M5 Junction 10 Improvements Scheme

Applicant Response to Examining Authority's Second Written Questions

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Rules 8 (1) (b)

Planning Act 2008

Infrastructure Planning (Examination Procedure) Rules 2010

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The Infrastructure Planning (Examination Procedure) Rules 2010

M5 Junction 10 Improvements Scheme

Development Consent Order 202[x]

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Executive Summary

The Development Consent Order (DCO) application for the M5 junction 10 scheme was submitted on 19 December 2023 and accepted for examination on 16 January 2024.

The purpose of this document is to set out Gloucestershire County Council's (GCC) response to the Examining Authority's second round of Written Questions (ExQ2s). Where the Examining Authority have requested that the Applicant provide new documents, these are submitted at Deadline 5 with the associated ExQ2 referenced in the document title.

1. General and cross-topic questions

Question number	Doc ref and question to:	Question	Applicant Response
Q1.0.1	The Applicant and National Highways	**Project Control Framework and Governance** (i) The SoCG with National Highways [REP3-037] states no agreement has been reached on this matter. Can the Applicant and National Highways set out clearly their respective positions, and how each party proposes that an appropriate control framework and governance arrangements are proposed to be achieved. (ii) Can each party also set out its position if agreement is not reached and how they envisage the SoS should be advised of the implications of not having an agreement in place bearing in mind the ExA's responsibility to prepare a DCO which would be fit for purpose in the event the SoS were to approve the application.	The Applicant has had prior sight of the response to this question from National Highways and welcomes the understanding that the detailed engagement that was undertaken between the Applicant and National Highways was construed as giving approval rather than appropriateness and governance. The Applicant's position is that we are confident that moving forward the role of PCF in the delivery of the project has been defined and agreed without the need for SoS intervention. Indeed, PCF 4 and 5 are a list of products to be produced by the Applicant which are agreed in principle with National Highways.
Q1.0.2	The Applicant	**Statements of Common Ground with prospective developers** Drafts of the SoCG were supplied as part of the initial application [APP-151, APP-152 and APP-153]. Please provide updated drafts so the positions of each respective party can be properly understood at this stage of the examination and the ExA can be advised of the progress made between the parties.	Updated versions of the SoCGs with the prospective developers have been submitted at Deadline 5.

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Q1.0.3	The Applicant and National Highways	**Statement of Common Ground with National Highways** Can the Applicant ensure that the Glossary includes reference to all the abbreviations and acronyms used in the document, currently there are several which are not referenced, for example at section 7.6 CPI, SPI, LEI, BEI.	The Applicant can confirm that the glossary for the SoCG with National Highways will be updated to reflect the Examining Authority's comments. An updated version of the SoCG, including the glossary, will be submitted at Deadline 7.
Q1.0.4	The Applicant	**Equalities Act** In response to Q1.0.10 the Applicant reiterates that a pack of information was provided to occupiers of the Traveller site and a cover letter was provided in 6 different languages which provided contact details. (i) Did either the Traveller Liaison Support Officer or the Friends, Families and Travellers Charity advise that engagement in writing was the most appropriate approach to engage constructively with the residents? (ii) Did the Applicant visit the site in order to seek to create a constructive approach which facilitated consultation without relying on written communication? (iii) Was the Applicant advised not to visit the site, or undertake a review that indicated it was not safe to do so?"	(i) The Friends, Families and Travellers Charity advised that should further engagement be required with residents of the Traveller site, to liaise with the appropriate Traveller Liaison Officer. The Applicant was advised by GCC's Traveller Liaison Support Officer not to visit site without police support due to history of the site and a serious incident that occurred previously. The Applicant therefore contacted the Traveller Liaison Officer who advised that if the site could not be visited in person, the consultation pack cover letter should include a paragraph explaining what the pack contained and how to get further information, in Polish, Ukrainian, Lithuanian and Bulgarian, as these are known to be the most likely languages spoken on the site. (ii) A process server was used to deliver the information pack containing consultation information, to ensure the s42 notice was delivered to the site, on 21 December 2022. The information pack included a cover letter containing an explanation of the consultation and the documents provided, in Polish, Ukrainian, Lithuanian and Bulgarian, as these are known to be the most likely languages spoken on the site. For the reasons stated above, the Applicant was advised not to visit the site without police support. This process was repeated for all other relevant consultation and engagement.

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			(iii) The Applicant was advised by GCC's Traveller Liaison Support Officer not to visit site without police support due to history of the site and serious incident that occurred a few years previous. Having received this advice, the Applicant considered that visiting site with police support would not result in constructive engagement and therefore a decision was taken to rely on the information pack served in the languages noted above.
1.2 Need			
Q1.2.1	The Applicant	**Local Policy** Is it correct to say that in respect of the evolution of local policy, that the Applicant seeks to rely on the evidence base for the JCS as supporting the need case for the proposed development?	Yes, it is correct to state that with regard to the evolution of local policy it is the Applicant's position that the evidence base for the JCS establishes the need case for the Scheme. However, this is also reaffirmed in the Local Transport Plan, the Infrastructure Delivery and plan and most recently by the Joint Councils' GC3M assessment.
Q1.2.2	The Applicant, Bloor and Persimmon Homes, Joint Councils, St Modwen and Midlands Land Portfolio	**Local Policy** The JCS, as adopted, does not stipulate that for individual allocations, each subsequent planning application must not go ahead in advance of any road improvement scheme but to set out how it proposes to ensure the particular scheme would need to address "the provision of infrastructure and services required as a consequence of development," Paragraph 5.8.7 of the JCS goes on to say "**This policy will primarily be delivered through the development management process**. Early engagement with the Local Planning Authority at pre-application stage is encouraged. Developers may note in this respect that Gloucestershire County Council has adopted a 'Local Developer Guide: Infrastructure &	i) The Applicant would not agree that the policy and supporting paragraphs of the JCS do not specifically require the Scheme, or specifically justify it in need terms. Paragraph 5.8.7 of the JCS relates specifically to the delivery of developer contributions through the development management process financial contributions towards the provision of infrastructure and services required as a consequence of development. Adoption of the wider JCS and its strategic allocations are predicated on the Transport Evidence Base and the mitigation measures outlined in Scenario DS7. Moreover, Policy SA1(7) and (8) require developers to ensure the implementation of the Infrastructure Delivery Plan and to align with and where appropriate contribute to the wider transport strategy contained within the Local Transport Plan. Both policy documents establish the core elements of the Scheme as being

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		Services with New Development' (February 2013) that relates to infrastructure requirements and associated matters for which it is responsible." (Our Highlighting) (i) Is it not the case, that even if the ExA were to accept the Applicant's case that the need for the broad infrastructure improvements has been established through the evidence base for the JCS, the actual policy and supporting paragraphs do not specifically require this proposed development, or specifically justify it in need terms. (ii) Does it not remain the case for the developer to demonstrate to the LPA's satisfaction that the scheme proposed provides the infrastructure and services required as a consequence of the individual developments?	required to meet the infrastructure needs necessary to support eh development of the strategic allocations and the wider JCS. The Applicant would also draw the Examining Authority's attention to paragraph 5.1.5 of the JCS which establishes the importance of infrastructure to the delivery of the plan's policies and proposals, the JCS and the function of the IDP to assess the infrastructure and services that will be required to support the levels of housing and employment growth proposed in the plan. In particular the IDP fulfils the role of presenting estimated infrastructure costs and secured sources of funding, including the potential for developer contributions towards infrastructure through S106 planning obligations. Paragraph 5.1.5 also states that the IDP will also be the evidence base underpinning any Community Infrastructure Levy (CIL) charging schedule for each of the three constituent local planning authorities. In view of the above the Applicant would propose that whilst the Scheme is not named explicitly within the wording of the JCS its inclusion within Scenario DS7, which underpins the entirety of the JCS, and the intrinsic links with the IDP and TLP established within the wording of the JCS the need for the scheme is justified. (ii) Whilst the Scheme cannot prejudice the outcome of any individual planning application associated with the Strategic Allocations, or other development sites, it is the Applicant's position that the policy background against which any planning application would be assessed established the need for the Scheme to mitigate the impacts of the individual development when considered cumulatively. This has been reinforced by the conclusions of the GC3M Assessment submitted into Examination by the Joint Councils.

3. Biodiversity, ecology and the natural environment

Question number	Doc ref and question to:	Question	Applicant Response
3. Biodiversity, Ecology and the Natural Environment			
Q3.0.1	The Applicant and Joint Councils	**LEMP** The Joint Councils sought amendments to the LEMP in response to FWQ 3.0.6. Have amendments been made which now resolves this concern?	The Joint Councils are in agreement that these can be addressed in the 2nd iteration of the LEMP, as evidenced in the Statement of Common Ground (REP4-024, matter reference number 19.1).
3.1 Habitats Regulations Assessment			
Q3.1.1	The Environment Agency	"Within the Relevant Representation [RR-013], the Environment Agency raise a number of points related to the aquatic environment (5.1, 5.2, 5.3, 5.4, 5.5, 5.7). A number of matters are also raised in the SOCG [REP1-036] (Entries 7.1, 7.2 and 7.3 of Table 5-1 matters outstanding). However, these entries do not provide an indication as to whether the EA consider that these have the potential to affect the conclusions of the Habitats Regulations Assessment provided to date (most recent versions provided as REP3-024 and REP3-026). Can the EA confirm their current position on the Habitats Regulation Assessment?"	Whilst this is for the Environment Agency to respond, the Applicant can confirm that items 7.1, 7.2 and 7.3 are all matters agreed in the most recent version of the SoCG with the Environment Agency, as submitted at Deadline 4 [REP4-024]. With regards to their potential to affect the conclusions of the HRA, these are all Scheme embedded mitigation measures, and have therefore been included in the HRA assessment and its conclusions.

5. Compulsory acquisition, temporary possession and other land or rights considerations

Question number	Doc ref and question to:	Question	Applicant Response
Q5.0.1	The Applicant, Joint Councils, Bloor and Persimmon Homes, St Modwen and Midlands Land Portfolio, Cheltenham Borough Council Property and Asset Management	**Funding** At CAH1 the Joint Councils advised that there had been a change to the Community Infrastructure Levy Funding Statement. Please can all parties explain what implications this has for the funding in respect of Compulsory Acquisition and the obligations under those regulations, and secondly in the Applicant's capacity to fund the construction of the project. In responding, please set out any implications for the timing of the delivery of such funding, and as far as you can the changes to the amount of funding this could ultimately deliver, relative to the sums which might be delivered through s106 alone?	Whilst the Applicant is not reliant on the CIL funds to finance the Scheme it is a relevant additional source of funding which may contribute to the Scheme that GCC are discussing with the relevant LPAs. Its availability or lack thereof, would not have any timing implications for the commencement of the authorised development as the Applicant is satisfied that the funds anticipated to be secured through section 106 agreements are sufficient to meet the funding gap.
Q5.0.2	The Applicant, Joint Councils, Bloor and Persimmon Homes, St Modwen and Midlands Land Portfolio,	**Funding** The ExA understand that the Community Infrastructure Levy Amendment Regulations 2019 removed the restrictions on pooling funds and on funding the same item of infrastructure from both CIL and s106 obligations. Can each party explain the changes that the inclusion of the M5 J10 within the Infrastructure Funding Statement has in respect of the potential to facilitate funding in combination with any s106 money?	The Applicant concurs that the Community Infrastructure Levy Amendment Regulations 2019 removed restrictions on pooling funds. It is well established that unlike development contributions required by section 106 obligations which generally relate to major developments and are linked to its specific impact, CIL monies can be obtained at a flat rate through the charging schedule. The inclusion of the M5 J10 within the Infrastructure Funding Statement provides a clear opportunity for the Scheme to obtain additional funding from the CIL pool. Whilst the Applicant is not

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	Cheltenham Borough Council Property and Asset Management		reliant on this pool of funds, it is clearly a relevant additional source of funding which may contribute, overall, to the scheme.
Q5.0.6	The Applicant	**Funding** (i) The ExA note the response provided to ExQ 5.0.8, do you consider that the test under s122 would be met if the land were to be acquired within the 5-year period referenced within the answer, but the development did not commence? (ii) Taken as a whole does the guidance, and the terms of the Act not only require there to a reasonable prospect of the requisite funding being available for acquisition, but for the development to be undertaken?	Section 122 Planning Act 2008 states that a DCO may include provision authorising the compulsory acquisition of land only if the Secretary of State is satisfied that the land: a. Is required for the development to which the development consent relates b. Is required to facilitate or is incidental to that development, or c. Is replacement land which is to be given in exchange for the order land under section 131 or 132; and d. There is a compelling case in the public interest for the land to acquire compulsorily. The Applicant has summarised its position relating to the provisions on funding in CA Guidance, but the Applicant would make further reference to paragraph 10 which states the Secretary of State *must ultimately be persuaded that the purposes for which an order authorises the compulsory acquisition of land are legitimate and are sufficient to justify interfering with the human rights of those with an interest in the land affected.* The ExA through seeking to obtain certainty that the land will be used for the development is going beyond the tests set out in the Planning Act and Guidance. The Planning Act 2008 and Guidance are clearly limited to assessing the *purpose* for which the acquisition is sought and weighing that purpose against the

