

Our ref: Deadline 1
Your ref: TR010025

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Dear Mr Price,

**A303 Amesbury to Berwick Down
Application for Development Consent – Deadline 1 Submission**

Further to the Rule 8 letter dated the 11 April please find enclosed the following documents set out in chronological order as shown in Annex B, Section 6 of that letter:

i. The five available water reports and the groundwater monitoring report for Blick Mead.

These five Hydrogeological reports were submitted in draft form to the Examining Authority on Friday 5th April. The Blick Mead Groundwater monitoring data was also issued at that time.

ii. A note on the Blick Mead groundwater monitoring situation including the installation of additional monitoring equipment.

The report on GW monitoring at Blick Mead was submitted to PINS on 5 April [AS-022] (Blick Mead monitoring to March 2019 HE51506-AMW-EWE-SW_GN_000_ZZ-TN-WR-0015, April 2019). It included the statement “It is noted that, while stakeholders with an interest in Blick Mead have requested that additional piezometers are installed in the same general area at more dense spacing, this is still under discussion.”

Since the issue of that report, Highways England contacted David Jacques on 9 April 2019 to say that, after careful consideration of his request for the installation of further piezometers at Blick Mead for monitoring groundwater levels, Highways England has not been able to accept the additional value that would be gained from the extra installations. The additional works go beyond the scope of the works discussed by Highways England, Historic England and the Blick Mead project to provide monitoring of the water table at Blick Mead. Highways England considers that the monitors that are already in place are sufficient for this purpose. As such Highways England cannot confirm that it is able to carry out such works but will continue to monitor and maintain the existing boreholes and data loggers, subject to access.

A note on the proposals for additional monitoring (HE551506-AMW-EWE-SW_GN_000_ZZ-TN-WR-0127) is being submitted for Deadline 1 and summarises how the ES assessed effects at Blick Mead and concluded that they are not significant, the development of the tiered assessment, the installation of the monitoring locations, ongoing monitoring and why additional monitoring is not required.

iii. All available archaeological evaluation reports.

These were submitted to the Examining Authority on Friday 12th April.

Three further reports were requested by the Heritage Monitoring Advisory Group (HMAG) separately from the evaluation reports: two short technical reports relating to the Western Portal Approaches on charcoal and snails respectively, and an assessment of flint and tree throw distributions. HMAG has requested that it reviews these reports prior to publication. To allow for this, they will be submitted to examination at Deadline 3.

iv. A response to Dr Andrew Shuttleworth's request for confirmation of validation of Highways England's data and approach.

Please find attached note, titled as above.

v. An update on the provision of the English Heritage Phase 1 Visitor Survey referred to in [APP-195] as requested by the Stonehenge Alliance.

Although Highways England previously requested this from English Heritage and National Trust, unfortunately Highways England do not hold the raw data or the factual report of the English Heritage / National Trust's Phase 1 Visitor Survey and the English Heritage/National Trust Phase 1 Partnership Plan. A summary presentation on this was provided to the UNESCO ICOMOS Mission in 2018 by English Heritage and the National Trust. In order to address a need within the HIA (looking at Visitor Experience of the WHS) Highways England reproduced two of the slides from this presentation (Charts 2 and 3) in the HIA under section 6.12.43 – 45 Visitor Experience. We suggest that the Interested Parties who would like to see the document contact English Heritage and National Trust direct.

vi. An update on provision of the list of other information requested by the Stonehenge Alliance (Geoscientific data set out in the appendix to their letter dated 21 March 2019 notifying matters they wished to raise at Preliminary Meeting), and also in respect of two redacted bird survey documents [APP157 and APP255] to be discussed with the Stonehenge Alliance and the National Farmers' Union.

Please find enclosed a letter from Highways England dated 18 April responding to Stonehenge Alliance's letter dated 21st March.

The information contained within APP-157 contains confidential information relating to Schedule 1 species under the Wildlife and Countryside Act 1981 and great bustard (*Otis tarda*), an Annex 1 bird species of the Birds Directive 2009/147/EC. As such, this information is environmentally sensitive, and to disclose the information could adversely affect the protected species that are the subject of the information. As a result, APP-157 cannot be disclosed to the Stonehenge Alliance or the National Farmers Union.

