



# Department for Transport

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12 November 2020

Dear Sirs,

## **PLANNING ACT 2008 APPLICATION FOR THE PROPOSED A303 AMESBURY TO BERWICK DOWN DEVELOPMENT CONSENT ORDER**

1. I am directed by the Secretary of State for Transport (“the Secretary of State”) to say that consideration has been given to:

- the Report dated 2 January 2020 of the Examining Authority, a Panel of five examining inspectors consisting of Wendy McKay, Alan Novitzky, David Richards, Ken Taylor and Edwin Maund (“the ExA”) who conducted an examination into the application made by Highways England (“the Applicant”) for the Amesbury to Berwick Down Development Consent Order (“the DCO”) under section 37 of the Planning Act 2008 as amended (“the 2008 Act”);
- responses to the further consultations undertaken by the Secretary of State in respect of the application and also in response to the notice of the other environmental information provided and published by the Applicant since the close of the examination; and
- other late representations received by the Secretary of State following the close of the examination.

2. The application was accepted for examination on 16 November 2018 and the examination began on 2 April 2019 and was completed on 2 October 2019. The examination was conducted on the basis of written and oral submissions submitted to the ExA and by a series of hearings held in Salisbury in Wiltshire. The ExA also undertook a number of accompanied and unaccompanied site inspections.

3. The DCO as applied for would grant development consent for the construction of a new two-lane dual carriageway for the A303 between Amesbury and Berwick Down in Wiltshire (“the Development”). The key elements of the Development are:

- a northern bypass of Winterbourne Stoke with a viaduct over the River Till valley;

- a new junction between the A303 and A360 to the west of, and outside, the Stonehenge World Heritage Site (“WHS”), replacing the existing Longbarrow roundabout;
- a tunnel approximately 2 miles (3.3km) in length past the Stonehenge stones; and
- a new junction between the A303 and A345 at the existing Countess roundabout.

4. The Development would be approximately 8 miles (13km) in length and the location of the site lies wholly within the administrative county of Wiltshire Council.

5. Published alongside this letter on the Planning Inspectorate’s website is a copy of the ExA’s Report of Findings and Conclusions and Recommendation to the Secretary of State for Transport (“the ExA’s Report”). The main features of the Development and the site are set out in section 2 of the ExA’s Report, the ExA’s findings and conclusions are set out in sections 4 to 9, and the ExA’s summary of its findings, conclusions and recommendation are in section 10.

### **Summary of the ExA’s Recommendations**

6. The main issues considered during the examination on which the ExA reached conclusions on the case for development consent were:

- a) legal and policy context, including need for the Development and conformity with national and local policies;
- b) agriculture;
- c) air quality;
- d) alternatives;
- e) biodiversity;
- f) climate change;
- g) cultural heritage and the historic environment;
- h) design considerations;
- i) flood risk, water quality and drainage;
- j) geology, soils and contamination;
- k) health and wellbeing;
- l) landscape and visual;
- m) noise and vibration;
- n) people and communities;
- o) public rights of way (“PRoW”) and Non-Motorised Users (“NMUs”);
- p) socio-economic effects;
- q) traffic and transportation;
- r) waste and materials management;
- s) habitats regulations assessment;
- t) compulsory acquisition and related matters; and
- u) the draft DCO (“dDCO”) and related matters.

7. For the reasons set out in the ExA's Report, the ExA recommended that the Secretary of State should withhold consent. If, however, the Secretary of State decides to give consent, the ExA recommended that the DCO should be in the form attached to its Report.

### **Summary of Secretary of State's Decision**

8. **The Secretary of State has decided under section 114 of the 2008 Act to make, with modifications, a DCO granting development consent for the proposals in the application.** This letter is the statement of reasons for the Secretary of State's decision for the purposes of section 116 of the 2008 Act and regulation 31(2) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

### **Secretary of State's Consideration**

9. The Secretary of State has considered the ExA's Report and all other material considerations, including the late representations received after the close of the ExA's examination and representations made in response to his further consultation letters of 4 May 2020, 16 July 2020, and 20 August 2020 and also in response to the advertised notice of the other environmental information produced by the Applicant. The Secretary of State's consideration of the ExA's Report and the representations received is set out in the following paragraphs.

10. Where not otherwise stated, the Secretary of State can be taken to agree with the ExA's findings, conclusions and recommendations as set out in the ExA's Report and the reasons given for the Secretary of State's decision are those given by the ExA in support of the conclusions and recommendations. All "ER" references are to the specified paragraph in the ExA's Report. Paragraph numbers in the ExA's Report are quoted in the form "ER x.xx.xx" as appropriate.

11. The National Planning Policy Statement for National Networks ("NPSNN")<sup>1</sup> is the primary policy basis to be used by the Secretary of State for making decisions on development consent applications for nationally significant national networks infrastructure projects in England. The Secretary of State has also had regard to: the Local Impact Report ("LIR") submitted by Wiltshire Council [ER 4.3]; the Development Plan [ER 4.5]; environmental information as defined in regulation 3(1) of the 2017 Regulations; and to all other matters which are considered to be important and relevant to the Secretary of State's decision as required by section 104 of the 2008 Act. In making the decision, the Secretary of State has complied with all applicable legal duties and has not taken account of any matters which are not relevant to the decision.

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/387223/npsnn-web.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/387223/npsnn-web.pdf)

## The Need for and Benefits of the Development

12. The existing A303 between Amesbury and Berwick Down is part of the Strategic Road Network<sup>2</sup> (“SRN”) route connecting the South West to London and the ExA has noted that there have been recognised acute congestion problems on this section of road for over 30 years. It is the first section of single carriageway when travelling west from London and at busy times traffic levels can be double the design flow capacity [ER 4.4.2].

13. The ExA notes that a business case for the Development has been prepared as required by the NPSNN and that the Applicant has concluded that this was the most appropriate way to achieve the outcomes identified by the Department for Transport; following a detailed options appraisal the Development was announced as the preferred route by the Secretary of State in 2017. Where such an appraisal has taken place and a scheme is included in the Road Investment Strategy (“RIS”), paragraph 4.27 of the NPSNN states that option testing need not be considered by the ExA [ER 4.4.5]. The NPSNN also recognises that enhancements to the existing national road network will include improvements to trunk roads, “*in particular dualling of single carriageway strategic trunk roads...*”. Subject to the detailed policies and protections in the NPSNN, and the legal constraints set out in the 2008 Act, there is a presumption in favour of granting development consent for national networks Nationally Significant Infrastructure Projects that fall within the need for infrastructure established in the NPSNN [ER 4.4.6].

14. Whilst issues have been raised by Interested Parties opposing the Development, there is support from a number of local authorities, including Wiltshire Council and Devon County Council, and other Interested Parties, in part because of the economic benefits it would bring to the region [ER 4.4.7]. The NPSNN also states there is a compelling need for development of the national networks to support such economic benefits [ER 4.4.8-4.4.9].

15. The ExA recognises that the Road Investment Strategy for the 2015/16-2019/20 Road Period (“RIS1”), identifies that the A303 corridor needs to be improved and the Development is one of three major improvements identified in RIS1 as part of a total A303/A358 corridor package of commitments. It notes that the A303 has over 35 miles of single carriageway with these sections constraining users of the route resulting in congestion, particularly in the summer months and at weekends, generating driver delay and the risk of accidents. In addition, the sensitivity of the environment along the corridor means that the road currently limits the wider enjoyment of the surrounding area and, in particular, the setting of nationally designated heritage assets [ER 5.17.12 - 5.17.13]. The ExA has also noted that even on ‘non-busy days’ delays can be experienced due to the single carriageway alignment past the Stones, junction capacity and the recognised occurrence of ‘rubber-necking’ in the vicinity of the Stones [ER 5.17.79]. The Secretary of State notes that the ExA does not find the Applicant has exaggerated the nature of the existing traffic problem, which is widely recognised, even by those opposed to the Development. The ExA finds that there would be a strategic benefit in removing a notorious bottleneck, which results in significant time delays and diversions onto less suitable roads with adverse consequences for those living along those routes [ER 5.17.80].

16. The ExA is satisfied that the Development would satisfy the broad principles and meet the strategic aims as set out within the NPSNN by providing an upgraded dual carriageway on this part of the SRN [ER 7.2.2]. The ExA concurs with the general conclusions set out in

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<sup>2</sup> The Strategic Road Network comprises motorways and major trunk roads managed by Highways England in England.

the Applicant's NPSNN Compliance Tracker in terms of the need for the development of the national networks and finds the Development to also be in general conformity with the NPSNN in that respect. However, the ExA disagrees with the Compliance Tracker's overall assessment of heritage benefits and the generic impacts on the historic environment and the landscape and visual amenity [ER 7.2.3]. These matters are considered further by the Secretary of State below.

17. The Secretary of State agrees with the ExA that the Development would be in accordance with the Government's vision and strategic objectives set out in the NPSNN. It would contribute to the objective of creating a high-quality route between the South East and the South West that would meet future traffic needs and result in journey times being more reliable and reduced. It would also be safer, helping reduce collisions and casualties [ER 7.2.9]. The Development would also result in a significant reduction in traffic using routes through Shrewton and other settlements, and the A360 north of Longbarrow Junction, which would help relieve traffic and related environmental issues, particularly during busy periods of the year. Transportation costs for users and business would also be reduced as a result of freer flowing journeys [ER 7.2.10].

18. The Secretary of State considers it important that a free-flowing, reliable connection between the South East and the South West would also contribute to the objective of enabling growth in jobs, including tourism, and housing. However, he agrees with the ExA that full realisation of the wider benefits would be dependent on all proposed improvements in the A303 corridor being implemented [ER 5.17.80 and ER 7.2.11]. Notwithstanding those other plans are outside the scope of this application, the Secretary of State agrees with the ExA that there would still be economic benefit achieved through the Development to which moderate weight can be given [ER 7.2.12]. The Secretary of State does not consider his "minded to refuse" letter and consultation of 21 July 2020 in respect of the A303 Sparkford to Ilchester Dualling DCO changes that conclusion.

