

# A303 Amesbury to Berwick Down

TR010025

**Deadline 8**

**8.52.2 – Written summary of oral submissions put at  
Traffic and Transportation hearing on  
22 August 2019**

APFP Regulation 5(2)(q)

Planning Act 2008

The Infrastructure Planning (Examination Procedure) Rules 2010

September 2019



## Infrastructure Planning

## Planning Act 2008

**The Infrastructure Planning (Examination Procedure)****Rules 2010****A303 Amesbury to Berwick Down****Development Consent Order 20[\*\*]**


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# 1 Introduction

- 1.1.1 This note summarises the submissions made by Highways England ("the Applicant") at the Traffic and Transportation hearing held on 22 August 2019 ("the Hearing") in relation to the Applicant's application for development consent for the A303 Amesbury to Berwick Down project ("the Scheme").
- 1.1.2 Where the Examining Authority ("the ExA") requested further information from the Applicant on particular matters, or the Applicant undertook to provide further information during the hearing, the Applicant's response is set out in this document. This document does not purport to summarise the oral submissions of parties other than the Applicant, and summaries of submissions made by other parties are only included where necessary in order to give context to the Applicant's submissions in response, or where the Applicant agreed with the submissions of another party and so made no further submissions itself (this document notes where that is the case).
- 1.1.3 The structure of this document follows the order of items published by the ExA on 14 August 2019 ('the Agenda'). Numbered agenda items referred to are references to the numbered items in the Agenda. The Applicant's substantive oral submissions commenced at item 3 of the agenda, therefore this note does not cover items 1 and 2 on the agenda which were procedural and administrative in nature.

## Written summary of the Applicant's oral submissions

3 APPLICANT'S PROPOSED CHANGES	
<p>Mr Reuben Taylor QC, on behalf of the Applicant confirmed at the outset of the Hearing that the starting point for consideration of the proposed non-material changes is Highways England's report submitted in support of the application for non-material changes at document reference - AS-067. This sets out the full background of the changes and includes an environmental appraisal of them.</p>	
Agenda Item	Highways England response
<p><b>3.1 NMC-01: Existing A303 layby west of Winterbourne Stoke to be de-trunked.</b></p>	<p><b>Mr Howard Smith</b>, on behalf of Mr. Parsons, indicated that his client was supportive of the change, and would say as such in his consultation response on 26th August.</p> <p><b>Mr Philip Tilley</b>, on behalf of Wiltshire Council, indicated that the Council support the proposed change.</p> <p><b>Dr Shuttleworth</b>, on behalf of Winterbourne Stoke Parish Council, expressed concern regarding the proposed legacy of the layby land. He explained that the Parish Council has a proposal for cycle track in the wider area, including using the existing A303 and the layby area, and are concerned about having to use funds to improve the grassed layby if the tarmac from the layby is removed as a consequence of this change. In response to a question from the ExA, Dr Shuttleworth confirmed that this legacy proposal can only happen if the funding is available, Wiltshire Council support it and land acquisition is able to be achieved. These are all matters currently in progress.</p> <p><b>Mr Tim Harper</b>, on behalf of the Applicant, confirmed that the change to the layby would not happen until the new dual carriageway is in place and the tunnel is open to traffic giving the Parish Council sufficient time to bring their proposal forward to tie in with these works if appropriate.</p>
<p><b>3.2 NMC-02: Countess roundabout to be de-trunked</b></p>	<p><b>Mr Tilley</b>, on behalf of Wiltshire Council, indicated that the Council supported the proposed change but, as a point of detail, wants the Applicant to confirm the precise boundary between the local road and trunk road at this location. Mr Tilley also noted that the Council had comments on the legends of the Classification of Roads Plan, but agreed that this matter and the boundary issue would be able to be discussed outside of the Hearing with the Applicant.</p> <p>The Applicant can confirm that these discussions have commenced, including the sharing of plans.</p>
<p><b>3.3 NMC-03: Declassification of existing A303 between</b></p>	<p><b>Mr Tilley</b>, on behalf of Wiltshire Council, confirmed the Council's support for this change.</p> <p><b>Dr Shuttleworth</b>, on behalf of Winterbourne Stoke Parish Council, <b>Mr Howard Smith</b>, on behalf of Mr Whiting and <b>Ms Diana Mullinson</b>, on behalf of Green Lanes Environment Action Movement, all indicated that they consider that the proposed</p>

<p><b><i>Winterbourne Stoke and Berwick Down</i></b></p>	<p>Byway Open to all Traffic at the western end of the de-trunked A303 should be a restricted byway and private means of access instead.</p> <p><b>Mr Harper</b>, on behalf of the Applicant, explained that the Applicant had previously responded to this point in the course of the Examination. Mr. Harper referred to the summary of oral submissions from ISH6, but the Applicant can confirm that the response is more fully given in its response to the Parish Council's written representation found at paragraphs 6.25 and 6.30 of REP3-013. These paragraphs confirm that a BOAT is proposed instead of a restricted byway to preserve a continuous BOAT link between Berwick St James and Winterbourne Stoke. The needs of the chicken farm in this location (referred to by Dr Shuttleworth), while relevant to the proposals here, do not provide the overriding reason for the proposed BOAT.</p>
<p><b><i>3.4. NMC-04: Provision of turning head on old Stonehenge Road</i></b></p>	<p><b>Mr Richard Moules</b>, on behalf of Wiltshire Council, confirmed that the Council supports this change.</p> <p><b>Mr Howard Smith</b>, on behalf of Mr Sawkill, and <b>Mr Patrick Robinson</b>, on behalf of the National Trust (Mr. Sawkill's landlord) indicated that their clients are generally supportive of the change but consider that there are still points of detail to be confirmed, such as access to land (including Stonehenge Cottages) and traffic management.</p> <p><b>Mr Harper</b>, on behalf of the Applicant confirmed that these issues are matters of detailed design within the Order limits.</p> <p><b>Ms Woodhouse</b>, on behalf of Historic England, sought confirmation as to the type of fencing that would be used at this location.</p> <p><b>Mr Harper</b>, on behalf of the Applicant confirmed that the amount of fencing at this location will reduce as a result of this change. The Applicant also notes that Historic England will be consulted on fencing within the WHS pursuant to item D-CH14 of the OEMP.</p> <p><b>Ms Woodhouse</b>, on behalf of Historic England, also sought confirmation as to whether there will be archaeological works undertaken at this location as part of the installation of the turning head, and if so, which area within the DAMS it would fall under. <b>Mr Taylor QC</b>, on behalf of the Applicant, stated that this would be confirmed in the Applicant's hearing summary. The Applicant can therefore now confirm that:</p> <p>Provision of archaeological mitigation in respect of the turning head at Old Stonehenge Road (NMC-04) would be dealt with through either the extension of site 56 or the addition of a new, separate site in the DAMS. The DAMS would be revised following the acceptance of the NMCs by the Examining Authority (pursuant to its procedural decision due to be issued on 27 September 2019) and would be submitted by the close of the examination.</p>
<p><b><i>3.5 NMC-05 Revised proposal for access to land next to the existing A303 north of Longbarrow</i></b></p>	<p>There was no discussion of this item at the Hearing.</p>

