

M3 Junction 9 Improvement

Scheme Number: TR010055

8.15 Applicant written summaries of oral case for Issue Specific Hearing 3 (ISH3)

APFP Regulations 5(2)(q)

Planning Act 2008

**Infrastructure Planning (Applications: Prescribed Forms and
Procedure) Regulations 2009**

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Infrastructure Planning

Planning Act 2008

**The Infrastructure Planning
(Applications: Prescribed Forms and
Procedure) Regulations 2009**

M3 Junction 9 Improvement
Development Consent Order 202[x]

**8.15 Applicant Written Summaries of Oral Case for Issue
Specific Hearing 3 (ISH3)**

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Appendices

Appendix A Further information regarding alternatives

1.1 Introduction

- 1.1.1 The purpose of this document is to set out the Applicant's written summary of the oral case for Issue Specific Hearing 3 (ISH 3) held on Tuesday 08 August 2023 in Winchester and virtually via Microsoft Teams.
- 1.1.2 This document does not propose to summarise the oral summaries of parties other than the Applicant, summaries of oral submissions made by other parties are only included where necessary in order to give context to the Applicant's summary.
- 1.1.3 Where the Examining Authority requested further information from the Applicant on particular matters, or the Applicant undertook to provide further information during the Hearing, the Applicant's response is set out.
- 1.1.4 This document follows the order of the Agenda published by the Examining Authority on Friday 04 August 2023.
- 1.1.5 For defined terms and abbreviations, please refer to **Section 12** of the **Introduction to the Application (1.3, Rev 4)**.

1.2 Item 1 – Welcome and introductions

- 1.2.1 Mrs Cathryn Tracey of Burges Salmon LLP confirmed that she represents the Applicant and would speak for all agenda items as needed and let the following topic specialists introduce themselves to speak as required on the agenda items:
- Mr Julian Buckle, Policy and need lead, Stantec
 - Ms Caroline Dinnage, Climate lead, Stantec
 - Mr Kevin Lumsden, Traffic and transportation lead, Stantec

1.3 Item 2 - Policy and Need

Agenda reference	Examining Authority agenda item	Applicant's summary of oral submission
Item 2(i) National policy and the need for the proposed development		
Item 2(i) – first bullet	The National Policy Statement for National Networks (NPSNN) and the strategic need to improve the National Road Network.	The Applicant confirmed it had nothing further to add to its position expressed in the Case for the Scheme (7.1, Rev 1) which was that the need for the Scheme had been established by inclusion of the Scheme in the Road Investment Strategy (RIS) which meant that the Government had concluded a strategic need for the Scheme.
Item 2(i) – second bullet	The need for the Proposed Development in the light of the NPSNN strategic policies including the reasons for seeking the proposed improvements to the existing national road network.	<p>The Applicant confirmed that it had nothing to add to its written submissions regarding the status of the Scheme in the context of National Policy Statement for National Networks paragraph 5.152, it being the Applicant's position that the Scheme is not a significant road widening scheme within the scope of that paragraph.</p> <p>The Applicant confirmed that it had nothing to add to its written submissions regarding compliance with the tests set out in National Policy Statement for National Networks paragraph 5.151.</p>
Item 2(i) – third bullet	The ES consideration of alternatives and the scope for meeting the need in some other way.	In response to the Examining Authority asking the Applicant to explain the extent of assessment of alternatives for viable modal alternatives, the Applicant confirmed that this would likely have been considered by the Department for Transport prior to including the Scheme in the Road Investment Strategy portfolio.