19. In respect of PRow and NMUs, the Secretary of State agrees with the ExA's conclusions that the Development, as a whole, would meet the NPSNN's policy requirement to enhance accessibility for NMUs and to mitigate impacts on their accessibility and that overall there would be benefits in terms of improved provision for NMUs [ER 7.2.13]. The Secretary of State is satisfied in respect of health and wellbeing, that the Development would provide the opportunity for broader benefits by reducing severance and increasing the opportunities of access to the countryside through the proposed NMU provision [ER 7.2.14]. The Development would also result in an improved environment for people and communities by way of a reduced severance, particularly in Winterbourne Stoke and important benefits for communities currently suffering from rat running as a result of current conditions with the existing A303 route [ER 7.2.15].

20. With regard to cultural heritage, which is considered further below, the Secretary of State agrees the benefits of the Development would include enabling visitors to Stonehenge to see the stone circle without the visual and aural distraction of road traffic and unifying the areas currently divided by the existing A303, removing and allowing reconnection of The Avenue in its route from the River Avon to the Stones, and improving access to and within the WHS [ER 7.2.16].

21. In relation to the water environment, the Secretary of State is satisfied that there would be improved pollution control through the imposition of upgraded pollution control measures. He agrees that the creation of 186 hectares (net) of new semi-natural habitats (including 162 hectares of calcareous grassland) would represent a significant benefit for

biodiversity and the improvement to the SRN would also provide a waste management benefit [ER 7.2.18].

22. Overall the ExA's conclusion on need is that the Development would contribute to meeting the need for the development of the national road network established in the NPSNN, noting there is also a presumption in favour of granting development consent for the application pursuant to paragraph 4.2 of the NPSNN. The identified benefits fall to be weighed against the adverse impacts in the overall planning balance [ER 7.2.19]. For the reasons above, the Secretary of State is satisfied that there is a clear need case for the Development and considers that the benefits identified weigh significantly in favour of the Development.

## **Adverse Impacts of the Development**

### Agriculture

23. The Secretary of State notes that the ExA considers the measures in the Outline Environmental Management Plan ("OEMP") are sufficient to appropriately create and manage the proposed chalk grassland areas and that the size and general locations for the construction compounds and tunnel processing areas, necessary to facilitate the construction of the Development, have been adequately justified. It is also noted that the ExA is satisfied that the adverse impacts from the processes in these areas can be adequately mitigated [PR 7.2.20]. The ExA is satisfied that the provision of new and/or altered rights of way would not have any material adverse effects on adjacent farming operations and that also adequate provision for access for agricultural vehicles would be made. There are considered to be no substantive effects on the welfare of livestock during the operational phase of the Development [PR 7.2.21]. The ExA has, however, concluded that the Development would have negative effects through the loss of productive agricultural land during its construction and reduced productivity associated with the restored chalk grassland. The ExA concludes that limited weight should be given to the modest adverse impacts in terms of the effect on best and most versatile agricultural land [PR 7.2.22].

24. It is noted that the ExA also considers that limited weight should be given in the planning balance to the adverse impact of the proposed deposition of the tunnel arisings to Manor Farm, Stapleford [PR 7.2.23]. In taking account of the harm that would arise to other affected landholdings, the ExA considers that the effect on the holdings would be necessary to allow for the construction and operation of the Development and individually considers that very limited weight should be given to each of the harms that would arise. When considered together, the harm that would arise to these other agricultural holdings should be given limited weight in the overall planning balance [PR 7.2.24]. The Secretary of State agrees with the ExA's conclusions in relation to agriculture.

### Cultural Heritage and the Historic Environment

25. The Secretary of State notes the ExA's consideration of cultural heritage and the historic environment in Chapter 5.7 of the Report and the differing positions on this matter among others of: Wiltshire Council [ER 5.7.55 – 5.7.61]; the Historic Buildings and Monuments Commission for England ("Historic England") [ER 5.7.62 – 5.7.69]; the National Trust [ER 5.7.70 – 5.7.71]; English Heritage Trust [ER 5.7.72]; International Council on

Monuments and Sites (“ICOMOS”) Missions [ER 7.7.73 – 5.7.80]; Department for Digital, Culture, Media and Sport (“DCMS”) [ER 5.7.81 – 5.7.83]; International Council on Monuments and Sites, UK (“ICOMOS-UK”) [ER 5.7.84 – ER 5.7.98]; Stonehenge and Avebury World Heritage Site Coordination Unit (“WHSCU”) [ER 5.7.99 – ER 5.7.104]; the Stonehenge Alliance (comprising: Ancient Sacred Landscape Network, Campaign for Better Transport, Campaign to Protect Rural England, Friends of the Earth, and Rescue: The British Archaeological Trust) [ER 5.7.105 – 5.7.108]; the Consortium of Archaeologists and the Blick Mead Project Team (“COA”) [ER 5.7.109 – 5.7.120]; and the Council for British Archaeology (“CBA”) and CBA Wessex [ER 5.7.121 – 5.7.128].

26. Central to the Secretary of State’s consideration of cultural heritage and historic environment is the question of the Development’s conformity with the NPSNN and whether substantial or less than substantial harm is caused to the Outstanding Universal Value (“OUV”) of the WHS. The NPSNN (paragraphs 5.131-5.134) states that substantial harm to or loss of designated assets of the highest significance, including World Heritage Sites, should be wholly exceptional and that any harmful impact on the significance of a designated heritage asset should be weighed against the public benefit of the development, recognising that the greater the harm to the significance of the heritage site, the greater the justification that will be needed for any loss. Where the Development would lead to substantial harm to or total loss of significance of a designated heritage asset, the Secretary of State should refuse consent unless it can be demonstrated that the substantial harm or loss of significance is necessary in order to deliver substantial public benefits that outweigh that loss or harm. Where the Development will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal.

27. The Secretary of State notes that the concept of OUV has evolved and been incorporated in the UNESCO document ‘The Operational Guidelines (“OG”) for the Implementation of the World Heritage Convention’<sup>3</sup>, which have been regularly revised since 1977 (the latest update being in 2019). It is noted that the term OUV is defined in paragraph 49 of the OG as meaning: ‘*Outstanding Universal Value means cultural and/or national significance which is so exceptional as to transcend national boundaries and to be of common importance for present and future generations of all humanity*’. The Secretary of State notes the UNESCO definitions of criteria for inscription of the WHS on the World Heritage List [ER 2.2.2] and the description of the attributes of OUV<sup>4</sup> [ER 2.2.6] has been set out by the ExA. The WHS Management Plan that was adopted for the WHS in 2015 sets out the vision and management priorities for the WHS to sustain its OUV [ER 3.13.1 - 3.13.2]. The ExA has also considered the local Development Plan, National Planning Policy Framework (“NPPF”), and the Statement of Outstanding Universal Value that exists for the WHS as important and relevant matters [ER 5.7.13 - 5.7.17].

28. The ExA concludes the Development would benefit the OUV in certain valuable respects, especially relevant to the present generation. However, permanent irreversible harm, critical to the OUV would also occur, affecting not only present, but future generations. It considers the benefits to the OUV would not be capable of offsetting this harm and that the overall effect on the WHS OUV would be significantly adverse [ER 5.7.321]. The ExA considers the Development’s impact on OUV does not accord with the Wiltshire Core

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<sup>3</sup> <http://whc.unesco.org/en/guidelines/>

<sup>4</sup> <https://whc.unesco.org/en/list/373>

Strategy Core Policies 59 and 58, which aim to sustain the OUV of the WHS and ensure the conservation of the historic environment [ER 5.7.322 – 5.7.324], and that the Development is also not consistent with Policy 1d of the WHS Management Plan [ER 5.7.325]. It considers this is a factor to which substantial weight can be attributed [ER 7.5.11].

29. In the ExA's overall heritage assessment [ER 5.7.327 – 5.7.333] the ExA considers the cultural heritage analysis and assessment methodology adopted by the Applicant appropriate, subject to certain points of criticism. These include poor consideration of the influence of the proposed Longbarrow Junction on OUV; inadequate attention paid to the less tangible and dynamic aspects of setting, as well as the absence of consideration of certain settings; and concerns regarding the consideration given to the interaction and overall summation of effects. The ExA took these points into account in its assessment [ER 5.7.327]. The ExA is also content overall with the mitigation strategy, apart from the proposed approach to artefact sampling and various other points identified. As set out in Appendix E to its Report the ExA recommends the Secretary of State considers resolving these matters if the decision differs from the recommendation [ER 5.7.328].

30. On the effects of the Development on spatial relations, visual relations and settings, the ExA concludes that substantial harm would arise. This conclusion does not accord with that of Historic England, but is based on the ExA's professional judgments, having regard to the entirety of evidence on cultural heritage [ER 5.7.329]. In particular, the ExA places great weight on the effects of the spatial division of the cutting, in combination with the presence of the Longbarrow Junction on the physical connectivity between the monuments and the significance that they derive from their settings. This includes the physical form of the valleys, with their historic significance for past cultures, and the presence of archaeological remains [ER 5.7.330].

31. The ICOMOS mission reports and the WH Committee decisions, alongside the submissions of DCMS, in the context of the remainder of the evidence examined have been noted by the ExA and it regards the reports and decisions as both relevant and important, but not of such weight as to be determinative in themselves [ER 5.7.331].

32. The Secretary of State notes the ExA's approach has been to integrate cumulative and in-combination effects into its assessment, where relevant and that the ExA agrees with the outcome of the Applicant's exercise that cumulative effects arising from the future baseline would not be significant, and that adequate mitigation has been arranged in respect of in-combination effects during construction and operation [ER 5.7.332].

