether it needs to be listed as parts 1 and 2. In relation to this, the Applicant confirmed that it will check the issue.</p> <p>In relation to the main agenda point, the Applicant confirmed that neither “based on” or “accords with” will cause a problem. The Applicant thought that it was sufficiently precise but noted that it had no issue with “accords with” if the Examining Authority thought it needed to say this.</p> <p>The Examining Authority noted that they were interested in finding out why this wording was used since other DCOs use wording such as “substantially in accordance with”. The Applicant explained the various phrases in the articles do change and are reflective of where there is a degree of flexibility required, here it needs to accord with the plans so “accord with” or “based on”, not sure there’s a difference. The Applicant agreed to provide an explanation of the different phrases used in the DCO as a written response.</p>
	<p>Response to Action Point 13:</p> <p>The Applicant can confirm having the environmental masterplan as two parts in the application library is not an issue and that the extent to which the document is identified in Schedule 10 is appropriate, as that makes reference to the environmental masterplan being Volume 2, document 2.13 which accords with both entries in the application library.</p>	
<p>(iv) 6. Landscaping and Ecological Management Plan</p>		

Relevant reference	Agenda item	Written Summary of Oral Submissions
First bullet	Justification for the 5-year maintenance period particularly in light of reference within the ES to maintenance of 15 years for certain areas e.g. woodland.	The Applicant confirmed that the 5 year period is standard and it considers it to be appropriate. In respect of the two additional periods of management that relate to dormice and woodland, they are delivered through the REAC.
Second bullet	Whether there should be an amendment to ensure replacement planting is at the expense of the undertaker.	There was no discussion raised in respect of this Agenda item.
(v) 8. Land and groundwater contamination		
Land and Groundwater contamination	Requirement 8 (4) justification for the undertaker determining that remediation is necessary.	The Applicant explained that there are two schools of thought on this. It is appropriate as there is a risk assessment that needs to be submitted in consultation with county planning authority, Environment Agency and relevant planning authority and therefore it should be the decision following that as to whether a remediation is required. There is also environmental protection legislation that means that if the decision maker took a decision that wasn't appropriate then those powers could be used. However the Applicant is conscious that the most recent DCOs use the phrase "where the risk assessment determines that remediation is necessary" and supports the change. This would mean that it is not the undertaker, but the risk assessment (submitted in consultation with the relevant authorities) where that shows that remediation is necessary it takes the decision away from just being the undertaker's decision.
(vi) 9. Archaeology		
Archaeology	Requirement 9 (6) Seek an explanation how this would work in practice?	The Applicant explained that the purpose behind requirement 9 is to ensure that archaeological investigation and mitigation is done properly. Requirement 9(6) provides that prior to completion of the development, suitable resources and provisions for long term storage of the archaeological archive will be agreed with the County Archaeologist. It is drafted in that way since in practice, it will need to be determined by the undertaker and county archaeologist at the time, it is not possible to say now what would be found and what would need to be archived etc. so it needs to build in the flexibility. It is a provision found in other dDCOs such as the A417 Missing Link. The Applicant noted

Relevant reference	Agenda item	Written Summary of Oral Submissions
	<p>Response to Action 13</p> <p>The Applicant understands that this proposed wording has been used on other Schemes at the behest of or to satisfy the County Archaeologist that there is some requirement on the face of the dDCO to bind an undertaker in securing suitable resources and provisions for long term storage. This is justified as, in practice, this is something which will need to be decided between the undertaker and County Archaeologist at the relevant time. At this stage it is not possible to say what will be found and what needs to be archived. Commitments in relation to payments, length of storage, location of storage etc. will depends on what is found, how big an item is, how many items there are, what needs to be done with the items etc. The Archaeological Management Plan [AS-038] (paragraph B8.6.28) recognises that “on completion of the archaeological post-excavation programme, it is anticipated that any artefacts will be deposited with the relevant museum, subject to the relevant landowner permissions being obtained” and again at B8.9.2 “The relevant museum shall be contacted in advance of the fieldwork to arrange deposition of the site archive as well as obtain (if available) an accession number and clarify archiving requirements and costs.” There is, however, no guarantee that local museums will accept items found nor what the alternative arrangement might be. Article 9(6) provides the flexibility needed and is an approach found in other DCOs (eg A4017 Missing Link Order 2022 and the M3 Junction 9 Order 2024).</p> <p>The Applicant notes, however, the Examining Authority’s comments that should “suitable resources and provisions for the long term storage” not be agreed that the Applicant might have completed substantial parts of their development, but would be unable to open to traffic until the position is resolved thus creating a ransom position with the County Archaeologist.</p> <p>The Applicant does not consider it likely that a ransom position would be imposed in this regard, given that the County Archaeologist would be under duties of a public authority to act reasonably. However, the Applicant does acknowledge that the current drafting may cause issues for interpretation as well as enforcement and as such proposes to remove the entry in the dDCO. The Applicant will engage with the County</p>	<p>that Historic England have asked to be a consultee in relation to this, outside of the SOCG discussions and the Applicant is happy to add them as a consultee to provide some comfort.</p> <p>The Examining Authority raised a query about how the provision would be enforced. The Applicant explained that there are general provisions in the Planning Act 2008 which provide that the Applicant would be committing an offence if in breach of the requirement, but the Applicant recognises the point that it is potentially not certain enough. The Applicant explained that it will take the point away.</p>