### 3.6 NMC-07: Additional PMA to Earl's Down Field

**Mr Graham Eves**, on behalf of Classmaxi Limited and Amesbury Property Company ('CMC/APC'), set out his client's comments to this proposed change:

#### Procedural

- No comment is made as to whether the changes are material or not.
- The change application is premature and pre-determines the outcome of the consultation exercise, particularly in the context of the ExA's letter of 27 June stating that consultation should be carried out prior to the change request being submitted.
- This is unfair and against the Gunning Principles, as it shows that the consultation has not been taken at a formative stage and with an open mind. As such, Highways England has already determined to go ahead with the proposed changes.
- The notices advertising NMC-07 are defective as the press notice, public notice, notice to consultees and site notices only reference one additional private means of access off the new link to the Allington Track (PMA 41), and not the second private means of access from the proposed AMES1 between Equinox Drive and Amesbury Road (PMA 42).
- Paragraph 10.2.4 of the Consultation Booklet is misleading as it suggests that the proposed changes within NMC-07 have the support of the relevant landowner, suggesting it is not contentious. This is not the case - while the change may have the support of the owner and occupier of Earl's Down Field, it does not and never has had the support of CMC/APC

In response to these points, **Mr Taylor QC**, on behalf of the Applicant, explained that Mr Eves' procedural points should be considered misconceived. It is not the Applicant's decision as to whether or not the changes are able to be made to the Application to be considered as part of the decision on the Scheme as a whole – that is the decision of the Examining Authority. The consultation carried out has enabled all interested parties to be involved in the process of the Examining Authority's consideration of the proposed changes, as evidenced by Mr Eves' presence at the hearings. As such, there has been no breach to the Gunning principles and no prejudice to interested parties.

The Applicant would also note that part 1 of AS-067 explains why the change report was submitted shortly after the start of the consultation period - to enable the ExA to have sufficient time to consider the changes before then considering the comments on it. This has enabled, for example, the issues to be discussed at ISH9. If the report submission had accompanied the consultation report, there would have been limited time within an already busy Examination timetable for such a hearing to take place.

In respect of the notices, the Applicant can confirm, by reference to AS-067, that:

- the consultation booklet referred to in the site notice and press notice and the letter to consultees refers to NMC-07 as comprising "New private means of access are proposed into Earl's Down Field from the proposed link between Allington Track and Equinox Drive, **and** from the proposed link between Equinox Drive and Amesbury Road";
- as set out at appendices F and G to AS-067, the site notice and the information sent to consultees with the aforementioned letter included a table summarising the changes which included the above sentence;
- it was clear from the letter and notice that details were provided in the documents included with them; and
- as indicated in table 3 (in respect of APC) and table 4 (in respect of CMC) of appendix D to AS-067, Mr Eaves' client received that information

The Applicant acknowledges that the press notice at appendix E to AS-67, the text of which was also included in the site notice and the information sent to consultees, does only refer to an 'Additional access off the new link to the Allington Track'. However, in the context of the second access being made clear in all the other information available to other parties, it is considered that no prejudice has been caused to interested parties.

In respect of the statement within the Consultation Booklet that NMC-07 had the support of the landowner, the Applicant can confirm that Lincoln College, the owner of the field served by PMA42 and the tenant P J Rowlands & Sons (Farmers) Ltd support the proposal, notwithstanding that CMC/APC do not.

#### Substantive

**Mr Eves** set out his clients' concerns that:

- The Applicant has not shown the pressing need for the change in AS-067, in particular why accommodation works could not be done instead and why PMA41 is not enough by itself.
- There has been no negotiation on this point to date (and there was no discussion of this at the Compulsory Acquisition Hearings) which is surprising given that APC/CMC have incurred costs in trying to bring forward a dedication agreement in respect of AMES1.
- PMA42 affects APC/CMC's ability to develop its land.
- Even if a pressing need could be shown for a second access, it should be located further south than is proposed.

In response **Mr Harper**, on behalf of the Applicant, set out that:

- the pressing need for the change is to ensure that access to Earl's Farm Down is able to be maintained such that that farm's business is able to continue with the flexibility to divide the field into smaller units; and an access provided further south would not facilitate that;