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		<p>Once the Scheme is designated as a Road Investment Strategy Scheme, the Applicant then pursues it as a road scheme and its alternative assessment looks at the Scheme from a road optioneering basis. However, there is a strategy paper [Solent to the Midlands Multimodal Freight Strategy – Phase 1 June 2021] in which National Highways has committed to look at alternative modes and work with other providers such as Network Rail or others to develop other ways of moving traffic around the network or the country. As part of this strategy paper, there is an acknowledgement that National Highways should be looking to improve key junctions on the strategic network and M3 Junction 9 is listed as one of these junctions.</p> <p>The Applicant confirmed that it would try to source any appraisal undertaken by the Department for Transport but that it would be unable to confirm when this might be as it is outside the Applicant's control.</p> <p>In response to a question from the Examining Authority on an issue raised by Winchester Action on Climate Crisis over whether, as a result of the Stonehenge judgment, the Applicant considers the assessment of alternatives to be sufficient. The Applicant confirmed that it would respond in writing but that the assessment of alternatives undertaken as part of the application (see Chapter 3 (Assessment of Alternatives) of the Environmental Statement (ES) (6.1, Rev 1)) satisfies the legal requirements of the relevant Environmental Impact Assessment</p>

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		<p>regime.</p> <p>The Applicant made no further comments in response to the South Downs National Park Authority confirming that it accepts that there is a need for the Scheme and that there is a need for the Scheme to be developed in the National Park by virtue of the junction already existing in the National Park but that there remained additional alternatives that would have reduced impact on the National Park.</p> <p>The Applicant confirmed that it had no further comments in response to Winchester Friends of the Earth's comments regarding the economic outcome of the Scheme.</p> <p>Applicant's post hearing note:</p> <p>Please see Appendix A (Further information regarding alternatives).</p>
Item 2(i) – fourth bullet	The economic and other benefits of the scheme including those in relation to the local economy, improved access to the SDNP and the connectivity of National Cycle Network Route 23.	In response to a specific question by the Examining Authority, the Applicant confirmed that Paragraph 9.8.1 of the Case for the Scheme (7.1, Rev 1) refers to benefits of the Scheme which includes: reducing congestion delays; improved journey times; economic benefits; direct and indirect safety improvements; improvements to visual amenity and landscape character over the long term; wildlife and green infrastructure enhancements; controlling pollution; managing water runoff; and providing

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		<p>enhancements for pedestrians, cyclists and horse riders.</p> <p>The Applicant confirmed that the economic benefits could be split between user benefits and agglomeration benefits; and that whilst the key benefits are monetised, not all are. The monetised benefits are predominately user benefits but also include accident reductions, economic benefits from construction, noise and air quality improvements, and greenhouse gas reductions. Specifically for the local area, of the total user benefits, around 40% are attributed to, from and within Winchester.</p> <p>The Applicant noted Councillor Porter's comments that the Scheme satisfied two of the three priorities of the Winchester Movement Strategy (2019).</p> <p>The Applicant confirmed it would provide a written summary of information regarding the specific and localised economic benefits of the Scheme (see below).</p> <p>Applicant's post hearing note: Table 5-9 of the Combined Modelling and Appraisal Report (7.10, Rev 1) provides a spatial breakdown of the total user benefits. This indicates that 44% (£67.6M) of the user benefits are attributed to travel movements to/from/within the Winchester area.</p> <p>Section 5.7 of the Combined Modelling and Appraisal</p>

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		<p>Report (7.10, Rev 1) details how the wider economic benefits were quantified and where the geographic focus of the agglomeration calculations reflects where Winchester is one of the primary employment locations in the Enterprise M3 area and the Scheme is expected to boost productivity by removing congestion. Therefore, all of the £34.7M of quantified productivity benefits are from the Winchester area.</p> <p>The Applicant understands that the following questions were raised by South Downs National Park Authority:</p> <ul style="list-style-type: none"> ▪ Why is the cost-benefit analysis discounted to 2010? ▪ What discount rate had been used? ▪ Whether the benefit figure of £152 million referred to in Table 5.4 in the Case for the Scheme (7.1, Rev 1) is a gross figure or whether it includes the cost to build the Scheme, and whether that is appropriate? ▪ Whether the wider economic benefits in Table 5.4 in the Case for the Scheme (7.1, Rev 1) are present values? ▪ Whether any '<i>green book</i>' analysis has been carried out? Bearing in mind the Green Book was updated in November 2022 but that the analysis carried out by the Applicant was done against an earlier version. <p>The Applicant confirmed that Table 5.4 in the Case for the</p>