Relevant reference	Agenda item	Written Summary of Oral Submissions
	Archaeologist to ensure that they are satisfied that the Archaeological Management Plan set out in the EMP (1 st Iteration) is sufficiently robust to ensure that they are confident in the required constraints being included in the Archaeological Management Plan (2 nd Iteration).	
(vii) 11. Detailed Design		
First bullet	Justification for the wording of ‘materially worse adverse	The Applicant discussed that it would be amending the wording in this instance to “materially different” to reflect what is now an established principle in DCO drafting.
Second bullet	Justification for the wording ‘is compatible with’ and whether this is sufficiently precise and clear?	The Applicant addressed this point in stating it would do a review of the range of wording in the requirements and adjust where appropriate.
<p>Response to Action Point 14:</p> <p>The ExA requested an explanation of and justification for the different terminology used throughout the requirements (e.g. “must be based upon”).</p> <p>There are a number of terms used in the dDCO throughout the Requirements which are interchangeable. Those we have identified (in italics) are:</p> <p>Requirement 3(2) - The EMP (2nd iteration) must- (a) be substantially in accordance with the environmental management plan (1st iteration) certified under article 44 (certification of plans etc.);</p> <p>Requirement 4(3) - The undertaker must ensure that any consultation responses are reflected in the details submitted to the county planning authority for approval under this Schedule... (para 4(4) also uses the word ‘reflected’)</p> <p>Requirement 5(3) - The landscaping scheme prepared under sub-paragraph (1) must be based on the environmental masterplan and the results of the surveys undertaken under sub-paragraph (2)</p> <p>Requirement 9- —(1) No part of the authorised development is to commence until for that part a scheme for the investigation and mitigation of areas of archaeological interest, reflecting the investigation and mitigation measures included in chapter 11...</p> <p>Requirement 11 - (1) The authorised development must be designed in detail and carried out so that it is compatible with the preliminary scheme design</p>		

Relevant reference	Agenda item	Written Summary of Oral Submissions
	<p>Requirement 12 - No part of the authorised development is to commence until written details of the surface and foul water drainage system for that part, reflecting the mitigation measures in chapter 8...</p> <p>Requirement 15(2) - The standard of the highway lighting to be provided by the scheme referred to in sub paragraph (1) must either reflect the standard of the highway lighting included in chapter 9...</p> <p>These all follow standard wording in confirmed Orders. We are unaware how far as part of those Examinations an analysis of this wording took place and we are conscious this provides well established wording in most cases for each article mentioned. However, we have proposed amendments in the dDCO to regularise so far as possible the wording across the various Requirements. We consider that 'accord' or 'accordance' should be used in Requirements 3, 5, 11 and 15 and 'reflect' is used in Requirements 4, 9 and 12. Reflect is appropriate as it allows a degree of flexibility in the final written details to be submitted and approved.</p>	
Third bullet	Whether the Requirement as drafted provides sufficient safeguards and control in respect of design and links to all the necessary plans and documents?	This Agenda item was not discussed
Fourth bullet	Whether there is a need for a 'design code' which would establish the approach to delivering the detailed design specifications such as bridges and fencing and choice of materials to be secured by a draft dDCO requirement.	This Agenda item was not discussed.
Additional query	The Examining Authority raised an additional query as to whether requirement 11(2) provides flexibility to substitute something shown on any of the plans listed.	The Applicant explained that this is correct, subject to requirement 11(1) which requires that the authorised development must be compatible with the preliminary scheme design etc.
(viii) 12. Surface and foul water drainage		
First bullet	Justification for the wording 'reflecting the mitigation measures' in chapter 8	This Agenda item was not discussed
Second bullet	Should there not be provision for maintenance for the lifetime of the proposed development as in Requirement 13?	The Applicant noted that this will become the responsibility of the relevant highways authority so there isn't a need to add the wording but does not see an issue doing so either.

