



**Written summary of oral submissions on behalf of Classmaxi
Limited
put at the Compulsory Acquisition Hearing held on 9 and 10 July
2019**

**Deadline 5 submission
19 July 2019**

**Application by
Highways England for an Order granting Development Consent for
the A303 Amesbury to Berwick Down**

PINS Reference No. TR010025

Reference Nos. A303-AFP035 and 20019746

1. This note summarises the submissions made by Classmaxi Limited ("Classmaxi") at the first Compulsory Acquisition Hearing ('CAH') held on 9th and 10th July in relation to Highways England's ('HE') application for a Development Consent Order ('dDCO') for the A303 Amesbury to Berwick Down project ("the DCO Scheme"). This note should be read in conjunction with, and as an update to, Classmaxi's written representations of 2 May 2019, a copy of which is attached at Annex A.
2. Where the Examining Authority ("the ExA") requested information from Classmaxi on particular matters, Classmaxi's response is set out in or appended to this document. This note does not purport to summarise the oral submissions of parties other than Classmaxi, and summaries of submissions made by other parties are only included where necessary in order to give context to Classmaxi's submissions.
3. The structure of this note follows the order of items published by the the ExA on 1 July 2019 ('the Agenda'). Classmaxi's substantive oral submissions commenced at item 8 of the Agenda. Therefore, this note does not cover items 1- 7, 9-11, and 13-15 of the Agenda.

Item Number 8- Representations from parties who may be affected by the compulsory acquisition provisions in the dDCO

4. Classmaxi is the freeholder of various plots of land identified in the dDCO¹, which are the subject of proposed compulsory acquisition/ temporary possession powers by HE, for the purposes of enabling the Allington Track and Byway AMES1 junctions onto the A303 to be closed and replaced by alternative arrangements (referred to as Work No.7 in Schedule 1 of the dDCO).
5. Classmaxi (and it's predecessor the Amesbury Property Company Limited), object to the proposed compulsory acquisition/ temporary possession of its land by HE for the purposes of carrying out the works required to achieve the closure of the Allington Track and Byway AMES1 junctions onto the A303 on the basis that the proposed compulsory acquisition/ temporary possession of its land is unnecessary to achieve HE's objectives, unjustified in the public interest, and a disproportionate interference with its private rights.

¹ Plots numbered 10-16, 10-17, 10-18, 10-19 10-20, 10-21, 10-22, 10-23, 11-04, 11-05, 11-06, 11-07, 11-08, 11-10, 11-11, 11-23, 11-32 and 11-33.

6. Classmaxi has put forward a reasonable, proportionate, and less draconian alternative proposal which will enable HE's objectives for these works to be met, and Heads of Terms of an agreement have been drawn up and agreed with HE and the inheriting local highway authority, Wiltshire Council ('WC'), for the relevant works which delivers these objectives.
7. In summary, the agreed alternative proposal contained in the Heads of Terms involves Classmaxi granting HE a licence over such of its land as is reasonable necessary for the purposes of HE carrying out the relevant works and then Classmaxi dedicating the newly constructed Allington Track Diversion and Byway AMES1 Diversions as public highways maintainable at public expense. In return, HE agrees not to implement the compulsory acquisition/ temporary possession powers of the DCO as they relate to the Classmaxi land.
8. An agreement to give legal effect to these Heads of Terms is being actively drawn up by legal representatives for the parties with a view to being presented to the ExA on or before the second CAH and in any event by the end of the Examination Period . As requested by the ExA, a copy of the agreed Heads of Terms is appended to this Summary at Annex B.
9. Pending completion of the agreement, Classmaxi formally maintains its objections to the dDCO, (for the reasons set out in its written representations dated 2 May 2019). However, it is all parties firm intention to promptly finalise the agreement before the second CAH on 21 August 2019 and in any event before the end of the Examination Period whereupon, pursuant to the Heads of Terms, Classmaxi will withdraw its objection to the dDCO.
10. However, Classmaxi hereby reserves its right to supplement its (written and oral) representations and/or attend the second CAH in person (currently scheduled for 21 and 22 August 2019) in the unlikely event that a prompt agreement with HE and WC giving legal effect to the Heads of Terms is not finalised, or some insuperable impediment to such an agreement is identified.
11. As particularised in its written representations, Classmaxi wishes to retain the freehold ownership of its land so as to be able to limit what future improvements (unrelated to the DCO scheme) might be able to be undertaken to increase the capacity, or nature, of the presently proposed highway works which could enable development of adjacent land to take place

without having to properly compensate it for any increased development value of that adjacent land which might result from such future improvements or modifications.