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		<p>Scheme (7.1, Rev 1) demonstrated monetised benefits but that not all benefits of the Scheme are monetised. The Applicant confirmed that the figures used by the Applicant have been calculated to account for inflation in line with Transport Analysis Guidance (TAG) which looks to project the figures in a 60-year benefit appraisal process. The discount rate is also determined by Transport Analysis Guidance provided by the Department for Transport.</p> <p>Applicant's post hearing note: In response to the five specific questions raised by the South Downs National Park Authority:</p> <ul style="list-style-type: none"> ▪ Costs and benefits are presented in 2010 base year present values and prices as specified by the Unit A1.1. This provides a common base year for all schemes being considered by the Department for Transport. ▪ Chapter 5 of the Combined Modelling and Appraisal Report (7.10, Rev 1) details how all costs and benefits were discounted to 2010 values and deflated to 2010 prices. Discounting to 2010 values was applied from a current year of 2022 using discount factors from the Transport Analysis Guidance Databook (3.5% per annum until 30 years after opening, then 3% for the remainder of the 60-year appraisal period). Costs and benefits were deflated to 2010 prices using the Transport Analysis Guidelines Databook GDP deflator series.

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		<ul style="list-style-type: none"> ▪ The Case for the Scheme (7.1, Rev 1) includes presentation of the Present Value of Benefits (PVB), the Present Value of Costs (PVC), and the resulting Net Present Value (NPV). Note that NPV = PVB minus PVC. These are all presented in 2010 present values in 2010 prices. The PVB is £152.3M, the PVC is £112.7M, and the NPV is £39.5M (allowing for slight rounding). ▪ The wider economic benefits in Table 5.4 of the Case for the Scheme (7.1, Rev 1) are presented in 2010 present values in 2010 prices consistent with the other presented economic metrics. ▪ The Scheme economic appraisal was undertaken in accordance with Department for Transport's (DfT) Transport Analysis Guidance (TAG), which meets the Treasury's Green Book guidance on appraisal and evaluation in Central Government. Relevant November 2022 Green Book updates will be incorporated in TAG by the DfT as part of the Orderly Release Process, which provides notice of changes to TAG. It is not anticipated that the current Green Book updates will have a material impact on the published economic appraisal. <p>The Applicant confirmed that modal shift is included in the variable demand model.</p> <p>The Applicant confirmed it would respond to Dr Boswell in</p>

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		<p>relation to his questions on:</p> <ul style="list-style-type: none"> ▪ How the 37,000 tonnes of greenhouse gas emissions for construction vehicles are derived; and ▪ Whether GHG emissions that input into cost benefit ratio account for wider emissions or are Scheme specific. <p>Applicant's post hearing note in response to questions from Dr Boswell:</p> <ul style="list-style-type: none"> ▪ As detailed in Section 5.5 of the Combined Modelling and Appraisal Report (7.10, Rev 1), the Applicant's Carbon Tool V2.4 was used to assess the greenhouse gas emissions associated with the extraction, manufacturing, and transportation within the supply chain of permanent construction materials, plant equipment, temporary welfare facilities and construction waste. The outputs of this assessment were used in the economic appraisal. Further details are provided in Chapter 14 (Climate) of the Environmental Statement (ES) (6.1, Rev 2). Greenhouse gas benefits over the 60-year appraisal period were monetised using Transport Analysis Guidance Greenhouse Gases Workbook values with interpolation of greenhouse gas values between model years. ▪ GHG emissions input into cost benefit ratio are Scheme specific. As detailed in Section 5.7 of the Combined Modelling and Appraisal Report (7.10, Rev 1), the wider

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		<p>economic benefits were quantified based on the relevant Transport Analysis Guidance methods and application of the Department for Transport Wider Impacts in Transport Appraisal (WITA) software (version 2.2). These methods were based on fixed land-use and, therefore, the calculated wider economic benefits do not include additional jobs or transport trips and there is no requirement to monetise equivalent greenhouse gas emissions impacts.</p> <p>Applicant's post hearing note: A response to Winchester Friends of the Earth query relating to the treatment of Scheme costs and optimism bias is provided as part of the Applicant's response in Section 3.1 in Applicant Comments on Deadline 3 Submissions (Document Reference 8.16) submitted at Deadline 4.</p>
Item 2(i) – fifth bullet	The March 2023 NPSNN Consultation Draft and the weight (if any) to be afforded to it.	The Applicant confirmed that the National Policy Statement for National Networks Consultation Draft is an early draft and whilst it is out for consultation, there had been no further output and therefore should be attributed limited weight particularly as the transition provisions currently set out would explicitly disapply its relevance to the schemes currently going through determination. This is because it would be too late for those schemes to address the changes in policy within that draft. Despite this, the Applicant has undertaken an assessment of the new wording of the draft and has not identified any areas of significant conflict. The Draft National Policy Statement for