Relevant reference	Agenda item	Written Summary of Oral Submissions
		The Applicant acknowledged that this requirement may need amendment to remove reference to “foul water”.
Third bullet	The EMP Requirement does not refer to drainage or flood compensation areas so how is the maintenance of these to be secured?	This Agenda item was not discussed.
Additional query	The Examining Authority asked whether, in terms of the bodies listed under Article 12(2), should there be consultation with the lead local flood authority?	The Applicant noted that it is in discussions with the lead local flood authority and will raise it with them as to something that they would seek to have an input in.
(ix) 13. Flood Compensatory Storage (FCS)		
First bullet	The Work Nos that include flood compensation, 3e, 5n, and 6d, so is it appropriate that every part would require an approval of this detail?	<p>The Applicant explained the requirement prohibits any part of the development commencing until details of the flood compensatory storage scheme have been submitted and approved. It is designed to ensure that before any development in floodplain that the scheme for flood compensatory storage for that part is submitted and approved.</p> <p>The Applicant confirmed that it will check the work numbers to make sure everything is included, noting that they recognise a lot of works which do not affect flood storage schemes. The Applicant explained that it will propose an amendment to ensure it only relates to compensation measures which are needed when development occurs in the floodplain. Also, there are definitions such as flood storage area and flood compensation area which it should also refer to. The Applicant suggested providing alternative wording for the Examining Authority to consider.</p> <p>The Examining Authority asked whether the redrafting would include work no. 7 (construction of flood storage area), noting that it has been identified to help deal with flood issues, but what is it that ensure it is delivered.</p> <p>The Applicant confirmed that work no. 7 will be picked up with the redrafting. In terms of the mechanism for delivery, it will be picked up in requirement 13.</p>

Relevant reference	Agenda item	Written Summary of Oral Submissions
Second bullet	Justification for the relationship between the detailed FCS to be submitted and approved and how this relates to the FRA or plans?	This Agenda not discussed
Third bullet	Justification for and explanation of who should be the approval authority and if the Environment Agency should also be involved.	The Applicant acknowledged that it would be appropriate for the Environment Agency to be consultee to this requirement.
(x) 14. Noise Mitigation		
First bullet	Explanation of the locations where each of these mitigation matters would be expected to be provided and how the ddDCO secures this mitigation and ensures future maintenance of these measures.	<p>In terms of the general approach, there are noise barriers (shown in the EMP), low noise surfacing on slip roads (dealt with in Environmental Statement). This requirement requires the noise mitigation is submitted, approved and maintained. If measures are inside the redline the measures will work appropriately.</p> <p>The Examining Authority noted a noise issue identified outside the DCO redline, at Stoke Road through Stoke Orchard. The Applicant confirmed that it will revert on this point.</p>
<p>Response to Action Point 15:</p> <p>The ExA requested an explanation of how noise mitigation is secured, including delivery and maintenance, including any measures outside of the DCO boundary such as at Stoke Road.</p> <p>The onsite noise mitigation measures are noise barriers and they are shown in the environmental masterplan with locations. There are two noise barriers on the M5 and a number on the A4019. Measures also assume low noise surfacing on slips roads as set out in paragraph 6.8.17 and 6.8.18 of Chapter 6, Environmental Statement.</p> <p>The Requirement requires the proposed noise mitigation to be submitted and approved. The Requirement also provides that it must be constructed and maintained.</p> <p>There is one area of offsite works which comprise traffic calming at Stoke Road. This is a scheme that will be delivered separately by Gloucestershire County Council and the Applicant is currently considering the most appropriate route to relying on that mitigation.</p>		
(xi) 15. Highway Lighting		