In terms of APP-255, the breeding bird survey report, it is possible for a redacted version of APP-255 to be disclosed. In order to protect the environmentally sensitive information, Highways England has redacted all references to Schedule 1 species and great bustard (Annex 1 bird species).

vii. A note confirming discussions with Graham Parker (RSA) (Amesbury 2018)) in respect of the A303 Parker Plan prepared by Balfour Beatty for the former Highways Agency.

Please find attached a note on this, titled as above.

viii. A note confirming discussions with the Great Bustard Group in respect of bird survey data sought by them.

The Great Bustard Recovery Group (GBRG) provided the great bustard nesting data that have been used to inform the baseline of Chapter 8 of the Environmental Statement as illustrated within [APP-157]. Following ongoing consultation with the GBRG, it has been agreed that a redacted version of APP-157 and APP-255 (whereby all information relating to Schedule 1 species has been removed) will be provided to the GBRG. The documents would retain information regarding any great bustard (Annex 1 bird species) records based on the data previously supplied by the GBRG, to enable them to check that the data have been correctly shown on the Figure making up APP-157.

ix. An update on Highways England's position as regards the 1915 restrictive covenant attached to the relevant land sale document, in response to the query raised by Andrew Rhind Tutt.

Stonehenge and the immediate surrounding area are in the ownership of the Department for Digital, Culture, Media & Sport (DCMS). The stone circle, together with a small parcel of adjoining land (now known as Stonehenge), was given to the Commissioners of Works, for the benefit of the nation, in 1918. English Heritage currently manages the monument on behalf of the DCMS under section 34 of the National Heritage Act 1983.

Highways England is aware of a historic Deed of Gift made on 26 October 1918 under section 2 of the Ancient Monuments Consolidation and Amendment Act 1913, conveying Stonehenge from its owners at the time, Sir Cecil Chubb and his wife Mary, to the Commissioners of Works, who thus became the owners of it, holding it for the benefit of the nation.

The 1918 Deed contains four covenants, the third of which seeks to restrict development at and around Stonehenge. It is expressed in these terms:

“Thirdly that no building or erection other than a pay box similar to the Pay Box now standing on the premises shall be erected on any part of the premises within four hundred yards of The Milestone marked “Amesbury 2” on the northern frontage of the premises”.

The fourth and final covenant imposed by the 1918 Deed required the Commissioners of Works to indemnify Sir Cecil Chubb and his wife Mary for any breach of covenants set out in the deed which had transferred Stonehenge to the Chubbs on 31 December 2015, following Sir Cecil's purchase of the monument at auction. The 1918 Deed references the 1915 transfer and associated covenants in these terms:

*“Fourthly that the Commissioners of Works will at all times save harmless and keep indemnified the Donors and each of them their and each of their estates and effects from and against all proceedings costs claims and expenses on account of any breach or non observance of the covenants by the Donors to the like or similar effect contained in the Conveyance of the premises to the Donors dated the **thirty first day of December One thousand nine hundred and fifteen.**” (bold emphasis added)*

In consideration of the covenants in the 1918 Deed in response to the ExA's request, two matters arise:

1. Enforceability of the 1918 covenants:

- a. In respect of the third restrictive covenant in the 1918 Deed, which seeks to restrict development in the vicinity of the monument, Highways England understands that the DCMS is of the view that the covenant is no longer enforceable. This is because it (along with the other covenants in the 1918 Deed) was given simply as a personal covenant; it would not be legally capable of 'running with the land' because it was not expressed as being granted for the benefit of the heirs to, or the successors in title of, the landowner at that time.
- b. This position is corroborated in a case decided by the Court of Appeal (Civil Division) in 1991 (*R -v- Historic Buildings and Monuments Commission for England [aka English Heritage] ex parte George Firsoff* [1991] Lexis Citation 3354) ("the HMBCE case").
- c. The transcript of the HMBCE case states that:

"... the deed contained a number of covenants by the Commissioners with the donors ...As a practical matter it must be assumed that the covenants between the Commissioners and the donors, if they could ever have been enforced as such, can no longer, for one reason or another, be so enforced."

- d. The HMBCE case was cited in the concluding statements of the Inspector at the public inquiry into the Highways Agency's (as was) previous proposals to improve the A303 at Stonehenge. The Inspector stated that:

"One objector raised the issue that implementation of the published scheme would mean that access to Stonehenge would be operated on a basis which would conflict with the covenants in the Deed of Gift of Stonehenge to the nation. In response, DCMS states that those covenants are no longer enforceable, a view which has been upheld by the Court of Appeal in a decision reached in 1991. I conclude that this does not represent a basis on which the published scheme can be challenged."