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		<p>National Networks Accordance Table (8.7, REP2-053) was submitted at Deadline 2.</p>
<p>Item 2(i) – sixth bullet</p>	<p>The implications of any other recent updates/reviews of relevant planning policy documents and publications including the May 2023 update to the Solent to Midlands Route Strategy.</p>	<p>The Applicant confirmed that there is no requirement to review schemes when they are passed between Road Investment Strategy 1 and Road Investment Strategy 2; and that once a scheme has been allocated it does not get re-reviewed against updated strategies.</p> <p>The Applicant confirmed with reference to the specific objectives outlined in the 2023 Solent to Midlands Route Strategy that the Scheme remains consistent, as Objective B refers to improvements to the National Cycle Network route 23 and cycle routes, Objective C addresses congestion of the A34 and Objective D relates to enabling more freight movements.</p> <p>The Applicant confirmed that it would respond in writing to a question raised by the Examining Authority over whether the need for improvement at M3 Junction 9 had been identified consistently within the Solent to Midlands route strategy or whether it had used be part of the M25 to Solent route strategy.</p> <p>Applicant's post hearing note: The performance of M3 Junction 9 has implications on journeys from both the Solent to the Midlands and also from the Solent to the M25 London (and vice versa). The headings below detail where reference to M3 Junction 9 was included within the following route strategies outlined below.</p>

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		<p>The Road Investment Strategy for the 2015/16 – 2019/20 Road Period (RIS1) report includes the M3 Junction 9 improvement was published in December 2014. The second Road Investment Strategy (RIS2) was published on 11 March 2020.</p> <p><i>M25 to Solent Route Strategies:</i></p> <ul style="list-style-type: none"> ▪ <i>M25 to Solent Route Strategy Evidence Report (April 2014)</i> ▪ <i>M25 to Solent Route Strategy Technical Annex (April 2014)</i> ▪ <i>M25 to Solent (A3 and M3) Route Strategy (April 2015)</i> ▪ <i>M25 to Solent (A3 and M3) Route Strategy (March 2017)</i> <p><i>M25 to Solent Route Strategy Evidence Report (April 2014)</i> Issues with congestion at M3 Junction 9 were identified (paragraph 4.7.13). Paragraph 1.3.12 notes that the M25 to Solent Route connects with three other routes for which there are Route Based Strategies, this includes Solent to Midlands. This report was published on 15 April 2014, noting that the first draft was published on the 04 December 2013.</p> <p><i>M25 to Solent Route Strategy Technical Annex (April 2014)</i> Section A4.4 'Capacity challenges and opportunities' identifies high levels of congestion and delay with poor journey time reliability at M3 Junction 9. This report was published in April</p>

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		<p>2014.</p> <p><i>M25 to Solent (A3 and M3) Route Strategy (April 2015)</i> The M3 Junction 9 is identified as a potential constraint on future growth from the ports and developments along the A34 (page 10). Annex A identifies M3 Junction 9 as a Junction upgrade to allow free movement from the A34 to the M3. This report was published in April 2015.</p> <p><i>M25 to Solent (A3 and M3) Route Strategy (March 2017)</i> Section 3 identifies safety issues at M3 Junction 9. The report also states that on the southern section of the M3, junction 9, which connects routes between the Solent and the Midlands experiences a high level of congestion, partly caused by the high proportion of heavy goods vehicles (HGVs) travelling between the M27, M3 and A34 (page 9). This report was published in March 2017.</p> <p><i>South West Peninsula Route Strategy:</i></p> <ul style="list-style-type: none"> ▪ <i>South West Peninsula Route Strategy Initial Overview Report (2023)</i> <p><i>South West Peninsula Route Strategy Initial Overview Report (2023)</i> The eastern part of the route is characterised by the M3 which connects from Southampton through Hampshire to the M25. The report recognises that some journeys on this route are part</p>