Relevant reference	Agenda item	Written Summary of Oral Submissions
First bullet	Explanation of what controls are in place for the construction period as this would appear to be exempted by 15(4)	The Applicant confirmed that requirement 15 deals with permanent lighting. Construction lighting is expressly removed and is controlled through the REAC at G13 – construction lighting “is located and maintained so as to cause minimal effects”. There is also reference to construction lighting at B23 of the REAC – “If night working is essential, minimal and directional lighting will be used.” and PHH7 deals with construction lighting and minimising pollution and glare. The measures are commitments secured through the EMP 2 nd iterations and the development will be built and delivered in accordance with those.
Second bullet	Justification for approach to the SRN and whether the County Planning Authority is the appropriate body for approval	This Agenda item was not discussed
Part 2 Procedure for discharge of requirements		
(i)	Whether there should be an amendment to this clause to include bodies in addition to the County Planning Authority and if there is justification for departing from the Planning Inspectorate Advice Note 15.	The Applicant confirmed that the procedure needs to be worked through, in terms of the process and its impact on the various requirements.
Item 3 - Schedule 9 – Protective Provisions		
First bullet	To obtain an update on progress between parties regarding protective provisions and an explanation of any important differences of view and a timescale for resolution, in particular the detailed concerns of:	<p>The Applicant explained that there are a number of protective provisions and discussions being had with undertakers:</p> <ul style="list-style-type: none"> • Gigaclear Plc. No relevant representation and the protective provisions in the order have been confirmed to be acceptable to them. • Openreach have not made a relevant representation. They were seeking some amendments to the protective provisions but the Applicant’s position is they aren’t relevant and it has gone back to Openreach on this basis. The Applicant has not had a response. • Zeogroup UK ltd have not made a relevant representation. They are not seeking any changes to the protective provisions.

Relevant reference	Agenda item	Written Summary of Oral Submissions
		<ul style="list-style-type: none"> • Seven Trent water have not made a relevant representation. The Applicant is engaged with them to agree a set of bespoke protective provisions with them. • Virgin Media Ltd apparatus is not affected, for completeness. They were identified in Book of Reference and have not made a representation. The Applicant has written to them confirming the same. This is the same for a number of undertakers that notwithstanding they are in the Book of Reference it is not in relation to their apparatus and so they do not need protective provisions, they would benefit from the standard protective provisions in any event and none have come back to request any clarification or any particular protective provisions. <p>The Applicant agreed to provide an update at Deadline 1.</p>
First sub-bullet	National Highways;	The Applicant explained that National Highways have raised a number of issues in their relevant representation. The Applicant is in active discussions with them to agree a set of protective provisions, potentially delivered through side agreement. Those discussions are ongoing.
Second sub-bullet	National Grid Electricity Distribution;	N/A
Third sub-bullet	National Grid Electricity Distribution (West Midlands), and	The Applicant explained its understanding that there are two entities National Grid Electricity Distribution and National Grid Electricity Distribution (West Midlands). In both cases the Applicant has been provided with a template set of protective provisions and asset protection agreement and the Applicant has returned comments. Mr Hopkinson for West Midlands plc has recently provided comments back on those. The Applicant believes it is close on the asset protection agreements and there are a few matters on the protective provisions they want to see.