33. It is the ExA's opinion that when assessed in accordance with NPSNN, the Development's effects on the OUV of the WHS, and the significance of heritage assets through development within their settings taken as a whole would lead to substantial harm [ER 5.7.333]. However, the Secretary of State notes the ExA also accepts that its conclusions in relation to cultural heritage, landscape and visual impact issues and the other harms identified, are ultimately matters of planning judgment on which there have been differing and informed opinions and evidence submitted to the examination [ER 7.5.26]. The Secretary of State notes the ExA's view on the level of harm being substantial is not supported by the positions of the Applicant, Wiltshire Council, the National Trust, the English Heritage Trust, DCMS and Historic England. These stakeholders place greater weight on the benefits to the WHS from the removal of the existing A303 road compared to any consequential harmful effects elsewhere in the WHS. Indeed, the indications are that they



consider there would or could be scope for a net benefit overall to the WHS [ER 5.7.54, ER 5.7.55, ER 5.7.62, ER 5.7.70, ER 5.7.72 and ER 5.7.83].

34. The Secretary of State notes the differing positions of the ExA and Historic England, who has a duty under the provisions of the National Heritage Act 1983 (as amended) to secure the preservation and enhancement of the historic environment. He agrees with the ExA that there will be harm on spatial, visual relations and settings that weighs against the Development. However, he notes that there is no suggestion from Historic England that the level of harm would be substantial. Ultimately, the Secretary of State prefers Historic England's view on this matter for the reasons given [ER 5.7.62 – 5.7.69] and considers it is appropriate to give weight to its judgment as the Government's statutory advisor on the historic environment, including world heritage. The Secretary of State is satisfied therefore that the harm on spatial, visual relations and settings is less than substantial and should be weighed against the public benefits of the Development in the planning balance.

35. Whilst also acknowledging the adverse impacts of the Development, the Secretary of State notes that Historic England's concluding submission [Examination Library document AS-111] states that it has supported the aspirations of the Development from the outset and that putting much of the existing A303 surface road into a tunnel would allow archaeological features within the WHS, currently separated by the A303 road, to be appreciated as part of a reunited landscape, and would facilitate enhanced public access to this internationally important site [ER 5.7.62] and that overall it broadly concurs with the Applicant's Heritage Impact Assessment [ER 5.7.66]. Furthermore, it is also noted from Historic England's concluding submission that it considers the Development proposes a significant reduction in the sight and sound of traffic in the part of the WHS where it will most improve the experience of the Stonehenge monument itself, and enhancements to the experience of the solstitial alignments [ER 5.12.32]. It considers that, alongside enhanced public access, these are all significant benefits for the historic environment.

36. The Secretary of State also notes from Historic England's concluding submission made during the examination [Examination library document AS-111] that its objective through the course of the examination was to ensure that the historic environment is fully and properly taken into account in the determination of the application and, if consented, that appropriate safeguards be built into the Development across the dDCO, OEMP and the Detailed Archaeological Mitigation Strategy ("DAMS") [ER 5.7.63]. Whilst it is also noted that Historic England identified during the examination a number of concerns where further information, detail, clarity or amendments were needed, particularly around how the impacts of the Development would be mitigated, their concluding submission states that its concerns have been broadly addressed. Historic England believe that the dDCO, OEMP and DAMS set out a process to ensure that heritage advice and considerations can play an appropriate and important role in the construction, operation and maintenance of the Development. As a consequence of the incorporation of the Design Vision, Commitments and Principles in the OEMP, together with arrangements for consultation and engagement with Historic England, it considers sufficient safeguards have been built in for the detailed design stage and there are now sufficient provisions for the protection of the historic environment in the dDCO. It is Historic England's view that the DAMS is underpinned by a series of scheme specific research questions which will ensure that an understanding of the OUV of the WHS and the significance of the historic environment overall will guide decision making and maximise opportunities to further understand this exceptional landscape. It considers the DAMS will also ensure that the archaeological mitigation under the Site Specific Written Schemes of Investigation ("SSWSIs") will be supported by the use of innovative methods

and technologies and the implementation of an iterative and intelligent strategy, which will enable it to make a unique contribution to international research agendas.

37. Given the amendments and assurances requested and received during the course of the examination and the safeguards that are now built into the DCO overall, Historic England states in the concluding submission that it is confident of the Development's potential to deliver benefits for the historic environment.

38. The Secretary of State also notes that Historic England would continue to advise the Applicant on the detail of the design and delivery of the Development through its statutory role and its roles as a member of Heritage Monitoring and Advisory Group and of the Stakeholder Design Consultation Group. The ExA agrees with Historic England's view that this would also help minimise impact on the OUV, and delivery of the potential benefits for the historic environment [ER 5.7.69].

39. Historic England's response to the Secretary of State's further consultation on 4 May 2020 also indicates that its advice has addressed the need to avoid any risk of confusion which might impede the successful operation of the processes, procedures and consultation mechanisms set out in the revised DAMS and OEMP designed to minimise the harm to the Stones and surrounding environment of the WHS.

40. Similarly, the Secretary of State also notes the National Trust's support for the Development and view that, if well designed and delivered with the utmost care for the surrounding archaeology and chalk grassland landscape, the Development could provide an overall benefit to the WHS. It also considers the Development could help to reunite the landscape providing improvements to monument setting, tranquility and access for both people and wildlife. Following initial concerns about the lack of detail in relation to both design and delivery, it is now satisfied that sufficient control measures have been developed through the DAMS and OEMP and also in the dDCO [ER 5.7.70 – 5.7.71]. English Heritage Trust support the scope for linking Stonehenge back to its wider landscape and making it possible for people to explore more of the WHS and welcomes the reconnection of the line of the Avenue [ER 5.7.72]. DCMS also expressed the view that the Development represents a unique opportunity to improve the ability to experience the WHS and its overall impact would be of benefit to the OUV of the WHS, primarily through the removal of the existing harmful road bisecting the site [ER 5.7.81 – 5.7.83].

41. The Secretary of State notes that whilst Wiltshire Council acknowledge that the most significant negative impact of the Development would be that of the new carriageway, cutting and portal on the western part of the WHS, the Council considers the removal of the existing A303 road would benefit the setting of Stonehenge and many groups of monuments that contribute to its OUV and the removal of the severance at the centre of the WHS caused by the road would improve access and visual connectivity between the monuments and allow the reconnection of the Avenue linear monument. It considers the removal of the existing Longbarrow Roundabout and the realignment of the A360 would also benefit the setting of the Winterbourne Stoke Barrow Group and its visual relationship to other groupings of monuments in the western part of the WHS and the absence of road lighting within the WHS and at the replacement Longbarrow Junction would help reduce light pollution. The rearranged road and byway layout to the east would remove traffic from the vicinity of the scheduled Ratfin Barrows [ER 5.7.55 – 5.7.57].

42. The Secretary of State also notes from the Statement of Common Ground agreed between Wiltshire Council and the Applicant [Examination library document AS-147] that Wiltshire Council's regulatory responsibilities include managing impacts on Wiltshire's heritage assets and landscape, in relation to its statutory undertakings. These responsibilities include having regard to the favourable conservation status of the WHS. The document notes that the Development affects several built heritage assets, both designated and undesignated. However, all sites of interest along the route had been visited by the relevant Council officer with the built heritage consultant, and general agreement exists regarding the likely extent of the Development's impacts. Wiltshire Council agreed that there are no aspects that are considered likely to reach a level of 'substantial harm'.

43. The Secretary of State has also carefully considered the ExA's concerns and the respective counter arguments and positions of other Interested Parties, including ICOMOS-UK, WHSCU, the Stonehenge Alliance, the COA and the CBA in relation to the effects of elements of the Development on the OUV of the WHS and on the cultural heritage and the historic environment of the wider area raised during the examination. The Secretary of State notes in particular the concerns raised by some Interested Parties and the ExA in respect of the adverse impact arising from western tunnel approach cutting and portal, the proposed Longbarrow Junction and, to a lesser extent, the eastern approach and portal [ER 5.7.207]. He accepts there will be adverse impacts from those parts of the Development. However, on balance and when considering the views of Historic England and also Wiltshire Council, he is satisfied that any harm caused to the WHS when considered as a whole would be less than substantial and therefore the adverse impacts of the Development should be balanced against its public benefits.

*The Secretary of State's further consultations on the Hidden Landscapes Project archaeological find*

44. Since the close of the examination, the COA in its representation dated 25 June 2020 and the Stonehenge Alliance in its representation dated 26 June 2020 have also brought to the Secretary of State's attention the Hidden Landscapes Project archaeological find (see Gaffney, V. et al. 2020 *A Massive, Late Neolithic Pit Structure associated with Durrington Walls Henge*, Internet Archaeology 55. <https://doi.org/10.11141/ia.55.4>), which is interpreted as a series of large pit structures surrounding Durrington Walls within the WHS but outside the DCO boundary. The Secretary of State's further consultation letters of 16 July 2020 and 20 August 2020 accordingly sought comments from certain Interested Parties on matters raised in the Hidden Landscapes Project report and the representations above relating to the archaeological find and its: i) implications for the Development and any harm it may cause to the WHS; and ii) implications for the Applicant's Environmental Statement ("ES"), including the Heritage Impact Assessment ("HIA"), and the proposed DAMS.

45. The consultation letter of 20 August 2020 also sought comments on the other environmental information provided by the Applicant in response to the 16 July 2020 consultation letter; it is noted the other environmental information consisted of an Addendum to the ES to address the archaeological find and also to update the ES submitted with the Application by including the corrections, replacements and additions to the ES that were submitted during the examination. In respect of the ES Addendum, the Secretary of State notes it has not identified any new Likely Significant Effects and concludes that the conclusions of the ES and the HIA remain valid. The consultation letter also sought comments on the further justification provided by the Applicant in their letter of 11 August

2020 in respect of the drafting of articles 22 and 50 of the dDCO. This is considered further in paragraphs 105-106 below.