	<ul style="list-style-type: none"> <li>• providing a single access to Earl's Farm Down would not be suitable for the turning circles of vehicles who access Earl's Farm Down without additional compulsory acquisition of adjacent land being required; and</li> <li>• further to tri-partite discussions with Wiltshire Council, it is understood that the land upon which PMA42 will sit would not be suitable for development in the future.</li> </ul> <p>As such, the Applicant considers that a change to the Scheme to provide for PMA42 is fully justified and should be able to proceed.</p> <p><b>Mr Howard Smith</b>, on behalf of Mr Rowland, confirmed that two accesses to his client's farm (known as Ratfyn Farm, rather than Earl's Down Farm as suggested by the Applicant) are required to enable the farming business to continue in the future, as is facilitated by this change. Mr Smith set out that these requirements would be set out in his response to the consultation on the non-material changes on 26 August.</p> <p><b>Ms Woodhouse</b>, on behalf of Historic England, also sought confirmation as to whether there will be archaeological works undertaken at this location as part of the installation of the new accesses and the changes to AMES1 and if so, which area within the DAMS these works would fall under. <b>Mr Taylor QC</b>, on behalf of the Applicant, stated that this would be confirmed in the Applicant's hearing summary. The Applicant can therefore now confirm that:</p> <p>The DAMS will be updated to reflect the changes pursuant to NMC-07 to ensure archaeological remains are protected. This will be dealt with as part of site 32 or 33 or the addition of a new, separate site in the DAMS. The DAMS would be revised following the acceptance of the NMCs by the Examining Authority (pursuant to its procedural decision due to be issued on 27 September 2019) and would be submitted by the close of the examination.</p>
<p><b>3.7 NMC-08: Revised means of access off the new restricted byway south of Green Bridge No.2</b></p>	<p>In respect of this change, <b>Ms Woodhouse</b>, on behalf of Historic England, sought confirmation as to whether there will be archaeological works undertaken at this location as part of the installation of the revised means of access (noting that the changes report [AS-067] indicated a 'non-material <u>change</u>' in heritage effects), and if so, which area within the DAMS it would fall under. <b>Mr Taylor QC</b>, on behalf of the Applicant, stated that this would be confirmed in the Applicant's hearing summary. The Applicant can therefore now confirm that:</p> <p>The DAMS will be updated to reflect the revised location of the new PMA as set out in NMC-08. This will be dealt with as part of site 39 (preservation of archaeological remains). The DAMS would be revised following the acceptance of the NMC by the Examining Authority (pursuant to the Procedural Decision which is due to be issued on 27 September 2019) and would be submitted by the close of examination.</p>
<p><b>3.8 NMC-06: Amendment to Public Right of Way (PRoW) to Stonehenge Visitor Centre (only to be pursued if</b></p>	<p><b>Mr Harper</b>, on behalf of the Applicant, introduced the change and confirmed that the Applicant does not wish to seek powers over 'additional land' in relation to this change and that the Guinness family, English Heritage, Historic England, utility companies and Wiltshire Council as highway authority hold the relevant land interests.</p>

<p><b><i>agreement can be reached with landowner without recourse to Compulsory Acquisition).</i></b></p>	<p><b>Mr Richard Moules</b>, on behalf of Wiltshire Council, confirmed that of the options presented in AS-067, the Council prefers route B as it considers that route A is too narrow for shared use. Mr Mould QC also confirmed that the Council will be submitting a representation in respect of this change to the non-material changes consultation for 26 August.</p> <p><b>Mr Robert Bruce</b>, on behalf of English Heritage Trust, confirmed that, that the options presented are improvements on the route proposed as part of the application Scheme but do not solve all of the Trust's concerns. However, the Trust considers that positive discussions are taking place with the Applicant and that an agreed position will be able to be reached. Mr Bruce also confirmed that the Trust will be submitting a representation to the non-material changes consultation for 26 August.</p> <p><b>Mr Andrew Nicholson</b>, on behalf of Cycling UK, indicated his concern that the proposed route was too narrow for shared uses, which could cause safety risks. The Applicant's response to this concern is that users of the cycle track would be expected to have due regard for other users and a 1 metre wide verge between the cycle track and the A360 is provided to mitigate the risk.</p> <p><b>Mr Nicholson</b>, and the Examining Authority, further to written representations from the British Horse Society, raised concerns about the fact that the proposed change would alter the proposal for the non-motorised user route to be a restricted byway suitable for use by horses to a 'shared-use cycle track' which has the potential to lead horses needing to be 'on-road' on the A360, which is not a preferable situation for equestrians. The Applicant acknowledges the desire for safe off-road access for equestrians from areas to the north and west of the World Heritage Site. The Applicant sought to provide for this with the application Scheme. However, further to the requirements of the affected parties at this location which have prompted the non-material change requests, these are beyond the ability of this Scheme to deliver if the non-material changes are to be made.</p> <p>An update on the discussions in respect of this NMC is set out in the Consultation Report in relation to these changes submitted at Deadline 8.</p>
<p><b><i>3.9 Merits of original proposal for new restricted byway alongside A360, in the event that NMC-06 cannot proceed.</i></b></p>	<p><b>Mr Harper</b>, on behalf of the Applicant, confirmed that the restricted byway proposed as part of the application Scheme provides a connection to the proposed public rights of way network at Longbarrow junction and to the wider public rights of way network. In addition, this route also facilitates connection to the Stonehenge Visitor centre, which is a major tourist attraction in the area, allowing sustainable travel to this destination. As this route runs parallel to the A360, it minimises additional infrastructure within the World Heritage Site. Being situated to the east of the A360 gives the route good views over the World Heritage Site making it more attractive to non-motorised users. This route would also provide a key link in a restricted byway route north beyond Rolleston crossroads which is being promoted as an aspiration of Wiltshire Council. This would provide access to the extensive network of byways on Salisbury Plain. It is noted that this route was included in the briefing provided to the Walking Cycling and Horse Riding Workshop held on 24 July 2018.</p> <p>The Applicant also notes, in the context of English Heritage's concerns that there would be safety risks of non-motorised users crossing accesses to a busy park as a result of this original proposal, that by way of comparison, Salisbury's Central</p>