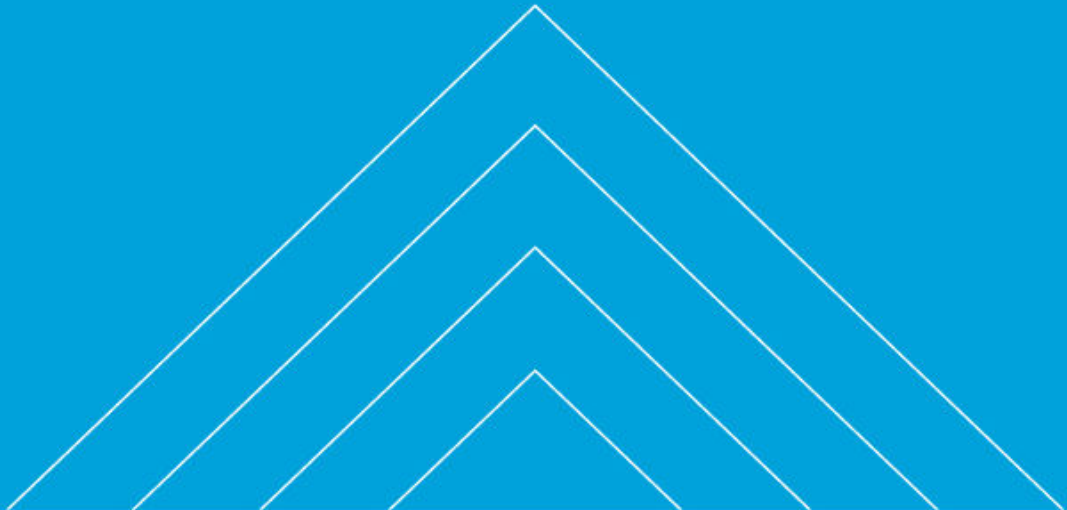
Relevant reference	Agenda item	Written Summary of Oral Submissions
Fourth sub-bullet	Wales and West Utilities.	The Applicant confirmed that Wales and West Utilities have provided it with a set of protective provisions. It has gone back on those and the parties continue to discuss in order to seek agreement.
	<p><u>Action Point 16</u></p> <p>The ExA requested a written update on the progress of negotiating protective provisions with all statutory undertakers and National Highways. The Applicant was also asked to explain the position reached regarding the scope of powers highlighted by NGED (West Midlands) in relation to article 47, and any differences. Also to provide a timetable for resolving any outstanding items.</p> <p>A protective provisions update is attached at Appendix B</p> <p>The position in relation to Article 47 vis a vis NGED is included in the explanation in Appendix A</p>	
Item 4 – Consents, licences and other agreements		
First bullet	The Applicant will be asked to provide an update of progress and timescales for completion. The ExA will then ask questions, including discussing whether any legal agreements are proposed and if there is an indicative timescale for finalising them.	The Applicant explained that engagement is ongoing with Natural England in relation to licences for badgers, bats dormice and great crested newts. Draft licences were submitted and we received letter of no impediment for: dormice on 28 February 2024, bats on 4 March 2024, and badgers on 30 March 2024. Great crested newts are being managed through a local level licencing agreement in Gloucestershire, which is being managed by Naturespace, and discussions are ongoing with them. There is the potential need for permits and licences from the Environment Agency which will be obtained as necessary and there is ongoing engagement in relation to this. The potential consents are listed in the Consents and Agreements Position Statement [APP-033]. The Applicant is in discussions with Gloucestershire County Council as the lead local flood authority in relation to disapplying s.23 of the Land Drainage Act and the Applicant will provide an update at Deadline 1. There may be a variety

Relevant reference	Agenda item	Written Summary of Oral Submissions
		<p>of other consents and permits that the contractor may apply for, also set out in Consents and Agreements Position Statement [APP033].</p> <p>The Examining Authority asked whether the Applicant could provide an update on permit applications. The Applicant explained that they are waiting to be done as it is too early at the moment, the Applicant agreed to provide information on the programme for this.</p> <p>The Examining Authority noted a preference on seeking to get a permit/licence from the Environment Agency on flood risk works and asked for an explanation in how these fit with the statutory tests that the Examining Authority needs to cover (e.g. sequential exception test no worsening of the flood risk).</p>
Second bullet	The ExA will ask for views from the Applicant and IPs on the linkages and relationship between the dDCO and the Licences required and the need or otherwise for matching requirements or similar in each set of controls.	-
Third bullet	The ExA will seek clarification in respect of Letters of No Impediment (LONI)	At the request of the Examining Authority the Applicant agreed to provide the letters from Natural England at Deadline 1.
	<p>Response to Action Point 17:</p> <p>The ExA requested a written update on progress with consents, licences, letters of no impediment and other agreements together with a timetable for resolving any outstanding items.</p> <p>An update on the consents position is attached at Appendix C</p>	
Item 5 – Statements of Common Ground		

Relevant reference	Agenda item	Written Summary of Oral Submissions
First bullet	The ExA will ask the Applicant to provide an update on Statements of Common Ground relevant to the dDCO	<p>The Applicant explained that:</p> <ul style="list-style-type: none"> • Joint Councils - Joint Councils are in receipt of the 2nd iteration. There is a meeting arranged next week to progress the document and the Applicant will provide an updated draft at Deadline 1. • National Highways - matters are outstanding but engagement is taking place in relation to the matters raised in their relevant representation. • Environment Agency - draft is advanced and very close to agreement. The Applicant will provide an updated draft/finalised version at Deadline 1. • Natural England – regular meetings held, a 2nd version has been prepared and approved and is being finalised. • Historic England - drafting has been advanced. There are two matters they've raised which will be dealt with in the DCO (one of them is their involvement with the county archaeologist). The Applicant will provide updated draft at D1. • Apart from the initial drafts put forward with the application, there are no draft SOCGs with the developers being advanced with the developers. The Applicant has noted the Examining Authority's comments from ISH1 and have spoken to the developer's representatives with a view to progressing them.
Second bullet	The ExA will ask for an update on Progress on Principal Areas of Disagreement Summary Statement (PADSS) with National Highways.	The Applicant made no comment to this Agenda item.
	Response to Action Point 18:	