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			impact caused. There is no requirement which would force any party to ensure that the purpose comes to fruition. However, the Applicant would acknowledge that in considering whether acquisition of land is justified based on the *purpose* for which it is acquired, the decision maker may wish to analyse the potentiality of that *purpose*, i.e the development commencing. The Applicant would submit that paragraphs 17-18 deal with this consideration and as mentioned above, the Applicant has made its position clear in this regard. The Applicant would further reference the precise terms on which it seeks to be granted the dDCO, being set out in article 21 that the undertaker may acquire compulsorily so much of the Order land as is required to carry out, facilitate or is incidental to the authorised development. This ensures that the operation of compulsory acquisition is in keeping with section 122. What this means in practice is that the Applicant is forced by the terms of the Order to acquire *only so much as is required to carry out the authorised development.* Table A, Statement of Reasons details the purposes for which compulsory acquisition and temporary powers are sought, and separately the dDCO sets out the precise basis on which rights and temporary powers can be exercised (see Schedules 5 and 7) . Were the development not ever to be commenced (i.e not commenced within the 5 year period as required by requirement 2), then the Applicant submits that the undertaker may be at risk of breaching the terms of the order, as they would have acquired land compulsorily that was not required or otherwise potentially not in accordance with the purposes set out in the Order. Not only

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			would there be potential offences under the Planning Act 2008 but potentially recourse due to the impacts on human rights. However, the Scheme is not seeking compulsory acquisition powers for a development that will never commence. The Applicant has demonstrated to the satisfaction of the relevant tests in guidance that it has sufficient funding to satisfy compulsory acquisition and otherwise has provided an indication on how the remaining shortfall of funding will be met. As a basic position, the undertaker as a local authority will not be seeking to purchase land for which it will have to take the liability of purchase, and ongoing ownership for where it has no anticipation that the relevant development would be built out. In the event that the development were to be paused pending further funding, or whatever other reason, including due to central government funding changes as has happened in the recent past with a number of projects not least the A303 Stonehenge, or HS2, then the undertaker would have a choice of either retaining the land until funding is secured or selling the land. In the event that the land is sold then this will be subject to the Crichel Down rules which are in place to ensure that the persons affected by the compulsory acquisition have the right of first refusal regarding and sale. The Applicant would submit that retaining the land pending further funding would not cause the undertaker to be in an automatic breach of the order as the land is still acquired for the purpose of the authorised development. It appears to the Applicant that the Panel are wrestling with a perceived uncertainty regarding the grant of compulsory acquisition powers and how to weigh this uncertainty against the public benefit of the Scheme. The Applicant would submit that Guidance has set out the tests required to consider relevant to

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			this uncertainty in paragraphs 17 and 18 and has provided its position in relation to these paragraphs.
Q5.0.7	The Applicant	**Funding** The ExA note the Applicant's response at Item 16.20 in [REP3-044]. If there is no agreed position on deadweight and that this should be considered by the LPAs as part of the determination of the individual applications, does this contradict the Applicants position in respect of any confidence that there can be in future funding from the development of the allocations?	The precise quantum of deadweight to be apportioned to specific developments is a matter for the determination of the relevant local planning authority. However, the broad principle of the value of deadweight in total across the network is agreed between the local planning authorities and Gloucestershire County Council and local highway authority. Therefore, the Applicant does not consider there is any implication on the confidence that can be drawn over the future funding mechanisms anticipated by the Applicant The Applicant understands that Gloucestershire County Council (as local highway authority) have begun to update planning consultation recommendations to the LPA's concerning the current live planning applications. These recommendations set out the limits for growth at north-west and west Cheltenham in the event that the Junction 10 scheme is not implemented. This assessment is based on the GC3M report that has been submitted to the Examination and considers cumulative impacts in accordance with INF1, INF6 and INF7. The response to the most recent Nema application is appended to this response, this states that "In the absence of the Junction 10 scheme, the County Council is recommending that a maximum total of development from the west Cheltenham (A7) and north west Cheltenham (A4) allocations cumulatively be restricted to 1711 residential units and 58,280 sqm of employment GFA. This aligns with the information provided by the Applicant in Table 6, Appendix L, Traffic Forecasting Report [REP4-020]. Further, the Applicant understands that Gloucestershire County Council's position is that the actual level of "deadweight" from a development management perspective will depend on how much

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			development is consented, where and in what sequence. This is the reality of the development management process and differs from the "deadweight" based on cumulative build-out for the DCO modelling. However, in determining the funding apportionment methodology, the Applicant has used this "deadweight" figure to better align with the Section 106 tests, i.e. the funding apportionment is based on dependent development and excludes "deadweight".
Q5.0.8	The Applicant	**Funding** In the Funding Technical Note at paragraph 4.1.8 the Applicant advises that CA would have a five-year window. While this would meet the usual timeframe within a DCO and the CA Regulations, the HIF funding on which the Applicant relies would appear to expire in 2027. (i) In these circumstances would it not be more appropriate to have a Requirement similar to that at Manston Airport not less?	The Applicant understands that this question refers to article 21 of the Manston Airport Development Consent Order 2022 which states that no notice to treat can be served or declaration under section 4 of the 1981 Act executed after the later of: a. A year after the period for legal challenge in section 117 of the 2008 expires; or b. the final determination of any legal challenge under section 118 of the 2008 Act. Fundamentally, the Applicant does not consider that its position regarding funding is equivalent to that in the Manston Airport example. The Applicant has in its response to ISH3.27 provided a more detailed explanation for the difference in the funding situations between Manston and this Scheme. In short, in Manston there was concern during examination that there was insufficient evidence that the applicant held adequate funds to indicate how an order that contains the authorisation of compulsory acquisition is proposed to be funded. This is not a concern in this Scheme, with clear adequate funding being in place for compulsory acquisition proposed by the Scheme. Therefore, a reduction in the time limit to exercise compulsory acquisition power to one year is not considered proportionate or necessary given the funding that is in place.

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			However, the Applicant does note that under the current arrangement with Homes England, which the Applicant maintains is, and will always be, subject to the ability to change through negotiation between the parties, the Scheme cannot draw down on additional funding from the end of 2027. The Applicant is actively exploring options with Homes England to extend the funding period of the Scheme and will be arguing that extending the period for funding to 2029 is an appropriate period. The Applicant is not able to give further details regarding this discussion with Homes England and acknowledges that extension of funding period is within Homes England gift and not something that is within the control of the Applicant. However, the Applicant would, in trying to demonstrate the reasonableness of the assumption that such a timeframe could be extended, point to the fact that the Scheme's ability to unlock significant housing growth in the context of recent government announcements, that highlight the primacy of the need for housing across the United Kingdom, would suggest that such an extension cannot be considered unlikely. Considering that acquisition of land may well be staggered to align with construction timetables, it would be important to maintain a compulsory acquisition period for as long a period as is reasonable. Clearly, the general position in DCOs is this to be 5 years. The Applicant would accept that in this case, with a mind to the period of HIF funding that a reduction of the timeline to exercise compulsory acquisition could be reduced to 3 years, to reflect more closely the factual funding situation. This change is not, to repeat, as a result of an inadequacy of funding as was the case in Manston Airport. By reducing the period for acquisition to 3 years. The Applicant recognises the point being made by the ExA in this question but would reject the imposition of a Requirement similar

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			to that at Manston Airport, which only granted 12 months to acquire the necessary land. The response to Q5.0.10 below demonstrates that there is a means by which the funding availability period could be extended. Any such Requirement would unfairly restrict the ability to utilise any extension to the HIF grant or to utilise other forms of funding.
Q5.0.9	The Applicant and National Highways	**Funding** In previous evidence NH have indicated that they do not agree with the cost forecasts for the sum needed for the construction of the project. Can both parties please provide an itemised list spelling out their calculations and why you consider list provides an objective basis for costing assessment. In doing so please provide evidence as to why you consider your position the more robust and why the ExA should give this greater weight in the recommendation to the SoS.	The Applicant has shared Bills of Quantities with National Highways on 25/9/24 that will provide a consistent approach to the estimation of materials. The Applicant's breakdown of costs remains as detailed in Table 2 of the Funding Statement (APP-036). Construction costs of £114,932,579 have been developed based on the Preliminary Design (DF3) using a 'bottom-up' estimating methodology. Quantities were measured and priced in accordance with the Method of Measurement for Highways Works (MMHW), which is the industry (DMRB) standard Estimating Guidance document for Cost Plans and Estimates across Highways schemes. The prices were derived using composite rates from the estimator's rates database of comparable schemes. The Applicant understands that within the AtkinsRéalis PPS Estimating discipline an internal Units Rates Database was used. This tool is usedacross various complex infrastructure sectors. This tool holds over 30,000 rates, encompassing sectors such as highways, rail, water, aviation, and other complex infrastructure sectors. The rates are structured at multiple levels, including resource-level rates up to asset-level breakdowns, allowing for detailed, granular cost estimates tailored to specific project needs. The database is fed from a blend of top-down and bottom-up rates, providing a comprehensive view of the cost landscape. These rates are continually updated based on real-world data from a wide range of projects, ensuring accuracy and relevance.

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			The breadth of sectors covered, and the depth of data provide a high level of cost assurance, ensuring that our estimates are both reliable and robust. Preliminary costs of £45,818,408 have been developed based on the main and satellite compounds sites identified in the preliminary design. A unit square meter rate was then applied to determine the estimated prelim costs. The until rate used considered a number of items, including: cost of offices, construction management, insurance, ancillary overhead costs, temporary works, traffic management. This demonstrates that the Applicant did not arrive at the preliminary costs simply on a percentage basis of the overall costs of the Scheme but rather has built this estimate from the ground up. Design costs of £42,111,713 are a combination of historic costs incurred and estimated future costs. As is typical with cost estimates at this stage, future design costs were calculated as a percentage of the direct construction. The percentage used was based on typical percentages used. The estimate for land costs have been undertaken by the Applicant's land agent and the estimate remains at £24,579,173. As stated in the Funding Technical Note (REP4-043), this remains a robust estimate. The Applicant strongly argues that this position is robust as it is updated using actual costs and monitored to ensure that the remaining budget is sufficient. The estimate for inflation is £18,732,636. As explained in the Funding Technical Note, this is regularly monitored. The allowance for risk is £33,894,705. As explained in the Funding Technical Note, this is a pre-mitigation allowance of the order of 18% of costs and is robust for this stage.

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			The allowance for strategic risk is £2,140,696. This relates to matters related to GCC's management of the contract, such as disputes. As such, these are different to risks (identified above) that our suppliers have identified and are working to mitigate. The allowance for post completion costs is £11,000,000. This includes an allowance for potential compensation claims and commuted sums. The Applicant has not concluded discussions with National Highways regarding commuted sums but consider this allowance to be more than sufficient. The Applicant does not accept that it needs to justify its position as against National Highways, rather demonstrate its own approach is robust. The Applicant considers that it has developed a robust scheme budget using professional suppliers (AtkinsRealis) with access to an extensive database of construction costs. These costs were verified by Homes England's audit using Turner Townsend.
Q5.0.10	The Applicant and Homes England	**Funding and Construction Programme** Homes England in their D4 submission state "The contractual funding Availability Period is to 30 September 2027 by which time all HIF grant funding must be incurred and claimed. The GDA requires construction of the Scheme to be completed by 30 December 2027." This is confirmed in the Applicants Funding Technical Note. As of September 2024, that facilitates a 40-month window for the project to have been constructed prior to the end of the HIF funding as currently offered. In Chapter 2 of the ES [AS-010] Table 2-1 indicates a 30-month construction sequence for the project to be complete. In the D4 submission (doc 9.68 page 20	(i) The Applicant appreciates that the Scheme has an estimated 30-month construction programme, as indicated in Chapter 2 of the ES [AS-010] Table 2-1. The Applicant is also aware that currently this programme causes issues with the project completion date and availability period in the GDA with Homes England. The Applicant is in discussions with Homes England regarding extension of this completion date and availability period. The Applicant would not be barred from further negotiation and discussion with Homes England after the examination to further extend this deadline if it was deemed necessary and appropriate by the Applicant. The Applicant is aware of and appreciates the limits of Homes England delegated authority and that for extensions to the availability period, consent of HMT/MHLGC would be required but that Homes England do have delegated