	long stay car park with 887 spaces (within a 5 minute walk of City Hall) has two accesses with footway/cycleway crossings. There are no recorded accidents at these crossing within the last five years. As a relatively common feature of car parks, it is considered that this concern is not a substantive reason why this proposal could be considered unacceptable.
<h4>4 TRAIL RIDER FELLOWSHIP'S PROPOSED CHANGES</h4>	
<p>4.1.</p> <p>4.2.</p> <p>4.3.</p> <p>4.4.</p>	<p>Amendment 1: To avoid extinguishment of link between byways AMES11 and AMES12 – Amend Part 1 of Schedule 3 of the draft Development Consent Order (dDCO) to create a new length of Byway Open to All Traffic (BOAT) between AMES11 and AMES12. Alternatively amend the extent of stopping up of the A303 in Part 1 of Schedule 3 of the dDCO so that it does not stop up the road between the byways and specifies a width</p> <p>Amendment 2: To ensure motorcycle-only use of the link; prohibition of use by motorised vehicles except for invalid carriages and two-wheeled vehicles.</p> <p>Amendment 3: To retain use of the A303 for small capacity vehicles i.e. creation of a BOAT rather than a restricted byway, subject to a prohibition of vehicles, except motorcycles with a capacity of less than 50cc.</p> <p>Amendment 4: To retain use of the A303 for motorcycles only.</p>
<p><b>Agenda Item</b></p>	<p><b>Highways England response</b></p>
<p><b>4.5 Materiality of the TRF's proposed changes</b></p> <p><b>4.6 Evidence of harm to cultural heritage, landscape, tranquillity and other potential impacts arising from proposed changes.</b></p>	<p><b>Mr. George MacKenzie</b>, on behalf of the TRF, set out the following points:</p> <ul style="list-style-type: none"> <li>the concerns of third parties as to fencing and signage and width reductions are matters of detail that will be able to resolved and it is noted that there are no records of accidents on the A303;</li> <li>without the change, a turning point may be needed at Byway 11 (<b>Wiltshire Council</b> set out their concerns that without this there would be a risk of parking and camping at this location);</li> <li>the existing situation is relevant to the materiality of the TRF's proposed change, as the TRF's change to the DCO would allow the existing situation to continue;</li> <li>the change is not material as there would not be that many movements of motorcycles and this should be seen in the context of likely agricultural vehicles who are likely to be louder, so all in all it would be affecting a change for something that is trivial;</li> <li>the WHS Management Plan does not seek for road traffic to be removed from the WHS, but instead says that the aim must be to 'reduce negative effects' from road traffic – the small amount of motorcycle movements facilitated by this change will not make much difference to achieving this in the context of the Scheme as a whole;</li> </ul>

- the Applicant's Deadline 4a submission does not identify new harms, and just says generically that there may be less beneficial effects;
- there can be no realistic suggestion that use of the link would either discourage exploration by foot of the WHS or affect access to archaeology (as is encouraged by the WHS Management Plan); and
- the Applicant's Environmental Statement does not really cover motorcycles. The removal of the formerly proposed link to the south was justified in relation to potential effects to the Normanton Barrows and nesting birds - neither of these issues are relevant to the 'missing link'.

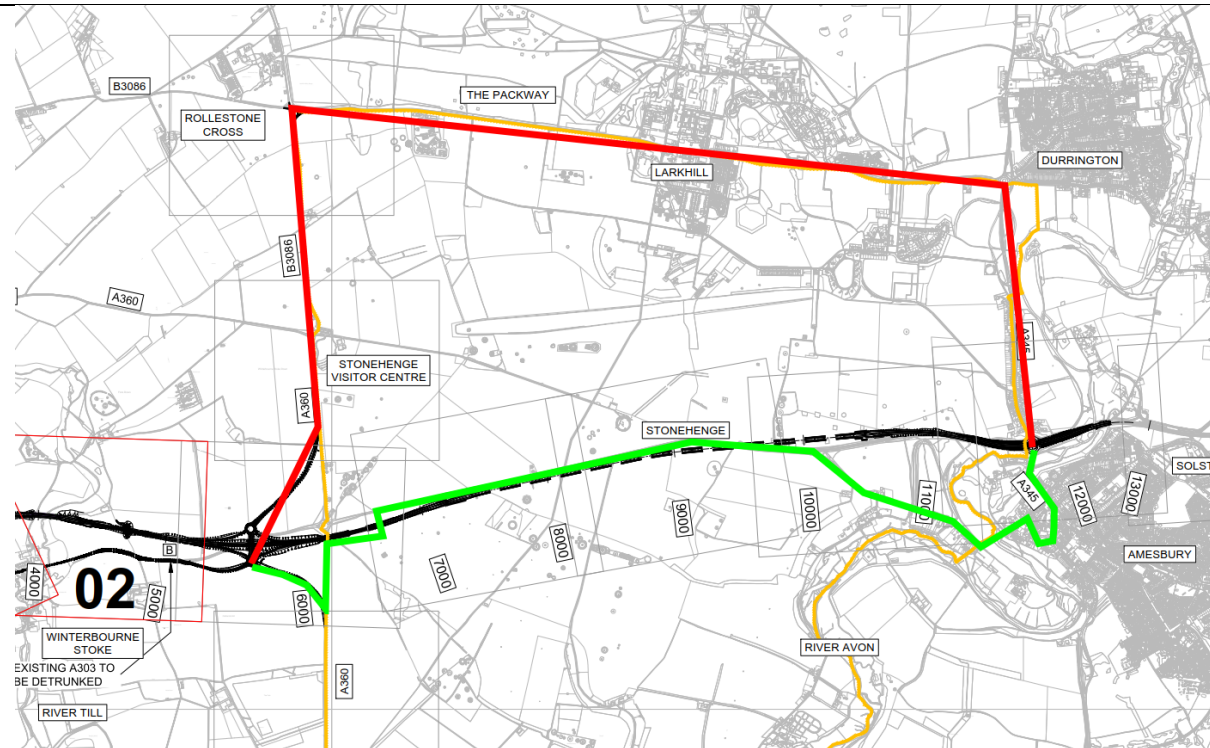
In response, the Applicant contends (as expressed by **Mr Taylor QC** and **Mr Harper** at the Hearing and now supplemented by post-hearing submissions):

