



Historic England

SUBMISSION FOR DEADLINE 8 (06 September 2019)

**WRITTEN SUMMARIES OF ORAL SUBMISSIONS PUT AT HEARINGS
HELD BETWEEN 21 - 22 AUGUST AND 29 - 30 AUGUST**

ON BEHALF OF THE

**HISTORIC BUILDINGS AND MONUMENTS COMMISSION FOR
ENGLAND**

(HISTORIC ENGLAND)

("HBMCE")

Application by

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

PINS Reference No: TR010025

HBMCE Reference No: 20019871

1. INTRODUCTION

1.1. Historic England is more formally known as the Historic Buildings and Monuments Commission for England (HBMCE). We are the Government's statutory adviser on all matters relating to the historic environment, including world heritage. It is our duty under the provisions of the National Heritage Act 1983 (as amended) to secure the preservation and enhancement of the historic environment. There is also, in this case, the requirement in Article 4 of the 1972 'Convention Concerning the Protection of the World Cultural and Natural Heritage' to protect, conserve, present and transmit the values of the Stonehenge, Avebury and Associated Sites World Heritage Site (Stonehenge WHS).

1.2. The Examining Authority reminded attendees that there was no need to repeat the points that have been made to date in written submissions for previous deadlines. We have therefore sought to focus on the questions within the relevant Issue Specific Hearings that would assist and inform the Examining Authority's understanding of the implications for the historic environment arising from the Scheme. Our summary sets out those items which we provided a response to during the course of the relevant issue specific hearing, together with relevant reference to documentation that has already been submitted to the examination.

1.3. As noted during the sessions, there are a number of on-going discussions between ourselves and Highways England, and we are also engaging in discussion groups/meetings where we can be of assistance and where it is appropriate to do so. Again, where appropriate, these are referred to in these submissions with an update on the progress to assist the Examining Authority, mindful of their reminder of the time available for the remainder of the Examination. We are also in discussions with Highways England about providing an updated Statement of Common Ground.

1.4. As the Examining Authority will be aware from our representations to the hearings, further documentation is awaited from Highways England. We will continue to discuss with them the matters that we have raised throughout the

examination process as we receive that documentation so that we can provide the Examining Authority with our representations on those matters and our final position by or before Deadline 9, if not earlier.

1.5. We have set out in sections 2 – 11 following the summaries for each Issue Specific Hearing that we engaged with.

21 August:

ISH8 Cultural heritage, landscape and visual effects and design Sections 2-6

22 August:

ISH9 Traffic and transportation Sections 7-8

30 August:

ISH11 Draft Development Consent Order Sections 9-11

**ISSUE SPECIFIC HEARING 8 DEALING WITH MATTERS
RELATING TO CULTURAL HERITAGE, LANDSCAPE AND VISUAL
EFFECTS AND DESIGN**

2. THE WORLD HERITAGE SITE (Agenda Item 3)

Examining Authority's Agenda Questions:

Harm to the Outstanding Universal Value (OUV)

- i. Harm to the OUV and its place in the overall acceptability of the Proposed Development. Discussion.**

World Heritage Committee adopted decision and report, July 2019

- i. The report's criticism of the focus of the Proposed Development's analysis on measuring and aggregating its impact on individual components, and of its justification based on assessing whether the proposal is an improvement, rather than the best available outcome for the property.**
- ii. The report notes that a longer tunnel is technically feasible but is not proceeding because of cost, etc. However, a detailed analysis of the benefits compared with the costs of a longer tunnel is absent from the application.**

Heritage Impact Assessment (HIA)

- i. The HIA's approach to the effects of the Proposed Development on the OUV given that four of the seven attributes which together express the OUV of the site concern spatial relationships.**
- ii. Integrity and authenticity.**
- iii. Harm to the OUV from effects outside the boundaries of the World Heritage Site.**

2.1. HBMCE in its response drew the Examining Authority's attention to our previous submissions in Section 2.2.1 of our Deadline 4 Written Summaries of Oral Submissions at Issue Specific Hearing 2 [REP 4-85] which covered the implications arising from the 1972 Convention, the obligations on the State Party, and the relationship between Articles 4 and 5.

- 2.2. We indicated that the ICOMOS HIA Guidance acknowledges in section 2-1-5 that sometimes harm to World Heritage Sites will be unavoidable and that in those circumstances the decision should be based on whether the public benefit outweighs the harm. We further advised that in our opinion this guidance should apply in this case.
- 2.3. Ultimately, HBMCE observed that it will be for the Examining Authority to determine whether the present scheme is the best available on the basis of the evidence in front of it.
- 2.4. We noted that HBMCE's role is specifically in relation to the historic environment. It is our role to respond to the draft DCO and to do our best to ensure that in its final version it is appropriate to the OUV of the WHS and HBMCE has consistently sought to achieve this.
- 2.5. At the hearing we indicated that although our Head of International Affairs was not present, that our submissions represented HBMCE's position but that we could elaborate further on this topic in writing should that be appropriate.

Post Hearing Note:

- 2.6. HBMCE attended the 43rd World Heritage Committee Session as part of the UK delegation led by DCMS. The UK attended as a State Party Observer and HBMCE acted in our role as adviser to the State Party.
- 2.7. In HBMCE's advice we have continually reinforced the importance of the World Heritage Site and reference to the Department for Transport's Cultural Heritage Objective for the Scheme. This reference is important to help inform the development of the design, in the need to minimise adverse impacts, and in securing appropriate safeguards for the historic environment and particularly in relation to parameters for decision making at detailed design stage.
- 2.8. In fulfilling our statutory role HBMCE's response to the effects of the Scheme

on attributes of OUV which relate to spatial relationships impacts has been to advise in relation to the development of the design principles and the DAMS. This is to ensure that they engage with the importance of those spatial relationships and consider, for example, how visual relationships can be retained and where possible enhanced, how the loss of archaeological remains should be mitigated through understanding the relationships between the monuments and those remains within their settings, and in considering through the landscaping scheme how integration with the existing landscape character can most successfully be achieved.

- 2.9. Ultimately the Examining Authority will need to take a view in the light of the assessed adverse impacts and positive benefits, taking account of the 1972 Convention and the requirements of national policy.

3. **Outline Environmental Management Plan (OEMP) (DL6 version [[REP6-011](#) and [REP6-012](#)]) (Agenda Item 4)**

Approvals/ agreements/ consultation

- i. **MW-G7 and MW-CH1 note the Heritage Management Plan is to be approved by Wiltshire Council, as are the Heritage Method Statements (amend MW-G8) and Site Specific Written Schemes of Investigation (SSWSI). However, approval of the type of fencing (MW-CH3); surfacing (MW-CH14); monitoring of heritage assets arrangements (MW-CH7); the Ground Movement Monitoring Strategy (MW-CH8); the vibration control measures (PW-NO14 and MW-NO13); the Landscape and Ecology Management Plan (LEMP) (MW-LAN1) and the Arboricultural Mitigation Strategy (MW-LAN3) remains the responsibility of Highways England. Discussion.**
- ii. **Discussion on approval of the Construction Environmental Management Plan (CEMP) (MW-G5) and Handover Environmental Management Plan (HEMP) (MW-G11), including the Cultural Heritage Asset Management Plans (Cultural Heritage Asset Management Plans (CHAMPS) – Draft Detailed Archaeological Mitigation Strategy (DAMS), para 5.1.21).**

3.1. HBMCE stated that we remained in discussion with Highways England regarding the range of documents and their hierarchy and the way in which we would best fulfil our role as a statutory consultee, as adviser to the State Party, as the Government's adviser on the historic environment, and as a member of the HMAG forum.

3.2. We indicated that we would review the list of documents cited, but welcomed the clarification from Highways England that the CEMPs and Management Plans were now to be categorised for approval by the Secretary of State, noting the exceptions to the list of the Heritage Management Plans (HMPs), Method Statements (MSs) and Site Specific Written Schemes of Investigation (SSWSI) which would be approved by Wiltshire Council in consultation with HBMCE.

Post Hearing Note:

3.3. HBMCE has continued to work with Highways England on the document hierarchy, and has provided Highways England with details of those elements

of the Scheme and those documents on which we would want to be consulted in order to best fulfil our statutory role. This has been provided in the hope that we will be able to agree those elements and documents with them (through discussion on the DAMS and OEMP) sufficiently in advance of Deadline 8 to facilitate the revision of these documents where necessary.