12. The alternative arrangements set out in the agreed Heads of Terms (and which are appended to this summary) secure HE's objectives, but at the present time, until the agreement is signed the Examining Authority is requested to recommend that the dDCO as drafted **not** be confirmed in relation to the Classmaxi land , but to recommend to the Secretary of State that the Classmaxi plots of land in the dDCO which HE seeks to permanently, or temporarily, acquire be removed from the dDCO on the basis that the proposed compulsory acquisition/ temporary possession powers are unnecessary to achieve HE's objectives, unjustified in the public interest, and a disproportionate interference with its private rights.
13. In response to Classmaxi's submissions , **Richard Turney, on behalf of HE**, confirmed that HE agreed with the principle of the alternative approach outlined in the agreed Heads of Terms and HE were working with Classmaxi and WC to promptly draw up an agreement to give effect to the the agreed Heads of Terms. Similarly, **Kate Olley, on behalf of WC** , also confirmed that WC were content with the principle of the alternative approach for the Classmaxi land in the agreed Heads of Terms.

Item Number 12- Sections 131 and 132 of the PA2008- Open space, compulsory acquisition of land and rights and rights over land

14. As to question 12.1 on the Agenda, Classmaxi made no oral submissions at the CAH as to whether the replacement land proposed to be provided by HE in exchange for the open space land would be suitable and is no more than is reasonable necessary for that purpose pursuant to section 131 of the Planning Act 2008.
15. As to question 12.2 on the Agenda, Classmaxi reiterated its position set out in its response to EXQ CA.137 dated 2 May 2019 (copy attached at Annex C) as to whether the Classmaxi land, over which compulsory rights over land powers are sought by HE, would be no less advantageous than it was before when burdened with such rights pursuant to section 132 of the Planning Act 2008.
16. In response to Classmaxi's submissions, **Richard Turney for HE** indicated that the rights sought

over such land were in relation to statutory undertakers utilities but that HE would provide the further and better particulars sought by Classmaxi.

REPRESENTATIONS ON BEHALF OF APC AND CLASS MAXI (REFERENCES A303 – AFP035 and 20019749)

Classmaxi Ltd (CM) (now the owner of land previously in the ownership of The Amesbury Property Co - APC) is supportive of the overall objectives of HE major infrastructure work at Stonehenge.

CM also supports the specific objectives of stopping up the junction of Allington Track with the A303, and also the stopping up of AMES1 along part of its length and at its junction with the A303, but clearly these works, some 1 kilometre east of Countess Roundabout, are not directly necessary to achieve HE's principal objective of the dualling of the A303 past Stonehenge and the grade separation of Countess Roundabout (*and indeed, the initial consultations by HE did not include the Allington Track and AMES1 proposals*).

CM will resist the compulsory acquisition of land as it believes HE's objectives can be realised equally satisfactorily by the acquisition of certain rights, from CM by HE, thus rendering the compulsory acquisition unnecessary.

The scope of the HE project involving CM land is as follows:

- A. The Allington Track Diversion, the purpose of which is to accommodate only the level and nature of traffic flow permitted by the physical constraints of the present Allington Track route.
- B. The AMES 1 Diversion, the purpose of which is to accommodate only the existing level and nature of traffic flow permitted by the physical constraints of the present byway AMES1 and notably the constriction by its ex-railway bridge which has a clear width of 4.4m.

The acquisition of the freehold ownership by a Highway Authority of the extent of the land identified in the Order would have the consequence that a Highway Authority would at a later date be able to carry out additional future works (*for purposes unrelated to this DCO*) to widen Allington Track and to change the status of AMES1 to a "full" highway and thus allow an increased level, and different nature, of traffic to use these routes.

At present, given that CM owns the surface and sub-soil of the existing routes such future works could only be undertaken with the express permission of CM, and in the event that such works were required to enable development to occur on land in the south and east of Solstice Park, an appropriate financial consideration would be payable. In this respect, a future access into Boscombe Down Airfield (*by way of an extension of Equinox Drive southwards*) in order to facilitate development on the airfield has long been envisaged. Planning permission (*obtained by APC*) exists for this extension which is described as the Boscombe Down Link Road (BDLR) and which has been partially constructed and therefore has planning consent in perpetuity. Discussions have taken place with Wiltshire Council (*which has been appointed by a consortium, including QuinetiQ, Defence Infrastructure Organisation, Boeing, and Wiltshire Council, with interests in developing the airfield complex*) regarding the use of the BDLR to facilitate access to the airfield for such development, whilst such relevant negotiations have not yet been concluded.

