



**A303 Amesbury to Berwick Down
(Stonehenge) Wiltshire
TR010025**

**Wiltshire Council (A303-AFP022)
Comments on ExA's Second Round of
Written Questions Responses**

Wiltshire Council's Comments on Second ExA Question Responses

Question	Initial Responder	Wiltshire Council Response
Ag.2.5	HE	Wiltshire Council is still awaiting further information from Highways England (HE) on the precise route proposed for combine harvester access across National Trust land, and whether or not the route makes use of public rights of way. The Council reserves the opportunity to comment further when this additional information is made available.
De.2.2	HE	The Council welcomes the substantial amendment of Section 4 of the OEMP in the revised version (rev 3). It is pleased that the vision applies to the whole Scheme, not just the WHS, as these are sensitive historic landscapes which include the settings of designated heritage assets.
De.2.4	HE	The Council welcomes HE's commitment to consult with the Council on the external finishes of the green bridges. However, Wiltshire Council's ecologists will also require the opportunity to comment on the function for biodiversity of the green bridges, throughout the design and construction processes.
De.2.5	HE	Highways England appear to have concentrated their response to this question on the trunk road aspects of the Scheme. However, responsibility for the remaining vehicular roads, byways open to all traffic and non-motorised user public rights of way will pass to, or remain with Wiltshire Council as the local authority, so the final decision on the detailed design of those aspects should rest with the Council.
Ec.2.1	HE	<p>Wiltshire Council now understands that the conclusion of the Habitats Regulation Assessment (HRA) does not rely solely on the mitigation provided by enhanced fences. The fences are already present within the nature reserve; their enhancement would be of benefit to the Stone Curlews but not essential mitigation for the Scheme. The provision of a number of alternative nest plots forms the major part of the proposed mitigation and this is being actively taken forward by HE in close liaison with the RSPB. Natural England, as the authority with the responsibility for protection of Natura 2000 (N2K) sites, will need to agree that the mitigation proposed will be:</p> <ul style="list-style-type: none"> a) Achievable b) Sufficient and appropriate. <p>This issue is currently expected to be wholly resolvable and the Scheme is very likely to be HRA compliant.</p>
Ec.2.1	RSPB	The RSPB are advising on the suitability of mitigation measures for Stone Curlews and working with HE to design sufficient and appropriate mitigation design. Wiltshire Council supports RSPB's views on this issue.
Ec.2.2	HE	Wiltshire Council's ecologists are confident that suitable mitigation will be available to deal with impacts on both the River Avon Special Area of Conservation (SAC) and the Salisbury Plain Special Protection Area (SPA), and that detailed design of the mitigation will need to be approved by Natural England. There is an important role for the RSPB to play in