Relevant reference	Agenda item	Written Summary of Oral Submissions
	The ExA requested a written update on progress of the SOCGs with a proposed timetable for completion. An SOCG position statement is attached at Appendix D	

Appendices



Appendix A. Explanation of Articles 7 and 47 of the dDCO

Firstly, the Applicant would like to note that it has reviewed these articles further to assess against recent applications, not least the Lower Thames Crossing. Article 47 itself is not an article that features in any granted DCOs, and it is only recently that applicants have sought to mitigate against Hillside risk in DCOs, the learning about how best to do this is ongoing and we would admit that article 47 as currently drafted is dense and hard to dissect.

On review it appears that from a basic stand point that article 7, and article 47(3) function to do the same thing and as such the Applicant will be proposing to remove article 47(3) from its next draft of the dDCO.

Article 7

Article 7 reads:

“Planning permission

—(1) If planning permission is granted under the powers conferred by the 1990 Act for development, any part of which is within the Order limits, following the coming into force of this Order that is—

- (a) not itself a nationally significant infrastructure project under the 2008 Act or part of such a project; or*
- (b) required to complete or enable the use or operation of any part of the development authorised by this Order,*

then the carrying out, use or operation of such development under the terms of the planning permission does not constitute a breach of the terms of this Order.”

This article serves to provide reassurance that any further permission under the 1990 Act which is not itself an NSIP and not required to complete or enable the use or operation of any part of the development authorised by this Order can do so without breaching the terms of this Order. The article is clarificatory, and serves to provide additional reassurance for any future development within the Order limits.

This article has appears in many highways DCOs, not least M3 Junction 9 DCO 2024, A47 Wansford to Sutton DCO 2023, A417 (Missing Link) DCO 2022, M25 Junction 10/A3 Interchange DCO 2022 and appears in the proposed Lower Thames Crossing draft DCO at article 56(1).

Article 7 is forward looking, that is it will apply to planning permissions within the order Limits following the coming into force of this Order. The Applicant is not proposing to make amendments to this Article and is satisfied that the Article’s inclusion is justified and reasonable.

Article 47, will be deleted in its entirety and the following relevant elements of this article will be added to article 7.

(2) To the extent any development carried out or used pursuant to a planning permission granted under section 57(c) (requirement of planning permission) of the 1990 Act or

compliance with any conditions of that permission is inconsistent with the exercise of any power, right or obligation under this Order or the authorised development—

(a) that inconsistency is to be disregarded for the purposes of establishing whether any development which is the subject matter of that planning permission is capable of physical implementation; and

(b) in respect of that inconsistency, no enforcement action under the 1990 Act may be taken in relation to development carried out or used pursuant to that planning permission, or compliance with any conditions of that permission, whether inside or outside the Order limit

(3) Any development or any part of a development within the Order limits which is constructed or used under the authority of a permission granted under section 57 of the 1990 Act including permissions falling under sub-paragraph (1) or (2) or otherwise, is deemed not to be a breach of, or inconsistent with, this Order and does not prevent the authorised development being carried out or used or any other power or right under this Order being exercised

The above wording provides a different method of drafting to what was Article 47(1). Paragraph (2) will now apply from coming into force of the Order to ensure that it applies equally with the rest of the clause. The clause functions to ensure that from the coming into force of the Order, where there is any inconsistency between the authorised development and any other development permitted under the Town and Country Planning Act 1990, then that inconsistency is to be disregarded, and no enforcement action can be taken as to that inconsistency. This protects third parties from “Hillside risk”, i.e it ensures that they are not at risk of enforcement proceedings as a result of any inconsistency between the authorised development and that planning permission where that inconsistency means that the planning permission is incapable of physical implementation essentially introducing the principle of severability into these permissions.

Hillside risk refers to the law which has been confirmed in Hillside Parks v Snowdonia NPA, a general principle first established in Pilkington v SoS for the Environment whereby a permission can no longer be relied upon where development pursuant to later permissions render it impossible to implement the original permission.

Paragraph (3) also clarifies that the protection afforded by paragraph (2), will also protect the undertaker, as it confirms that development granted under the Town and Country Planning Act 1990 will not prevent the authorised development being carried out, in effect confirming the primacy of the authorised development.