2. Availability of the 1915 covenants:

- a. Highways England has endeavoured, without success, to locate a copy of the 1915 covenants contained in the transfer of Stonehenge to Sir Cecil Chubb and his wife on 31 December 1915. No documents held at HM Land Registry in respect of land adjoining Stonehenge would appear to reference the 1915 conveyance to the Chubbs; and the land/property comprising Stonehenge itself is not registered.
- b. Research revealing the response from English Heritage to a Freedom of Information requests received in 2018 indicates that no title land deed exists. In English Heritage's response the only document referred to in relation to the provenance of Stonehenge as a national monument is the 1918 Deed of Gift from Sir Cecil Chubb and his wife to the Commissioners of Works.
- c. Furthermore, whilst there exists a transcript/summary of the 1915 auction notes taken at the time of Sir Cecil's purchase of Stonehenge, the transcript merely notes that, as a condition of the sale, the purchaser (i.e. Sir Cecil) "would be required to ...(illegible) ...to the satisfaction of the vendor's solicitors and maintain a fence on the western boundary of ...(illegible)...so as the fence exists

at present”. The transcript includes no reference to any restriction or restrictive covenant on the use of the land so conveyed.

It will be clear from the above that Highways England’s position as regards “*the 1915 restrictive covenant attached to the relevant land sale document*” is that there is no available information or existing evidence which would have the effect of restricting Highways England’s current proposals to improve the A303 between Amesbury and Berwick Down, in the vicinity of Stonehenge.

x. A response on the prospect of livestreaming of future Examination events.

Highways England has investigated this, both on this and other DCO examinations. Unfortunately, however, as on other DCO applications, Highways England is not in a position to provide this facility, as it presents a number of IT and compliance difficulties for a Government-owned company. There will of course be an audio recording and transcripts available of each hearing, which is considered sufficient.

In addition the following documents are enclosed, as referenced in Annex B of the Rule 6 letter. Some of these are enclosed in advance of the Deadline applying to them:

- *Draft Itinerary for the Accompanied Site Inspection*
- *Technical Note – Approach to Haul Roads & Archaeological protection*
- *(i) The third edition of Guidelines for Landscape and Visual Impact Assessment (GLVIA3)*
- *(ii) Highways England Interim Advice Note 135/10 (2010)*
- *A303 Stonehenge: Amesbury to Berwick Down - Scheme Assessment Report (September 2017) (SAR)*
- *A303 Stonehenge: Amesbury to Berwick Down - Technical Appraisal Report (2017) – not requested but is linked with the SAR*
- *Mission Report on the joint World Heritage Centre/ICOMOS Advisory mission to Stonehenge, Avebury and associated sites (27-30 October 2015)*
- *Mission Report on the joint World Heritage Centre/ICOMOS Advisory mission to Stonehenge, Avebury and Associated sites (UK) (31 January–3 February 2017)*
- *Final Mission Report on the joint World Heritage Centre/ICOMOS Advisory mission to Stonehenge, Avebury and Associated Sites (c.373bis) (5-7 March 2018)*
- *Decision 42COM 7B.32 - Stonehenge, Avebury and Associated Sites (United Kingdom of Great Britain and Northern Ireland) (C 373bis)*
- *Decision 41COM 7B.56 - Stonehenge, Avebury and Associated Sites (United Kingdom of Great Britain and Northern Ireland) (C 373bis)*
- *State of conservation report by the State Party (Department for Digital, Culture, Media and Sport DDCMS, 2018)*

- State of conservation report by the State Party (*Department for Digital, Culture, Media and Sport DDCMS, 2019*)

Finally, the following table updates on the status of the other documents discussed at the Preliminary Meeting and when Highways England will be submitting them to the Examination:

Document & Status	Target Submission
Finalised Hydrogeological Reports x4 – currently being finalised with Environment Agency & Wiltshire Council	Deadline 2
A303 Amesbury to Berwick Down Western Portal and Approach – Assessment of Wood Charcoal (referred to at iii above)-	Deadline 3
A303 Amesbury to Berwick Down Western Portal and Approach Mollusc Bulk Samples (referred to at iii above)	Deadline 3
Archaeological Evaluations: Assessment of Flint Distributions and Tree Hollow Distributions (referred to at iii above)	Deadline 3

I would be grateful if you could acknowledge safe receipt of this letter and enclosed documents.

Yours sincerely



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