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		advising on the requirements of Stone Curlews and the detailed design of suitable and appropriate mitigation. The Council fully supports the approach to HRA for both these N2K sites.																		
Ec.2.3	Natural England	Wiltshire Council fully supports Natural England's view on this issue and believes that the RSPB's advice on provision of additional nest plots is a sound solution and will provide sufficient mitigation for Stone Curlews in the affected area, such that there can be certainty of no significant adverse effects on the conservation objectives of the Salisbury Plain SPA.																		
Ec.2.4	HE	Wiltshire Council believes that sufficient regard has been given to the protection of Great Bustards within the OEMP and the Preliminary Works programme.																		
CA.2.10	HE	<p>Wiltshire Council supports HE's view that the compulsory acquisition of land for the submitted Scheme represents the most efficient use of land in terms of delivering the Scheme, including providing the essential mitigation for biodiversity. However, with regards to HE's response to CA.2.10 (response part 'd'), the Council is disappointed that HE has been unable to reach agreement with the neighbouring landowner to enable the creation of a restricted byway for the whole length of the route between the existing Longbarrow roundabout and the Stonehenge Visitor Centre, and that it has decided against pursuing the option of compulsory land acquisition. The consequence of HE's decision is that an important strategic motorised traffic free link route for equestrian users will not be achieved. However, that being the case, Wiltshire Council will respond to HE's revised proposals for provision of this link for pedestrians and cyclists as contained in its present consultation on proposed changes to the draft DCO.</p> <p>The Council is pleased to note that as stated in their response to CA.2.10 (response part 'e') HE are still seeking to achieve this strategic link in the public rights of way network and that it is working with the landowners affected in order to minimise the impact on farming activities.</p>																		
CA.2.19	HE	<p>Having considered the updated Book of Reference submitted at Deadline 6 against the information which is available to Wiltshire Council, the Council provides the following update.</p> <table border="1" data-bbox="694 1126 2096 1380"> <thead> <tr> <th data-bbox="703 1129 896 1225">Council Comment Ref</th> <th data-bbox="900 1129 999 1225">Land Plot</th> <th data-bbox="1003 1129 1205 1225">Asset Type</th> <th data-bbox="1209 1129 1429 1225">Confirmed / Unconfirmed</th> <th data-bbox="1433 1129 2087 1225">Comment</th> </tr> </thead> <tbody> <tr> <td data-bbox="703 1228 896 1289">6.5.12</td> <td data-bbox="900 1228 999 1289">04-07</td> <td data-bbox="1003 1228 1205 1289">Street lighting</td> <td data-bbox="1209 1228 1429 1289">Confirmed</td> <td data-bbox="1433 1228 2087 1289">Unit 2 and 3</td> </tr> <tr> <td data-bbox="703 1292 896 1377">6.5.13</td> <td data-bbox="900 1292 999 1377">04-10</td> <td data-bbox="1003 1292 1205 1377">Street lighting</td> <td data-bbox="1209 1292 1429 1377">Unconfirmed</td> <td data-bbox="1433 1292 2087 1377">No assets in 04-10. Multiple units in Shrewton Road, unit 2 and 3 are in 04-07.</td> </tr> </tbody> </table>				Council Comment Ref	Land Plot	Asset Type	Confirmed / Unconfirmed	Comment	6.5.12	04-07	Street lighting	Confirmed	Unit 2 and 3	6.5.13	04-10	Street lighting	Unconfirmed	No assets in 04-10. Multiple units in Shrewton Road, unit 2 and 3 are in 04-07.
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6.5.13	04-10	Street lighting	Unconfirmed	No assets in 04-10. Multiple units in Shrewton Road, unit 2 and 3 are in 04-07.																

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		6.5.13	04-10	Gully Data	Confirmed	N/A
		6.5.14	04-11	Street lighting	Unconfirmed	Give Way sign Unit 1, however this maybe in 04-07 or 04-11. The Council is unable to confirm which.
		6.5.15	05-21	Gully Data	Confirmed	N/A
		6.5.16	05-26	Gully Data	Confirmed	N/A
		6.5.17	09-06	Street lighting	Confirmed	Unit 52 Countess Road. Please note the Council also hold ANPR camera for haulage restrictions.
		6.5.18	09-08	Street lighting	Confirmed	Multiple units.
		6.5.19	09-15	Street lighting	Confirmed	Multiple units.
		6.5.20	09-18	Street lighting	Unconfirmed	No assets in 09-18.
		6.5.21	09-29	Culvert Data	Confirmed	N/A
		6.5.22	11-02	Gully Data	Confirmed with comments	Whilst the data available does show this data within 11-02, the Council suspects that it has been wrongly plotted and would actually be situated in 11-30. (This would put the gully on the A3028 and Wiltshire Council maintained highway).
		6.5.23	14-04	Gully Data	Confirmed	N/A
		6.5.24	14-06	Street lighting	Confirmed	Assets are to be adopted by Wiltshire Council as part of S278 agreement.
		6.5.25	14-07	Street lighting	Unconfirmed	No assets in 14-07. Asset information extracted in this vicinity are in 14-06.