The compulsory acquisition of the land by way of the DCO would reduce or remove the ability of CM to obtain a fair financial consideration as part of such negotiations, and should development occur this would result in additional traffic using the Solstice Park Road Network, which although public roads, were privately funded by APC, as was the upgrading of the Solstice Park Junction on the A303 to an all directions junction.

The compulsory acquisition of land would also prevent CM from undertaking any future realignment of Equinox Drive (*subject to any statutory processes being adhered to*) to enable any future redevelopment of Solstice Park to take place as the Highway Authority would be the freehold owner of the land on which Equinox Drive lies.

CM has therefore put forward the following proposals to HE which it believes will adequately secure HE's current objectives in relation to the presently proposed A303 upgrade, and therefore render the CPO unnecessary.

Allington Track Diversion

It is proposed that the diversion shall comprise

- (a) a 5.5m metalled carriageway width with passing places as presently shown on the scheme plans;
- (b) 1m verges, restricted to verge use only either side;
- (c) this overall width (7.5m) to be dedicated to HE or Wiltshire Council (WC) as public highway;
- (d) standard highways post and rail wooden fences to the rear edge of verges on both sides of the land to be dedicated as public highway;
- (e) any slopes to cuttings or embankments to approx. 1:4 gradient will not be included in CM's dedication but to remain wildflower meadow/ public open space.

AMES1 Diversion

It is proposed that the diversion shall comprise

- (a) a maximum total width of (4.6 m) comprising a single track gravel surfaced carriageway inclusive of its verges;
- (b) this width to be dedicated to HE or (WC) as a public byway and for no other purpose;
- (c) standard highways post and rail wooden fences to define the overall width to be dedicated as a public byway;
- (d) any slopes to cuttings or embankments necessary at approx. 1:4 gradient not included by CM in any dedication as highway byway but to remain wildflower meadow/ public open space.

All of these works may generally be within the overall extent of the areas of land identified in the Order and shall include any ancillary rights required for public utility apparatus. HE shall also undertake the necessary procedure to adopt the currently built section of Equinox Drive and this at no cost to CM.

HE shall undertake to arrange direct with Wiltshire Council a release of APC's and CM's obligations under the S106 Agreement regarding the maintenance of public open space and wildflower meadows where this is specifically affected by the HE proposed project.

At the time of writing this representation, HE has confirmed that such dedication arrangements (*which are commonly used by Local Highway Authorities*) might possibly represent a way forward, but a suitable formal agreement has yet to be reached.

CM therefore propose to continue to work towards agreement with HE, to allow HE's objectives in respect of Allington Track and AMES1 to be achieved, and will, as soon as possible, but in any event before the end of the Examination, submit to the Examining Authority a legal agreement or other binding arrangement which will allow HE's objectives to be achieved without the need for compulsory acquisition, thus rendering the compulsory acquisition process unnecessary.

CM has indicated that it would be content to receive a nominal sum plus reimbursement of its reasonable professional fees for these negotiations and such agreement as set out above.

In the event that HE has not accepted CM's proposal by the time of the Compulsory Acquisition Hearing (CAH), CM will wish the CAH to take place and to examine HE's reasons for not accepting the proposals.



SCHEDULE OF CM LAND IDENTIFIED IN CPO

Plots within which CM will dedicate sufficient land as highway as specified in its written representation:

10.16
10.21
10.23
11.06

Plots within which CM will grant such permanent rights for utilities as HE consider necessary:

10.18
10.19 (identified in error as Greggs in Book of Reference)
11.04 (identified in error as Greggs in Book of Reference)
11.05

Plots within which CM will grant HE a temporary licence to occupy for the purposes of constructing the works:

10.16
10.20
10.21
10.23
11.06
11.07

Plots which already have sufficient rights and no acquisition is necessary:

10.22
11.07

Annex B



Heads of Terms ('HoTs')

Parties: Highway England ('HE')
Classmaxi Ltd ('CM')
Wiltshire Council (WC)

Purposes: To enable the Allington Track Diversion and Byway AMES1 Diversion as described in the A303 Amesbury to Berwick Down DCO to be constructed and to provide for the dedication and the adoption as public highway maintainable at public expense of the Allington Track Diversion, for part vehicular, and part non-vehicular, uses and the adoption as public highway maintainable at public expense of Byway AMES1 Diversion as a Byway Open to All Traffic.