Appendix B. Status of Negotiations with statutory undertakers

Statutory Undertaker benefitting from PP	Status of negotiations
<p>National Highways (Highway Authority for the SRN)</p>	<p>Current position: The matters in dispute are those raised in NH's RR. The Applicant is in active discussions with a view to agreeing a set of PPs. A draft revised PPs (and draft side agreement) was sent to NH on 24 May 2024 for consideration and the parties are working together to resolve outstanding issues. Discussions are ongoing.</p>
<p>National Grid Electricity Distribution (NGED) (electricity undertaker) Assume it is both NGED and NGED (West Midlands)</p>	<p>Current position: The Applicant understands from NGED's legal representative at ISH2 that NGED's concerns will be addressed following an agreed position being reached with NGED West Midlands Plc (see below).</p>
<p>National Grid Electricity Distribution West Midlands) PLC (Electricity undertaker)</p>	<p>Current position: Draft APA and PPs recently provided by NGED on which GCC are considering and will be responding.</p>
<p>Wales and West Utilities Ltd (Gas undertaker)</p>	<p>Current position: W&W provided proposed amended PPs to GCC in April 2024. GCC has returned comments on these. These continue to be discussed with a view to getting an agreed set of PPs in place as soon as possible.</p>
<p>Other Undertakers</p>	
<p>Gigaclear PLC</p>	<p>Current Position:</p>

Statutory Undertaker benefitting from PP	Status of negotiations
(Electronic communications apparatus)	Gigaclear confirmed on 27 Feb 2023 that PPs in dDCO are acceptable.
Openreach (BT) (Electronic communications apparatus)	<p>Current Position:</p> <p>Openreach provided bespoke PPs on 11 May 2023.</p> <p>Two issues raised (i) amendment of arbitration clause to refer to NRSWA and (ii) proposals in relation to HVDC apparatus.</p> <p>On 26 May 2023 GCC confirmed HVDC issue not relevant.</p> <p>However, formal agreement not reached on PPs. Last communication 12 June 2023 with BT asking to insert wording re HDVC apparatus in the PPs. GCC has confirmed this isn't part of the Scheme.</p> <p>GCC sought clarification on 11 August 2023 to confirm whether BT was willing make any changes to its standard PPs but no response yet received.</p>
Zayo Group UK Ltd (Electronic communications apparatus)	<p>Current position:</p> <p>Draft PPs provided to Zayo on 20 Jan 2024.</p> <p>Zayo responded on 21 September 2024 requesting the DCO adds in wording to the effect of "Zayo recognises that the draft PPs provide a mechanism for the protection of Zayo's existing apparatus". This is not necessary. Zayo also stated that they do not see the need for PPs as they are protected by the New Roads and Street Works Act 1991.</p>
Severn Trent Water (Water undertaker)	<p>Current position:</p> <p>STW provided bespoke PPs to GCC in Jan 2024. GCC has gone back with comments on STW PPs. The Applicant is waiting on a response.</p> <p>The Applicant will continue to press for an agreed set of PPs.</p>

Statutory Undertaker benefitting from PP	Status of negotiations
Virgin Media Limited (underground telecoms cables)	VML was identified in the Book of Reference as having interests but we understand that VML’s apparatus will not be directly impacted. Carter Jonas wrote to VML on 26 Oct 2023 confirming this and that, in any event, PPs will be included in the DCO. The Applicant is not aware of any response.
Neos Networks Limited (underground telecoms cables)	NNL was identified in the Book of Reference as having interests but we understand that NNL’s apparatus will not be directly impacted. Carter Jonas wrote to NNL on 26 Oct 2023 confirming this and that, in any event, PPs will be included in the DCO. The Applicant is not aware of any response
Instalcom UK Limited (underground telecommunications cables and equipment)	While Instalcom are in the BoR as having interests in land, the Applicant understands that there is no apparatus of Instalcom affected and therefore PPs not required. As such no negotiation necessary.
OCU Services Limited (underground telecommunications cables)	Current position: It has been confirmed that OCUS does not have any apparatus in the land. GCC’s land agents, Carter Jonas wrote to OCUS on 26 Oct 2023 to confirm this position.
National Gas Transmission PLC (Gas undertaker)	Current position: It has been confirmed that NGTP does not have any apparatus in the land. GCC’s land agents, Carter Jonas wrote to NGTP on 26 Oct 2023 to confirm this position.