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		Item 1.4 Item 3) the Applicant further states that the “final cost is likely to be around September/October 2025” Assuming the SoS were to make a positive decision to grant the DCO, the current statutory timetable would give a provisional date for decision of 4 June 2025, 9 months from now. This infers the construction would need to commence within one month of a positive decision being made by the SoS. (i) Please explain how this might be achieved, when the Applicant acknowledges that there would be no statement to commence in advance of certainty of funding. (the gap in funding currently identified (circa £81million)), That the funding gap relies in part, according to evidence presented by the Applicant at ISH3 upon the safeguarded land to deliver 33% of the assumed s106 funding and the Joint Councils in their D3 submission [REP3-64] in response to ExQ1.1.4 state “Should the site be allocated then there could be potential that some units may be realised before the end of 2031.” (ii) [REP3-016] identifies a series of additional consents and licences which will be required, (some of which may limit works in specific seasons) while others are yet to be concluded. Can the Applicant give greater detail on their construction programme and the readiness to start on site? In doing so set out your programme for development of the detailed design work, approvals for necessary licences and the discharge of requirements and any other time critical factors which would influence the ability to commence	authority to extend the completion date of the Scheme to March 2028. Assuming that consent is granted in June 2025, the Applicant has allowed 4 months to discharge requirements and pursue GVD for land. The Applicant is aware that this timetable is restricted and intends to take actions prior to the coming into force of the Order to allow for the swift discharge of requirements. These anticipatory actions are permitted due to Schedule 2, Part 2, paragraph 20 of the dDCO. Running concurrently to this, the Applicant will be following its notice to proceed procedures both with National Highways and internally within Gloucestershire County Council. This process will in part be dependent on finalisation of detailed design to provide final scheme costs. The Applicant anticipates that the notice to proceed procedures will be finalised by November 2025 which would give until March 2028 for completion of the Scheme. An estimated timeline of November 2025 for commencement would also be sufficient time to secure s106 commitments from sites A4 and A7. As set out in its Funding Technical Note, the Applicant is cognisant of its funding arrangements for the remaining £81million funding gap, of which an estimated £26million is to be derived from the safeguarded land. It separately acknowledges that the timing as to when s106 contributions could be levied against the safeguarded land fall outside of the funding availability period for the HIF funding. The Applicant is aware that in the event that an extension by Homes England of the availability period is not secured that alternative funding arrangements will need to be identified. However, it is first important to note the following regarding whether an extant £26million shortfall on date of commencement would be a bar to commencement. Of the £293.21million estimated for the total scheme costs, £11million is set aside for an allowance of post completion costs.

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		promptly upon getting a favourable decision from the SoS. (iii) In the event there were to be a slippage in the programme, what arrangements are in place to secure either alternative funding or what assurance can either the Applicant or Homes England provide that there is flexibility in the end date? (iv) Do Homes England have a final threshold (date) that would mean the funding would be withdrawn in the event that the proposed development had not been completed by December 2027? (v) The ExA understands from the D4 submission there is a process that would need to be gone through to assess whether the terms of the GDA were being met. Would an extension of the time period beyond December 2027 be within Homes England's delegated authority or would this require approval of MHCLG/HMT?	These costs are associated with commuted sum payments and Part 1 claims. The Applicant does not consider that these costs need be secured on date of commencement to allow the notice to proceed procedures both internally and with National Highways to commence and therefore that £26million gap can reduce to £15million. A further nuance to this remaining gap is that there may not be a need to demonstrate that this gap is secured for the works to commence on the SRN. The notice to proceed mechanism that will be secured with National Highways will ensure that sufficient security of funding is in place to ensure that works to the SRN can be completed. This is only a portion of the overall scheme costs and as can be seen in table 2 of the Funding Statement, the works to the SRN could commence under this notice to proceed mechanism were the £15m gap not to be secured by November 2025. Regarding the internal governance notice to proceed procedures that Gloucestershire County Council may need to go through, there would be no need for the internal notice to proceed to have all construction costs for the entire project secured before November 2025. The GCC notice to proceed mechanism will require the DCO to be granted, acquisition of relevant land, an agreed Stage 2 ECI Contract, and adequate funding to be in place. The governance procedures with Gloucestershire County Council will require that certain works that are to be commenced are funded but iterative cabinet/committee authorisations could be given to allow for a "staged" notice to proceed mechanism internally within Gloucestershire County Council. This would allow commencement in November 2025 for a defined package of works. The Applicant would again clarify that it is fully cognisant of the 30-month construction timeline and the overall HIF funding availability. The "staged" process above is not an indication that

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			the 30 month construction timeline would not be achievable only due to funding, but it would acknowledge that funding would not need to be secured in its entirety at month 0, and that staged approvals could be obtained reflecting a staged requirement for that funding. It would remain, however, that the timing around securing the remaining funding from the safeguarded land is unknown. However, the Applicant is in discussions with the local planning authorities to identify further opportunities to cover the safeguarded land and any other site which relies on the capacity generated by the Scheme. This would mean that the Applicant is not reliant in isolation on the safeguarded land, and further that there is additional planning status to intended funds to be levied. Should it be necessary, the Applicant would explore further options for forward financing of the project through private organisations such as the UK Infrastructure Bank. Initial discussions have been had with the UK Infrastructure Bank which confirmed that no more than 13-26 weeks is required to agree a loan facility once details on the precise extant costings are known. Due to the above, the Applicant does not consider that the considerations inherent within the GDA and overall funding strategy are an inherent barrier to delivery of the project and that it is reasonable to assume that the 30 month construction timetable can still be achieved. (ii) The Applicant has made good progress in assembling the land required for the Scheme. Whilst the detailed construction programme is still being developed, the Applicant expects this to be sufficiently advanced to enable construction to start on critical path activities around Junction 10 and the A4019 just as soon as a positive decision is received. To facilitate an early start, the

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			Applicant is currently in discussion with Homes England to amend the spend forecast for preliminary activities, such that detailed design can commence by the end of October 2024. This would enable license applications to be made and other consents prepared in advance of a decision and for the discharge of requirements to commence immediately, once a positive decision is received and to be completed in time for construction to commence as per the outline programme to completion. (iii) The HIF funding availability period expires on 30 September 2027. Under the GDA, any unspent HIF funding is then no longer available to the Applicant. Homes England have no delegated authority to extend the HIF funding availability period to a later date past 30 September 2027. Any extension of the availability period would need to be considered and decided by HMT/MHCLG. Homes England do have delegated authority to extend the completion date of the Scheme past 31 December 2027 up to March 2028. The Applicant is in current discussions with Homes England about the potential to extend the completion date to March 2024. This will enable the Scheme to be completed within the GDA. The Applicant does not require Homes England funding to be available past September 2027. The Applicant considers that on the basis of current spend profiles, that the Homes England funding will be have been utilised prior to September 2027 and that during this period (September 2027 – March 2028) the Applicant would be reliant on its alternative funding. This means that it would be sufficient to only extend the completion deadline,

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			which is within Homes England delegation, to ensure that the Applicant remains compliant with the GDA. Regardless, should an extension to the availability period be required, the Applicant does consider that there is a reasonable prospect of this occurring having regard to the Scheme's ability to unlock housing growth in the context of recent government announcements. (vi) – no response required (v) – no response required
Q5.0.11	The Applicant and Homes England	**Funding** (i) Is there a process under way with Homes England that prepares for the eventuality of a delay? (ii) At this time are you able to provide additional information to the ExA on this issue such that it could be set out to the SoS?	(i)(ii) See above Q5.0.10 (i-iii)
Q5.0.12	The Applicant	**Funding** There is an acknowledgment in the funding technical note provided at D4 that for each year of delay there is the potential for an increase of cost in the region of £4-5 million. What assurance can you provide that this additional cost is capable of being met in the event of a delay?	The Applicant has considered the impacts of inflation and remains committed to starting construction as soon as possible to minimise these impacts and the ExA will be aware of the Homes England GDA which ensure that this timetable is kept to. However, in the event of delay meaning that inflation costs becoming a relevant factor in the funding of the Scheme, the Applicant would be able as part of its wider funding considerations to liaise with UK Infrastructure Bank to the extent that these funds are required. It should be noted that given that this will not be confirmed until a later date it is too early to determine for certain whether this route would be used. The Applicant would also note that it is reasonable to assume that the s106 contributions would be index linked.

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Q5.0.13	The Applicant, Statutory Undertakers	**S127 and s138 of the Planning Act 2008**
		
		(i) Can the Applicant set out their case in detail in respect of s127 and s138 for each of the SUs where agreement has not been reached.
		
		(ii) For each SU to set out their case in respect of s127 and s138 explaining fully where agreement has not been reached and why the Protective Provisions as drafted in the draft DCO are not considered sufficient. In doing so please provide a version of the preferred Protective Provisions clearly explaining the differences and what each change from the dDCO achieves and why this wording is considered more appropriate.
			To provide context to the Applicant's response to part (i) ExA WQ 5.0.13, the Applicant summarises the requirements of sections 127 and 138 of the Planning Act 2008:
			
			• **s127** – Subject to the provisions of subsection (1), section 127 allow that an order granting development consent to include provision authorising the compulsory acquisition of statutory undertakers' land or a right over statutory undertakers' land only to the extent that the Secretary of State is satisfied that (a) the land or right can be purchased and not replaced without serious detriment to the carrying on of the undertaking, or (b):
			  ○ in the case of land, if purchased it can be replaced by other land belonging to, or available for acquisition by, the undertakers without serious detriment to the carrying on of the undertaking; and
			  ○ in the case of a right, any detriment to the carrying on of the undertaking, in consequence of the acquisition of the right, can be made good by the undertakers by the use of other land belonging to or available for acquisition by them
			
			• **s138** – This section applies if an order granting development consent authorises the acquisition of land (compulsorily or by agreement) and (a) there subsists over the land a relevant right, or (b) there is on, under or over the land relevant apparatus. Where this is the case, the order may include provision for the extinguishment of the relevant right, or the removal of the relevant apparatus, only if the Secretary of State is satisfied that the extinguishment or removal is necessary for the

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			purpose of carrying out the development to which the order relates. The Applicant has set out within the Land Rights Tracker [REP3-042] the interface of the compulsory acquisition powers sought by the Applicant with statutory undertakers' land interests and apparatus on a plot-by-plot basis. Appendix B of the Statement of Reasons [REP4-014] also provides a Schedule of all affected persons (including statutory undertakers) with interests in land subject to compulsory acquisition and temporary possession powers. Appendix B confirms that, except for plots in which National Highways has a Category 1 interest, the Applicant is seeking powers to compulsorily acquire all rights and interests in various land plots in which statutory undertakers have Category 2 interests (i.e. rights in land in respect of apparatus). **Section 127** For the purpose of section 127 of the Planning Act 2008, the Applicant considers that the lands or rights of statutory undertakers can be acquired without serious detriment to the undertaking of each statutory undertaker because of the protective provisions within Schedule 9 of the dDCO [REP4-012]. The Applicant confirms that where statutory undertakers' apparatus is proposed to be removed, the dDCO includes provision for the diversion of such apparatus. Certain statutory undertakers, as set out in the Land Rights Tracker, are seeking bespoke protective provisions and the Applicant expects these can be agreed before the end of Examination. The Applicant notes the Government's guidance entitled *Planning Act 2008: Content of a Development Consent Order required for Nationally Significant Infrastructure Projects (30 April 2024).* Concerning the inclusion of protective provisions, the Guidance confirms at paragraph 012 that (emphasis added):

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			Most statutory undertakers have now developed their own preferred form of protective provisions which is very helpful to the preparation of the draft DCO. However, these must be adapted as necessary so they accurately reflect the proposed development. They should also not simply negate other provisions of the DCO, particularly concerning proposed compulsory acquisition of statutory undertakers' land. To date, the Applicant has not been made aware of any scheme-specific issues for the inclusion in the dDCO of provisions for the compulsory acquisition of statutory undertakers' land or interests. **Section 138** In several cases, the Applicant's proposed acquisition of statutory undertakers' interests in land may involve the extinguishment of statutory undertakers' rights or otherwise require the removal and diversion of statutory undertakers' apparatus. For the purpose of section 138 of the Planning Act 2008, the Applicant confirms that any such extinguishment or removal is necessary for the purpose of carrying out the Scheme. Specifically, the compulsory acquisition powers sought are required to enable the works particularised in the Land Rights Tracker **[REP3-042]**, which can be cross-referenced against Appendix A of the Statement of Reasons **[REP4-014]**.
Q5.0.14	The Applicant	**s135 of the Planning Act 2008** Can the Applicant set out where agreement is not reached a statement setting out clear reasoning and justification for the inclusion of each of the land plots, their purpose and the extent of powers sought,	The Applicant has already sought to minimise interference with Crown land plots and regardless, due to the protections within the Planning Act 2008 and reflected in article 43, the Applicant will only be able to interfere with Crown land to the extent that that interference is consented to and in any event will not be able to acquire Crown land compulsorily. Regardless, the Applicant has set out below the reason for the acquisition of each plot:

