

***The Planning Act 2008 - Chapter 2 Examination TR010025
A303 Amesbury to Berwick Down Improvements***

Written Submission by the Council for British Archaeology

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**Appendix G SEA Screening Criteria for Road Investment Strategies 1 and 2
and Associated Sub-programmes**

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Tests for whether SEA is needed:	RIS1 & RIS2 (and Strategic Route Strategies)
<p>A Is the document or action either <i>a plan or a programme..... (SEA Regulation 5(1)(b); Regulation 2(1))...</i> <i>.... with its first formal act on or after 21st July 2004 (SEA Regulation 5(1)(b))</i></p>	<p>YES – RIS1 & Draft RIS2 are Road Investment Strategies that set out a strategic PROGRAMME of identified road schemes to be delivered within a set time scales (2015-19 and 2020-25) by a Highways Authority (strategic highways company) appointed under ss. 1-2 of the Infrastructure Act 2015.</p>
<p><i>..... “subject to preparation or adoption by an authority at national, regional or local level...”? (SEA Regulation 2(1)(a))....</i></p>	<p>YES – after draft preparation and consultation by DfT and any proposals for amendment by the strategic highways company, s.3(6) of the Act requires that <i>The Secretary of State and the company must comply with the Road Investment Strategy.</i></p>
<p><i>...OR “....prepared by an authority for adoption through a legislative procedure by Parliament or Government”? (SEA Regulation 2(b))</i></p>	<p>YES – the RIS is set by the SofS under s3 of the 2015 Infrastructure Act, which under s.3(7) requires that if a Company does not have an RIS the SofS must (a) lay a report before Parliament explaining the reasons, and (b) set a RIS as soon as practicable.</p>
<p>B If so, is it <i>“prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use” (SEA Regulation 5(2)(b))...</i></p>	<p>YES – Transport</p>
<p><i>...AND NOT a plan or programme the sole purpose of which is to serve national defence or civil emergency (SEA Regulation 5(5)(a))</i></p>	<p>NO – it is NOT for National Defence or Civil Emergency</p>
<p><i>...NOR “a financial or budget plan or programme”? (SEA Regulation 5(5)(b))</i></p>	<p>NO – HM Treasury’s annual Budget sets the overall budget for the RIS and outlines of what it is intended to achieve, most recently in the 2018 budget. [1]</p> <p>The RIS set by the SofS for Transport is an investment delivery plan that sets traffic, economic, social and environmental objectives and a programme of projects within that budget.</p> <p>Under Section 3(5) of the Infrastructure Act, <i>‘In setting or varying a Road Investment Strategy, the Secretary of State must have regard, in particular, to the effect of the Strategy on— (a) the environment, and (b) the safety of users of highways.’</i></p> <p>Under s5(2) of the Act the same duty applies to the strategic highways company</p>

<p>C If so, does it i “set the framework for future development consent of projects [that fall under EIA Schedule 1 or 2 development by virtue of thresholds or sensitive areas]”? (SEA Regulation 5(2)(b))</p>	<p>YES – The RIS clearly sets the framework by which a time limited set of specific road infrastructure projects must be delivered. The vast majority of these are Schedule 1 Development. SofS and strategic highways company are statutorily obliged to ‘have regard in particular to the effect of the Strategy on the environment.’</p>
<p>C and if so, does it ii “set the framework for future development consent of projects” (SEA Regulation 5(2)(b)) in the sense of the Supreme Court ruling on what ‘setting a framework’ means – para 92 in HS2 case judgment</p> <p><i>The purpose of SEA is to ensure that the decision on development consent is not affected by earlier plans which through the framework, the rules or criteria or policies they contain, weigh one way or another against the application when the earlier plans have not themselves been assessed for likely significant environmental effects. The significant environmental effects have to be assessed at a time when they can play their full part in the decision; they cannot be left unassessed so that the development decision is made when the framework in the plan has sold the pass. A plan framework tilts the balance, creates presumptions, and urges weight to be given to various factors.”</i></p> <p>(Supreme Court [2014] UKSC 3 on appeal from: [2013] EWCA Civ 920 etc)</p>	<p>YES – The RIS sets a clear framework of specific projects within a defined timescale and key objectives that include environmental objectives set by Government.</p> <p>The RIS is the National Strategy and sets the Framework within which regional programmes of road infrastructure projects are developed and delivered.</p> <p>Under s.4(1) of the Act, The Secretary of State must from time to time direct a strategic highways company to prepare proposals for the management and development of particular highways in respect of which the company is appointed (“a route strategy”), with which the Company must comply (s.4(3)).</p> <p>Under s.6 of the Act the SofS may give a Strategic Highways Company directions or guidance as to how to exercise its functions. [2]</p> <p>Under s.7 of the Act a Strategic Highways Company has powers to delegate functions if authorised by the SofS and exercised in accordance with s.8 of the Act. [3]</p>
<p>D Is it likely to have significant environmental effects taking account of:</p> <p>1. The characteristics of plan/programme regarding—</p> <p>(a) the degree to which it sets a framework for projects and other activities (location, nature, size, operation or use of resources);</p> <p>(b) the degree to which it influences other plans and programmes including those in a hierarchy;</p> <p>(c) relevance for integrating environmental considerations to promote sustainable development;</p> <p>(d) environmental problems relevant to it</p> <p>(e) its relevance to implementing EU environmental legislation.</p> <p>(SEA Regulations 5(4)(c), 9(1), 10(3), Schedule 1, 1)</p>	<p>YES</p> <p>YES – RIS1 & RIS2 set the framework for development and delivery of numerous individual highways development projects</p> <p>YES – RIS1 & RIS2 set the framework for development and delivery of individual projects within regional programmes and route strategies and to be meshed in with local transport strategies</p> <p>YES – These are core objectives of RIS1 & RIS2</p> <p>YES – Resolving environmental problems is a core objective of RIS1 & RIS2</p> <p>YES – RIS1 & RIS2 are relevant to ensuring that in respect of major highways development EU legislation on air and water quality, habitats and species and climate are implemented.</p>