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CA.2.39	HE	i. Wiltshire Council notes HE's willingness to achieve its objectives through a negotiated agreement with the owners of the land in question. iii. Wiltshire Council notes that HE considers that it has the support of the Council to stop up the existing byway open to all traffic and to replace it with a public footpath over the same route. However, this is not an accurate statement of Wiltshire Council's position on this matter. Correctly stated, the Council's position is that it does <i>not object</i> to the stopping up of the byway open to all traffic and its replacement with a public footpath over the same route iv. The Council notes HE's willingness to achieve its objectives through a negotiated agreement with the owners of the land in question.
CA.2.43	HE	See response to Ag.2.5.
CA.2.44	Rachel Hosier on behalf of Max Hosier and Helen Hosier	Wiltshire Council would be willing to support the principle of a set of legally binding management agreements with landowners within the footprint of the Scheme, where land is to be used for ecological mitigation and enhancement in respect of the Scheme, rather than hard engineering. These landowners are already managing their land sympathetically for biodiversity, in many cases specifically for protected and sensitive habitats and species associated with N2K sites. Such agreements would likely result in better landscape scale benefits for biodiversity because there would be consistency of management across wider areas, rather than fragmentation of management units. An additional benefit would be the financial saving of not going through the compulsory acquisition process.
CA.2.54	HE	Wiltshire Council is disappointed that HE has been unable to reach agreement with the neighbouring landowner to enable the creation of a restricted byway for the whole length of the route between the existing Longbarrow roundabout and the Stonehenge Visitor Centre, and that it has decided against pursuing the option of compulsory land acquisition. The consequence of HE's decision is that an important strategic motorised traffic-free link route for equestrian users will not be achieved. However, that being the case, Wiltshire Council will respond to HE's revised proposals for provision of this link for pedestrians and cyclists as contained within its present consultation on proposed changes to the draft DCO.
DCO.2.5	HE	Wiltshire Council agrees with HE's response, that the wording would not significantly prejudice its ability to maintain the Scheme and welcomes the addition of the wording to the draft DCO. However, it is unclear why, if the works are to be inspected, then such an inspection would not be recorded for later action / reference.
DCO.2.6	HE	The Council supports HE's response to this question.
DCO.2.7	HE	The Council notes HE's response. Following discussions with HE, it has been agreed that Wiltshire Council will be referred to as "planning authority" which is defined as Wiltshire Council. HE have agreed to amend the dDCO and OEMP to ensure that this is consistently adopted across the whole suite of documents. This will also include ensuring that all references are to the Council as a corporate body, rather than its numerous functions or service areas. Where references to function

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		are applied, the Council considers that the wording in MW-G7 is the most appropriate as it states, “in respect of matters relevant to their function”.
DCO.2.32	HE	<p>The Council notes HE’s response and in respect of all activities apart from “receipt and erection of construction plant and equipment”, the Council accepts HE’s explanations as to how these activities would be controlled and regulated and do not need to be further regulated.</p> <p>In respect of the activity “receipt and erection of construction plant and equipment” the Council notes that HE’s explanation only relates to receipt (construction equipment arriving on the site) and notwithstanding HE’s explanation may constitute development by way of storage of the equipment on the land pending construction starting.</p> <p>The Council notes that HE’s explanation does not address the term “erection of equipment”. The Council is of the view that erection of plant equipment on the site would constitute development and should be subject to appropriate controls.</p>
DCO.2.34	Environment Agency	Wiltshire Council considers that it is entirely appropriate and necessary that the Environment Agency (EA) is consulted by the Secretary of State when considering whether to approve any departure from the plans specified in the Requirement. The EA are the authority with the relevant expertise to comment on the potential impacts to the environment as a result of any such departures, not least the effects on the Rivers Till and Avon, which are both part of the River Avon SAC.
DCO.2.41	HE	The Council welcomes the approach to establishing Design Principles and parameters that HE have set out in Section 4 of the OEMP, but reserve the opportunity to make further responses as more information becomes available through the discussions of the multi-interest stakeholder working group.
DCO.2.42	HE	The Council considers that "In accordance with" is the normal planning permission terminology, but in order to secure all biodiversity features the phrase "In strict accordance with" is typically used. An alternative wording to include the phrase "compatible with" is not strong enough to ensure that all necessary elements of the Scheme, particularly ecological mitigation and enhancement, are delivered. The Council considers that a change of wording may be appropriate, including reference to the Limits of Deviation (LoD) but retaining ‘in accordance with’. For example: “Having regard for the LoD described in (ref), the scheme will be constructed in accordance with the detailed design approved”.
DCO.2.44	HE	<p>The Council has considered HE’s response. However, the Council notes that HE is only The Authority and approving body if the ExA agree that this is appropriate.</p> <p>The Council maintains its position that it considers this inappropriate.</p>