Miscellaneous

i. *Construction compounds (MW-G28): Location and design.*

Function, size and appearance of the concrete batching plants, and their relationship to the Site Travel Plan.

ii. *Approval of colours of buildings and hoarding.*

Post Hearing Note

- 3.4. As part of continued subsequent discussion with Highways England regarding the OEMP, REAC tables and design commitments and principles, HBMCE has highlighted the need to consider carefully how the design and approach to temporary works, particularly those with potential for significant visual effects, are addressed as part of the Scheme.
- 3.5. Consideration of height, colour, massing and visual screening could assist in this regard. We have highlighted the need to include additional drafting for design elements beyond the 'colour' of hoardings with reference to MW-G28.
- 3.6. We have also recommended that further design principles might be required to address temporary works in general and hope to see this addressed in the next iteration of the OEMP due to be submitted at Deadline 8.

iv. **Ground Movement Monitoring Strategy (MW-CH8, cf: DAMS, para 5.2.7). Has an agreed specification been established for acceptable levels of vibration and settlement? How should monitoring and remediation, during and post construction, be secured?**

a) ***Through the OEMP?***

- i. **Through the Noise and Vibration Management Plan, Ground Movement Monitoring Strategy, or Heritage Management Plan (HMP)? How would the documents correlate and who would be responsible for particular aspects?**
- ii. **Wording regarding vibration/ settlement level and quality monitoring, reporting programme, trigger levels, action plans for mitigation/ remediation.**
- iii. **Appropriate reporting criteria: Should Wiltshire Council or Historic England's role be expanded beyond approval of SSWSIs, Method Statements and the HMP, and consultation on Noise and Vibration/ Ground Movement Monitoring?**

b) ***Through an additional Requirement?***

- i. **Appropriate wording, including consultation and approval bodies.**
- ii. **Approval of the details before tunnelling works commence.**

3.7. HBMCE stated that this was an element of the Scheme on which we would wish to be consulted, and welcomed the earlier clarification from Highways England in relation to the status of documentation. We stated that we had been looking carefully at how the provisions for mitigation are set out in the OEMP and how they relate to the provisions within the DAMS to ensure that there is consistency and that they work well together.

3.8. We confirmed that we remain in discussion with Highways England regarding various elements of the relationships between, for example, the Noise and Vibration Management Plan (MW-NOI3) and the DAMS which we were still in the process of exploring.

3.9. In addition we remain in discussion about the information collected as part of Highways England's assessment to date and how that might be helpful to us as a statutory consultee and the Government's adviser on the historic environment to assist in answering the difficult question surrounding the identification of the appropriate triggers on a case by case basis with respect to the sensitive cultural assets that the Scheme has potential to affect.

Post Hearing Note

3.10. We would also take this opportunity to draw the Examining Authority's attention to a related issue that we have been in continuing discussion with Highways England regarding, primarily through dialogue concerning the dDCO. This is due to the unintended capture or exclusion of scheduled monuments from the definition of 'building'. The OEMP excludes 'buildings' from sensitive cultural heritage assets under MW-NO15, but this would be at odds with the Ancient Monuments and Archaeological Areas Act 1979 definition of a scheduled monument. We would refer the Examining Authority to our submissions as part of the dDCO hearing where we expand on the detail of this point (paragraphs 10.19-20 below). The unintended consequence is the exclusion of the Stonehenge monument and barrows as the OEMP is currently drafted.

3.11. HBMCE consider that regardless of how it is determined appropriate safeguards should be secured it is essential that detailed consultation with HBMCE is secured under the DCO to enable us to provide advice based on the emerging information through the detailed design process and on the basis of the most up to date information available to Highways England.

Design

iii. Design vision (Section 4.2): Discussion.

- 3.12. HBMCE confirmed that we attended a workshop, which we had initiated, regarding the design principles on Monday 19 August.
- 3.13. Our advice, as set out in our previous submissions, has been in relation to the need for the design vision to be set out very clearly and to be embedded in the OEMP as a mechanism to draw together the various information included within the application documentation which outline and provide an understanding of the design vision for the Scheme, such as the Design and Access Statement.
- 3.14. HBMCE welcomed the inclusion of this more comprehensive approach to the Design Vision set out and integrated within the OEMP where it is juxtaposed with the Design Commitments and Design Principles in the latest version of that document. In addition the recent inclusion of the Annex of associated illustrations which brings together the relevant commitments and principles in relation to key engineering elements has been helpful. This has assisted in the progression of on-going discussion with Highways England regarding the refinement of language in the OEMP with the overall intention of securing the highest quality in delivery of the scheme together with the potential heritage benefits and minimisation of negative effects on the WHS. This approach, with the WHS at its core would recognise the Cultural Heritage objective set by the Department for Transport for the Scheme.
- 3.15. HBMCE remains in conversation with Highways England on these matters but can confirm that we found the workshop very useful and productive in progressing those discussions on the refinement of language.
- 3.16. Whilst we indicated that the Design Vision remains under discussion we noted that we had found it helpful to bring that articulation of Highways England's vision for the Scheme together in one place. Some of the discussions in relation to the refinement of language have been able to

articulate more clearly how the quality and appropriateness of the design can be secured, identifying the relationships between the landscaping scheme and the design of individual architectural elements as part of a single holistic approach to the development of the detailed design across the whole of the Scheme.

iv. *Design principles (Section 4.3): Discussion.*

v. *Para 4.3.2 – Illustrated Examples of Key Design Elements, AnnexA4: Discussion. (Covered by discussion under agenda item above)*

3.17. HBMCE indicated that one of the key purposes of the aforementioned workshop regarding the Design Principles and Commitments was to go through a process where they were tested and challenged, and consider how they would work together holistically with the Design Vision.

3.18. One particular intention was to identify very clearly in the drafting the elements of significance in relation to the historic environment which the drafting was intended to secure protection for as part of the decision making process. As part of that discussion we found it helpful to talk about 'landscape character' in order to convey an understanding of visual character, and the relationship between the natural environment, physical landform and historic environment and so to embody a range of concepts that would help describe the significance that the Design Principles were specifically designed to secure protection for. It was considered that this wider landscape approach also recognised the international importance of the WHS that the Scheme traverses.

3.19. HBMCE remains in discussion with Highways England following the workshop and looks forward to seeing the revised version of the OEMP and the updated language in Table 4.1 drawing on those conversations so that we can confirm that those discussions have been taken into account in the version to be submitted at Deadline 8.

3.20. In responding to the Examining Authority's follow up question regarding specific elements and drafting of the Design Principles we again highlighted the reflection of the concept of landscape character in the redrafting as outlined in paragraph 3.18 of our submissions above.

3.21. HBMCE indicated that we would provide the Examining Authority with an update following receipt of the revised OEMP regarding any further amendments or drafting of language that we considered necessary.

vi. Design consultation (Section 4.5): Discussion.

vii. Para 4.5.14 – Final Decision on Detailed Design: Why not the traditional arrangement, whereby highways and planning requirements each have to be separately met and then approved by the competent statutory authority?

3.22. HBMCE stated that at the time of the hearing we had not had sufficient opportunity to review the latest version of the documents received from Highways England in advance of the hearing outlining the consultation process for the detailed design stage to comment in detail. As a result we remained in discussion with Highways England. We noted however, that at present the Deadline 6 draft OEMP was largely focused on the role of the Stakeholder Design Consultation Group (SDCG), and that it did not as yet reflect the full scope of either Historic England or Wiltshire Council's roles as statutory consultees inside and outside the WHS beyond that of their membership of HMAG and the SDCG. We noted that there was need for agreement of the Terms of Reference for the SDCG to assist in progressing that discussion.

3.23. Since HBMCE's role would be as a statutory consultee, as adviser to the State Party, as the Government's adviser on the historic environment, and as a member of the HMAG/SDCG fora we would expect, given the implications of the Scheme within the WHS and its setting, to be involved in discussions regarding the development of the detailed design.

3.24. Consequently discussion remains on-going with Highways England in relation to the procedures for consultation and engagement, and may be resolved as part of those conversations in relation to how HBMCE can best fulfil its statutory role.

Post Hearing Note:

3.25. HBMCE have provided detailed comments back to Highways England regarding the drafting of the OEMP and the Design Principles and Commitments, and remain in discussion with them in relation to their response to those comments. Whilst we have found the Annex of illustrations useful, we have focused on the wording of the text they accompany since it is this that will provide the security in subsequent decision making stages to ensure that the level of quality that is required given the WHS inscription can be achieved in practice.

3.26. We would hope to have reached agreement in time for our key points to have been addressed in the version submitted to the Examining Authority at Deadline 8.

3.27. In relation to on-going discussions regarding the process for final decision making on the detailed design, HBMCE can update the Examining Authority as follows. HBMCE welcomed consideration of the question by the Examining Authority because our advice has been focused on how the quality of the scheme to be delivered can be secured at the highest level due to recognition through the WHS inscription that this is a landscape without parallel.