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		<p>of longer trips and therefore need to be considered in conjunction with strategies on other routes. The report states that the collision data (STATS19) for the period of 2015-2018 Figure 15, shows the sections of the route where collisions have resulted in higher number of people being killed or seriously injured – this includes between M3 Junction 8 to 9 as well as the M3 Junction 2 to 3 and A35 Axminster to Wilmington (page 53). The report also recognises the need to support the freight network which includes links from Junction 9 to the A34. This report was published in May 2023.</p> <p><i>Solent to Midlands Route Strategies:</i></p> <ul style="list-style-type: none"> ▪ Solent to Midlands Route Strategy Evidence Report (April 2014) ▪ <i>Solent to Midlands Route Strategy Technical Annex (April 2014)</i> ▪ <i>Solent to Midlands Route Strategy (April 2015)</i> ▪ <i>Solent to Midlands Route Strategy (March 2017)</i> ▪ <i>Solent to Midlands Route Strategy Initial Overview Report (May 2023)</i> <p><i>Solent to Midlands Route Strategy Evidence Report (April 2014)</i> The M3 Junction 9 is identified in relation to Road Safety</p>

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		<p>(paragraph 2.2.11) and in relation to stakeholder issues (paragraph 4.7.6). Table 2.2 identifies the ten least reliable journey time locations (1/4/12 to 31/3/13) with number one within the route strategy between the A34 between the A33 and M3 J9. This location is ranked 22 out of 2,495 strategic road network links in terms of least reliable journey times. This report was published in April 2014.</p> <p><i>Solent to Midlands Route Strategy Technical Annex (April 2014)</i> The M3 Junction 9 is identified in relation to stakeholder feedback as a capacity / operational issue. This report was published in April 2014.</p> <p><i>Solent to Midlands Route Strategy (April 2015)</i> Figure 2 details the 'Key opportunities and challenges for the route' identifies congestion at the M3 Junction 9 as a capacity issue. This report was published in April 2015.</p> <p><i>Solent to Midlands Route Strategy (March 2017)</i> Paragraph 2.1.6 in Case for the Scheme (7.1, Rev 1) provides commentary in relation to the 2017 Solent to Midlands Route Strategy.</p> <p><i>Solent to Midlands Route Strategy Initial Overview Report (May 2023)</i> The M3 Junction 9 and connection to the A34 is identified in objectives A, B, C, D which refer to improving the strategic</p>

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		corridor and managing issues relating to safety and congestion; improvements to the NCN23 cycling route; and enabling more efficient freight movements.
Item 2(ii) Local Plan and other policies		
Item 2(ii) – first bullet	The relative weight to be afforded to relevant Local Plan and NPSNN policies.	The Applicant did not contribute to this agenda item.
Item 2(ii) – second bullet	Whether the Proposed Development would be in conflict with any Local Plan or Local Transport Plan (LTP) policies having regard to the references to an upgraded J9 within the Local Plan and LTP.	<p>The Applicant, in response to Winchester City Council and the relevance of the Carbon Neutrality Action Plan, highlighted that the scope of that Action Plan (as outlined on Page 8 of the document) excludes motorways because this requires a national response. The Applicant confirmed that the Plan had been given limited weight as a result.</p> <p>The Applicant also confirmed that it had given limited weight to Policy DS1 in the Winchester Local Plan but that it would discuss this in further detail later when dealing with Climate later in the Hearing.</p> <p>The Applicant agreed with the South Downs National Park Authority that the Scheme is a major development and therefore the major development test is engaged. The second part of this test mirrors paragraph 1.151 of the National Policy Statement for National Networks. The third part of the test relates to</p>

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		conserving and enhancing the special qualities of the National Park being outlined in Table 7.1 of the Case for the Scheme (7.1, Rev 1) .
Item 2(ii) – third bullet	Other planning policy considerations including the revised National Planning Policy Framework (NPPF).	The Applicant confirmed that the National Planning Policy Framework (NPPF) makes clear the applicability of the NPPF in the context of Nationally Significant Infrastructure Projects.