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		including justification as appropriate and why lesser powers might not suffice.	Plot 13/3r - This plot is required for the realignment and dualling of the A4019 (Tewkesbury Road) (Work No 4), the construction of a service road running east and west of The Green (Work No 4n), the construction of environmental barriers west and east of The Green (Work No 4o), the diversion of Severn Trent Water Limited water pipeline (Work No 15), the diversion of telecommunication cable and associated apparatus and equipment (Work No 27). The Applicant seeks temporary possession rights over this plot. A Crown interest is noted in respect of a land charge within a redemption of tithe rent charge by an Order dated 16 June 1922. It should also note noted that this plot is over existing public highway and the A4019 carriageway runs through the middle of this plot. A cycle path is also covered in description of Work 4, service diversion also going through the plot. Without plot 13/3r the Applicant would be unable to widen the existing A4019 to dual carriageway standard without the need to acquire significantly more land south or north of this plot to realign the whole A4019, causing significantly more land and property impacts. There is no lesser right capable of acquisition than temporary possession. Whilst the plot is currently existing public highway powers of temporary possession have been included to confirm that the Applicant has powers of possession capable of overriding, on a temporary basis, the other various interests held in this plot, including the other statutory undertaker rights. Lesser rights are not sufficient to enable this work. Plot 13/6a is required for the construction of a service road running east and west of The Green and its associated footway (Work No. 4n), diversion of a gas main (Work No 17) and diversion of an electricity cable (Work No 22). The Applicant seeking to acquire permanent rights with temporary possession over this plot, as noted in the Book of Reference and Schedule 5 of the dDCO. This plot is currently owned by Merlin Housing Society Limited. A Crown interest is noted in respect of a

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			restriction of disposition of legal estate. Were the Applicant be unable to acquire rights over plot 13/6a, it would be unable to connect the existing footway on the eastern side of The Green to the proposed footway along the A4019. It would also mean that the Applicant could not acquire the necessary rights for the gas main diversion and electricity cable diversion (Work Nos 17 and 22). The rights being proposed to be acquired are: Work No 4n: New right for the construction of a service road running east and west of the Green Work No 17: New right for the diversion use protection and maintenance of gas main for the benefit of Wales and West Utilities Limited Work No 22: New right for the diversion use, protection and maintenance of electric cable and associated apparatus and equipment for the benefit of National Grid Electricity Distribution PLC. The Applicant would note that the right for the construction of 4n is a necessary right to enable the Applicant to construct the service road. The remaining rights for Work No 17 and 22 are necessary to acquire the relevant rights for the diversion of utility apparatus which will ultimately be granted to the relevant undertaker. The Applicant is of the view that such rights are absolutely necessary and the minimum required to secure this work. Plot 14/5a is required for the realignment and dualling of the A4019 (Tewkesbury Road) (Work No 4), the alteration of the signalised junction serving Gallagher Retail Park and the B4634 to the south of the A4019 (Tewkesbury Road) (Work No 4x) and the diversion of telecommunication cable (Work No 27). The Applicant is seeking permanent acquisition over this plot. The freehold of this plot is owned by the Crown Estate Commissioners. Due to the need for this plot to be used for the A4019 mainline the Applicant

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			requires the full freehold of this plot, however, it should be noted that the Applicant would be unable to acquire the Crown Commissioners interest as part of the GVD. The plot therefore is noted as permanent acquisition not to acquire the Crown Commissioners interest but rather on the basis that the Applicant is able to acquire the Crown Commissioners interest by voluntary agreement, the permanent acquisition would then be used in respect of remaining subsisting interests in the freehold. Plot 14/7a is required for the realignment and dualling of the A4019 (Tewkesbury Road) (Work No 4) and the diversion of telecommunication cable (Work No 27). The Applicant is seeking permanent acquisition over this plot. The freehold of this plot is unknown but the Crown Estate Commissioners are deemed to be owners of the subsoil rights up to the centre of the public footway. Again, it should be noted that the Applicant would be unable to acquire the Crown Commissioners interest as part of the GVD. Without plot 14/5a and 14/7a the Applicant would be unable to widen the A4019 and improve the Gallagher junction without further realignment work and significantly more land and property impacts.
Q5.0.16	The Applicant (i), (iii) and (iv) Bloor Homes (ii) and (iii).	**Potential Ransom Strip** During the CAH discussions took place around whether there was the potential for a ransom strip to be created by virtue of the DCO proposals. (i) Following receipt of the plans as part of the action points to the CAH, it appears to the ExA the highway boundary is proposed to be contiguous with the land plots that front onto the north side of the A4019. Can the Applicant confirm how this arrangement is secured in the DCO?	(i) The Applicant can confirm that the proposed highway boundary shown by the yellow line in the plans submitted in Appendix C of REP4-037 in response to action point ISH3-15 show the indicative highway boundary proposed. This is not secured in the dDCO. The Applicant does not consider it appropriate to secure it in the dDCO. The Applicant is not aware of another example where highway boundaries have been secured in a dDCO. This is due to the fact that the detailed design of the Scheme at this stage is not known and commitment provided in a dDCO for a proposed highway boundary would have to be done on an indicative basis and therefore is of limited merit.

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		(ii) Can Bloor advise whether this overcomes the concern they have set out? (iii) The ExA understands that GCC as a landowner has the same rights as other landowners and should not be disadvantaged, however it also appears that it should not be disproportionately advantaged by virtue of any CA and the choice of access proposed by the Applicant. In [REP3-044] Item 15.8 the Applicant recognises that the design currently offered achieves a ransom situation. "GCC, as landowner, is seeking recognition of the value of its land over which the access will be built, on the **basis that this land is required to facilitate future development**. It could be provided as part of a landowner equalisation agreement." Do reasonable alternatives exist to access the land to the north to allow for the development of the safeguarded land should it be allocated as they appear to do at present? (This would appear to be the inference in the Applicant's response to ExQ1.1.8) (iv) Should the ransom situation arise can the Applicant explain how this might be regarded as meeting the tests in the PA2008 and the CA Regulations.	Ultimately the highway boundary will reflect final design of the Scheme and be a decision for GCC as highway authority. The Applicant is aware that the location of the highway boundary may have a material impact on the compensation that will be available to frontages. (ii) N/A (iii) The Applicant does consider that reasonable alternatives exist to access the land to the north to allow for the development of the safeguarded land should it be allocated. However, it would be for the local planning authority to determine the suitability of any access and the developer to demonstrate that no such reasonable alternatives exist if they are wishing to demonstrate a ransom position. (iv) The question might infer that the Applicant has engineered its strategy of acquisition in order to manufacture a ransom situation, and equally would also suggest that the Applicant should have regard to potential ransom situations that may arise between landowners as a result of the scheme. The Applicant's approach to land acquisition has been in accordance with the tests set out in the Planning Act 2008 and the CA Guidance. The Applicant is only able to acquire land which is required for the development, or required to facilitate or is incidental to that development with the condition that there is a compelling case in the public interest for the land to be acquired compulsorily. The Applicant has followed this principle across the entire Scheme as would be required. This means that across the A4019 the Applicant is acquiring the minimum land required, and the land that is being acquired is either for the development or is required to facilitate or is incidental to the development. The Applicant

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			considers that it is not able to commit, at this stage of design, to a lesser degree of acquisition along the A4019. The result of the proposed acquisition by the Applicant is that the frontages across the A4019 are affected. Regarding the impact of current usage it is clear that the Applicant has sought through its design to ensure that access is maintained for current field usage. The question over ransom exists over the future development potential of the safeguarded land. A ransom would be established if IPs can prove that without the Scheme similar access could have been obtained in a separate location and that separate location is no longer available and that secondly the only appropriate access remaining is through the GCC land. However, it is imperative to recall that route over which a ransom is claimed (but not yet established or proven) does not involve land that is being compulsorily acquired by the Applicant. It is not the case that the Applicant is acquiring the land subject to the potential ransom and will therefore benefit from the ransom created directly as a result of the Order. The Applicant already owns the land subject to the potential ransom, and that ransom (if it has been created) has been done so indirectly and without motive or intent by the Applicant as a consequence of the change of frontage along the A4019. The Applicant does not recognise a requirement in CA Guidance or legislation to nullify the indirect effects of legitimate and appropriate compulsory acquisition by the Scheme. This is of particular relevance when one considers what solution could be achieved in this case. The Applicant is not in a position to compulsorily acquire less frontage than is currently proposed, being the minimum that is required. The second option would be to build an access road across the “ransom” land to nullify the potential issue. This is also not acceptable, as it would amount to the Applicant building an access for a future development site

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			which currently has no formal planning status. It would not be an appropriate use of public funds to build an access road for the benefit of private persons without a clear basis of need. The third option would involve GCC as landowner coming to some form of private agreement, which the Applicant is not able to control nor comment on – nor would this private agreement be necessary in order to satisfy the tests set out in legislation and guidance.
Q5.0.17	The Applicant and Bloor Homes	**Potential Ransom Strip** (i) In the event that a ransom strip was created where one does not currently exist, would the landowner be entitled to compensation taking into consideration the current status of the land, and that it is specified as 'safeguarded' in the JCS? (ii) If this is the case with regard to future funding for the Proposed Development – would the relative amount payable be any different, or would it be split to be paid pro rata by the beneficiaries? (iii) Has the Applicant's assurance that there is sufficient funding in place for CA included for this eventuality should it exist?	(i) As set out in response to Q5.0.16 the Applicant maintains that the Scheme does not create a ransom over the access to the land north of the A4019. Bloors will determine the most commercially advantageous means of securing access to the site. Whilst access can be secured through the land fronting the A4019 within Bloor's control, if they determine a more efficient access can be secured through land outside of their control a commercial agreement will need to be reached between the parties in the normal way. This would be the case in a no Scheme world and should be in a Scheme world also. The Applicant would not consider this is a relevant head of claim. The Scheme should not remove a landowners ability to manage the land outside of the DCO and achieve the maximum benefit from their asset. This would extend to providing access rights to Bloors from which they do not currently benefit across third party land, in this case disadvantaging GCC. The status of the land as safeguarded does not alter this. The value of the land would reflect this commercial opportunity. As such it is the Applicant's position that compensation is not appropriate or relevant to this scenario. (ii) The Applicant is not clear on the question and requests clarification. However, the Applicant can confirm that the

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			funding covers all property compensation which in the Applicant's opinion will result from the Scheme. (iii) The Applicant is confident that all compensation that would result from Compulsory Acquisition is included within the funding.

6. Draft Development Consent Order

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Q6.0.4	The Applicant, National Highways, and Joint Councils	**Discharge of Requirements** Clarity is required on the progress between the parties on the procedure for the discharge of requirements, the role of consultees, and any arbitration process in the event that agreement is not reached. Can each party clarify their current position and provide the wording in respect of any requirements, discharge arrangements, consultees, and arbitration that they would wish to be include within the dDCO where not presently agreed? (The ExA notes there has been a series of updates to the REAC and the dDCO submitted at D4 by the Applicant. If these changes have resolved the concerns previously identified, please confirm this to be the case)	The Applicant is not aware of any further amendments required by National Highways or the Joint Councils in respect of the discharge of requirements. For completeness, however, the Applicant has summarised the process of discharge, role of consultees and arbitration process below. A number of requirements, being requirements 3, 5, 8, 9, 12, 13, 14, 15 require specific discharge prior to commencement of the authorised development. These invariably require the submission of a plan for approval by the Secretary of State. The relevant document being approved will also be subject to consultation requirements that will need to be discharged prior to approval by the Secretary of State. Other requirements, such requirements 7 and 11 also reference approvals required by the Secretary of State but are not needed to be "discharged" in the same way as the aforementioned. Where consultation is required, the process is as set out in requirement 4. This states that where the undertaker of the Order is seeks approval the details submitted must be accompanied by a summary report setting out the consultation undertaken by the undertaker to inform the details submitted, the responses received, and the undertaker's response to those responses. This summary report will need to be provided at the same time to the relevant consultees. Where consultation responses are not reflected in the details submitted to the Secretary of State the undertaker must state why. Otherwise the undertaker must