3.28. We have provided Highways England with our detailed comments regarding how and where we would look to engage with the consultation on the detailed design process in relation to specific documentation to best fulfil our statutory role. We have also continued conversation regarding the mechanisms and processes for that engagement and consultation.

3.29. HBMCE will look to review the updated versions of documentation due to be submitted at Deadline 8 and will consider whether we are able to agree and

resolve the remaining issues on the topics outlined above, and whether we are able to agree the final language of the OEMP design principles and commitments to ensure that we are satisfied that there is sufficient safeguarding embedded within the processes for the Scheme to ensure that the avoidance of negative effects on the historic environment is a key factor in decision making. Following this we will form a view on how the documentation has taken on board our comments and provide an update to the Examining Authority at Deadline 9 in relation to the final process of decision making at the detailed design stage.

4. DAMS (DL7 version [[REP7-019](#) and [REP7-020](#)]) (Agenda Item 5)

Part 1 – DAMS

ii. Section 4 – *Archaeological Research Agenda. Discussion.*

- 4.1. HBMCE stated that we have been involved in very detailed discussions with Highways England regarding the DAMS and provided a great deal of advice on the development of the Archaeological Research Agenda (ARA).
- 4.2. HBMCE has consistently advised in our previous submissions to the Examination that the research framework is an essential part of the DAMS for the Scheme. Its purpose is to provide a framework for the way in which the mitigation programme can best contribute to enhancement of our understanding of the significance of the heritage assets affected by the Scheme, whether designated or not, and to inform a process of decision making on an iterative and intelligent basis to target the programme of mitigation, taking account of the requirements under the NPSNN for this to be both appropriate and proportionate.
- 4.3. Given the WHS inscription there is clearly a focus on research questions that address evidence from those chronological periods that has potential to contribute to the OUV of the WHS. However, we have been clear in our advice that the landscape traversed by the Scheme is a multi-period one, and that understanding the evidence from all periods is important as a robust basis for decision making across the Order limits.
- 4.4. HBMCE has therefore provided suggestions about how the research questions posed might be enhanced, particularly in the development of Scheme specific research questions that will really assist in maximising the potential of the mitigation programme to enhance our understanding of the WHS within its context. We have advised that more could be done to highlight these in the drafting and make them more clearly signposted in the next version of the DAMS.

4.5. We also clarified that the ARA in the DAMS is a starting point. We would expect the development of those research questions included to continue through the careful planning for the work to be undertaken under each SSWSI as set out in Appendix D of the DAMS. This will also offer the opportunity to consider questions that can be posed in relation to more localised areas as well as the wider landscape based focus.

4.6. Nonetheless we remained of the opinion that the incorporation of landscape scale research questions is particularly important given the extent of the Scheme. We have highlighted the opportunity for the Scheme to test some of the current proposed landscape models for the Stonehenge landscape, including some of those discussed during the Issue Specific Hearings and referred to in written submissions by other Interested Parties even if they are not included in an established research framework.

iv. Para 5.2.10 – Tunnel Protection Zones. Discussion

4.7. HBMCE has consistently advised in relation to the Tunnel Protection Zones proposed by Highways England that there is a need to identify an acceptable solution to enable archaeological work to continue within the WHS, whilst recognising that Highways England will want to ensure that this can proceed without affecting the stability of the tunnel.

4.8. We have welcomed the inclusion at 5.2.10 of the draft DAMS of additional explanation of how these zones have been identified. Whilst we confirmed that the drafting reflected our previous conversations, we also indicated that the figures that we understand have been produced to accompany that text were particularly helpful in illustrating the extent of the 0.6 and 1.2 m zones in relation to the tunnel and with reference to surrounding archaeological remains. It was not clear to us whether these images had been submitted to the Examination. We therefore welcomed Highways England's statement during the hearing that they were engaged in deciding where was the most appropriate location for these images to be included within the Examination documentation.

4.9. HBMCE therefore continues in discussion with Highways England in relation to how the Tunnel Protection Zones relate to the Limits of Deviation and in relation to the draft restrictive covenants indicating how they will operate in practice. We noted that we had had discussions with Highways England regarding the alignment of advice relating to archaeological work in this area so that if any works also required Scheduled Monument Consent, a mechanism for sharing appropriate information and provision of relevant advice back to the applicant had been agreed in advance.

Post Hearing Note:

4.10. Following the hearing, HBMCE has now received the outstanding information we requested from Highways England relating to the restrictive covenant and the Tunnel Protection Zones subsequent to this being raised during the hearing. We will review this information in discussion with Highways England and seek to resolve any outstanding issues prior to providing the Examining Authority with our comments at Deadline 9.

v. Para 5.2.18 – *Soils handling strategy*. Discussion

Post Hearing Note

4.11. HBMCE has provided detailed comments to Highways England on the Outline Soils Handling Strategy now embedded in the latest version of the OEMP and the need to ensure that this avoids rather than generates any conflict with process and procedures in the DAMS and the various contractors responsible. We consider the recognition of the relationship between the DAMS and the processes set out in the Soils Handling Strategy helpful, and by addressing it in both the DAMS and OEMP these documents should assist in avoiding conflict in working practices.

Part 2 – Overarching Written Scheme of Investigation (WSI)

Preservation by record

i. Archaeological excavation and recording

- **Agreement required on a baseline percentage for plough zone and other sampling.**

4.12. HBMCE agreed that the ploughzone archaeological resource was very important and particularly so in the WHS. We referred the Examining Authority to our previous submissions [REP7-046 paragraph 4.10] in relation to the programme of statistical analysis being undertaken by Highways England. We noted that this was still underway and as yet therefore we were not able to consider questions such as the volume potentially required to be able to answer landscape scale research questions, or the volume of work required to achieve a statistically representative sample.

4.13. We advised that our advice had fed into this process and had recommended that questions such as that set out in section 6.3.51 of the DAMS [REP7-019] should be considered in the approach to interrogation of the results from the evaluation stage of the Scheme.

4.14. We remain of the view that the statistical analysis may be able to help frame the reflexive and iterative approach. In particular, such analysis has potential to help develop an intelligent approach to where work should be targeted to answer specific research questions. It has potential to assist in identifying the extent of mitigation required with a high level of confidence in the results from the sample as being representative of the wider assemblage, and in identifying what level of baseline sampling would need to be conducted in those areas to maximise the potential of the Scheme to contribute to our understanding of the historic environment and its significance and in particular the OUV of the WHS.

4.15. HBMCE indicated that we were keen to see that initial process of analysis

concluded before finalising our advice and hoped that we would be able to update the Examining Authority further in relation to how the results might enable further refinement of the current proposals.

4.16. We concurred that there was need for agreement but considered that it would be worthwhile awaiting the results of this analysis before coming to any final conclusions.

4.17. In relation to the Examining Authority's follow up question regarding the stage at which we would be able to come to an agreement, we indicated that we remained hopeful that the results of the statistical analysis would be useful in addressing this point, but that regardless the DAMS set out a reflexive and iterative approach and further refinement was likely to be possible as part of the development of approaches in the SSWSIs drawing on the baseline set by the DAMS.

4.18. We further confirmed that there was need for confidence in the DAMS as the basis for modifying and developing the results and approaches.

4.19. In general HBMCE would note that when considering sampling strategies for work within scheduled monuments, we consider each application on a case by case basis, taking account of the significance of the area affected, and the impact of the proposed works and would base our recommendation on the results of this assessment.

Post Hearing Note:

4.20. During the ISH further queries were raised regarding the appropriate baseline for sampling of the plough soil within the Stonehenge WHS and regarding evidence from the approaches that had been taken within the preceding 10 years. Due to the concerns expressed by the Examining Authority as to the extent of time available, it was considered this could be dealt with more thoroughly in written submissions.

4.21. A supplemental query was raised which we understand to have

questioned whether the proposed response would be to increase the extent of work where a high density of evidence was identified or where a low density of evidence was identified. We understood the question to be suggesting that it was in the areas where a low density of material was identified where a higher percentage sampling would be required to ensure that all diagnostic material was recovered.

4.22. Following the hearings, we have now had the opportunity to consider the matter further and also review our records for archaeological work conducted under scheduled monument consent (SMC) within the WHS where the plough soil/topsoil had been systematically sampled.

4.23. HBMCE has reviewed the information available from applications we have received and administered on behalf of the Secretary of State for SMC within the Stonehenge, Avebury and Associated Sites WHS that involved an element of ground disturbance.

4.24. The Examining Authority should be aware that applications for SMC cover a wide range of different types of works with differing impacts, and in many situations sampling of the topsoil would not be considered either valuable, appropriate or proportionate.