1.4 Item 3 - Climate Change and GHG emissions

Agenda reference	Examining Authority agenda item	Applicant's Summary of oral submissions
Item 3(i) Climate change effects and the assessment of GHG emissions		
Item 3(i) – first bullet	The effects of the Proposed Development on climate change during construction and operation with particular regard to carbon emissions and the ability of Government to meet its carbon reduction plan targets.	<p>In response to the oral submissions made by Dr Boswell, Transport Action Network, Winchester Friends of the Earth, and Winchester Action on Climate Crisis, the Applicant confirmed that it would have to respond in writing.</p> <p>The Applicant understands that it was asked to respond to the following queries from Dr Boswell:</p> <ul style="list-style-type: none"> ▪ Clarification on the models used in calculation of GHG emissions. ▪ Information regarding the calibration of the traffic model

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		<p>against a do-minimum scenario, as the traffic model looks back to 2009 and was re-calibrated in 2015 and could potentially not be incorporating infrastructure since 2015 in the baseline.</p> <ul style="list-style-type: none"> ▪ Whether the Applicant should reappraise its conclusion that the GHG emissions are not significant in light of IEMA guidance. ▪ Whether the offsetting details at paragraphs 14.9.6 and 14.9.7 of the Environmental Statement could contain any calculations for mitigation to assess effectiveness. ▪ What is the relationship between the GHG emissions of the Scheme and the emissions reported to Winchester District? ▪ How is the EV strategy built into the models? <p>The Applicant confirmed that there are only two transport models being used for the Scheme assessment. They are the strategic model and the operational model. The strategic model was developed using the 2015 base year South East Regional Traffic Model (SERTM), and it is this model that was used to calculate the greenhouse gas emissions. The operational model is a more detailed model of the operation of the Scheme.</p> <p>The Applicant also confirmed that whilst greenhouse gases could be disaggregated by regions, it could not be set against trip ends (origins and destinations of users) to allow for carbon</p>

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		<p>assessment for Winchester trips specifically. This is because the model ascribed greenhouse gas emissions once vehicles are on the transport network rather than at trip end.</p> <p>Applicant's post hearing note: Responses have been provided on the transport model used in calculation of GHG emissions in the Applicant Comments on Written Representations (8.8, REP 2-082f).</p> <p>With regard to an assessment using the IEMA guidance (IEMA, 2022), the Applicant's response to RR-096 within the Applicant Responses to Relevant Representations (8.2, REP1-031), sets out how and where the assessment within Chapter 14 (Climate) of the ES (6.1, Rev 2) aligns with IEMA guidance methodology (IEMA, 2022). The response goes on to assess the Scheme under the IEMA guidance (IEMA, 2022), concluding that the Scheme is considered to have a minor adverse and not significant effect. This is based on the Scheme being required to align with the Net Zero Highways plan (National Highways, 2021), and that the plan in turn aligns with the UK Carbon Budgets, it can be considered that the reduction measures secured through the application for the Scheme contributes to reducing GHG emissions relative to the UK Carbon Budget trajectory net zero by 2050.</p> <p>Responses have been provided on the quantification of</p>

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		<p>mitigation measures in Q6.1.10 in the Applicant Response to the Examining Authority's First Written Questions (ExQ1) (8.5,) and RR-102b in Applicant Responses to Relevant Representations (8.2, REP1-031). Additional mitigation, termed as 'essential', has not been taken into account within the GHG assessment given that specifics of, for example, the proportion of recycled material, is not known at this stage and therefore any carbon reductions associated with these are not currently quantifiable. Work will be undertaken during detailed design, including the development of an internal Carbon Management Plan and Carbon Opportunities Tracker for the Scheme. These will enable carbon savings resulting from design decisions to be quantified and for the Scheme to align with the targets within the Net Zero Highways Plan (national Highways, 2021).</p> <p>As set out in Section 14.6 in Chapter 14 (Climate) of the Environmental Statement (ES) (6.1, Rev 2), the study area of the greenhouse gas assessment is consistent with the Schemes traffic model, which covers the south-east region of England. The greenhouse gas emissions presented in the Chapter 14 (Climate) of the Environmental Statement (ES) (6.1, Rev 2), therefore, are not limited to Winchester District.</p> <p>The Applicant has provided an appropriate response in relation to the rate of vehicle electrification in response to Winchester</p>