- the existing access onto Byway 11 from A303 will be used as the future turning area, the details of which will be resolved with Stakeholder Consultation Design Group including Wiltshire Council;
- the starting point is that any consideration of the acceptability or materiality of the change must be a comparison against the application Scheme and the differences that would be created between the application as changed and the application as originally promoted - this was the approach taken in the Applicant's Deadline 4a submission;
- the TRF has still failed to carry out a full consideration of this change above and beyond the statements made at the Hearing and the previous traffic and transport hearing, and there is now insufficient time for it to do so within the remaining Examination timetable. Taken with the lack of any public consultation on the issues, it therefore should not be a change that is able to be made to the DCO;
- whilst the Applicant maintains that the TRF's changes could be considered as material, even if it is considered that they are not material, a process of consultation and appraisal, mindful of the Wheatcroft principle, should have been carried out, further to PINS Advice Note 16;
- the Applicant's concerns (as supported by interested parties at the Hearing) that the change would have potential noise, visual and heritage considerations have still not been rebutted save for qualitative statements expressed in the Hearing (noting that Mr Mackenzie's points were essentially a repeat of Mr Westaway's (of Counsel) comments on behalf of the TRF made at the first traffic and transport hearing); and
- the TRF has sought to say that the DCO should not be made without such a change being made, given the 'impact' the 'missing link' will have. However, Mr Mackenzie stated that the change would be 'trivial'. Such a statement indicates that there is no 'fatal' omission to the DCO that does not cater for such a trivial impact. As such, the TRF's starting point that the DCO cannot be made without the change should be considered misconceived.

	<p>In addition to the above points, the Applicant has topic specific concerns in respect of the TRF's proposed changes. These are set out in the <b>Annex</b> to this note.</p>												
<p><b>4.7 Evidence of benefits/ need for the TRF's proposed changes.</b></p>	<p><b>Mr. George MacKenzie, Mr Alan Kind and Mr James Higgs</b>, on behalf of the TRF, explained that the TRF proposals will ensure that there are continuous links in the area, from Salisbury Plain in the north to the Wylde Valley and Hampshire valleys elsewhere. A fragmented network that would be caused by the application as it currently stands would lead to trail riders having to use the A360 and the Packway which could be dangerous given the trail riders' comparative low speeds to the normal users of those roads. Trail riders look at clusters of public access and byways when planning their routes and the application would cause a break in this cluster.</p> <p>The TRF representatives then went on to say that although they recognise that the data capture by the Applicant was consistent with the user forms submitted by the TRF, the low averages (such as 1 a day), is likely to mask the fact that trail riders involve wider groups of friends coming together and using Byways 11 and 12 as part of a wider network. With the application scheme, these users would be faced with a block in that wider network and having to turn around. Taken with the poor alternative route, it is clear that the qualitative impacts on trail riders have not been considered which is a failing given the conclusions of previous inspectors, who would have access to the Faber Mansell report which discusses the benefits of motorcycle use of byways.</p> <p>In response, the Applicant contends (as expressed by <b>Mr Taylor QC</b> and <b>Mr Harper</b> at the Hearing and now supplemented by post-hearing submissions):</p> <ul style="list-style-type: none"> <li>the impacts that are being considered in this issue are minimal. Consistent with the figures presented at ISH6, further data capture carried out until 11<sup>th</sup> August 2019 has demonstrated the following figures at this location (the difference in survey days is due to either tampering with the cameras or equipment failure (usually defective batteries) or that the survey sites were not available during the period when the byways were closed immediately before and following the summer solstice):</li> </ul> <table border="1" data-bbox="683 1034 2007 1281"> <thead> <tr> <th></th> <th>Survey days</th> <th>North-bound Average Count (Range)</th> <th>South-bound Average Count (Range)</th> </tr> </thead> <tbody> <tr> <td>Byway 11 (survey site 10)</td> <td>70</td> <td>1 (0 - 4)</td> <td>1 (0 - 5)</td> </tr> <tr> <td>Byway 12 (survey sites 9 &amp; 11)</td> <td>97</td> <td>7 (0 - 8)</td> <td>6 (0 - 9)</td> </tr> </tbody> </table> <ul style="list-style-type: none"> <li>previous decisions are of limited value: they refer to a different Scheme and the Inspectors did not have access to the survey data that has been presented to this Examination;</li> </ul>		Survey days	North-bound Average Count (Range)	South-bound Average Count (Range)	Byway 11 (survey site 10)	70	1 (0 - 4)	1 (0 - 5)	Byway 12 (survey sites 9 & 11)	97	7 (0 - 8)	6 (0 - 9)
	Survey days	North-bound Average Count (Range)	South-bound Average Count (Range)										
Byway 11 (survey site 10)	70	1 (0 - 4)	1 (0 - 5)										
Byway 12 (survey sites 9 & 11)	97	7 (0 - 8)	6 (0 - 9)										

- the diversion for trail riders does not provide that much of a difference in time if speeds on the route along the A303 are to be low enough to avoid risks to non-motorised users of the restricted byway, as explained below:
  - the detour route (red route) and the more direct route along the existing A303 (green route) have been compared (see the plan below). Journey times are also modelled assuming a maximum speed on the highway of 40kph to account for users being unable to reach top speed due to the profile of acceleration and / or the performance spec of the moped.
  - where the typical vehicle speed along a highway link is greater than the modelled speed of a moped, the speed upon that link has been reduced (and therefore the travel time upon that link increased) to reflect the differing top speed of a moped. The byway section is modelled based on three speeds – 10mph, 15mph and 20mph (16, 24 and 32kph).
  - the results below show that the red route (via the Packway) is quicker if mopeds are assumed to be travelling at 10mph along the byway (the green route), but the green route takes about the same length of time if mopeds are assumed be travelling at between 15-20mph through the byway. This conclusion is the same no matter the modelled top speed of the moped, and would likely be the case if a 35kph top speed scenario was modelled. In the context of a byway that is likely to see an increase in pedestrian users as a result of the improved access of the WHS, it is considered unlikely that a 20mph speed limit would safely be put in place. Journey Time comparisons (in minutes) are shown in the table below:

Moped Speed Limit	Red Route (Packway)	Green Route - speed along byway		
		10mph	15mph	20mph
28 mph (45kph)	00:16:13	00:26:13	00:18:22	00:14:27
25 mph (40kph)	00:18:10	00:26:18	00:18:27	00:14:32



- The Applicant acknowledges that there may be vagaries in the speeds of the mopeds (e.g. they may not be able to maintain constant speed on the red route, as suggested by the TRF at the Hearing) and that the red route will involve roads that are at the National Speed Limit, but does not consider that this means that the red route cannot be considered as a viable alternative route for part of a wider journey. Furthermore, the Applicant notes that with the Scheme, less traffic will divert onto these routes than is currently experienced (and in non-busy periods, the Packway has a current AM peak flow of just 7 vehicles per minute), which will potentially have a beneficial impact on the journey experience on these roads that are already not particularly busy.