4.25. Our review of these applications demonstrates that a site by site and case by case approach has been taken, as set out in our oral submissions at the hearing (paragraph 4.19 above).

4.26. This approach follows DCMS policy (2013)¹ (sections 15-21) in relation to the factors taken into account when deciding whether to grant SMC which require a case by case assessment of individual circumstances and justification for proposed works.

4.27. HBMCE's review of these applications indicates that a range of percentages of top soil/ plough soil sampling have been consented by the

¹ <https://www.gov.uk/government/publications/scheduled-monuments-policy-statement>

Secretary of State in relation to SMC applications within the WHS. Approaches have varied from no work being undertaken on the topsoil, to a set sampling process being undertaken (examples range between e.g. 4.2%, 10%, 100%), to the implementation of an iterative strategy (increasing up to 100% depending on artefact presence/density identified during the excavation).

4.28. In summary HBMCE's advice is to ensure that the focus of any sampling responds to significance, and targets mitigation in response to specific research questions. The objective is to enhance our understanding of the significance of the WHS and its OUV, rather than a process of continued collection of increasing volume of material even if that will not necessarily yield further understanding. Our advice is that mitigation should be focused on the basis of a series of research questions that address the WHS at a landscape scale in order to maximise the potential of the results of the mitigation to provide meaningful answers to those questions.

The Examining Authority requested written submissions in relation to the following questions on the agenda which were not specifically addressed due to the time available (paragraphs 4.29-4.36 below):

- **Para 6.3.15 – How would the mechanism of a reflexive approach operate? How are trigger points and proportions determined?**

4.29. HBMCE considers that one of the key benefits of having specialists as part of the archaeological project team based on site, is that they can contribute to the reflexive approach set out in the DAMS on the basis of their specialist expertise in specific areas. This will allow, for example, the lithics specialists on site to assess the assemblages identified in individual areas and to use this information to feed into the sampling strategy. This would be communicated to the statutory consultees, and within the WHS to HMAG, to respond. If changes to the strategy can only be made during site meetings with monitors this may make the iterative strategy difficult to

implement and require many site meetings. Therefore there is need for the SSWSI to set out clear parameters for decision making to facilitate a fluid process on site. This will ensure the positive aspects of implementing a reflexive and iterative decision making strategy are not constrained, whilst retaining confidence in the proportionality of the approach.

- **Para 6.3.22 – Should decisions regarding cleaning by hand be made by the Contractor or by others?**

4.30. Good practice would suggest hand cleaning is part of the process necessary to ensure site staff can see the features they are investigating, to clean off after machine excavation, to confirm whether remains are present, and to ensure site photographs are clear. As such HBMCE would expect this to be included as normal rather than an exception (bearing in mind the need to be proportionate in line with the NPSNN).

- **Para 6.3.44 to 6.3.48 – Changes to the sampling strategy would mean a revised SSWSI, subject to Wiltshire Council's approval.**

4.31. HBCME would refer the Examining Authority to our comments at paragraph 4.29 above where we indicate how the SSWSI will set our parameters for decision making which supports the on-site staff and specialists in making decisions about how to implement an iterative strategy based on a reflexive understanding of the emerging results of on-going work. This approach is designed to avoid the need for continued review and revision of individual SSWSI.

- **Para 6.3.50 – Agreement required on the proportion of tree hollows excavated.**

4.32. HBCME would refer the Examining Authority to our response to their Written Questions CH.2.9 (ix) and CH.2.9 (viii) [REP6-053] and paragraphs 4.12-17 above in relation to the on-going statistical analysis.

- **Para 6.3.77 – Treatment of human remains. Discussion.**

4.33. HBCME recognises that the treatment of human remains from archaeological contexts is a sensitive and emotive subject. We would refer the Examining Authority to our response to their Written Question HW.2.2 [REP6-053] and paragraph 4.11 of our comments on the Deadline 6 submissions [REP7-046]. We have continued to advise Highways England in relation to the drafting of the relevant sections of the DAMS to ensure that this, together with Article 16, makes clear the approach taken to historic burials as opposed to any more recent burials that may be encountered.

ii. Strip, Map and Record

- **Para 6.4.4 – Agreement required on a baseline percentage for the proportion of features excavated.**

4.34. HBCME would refer the Examining Authority to our responses above to 4.12-19 which addresses broadly the same issue and the way in which we have approached this in providing advice on the development of the DAMS.

4.35. HBMCE has promoted parameters for decision making in the DAMS which support a reflexive and iterative approach to the archaeological mitigation strategy focused on the potential of deposits and features to answer carefully considered research questions and enhance our understanding of the Stonehenge landscape of all periods, but particularly in relation to the OUV of the WHS.

iii. Archaeological Monitoring and Recording

- **Para 6.5.10 - Agreement required on a baseline for the quantum of excavation.**

4.36. HBCME would refer the Examining Authority to our responses above to 4.12-19 which addresses broadly the same issue and the way in which we have approached this in providing advice on the development of the DAMS.

Communications, etc.

- i. **Para 8.5.1 – *Consultation on SSWSIs, etc* and para 8.6.1 – *Approval of Documents by Wiltshire Council*. Are these arrangements acceptable, including the time periods allowed?**

4.37. HBCME very briefly noted that we remained in discussion with Highways England and that part of those discussions crossed over between meetings regarding the OEMP and the DAMS and had led to a few unintentional inconsistencies. We stated that we hoped it would be possible to sort these out quickly in discussion with Highways England.

Post Hearing Note:

4.38. HBMCE have provided detailed comments to Highways England in relation to how we consider we can best fulfil our statutory role in relation to the Scheme and the ways in which we would look to engage through the proposed consultation mechanisms as set out in the DAMS and the OEMP and other associated documentation. We would hope to see that these comments have been incorporated into the documents submitted at Deadline 8.

Part 3 – Tables, figures and references

- ii. **Table 11-3: *Summary of proposed mitigation areas and actions*. Are the parties satisfied with these proposals, including treatment of stockpile areas? Should other areas be covered?**
- iii. **Table 11-4: *Areas excluded from archaeological mitigation*. Are the parties satisfied with the list, including the exclusion of proposed working areas?**

4.39. HBCME very briefly noted that we remained in discussion with Highways England in relation to the detail of these areas and would look to update the Examining Authority in due course.

Post Hearing Note:

4.40. HBMCE have held further meetings with Highways England and other members of the HMAG forum to progress discussion on the detail of the proposed mitigation areas (Table 11.3) and actions, as well as those excluded from mitigation (Table 11.4) - a new inclusion into the DAMS on which we needed additional time to confirm our view.

5. LANDSCAPE AND VISUAL (AGENDA ITEM 6)

Landscape Character

5.1. HBMCE would request that the Examining Authority refer to our comments in relation to landscape character at paragraphs 3.18 and 3.20 above.

Visual

- i. **Reprise on visualisations produced and outstanding requests including digital modelling of the site.**
- ii. **Landscape and Visual Impact Assessment (LVIA) Fig 7.107, *View North from Blick Mead*. At what point relative to Blick Mead would the flyover start its ascent?**
- iii. **Visualisations from the ex-A303 as a by-way under the Proposed Development.**
- iv. **Reprise on the visual effects of adjustments within Limits of Deviation (LoD).**

5.2. HBMCE noted that we welcomed the submission of additional visualisations from Highways England following requests from the Examining Authority and HBMCE. At the time of the hearing further visualisations had been submitted only a few days preceding. We therefore advised that we were still reviewing the additional visualisations and discussions remained on-going with Highways England in this regard.

5.3. However, we noted the Examining Authority's reminder in general that this was the last opportunity to request further visuals should these be considered essential to the Examination. HBMCE has reviewed our earlier requests, as set out in detail in our Written Representations [REP2-100] paragraphs 7.5.14-29 with reference to the series of submissions provided subsequently and as considered as part of the Accompanied Site Visit on 29 August. We will provide our final assessment of the various visualisations, including the implications of the Limits of Deviation, in our Deadline 9 submission.

Post Hearing Note

5.4. HBMCE is able to confirm that we will not be making any further requests for visualisations in addition to those we have already set out in writing.

6. BLICK MEAD HYDROLOGY (AGENDA ITEM 8)

If monitoring (and any associated remediation) is required for groundwater levels at Blick Mead during construction, and post construction, how should this be secured?

6.1. In response to the Examining Authority's question HBMCE confirmed that our position in relation to our role and involvement had not change. As a non-designated heritage asset the primary responsibility for advice regarding Blick Mead lies with Wiltshire Council and therefore it will be for the Council and other interested parties to take a view on whether a new Requirement or amendments to the OEMP would best secure any additional monitoring and remediation considered necessary.