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			ensure that details are reflected in the summary report where it is appropriate, reasonable and feasible. Pursuant to requirement 17, when an application has been made to the Secretary of State for any consent, the Secretary of State must give notice of its decision within 8 weeks beginning with the date immediately following the application is received, or the day immediately following that on which further information has been supplied by the undertaker, or such longer period as may be agreed. There is no "deemed acceptance" provision within Schedule 2. There is a "deemed refusal" period under Schedule 2, paragraph 17 where a summary report accompanying an application identifies that a consultee is of the view that the subject matter of the application is likely to give rise to any materially new or materially different environmental effects in comparison with the reported in the environmental statement. The undertaker must, pursuant to paragraph 19, maintain in electronic form suitable for inspection by members of the public a register of those requirements contained in Part 1 Schedule 2. The undertaker may take any steps prior to the coming into force of the Order to discharge requirements and those steps may be taken into account for the purpose of determining compliance with that provision.
Q6.0.5	The Applicant, Joint Councils	**Article 7 Planning Permission** (i) Can each party provide their preferred wording for this Article, if there is not resolution to the disagreement referenced in the response to FWQs? (ii) Can the Applicant provide reference to a precedent which has been agreed by the SoS?	(i) The Applicant's preferred wording is as set out in the Applicant's draft Development Consent Order and below. (ii) The Applicant’s preferred wording, as set out in the Applicant’s draft Development Consent Order, is as follows- *‘Planning permission*

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			7.—(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.* *(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, 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*

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			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. Regarding (1), the Applicant has set out the examples where article 7(1) can be found in its Explanatory Memorandum, page 9, footnote 7. Regarding (2), a form of this wording can be found in article 3(3) of the Lake Lothing (Lowestoft) Third Crossing Order 2020. Additionally, both sub-paragraphs (2) and (3) can be found in the proposed Lower Thames Crossing Development Consent Order which is due to be determined on the 4th October 2024 and the Applicant would request that further reference to that Order is made contingent upon its grant. The Applicant is aware of other Orders currently being examined that use identical, or similar, drafting to the dDCO. For example: both sub-paragraphs (2) and (3) can be found at articles 39(3) and (4) of the proposed H2Teesside Development Consent Order which is currently in examination. Other DCOs which the Applicant is aware of that are looking to achieve similar provision, albeit not in the exact form the Applicant is proposing, nor granted by the Secretary of State are: Viking CCS Carbon Dioxide dDCO: article 44 Oaklands Farm Solar Park dDCO: article 44 Byers Gill Solar dDCO: article 46

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			Rampion 2 Offshore Wind Farm dDCO: article 58.
Q6.0.6	The Applicant and National Highways	**Article 10 Consent to transfer benefits** (i) Can the ExA be updated on the progress on the side agreement between the NH and the Applicant with respect to if the concerns NH identify in the PADDS are now resolved? (ii) In the event agreement is not reached, can each party give a detailed explanation of their position?	Please refer to Appendix A of this document for a response to this question.
Q6.0.7	The Applicant	**Article 13** National Highways in their response to ExQ1 have provided their preferred wording to Article 13 with the addition of sub paragraphs (9) and (10). (i) Can the Applicant advise of its views on these additions?	The Applicant's view on National Highways preferred wording to Article 13 can be found at section 2.5 of the document 'Applicant comments on Interested Parties Response to Examining Authority's First Written Questions (ExAQ1)' (REP4-035). The response from that document is extracted below- *'The Applicant agrees with National Highways that the precise extent of the SRN cannot be determined until detailed design. The Applicant's position is that the mechanism for agreeing the precise extent and assets which are to from part of the SRN is being negotiated as part of a separate side agreement.* *In the event that the side agreement is not agreed during examination, the Applicant has the following comments regarding the drafting proposed by National Highways.* *Under article 13(2) and 13(3), where a special road or trunk road is constructed, altered or diverted, then the work must be completed to the reasonable satisfaction of National Highways and unless otherwise agreed with National Highways, that part of the highway including any culverts or other structures laid under it must be*

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			maintained by and at the expense of National Highways. The Applicant considers that this default position in the dDCO to be reasonable, as the alternative would see the default position as a local highway authority being responsible for a special road or trunk road. The position which the Applicant understands is under consideration between the parties, is not in relation to the maintenance of the mainline of a trunk road or special road, the extents of which are set out in Part 1 of Schedule 3 of the Order, but rather whether supporting infrastructure, such as culverts, drainage features, cabling etc. falls within the SRN or the local road network *Regarding 13(9): the drafting of this article is inconsistent with Article 14(2) which sets out the extent of the special roads and the appropriate trigger from which those roads are to be maintained by National Highways. The drafting as suggested also allows for discussion as to the maintenance obligations over the mainline of the relevant highways which the Applicant understands is not up for debate. Secondly, it is not clear how the undertaker of the Order will liaise with the Secretary of State to certify a document which was not before the panel in examination which is suggested through the certification of the "plan" referred to and this would not seem to be in accordance with paragraph 11.2 of Advice Note 15.* *Proposed Requirement 13(10) has similar concerns in that it suggests that National Highways could refuse to maintain a road classified by the Order as a special or trunk road on the basis that final agreement of specific assets is not agreed. This is not appropriate, and the*

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			Applicant does not recognise that this is the true position between the parties. In addition, the wording "transfer to or adoption by" is inaccurate against the operation of Article 13(2) which details that from completion of the works the road is to be maintained by National Highways, there is therefore no transfer to or adoption by, rather the dDCO imposes that responsibility on National Highways. *Lastly, the Applicant has not seen from National Highways a "final road network agreement process" and is not in the process of negotiating such an agreement for the purpose of certification. Therefore, the Applicant is not able to agree to the addition of this wording absent the principal document the operative articles refer to.'*
Q6.0.8	The Applicant	**Article 41 Defence to Proceedings in respect of Statutory Nuisance** The Joint Councils sought amendments to this article such that the defence should only arise for the construction period. (i) Can the Applicant provide greater clarity and any legal justification for the defence continuing for any subsequent maintenance period or during the operation of the development?	The Applicant's response to the Joint Councils on this matter can be found at section 2.2 of the document 'Applicant comments on Interested Parties Response to Examining Authority's First Written Questions (ExAQ1)' (REP4-035). The response from that document is extracted below- *'The Applicant would highlight that its proposed wording is aligned with that of other recently granted highways DCOs. This includes:* *- Article 44, A417 Missing Link Development Consent Order 2022* *- Article 44, A47/A11 Thickthorn Junction Development Consent Order 2022* *- Article 42, A47 Blofield to North Burlingham Development Consent Order 2022*

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			- Article 40, A57 Link Roads Development Consent Order 2022 *- Article 43, A47 Wansford to Sutton Development Consent Order 2023* *- Article 50, A12 Chelmsford to A120 Widening Development Consent Order 2024* *- Article 44, M3 Junction 9 Development Consent Order 2024* *The Applicant considers that this level of consensus among recently granted DCOs is likely as a result of the article being substantially based on article 7 of the model provisions contained at Schedule 1 of the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009.* *The Applicant therefore does not agree with the Joint Council's assessment that is position is unreasonable, given the widely documented examples where previously it had been decided that was appropriate.'* As additional clarity and legal justification: section 158 Planning Act 2008 confers statutory authority for carrying out the Scheme for the purposes of a defence in statutory nuisance generally. Therefore, there is already a basic statutory authority. This section is subject to any contrary provision made by a particular DCO. This article is such a contrary provision and amends only the terms of the defence. The Applicant would note that often other DCOs reference a longer list (see article 39 Drax Power (Generating Stations) Order 2019) but some shorter (Cleeve Hill Solar Park DCO 2020). In the case of the Applicant's proposed dDCO, the Applicant has narrowed the list of those nuisances under sub-paragraph (1) to those noted as being potentially

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			engaged in its Statement of Statutory Nuisance. It is for this reason why those paragraphs are listed as such. The defence is available if the nuisance relates to: a. the construction or maintenance of the Scheme and is in accordance with any controls imposed by the local authority under the Control of Pollution Act 1974, or cannot be reasonably be avoided; or b. the use or operation of the Scheme and cannot be reasonably avoided. The article does not go so far as other Orders including the proposed Lower Thames Crossing which includes a confirmation that compliance with the control and measures set out in a CoCP or EMP is sufficient to demonstrate that the nuisance cannot be avoided. Regarding the particular concerns over maintenance, the Applicant would again highlight that the statutory authority so defined in section 158 refers to “carrying out the development” and “doing anything else authorised by the order”, the fact that the order authorises the construction and maintenance would mean that it is entirely appropriate for this article to drafted as it is.
Q6.0.9	The Applicant	**Requirement 12** In ExQ6.2.3 we sought clarification of whether the word ‘reflect’ was the most appropriate phrase or whether this would be better if amended to ‘in accordance with’? The response provided refers to [REP1-047] page 37 but this does not answer the question. Please set out	The Applicant has amended its dDCO to ensure that the wording of requirement 12 aligns with other requirements in this Schedule and therefore “reflect” has been amended to “in accordance with”. An updated dDCO (TR010063/APP/3.1 – Rev 5.0) has been submitted at Deadline 5.

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		an explanation for the form of words used in this Requirement?	

7. Good design

Question number	Doc ref and question to:	Question	Applicant Response
Q7.0.1	The Applicant	**Design Review** (i) In light of the response from NH at D4 (page 12) please respond to the concern/ advice that a Design Review process prior to detailed design would be beneficial. (ii) If this is not considered to be the case, please provide a detailed response setting out why the current project would not benefit from such an approach? (iii) In the event that the ExA were to consider it appropriate, please draft your preferred wording for a Requirement to have a Design review process undertaken, the results fully considered, and the design developed taking account of any advice.	**Item (i)** - National Highways has commented in their response at Deadline 4 (page 13 of REP4-049) that "*a Design Review would be beneficial to the project in advance of the detailed design stage. A design review provides the opportunity to influence the perception and visual appearance of the scheme in the context of the surrounding landscape via consideration of aspects, such as the finish to structures.*" National Highways has set out the criteria which would trigger a requirement for a Design Panel for a National Highways scheme (page 13 of REP4-049), specifically: • On the design of road improvements schemes, where these are in sensitive locations or expected to have a substantial impact on the surrounding landscape; • On the development of relevant design standards concerning the visual impact of schemes; and • At any other time where required by the Secretary of State. Paragraph 4.33 of the NNNPS states "*The use of professional, independent advice on the design aspects of a proposal should be considered, to ensure good design principles are embedded into infrastructure proposals.*" Therefore, independent advice is not a requirement of the NNNPS; rather the consideration of its use is the requirement. Taking into account both NNNPS and National Highways' criteria, the Applicant believes that a Design Review of the current design is not a requirement for the Scheme, and would not be a valuable

Question number	Doc ref and question to:	Question	Applicant Response
			use of resource on all sides given the objectives of the Scheme design and the characteristics of the environment in which the Scheme is located. • In the context of the perception and visual appearance of this Scheme, the local landscape already includes a network of local roads passing over or under the M5 with the finish and design vernacular remaining simple, functional plain concrete. The slightly undulating landform combined with hedgerows, trees and buildings give rise to intermittent views in which these bridges and underpasses are concealed or glimpsed, and views to the road infrastructure generally are broken by hedgerows and trees. • The preliminary design of the Scheme's structures and landscape plan is aligned with this. For example, the design mitigation embedded in the Scheme design includes horizontal and vertical adjustments to the engineering elements to more easily bed with the existing landscape and road network, and planting of locally appropriate species and mixes to develop vegetation in keeping with the existing vegetation pattern. • The detail of finishes for structures proposed as elements of the Scheme including the bridges across the M5, is to be decided at the detailed design stage. With regards to a design review going forwards, the Applicant would welcome collaborative input from National Highways into the detailed design in the next stages. **Item (ii)** - The Scheme has progressed through iterative design evolution to incorporate embedded mitigation and fit with the receiving landscape as summarised above. The detailed design including finishes to structures is to be decided at the next stage.