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		<p>HE's response does not provide any safeguard to the underlying principle that nobody should be a judge in their own cause (actual bias) nor should any decision maker be put in the position <i>whether a fair minded and informed observer would conclude there was a real possibility that the decision maker was biased</i> (apparent bias). (Test for the principle taken from Porter v Magill [2011] UKHL 67 and subsequent line of cases).</p> <p>In earlier submissions HE tried to make a distinction between the contractor and HE but the contractor is carrying out the project for and on behalf of HE and therefore under HE's proposal, it would still be the decision maker for its own project.</p> <p>Whilst it is acknowledged that HE is a public body that does have some statutory duties, it is also the proponent and sponsor for the Scheme and therefore is in exactly the same situation as a private developer when it comes to being a judge in its own cause. HE is also faced with the potential conflicts of risk of delay, cost and failure of the Scheme, therefore actual and / or apparent bias is not addressed. As there are viable alternatives which remove the risk the Council considers it inappropriate for HE to be the approving body.</p> <p>The Council notes that HE have attempted to draw an analogy to that deployed by local authorities. However, the Council considers that there is a clear distinction between the arrangements under Local Government law and this situation. In Local Government law there are no viable alternatives and therefore additional checks have been put in place (Secretary of State's powers to call in, use of Public enquiry with recommendation on fact finding etc.).</p> <p>As there is a clear alternative in this case (either the Secretary of State or the Local Planning Authority, the Council considers it would be inappropriate for the panel to recommend to the Secretary of State that HE be the judge in its own cause.</p> <p>The Council notes HE's references to previous DCO's. The examples given all relate to non HE schemes where there is a separation between District Council as Local Planning Authority (LPA) and County Council as Highway Authority (HA) or in respect of a Unitary authority, there is statutory separation between the Executive functions as HA and Council functions as LPA.</p> <p>There is recognised process for such separation, a democratic process of decision making and likely to be call in provisions by the Secretary of State. Furthermore, each application has to be determined on its own merits and just because a process has been adopted in another application does not necessarily mean it is best practice.</p>

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		<p>This application has to be considered in accordance with sound legal principles of administrative law and having regard to the nature of the proposal (a two-mile tunnel and work within a WHS with OUV). The Council considers it appropriate that the approver be other than the project proponent and sponsor to ensure maintenance of the public’s confidence in the DCO process. Additionally, whilst it is recognised that HE have knowledge as a roading authority, it has limited knowledge of applying the quasi-judicial functions necessary to consider the planning merits of the Wiltshire Core Strategy, the WHS Management Plan and the community’s community needs.</p>
DCO.2.47	HE	<p>Please read in conjunction with comments on DCO.2.44 above.</p> <p>In respect of HE’s comments on this Scheme being a NSIP, the Council considers that this and the Council’s recognised expertise is a significant reason why HE should not be the decision maker. Furthermore, there is power within the NPPF for Monitoring costs to be covered in exceptional circumstances and a NSIP of this nature, would justify HE as proponent and sponsor of the Scheme, contributing to such monitoring costs rather than retaining these costs in-house. The Council considers that the burdensome element is more properly addressed via contribution by HE to the exceptional monitoring costs that HE are acknowledging.</p> <p>In respect of the references to HE and Wiltshire Council’s expertise, the Council considers that HE’s expertise would not be lost because as applicant, proponent and sponsor of the Scheme, the underlying documents will be provided to the decision maker. The decision maker in making the decision has to assess the merits of the application based on the information provided to it. This is exactly the expertise that the Council has developed over many years. By the applicant and the decision maker being one and the same, there is unlikely to be sufficient safeguards to ensure robust decision making can be evidenced notwithstanding any consultation undertaken.</p> <p>For clarity, Wiltshire Council’s position is that it is inappropriate for HE to be the decision maker on a number of documents and that should the Panel determine that it is unnecessary to be referred to the Secretary of State for approval, then it is more appropriate that there be a separate decision maker, such as the Council. If this is being considered, then as anticipated by HE, the cost of such monitoring and approval will need to be considered and provided for.</p>
DCO.2.54	HE	<p>Following review of HE’s response, the Council concurs that the DAMS is much further developed than it was at the time the Council proposed this amendment. Furthermore, as the Council will be approving and signing off the SSWSI’s, the Council withdraws its request for this amendment.</p>