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		<p>Action on Climate Crisis (REP1-038), Post hearing submissions including within Section 2.4 of the Applicant Response to Written Summaries and Oral Submissions at Open Floor Hearing 1 (OFH1) (8.6, REP2-052). In summary, DEFRA's Emission Factor Toolkit V.11, which was used to calculate operational end-user emissions, accounts for likely changes to national vehicle fleet composition such as increasing uptake of electric vehicles (EVs). This is the accepted position from Government on future EV uptake in the UK and is a widely accepted approach taken within EIAs.</p>
Item 3(i) – second bullet	The adequacy of the ES assessment of carbon emissions, including cumulative impact, having regard to the judgment of the High Court in the case of R (Boswell) v Secretary of State for Transport [2023] EWHC 1710 (Admin).	The Applicant confirmed that the assessment of the Scheme has been undertaken in accordance with the Design Manual for Roads and Bridges and the Environmental Impact Assessment Regulations. The same methodology that has been utilised as those schemes challenged by Dr Boswell previously which have now been dismissed. Therefore, the Applicant considers that it has met the legal tests required of it.
<p>Item 3(ii) Climate change proposed mitigation/adaptation measures</p>		
Item 3(ii) – first bullet	The effectiveness of the proposed mitigation measures relating to design and construction with particular regard to the need to ensure that the carbon footprint of the scheme would not be unnecessarily high.	The Applicant confirmed that there was no requirement in Government policy for carbon emissions for all road transport to be net zero, and that emissions are to be managed by Government-led national targets and policies. The Applicant also highlighted that the <i>Winchester Carbon Neutrality Action Plan</i> is not applicable to the Scheme as paragraph 5.1.8

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		<p>explicitly leaves motorways out of its scope.</p> <p>The Applicant confirmed that as part of its corporate procedures it would prepare an internal Carbon Management Plan which will seek to find opportunities for material types, quantities, and design modifications in detailed design. This then ensures that carbon is part of the decision-making process during design as well as construction phases.</p> <p>The Applicant confirmed that it had justified the design and the replacement of structures in its assessment of alternatives (see Chapter 3 (Assessment of Alternatives) of the Environmental Statement (ES) (6.1, Rev 1)). It also confirmed that the first iteration Environmental Management Plan (fiEMP) (7.3, Rev 4) includes measures regarding the management of vehicle emissions, and that National Highways have a process relating to quarterly reporting of carbon figures during construction that is applicable to National Highways Schemes.</p> <p>The Applicant confirmed that it would confirm in writing how this will be secured with the contractor.</p> <p>Applicants post hearing note:</p> <p>The commitments in the first iteration Environmental Management Plan (fiEMP) (7.3, Rev 4) are the measures that</p>

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		<p>the Applicant can commit to in order to ensure that all reasonable steps to mitigate carbon emissions are taken. Any measures captured in the first iteration Environmental Management Plan (fiEMP) (7.3, Rev 4) are required to be complied with by the Applicant or its contractor as part of the Development Consent Order.</p> <p>Table 3.2 (Record of environmental actions and commitments) of the first iteration Environmental Management Plan (fiEMP) (7.3, Rev 4), contains commitments C1 to C13 in relation to carbon efficiencies and reduction during detailed design and construction. These commitments are secured in the first iteration Environmental Management Plan (fiEMP) (7.3, Rev 4) under Requirement 3 of the draft Development Consent Order (3.1, Rev 3).</p> <p>However, in addition to the commitments secured in the draft Development Consent Order (3.1, Rev 3) both National Highways, corporately, and the Contractor have their own commitments to reduce carbon. These commitments are outside this DCO application and will be secured contractually. They include measures to monitor carbon throughout the construction process. These matters will align with the corporate Carbon Management Plan that National Highways is developing which will be used at an earlier design stage in future projects where it is anticipated significant carbon savings can be secured.</p>