Question number	Doc ref and question to:	Question	Applicant Response
			Whilst the Applicant is of the opinion that a formal Design Review process is not required for the Scheme, collaborative consultation with National Highways will be welcomed, in particular their comment on the design finishes of those elements of the Scheme that fall within National Highways' land ownership. **Item (iii)** – With regards to requirements to manage the detailed design of the Scheme, the Applicant has produced a Design Principles Report (submitted to Examination at Deadline 4 [REP4-039]) which sets out the Applicant's approach to ensuring a good design for the Scheme in the detailed design stage. • The Design Principles Report details the key principles that have shaped the preliminary design (DF3 design stage) as submitted, and makes a commitment that these will be maintained and developed in the future detailed design and delivery phase of the Scheme in accordance with National Policy Statement for National Networks (NPS NN) (Department for Transport, 2014) requirements for 'good design'. • Requirement 11 of dDCO [REP4-012] has been updated (at Deadline 4) to require that the *authorised development must be designed in detail and carried out so that it is in accordance with the Design Principles Report.* The overarching design principle (it DV0 in the Design Principles Report [REP4-012]) is to '*Develop a sustainable design through a multidisciplinary team of engineers and environmental specialists, with the design developed through an iterative process of development, testing and refining the design and the consideration of feedback received through the consultation process*'. Implementation of this design principle will ensure that review and feedback from relevant stakeholders will continue to be sought through the development of the detailed design, to

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			ensure that a good quality of design in maintained. The design vision for the Scheme (particularly items DV2 and DV4 (Section 2.4 of the Design Principles Report [REP4-012]) will ensure that the detailed design remains in keeping with the local landscape character, and with the Scheme embedded into the landscape. The Applicant considers that it has put measures in place to ensure a good quality of design is maintained, and that the Scheme will fit into the local landscape character as a consequence of this. The Applicant queries what more or what else might be achieved from a formal Design Review. Notwithstanding the above, the Applicant has proposed the following wording at the request of the ExA which the Applicant has sought to align closely with the wording and suggestions provided by the NPS NN. *Detailed design 11.—(1) The authorised development must be designed in detail and carried out so that it is in accordance with—* *(a) the preliminary scheme design shown on the works plans, the general arrangement plans, the environmental masterplan and the engineering section drawings; and* *(b) the design principles set out in the design principles report, unless otherwise agreed in writing by the Secretary of State following consultation with the relevant planning authority, county planning authority and strategic highway authority on matters related to their functions and provided that the Secretary of State is satisfied that any amendments to the works plans, the general arrangement plans, the environmental masterplan and the engineering section drawings showing departures from the preliminary design would not give rise to any materially new or*

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			materially different environmental effects in comparison with those reported in the environmental statement. *(2) Where amended details are approved by the Secretary of State under sub-paragraph (1), those details are deemed to be substituted for the corresponding works plans, general arrangement plans, environmental masterplan or engineering section drawings and the undertaker must make those amended details available in electronic form for inspection by members of the public.* *(3) in advancing the design of the authorised development pursuant to sub-paragraph (1), the undertaker shall ensure that suitable, proportionate professional independent advice is obtained with the aim of identifying measures for sustainable, aesthetically sensitive, durable, adaptable and resilient design within scope of the preliminary scheme shown on the works plans, general arrangement plans, environmental masterplan and engineering section drawings.* *(4) Where such professional independent advice identifies measures within its scope under sub-paragraph (3), the undertaker may elect to incorporate any such measures into its design secured pursuant to sub-paragraph (1). Where the undertaker elects not to incorporate any such measures which are within the scope of the preliminary scheme design shown on the works plans, the general arrangement plans, the environmental masterplan and the engineering section drawings the undertaker must submit to the Secretary of State for approval a design panel summary report which shall set out the advice received and the undertakers response to that advice. Advice must only be included in the design panel summary report where it is*

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			appropriate, reasonable and feasible to do so, taking into account considerations including, but not limited to, cost and engineering practicality. *(5) For the avoidance of doubt, where advice received under sub-paragraph (3) specifies measures not within the scope of preliminary scheme design shown on the works plans, the general arrangement plans, the environmental masterplan and the engineering section drawings or otherwise constituting a safety or security risk to the construction, operation and maintenance of the authorised development the undertaker is under no obligation to incorporate such measures into its design secured pursuant to sub-paragraph (1) and such measures do not need to be reflected in the design panel summary report.*

9. Heritage

Question number	Doc ref and question to:	Question	Applicant Response
Q9.0.1	The Applicant, GCC and Joint Councils	**Archaeological Management Plan (AMP)** The ExA understands that the current GCC Archaeologist post is being advertised in order to recruit to the post. What the ExA is seeking to ensure/understand is that the wording within the AMP can be met by the obligation "that all works will be monitored by the LPA Archaeological advisor". In the event the DCO is granted is there a mechanism that ensures suitable availability to undertake this monitoring as the AMP requires?"	The Applicant understands that a new LPA archaeologist is now in post and also being supported through the GCC Highways Framework to provide additional cover. Regardless, the Applicant does not consider the status of an in-house employed archaeological advisor to the county council to be a relevant consideration for the purpose of determination in this examination. Planning Practice Guidance: Historic Environment (advises on enhancing and conserving the historic environment) paragraph 010, acknowledges that where a local planning authority needs expert advice in relation to information provided by an application advice may be sought from appropriately qualified staff, in house experts, professional consultants, complemented as appropriate by consultation with National Amenity Societies and other statutory consultees and other national and local organisations with relevant expertise. When looking at the role of local planning authorities, it is also important to note that paragraph 201 states that local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal taking account of the available evidence and any necessary expertise. This clearly establishes a wider requirement for archaeological expertise in the County that goes beyond this Scheme. The availability of one position therefore is not seen as a necessary concern in this instance, particular when one considers that wider concerns over the availability of archaeological services have been present for some time, with the Chartered Institute for Archaeologists briefing the Lords Grand Committee debate on 'Protection and improvement of local arts and cultural services

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			including museums, libraries and archaeological services', 30 March 2017 that between 2006-2017 there had been a 33.2% fall in staffing numbers within local authority archaeology services from 400 to 271. The Applicant raises this issue only to highlight its confidence that the wording in the AMP can reliably be met.
Q9.0.2	The Applicant	**Geophysical Surveys - Archaeology** The JCs D3 response confirms that geophysical surveys are required ahead of the end of Examination to assess whether the legal tests on heritage impacts have been met appropriately. Is this agreed? Please can the Applicant confirm that this information will be submitted in good time, in order for the JCs to be able to respond to the findings and the ExA given evidence prior to the close of the Examination."	The Applicant confirms that whilst further geophysical survey work is required to inform further mitigation measures proposed by the Scheme, and will be undertaken; the results of the geophysical survey are required to inform the nature and extent of mitigation identified within the ES, but such information is not required to understand the significance of the impacts identified in the ES and therefore not required to be adduced into the DCO Examination. This was discussed and agreed with the Joint Councils and LPA Archaeologist in a meeting on the 22nd August. It was also agreed at this meeting that the geophysical survey results would be required to identify and refine further evaluation and mitigation measures, but that it is unlikely that remains of such significance will be discovered as to affect whether a consent should be given. These points are recorded in item 11.1 of the current copy of the Joint Councils SoCG submitted at Deadline 4 [REP4-022]. The Applicant notes that should archaeological remains that were not identified previously, be revealed during the construction of the Scheme, then controls are in place within the archaeological management plan (AMP) [AS-038] and the dDCO. Schedule 2, Part 1, Paragraph 9(4) and (5) (Requirement 9) of the dDCO states that any archaeological remains not previously identified which are revealed when carrying out the authorised development must be retained in situ and reported to the County Archaeologist

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			as soon as reasonably practicable, and subject to appropriate mitigation as set out in the archaeologically management plan and that no construction operations are to take place within 10 metres of the remains referred to in (4) for a period of 14 days from the date the remains area reported to the County Archaeologist (unless otherwise agreed in writing by the SoS).

11. Landscape and visual

Question number	Doc ref and question to:	Question	Applicant Response
Q11.0.1	The Applicant and Joint Councils	**Acoustic Barriers** (i) Can the Applicant confirm their position with respect to the D3 request from the JC that LV6 of the REAC be modified to explicitly include the objective of implementing a vegetated solution for the barriers? (ii) In the event this is not included it would appear that the Landscape and Visual Impact Assessment Chapter should be updated to assess the impacts of a non-vegetated design solution. If the Applicant does not agree that this is the case, please explain the reasons why this would not be appropriate? (iii) It would appear there is very limited space to allow planting on both sides of the barriers along the A4019. Can GCC confirm as Highway authority they agree to landscape planting to screen the fences within the highway, and that appropriate space is available for maintenance? (iv) Can the Applicant point out how the effect on residential properties has been assessed where barriers are proposed and the significance or otherwise of the effect created upon these residential properties and the balance to be struck between any visual harm and acoustic benefit.	**Item i)** A vegetated solution is not required for mitigation. The ES assessment assumes a 2m high barrier of a non-specified material, which at its simplest design would be timber boards. As the LVIA assessment (ES Chapter 9 [ref REP1-016]) is not reliant on a vegetated design then the Applicant is not proposing to amend item LV6 of the REAC to include a commitment for such a mitigation. **Item ii)** The LVIA assessment (ES chapter 9, para 9.15.9 [REP1-016]) assumes the noise barriers comprise a 2m high barrier of non-specified material that could be a simple timber board design. The Applicant does not propose amending the LVIA chapter [REP1-016] therefore. **Item iii)** The Applicant confirms that planting on both sides of the barriers is not required to support the assessment presented in the LVIA chapter [REP1-016]. Should a vegetated design be identified as the preferred option from the consultation undertaken at detailed design stage (as detailed in item LV6 of the REAC [REP4-018]), then space for such planting would be considered at that stage. The Applicant has commented in the response to item iv (below) on the likely space for planting at the location of each noise barrier. **Item iv)** For the locations where the noise barriers are proposed, the Applicant has assessed the impacts on receptors with regards to noise (as presented in ES Chapter 6 [AS-014]) and landscape and visual (as presented in ES Chapter 9 [REP1-016]).

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			Summary of the landscape and visual assessment Six residential visual receptor groups have proposed noise barriers. The LVIA (ES Chapter 9, para 9.15.9 [REP1-016]) assumes a standard wooden noise barrier as a minimum design, with an expectation that alternatives, such as different materials, colour, art or planting for instance, would be discussed with the affected receptors and the LPA to agree the most desirable solution. This consultation is summarised in item LV6 of the REAC [REP4-018]. In terms of visual amenity, Barn Farm and the Traveller Site, adjacent to the M5 (VR4 and VR5), have both been assessed with a Slight Adverse effect at Year 1 and a Moderate Beneficial effect at Year 15. In part these effects are due to the presence of the noise barrier providing better screening to the motorway than currently exists with the gappy verge vegetation. By year 15 new planting to the motorway verge (and for VR4 planting to the south around the new attenuation pond) would have established and provide more enhanced screening and amenity value. If the barriers were **not** installed, the effect at Year 1 would likely be Moderate Adverse, given the more open views of the motorway. However, assuming evergreen mitigation planting, Slight to Moderate beneficial effects by Year 15 may be expected even without the noise barrier. The properties on the A4019 at Uckington (VR18b, 18c and 19) have all been assessed with a Slight Adverse effect at Year 1 and a Slight Adverse effect at Year 15. The key aspect of the effect is the proposed lighting columns which would be a new presence in the views and that the majority of properties in these receptor groups are two storey with views over the proposed noise barrier across some of the widened A4019. If the barriers were not installed, the effect at Year 1 would likely be a Moderate Adverse effect as the views would encompass a much wider view of the

Question number	Doc ref and question to:	Question	Applicant Response
			A4019 and from upper and lower floors. Given the narrow space available, the only mitigation option for longer term would be a very narrow, well-maintained hedge or a visual screen – potentially planted with climbing plants i.e. similar visually to the acoustic barrier. The properties on the A4019 east of the West Cheltenham Fire Station have been assessed with Slight Adverse effect at Year 1 and a Slight Beneficial effect at Year 15. The beneficial effect is anticipated due to the barrier providing additional screening to the traffic on the A4019. The majority of properties are bungalows which would have no or limited views over the barrier onto the widened A4019. The proposed lighting columns would be a new feature for some properties but there are existing lighting effects at both ends of the receptor group. If the barriers were not installed, the effect at Year 1 would likely be Moderate Adverse as the views would encompass a much wider view of the A4019. There is generally space in this location to provide some mitigation planting potentially resulting in Slight or Moderate Beneficial effects over the longer term, although the overall visual effect would be similar to a planted noise barrier, without the noise abatement. **Summary of the noise assessment** The noise assessment of the Scheme in operation, as reported in ES Chapter 6 [AS-014], included the provision of environmental noise barriers at locations which would provide a benefit for noise sensitive receptors. The majority of these receptors are located within a Noise Important Area (NIA) - the areas where 1% of the population are affected by the highest noise levels from major roads. The remaining noise sensitive receptor is the informal Traveller site, which is not within an NIA but is sited very close to the M5. The improvement in noise at these NIA locations is important as part of the Environmental Noise Directive and the government

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			bodies that operate the road network. For example, National Highway's 'Noise Mitigation Policy' states one of the criteria for noise barriers is that "The scheme protects all properties within the NIA, where practical". For the properties affected, the barriers provide a reduction in noise to below the SOAEL (significant observed adverse effect level) and/or a minor, moderate or major benefit in noise reduction, as shown in Table 6-14 of ES Chapter 6 [AS-014]. A summary of the change in noise due to the barriers is provided below. For the barriers M1, M2 and M3 on the A4019, at NIA 3948, NIA3949 and NIA3950, the noise barrier contributes a maximum 5dB improvement (Moderate in Future Year), leading to a combined noise reduction of up to 10dB (Major in Future Year) for the Scheme overall. With the barrier in place, noise levels at all properties within the NIA do not exceed the SOAEL threshold. Without the barrier, the noise level at properties would exceed the SOAEL Threshold, and the Scheme would only provide a 1dB to 5dB improvement. The improvement provided by the Scheme in the absence of noise barriers is a result of the alignment of the A4019 being moved away from the receptors in the Scheme design. For the barriers M4 and M5, at NIA 3952 Barn Farm and the informal Travellers Site, the barrier contributes a maximum 3dB (Minor in Future Year) improvement, but would still exceed the SOAEL threshold. Without the barrier, the noise level at properties would also exceed the SOAEL Threshold, and the Scheme would only provide negligible benefit. **Comment on the balance between landscape and visual assessment and noise assessment**

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			The summaries provide above for the assessment of the noise barriers from a landscape and visual, and a noise perspective, is that all six of the noise barriers provide a beneficial effect to receptors in both areas. The Applicant has not needed to consider whether to include a noise barrier in the DF3 design at each location therefore.