Appendix C. Consents and Licences required

Type of licence / consent	Relevant Authority	Current position and timetable for securing licence/ consent
Licence under s10 of the Protection of Badgers Act 1992 (for disturbance or destruction of badger setts)	Natural England	Letter of No Impediment issued. Final licence application to be made following confirmation of DCO (following approval of detailed design).
Licence under the Conservation of Habitats and Species Regulations 2017 & s16 Wildlife and Countryside Act 1981 (in relation to bat roosts, dormouse and Great Crested Newts)	Natural England	<p>Letter of No Impediment issued in relation to bats. Final licence application to be made following confirmation of DCO (following approval of detailed design).</p> <p>Letter of No Impediment issued in relation to dormouse. Final licence application to be made following confirmation of DCO (following approval of detailed design).</p> <p>Great Crested Newts are being managed through a district level licensing agreement with Nature Space. Discussions ongoing.</p>
Exemption permit under the Salmon and Freshwater Fisheries Act 1975 to translocate fish	Environment Agency	Permit to be applied for after confirmation of DCO following detailed design. Ongoing engagement with EA.
Various permits and licences may be required for discharging water, abstracting water,	Environment Agency	Permits and licences to be applied for by the contractor as required following confirmation of DCO and prior to or during construction phase depending on construction phasing and sequencing. Ongoing engagement with EA. If asbestos is found in any buildings to be demolished a licence will be required from HSE which the contractor will apply for.

Type of licence / consent	Relevant Authority	Current position and timetable for securing licence/ consent
<p>disposing of waste and materials.</p> <p>Land Drainage consent under section 23 Land Drainage Act 1991 for works affecting watercourses.</p>	<p>GCC as lead local flood authority</p>	<p>The undertaker is seeking consent to disapply this provision. We will keep the examining authority updated on progress.</p>
<p>Trade Effluent consent for discharging trade effluent from welfare facilities</p>	<p>Local water undertaker</p>	<p>This will be applied for by the contractor if required following confirmation of the DCO prior to relevant works for which this consent is needed commencing.</p>
<p>Consent under section 61 Control of Pollution Act 1974 in relation to construction noise and vibration</p>	<p>Relevant local authority</p>	<p>This will be applied for by the contractor following confirmation of the DCO as soon as practicable and in any event at least 28 days prior to the relevant work being carried out.</p>

Appendix D. Status of Statements of Common Ground

Party	Status of SoCG	Proposed timetable for completion
Joint Councils (APP-146)	Following a series of specialist meetings, the Joint Councils and the Applicant have agreed a revised iteration of the SoCG with matters agreed and matters still outstanding. Discussion is ongoing with regard to matters outstanding and the Applicant expects to submit a further iteration of the SoCG to the Examination.	Updated revision provided with D1 documents. Further iteration to be submitted to the Examination at an agreed deadline between parties.
National Highways (APP-147)	National Highways and the Applicant have agreed a revised iteration of the SoCG. Discussion is ongoing with regard to matters outstanding and the Applicant expects to submit a further iteration of the SoCG to the Examination.	Updated revision provided with D1 documents. Further iteration to be submitted to the Examination at an agreed deadline between parties.
Env Agency (APP-148)	The Environment Agency and the Applicant have agreed a revised iteration of the SoCG. Discussion is ongoing with regard to matters outstanding and the Applicant expects to submit a further iteration of the SoCG to the Examination.	Updated revision provided with D1 documents. Further iteration to be submitted to the Examination at an agreed deadline between parties.
Natural England (APP-149)	Natural England and the Applicant have agreed a revised iteration of the SoCG with all matters now agreed,	Final SoCG provided with D1 documents as all matters now agreed.
Historic England (APP-150)	Historic England and the Applicant have agreed a revised iteration of the SoCG. Discussion is ongoing with regard to matters outstanding and the Applicant expects to submit a further iteration of the SoCG to the Examination.	Updated revision provided with D1 documents. Further iteration to be submitted to the Examination at an agreed deadline between parties.

Party	Status of SoCG	Proposed timetable for completion
N.West Cheltenham (Elms Park) (APP-151)	No revision to the SoCG submitted with the DCO application as yet. The Applicant is looking to advance SoCG to see what can be agreed and to capture those issues which are in dispute.	TBC
Safeguarded Land (APP-152)	As above	TBC
West Cheltenham (APP-153)	As above	TBC

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