46. The Secretary of State has carefully considered the detailed representations received in response to the consultations above. A number of Interested Parties, including the CBA, the Stonehenge Alliance, the COA, ICOMOS-UK, local museums and individuals, continue to oppose the Development and its impact on the WHS. The COA has highlighted that *“one of the primary conclusions of the Durrington massive pits publication is that the spatial interrelatedness and coherence of the features identified are such that it is inconceivable they are anything other than a non-natural prehistoric monumental structure of a kind that is unparalleled in scale and character not only within the WHS but more generally in British prehistoric archaeology (Gaffney et al. 2020a)”*. In summary, the representations from the above Interested Parties also consider the archaeological find represents a major monument contributing to the WHS OUV and has profound implications for understanding the significance of the WHS. Whilst it is acknowledged that the archaeological find would not be physically damaged by the Development, it is argued that the WHS ought to be treated as a single heritage asset and accordingly protected in its entirety. It is also considered that the archaeological find strengthens the arguments put forward during the examination on the importance of the relationship and interconnectivity of the WHS’s heritage assets and its spaces and the level of harm to the OUV of the WHS that would be caused by the Development. The religious/spiritual significance of the WHS as a whole has been highlighted. These Interested Parties also argue that such archaeological finds highlight the need for further research and assessment of the landscape as a whole. The adequacy of the baseline data, and the Applicant’s approach to and findings in the ES (in particular whether assessments appropriately recognised the value of similar pits) is questioned. A number of Interested Parties conclude that the DAMS and the proposed mitigation measures are not fit for purpose. The interpretation of the archaeological find by the Applicant, Wiltshire Council, Historic England and others is questioned. It has also been highlighted that the assessments produced by the Applicant and the consultation responses from statutory consultees are either silent as to their authorship or as to the credentials/expertise/experience of their authors and so the Secretary of State should give it little weight. Some Interested Parties suggested that there is no majority support from the Scientific Committee experts for the Development or the DAMS. It is also suggested that the Secretary of State should take a precautionary approach and refuse the Development or alternatively should re-open the examination to allow the evidence on the archaeological find to be fully tested.

47. The Secretary of State notes the Applicant has provided an overarching summary and detailed table of its response to all the consultation representations received. In summary, it is also noted by the Secretary of State from the other representations received that the views of those opposed to the Development and the implications of the archaeological find summarised above are not shared by all Interested Parties, including some archaeologists who have questioned the Hidden Landscapes Project interpretation of the archaeological find. Some Interested Parties who are supportive of the Development have also highlighted again the benefits that would derive to the WHS from removing the existing A303 road, including in terms of improved access to the wider WHS and from removing noise and traffic with its associated impacts on the surrounding villages caused by the current congestion. The opportunities that would be provided for further archaeological discovery during construction of the Development have also been highlighted.

48. Furthermore, the Secretary of State notes from Historic England's consultation responses that it considers that the published research on the archaeological find does not change its view that the Applicant's assessments were sufficiently rigorous to inform the determination and development of an appropriate and proportionate archaeological mitigation strategy. It remains of the opinion that the surveys and evaluations conducted as part of the DCO process were adequate to ensure that any features of a similar nature to these within the DCO limits would have been detected. Historic England considers the DAMS provides for a proportionate approach to sampling with natural features that have been shown to contain archaeological remains to be completely excavated (100%) informed by the further development of the research strategy and specialist input. It considers that provision has been made in the DAMS for dealing with unexpected finds during construction and that safeguards have been included to facilitate the integration of these matters as raised by the preliminary results of the research through the SSWSIs. It also believes that the Development scheme has the potential to deliver a lasting positive legacy for one of the most important prehistoric landscapes in the world, helping to reduce the sight and sound of traffic and helping to reunite the landscape and to allow further appreciation and exploration of the WHS and its internationally important archaeological remains.

49. Wiltshire Council also consider the new archaeological findings do not change the assessments of impact of the Development on the OUV of the WHS contained within the ES and HIA. It was pleased to see the additional assessments undertaken by the Applicant and agrees with its conclusions. Its view is that the ES and HIA are thorough and comprehensive and disagrees with those Interested Parties that consider the A303 field evaluation commissioned by the Applicant is inadequate. Wiltshire Council also considers the DAMS and SSWSIs provide a mechanism for fully assessing and mitigating any archaeological remains which may be discovered during the mitigation phase on the road line and portals. Similarly, the National Trust also consider there are no substantive implications for the Applicant's ES, the HIA or the DAMS. The English Heritage Trust also consider that the archaeological find does not imply that the heritage assessments by the Applicant were not rigorous enough and note that an iterative and reflexive process of assessment for new discoveries is already built into the DAMS. Its view is also that its ability to encourage visitors to explore further into the landscape is greatly hampered by the current A303 road and the Development has the potential to transform the Stonehenge part of the WHS landscape by removing the sight and sound of the current road.

50. Following the further consultations of 16 July and 20 August, the Secretary of State is satisfied that Interested Parties have been provided with adequate opportunity to scrutinise all relevant documents and make their views known on this matter both during and since the examination. Further, in response to the suggestion that the examination should be re-opened to consider this matter, the Secretary of State notes that there is no legislative provision that allows for the re-opening of the examination. With regards to the concerns also raised relating to the expertise and qualifications of the person or persons responsible for preparing the Applicant's ES and HIA and also those of statutory consultees, the Secretary of State notes that a statement of expertise was included in paragraph 1.5 of the Main Report of the Applicant's ES in accordance with the requirements of the 2017 Regulations. Although the Applicant also subsequently provided an ES Addendum following the close of the examination, the Secretary of State considered that information to be "any other information" for the purposes of the 2017 Regulations that does not require a similar statement of expertise. However, in the interests of good administration and fairness, the Secretary of State asked that this be treated for advertising purposes as if it were "further

information” under the 2017 Regulations. In conclusion on cultural heritage and the historic environment, the Secretary of State places great importance in particular on the views of his statutory advisor, Historic England and also sees no reason to doubt the expertise of those from Historic England or other statutory consultees that have advised on this matter (or indeed on other matters relating to the application). As indicated above, whilst he accepts there will be harm, there is no suggestion from Historic England that the harm will be substantial. The Secretary of State agrees with Historic England on this matter and is also encouraged by the continued role Historic England would have in the detailed design and delivery of the Development should consent be granted. Whilst also acknowledging some Scientific Committee experts are not content with the mitigation proposed and also that the ExA was not content with the proposed approach to artefact sampling, the Secretary of State accepts Historic England’s views on this matter and is satisfied that the mitigation measures included in the updated OEMP and DAMS as submitted by the Applicant on 18 May 2020 and secured by requirements 4 and 5 in the DCO are acceptable and will help minimise harm to the WHS.

51. He is also satisfied whilst giving great weight to that harm, it would not outweigh the issue-specific traffic and transport [ER 5.17.23 -5.17.24, 5.17.59, ER 5.17.78 – 5.17.80 and ER 5.17.124 – 5.17.127], community [ER 5.14.32], economic [ER 5.16.41, ER 5.16.98 - 5.16.99, ER 5.17.34, ER 5.17.119 and ER 5.17.128], ecological [ER 5.5.65, 5.5.73, 5.5.85, 5.5.89 and 5.5.101] and water environment [ER 5.9.126] benefits of the Development that have been recognised by the ExA or the cultural and historic environment benefits of the Development identified above by the Applicant [ER 5.7.29], Wiltshire Council, Historic England, the National Trust, English Heritage Trust and DCMS.

### Landscape and Visual Effects

52. The Secretary of State notes the ExA’s consideration of landscape and visual effects [ER 5.12]. The ExA’s conclusions are that beneficial landscape and visual effects would include those which impinge on the connectivity and tranquillity of the landscape within much of the WHS through conversion of the existing A303 road to a NMU byway. It considers beneficial visual effects would also be available to WHS visitors and users of the PRow network in much of the WHS and also that the Winterbourne Stoke visual receptors and townscape would benefit [ER 5.12.148]. However, the ExA also concludes there would be adverse effects on the landscape and visual amenity to the west of Green Bridge 2, where the impact of the carriage embankment, the River Till crossing and users of the PRow network would also be adversely affected. The ExA considers the character of the landscape would be significantly harmed in areas associated with the Longbarrow Junction and the western cutting and portal despite mitigation measures. In addition, there would be adverse visual impacts experienced by users of the new byway system along the line of the old A303 road where, at certain points, very close views into the cutting and down towards the portal would be inevitable, but use of the byway would be enjoyable away from the cutting and Junction [ER 5.12.149]. Whilst in many respects, the ExA considers the Development has been designed carefully to accord with paragraphs 5.157 and 5.158 of the NPSNN, its view is that despite mitigation, the overall effect on landscape character and visual amenity would cause considerable harm and therefore conflicts with the NPSNN [ER 5.12.150]. The ExA considers conflict with the Core Policy 51 of Wiltshire’s development plan would also arise, even though notably with regard to the benefits identified from reduced light pollution [ER 5.7.29, 5.7.235, 5.7.245, 5.7.310] and the impact of the existing A303, the Development accords with the policies set out in the WHS Management Plan [ER 5.12.151].

53. The Secretary of State also recognises the landscape and visual impact concerns of others including the Campaign to Protect Rural England [ER 5.12.37 – 5.12.38], WHSCU [ER 5.12.39 – 5.12.41], the Stonehenge Alliance [ER 5.12.42 – 5.12.53], CBA [ER 5.12.54 – 5.12.59] and COA [ER 5.12.60 – 5.12.65].

54. The Secretary of State notes that Wiltshire Council's Local Impact Report [Examination library document REP1-057] identifies some construction impacts and also that during operation residual adverse visual effects would remain within the River Till valley arising from the new viaduct and for users of the PRow network, and for residents at Countess Farm. However, it also points to permanent beneficial landscape and visual effects due to improved tranquillity, habitat creation and a reduction in landscape severance within the WHS, during the operational phase of the Development [ER 5.12.26 -5.12.27]. In a written representation [Examination library document REP2-045], Wiltshire Council also considers that overall, it delivers beneficial effects through the reconnection of the landscape within the WHS and avoiding the severance of communities [ER 5.12.28].