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DCO.2.58	HE	The Council has reviewed HE’s response to DCO.2.58 and following discussion with HE, has agreed that these matters can be addressed in the landscaping scheme.
DCO.2.61	HE	The Council has reviewed the amended wording and confirms that it is acceptable.
DCO.2.63	HE	The Council has reviewed the changes made to the Requirement 11 (Details of consultation) and confirms that they are acceptable and that the Council withdraws its request for additional amendments.
DCO.2.65	HE	<p>In response to question DCO.2.65, HE make reference to those additional Requirements sought by the Council. The Council is currently in discussion with HE with a view to seeking the withdrawal of two of the additional Requirements, namely:</p> <ol style="list-style-type: none"> 1. Highway Lighting Scheme, and 2. Traffic Management during Tunnel Closures <p>In regards to the Highway Lighting Scheme, the Council accepts that HE, as a responsible government-owned company, will not seek to undermine the spirit of the DCO at a later date through the introduction of new street lighting which might affect the Scheme. However, it is concerned that the lighting of the crossover points near Countess and Longbarrow Junctions has the potential to cause unwanted repercussions in relation to the WHS, dark sky impacts, local residents and users of the highway. Therefore, there is a need for such lighting to be subject to a degree of control beyond that of the (at this time unknown) maintenance contractor(s) undertaking maintenance, recovery work etc. which requires tunnel closures.</p> <p>With regards to traffic management during tunnel closures, the Council accepts that there is potential to have such lighting controlled under the provisions of the proposed Tunnel Closure Management Plan (as closure is when the crossovers will be in use), currently accommodated in the OEMP. The Council also accepts that, given its understanding that the tunnel contractor will be retained for 5-7 years following the opening of the tunnels, to engage with tunnel operations, it is more acceptable than previously anticipated that the contractor be involved in the preparation and execution of the TCMP. The Council therefore accepts that there is an opportunity to concede to HE that the OEMP is an appropriate place (At Table 3.2b MW-TRA12) to retain the requirement of the TCMP. As indicated above, the Council is discussing with HE the possibility of amending the existing text in the OEMP to bring it more into line with the suggested Requirement text, and to include reference to the need for it to address lane cross-over point lighting in connection with any maintenance or other such works in the tunnel area.</p>

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		<p>Regarding the Requirement sought in relation to Traffic Monitoring and Mitigation, the Council does not concur with some of the views expressed by HE.</p> <p>HE states “The Applicant's Transport Assessment [APP-247] assesses the Scheme's operational effects which are summarised in paragraph 6.14.1. In short, no mitigation or monitoring is assessed as being required.” However, subsequent to the DCO submission, HE have submitted further assessment work in response to concerns raised prior to submission by the Council, about impacts within Amesbury Town Centre and at the Allington Track junction with the A338. This work clearly demonstrated that adverse impacts within Amesbury (A345 / London Road junction) that impact mitigation would be required. This is currently being addressed through the side agreement, currently in travelling draft form. It is currently envisaged that this work will be addressed following the completion of the Countess Junction works, when the potential for interaction between Scheme works and Amesbury A345 junction works would likely be less severe. The detailed design will need to be addressed on the basis of current information, but there will need to be adjustments (e.g. to signals timings) as and when the Scheme is completed, and the inevitable rat-running via the A345 route has been removed following Scheme opening.</p> <p>The Council considers that there are other areas of uncertainty requiring traffic monitoring, namely those which have been included in the draft side agreement as potential sites for intervention by way of traffic regulation orders at a later stage, when monitoring results can be considered in the context of a need for such interventions. Examples include the amount and nature of traffic on Allington Track, parking issues on Stonehenge Road, etc. It is unreasonable to expect the Council to undertake monitoring to inform consideration of measures which HE might be agreeing to fund to address any necessary intervention.</p> <p>The Council accepts that, if HE is willing, there is potential to include such arrangements in a side agreement. However, there has been, to date, no firm commitment to include such measures in the side agreement, so the Council maintains its position that the Requirement should be included in the DCO.</p> <p>Regarding the timing aspect (prior to the commencement of the authorised development), the Council does not share HE’s apparent concerns that this is an unreasonable trigger, as agreement to an acceptable monitoring scheme, in itself, is not considered to be a particularly onerous measure to be secured.</p> <p>Following a request from HE, the Council re-considered whether an additional requirement for flood risk assessment (FRA) was necessary or whether the OEMP could be amended instead. The Council considers that a separate, additional</p>