Definitions: **APC** means the Amesbury Property Company;

Allington Track Diversion means the Allington Track Diversion Carriageway and the adjacent Allington Track Diversion Verges.

Allington Track Diversion Carriageway means a Carriageway over which the public have a right of way for the passage of vehicles between points A and B with a width generally no greater than 5.5m, but with a passing bay and an enlarged bellmouth, as shown on Plan 1;

Allington Track Diversion Verges means the highway margins on either side of the Allington Track Diversion Carriageway as reasonably required by the Highways Authority, which for the purposes of this agreement, are referred to as footpaths as defined in the Highways Act 1980 restricted to a public right of way on foot only as shown on Plan 1 by hatched [black] lines and under no circumstances to be used for vehicular access by the general public or any other party except for the purposes of maintaining the highway and any statutory utilities apparatus therein;

Byway AMES1 Diversion means a Byway Open to All Traffic between points C and D with a total width no greater than 4.0m and with an unbound surface as shown on Plan 2;

Byway Open to All Traffic means a highway over which the public have a right of way for vehicular and all other kinds of traffic as defined in Section 66(1) of the Wildlife and Countryside Act 1981;

Boscombe Down Link Road means that road which would, if built, form the continuation southwards of the existing built section of Equinox Drive and for which detailed planning permission (ref S/2009/0673) has been granted and implemented.

Carriageway means a way constituting or comprised in a highway, being a way (other than a cycle track) over which the public have a right of way for the passage of vehicles as defined in section 329 of the Highways Act 1980;

DCO means the A303 Amesbury to Berwick Down Development Consent Order;

Directly Related Works means any earthworks (*side slopes for embankments and cutting*) fencing, drainage and similar works;

Equinox Drive means that section of Equinox Drive between points C and D on Plan 1 which is not presently adopted highway;

Footpath means a a highway over which the public have a right of way on foot only not being a footway as defined in section 329 of the Highways Act 1980;

HE Works means the construction of the Allington Track Diversion and the Byway AMES1 Diversion, and any works that HE consider necessary to allow the adoption of the presently unadopted section of Equinox Drive, together with any Directly Related Works;

Practical Completion means completion of HE Works that enables the HE Works to be used for the purposes for which they were designed;

Section 106 Agreement means the agreement between CM (through its predecessor APC) and Wiltshire Council pursuant to section 106 of the Town and Country Planning Act 1990;

Covenants: CM will, on receiving notice from HE that a works contract for any part of the DCO scheme has been let, immediately grant HE and its contractor a licence to temporarily occupy , any, or all of its land as presently identified in the DCO for the purposes of enabling HE and its contractors to construct the HE works.

On completion of the HE works, CM will grant such permanent rights over its land identified in the DCO as HE reasonably requires for the purposes of the use, protection and maintenance of, and access to, statutory undertakers apparatus for the benefit of the relevant statutory undertaker.

On completion of the HE works, CM will:

- (a) Dedicate for use by the public for the purposes of a Carriageway the Allington Track Diversion Carriageway maintainable at public expense using the provisions of S38 of the Highways Act.
- (b) Dedicate for use by the public for the purposes of a Byway Open to All Traffic the Byway AMES1 Diversion maintainable at public expense;
- (c) Create for use by the public for the purposes of Footpaths only the Allington Track Diversion Verges maintainable at public expense using the provisions of S25 of the Highways Act;
- (d) Dedicate for use by the public for the purposes of a highway Equinox Drive maintainable at public expense;

- (e) Grant the relevant Highway Authority such permanent rights over the Allington Track Diversion Carriageway, Allington Track Diversion Verges, and Byway AMES Diversion as may be necessary for
- (i) the maintenance of the Allington Track Diversion Carriageway and Byway AMES Diversion as public highways maintainable at public expense; and
 - (ii) the maintenance of the Allington Track Diversion Verges as a public footpath maintainable at public expense.

all with such permanent rights for drainage, street lighting, and street furniture as are reasonably necessary.