<p>D Is it likely to have significant environmental effects taking account of:</p> <p>2. Characteristics of the effects and of the area likely to be affected, having regard, in particular, to</p> <p>(f) effects’ probability, duration, frequency and reversibility; cumulative nature; transboundary nature of effects and risks to human health or the environment (eg accidents)</p> <p>(g) effects’ likely magnitude and spatial extent (population and area)</p> <p>(h) value and vulnerability of the area due to— special natural characteristics or cultural heritage; exceeded environmental quality standards or limit values; or intensive land-use; and</p> <p>(i) effects on areas or landscapes which have a recognised national, Community or international protection status.</p> <p>(SEA Regulations 5(4)(c), 9(1), 10(3), SEA Regulations Schedule 1, 2)</p>	<p>YES – The characteristics of the likely significant effects of RIS1 & RIS2 (whether beneficial or adverse) include all these factors</p> <p>YES – The magnitude and spatial extent, both in area and population affected are inevitably highly significant because of the magnitude of the individual schemes included in the RIS1 & RIS2 programme and their cumulative impact</p> <p>YES – The location of development projects included in the RIS1 & RIS2 programme affect areas of special wildlife or heritage value and vulnerable areas subject to environmental quality standards and intensive land-use</p> <p>YES – The location of development projects included in the RIS1 & RIS2 programme include National Parks, Areas of Outstanding Natural Beauty and at least one World Heritage Site</p>
<p>E Will the plan/programme in view of its likely effect on sites, require an assessment under Article 6 or 7 of the Habitats Directive? (SEA Regulation 5(3))</p>	<p>YES - designated habitats within the area not explicitly excluded, and Plan may include positive conservation actions</p>
<p>G Does the plan/programme determine the use of small areas at local level OR is it a minor modification of a Plan or policy? (SEA Regulation 5(6))</p>	<p>NO</p>
<p>H Does the plan/programme set the framework for future development consent of projects (not just projects in Annexes to the EIA Directive) that would have significant environmental effects? (SEA Regulation 5(4))</p>	<p>YES – Strategic highways company obliged by s.5(1) of the Act to cooperate with planning and highways authorities; Localism Act 2011 and The TCP Regulations 2012 s.4(1) obliges local authorities to co-operate with the SofS.</p>

1 HM Treasury Budget 2018: ‘4.9 Roads Investment Strategy 2 – The Budget is announcing the draft Roads Investment Strategy 2. This is the largest ever investment in England’s strategic roads and will enable the government to build on the successes of Roads Investment Strategy 1, such as.... The government expects to spend £25.3 billion on this strategy, funded by the National Roads Fund, between 2020-25.’
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/752202/Budget_2018_red_web.pdf

2 The Passenger’s Council is required under s.9 of the Act to carry out activities as a watchdog, including investigating, reporting or giving advice on 9(2) (a) how a strategic highways company’s exercise of its functions or achievement of its objectives under a Road Investment Strategy affects users of highways for which it is the highway authority, and (b) any other matters— (i) relating to highways for which a strategic highways company is the highway authority, and (ii) which the Council considers to be of interest to users of such highways.

3 The Office of Rail Regulation is required by ss. 10-11 of the Act to monitor the performance of the strategic highways company and report to the SofSt.