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		<p>requirement relating to the FRA is still required as Requirement 10 is a pre-commencement requirement, whereas the proposed FRA requirement is a compliance requirement specifically for the FRA. The Council considers that due to the flood risk sensitivity from multiple sources (river, surface water and flood risk), it is appropriate to elevate this to the DCO as a requirement. Furthermore, the need to comply with the FRA is not explicitly stated in the FRA or OEMP. The Council considers that a precedent has been set by including this requirement in the A14 DCO in addition to a drainage requirement similar to Requirement 10.</p>
Fg.2.4	HE	<p>The Council considers that the actions from the peer review have now been agreed with HE. It is important that the Flood Risk Assessment (Appendix 11.5 of the Environmental Statement) is updated with the additional information provided as part of agreeing the actions, so that the party undertaking the detailed design fully understands the risks and requirements.</p>
Fg.2.27	Wiltshire Council	<p>Following discussion between Wiltshire Council and the Environment Agency, the previously suggested amendment to Article 13 is no longer required.</p>
Ns.2.3	HE	<p>The Council considers that nature and scope of the preliminary works are limited, and it is unlikely that any preliminary works will impact on residential developments where noise insulation or rehousing would be necessary. Therefore, the wording is considered satisfactory in this case.</p>
Ns.2.9	Lois Lloyd	<p>As a point of clarity, Wiltshire Council confirms that the dDCO as it stands does not propose a Traffic Regulation Order on all byways open to all traffic. While the Council has put forward proposals for prohibitions on driving on the byways open to all traffic identified below, it has now reconsidered its position.</p> <p>Due to the risk to the statutory examination timetable if the Council were to go to public consultation and then provide the outcome to the Examining Panel and the fact that the Council does not wish to put at risk the wider benefits HE's proposed development will bring to the residents of Wiltshire, the wider travelling public and to visitors to the WHS, the Council has decided to withdraw its application that the DCO be amended by the inclusion of a prohibition on the use of motorised vehicles (other than motor cycles and invalid carriages) on part of Durrington byway 10, and Amesbury byway 11 (hereafter referred to as AMES 11) and part of Wilford cum Lake byway 1, Wilford cum Lake byway 2, Berwick St James byway 11, Woodford byway 16 and part of Amesbury byway 12 (hereafter referred to as AMES 12).</p> <p>The Council maintains its concern that the closure of the existing A303 and resultant loss of the travelling motorised public's ability to obtain a passing free view of the Stonehenge monument will increase use of AMES 11 and 12 by the travelling motorised public to an inappropriate level.</p>

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		<p>However, the Council proposes that this concern, should it arise, can be dealt with under the Council’s existing Highway Authority powers provided HE agrees to the monitoring of traffic within these byways once the Scheme becomes operational (to avoid delays caused by evidence gathering) and coverage of the costs of any TRO necessary (to ensure that the residents of Wiltshire do not incur unnecessary costs resulting from the Scheme).</p> <p>The Council is currently in discussion with HE for the inclusion of these aspects within the Side Agreement currently being developed and considers this should be capable of resolution.</p>