HE will undertake any works to the currently constructed section of Equinox Drive it considers necessary to bring it up to adoptable standard to allow CM to dedicate the unadopted section of Equinox Drive as public highway whilst at the same time maintaining reasonable access to the adjacent developed site and CM land.

HE will, on completion of the HE works, reinstate all of CMs land not to be dedicated by CM to its original condition to the reasonable satisfaction of CM.

HE will, on completion of the HE works, provide CM with such details, plans, drawings, specifications, information as may be required for CM to identify the precise extent of the Allington Track Diversion Carriageway, the Allington Track Diversion Verges, the Byway AMES1 Diversion, and the Equinox Drive works sufficient to enable CM to dedicate the Allington Track Diversion Carriageway as a Carriageway, the Byway AMES1 Diversion as a Byway Open to All Traffic, the Allington Track Diversion Verges as a Footpath, and Equinox Drive as a public highway.

HE will, on completion of the HE works maintain for a period of 12 months those works which are to be maintained by WC and, at the end of that maintenance period undertake such remedial measures as Wiltshire Council should require to allow those works to be maintainable at Public Expense.

On completion of the HE works, the relevant Highway Authority will:

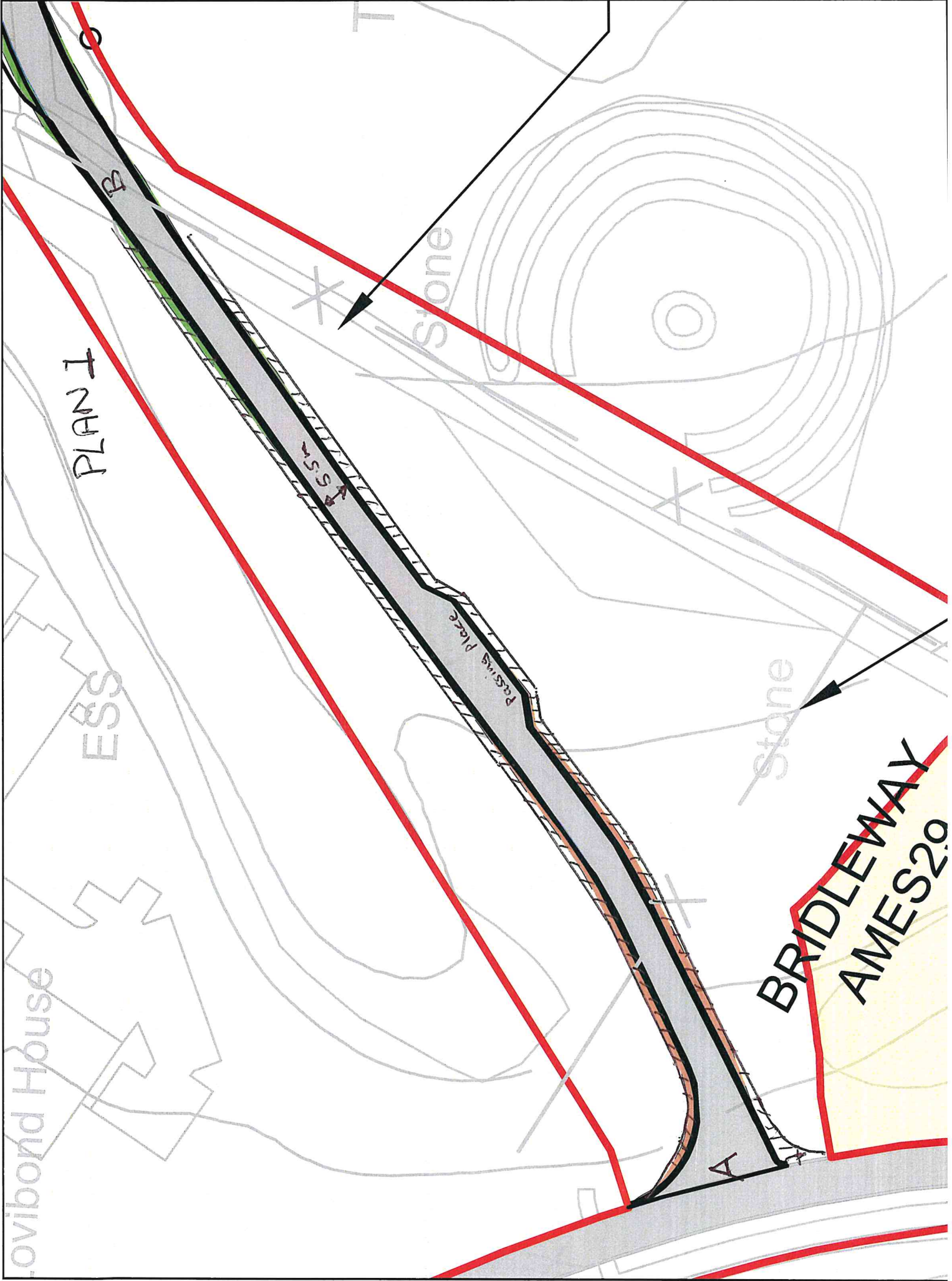
- (i) adopt the Allington Track Diversion Carriageway and Byway AMES Diversion as public highways maintainable at public expense;
- (ii) adopt the Allington Track Diversion Footpath as a public footpath maintainable at public expense; and
- (iii) adopt Equinox Drive as a public highway maintainable at public expense.