In conclusion, therefore, the impact caused by the Scheme is minimal and there exists a sufficient alternative. There is therefore no need for the TRF's changes, above and beyond the impacts it may cause.

***4.8 Implications of omitting link for motorised traffic and specifically motorcycles between byways AMES11 and AMES12 for European Convention on Human Rights Articles 9 and 14 and the Equality Act 2010, with particular regard to disability discrimination.***

**Mr Taylor QC**, on behalf of the Applicant, set out that:

- This issue does not arise in relation to TRF's proposals in relation to the link between AMES11 and AMES12. There is no evidence that trail riders are made up of persons with a protected characteristic under the Equalities Act 2010; and neither can trail riding be considered to be a form of religion.
- Not including the link also does not affect the ability of trail riders to continue to ride their vehicles - it just prohibits them from doing so on certain trails.
- Regarding Article 9 of the European Convention on Human Rights, relating to freedom of thought, belief and religion, the Applicant does not consider that the rights of any person(s) wishing to practice their thoughts, beliefs, or religions in the context of the Stonehenge Monument or associated landscape are prevented or impeded by the omission of the link between byways AMES11 and AMES12. Both Byways will retain their status as Byways Open to All Traffic and will be open to use by motorised and non-motorised users alike, including those with disabilities. The same can be considered true in the context of the Equality Act 2010 and protection from discrimination of persons with religious or beliefs based protected characteristics.
- Regarding Article 14, relating to protection from discrimination, specifically in the context of disabled users, the Applicant's Deadline 5 submission (REP5-003) in response to the TRF Deadline 3 (REP3-096) and 4 (REP4-058) submissions, sets out that vulnerable road users in mobility scooters are permitted by law (section 20 of the Chronically Sick and Disabled Persons Act 1970) to use the restricted byways (subject to them complying with the conditions and requirements of the Use of Invalid Carriages on Highways Regulations 1988), such as that proposed between Byway 11 and 12. There are therefore no implications to compliance with the ECHR or similarly in respect of the Equality Act 2010.

In relation to these issues, the Applicant has also considered the submissions of Lois Lloyd submitted prior to the Hearing [AS-089], noting that many of them were dealt with in the previous traffic and transportation hearing [REP4-034] and Highways England's Deadline 4a submission [REP4a-001]. The Applicant's response is set out below to the extent that points are not already covered in this summary:

- The NMC process has been subject to full consultation. NMC6 involves an adaptation of a proposed NMU route and does not involve the loss of a route.
- As set out above, the Applicant considers that, for religious users such as Ms Lloyd, access to the WHS by motorised vehicle along byways will still be able to be made via Byway 12 - the only change for such users is that if they want to get closer to the Stones, they will be required to use Byway 12 rather than having the option of using Byway 11 to then access Byway 12. With the restricted byways in place, mobility scooters will be able to use the line of the existing A303 to access the WHS, which will connect with Byway 12, including after 5pm. No diversion would be required.
- Furthermore, the Scheme does not prevent users from using Byway 12 and take any short walks they desire – they just cannot use Byway 11 to get there.



	<ul style="list-style-type: none"> <li>• Any changes to Byway12, including its route, are outside the scope of the Scheme.</li> <li>• The debate about the proposed TRF changes does need to be considered both quantitatively and qualitatively but clearly the Examining Authority will need to consider what weight to give qualitative evidence that will be inherently subjective. The quantitative surveys that have been undertaken have arisen as a result of the TRF seeking to make a change to the Scheme as applied for, not to defend the Scheme as it is. As such, it is entirely appropriate that the information has been presented by the Applicant at the point of discussion of the TRF changes.</li> <li>• This evidence has been presented as part of the summary of oral submissions as it has become available and the Applicant's position on this matter has been consistent throughout the Examination.</li> </ul> <p>The Applicant notes Ms Lloyd's concern as to the use of the area between the Visitor Centre and the Stones but confirms that it has no control over this area and has made no proposals in this regard.</p>
<p><b>4.9 Safety considerations.</b></p>	<p><b>Mr Taylor QC</b>, on behalf of the Applicant, noted that, notwithstanding that trail riders may ride carefully (as expressed by the TRF at the hearing):</p> <ul style="list-style-type: none"> <li>• TRF Amendment 1 would place mechanically propelled vehicles on the same route as pedestrians, cyclists, equestrians and carriages between Byways 11 and 12. This would increase the risk to those non-motorised users. Although these routes do not experience significant use by non-motorised users at present, removal of traffic from the A303 will increase the attraction for these users and increase the potential for accidents with mechanically propelled vehicles.</li> <li>• TRF Amendment 2 would place motorcycles on the same route as pedestrians, cyclists, equestrians and carriages between Byways 11 and 12. This would increase the risk to those non-motorised users. As above the removal of traffic from the A303 will increase the attraction for these users and increase the potential for accidents with motorcycles.</li> <li>• TRF Amendments 3 and 4 would require access for motorcycles from the A360 to the north or south of the A303 at the western end, and access from the eastern end would necessitate a detour through Amesbury to Stonehenge Road, extending the distance between Countess Roundabout and Longbarrow junction to almost 5 miles (8km) compared with the existing distance along the A303 of 3.7 miles (6km).</li> <li>• TRF Amendment 3 would place mopeds on the same route as pedestrians, cyclists, equestrians and carriages. This would increase the risk to those non-motorised users.</li> <li>• TRF Amendment 4 would place motorcycles on the same route as pedestrians, cyclists, equestrians and carriages. This would increase the risk to those non-motorised users compared with Amendment 3 as it could be used by larger motorcycles capable of higher speeds.</li> </ul> <p>It is noted that in their "Paths for everyone" review of the National Cycle Network 2018, Sustrans research strongly suggests</p>