55. Similarly, the Secretary of State notes that Historic England considers that the Development would bring about a significant reduction in the sight and sound of traffic in the part of the WHS where it would most improve the experience of the iconic Stonehenge monument, and enhancements to the experience of the solstitial alignments. It would also facilitate wider access, allowing people to reach and explore the landscape further, reuniting previously severed parts of the WHS [ER 5.12.32]. English Heritage Trust noted the significant positive impact for the public and the WHS from removing the old Stonehenge visitor facilities and grassing over of the A344 in 2013 and considers the current Development has the potential to further transform the WHS and make significant improvements to the setting of WHS. It also welcomes the reconnection of the Avenue [ER 5.12.33 -5.12.34]. The National Trust also consider the Development could provide an overall benefit to the WHS [ER 5.12.35 – 5.12.36].

56. In considering the above, the Secretary of State agrees that there will be both adverse and beneficial visual and landscape impacts as identified by the ExA in its Report [ER 5.12.148 – 5.12.149]. However, he disagrees that the level of harm on landscape impacts conflicts with the aims of the NPSNN. The Secretary of State is satisfied the Development has been designed to accord with the NPSNN and is also satisfied that reasonable mitigation has been included to minimise harm to the landscape. He recognises the adverse harm caused but considers that the beneficial impacts throughout most of the WHS outweigh the harm caused at specific locations and therefore considers that there is no conflict with the aims of the NPSNN [ER 5.12.150]. For these reasons, he considers landscape and visual effects to be of neutral weight in the overall planning balance.

### Health and Wellbeing

57. The sensitivity of the WHS environment to people's beliefs and their rights to exercise those beliefs is recognised. The broader WHS landscape's religious and spiritual significance is also understood and appreciated. Furthermore, the Secretary of State notes that no evidence was presented to suggest that the Development would prevent or limit anyone from exercising these rights [ER 5.11.66]. The ExA considers the Applicant has fully addressed this issue and is satisfied that the Development would accord with the NPSNN [ER 7.2.46]. The Secretary of State agrees. He also agrees that article 16 of the dDCO, as revised during the examination, would address the concerns of the Druid Orders in respect

to the treatment of human remains [ER 7.2.47]. However, the ExA accepts that the changes that would result from the Development would adversely affect a significant number of people who have become accustomed to seeing the Stones as they pass the site. It considers this loss of view is an adverse impact, albeit of modest weight, in the overall planning balance [ER 7.2.48]. The proposed design has evolved to minimise adverse impacts during construction and operation and the ExA considers that any adverse effects on residential amenity would be reduced to an acceptable level [ER 7.2.49]. Overall, the Secretary of State is satisfied that with the exception of the loss of views of the Stones for those passing the monument, to which modest weight is attached, there are no other health and wellbeing issues that weigh against the Development in the planning balance [ER 7.2.52].

### Public Rights of Way and Non-Motorised Users

58. The Secretary of State notes the ExA's view that there is no reason to withhold DCO consent on the basis of the implications of the Development for the PRoW network. The Secretary of State also notes the ExA's view that the Development makes appropriate provision for mitigating the effects of the scheme on NMUs, reduces severance and enhances connectivity in accordance with the advice in the NPSNN and NPPF. The ExA considers there would be a slight loss of amenity currently enjoyed by motorcyclists and others as a consequence of the link between Byways Open to All Traffic ("BOATs") 11 and 12. However, it does not consider there would be any breach of section 136 of the 2008 Act or the duties of the Applicant or Wiltshire Council as highways authorities under section 130 of the Highways Act 1980 [ER 5.15.158]. The ExA is also satisfied that the DCO and OEMP secured by requirement 4 of Schedule 2 to the DCO contain effective provision for consultation with stakeholders on matters such as standard of provision of new and modified rights of way, appropriate surfacing to facilitate shared use, fencing and detailed design matters to ensure integration within and adjoining the WHS landscape. However, the ExA also acknowledges that in some locations this will involve compromises which may not fully satisfy the objectives of particular user groups. Nevertheless, the Development as a whole responds satisfactorily to the NPS policy requirement to enhance accessibility for NMUs and to mitigate impacts on accessibility for NMUs [ER 5.15.160].

59. Whilst noting the views of cycling user groups made both during and since the examination on the implications of the Development for NMUs, including Cycling UK's post-examination representations on cyclists being able to use the proposed tunnel between the Longbarrow and Countess junctions, the Secretary of State shares the Applicant's safety concerns on this matter. He is satisfied that an alternative route is available and notes that the Development would also include 10 miles of surfaced, restricted byways and bridleways where motorised vehicles are excluded. He sees no reason therefore to disagree with the ExA's conclusion that there are no material adverse impacts upon users of PRoWs or NMUs to weigh against the identified benefits of the Development in the planning balance except in relation to a slight loss of amenity currently enjoyed by motorcyclists and others as a consequence of a link between BOATs 11 and 12. However, it is noted that the ExA considers there are reasonable alternatives available and so it is not necessary to provide an alternative route for those users under section 136 of the 2008 Act [ER 5.15.138 – 5.15.139]. The Secretary of State agrees with the ExA's conclusion on this matter and that the slight loss of amenity above is a factor to which very limited weight should be attributed [ER 7.2.60 – 7.2.61].

### Socio-Economics Effects



60. The Secretary of State notes that socio-economic concerns were raised during the examination from individuals and individual businesses and companies. The Secretary of State sees no reason to disagree with the ExA's conclusion that the temporary harm identified during the construction period and long-term effects during operation have been appropriately assessed and would be satisfactorily mitigated by means of the obligations in the OEMP that are to be secured through the DCO. Whilst the potential harm to these individuals and businesses is a factor to weigh in the planning balance, the Secretary of State agrees it should be attributed limited weight [ER 7.2.62 – 7.2.64].

### Other Issues Considered by the ExA

#### Climate Change

61. The Secretary of State notes the ExA's consideration of climate change [ER 5.6]. The ExA's consideration of this matter includes a summary of the Applicant's approach [ER 5.6.30 – 5.6.35] to amendments made to the Climate Change Act 2008 by the Climate Change Act 2008 (2050 Target Amendment) Order 2019<sup>5</sup>, which amends section 1 so that the target is for net zero greenhouse gas emissions (following an adjustment for trading in carbon units). The ExA has also considered the individual and cumulative carbon emission concerns raised by other Interested Parties during the examination [ER 5.6.36-5.6.43]. The Secretary of State notes from the ExA's conclusions on this matter [ER 5.6.44 – 5.6.58] that the ExA concurs with the Applicant that it would not be possible to provide an accurate or robust assessment of contribution made by the Development to the cumulative impact, together with other schemes, on overall greenhouse gas emissions. Nonetheless, the ExA is satisfied that the Development's greenhouse gas contribution as a proportion of the total UK carbon emissions would be very small [ER 5.6.56]. The Secretary of State sees no reason to disagree with the ExA's conclusion that the Applicant's ES and additional information provided by the Applicant during the examination has demonstrated that, taking into account the identified mitigation measures, the Development would be in accordance with national and local policies and guidance in relation to climate change [ER 5.6.58]. He is satisfied the Development is consistent with paragraphs 5.17 and 5.18 of NPSNN and that the increase in carbon emissions that would result from the Development are not so significant that it would have a material impact on the ability of the Government to meet its carbon reduction targets. In conclusion, the Secretary of State therefore also agrees with the ExA that climate change is not a matter that weighs against the Development in the planning balance [ER 7.2.30].

62. The Secretary of State also notes the post examination representations and consultation responses from the Stonehenge Alliance in relation to transport and climate change issues, including its comments calling for the need for reassessment of the future of the Road Investment Strategy 2: 2020-2025 ("RIS2")<sup>6</sup> published in March 2020 and the A303 scheme following Covid-19 and the advisability of awaiting the outcome of the subsequent legal challenge to RIS2 by the Transport Action Network. Whilst it would not be appropriate for the Secretary of State to comment on the legal challenge to RIS2, he does not consider that the representations from the Stonehenge Alliance lead him to reach a different

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<sup>5</sup> <http://www.legislation.gov.uk/ukxi/2019/1056/contents/made>

<sup>6</sup>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/872252/road-investment-strategy-2-2020-2025.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/872252/road-investment-strategy-2-2020-2025.pdf)

conclusion on this matter or require him to delay a decision on the application pending the outcome of that legal challenge.

### Other Issues

63. It is noted that the ExA considers in respect of the Development that, on balance, the impacts of the following matters are also of neutral weight in the decision as to whether to make the DCO: air quality [ER 5.3 and ER 7.2.27]; alternatives [ER 5.4 and ER 7.2.28]; biodiversity and wildlife [ER 5.5 and ER 7.2.29]; design [ER 5.8 and ER 7.2.34]; flood risk, ground water protection and water environment [ER 5.9 and ER 7.2.44]; geology, soil and land contamination [ER 5.10 and ER 7.2.38]; noise and vibration [ER 5.13 and ER 7.2.58]; people and communities [ER 5.14 and ER 7.2.59]; and traffic and transportation [ER 5.17 and ER 7.2.68]. The Secretary of State sees no reason to disagree with the ExA's reasoning and conclusions on these matters.

### Whether subsections (4), (5) or (6) of section 104 of the 2008 Act apply in this Case

#### *The World Heritage Convention*

64. The Secretary of State notes that a number of Interested Parties made legal submissions alleging that the Development would be in breach of the United Nations Scientific and Cultural Organisation Convention concerning the protection of World Cultural and Natural Heritage 1972 ("WHC") [ER 7.3.1 – 7.3.8]. Section 104(3) of the 2008 Act requires the Secretary of State to decide an application in accordance with the relevant NPS, except where satisfied, amongst other things, that this would lead to the UK being in breach of its international obligations. Interested Parties therefore raised the question of whether granting consent in accordance with the NPSNN would place the UK in breach of Articles 4, 5 and 6 of the WHC [ER 7.3.35 – 7.3.38].