HE will arrange direct with WC a release of CMs (and its predecessor APCs) obligations under the Section 106 Agreement regarding the maintenance of public open space and wildflower meadows to the extent that CM/APCs obligations are affected by HE's DCO scheme.

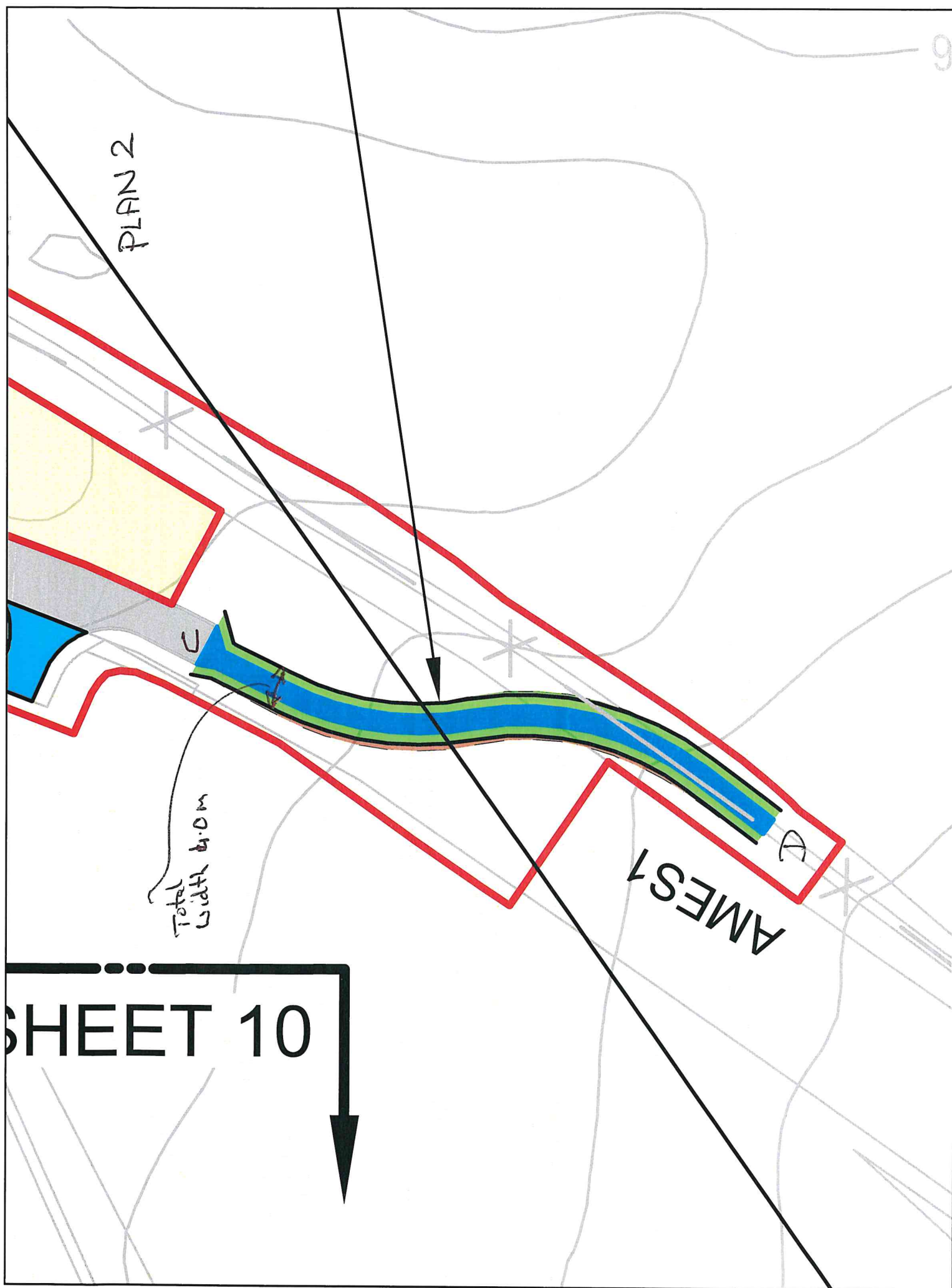
HE agrees to withdraw/not pursue those parts of the DCO which relate to the acquisition of land and/or rights from CM as compulsory acquisition is no longer required to facilitate the delivery of the DCO project