ISSUE SPECIFIC HEARING 10 DEALING WITH MATTERS RELATING TO TRAFFIC AND TRANSPORTATION

(INCLUDING PROPOSED CHANGES TO THE USE OF THE BYWAYS AMES11 AND AMES12, PROPOSED STOPPING-UP OF THE PART OF THE EXISTING A303 TRUNK ROAD BETWEEN BYWAYS AMES11 AND AMES12 AND THE PROPOSED RESTRICTED BYWAY ALONGSIDE THE A360)

7. APPLICANT'S PROPOSED CHANGES [[AS-067](#)] (AGENDA ITEM 3)

7.1. As the Examining Authority will be aware, during the Issue Specific Hearing we raised a few questions for clarification on the proposals. This was to enable us to consider the changes in greater detail and be in a position to provide our formal response to these changes.

7.2. We attach overleaf our formal consultation response which sets out our position in the matter.

8. TRAIL RIDERS FELLOWSHIP'S (TRF) PROPOSED CHANGES [[REP4-058](#)] (AGENDA ITEM 4)

8.1. As the Examining Authority will be aware, HBMCE set out our position (sections 3 and 18) in our submission at Deadline 4a [REP4-008]. We have nothing further to add to those submissions.



Historic England

A303 Amesbury to Berwick Down
Highways England,
Temple Quay House,
2 The Square,
Temple Quay,
Bristol
BS1 6HA

23 August 2019

Dear Sir or Madam,

**A303 Amesbury to Berwick Down
Highways England Consultation on Non-Material Amendments**

Thank you for consulting Historic England in relation to Highways England's consultation on a series of eight changes to the proposals for the A303 Amesbury to Berwick Down Scheme. We understand that Highways England consider these changes to be non-material to the Scheme as originally submitted.

The Historic Buildings and Monuments Commission for England is generally known as Historic England. However, due to the potential for confusion in relation to "HE" (Highways England and Historic England), we have used "HBMCE" in our formal submissions to the examination on the A303 Amesbury to Berwick Down and we will do the same here for the same reason.

HBMCE has reviewed the submitted information in the Proposed Changes Consultation Booklet (06 August 2019). We have also taken into account the additional clarification and information provided by Highways England and other Interested Parties during the Issue Specific Hearing on Traffic and Transport as part of the A303 DCO Examination on 22 August 2019.



Historic England, 29 Queen Square, Bristol BS1 4ND
Telephone 0117 975 1308 HistoricEngland.org.uk

Please note that Historic England operates an access to information policy.
Correspondence or information which you send us may therefore become publicly available.





1. NMC-01: Existing A303 layby west of Winterbourne Stoke to be de-trunked

- 1.1. HBMCE has no objection on heritage grounds to the proposed amendment and does not wish to offer detailed comments at this stage beyond the observation at 1.2 below. However, we reserve the right to comment further at Deadline 8a in the light of the submissions included in Highways England's consultation report at Deadline 8 of the Examination.
- 1.2. We have noted the proposed additional landscaping works this amendment would require, and have assumed that in the event this change is accepted, the OLEMP (and if necessary the OEMP) will be updated accordingly. It would be helpful if Highways England could provide confirmation that this assumption is correct.

2. NMC-02: Countess roundabout to be de-trunked

- 2.1. HBMCE has no objection on heritage grounds to the proposed amendment and does not wish to offer any further comments at this stage. However, we reserve the right to comment further at Deadline 8a in the light of the submissions included in Highways England's consultation report at Deadline 8 of the Examination.

3. NMC-03: Declassification of existing A303 between Winterbourne Stoke and Berwick Down

- 3.1. HBMCE has no objection on heritage grounds to the proposed amendment and does not wish to offer any further comments at this stage; However, we reserve the right to comment further at Deadline 8a in the light of the submissions included in Highways England's consultation report at Deadline 8 of the Examination.

4. NMC-04: Provision of turning head on old Stonehenge Road

- 4.1. HBMCE has concerns regarding the proposed amendment due to areas of detail that are not clarified in the consultation documentation. We have set





out these concerns below and would hope that Highways England will be able to address them through provision of clarifying information.

- 4.2. Fencing: It is not clear, nor was it clear from Highways England's response at Issue Specific Hearing 9 on Traffic and Transport (22 August), how the fencing proposals will operate in the amended proposal. It is not clear whether the widened fenceline illustrated in the 'after' image is proposed along the length of the Private Means of Access (PMA)/restricted byway to the north, or whether it will constrict down to the width shown on the 'before' image once beyond the area for which the widening is required in order to facilitate the inclusion of a turning head. If the proposal is for the fenceline to remain at the greater width across the whole of the PMA/restricted byway, we would request that Highways England submit clear justification for this element of the proposal.
- 4.3. In general, we would request a clearer illustration of the proposals in this location in so far as the design can be demonstrated at this stage.
- 4.4. The turning head is described as a southwards extension by 10m. We would note that this might more helpfully refer to a northwards extension off Stonehenge Road since we understand that it is vehicles travelling in this direction that will not have access to the PMA/restricted byway and that create the necessity for the turning head.
- 4.5. We note the assessment of a requirement for archaeological monitoring and recording in the DAMS (7.5.2). It would be helpful if Highways England could explain whether this will involve an extension to an existing Site in Table 11.3/Appendix D or inclusion of a new, separate site.
- 4.6. We have assumed that in the event the amendment is accepted any surfacing, signage, gating and fencing necessary will be covered by the commitments in D-CH26, D-CH27, & D-CH14 in the OEMP but it would be





helpful if Highways England could confirm whether this assumption is correct.

- 4.7. HBCME reserves the right to comment further at Deadline 8a in the light of the submissions included in Highways England's consultation report at Deadline 8 of the Examination.

5. NMC-05: Revised proposal for access to land next to the existing A360 north of Longbarrow

- 5.1. HBMCE has no objection on heritage grounds to the proposed amendment, and considers that it represents an improvement on the previously submitted proposal in relation to the historic environment.
- 5.2. The proposed access is located within the settings of designated and non-designated heritage assets. The scheduled monument Five bowl barrows and two saucer barrows forming a round barrow cemetery on Winterbourne Stoke Down (SM 10483; NHLE 1011047) is located on the eastern side of the A360, and a non-designated barrow is located on the western side of A360 in proximity to the previously located link to access route.
- 5.3. We note that the revised proposal moves the proposed access further to the north by c.45m, and away from the heritage assets highlighted at 5.2 above. The original proposal involved the existing field access being stopped up and replaced by new offset link to PMA 33. Under NMC-05 a new field access is constructed on a more direct alignment (similar to the stopped up access) and leading more directly to PMA 33.
- 5.4. Consequently HBMCE consider this amendment positive in relation to the potential to minimise the impact of the access on the significance of heritage assets.
- 5.5. We have noted the proposed additional works this amendment would require, and have assumed that in the event this change is accepted, the





DAMS will be updated accordingly. It would be helpful if Highways England could provide confirmation that this assumption is correct, and explain whether this will involve an extension to an existing Site in Table 11.3/Appendix D or inclusion of a new, separate site, and whether the proposal is for preservation of archaeological remains or archaeological excavation.

- 5.6. HBMCE reserves the right to comment further at Deadline 8a in the light of the submissions included in Highways England's consultation report at Deadline 8 of the Examination.

6. NMC-06: Amendment to Public Right of Way (PRoW) to Stonehenge visitor centre (only to be pursued if agreement can be reached with landowner without recourse to Compulsory Acquisition)

- 6.1. HBMCE has concerns regarding the proposed amendment due to areas of detail that are not clarified in the consultation documentation. We have set out these concerns below and would hope that Highways England will be able to address them through provision of clarifying information.
- 6.2. As previously indicated for all matters relating to HBMCE land ownership the English Heritage Trust (EHT) will be providing the principal response. Consequently, we would refer Highways England to the EHT response on the proposed NMC-06 amendment in relation to land ownership / operational issues.
- 6.3. Notwithstanding and without prejudice to any comments by EHT, we would also offer the following observations regarding the relative heritage impacts in isolation of the two options on the basis of the information submitted.
- 6.4. Option A: This would appear to have less heritage impact because it is located on the highway verge and east of the non-designated dew pond.