65. The ExA has set out its conclusions in relation to the WHC [ER 7.3.35 - 7.3.43]. As the ExA has noted, an international treaty has no legal effect in domestic law unless implemented by domestic legislation. Designation of a WHS brings no additional statutory controls, but protection is afforded through the planning system. The relevant planning policies are contained in the NPSNN and the NPPF, which postdate the WHC and the ICOMOS Guidance, and the ExA considers it is entitled to assume they were also taken into account in the formulation of those national planning policy documents. The ExA considers the protection and conservation of WHSs is thereby integrated into the UK planning system, including for Nationally Significant Infrastructure Projects applications. As the ExA notes, these policies have not been subject to any legal challenges on the grounds of non-compliance with the WHC or the Operational Guidelines [ER 7.3.39 – 7.3.40].

66. The Secretary of State agrees with the ExA and also does not accept that a finding of harm (whether substantial or less than substantial) to the attributes of OUV must inevitably mean that the grant of development consent for the Development would result in the UK being in breach of its international obligations under the WHC. As the ExA has noted, the application by the Secretary of State of the relevant domestic policies and ultimately the planning balance envisaged in the NPSNN in the decision-making process would not have that effect. The Secretary of State is satisfied that the Development is in accordance with NPSNN and in granting consent, this would not lead to the UK being in breach of its WHC obligations [ER 7.3.43].

#### *Other international or national enactments and duties*

67. The ExA notes that the Stonehenge Alliance and other Interested Parties considered that approval of the Development would be contrary to, amongst other things, the Environmental Impact Assessment Directive (85/337/EEC); the Habitats Directive (Council Directive 92/43/EEC); the Conservation of Habitats and Species Regulations 2017 (Habitats Regulations) in respect of the Salisbury Plain SPA and River Avon SAC; the Bern Convention on the Conservation of European Wildlife and Habitats; the Birds Directive (2009/147/EC) in respect of Annex I species; the Aarhus Convention, in respect of genuine public participation in environmental decision-making; the European Convention on the protection of the Archaeological Heritage; the European Landscape Convention; the SEA Directive (European Directive 2001/42/EC) and the Environmental Assessment of Plans and Programmes Regulations 2004 (Statutory Instrument 2004, No. 1633) on the environmental impacts of the planned A303/A358 corridor improvements programme alone and in combination [ER 7.3.44 – 7.3.52]. The Secretary of State notes the ExA's consideration of the above matters [ER 7.3.63 – 7.3.96]. The ExA has considered whether deciding the application in accordance with NPSNN would lead to the UK being in breach of any of its international obligations or to the Secretary of State being in breach of any duty imposed on the Secretary of State or under any enactment, or whether it would be unlawful by virtue of any enactment to do so. The Secretary of State agrees with the ExA's conclusion that there would be no impediment to a decision made in accordance with the NPSNN pursuant to subsections (4), (5) and (6) of section 104 of the 2008 Act [ER 7.5.28].

#### Habitats Regulations Assessment ("HRA")

68. Under regulation 63 of the Conservation of Habitats and Species Regulations 2017 ("the Habitats Regulations"), the Secretary of State as the competent authority is required to consider whether the Development would be likely, either alone or in-combination with other plans and projects, to have a significant effect on a European Site.

69. Where likely significant effects cannot be ruled out the Secretary of State must undertake an appropriate assessment ("AA") under regulation 63(1) of the Habitats Regulations to address potential adverse effects on site integrity. Such an assessment must be made before any decision is made on undertaking the plan or project or any decision giving consent, permission or other authorisation to that plan or project. In light of any such assessment, the Secretary of State may grant development consent only if it has been ascertained that the project will not, either on its own or in-combination with other plans and projects, adversely affect the integrity of such a site, unless there are no feasible alternatives and imperative reasons of overriding public interest apply.

70. The Secretary of State notes that the Applicant concluded that no likely significant effects were anticipated to occur at the following sites and this conclusion was not disputed:

- Chilmark Quarries Special Area of Conservation ("SAC");
- Mottisfont Bats SAC; and
- Mells Valley SAC.

71. The Secretary of State notes the Applicant identified potential likely significant effects for the following sites:

- River Avon SAC;
- Salisbury Plain SAC; and
- Salisbury Plain Special Protection Area ("SPA").

72. In respect of the River Avon SAC, the Applicant concluded no likely significant effects for all potential effects considered except for the shading of the River Till, which was considered to have potential for likely significant effects on all qualifying features except Desmoulin's whorl snail. The Applicant subsequently concluded no adverse effects on the integrity of the SAC as a result of potential shading. Natural England ("NE") as the Statutory Nature Conservation Body agreed that no likely significant effects is anticipated to occur on the River Avon SAC, and therefore an AA is not required [ER 6.4.32 and ER 6.5.8]. The Environment Agency ("EA"), in respect of its remit for hydrological and hydrogeological matters, also agreed that there would be no adverse effects on the integrity of the River Avon SAC [ER 6.4.28]. The ExA determined that an AA was required in respect of a number of potential effects previously screened out by the Applicant, due to the potential reliance on measures intended to avoid or reduce harmful effects [ER 6.4.9 – 6.4.52]. In conclusion on the River Avon SAC, given their views, the ExA is satisfied that the measures relied upon for the conclusions of the HRA are sufficiently secured by relevant provisions in the DCO and that sufficient information has been provided by the Applicant to demonstrate beyond reasonable scientific doubt that there would be no adverse effect on the integrity of the River Avon SAC either alone or in-combination with plans or projects [ER 6.5.21 – 6.5.22].

73. In respect of the Salisbury Plain SAC, the Applicant concluded no likely significant effects for all effects considered except for dust deposition during construction. The Applicant subsequently concluded no adverse effects on the integrity of the SAC as a result of dust deposition during construction with the proposed control measures. In conclusion on the Salisbury Plain SAC, the ExA agrees that the dust suppression and control mitigation measures as secured and implemented by the OEMP [Examination library document AS-129] and as referenced in the Consolidated Environmental Mitigation Schedule [Examination library document AS-135] are sufficient for the Secretary of State to conclude there would be no adverse effect on the integrity of the qualifying features of the SAC from the construction air quality effects from dust either alone or in-combination with other plans and projects [ER 6.5.30].

74. In respect of the Salisbury Plain SPA, the Applicant identified three potential impact pathways where a likely significant effect to stone curlew of the Salisbury SPA could not be ruled out relating to: the loss of a stone curlew nesting plot; construction disturbance of nesting stone curlew; and recreational disturbance to stone curlew (including in-combination effects) [ER 6.5.32]. The Applicant intends to provide four stone curlew plots in total: a replacement plot at Parsonage Down to address the direct loss of an existing plot; one additional plot agreed in principle with the Royal Society for the Protection of Birds ("RSPB") on its reserve at Winterbourne Down; and two additional plots have been committed to on the same basis as the Winterbourne Down plot [ER 6.5.43]. The proposed replacement plot is to be located within the existing Salisbury Plain SAC. However, given the size of the plot the Applicant submits that "*plot creation will not constitute a significant 'loss' of SAC habitat*" and no adverse effect on the integrity of the Salisbury SAC is anticipated [ER 6.5.34].

75. Towards the end of the examination, the Applicant included a new requirement (requirement 12) in the dDCO to secure the provision and maintenance of the proposed replacement and additional stone curlew breeding plots. The ExA also recommended proposed changes to requirement 12 in its recommended dDCO, which the Secretary of State has since also further consulted on and Natural England have agreed.

76. In conclusion on the Salisbury Plain SPA, the ExA is satisfied that the Applicant has put in place mechanisms that would be secured in the DCO to provide certainty beyond

reasonable doubt that the land for the proposed plots can be delivered and that suitable management and monitoring measures will be put in place in order for the Secretary of State to conclude no adverse effects on the integrity of the Salisbury Plain SPA alone and in combination with other plans and projects during the construction and operation of the Development [ER 7.4.4 and ER 7.4.6].

#### Secretary of State HRA Conclusions

77. Having given consideration to the assessment material submitted during and since the examination, the Secretary of State considers that likely significant effects in relation to construction and/or operations could not be ruled out. The Secretary of State therefore considered an AA should be undertaken to discharge his obligations under the Habitats Regulations. The AA is published alongside this letter.

78. In the Secretary of State's view, the material provided during and since the examination contained sufficient information to inform consideration under regulation 63 of the Habitats Regulations as to the likely impact on the European Sites. The AA has considered the conclusions and recommendation of the ExA. The AA has also taken account of the advice of NE, the EA and the views of other Interested Parties as submitted during and since the examination. Since the close of the examination, the Stonehenge Alliance has made a late representation regarding nutrient levels (including phosphates) affecting the River Avon SAC and this has also been considered as part of the AA.

79. The Secretary of State, having carried out the AA, is content that the construction and operation of the Development, as proposed, with all the avoidance and mitigation measures secured in the DCO, will have no adverse effect on the integrity of any European Site, either alone or in-combination with other plans or projects.

#### **Overall Conclusions on the Case for Development Consent**

80. For the reasons above, the Secretary of State is satisfied that there is a clear need for the Development and considers that there are a number of benefits that weigh significantly in favour of the Development (paragraphs 12-22). He considers that the harm that would arise to agriculture should be given limited weight in the overall planning balance (paragraphs 23-24). In respect of cultural heritage and the historic environment, the Secretary of State recognises that, in accordance with the NPSNN, he must give great weight to the conservation of a designated heritage asset in considering the planning balance and that substantial harm to or loss of designated assets of the highest importance, including WHSs, should be wholly exceptional. He accepts there will be harm as a result of the Development in relation to cultural heritage and the historic environment and that this should carry great weight. Whilst also recognising the counter arguments put forward by some Interested Parties both during and since the examination on this important matter, on balance the Secretary of State accepts the advice from his statutory advisor, Historic England, and is satisfied that the harm to heritage assets, including the OUV, is less than substantial and that the mitigation measures in the DCO, OEMP and DAMS will minimise the harm to the WHS (paragraphs 25-51).