HE agrees that nothing in the terms of this Agreement by Classmaxi to dedicate land or to allow construction of either of the two diversions shall be an impediment to or frustration of the ability and rights of Classmaxi, if it should wish at some future date, to construct (1) the Boscombe Down Link Road, and/or (2) a vehicular and/or pedestrian access to or egress from land to the east, currently in the ownership of Lincoln College, Oxford to do so.”

Fees: HE will be responsible for reimbursing CM as to all CM’s professional and administrative fees incurred in responding to the DCO and in relation to the negotiation, preparation and implementation of the agreement.



PLAN 2



Total Width b.r.o.m.

AMES1

A

SHEET 10

RESPONSE TO EXQ CA.1.37

The Examining Authority ('ExA') has asked the Amesbury Property Company and Classmaxi (through PFA) to: (i) indicate whether it is agreed that in respect of plots 10-18 and 11-05 there would be compliance with section 132 (3) Planning Act 2008 ('PA 2008'); and (ii) If not, please explain why that is the case and identify any areas of disagreement.

Section 132 PA 2008 makes provision in respect of instances when a DCO authorises the compulsory acquisition of a new right over land forming part of a common, open space, or fuel or field garden. In the present case, plots 10-18 and 11-05 of CMs land are designated public open space land provided for in a s106 agreement with Wiltshire Council. Such land is known as 'special category land', which is afforded special protection against compulsory acquisition (including compulsory acquisition of new rights across them) by providing that the confirmation of an order including such land (i.e. DCO in the present case) may be subject to what is known as 'special parliamentary procedure' ('SPP'). If a DCO includes land whose acquisition is subject to SPP, any confirmation of this part of the DCO would be made subject to the SPP procedure.

HE are relying, in relation to plots 10-18 and 11-05, on the specified exception in section 132(3) PA 2008. This provides that SPP will not be necessary if the new right does not result in imposition of a burden on the order land which would make it less advantageous to the person to whom the land is vested, the persons entitled to the existing rights, and also to the public. In order to consider whether this 'no less advantageous' exception in section 132(3) PA 2008 is engaged, it is necessary to consider the purpose for which HE intends to acquire new rights over CMs land. In this regard, the Book of Reference and Statement of Reasons submitted with the DCO are of assistance. The Book of Reference states, with respect to plots 10-18, that HE are seeking to acquire rights over land of approximately 2056 sq. metres of grassland, woodland and public bridleway (AMES29) (Solstice Park) and, with respect to plots 11-05, that HE are seeking to acquire rights over land of approximately 265 square metres of grassland (Solstice Park). The Statement of Reasons then specifies the purpose for which HE are seeking to acquire new rights over plots 10-18 and 11-05. In relation to both plots 10-18 and 11-05, HE states that the authorised purpose is: "new rights required for installation, use, protection and maintenance of, and access to, statutory undertakers apparatus for the benefit of the relevant statutory undertaker".

While it seems that the land is required for the provision of services, the precise nature and extent of the new rights sought, and works to be undertaken pursuant to these rights, is currently unclear. Further information needs to be provided by HE to be able to assess whether the 'no less advantageous exception' properly applies. We therefore request further and better particulars from HE as to the new rights over the land sought, the authorised purpose, and the works to be undertaken pursuant to the authorised rights.