12. Noise and vibration

Question number	Doc ref and question to:	Question	Applicant Response
Q12.0.1	The Applicant	**Stoke Orchard – Construction Stage Noise Impacts** Please can the Applicant confirm that in the absence of secured mitigation the proposal would comply with the requirements of the Noise Policy Statement for England (March 2010)?	The noise policy aim of the NPSE (2010) is as follows: "Through the effective management and control of environmental, neighbour and neighbourhood noise within the context of Government policy on sustainable development: - avoid significant adverse impacts on health and quality of life; - mitigate and minimise adverse impacts on health and quality of life; and - where possible, contribute to the improvement of health and quality of life." The noise assessment reported in ES Chapter 6 [AS-014] does not include the mitigation measures on Stoke Road in the construction or operational noise assessments. As stated in Section 6.4 of the ES Chapter 6 [AS-014], the study areas for construction noise and vibration are 300m and 100m respectively from construction works. As Stoke Orchard is located outside of these study areas, an assessment of the impacts of construction noise at this location was not undertaken. In addition, Stoke Orchard was not one of the areas that was flagged as having a significant increase in noise from diversions or construction traffic (Table 6-21 and Table 6-22 of ES Chapter 6 [AS-014]). Therefore, the impact of construction noise and

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			vibration on properties within Stoke Orchard is negligible, even without the mitigation measures. The operational noise assessment within Stoke Orchard (Table 6-29 and Table 6-34 of ES Chapter 6 [AS-014]) indicates that there is a significant adverse effect, as a result of minor to moderate increases in noise at properties with noise levels above the SOAEL threshold. A number of noise control measures were considered for this area but were discounted due to engineering constraints. For example, noise barriers or earth bunds along the road would reduce road traffic noise levels at properties but would prevent residents from accessing their properties. Low noise surfacing could reduce noise emissions but is not feasible at this location because the average traffic speed is less than 75kph, meaning that the low noise road surface would not improve noise levels any more than an HRA road surface, according to the DMRB. In addition, as detailed in ES Chapter 6 [AS-014] paragraph 6.4.63 "receptors that could qualify for noise insulation under the Noise Insulation (Amendment) Regulations 1988 were identified from the predicted noise levels. Noise sensitive receptors that may potentially qualify for noise insulation are residential receptors that experience road traffic noise levels greater than or equal to 68dB LA10,18h and are shown to experience an increase of at least 1dB due to the Scheme and are situated within 300m of a new or altered road". Stoke Orchard is located beyond 300m of the Scheme. Therefore, the Applicant considers that the Scheme complies with the aims of the Noise Policy Statement, as measures to avoid, mitigate and minimise noise has been considered within the

Question number	Doc ref and question to:	Question	Applicant Response
			context of a sustainable development. However, for Stoke Orchard it was determined that traffic calming measures would be suitable at this location regardless of the Scheme, and further work has been carried out on these measures in parallel, to be funded and implemented as part of a separate scheme.
Q12.0.2	The Applicant and Joint Councils	**Noise Mitigation** In response to Action Point ISH3.39, the Applicant suggests that the need for mitigation (insulation or rehousing etc) would be established following detailed design and secured via the 2nd Iteration of the EMP. (i) How can the ExA be assured that this process is appropriately secured at this stage? (ii) Are the JC content with the approach offered by the Applicant?	**Item (i).** This is secured at this stage through the Annex B.3 of the Environmental Management Plan 1st iteration, which is the Noise and Vibration Management Plan [AS-033]. Section B.3.6 of this document details the process for the assessment of the need for noise insulation or rehousing at the construction stage.

15. Traffic and transport

Question number	Doc ref and question to:	Question	Applicant Response
Q15.0.1	The Applicant	**Transport Modelling** (i) In response to ExQ1 15.0.9 the Joint Councils indicated that an additional chapter pulling together the transport information in one place. Is this being prepared? (ii) If so, when is it anticipated to be submitted to the ExA?	The Applicant continues to maintain that it is not necessary to produce a separate transport chapter within the ES. It was confirmed that a separate transport chapter would not be required at the ES Scoping stage. Please see Applicant response to the Joint Councils submission at Deadline 2 (REP3-044) references 39.22 to 39.27, for the Applicant position on this.
Q15.0.2	The Applicant and National Highways	**Transport Modelling** The Applicant's and National Highways' currently have substantially different positions with respect to consideration of the adequacy of the transport modelling. On this basis: (i) Can both parties explain how the SoS can reach a view that the Proposals adequately address the requirements of the NN NPS including those relating to good design (noting NN NPS Paragraph 4.31) and road safety? (ii) Can National Highways indicate which specific parts (design elements) of the Proposals compliance with the NN NPS remain unproven given their current consideration of the transport modelling and clearly explain why?	In accordance with Paragraph 4.31 of the NN NPS (Dec 2014), the design of the Scheme meets the stated Scheme objectives by eliminating or substantially mitigating the identified problems caused by the additional traffic forecast to be generated by the JCS developments and by improving operational conditions, whilst simultaneously minimising adverse impacts, including in relation to safety and the environment. This is evidenced by the traffic modelling, road safety analysis, and the ES undertaken to assess the impacts of the Scheme. The SoS can therefore be confident that the Scheme addresses the requirements of the NN NPS, including those relating to good design (noting NN NPS Paragraph 4.31) and road safety, on the basis that the traffic modelling used to inform the design of the Scheme and assess its impacts is deemed robust. The Applicant is confident that the traffic modelling undertaken in support of the Scheme is robust but recognises that National Highways do not currently share this view.

Question number	Doc ref and question to:	Question	Applicant Response
			National Highways' written post hearing submissions including written submissions of oral cases made at Hearings the w/c 12 August 2024 (REP4-049) indicate that its remaining concern with the traffic modelling relates to validation of the westbound journey times along the A4019 in the base year model. National Highways state: "*If this one issue is resolved and the model remains satisfactory validated locally, then this would address National Highways concern in respect to the SATURN model and potentially any residual issues associated with the Paramics model*". To specifically address this National Highway concern, the Applicant has undertaken a sensitivity test with relevant parameters adjusted such that the two westbound journey time routes in the base year model of concern meet the TAG validation criteria at segment level whilst maintaining TAG validation compliance for all other aspects of the model. The results of this sensitivity test are reported in a Technical Note submitted at deadline 5 (TR010063/APP/9.80 – Rev 0). A comparison of the outputs from the 'sensitivity test' baseline model with the DCO baseline model shows minimal differences in traffic flows. This demonstrates that the modelled routing or assignment of traffic across the road network is reliable and the model outputs are not materially affected by whether the modelled westbound journey time along the A4019 meets the TAG validation criteria in comparison to observed journey times. Therefore, the strategic traffic modelling used to assess the Scheme is both robust and fit for purpose. The Applicant is confident that the analysis presented in the Technical Note will satisfactorily address National Highways concern regarding base year validation of the model and enable it

Question number	Doc ref and question to:	Question	Applicant Response
			to conclude that the Strategic Modelling used to support the Scheme is both robust and fit for purpose.
Q15.0.3	The Applicant	**Transport Modelling** With respect to the Transport Assessment, Appendix L: Traffic Forecasting Report, please can the Applicant produce V/C plots for all Scenario Q assessment periods / years so that the impacts of the dependent development without the transport scheme can be clearly understood?	Appendix L of the Traffic Forecasting Report (REP4-020) contains the following output plots from the strategic modelling for Scenario Q (scenario with JCS dependant development but without the Scheme) in 2042: • Traffic flow differences - Scenario Q vs Scenario P and Scenario R vs Scenario Q, for both AM and PM peak period. • Vehicle delay differences - Scenario Q vs Scenario P and Scenario R vs Scenario Q, for both AM and PM peak period. • Demand over capacity ratios (V/C) - Scenario Q. Appendix L has been updated and resubmitted at Deadline 5 with demand over capacity ratio (V/C) plots from the Strategic modelling for Scenario Q in 2027 during both the AM and PM peak periods added.
Q15.0.4	Joint Councils and The Applicant	**Departures from Standards** The ExA note the D3 submission from the JCs including that relating to Departures from Standard and that the JC Project Team were not party to any discussions with respect to this matter, but GCC’s independent Departures for Standard Board is attended by senior qualified officers who are not directly involved in the scheme from the Applicants point of view and can therefore be “construed” as representative of the Joint Councils?	The Preliminary Design process has been undertaken in accordance with National Highways’ Design Manual for Roads and Bridges (DMRB). One document in the DMRB is “GG 101 Introduction to the Design Manual for Roads and Bridges”. This sets out the requirement that when requirements of the Overseeing Organisation are not met, departures should be submitted where: • it can be justified that a requirement is inappropriate in a particular situation;

Question number	Doc ref and question to:	Question	Applicant Response
		For the avoidance of doubt, please can the JC confirm the position with respect to agreements for the Departures from Standards included within the proposals for the local road network. Is there any outstanding requirement for the JC to provide any further agreements with respect to any departures proposed?	• the application of a requirement would have unintended adverse consequences; • innovative methods or materials are to be proposed; • a requirement not in the DMRB, NAA or MCHW is adopted as more appropriate in a particular situation; or, • an aspect not covered by requirements is identified The Overseeing Organisation for the M5 is National Highways and for the local roads is Gloucestershire County Council. At this stage (Preliminary Design) there is no requirement to submit Departures from Standards applications. The National Highways Project Control Framework only requires a Departures from Standards Checklist to be submitted which is a table of anticipated departures contained in the Preliminary Design. However, to gain confidence that NH would be happy with the departures on their network, they agreed to consider preliminary design departures applications and gave "Provisional Approval" with the caveat that they should be re-submitted in full during the detailed design. We engaged with the Overseeing Organisation for the local roads, Gloucestershire County Council. Their method of assessing Departures from Standards is to receive them in report format and to assess them in an independent Departures Panel . The Departures Panel accepted all of the local road departures contained in the submission, some with comments to be addressed at the detailed design stage. The Joint Councils are not an "Overseeing Organisation" as defined in the DMRB and are not part of the departures from standard process of accepting the proposed departures as they are not independent to the scheme design

Question number	Doc ref and question to:	Question	Applicant Response
			Full Departures from Standards submissions will be submitted to the two Overseeing Organisations for formal acceptance as part of the detailed design phase of the scheme. There is no outstanding requirement for the JC to provide any further agreements to the proposed Departures from Standards
Q15.0.5	Joint Councils and The Applicant	**Departures from Standards** Can both parties explain if the Deadline 4 'Departures from Standard Report' was provided to the JC to inform their respective positions / decisions about the acceptability of the departures from standard sought?	Please see response to Q15.0.4
Q15.0.6	Joint Councils and The Applicant	**Departures from Standards** Can both parties confirm their position with respect to the acceptability of DFS.10 as considered in the Deadline 4 'Departures from Standard Report'? The decision stated suggests that it was 'approved with comments', however the comment suggests that the item should remain 'on the departure list and review at detailed design stage'?	The detailed designers will consider the comments in their design process and submit full Departures from Standards applications (see response to Q15.0.4). For DFS 10 there could be an option to reduce the taper to the compliant 1:35 rate but this will be considered at detailed design alongside network capacity requirements as it will likely slightly reduce right turn storage capacity.