	<p>that vehicles and motorbikes have an adverse impact on NMUs. “It is clear that on-road sections are performing far worse than the traffic-free sections with 62% of on-road sections classified as Very Poor – a total of 6,962 miles.”</p>
<p><b>4.10 Implications of omitting proposed link for s136(i) of the Planning Act 2008, s130 of the Highways Act 1980 and para 5.185 of the National Policy Statement for National Networks.</b></p>	<p><b>Mr Taylor QC</b>, on behalf of the Applicant, set out that:</p> <p><u>Section 136 and NPS para 5.185</u></p> <p>NPSNN para 5.185 simply states: <i>Public rights of way can be extinguished under Section 136 of the Act if the Secretary of State is satisfied that an alternative has been or will be provided or is not required so these points can be considered together</i>; i.e. it summarises the section 136 position.</p> <p><i>Key parts of section 136: (1) An order granting development consent may extinguish a public right of way over land only if the [Secretary of State] is satisfied that—</i></p> <p><i>(a) an alternative right of way has been or will be provided, or</i></p> <p><i>(b) the provision of an alternative right of way is not required.</i></p> <p><i>(2) The following provisions of this section apply if—</i></p> <p><i>(a) an order granting development consent makes provision for the acquisition of land, compulsorily or by agreement,</i></p> <p><i>(b) the order extinguishes a public right of way over the land, and</i></p> <p><i>(c) the right of way is not a right enjoyable by vehicular traffic.</i></p> <p><i>(3) The order granting development consent may not provide for the right of way to be extinguished from a date which is earlier than the date on which the order is published.</i></p> <ul style="list-style-type: none"> <li>• Firstly, it should be noted that we are discussing here the replacement of an existing highway for road users (the A303 between AMES11 and AMES12) with a public right of way that is to be a restricted byway. Although section 136(1) does not define public rights of way, section 136(2) does (and which is relevant here as the subject land is to be acquired), and does so as being a right of way 'not...enjoyable by vehicular traffic'. It should also be noted that in the Public Bill Committee in the Lords on this section, the relevant Minister referred to the procedures in this section as being based on section 32 of the Acquisition of Land Act 1981. That Act imposed similar controls to section 136 and again refers to protection for PRoWs 'not being a right enjoyable by vehicular traffic'. As such, Highways England would contend that this section 136 does not apply to the existing route in any event.</li> <li>• However, even if was considered that it should do, it should also be noted that the section refers simply to alternative 'public rights of way' being provided, not the <u>class</u> of right that is able to be used on the route that the PRoW will follow. Thus in this case, the right of way for vehicles that is the current A303 between AMES11 and AMES12 is being replaced by a restricted byway on the surface and a tunnel for vehicles, pursuant to article 10 of the DCO. There is</li> </ul>

therefore a replacement of the right of way (i.e. an alternative), allowing compliance with section 136 – it is just that certain sized vehicles will not be able to use the restricted byway or the tunnel.

- To suggest otherwise is to seek to impart an additional test into the words of the Act. The Applicant acknowledges that PRow diversions under s.119 of the Highways Act 1980 require the confirming Secretary of State to consider whether the path or way will be substantially less convenient to the public in consequence of the diversion or that the diversion would have an effect on the public enjoyment of the path or way as a whole. However, this test does not apply to section 136 and in any event applies to diversions of an existing public path, whereas this is the replacement of a road with a restricted byway.
- Furthermore, even if such matters were a factor, for the reasons given above, it is considered that the replacement of a vehicular right of way with a NMU route, in the context of the WHS, would be more likely to be considered to be more convenient and enjoyable for those users.
- Even if it was considered that section 136 was triggered, and that the alternative does not meet the test in (1)(a) the Applicant considers that there is no 'requirement' (i.e. (1)(b)) for an alternative or replacement link between Byways 11 and 12 for MPVs (which is currently along a part of the existing A303), as there is an alternative route between these Byways (albeit using public roads). The existing A303 is to be replaced by the tunnel section of the A303, so an alternative right of way will be provided for through traffic. Any motorised users of the A303 wishing to gain access to Byways 11 and 12 will be able to do so by leaving the A303 at either the Countess or Longbarrow junctions and travelling to the byways via the A345 or A360 and local public roads. See also the points made about journey times at item 4.7.
- Furthermore, the Applicant does not consider the existing use is so well used such that an alternative is required. Our survey results, as discussed at item 4.7, demonstrate that the Scheme would have only a very minor effect upon motorcyclists, and as discussed above, TRF accepted during the hearing that their own evidence submitted to the Examination does not refute this. The evidence certainly does not establish the “negative” impact upon the wider route network asserted by the TRF; rather the evidence is that it will affect a handful of people in preventing a manoeuvre between Byways 11 and 12 which on some days no motorcyclists make at all.
- The Applicant acknowledges paragraph 5.184 of the NPSNN (as highlighted by the TRF at the Hearing), but notes that this paragraph refers to the replacement of rights of way in the context of discussing 'walkers, equestrians and cyclists'. Trail riders do not fall within this list, and the considerations therefore required by the NPS.