- 6.5. Option B: This would appear to have more of a heritage impact as it introduces a new piece of infrastructure in the SAAS WHS and also potentially severs to a greater degree the non-designated heritage asset of the dew pond from its surrounding landscape by having it fenced off in its entirety (i.e. on both sides).
- 6.6. We also remain concerned in relation to the process of approval for surfacing of public rights of way and private means of access across the Scheme as set out in D-CH26 of the OEMP. The Reporting Criteria section indicates approval of surfacing within the WHS will lie with the Authority following consultation with HMAG and Wiltshire Council, but tracked changes in the actions/commitments indicate that Highways England will look to agree this with the adopting authority. The process of consultation and approval therefore remains unclear and we continue in discussion with Highways England in relation to their refinement of drafting to explain these processes under the OEMP and other associated documentation as clearly as possible.
- 6.7. HBMCE reserves the right to comment further at Deadline 8a in the light of the submissions included in Highways England's consultation report at Deadline 8 of the Examination.

7. NMC-07: Additional private means of access to Earl's Down Field

- 7.1. HBMCE has concerns regarding the proposed amendment due to areas of detail that are not clarified in the consultation documentation. We have set out these concerns below and would hope that Highways England will be able to address them through provision of clarifying information.
- 7.2. A cultural heritage assessment for each of the new PMAs, 41 and 42, is not provided in the consultation report. PMA41 is covered by 10.5.2 but PMA42 is not.





- 7.3. We note that the proposal at PMA41 is for preservation of archaeological remains in the location of the new access, taking account of the non-designated Bronze Age round barrow to the east. We would also note the presence of the scheduled monument of the Bell barrow 650m east of the Pennings, Earl's Farm Down (SM 12202 NHLE 1009560) to the south west.
- 7.4. At PMA42 there is potential for groundworks to affect archaeological remains associated with the line of AMES1 which may follow that of a Roman road. This is also likely to follow the line of a probable Prehistoric trackway which survives in places along its length, and it is clear that remains of this trackway will contribute positively to the significance the scheduled prehistoric monuments and other non-designated prehistoric remains derive from their settings. Consequently an appropriate archaeological response should also be included in the DAMS in relation to this proposed amendment.
- 7.5. Highways England helpfully provided confirmation in Issue Specific Hearing 9 on Traffic and Transport (22 August) that the stopped up section of AMES1 is to be grubbed up and a wildflower meadow established. HBMCE will be looking to provide comments to Highways England as part of the refinement of the OEMP, OLEMP and DAMS to ensure that these works appropriately protect important archaeological remains and that the route of the trackway remains able to be appreciated despite the stopping up of this section of AMES1.
- 7.6. Notwithstanding this we remain of the opinion that the opportunity to assist in improving the condition of scheduled monuments that are currently vulnerable due to their proximity to these routes is positive.
- 7.7. HBMCE reserves the right to comment further at Deadline 8a in the light of the submissions included in Highways England's consultation report at Deadline 8 of the Examination.





8. NMC-08: Revised means of access off the new restricted byway south of Green Bridge No. 2

- 8.1. HBMCE has no objection on heritage grounds to the proposed amendment and does not wish to offer detailed comments at this stage beyond the observations at 8.2 - 8.4 below.
- 8.2. We note that Section 11.5 (Conclusions of the environmental appraisal) of the consultation report does not include a section on archaeological remains as is included elsewhere in the consultation document where a non-material change to cultural heritage has been assessed by the Applicant, as assessed here in Table 11-1.
- 8.3. We have noted that this amendment would require additional works although the scope of those is not clear, and have assumed that in the event this change is accepted, the DAMS will be updated accordingly. It would be helpful if Highways England could provide confirmation that this assumption is correct, and explain whether this will involve an extension to an existing Site in Table 11.3/Appendix D or inclusion of a new, separate site, and whether the proposal is for preservation of archaeological remains or archaeological excavation.
- 8.4. HBMCE reserves the right to comment further at Deadline 8a in the light of the submissions included in Highways England's consultation report at Deadline 8 of the Examination.

In general, in relation to all of the above amendments and in line with our comments on the Examination documentation and key documents to be certified, there is a need for consistency. This relates to consistency both within each of the documents and between the documents, so that they work effectively as a suite and manage the potential for any conflict arising from different approaches to mitigation based on the various environmental factors arising from the scheme. This is an on-going issue which Highways England will be aware we have raised in relation to the OEMP and DAMS in particular.





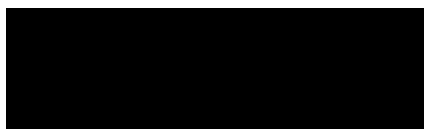
We would also note that discussions with landowners in relation to design detailing (e.g. in relation to fencing) as mentioned in Issue Specific Hearing 9 on Traffic and Transport (22 August) should not be divorced from the implications of design detailing for the historic environment. The OEMP and other documentation must seek to capture and integrate all such discussion to ensure that a consistently appropriate solution is identified across the Scheme in this regard.

We are aware that you have also formally requested HBMCE's consent for inclusion in the DCO application of additional land within HBMCE's ownership required to facilitate both Option A and Option B for NMC-06.

HBMCE has indicated previously in our submissions to the Examining Authority that these matters will be dealt with principally by the English Heritage Trust (EHT). Consequently, once HBMCE is satisfied that EHT has a clear understanding of the proposals and has provided their response, we will look to update our representations on Options A and B accordingly and consider the formal request for our consent.

Thank you for consulting HBMCE in relation to these proposed amendments to the A303 Amesbury to Berwick Down Scheme. Should you have any questions relating to the above consultation response please contact me and we will be pleased to discuss them.

Yours faithfully,



Dr Helen Woodhouse
Team Leader – Development Advice
Regions Group
South West Office



ISSUE SPECIFIC HEARING 11 DEALING WITH MATTERS RELATING TO THE DRAFT DEVELOPMENT CONSENT ORDER

9. DRAFT DCO

9.1. We would ask the Examining Authority to note that whilst following the agenda as a basis for our submission, we have only set out those items to which we provided a response during the course of the dDCO issue specific hearing and/or update following the conclusion of that hearing.

9.2. References in this Summary are to the draft DCO version 5 (“d5DCO”) which was published on the Inspectorate website on 28 August 2019.

9.3. We also note that the Examining Authority has recently published their own dDCO, and we have sought to consider this within our submission. We will however be reviewing this further and providing our final comments at Deadline 9.

10. DRAFT DCO ARTICLES (AGENDA ITEM 3)

Part 1 - Preliminary

Article 2 – Interpretation

The extent of definitions, including the definition of “*commence*”.

10.1. As the Examining Authority will be aware, HBMCE have set out their comments on this issue (and Requirement 1(1) in Schedule 2) in previous responses in particular REP7- 046 (see paragraphs 2.31 - 2.34) and also REP4 - 084 (see paragraphs 37 – 52). Our concern broadly relates to the “scope” and “timing” regarding the preliminary works.

10.2. As highlighted in those submissions, further clarification as to the commencement of Preliminary Works and the timing of the award of the Main Works contract and appointment of the Main Works contractor was requested from Highways England.

10.3. Since those submissions, further discussions have taken place as noted at the dDCO Issue Specific Hearing. As a consequence of those discussions we are confident that HBMCE and Highways England can now move to a resolution of this particular issue.

Post Hearing Note

10.4. We continue to discuss this issue with Highways England and would aim to update the Examining Authority as soon as we are able to, and in any event by Deadline 9.

Part 2 – Works provisions

Article 7 – Limits of deviation

- ii. The proposed LoD of up to 200m in a generally westerly direction for the western portal and whether any additional controls would be necessary to address any potential adverse visual impact that might result?**

10.5. As the Examining Authority will be aware, HBMCE have set out their comments on this issue in previous responses in particular REP7- 046 (see paragraphs 2.11 – 2.12). We noted at the Issue Specific Hearing that we have progressed in our discussions with Highways England on some of the points and are looking to resolve the matter through the refinement of design principles and we have been working with HMAG as well on this. We have also looked at the recent visualisations provided by Highways England and these are helpful and will assist as part of the refinement of the language that is required in the design principles.

10.6. In addition, we have been engaged in reviewing a further iteration of the draft DAMS and the phasing of works. This is in the process of being further revised. Both the draft DAMS and the draft OEMP have been subject to revisions subsequent to the previous submission and we are reviewing them to see whether our concerns have been addressed. In light of all the recently submitted and further revised documentation that has been submitted we are not yet in a position

to confirm our final position on this, and would anticipate updating the Examining Authority as soon as we are able to.

- iii. **The provision made by the revised dDCO Article 7(6) for consultation by the Secretary of State in relation to the disapplication of the maximum vertical limits of deviation and whether any further amendment and/or provision for consultation would be required?**

10.7. HBMCE considers that the reference to the Secretary of State and any other person the Secretary of State considers appropriate is helpful.