81. The Secretary of State accepts there will be adverse and beneficial visual and landscape impacts resulting from the Development and recognises that the extent of landscape and visual effects is also a matter of planning judgment. He is satisfied the Development has been designed to accord with the NPSNN and that reasonable mitigation has been included to minimise harm to the landscape. He disagrees that the level of harm

on landscape impacts conflicts with the aims of the NPSNN. Whilst he recognises the adverse harm caused, he considers that the beneficial impacts throughout most of the WHS outweigh the harm caused at specific locations and therefore considers that there is no conflict with the aims of the NPSNN. For these reasons, he considers landscape and visual effects to be of neutral weight in the overall planning balance (paragraphs 52-56).

82. The Secretary of State is satisfied that with the exception of the loss of views of the Stones for those passing the site, to which modest weight is attached, there are no other health and wellbeing issues that weigh against the Development in the planning balance (paragraph 57). The Secretary of State agrees with the ExA that there are no material adverse impacts upon users of PRowS or NMU to weigh against the identified benefits of the Development in the planning balance except in relation to a slight loss of amenity currently enjoyed by motorcyclists and others as a consequence of a link between BOATs 11 and 12. He is satisfied that an alternative route is not necessary under section 136 of the 2008 Act in light of the availability of other reasonable alternatives. The Secretary of State agrees that the slight loss of amenity above is a factor to which very limited weight should be attributed (paragraph 58-59).

83. In respect of socio-economic effects, the Secretary of State is content that whilst the potential harm to individuals and businesses is a factor to weigh in the planning balance, it should be attributed limited weight (paragraph 60). He agrees with the ExA's conclusion that climate change is not a matter that weighs against the Development [ER 7.2.30]. Amendments have been made to the Climate Change Act 2008 by the Climate Change Act 2008 (2050 Target Amendment) Order 2019<sup>7</sup>, which amends section 1 so that the target is for net zero greenhouse gas emissions (following an adjustment for trading in carbon units). However, in view of the small increase in greenhouse gas emissions identified as a result of the Development, the Secretary of State is satisfied that the Development would not have a material impact on the ability of the Government to meet its amended 2050 climate change targets (paragraph 61-62).

84. The Secretary of State agrees with the ExA that, on balance, the impacts of the following matters are also of neutral weight in the decision as to whether to make the DCO: air quality; alternatives; biodiversity and wildlife; design; flood risk, ground water protection and water environment; geology, soil and land contamination; noise and vibration; people and communities; and traffic and transportation (paragraph 63).

85. The Secretary of State is satisfied that the Development is in accordance with the NPSNN and in granting consent, this would not lead to the UK being in breach of its WHC obligations (paragraphs 64-66). In considering whether deciding the application in accordance with the NPSNN would lead the UK to be in breach of any of its international obligations or to the Secretary of State being in breach of any duty imposed on the Secretary of State or under any enactment, or whether it would be unlawful by virtue of any enactment to do so, he agrees with the ExA's conclusion that there would be no impediment to a decision made in accordance with the NPSNN pursuant to subsections (4), (5) and (6) of section 104 of the 2008 Act (paragraph 67).

86. The Secretary of State, having carried out an AA, is content that the construction and operation of the Development, as proposed, with all the avoidance and mitigation measures

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<sup>7</sup> <http://www.legislation.gov.uk/ukxi/2019/1056/contents/made>

secured in the DCO, will have no adverse effect on the integrity of any European Site, either alone or in-combination with other plans or projects (paragraphs 68-79).

87. In conclusion, when considering the impact of the Development as a whole and the mitigation measures to be put in place, the Secretary of State is satisfied that on balance the need case for the Development together with the other benefits identified outweigh any harm.

### **Compulsory Acquisition and Related Matters**

88. The Secretary of State notes the ExA's consideration of the powers sought by the Applicant for the compulsory acquisition ("CA") of land and rights over land and for the temporary possession ("TP") of land both for construction and maintenance purposes in Chapter 8 of its Report.

89. In particular, the Secretary notes the objections raised by the National Farmers Union ("NFU") relating to: the adequacy of negotiations with affected landowners/NFU members; the justification for CA of individual land plots and need for further assessment and consideration of alternatives, for example, in relation to the proposed balance ponds and the tunnel arisings; and the need for the proposed new PRoW [ER 8.12.8 – 8.12.28]. The Secretary of State also notes there were a number of remaining individual objections at the end of the examination. It is noted that the ExA has set out its consideration of those objectors falling with Parts 1, 2 and 3 of the Book of Reference ("BoR") and the individual site-specific issues raised by: Classmaxi Limited ("CML") [ER 8.12.30 - 8.12.45]; Beacon Hill Land Limited [ER 8.12.46 – 8.12.55]; English Heritage Trust ("EHT") and Historic England [ER 8.12.56 – 8.12.78]; The Warden or Rector and Scholars of The College of The Blessed Mary and All Saints Lincoln in the University of Oxford [8.12.79 – 8.12.92]; P J Rowland and Sons (Farmers) Limited and Mr C A Rowland [ER 8.12.93 – 8.12.108]; Rachel Hosier [ER 8.12.109 – 8.12.125]; Fiona Elizabeth Turner and Robert Lionel Turner, Matthew Edward Turner and Rachel Turner [ER 8.12.126 – 8.12.148]; IMP Investments HSBC Ltd (Grove Asset) [ER 8.12.149 – 8.12.159]; Travelodge Hotels Limited [ER 8.12.160 – 8.12.176]; Stephen Moore, Till Valley Contracting Limited [ER 8.12.177 – 8.12.190]; Mrs P M Sandell and Philip Sawkill [ER 8.12.191 – 8.12.209]; Mr Robin Peter Geoffrey Vincent Parsons [ER 8.12.210 – 8.12.223]; Catriona Rose Guinness, Erskine Stuart Richard Guinness, and Finn Benjamin Guinness (Biddesden House Farm Partnership), Berwick Down Limited [ER 8.12.224 – 8.12.238]; Hugh Newman [ER 8.12.239 – 8.12.242]; Frances William George Whiting and Louise Susan Whiting and Waves Training Solutions [ER 8.12.243 – 8.12.260]; Mr Fatih Turk [ER 8.12.261 – 8.12.267]; Morrison and King Limited [ER 8.12.268 – 8.12.286]; and Kathleen Edna Crook and Stuart Crook [ER 8.12.287 – 8.12.299].

90. The Secretary of State notes that CML formally withdrew its CA objection on 27 February 2020 following completion of a tripartite agreement with the Applicant and Wiltshire Council (as local highway authority) on 19 February 2020 to enable the Allington Track and Byway AMES1 junctions onto the A303 to be closed and to provide for the Allington Track Diversion, Byway AMES1 diversion, and Equinox Drive (unadopted section) to be constructed by the Applicant and thereafter to be dedicated as highway by CML and adopted as highway maintainable by public expense by Wiltshire Council. Accordingly, Highways England have given an undertaking to CML in the Tripartite Agreement not to exercise any DCO powers in respect of CML's freehold interest in the land.

91. In respect of consideration of other land plots and CA, the Secretary of State agrees with the ExA's conclusions that the requirements of section 122(2)(a) of the 2008 Act have been met and he is satisfied that: the legal interests in all plots of land included in the revised BoR and Land Plans (as amended) would be required for the Development to which the DCO relates; the authorised development identified within Schedule 1 to the DCO would be needed for that purpose; the purpose for each BoR plot is clearly defined; and the need for the development in each of the plots has been demonstrated [ER 8.13.1 -8.13.2].

92. In considering whether there is a compelling case in the public interest under section 122(3) of the 2008 Act, the Secretary of State agrees with the ExA that the Applicant has sought to minimise the impact that CA would have on those individuals affected by the Development and hence their private loss [ER 8.13.5], which would be mitigated by limiting the use of CA powers to land necessary to delivering the Development and through the use of TP powers where possible to minimise land-take and the extent of rights and interests to be acquired [ER 8.13.6]. The Secretary of State notes the ExA is satisfied that the Applicant has explored all reasonable alternatives to CA, including modifications to the Development and acquisition by negotiation and agreement, and that the objections raised do not dissuade the ExA from the conclusion that there are no alternatives to the CA powers sought which ought to be preferred [ER 8.13.7]. The ExA, having had regard to the objections raised by all affected persons, concludes that the public benefits associated with the Development would strongly outweigh the private loss which would be suffered by those whose land would be affected by CA powers to enable the construction, operation and maintenance of the Development [ER 8.13.8].

93. The ExA also considers the Applicant has demonstrated a clear idea of how it intends to use the land and rights which it proposes to acquire and has shown that there is a reasonable prospect of the requisite funds both for acquiring the land and implementing the Development becoming available and that the resource implications of a blight notice have also been taken into account [ER 8.13.9].

94. The Secretary of State notes the ExA's overall conclusions on the above, including its view that the proposed interference with the human rights of individuals would be for legitimate purposes that would justify such interference in the public interest and to a proportionate extent and that the Applicant has complied with its duties under the Equality Act 2010 [ER 13.10.10]. He agrees.

95. The Secretary of State is satisfied that there would be a compelling case in the public interest for the CA powers sought in respect of the CA land shown on the Land Plans (as amended). He agrees there would be compliance with section 122(3) PA2008 and the land-related powers in the DCO are necessary and justified for the Development to proceed [ER 8.13.11].

96. The ExA notes that its recommended DCO seeks, in a number of instances, to apply section 120(5)(a) of the 2008 Act and to apply, modify or exclude a statutory provision. The Secretary of State agrees that in making the DCO in the form of a statutory instrument, it would comply with section 117(4) of the 2008 Act and the powers should be granted [ER 8.13.12].