#### Section 130

The Applicant has explained in its response to FWQ 1.31 [REP2-036] and its comments on Wiltshire Council and the TRF's written representations [REP3-013] that there are no implications to section 130 to Wiltshire Council from this proposal:

- the Applicant notes that section 130 states:
  - It is the duty of the highway authority to assert and protect the rights of the public to the use and enjoyment of any highway for which they are the highway authority, including any roadside waste which forms part of it.
  - Any council may assert and protect the rights of the public to the use and enjoyment of any highway in their area for which they are not the highway authority, including any roadside waste which forms part of it.
  - Without prejudice to the above, it is the duty of a council who are a highway authority to prevent, as far as possible, the stopping up or obstruction of—
    - a. the highways for which they are the highway authority, and
    - b. any highway for which they are not the highway authority, if, in their opinion, the stopping up or obstruction of that highway would be prejudicial to the interests of their area.
- There is no reference to 'mitigation measures' within this wording. The concern is therefore relevant to the references in paragraphs (2) and (3) to Wiltshire Council's duties with regards to 'highway in the area for which they are not the highway authority', which is currently the case for the existing A303. Here, Wiltshire Council may prevent 'as far as possible' any stopping up or obstruction that 'would be prejudicial to the interests of their area'.
- The Applicant notes:
  - as the proposal is being brought forward as part of the DCO proposals, Wiltshire's engagement in the Examination is 'as far as possible' that the Council will be able to meet their duties under section 130; and
  - neither Wiltshire Council (nor any other party) has claimed that the proposals would be 'prejudicial to the interests of their area' (particularly in light of Wiltshire Council having previously brought forward the Experimental Traffic Order for byways 11 and 12). Indeed, the proposal would result in a number of benefits, as noted under agenda item 4.11 below.
- The extinguishment of rights to vehicular users proposed through the DCO therefore does not form a risk to Wiltshire Council's duties under section 130(1) or (3) of the Highways Act 1980. Nor does it oblige Wiltshire to exercise the discretionary powers which section 130(2) provides.
- In any event, the impact upon Wiltshire's duty to comply with this section of the Highways Act 1980 is not relevant to the decision on the DCO.

In respect of the Applicant's duties under the same section, the same considerations apply:

- In promoting the PRoW proposals that it has done through the application, the Applicant has considered what would protect the rights of the public to the use and enjoyment of rights of way in the area. That obligation applies to the

	<p>public as a whole, and for the reasons expressed elsewhere in this Summary and in its submissions to the Examination to date; the Applicant considers that it is bringing forward the most appropriate proposal for the public that is not considered to be prejudicial to the interests of the area;</p> <ul style="list-style-type: none"> <li>• At this location, the stopping up is replaced by a route on the same line through the restricted byway and the tunnel, limiting the scope of the stopping up.</li> </ul> <p>In any event, the impact upon Highways England's duty to comply with this section of the Highways Act 1980 is not relevant to the decision on the DCO.</p>
<p>4.11 Evidence of benefits/ need for the Highways England's proposed restricted byway along the route of the A303 from Longbarrow to Stonehenge Road.</p>	<p>Mr Taylor QC, on behalf of the Applicant set out that:</p> <ul style="list-style-type: none"> <li>• The provision of a restricted byway along the existing A303 provides a number of benefits, including cultural heritage, access and connectivity. The removal of the link for motorised vehicles between Byways AMES 11 and 12 contributes to the Scheme's objective to reduce the negative effects of the sight and sound of traffic in the WHS landscape, a key aspiration of the 2015 WHS Management Plan.</li> <li>• The route provides a parallel link to the A303 for non-motorised users consistent with the Government's cycling and walking strategy, aimed at promoting these modes for shorter journeys, or as part of a longer journey. The route also aligns with Highways England's Cycling Strategy which aims to provide integrated schemes which improve cycling facilities as part of an integrated, safe, comprehensive and high quality cycling network, separate from traffic and that enable users of all abilities to cycle, encouraging cycling as a sustainable form of transport.</li> <li>• As noted by Wiltshire Council at the Hearing, the proposal offers significantly better east west connectivity for non-motorised users, and is in accordance with Wiltshire Council's Rights of Way Improvement Plan.</li> <li>• The route will significantly improve the connectivity between Winterbourne Stoke and Amesbury for both commuter and leisure cyclists, linking with other public rights of way and National Cycle Route 45 to provide a significant increase in opportunity for leisure activity as has been experienced at Hindhead along the former A3.</li> </ul> <p>Mr Harper, on behalf of the Applicant, in response to a comment from Cycling UK, explained that it is not possible to extend NMU provision along the A303 to Countess Roundabout due to physical (there being insufficient room) and environmental constraints such as Vespasian's Camp, Amesbury Abbey Registered Park and Garden and the River Avon to the south and inalienable National Trust land to the north.</p>

## 5 ANY OTHER MATTERS

Agenda Item	Highways England response
	<p><b>Mr. Andrew Nicholson</b>, in his own capacity outlined his concerns that the Scheme is proceeding without a proper consideration of 'rubbernecking' being the prime reason for the traffic flows in busy periods, noting that congestion patterns at Stonehenge are specific and that congestion disappears after twilight, when the monument is not visible; and that alternative methods such as hedging could have been put in place instead to deal with this issue.</p> <p>The Applicant notes that this issue was considered in the response to FWQ TR 1.10 [REP2-036], where the Applicant confirmed that:</p> <p><i>'Rubbernecking', junction capacity, and merge capacity all constrain traffic volumes and contribute significantly to delay and congestion near Stonehenge'</i> and explained that rubber necking behaviour was appropriately considered in the traffic forecasts.</p> <p>As stated in that answer, the Applicant would note that Section 6.5.4 of the Transport Model Package (Appendix B to the Combined Modelling and Appraisal Report [APP-300]) states that 'rubbernecking behaviour' was observed in the data collected for the development of the model. Section 6.5.7 explains that this behaviour limits the capacity of the link between Countess roundabout and Longbarrow on busy days when the behaviour is more prevalent and demonstrates why rubbernecking is a significant constraint contributing to observed delays. Figure 13-21 shows 'shockwaves' of traffic queues on the section of A303 passing Stonehenge due to rubbernecking behaviour. For the strategic and operational modelling, respectively, Section 6.5.4-8 and 13.6.32-42 of the Transport Model Package explain how the rubber-necking behaviour was represented.</p> <p>As explained in Tr.1.10, the rubber necking behaviour is only one of the capacity constraints and Mr Nicholson's suggestion to erect barriers to prevent this behaviour would not, therefore, fully address the traffic problems. This suggestion was raised by consultees during the extensive options selection process and rejected as a viable option. As explained in the consultation report (see ENV#150, Table 5.6, [APP-026]) erecting barriers to provide screening past Stonehenge would detrimentally affect the OUV of the WHS and would conflict with national and local planning policies.</p>

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