Post Hearing Note

10.8. As the Examining Authority will be aware discussions continue regarding the consultation of interested parties, and we would expect to be in a position to have a final update for the Examining Authority at Deadline 9.

10.9. We would also note that the Examining Authority in their recently published draft DCO made some suggested additions and deletions to the text. This included, in Requirement 3(1), additional wording in relation to consultation of other persons by the Secretary of State. We consider that the Examining Authority's additional wording in Requirement 3(1) is helpful and clear in nature. We would therefore suggest that consideration be given on the basis of consistency, that the wording introduced in relation to Requirement 3(1) is also introduced in Article 7 (6).

- iv. **Whether within the World Heritage Site (WHS) and its setting the LoD should be permitted to be exercised where it would simply be "*convenient*" to do so?**

10.10. As the Examining Authority will be aware, HBMCE have set out their comments on this issue in previous responses notably REP7- 046 (see paragraph 2.18). Our concern relates to the inclusion of the word "convenient" in Article 7 and the ability of the undertaker to deviate either when he considers it necessary *or* convenient.

We noted at the dDCO Issue Specific Hearing that discussions had taken place, but we were not in a position to agree and our advice would be that the word “convenient” should be deleted. We noted the position taken by Highways England that they set out that the degree of flexibility had been assessed, however we remained of the view that the ability to exercise this on the basis of convenience was inappropriate in a World Heritage Site.

Post Hearing Note

10.11. Subsequent to the hearing, we have again reflected on our position in this matter. We have carefully considered the response provided by Highways England and the position that they have taken - that the limits of deviation have been assessed in the Environmental Statement and also how the approach they are advocating here differs to other DCO examples. We appreciate that there may be differences to other DCOs, and each case would need to be considered on its merits. This is a Scheme which will be within the Stonehenge, Avebury and Associated Sites World Heritage Site (Stonehenge WHS) and its setting. Whilst the limits of deviation will have been assessed in order to understand the impact, it is unclear why there would need to be such a range of flexibility between “convenient” which is a low threshold, compared to “necessary”. In addition, by having the scope to deviate on the basis of “convenience” could result in reliance on this, which would render the term “necessary” otiose. Whilst there may be occasions where there may be a need to deviate, and the limits of deviation provide this scope, we do not consider that the ability to exercise that deviation should be based on whether it is “convenient”.

10.12. We would also note that Examining Authority in their published draft DCO made some suggested additions and deletions to the text. In particular, on this point of “convenient” (Article 7), we welcome the Examining Authority’s suggestion that “convenient” be deleted.

Supplemental powers

Article 15 – Authority to survey and investigate land

- i. Whether there are any outstanding concerns as regards this**

provision and the means by which any intrusive surveys would be regulated by the OEMP and DAMS?

10.13. As the Examining Authority will be aware, we have already set out our concerns about intrusive investigations into the landscape of the WHS and its setting in previous responses in particular in REP7- 046 (see paragraphs 2.20 – 2.21) and also REP4 - 084 (see paragraphs 140-143).

10.14. Since those submissions, further discussions have taken place as noted at the dDCO Issue Specific Hearing, and as a consequence of those discussions we would anticipate that the issues will be resolved as soon as possible.

Post Hearing Note

10.15. As part of the on-going discussions with Highways England, we understand that our concerns with regards to the use of “adjacent” in the dDCO may be addressed through submissions which will be made by Deadline 8. This will then provide the relevant clarification of “adjacent” for both Article 15 and also Article 4(2) such as to resolve our concerns. Following the submission of this additional clarification we will review and provide an update to the Examining Authority by Deadline 9.

10.16. In addition to the discussions on this point in relation to the dDCO there are also associated conversations ongoing with Highways England in relation to the DAMS in order to ensure there is clarity regarding its operation and the potential requirement for consent under the Ancient Monuments and Archaeological Areas Act 1979 outside the Order limits.

Part 3 – Powers of acquisition and possession of land

Article 22 – Compulsory acquisition of rights

Whether there are any outstanding concerns as regards the scope of restrictions that would be imposed upon the use of land above the tunnel and the implications that might have for archaeological investigations in the WHS?

10.17. As the Examining Authority will be aware from our submissions at the Cultural Heritage Issue Specific Hearing, we requested additional clarification from Highways England around the issues of restrictive covenants regarding archaeological research which related to the shallow areas above the tunnel. Once we have received that information to clarify matters we will then be in a position to respond to this in more detail and confirm our position.

Post Hearing Note

10.18. Please see our comments with regards the covenant in our Summary of the Cultural Heritage Issue Specific Hearing section above (paragraphs 4.7-4.10).

Temporary possession of land

Article 29 – Temporary use of land for constructing the development

- i. Whether there are any outstanding concerns in relation to the scope of the powers sought and the extent of land that would be subject to powers of Temporary Possession?**

10.19. As the Examining Authority will be aware from our previous submissions REP7-046 (see paragraph 2.35) and REP4 - 084 (see paragraphs 135-139 and 153-157) we raised issues with regards this Article and that of Article 14 due to the scope of “building” definition which could give rise to unintended consequences to designated heritage assets. As noted at the Issue Specific Hearing, discussions are continuing which should resolve our concerns (see also our comments with regards this point set out in our Summary of the Cultural Heritage Issue Specific Hearing section at paragraph 3.10 above).

Post Hearing Note

10.20. We remain concerned about the scope of the powers sought and the extent of land over which it is sought (both in the WHS and its setting). Section 61(7) of the Ancient Monuments and Archaeological Areas Act 1979 defines a “monument” to mean a) “any building, structure or work, whether above or below the surface of the land, and any cave or excavation”, b) “any site comprising the remains of any such building, structure or work..”, and (8) states “the site of a monument includes

not only the land in or on which it is situated but also any land comprising or adjoining it which appears to the Secretary of State or the Commission or a local authority, in the exercise in relation to that monument of any of their functions under this Act, to be essential for the monument's support and preservation". The definition of "building" within d5DCO would therefore capture scheduled monuments – hence our concern about the potential for unintended consequences.

10.21. As part of the ongoing discussions with Highways England, we understand that our concerns with the dDCO may be addressed through submissions which will be made by Deadline 8. Following the submission of this additional clarification we will review and provide an update to the Examining Authority by Deadline 9.

Supplementary

Article 53 – Operational land for the purposes of the 1990 Act

Whether the exercise of permitted development rights under the Town and Country Planning (General Permitted Development) Order 2015 within the WHS would be appropriately regulated or whether there is justification to restrict permitted development rights within the WHS given the particular circumstances of this project and site?

Post Hearing Note

10.22. We would also note that the Examining Authority in their published draft DCO made some suggested additions and deletions to the text. This included a new Requirement 12 which related to Permitted Development. As set out in REP2 -100 (see paragraph 1.8) we noted the issue around the ability to rely on Permitted Development Rights. As was noted by the Examining Authority there is a query as to whether it would be appropriate to restrict PD rights within the Scheme area. Having reviewed matters we consider that as the extent to which Highways England have assessed the application of PD rights within the EIA or otherwise is

unclear, and in light of the infrastructure proposed in this unparalleled landscape it would appear prudent to remove the PD rights.

11. SCHEDULE 2 – REQUIREMENTS (AGENDA ITEM 4)

Interpretation

Preparation of detailed design etc

Requirement 3(1) and (2) – Preparation of detailed design etc

- ii. **Whether the revised draft OEMP includes appropriate and specific design principles and dispute mechanism or whether there are key aspects of design to which commitment should be made in the dDCO, for example, by way of the provision of a specific design parameters document secured by a dDCO Requirement and to be approved by the Secretary of State?**

11.1. As the Examining Authority will be aware from our previous submissions REP7-046 (see paragraphs 2.22- 2.23) and REP4 – 084 (see paragraphs 182 – 183) we have raised various issues regarding design. We remain in discussion with Highways England and a meeting took place earlier in the week with other members of HMAG and Highways England. Highways England have submitted a further revision of the draft OEMP and requested comments back on this. We would hope that this latest version has reflected the conversations that have taken place both as part of the Workshop requested by HBMCE that took place on 19 August, as well as subsequent meetings and discussions.

11.2. The design element within the OEMP (including design commitments set out in Table 3.2a and 3.2 b, the Design Vision in section 4, and the Design Principles in Table 4.1 together with the illustrative examples now included in Annex A4) is indeed one of the issues that have been looked at, in particular in relation to the statutory roles and responsibilities of some of those involved in the detailed design consultation process, and it will be important to capture this in the revision. These, together with dispute provisions and the refinement of language are matters which

continue to be discussed to ensure that the landscape can be appropriately safeguarded.