97. In respect of the representations received under sections 127 and 138 of the 2008 Act, the Secretary of State notes that in relation to section 127 the ExA is satisfied that



adequate protection for the relevant Statutory Undertakers' assets is included in the Protective Provisions in Schedule 11 to the DCO and that the CA of the Statutory Undertakers' land or rights over that land would meet the prescribed tests set out in section 127(3) or (6) of the 2008 Act. In the case of each representation under section 138 of the 2008 Act, the ExA considers the Secretary of State can be satisfied that the extinguishment of the relevant right, or the removal of the relevant apparatus would be necessary for the purpose of carrying out the development to which the DCO relates. The Secretary of State is therefore satisfied that the CA powers sought in relation to Statutory Undertakers' land in the DCO should be granted [ER 8.13.13].

98. The Secretary of State notes that the National Trust land has withdrawn its objection to the CA of the land that is held inalienably by it and agrees the DCO powers authorising CA in relation to the National Trust land would not be subject to the Special Parliamentary Procedure under section 130 of the 2008 Act and should be granted [ER 8.13.14]. Similarly, in respect of the CA of land and rights over land that forms part of open space, the ExA is satisfied that suitable replacement land would be given in exchange for the DCO land and that the DCO land when burdened with the rights sought would be no less advantageous than it was before to the person in whom it is vested, other persons, if any entitled to other rights and the public. The Secretary of State agrees and is satisfied that the DCO would therefore not be subject to the Special Parliamentary Procedure under sections 131 or 132 of the 2008 Act and should be granted [ER 8.13.15].

99. In respect of Crown land, the Secretary of State notes that the Applicant has obtained consent under section 135 of the 2008 Act from all the necessary Crown Authorities in respect of the CA powers sought in relation to Crown land (including, as explained below in paragraph 104, from the Ministry of Defence ("MoD") in respect of a correction sought by the Applicant in respect of requirement 8 in the DCO) and therefore is content that the powers included in the DCO relating to Crown land should be granted [ER 8.13.16].

100. The Secretary of State agrees that the temporary possession powers sought by the Applicant should be granted and are necessary both to facilitate implementation of the Development and to maintain it. He is satisfied adequate compensation provisions are included in the DCO [ER 8.13.17].

### **Draft Development Consent Order and Related Matters**

101. The ExA's consideration of the dDCO is set out in Chapter 9 of its Report. A dDCO and Explanatory Memorandum describing the purpose and effect of the provisions in the application dDCO were submitted as part of the application for development consent by the Applicant [ER 9.1.1]. The Secretary of State notes that a number of further revisions to the dDCO and Explanatory Memorandum were submitted during the examination [ER 9.1.3]. An application for non-material changes was also submitted during the examination and the ExA's Procedural Decision dated 27 September 2019 accepted 8 changes to the application put forward by the Applicant and explained the reasons that led to that decision [Examination document PD-021] [ER 9.2.2]. The Secretary of State notes that the final version of the dDCO as recommended by the ExA is at Appendix D of its Report, should he decide to grant development consent for the application [ER 9.3.1].

### *Request for a correction to requirement 8 in the dDCO*

102. A proposed change request to the Secretary of State was received from the Applicant on 10 February 2020 after the close of the examination to request a correction to a drafting inconsistency relating to requirement 8(1) and 8(2) of the dDCO, which provides for the implementation and maintenance of landscaping schemes. The drafting inconsistency arose as a consequence of amendments made to requirement 8 during the examination and relates to the treatment of Work No.5 (re-alignment of the Rollestone Cross Junction) (“the Rollestone works”).

103. The Rollestone works are a satellite element of the Development and it is noted were intended to be carried out as part the “preliminary works” ahead of the main works for the Development as shown in Work No.5 on Sheet 13 of the Works Plans [APP-008]. However, as drafted in the dDCO, the Secretary of State notes it would only have been possible for requirement 8(1) to be discharged in respect of the Rollestone works following the appointment of the main works contractor and the completion of the detailed design of all of the main works and the related landscaping scheme for the WHS. The Secretary of State considers that this is incompatible with the preliminary works strategy for the Development and that in order to resolve the drafting inconsistency, it is appropriate to exclude the Rollestone works (i.e. Work No.5) from requirement 8(1) and to include them in requirement 8(2), which would still require the approval of a works-specific landscaping scheme prior to the commencement of the Rollestone works.

104. It is noted that as the land within the DCO limits at Rollestone Cross Junction comprises Crown land, the Applicant informed the MoD of this drafting inconsistency and confirmed to the MoD that the proposed correction would have no implications for the terms of the Crown authority consent provided by the MoD, or for the commitments given to the MoD by the Applicant during the examination of the application. The Secretary of State notes from the correspondence included with the Applicant’s request that the MOD has raised no objection to the proposed correction. Similarly, the correction has also been agreed with other relevant stakeholders Wiltshire Council, Historic England, National Trust and English Heritage Trust following engagement on the matter of the proposed correction by the Applicant during December 2019 and January 2020 and prior to the submission of the correction request. As such, the Secretary of State considered the matter to be resolved without the need for further consultation on the correction request. In conclusion, he is satisfied that the correction of this drafting inconsistency is necessary to facilitate the delivery of the scheme as proposed both in terms of construction sequencing and in terms of providing an appropriate overarching approach to landscaping in the WHS.

### *Request for corrections to articles 22 and 50 in the dDCO*

105. The Applicant also made a separate representation dated 11 August 2020 after the close of the examination in respect of a DCO drafting issue relating to articles 22 and 50 in the dDCO concerning the compulsory acquisition of rights for the benefit of parties other than Highways England, specifically where rights are required:

- for the benefit of statutory undertakers whose apparatus is to be diverted in consequence of the scheme; and

- for the benefit of persons with an interest in land, the private means of access to which are proposed to be stopped up and subsequently re-provided across other land, which is not proposed to be acquired outright by Highways England.

106. The representation also includes the Applicant's updated draft Explanatory Memorandum, that accompanied its dDCO and asked that the drafting considerations raised in its letter be taken into account by Secretary of State. The Secretary of State accordingly consulted on this as part of his 20 August 2020 consultation on the archaeological discovery. He has carefully considered the Applicant's proposed amendments to articles 22 and 50, and while this is not the Secretary of State's stated position in relation to these matters, in the circumstances of this application he is satisfied the requested amendments are justified. The Secretary of State has noted the comments from Wiltshire Council that it is content for these amendments to be approved. The CBA in their letter dated 28 September 2020 have set out their concerns that it is not clear how works arising from the amendments to these articles would be subject to archaeological assessment and suitable mitigation. While noting these concerns the Secretary of State accepts that the use of the provisions to transfer rights under the Order would impose on the transferee the same restrictions, liabilities and obligations as would apply if those benefits or rights had been exercised by the Applicant. The Secretary of State is therefore satisfied that these concerns are appropriately addressed.

107. The main modifications which the Secretary of State has decided to make to the DCO are as follows:

- in article 2(1) (interpretation), the definition of "electronic transmission" has been amended to define the term "electronic communications network";
- in article 29(8) (temporary use of land for constructing the authorised development), the provision has been amended to remove sub-paragraphs (a) and (b). The Secretary of State has noted there is no cross over of land in relation to the plots of land set out in Schedules 4 and 7. The Secretary of State cannot therefore be certain that affected landowners would have been made aware that land of which temporary possession may be taken may be subject to the permanent acquisition of rights and so result in potential unfairness;
- in requirement 15(2) (further information) in Schedule 2, the Secretary of State notes that 10 business days has been provided in relation to requesting information when usually 21 business days is allowed, and so that change has been made.

108. The Secretary of State is making a number of other minor textual amendments to the ExA's recommended DCO in the interests of clarity, consistency and precision. He considers that none of these changes, nor the changes set out above, either individually or taken together, materially alter the effect of the DCO.

### **Other Late Representations**

109. The Secretary of State also received a number of other representations outside the formal consultations, including a petition from the Stonehenge Alliance with over 125,000 signatures opposed to the Development. However, it is the Secretary of State's view that they do not raise any new issues that were not considered by the ExA in its report and also do not give rise to an alternative conclusion or decision on the Development. As such, he is satisfied that there is not any new evidence or matter of fact that needs to be referred

again to Interested Parties under rule 19(3) of the Infrastructure Planning (Examination Procedure) Rules 2010 before proceeding to a decision on the Application.

## **Other Matters**

### Natural Environment and Rural Communities Act 2006

110. The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006, must have regard to the purpose of conserving biodiversity and, in particular to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when granting development consent.

111. The Secretary of State is of the view that the ExA's report, together with the environmental impact analysis, considers biodiversity sufficiently to inform him in this respect. In reaching the decision to give consent to the Development, the Secretary of State has had due regard to conserving biodiversity.

### **Secretary of State's overall conclusions and decision**

112. In reaching his decision, the Secretary of State has considered the need case for the Development and other potential benefits and impacts of the Development, including harm to the WHS OUV, and all other relevant matters. In the Secretary of State's judgment any harm to heritage assets, including the OUV, is less than substantial and this harm (whilst carrying great weight), along with the other harms identified, are outweighed by the benefits of the Development.

113. Accordingly, the Secretary of State has decided to grant the application for development consent.

### **Challenge to decision**

114. The circumstances in which the Secretary of State's decision may be challenged are set out in the note attached at the Annex to this letter.

### **Publicity for decision**

115. The Secretary of State's decision on the Application is being publicised as required by section 116 of the 2008 Act and regulation 31 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

Yours faithfully,

Natasha Kopala  
Head of Transport and Works Act Order Unit

## **LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS**

Under section 118 of the Planning Act 2008, a DCO granting development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such a DCO, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the High Court during the period of 6 weeks beginning with the day after the day on which the statement of reasons (decision letter) is published. Please also copy any claim that is made to the High Court to the address at the top of this letter.

The decision documents are being published on the Planning Inspectorate website at the following address:

<https://infrastructure.planninginspectorate.gov.uk/projects/south-west/a303-stonehenge/>

**These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the DCO referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (020 7947 6655).**