16. Water environment – flood risk, water quality and resources

Question number	Doc ref and question to:	Question	Applicant Response
Q16.0.1	The Applicant	**Flood Risk Assessment - Additional Data Sources** We asked at ExQ1 (Q16.0.8) the following, however, there does not appear to have been an answer. Cross-reference is made in Appendix 8.1A of the FRA [AS-023] as “providing some of the investigations that explain how the sequential test was applied.” However, no information is provided in this appendix other than a reference to a separate report, West Cheltenham Link Road Route Corridor Assessment (Atkins, February 2021). The Applicant is requested to either identify where in the application documents this assessment can be found or, if it has not been included in the application documents, provide a copy to the Examination.	The West Cheltenham Link Road Route Corridor Assessment (Feb 2021) technical note was submitted at Deadline 3 as requested [REP3-052]. This document demonstrates the alternative route corridor options that were considered along with other constraints (Section 4 of the document), when developing the Scheme. This, in part, applies the sequential test by considering flood risk and guiding the Scheme to those areas at lowest flood risk. Those route options closer to the M5 motorway have a greater extent of construction in Flood Zone 3, whilst those to east less. The chosen route balances flood risk with other project considerations. There are no direct routes available for the Link Road that do not cross Flood Zone 3.
Q16.0.2	The Applicant and Joint Councils	**Essential Infrastructure** The EA has provided alternative positions in their D4 submission in respect of ‘essential infrastructure’ with regard to the link road, can the Applicant’s and Joint Councils advise of their position on this and explain the justification for the approach?"	The Applicant concurs that by cross reference to Table 2 at paragraph 79 of the NPPG that in **EA Option 1**, the Scheme’s vulnerability as Essential Infrastructure is compatible with the envisaged flood risk. The proposed West Cheltenham development of new housing (c.9,000 homes) and employment land is described in the JCS as strategic and safeguarded allocations to the west and north-west of Cheltenham, these being: West Cheltenham (Golden Valley); North West Cheltenham (Elms Park); and safeguard land to the west and the north-west of Cheltenham. The proposed Link Road would provide flood free access and egress across the River Chelt floodplain that is currently only provided locally by the M5.

Question number	Doc ref and question to:	Question	Applicant Response
			Currently, during extreme flood events there is no flood free means of passing over the River Chelt within Cheltenham and if this is coincident with a flood on the Hatherley Brook then the Link Road would be the only recognisable mass evacuation route for the area between the River Chelt and Hatherley Brook floodplains. This would form a key evacuation route for the community at Hayden as well as the West Cheltenham development. In the alternative (**EA Option 2**), if parts of the Scheme (Link Road) are not described as essential infrastructure then it is unclear what it would be classed as, as none of the other classifications relate to this type of development. Of the various alternative categories, only the less vulnerable category might be applicable (being commercial development and car parks – although not transport infrastructure as such). The Applicant concurs that if the Scheme contains different elements of vulnerability the highest vulnerability category should be used in assessing the flood zone compatibility. The Applicant also concurs that the alternative classifications preclude development in Flood Zone 3b (functional floodplain – as shown in the figure appended to the SoCG with the Environment Agency submitted at Deadline 4 (REP4-024)). This non-compatibility is set out in Table 2 paragraph 079 of the NPPG Flood Risk and Coastal Change guidance. The impact of this decision would be a need to remove the non-Essential development in Flood Zone 3b by removing the Link Road embankment that encroaches into that flood zone. This would require increasing the number of culverts under the Link Road (or redesign the floodplain crossing) such that the road embankments were removed from Flood Zone 3b. However, whilst the design was originally developed with culverts along the full width of the design event floodplain, the detailed flood modelling, as set out in the Scheme Modelling Report [AS-048]

Question number	Doc ref and question to:	Question	Applicant Response
			and Flood Risk Assessment (part 1of 2) [AS-0230] demonstrates no increase in flood risk as a result of the encroachment of the road embankment and fewer culverts. Hence its presence in Flood Zone 3b causes no material impact on flood risk elsewhere. Furthermore, the compensatory floodplain (work items 5(c) and 5(n)) on the eastern side of the Link Road is sized to address the loss of floodplain arising from that encroachment. Hence a requirement to remove the current design from Flood Zone 3b would also see a reduction in the proposed compensatory floodplain by the Link Road. The other classifications, except highly-vulnerable (e.g. basement dwellings, police, ambulance and fire stations) which the Link Road is certainly not, are all compatible with Flood Zone 3a. Should the other classifications apply, then the fundamental requirements of development and flood risk as set out in the NPPF still apply (development to be safe and not increase flood risk elsewhere). Hence, a change from EA Option 1 to EA Option 2 (moving away from an essential infrastructure classification) would simply remove the need for the Scheme to pass the Exception Test, as described in Paragraph 164 of the NPPF, and expanded in paragraph 031 of the NPPG. This said, highly-vulnerable development in Flood Zone 2, and more-vulnerable development in Flood Zone 3a, would also require the Exception Test to be passed, although as agreed with the EA, the Scheme passes the Exception Test.

Appendices

Appendix A. Response to Q6.0.6

(i) Can the ExA be updated on the progress on the side agreement between the NH and the Applicant with respect to if the concerns NH identify in the PADDS are now resolved?
(ii) In the event agreement is not reached, can each party give a detailed explanation of their position?

Point of Concern (PoC)	Summary of issue / concern	Applicant’s position in relation to each PoC vis a vis the side agreement	Applicants position if side agreement / resolution not reached
1 to 5	Traffic and transport issues	Not relevant to side agreement or PPs. Discussions ongoing with NH in relation to these issues.	n/a
6	Reservoir responsibility	Discussions are ongoing between the Applicant and NH in relation to provision, operation and maintenance of the reservoir. Any agreement can be included in the side agreement.	If no agreement is reached a new Requirement can be included in the DCO to deal with delivery and maintenance of the reservoir.
7	Treatment of Land Parcel 5/2n	This relates to the unused carriageway in situ – the Applicant and NH have had discussions on this issue which are continuing.	This issue can be resolved by changes to the works plans if required.
8	Use of NH standard PPs	Protective provisions are being discussed with NH with the aim of an agreed form being submitted to the ExA.	Notwithstanding discussions on the PPs and side agreement continue, a revised set of PPs are being submitted at this deadline (D5) which reflect discussions to date and which seek to address concerns raised by NH.
9	Access to current and proposed NH assets	NH are seeking a number of easements which are being considered as part of the side agreement.	The Applicant considers that all land and rights necessary to access all SRN assets (current and proposed) affected by the scheme have been included in the Book of Reference. Suitable easements can be included so far as necessary as part of the PPs should agreement not be reached with NH in the side agreement.

Point of Concern (PoC)	Summary of issue / concern	Applicant's position in relation to each PoC vis a vis the side agreement	Applicants position if side agreement / resolution not reached
10	Art 25 - PROW	Expressed by NH not to be a DCO drafting concern.	n/a
11	Approach to land assembly	The Applicant understands that the approach to acquisition of NH's land is now agreed with NH. The dDCO previously has been amended to address concerns.	Resolved
12	Inclusion of Part 1 claims	The revised Protective Provisions contains amendments to address NH's concerns	Considered resolved as included in revised PPs (PP 35).
13	Body responsible for discharge requirements	The dDCO proposes that the Secretary of State for Transport is the discharging body for the purposes of the Requirements which addresses NH's concerns.	Resolved as now included in dDCO
14	Art 10 – restriction on transfer of benefits of DCO to undertakers	This is being discussed as part of the side agreement.	The Applicant does not understand the need for a restriction on the transfer of rights to statutory undertakers as specified by and pursuant to the dDCO and consider NH are sufficiently protected. However, NH have suggested covenants as a way of resolving this issue. This is being considered by the Applicant.
15	Implementing of utilising Limits of Deviation	The revised Protective Provisions contain amendments to address NH's concerns	Considered resolved as included in revised PPs (PP 25(5)).

Point of Concern (PoC)	Summary of issue / concern	Applicant's position in relation to each PoC vis a vis the side agreement	Applicants position if side agreement / resolution not reached
16	Art 13 – Clarity of assets to be transferred to NH	This is being discussed as part of the side agreement.	The Applicant considers that Article 13 (together with Article 14) identifies the assets which NH will be taking on. The PPs also protect NH though the certification process. Under Art 13 construction, alterations and diversions to the M5, as a trunk road, must be completed to NH's reasonable satisfaction. NH must maintain those alterations including any culverts or structures laid under it unless it is otherwise agreed in writing with NH. Therefore, in the absence of agreement, the assets which NH will be liable to maintain would be those which fall within the boundaries of the trunk road. This will be obvious in relation to most of the works and Art 14 makes the position clear. Art 14 states that the roads in Sch 3, Part 1 are to be special roads (trunk roads) and when GCC notify NH that they are complete and open to the public NH becomes the strategic highway for those roads (and therefore are liable for maintenance). Sch 3, Part 1 is prescriptive in respect of the length of the roads to be special roads and cross refers to the classification of roads plans. Given these Articles and the PPs, this should be sufficient to define the assets which NH will be taking on (the PPs prescribe a process for the construction, adoption and maintenance of the specified works).

Point of Concern (PoC)	Summary of issue / concern	Applicant's position in relation to each PoC vis a vis the side agreement	Applicants position if side agreement / resolution not reached
17	Art 14 – NH sign off required before NH becomes highway authority for road	The revised Protective Provisions contain amendments to address NH's concerns	Considered resolved as included in revised PPs (PP 28(5)).
18	Art 17 – Accesses to slip roads and M5 to be approved by NH	The revised Protective Provisions contain amendments to address NH's concerns	Considered resolved as included in revised PPs (PP 25(4)).
19	Art 2 – clarity on pre-construction mitigation works	The revised Protective Provisions contain amendments to address NH's concerns	Considered resolved as included in revised PPs (PP 25(3)).
20	Sunday working	The dDCO has previously been amended to address this issue	Resolved as included in dDCO
21	Consultation on 3rd Iteration EMP	The dDCO has previously been amended to address this issue	Resolved as included in dDCO
22	Use of deemed consent rather than deemed refusal	This is being discussed as part of the side agreement	It is considered that the deemed consent provisions should remain. To replace with deemed refusal means that if NH fail to respond the scheme cannot proceed which is unreasonable. The revised PPs include deemed consent provisions which are considered reasonable and protect both the Applicant and NH (PP 25(7)).
23	Art 30 – Consent for use of SRN airspace and subsoil	This is being discussed as part of side agreement.	The revised PPs as submitted at D5 should resolve this issue given the provisions in relation to design and construction.
24	Sch 2, Req 6 – replacement	The revised Protective	Resolved as included in revised PPs (PP 31(2)).

Point of Concern (PoC)	Summary of issue / concern	Applicant's position in relation to each PoC vis a vis the side agreement	Applicants position if side agreement / resolution not reached
	planting obligation on Applicant to be 5 years	Provisions contain amendments to address NH's concerns	
25	Art 11 – Consent from NH prior to street works on SRN	This is being discussed as part of the side agreement.	The revised PPs as submitted at D5 should resolve this issue given the provisions in relation to design and construction.
26	Review of Sch and SoR in relation to work numbers	The review requested by NH has been undertaken.	The Applicant understands that this is no longer an issue.
27	Potential omissions in REAC: (i) Construction Exclusion Zones around tree areas; (ii) national biosecurity issues; (iii) definition of 'enhancement works'.	These issues are not being discussed as part of the side agreement or PPs but it is considered that they are addressed. These have been agreed as part of the SOCG. If there are still issues not addressed NH are asked to clarify its position.	REAC contains commitment LV1 (protection of retained vegetation - trees and hedges) which are to be in accordance with the AIA which covers Construction Exclusion Zones, biosecurity is covered in REAC, B5 and the enhancement works are contained in REAC, B13.
28	REAC habitats management	This issue is not being discussed as part of the side agreement or PPs but it is considered that this is already dealt with in the REAC. If there are still issues not addressed NH are asked to clarify its position.	The REAC requires a 10 year management period for specific mitigation locations for the Dormouse EPS licence.
29	REAC carbon management	This is being discussed as part of the side agreement.	The REAC can be amended to address this issue.

Point of Concern (PoC)	Summary of issue / concern	Applicant's position in relation to each PoC vis a vis the side agreement	Applicants position if side agreement / resolution not reached
30	ES – NH BNG maintenance obligations	This issue is not being discussed as part of the side agreement or PPs but it is considered that this is already dealt with in the REAC. If there are still issues not addressed NH are asked to clarify its position.	Maintenance requirements are set out in the LEMP 1st Iteration and in the REAC at G4.
31	Alignment to NH PCF process	Not part of the side agreement or PPs. Discussions ongoing.	n/a
32	Omission of stopping up viewpoint on Street, Right of Way and Access Plans	The plans have previously been amended to deal with this issue.	Resolved as plans previously updated.
33	Status of Road Safety Audits	Not part of the side agreement or PPs. Discussions are ongoing between the Applicant and NH and it is hoped this will be agreed as part of the SOCG.	n/a
34	Funding concerns	The side agreement proposes a Notice to Proceed process which the Applicant considers will address NH's concerns regarding funding and works undertaken to the SRN. This continues to be discussed.	The protective provisions can be amended to incorporate a suitable notice to proceed process if agreement is not reached.

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