Post Hearing Note

11.3. A section providing a more coherent discussion of the Design Vision has been incorporated into the OEMP [REP6-011] and this with Annex 4 draws together the relevant commitments and principles so that the provisions could be tested in relation to individual key infrastructure elements. In the event that our requested drafting refinements and gaps in the coverage of the design commitments and principles are addressed by Highways England, we do not anticipate that a separate design parameters document will become necessary. However we will be able to provide our final comments once we have reviewed the revised version of the OEMP due to be submitted at Deadline 8.

iii. Whether Requirement 3(1) as amended at Deadline 6 makes satisfactory provision for consultation with relevant parties on key aspects of the detailed design or whether any further amendment of this Requirement and/or the OEMP is necessary?

11.4. We would reiterate the points that we have made earlier in the dDCO Issue Specific Hearing regarding discussions between HBMCE and Highways England. The OEMP and CEMP should provide a robust framework and consultation provisions, together with mechanisms provided to make sure that the highest quality of design is achievable. This will require refinement in the drafting of the documents. The proposed approach to approvals will then be appropriate within the framework and standards provided. We continue to provide advice to make sure that there is meaningful discussion and updates in the document to reflect the detail. We would expect the updated draft OEMP to have picked up on the points we have made and to have addressed them.

Outline Environmental Management Plan

Requirement 4 – Outline Environmental Management Plan

- iv. Notwithstanding the provision within the revised OEMP for consultation with various stakeholders, whether there are any other outstanding concerns in this respect including the means whereby this would be secured by the dDCO?**

11.5. In light of the ongoing discussions, and the comments made earlier in the dDCO Issue Specific Hearing, we reserved our position based on what we have previously set out in response to questions posed in the Cultural Heritage Issue Specific Hearing.

- viii. Whether the revised OEMP would provide sufficient control over the design of lighting at the tunnel portals or should the approval of the design of the lighting scheme be the subject of a specific dDCO Requirement?**

11.6. We noted as part of this agenda item that we provided our comments regarding design and lighting in our Deadline 6 response REP6-053 (see response to Written Question DCO.2.51). We also understood that there was to be revised draft wording on this within the OEMP recently produced by Highways England and we will be reviewing this submission which is expected to be submitted at Deadline 8.

Post Hearing Note

11.7. We would refer the Examining Authority to the comments we have made regarding the OEMP in our Summary of the Cultural Heritage Issue Specific Hearing at section 3 above.

Archaeology

Requirement 5 – Archaeology

Whether any additional provisions within the dDCO would be necessary to secure the required level of archaeological mitigation?

11.8. HBMCE are not seeking any additional requirement provisions within the dDCO regarding archaeology.

Post Hearing Note

11.9. As the Examining Authority will be aware from our various submissions to date, our focus has been to ensure that the historic environment would be appropriately safeguarded should this Scheme be granted consent. As part of the discussions that have taken place we have focused on the DAMS as this is a key document providing an overarching basis for the approach to archaeological mitigation that will be implemented across the Scheme. The Examining Authority have also recognised the importance of the document as they have been pressing for revisions and updates on the draft as we have proceeded through the examination. Having had those extensive discussions, we now await to see the submission at Deadline 8 to provide our final comments on this matter.

Details of Consultation

Requirement 11 – Details of Consultation

Whether the wording of this requirement is now agreed or whether any further amendment would be necessary and reasonable?

11.10. As the Examining Authority will be aware from our previous submissions REP 7 – 46 (see paragraphs 2.26 – 2.29) and REP4 -84 (see paragraph 191) we referred to consultation. We noted that it would be helpful for the Secretary of State to have a report setting out the consultation that has been undertaken, that the report should be provided to the relevant consultees and that the consultation responses should be provided with that consultation report.

11.11. We stated it would be sensible for there to be a package of information to include the consultation responses to be provided to the Secretary of State. This would enable the Secretary of State to be fully advised in relation to decisions concerning the WHS and its setting arising from the Scheme.

Post Hearing Note

11.12. Subsequent to the hearing, we have again reflected on our position in this matter. We understand that other bodies, including statutory bodies have expressed contentment with the terms of this provision. Whilst recognising this, we would note that they will have different concerns and roles to ourselves. HBMCE has a role as adviser to the State Party to the 1972 Convention, and also a role as the Government's statutory adviser with regard to the historic environment. In light of the fact that the development will traverse the Stonehenge WHS and its setting, we consider that it would be appropriate as a consequence that the Secretary of State should be provided with a copy of the consultation responses from HBMCE which address and advise on the implications for the historic environment. We would therefore propose that Requirement 11(1) be refined to include as follows:

After "... with another party," add

save as to any consultation response made by Historic England and which must be provided by the undertaker to the Secretary of State as an annex to a summary report

11.13. On a broader point regarding consultation, as the Examining Authority will be aware from our previous submissions REP7-46 (see paragraphs 3.1 – 3.7 we noted our position with regards the need for our statutory role and that this and the level of engagement were still under discussion. We are continuing with those discussions, to ensure that appropriate provision is made for the safeguarding of the historic environment. These include provisions within the dDCO, OEMP, DAMS, and in the development of detailed design. We would expect to be in a position to have a final update for the Examining Authority at Deadline 9.

SCHEDULE 11 – PROTECTIVE PROVISIONS (AGENDA ITEM 5)

ii. Whether it would be necessary for a Protective Provision to be included in the dDCO which explicitly referred to the Proposed Development as being within the WHS and its setting?

11.14. As the Examining Authority will be aware from our previous submissions REP7-046 (see paragraphs 2.39 – 2.40) and REP4-084 (see paragraphs 169-172) we raised the possibility of a Protective Provision.

11.15. Greater clarity has been provided as the Examination has progressed regarding the Scheme, with various frameworks being discussed and finalised which will set out the parameters for submission of detailed design in future. In our view, in light of the Scheme traversing a World Heritage Site and its setting, a Protective Provision would assist in retaining focus on the Cultural Heritage objective of the Scheme set by the Department for Transport.

11.16. We have had discussions with Highways England regarding the basis for a Protective Provision and as noted to the Examining Authority would send through draft wording to Highways England and to the Examining Authority for their consideration.

11.17. Generally, the frameworks which will govern the submission of details including that of design will be considered by multiple parties – Secretary of State, undertakers of the Scheme, any transferees, members of the public etc. Therefore having, within the DCO itself, provisions which refer to the Cultural Heritage objective of the Secretary of State, and signpost and refer to the various obligations and requirements on how the Scheme is to be carried out and built, and provide a reminder of the status of the landscape in which it is to be constructed and operated within would in our view be appropriate.

11.18. We would consider that the wording would be straightforward and simple in nature so that it facilitates the scheme and parties would not lose sight of the World Heritage Site and that regard is to be had to it.

Post Hearing Note

11.19. HBMCE consider that in view of the Secretary of State's stated Objectives for the Scheme including a Cultural Heritage objective and that the Scheme will result in a highway infrastructure in the Stonehenge WHS there should be a Protective Provision in place to acknowledge this in the DCO.

11.20. The points to be included within the Protective Provisions can be as follows:

1. A statement confirming that the Scheme lies within the Stonehenge, Avebury and Associated Sites World Heritage Site (Stonehenge WHS) and its setting.
2. A statement referring to the attributes as set out within the Stonehenge WHS Management Plan.
3. Confirmation that in proposing the Scheme, the Secretary of State has 4 objectives, one of which is Cultural Heritage.
4. Reference to the 1972 Convention concerning the Protection of the World Cultural and Natural Heritage (1972 Convention) and how decisions regarding preparation, delivery and future management of the Scheme and any issues surrounding the DCO provisions relate to it.
5. The role of the Historic Buildings and Monuments Commission for England (Historic England) as adviser to the State Party to the 1972 Convention , and also its role as the Government's statutory adviser with regards the historic environment; enables it to assist and engage with these issues and the implementation of the DCO as appropriate.

11.21. We would ask the Examining Authority to note that we are currently in discussions with Highways England regarding the Provisions and the specific drafting required.

ANY OTHER MATTERS (AGENDA ITEM 9)

Post Hearing Note

11.22. The Examining Authority will be aware of the various matters raised in our submissions throughout the Examination – the most recent being [REP7- 046] at Deadline 7 – and which we trust provided an update as to the position of HBMCE on concerns we have. We did not therefore look to review those matters at the hearing itself and take up time. There have been a number of additional submissions by Highways England subsequent to Deadline 7 and we have been working closely with them in order to progress the development of these documents and address the remaining concerns. We would expect to be able to update and provide the Examining Authority with our full response to these and all other outstanding matters raised in our submissions to date at Deadline 9 when all the documents will have been submitted by Highways England.