Agenda reference	Examining Authority agenda item	Applicant's Summary of oral submissions
Item 3(ii) – second bullet	The proposed mitigation/adaptation measures and whether these would ensure that the Proposed Development would be sufficiently resilient against the possible future impacts of climate change.	<p>The Applicant confirmed that the design includes building to a standard that would cope with 1:100-year flood events including an allowance of 40% increase due to climate change. This principle was taken into account for all Sustainable Drainage Systems (SuDS), filtration and drainage systems. The Applicant also confirmed that the concrete used will be reinforced against thermal cracking to account for change in weather patterns. The Applicant's planting strategy has also considered droughts and heatwaves, and has accordingly selected native species which are suited to a wide range of habitats and weather conditions. This means that the species selected are less susceptible to drought and will require less watering to ensure successful establishment.</p> <p>The Applicant confirmed that it would respond to the South Downs National Park Authority's comment that the proposed planting was a missed opportunity to provide landscape scale resilience by choosing planting which would also provide air quality mitigation and water retention (see post hearing note below).</p> <p>The Applicant also confirmed that it would respond in writing to risks caused by heat tunnels of motorways.</p> <p>The Applicant also confirmed that it would respond in writing as to the need to provide a contextualisation against carbon budgets produced by the Tyndall Centre.</p>

Agenda reference	Examining Authority agenda item	Applicant's Summary of oral submissions
		<p>Applicants post hearing note: The substantial green infrastructure provision within Figure 2.3 in Chapter 2 (The Scheme and its Surroundings – Figures (Part 2 of 4)) of the ES (6.2, Rev 1) would create multi-functional habitat corridors across the Scheme and would link to the wider landscape. A diverse selection of species is proposed, including suitable seed mixes of chalk grassland species, native broadleaved woodland and a mosaic of native scrub. The incorporation of a variety of species as well as the selection of low maintenance habitats provides greater climate resilience as there would be less need to water the planting during periods of low rainfall or drought. The Scheme's planting specifications would be provided at detailed design stage and will accord with the first iteration Environmental Management Plan (fiEMP) (7.3, Rev 3).</p> <p>Appendix 7.6 (Outline Landscape and Ecological Management Plan) of the ES (6.3, APP-102) includes the appropriate establishment and management of new landscape planting and features in accordance with relevant best practice and standards. Suitable management of the proposed landscaping would help to ensure the long-term success of the planting. The duration of management and monitoring for each landscape/ecology element created or enhanced is 25 years from completion of the authorised development. The proposed planting and its management include several measures that are recommended in Natural England's Climate Change Adaption Manual (NE751) (Natural England, 2021), such as selecting a</p>

Agenda reference	Examining Authority agenda item	Applicant's Summary of oral submissions
		<p>greater mix of native trees and shrubs.</p> <p>The Tyndall Centre for Climate Change Research at the University of Manchester has produced carbon budgets for every local authority in the UK. These budgets show a potential, indicative pathway to reducing emissions in line with the Paris Agreement. These carbon budgets are not adopted by the Government and have no legal standing.</p> <p>The Applicant has responded to comments on using local and regional carbon budgets in Relevant Representations RR-018e in Applicant Responses to Relevant Representations (8.2, REP1-031) and Written Question 6.1.5 in Applicant responses to Written Questions (8.5, REP2-051).</p> <p>As noted in Paragraphs 14.5.33-35 of Chapter 14 (Climate) of the Environmental Statement (ES) (6.1, Rev 2), the methodology is consistent with the decision-making requirements set out in paragraphs 5.17 and 5.18 of the <i>National Policy Statement for National Networks (NPS NN)</i>, including the requirement that for road projects applicants should provide evidence of the carbon impact of the project and an assessment against the Government's Carbon Budgets.</p>

1.5 Item 4 - Any other matters relevant to the agenda

- 1.5.1 The Applicant confirmed that it would endeavour to provide written responses by Deadline 4, but where additional material is required it would seek to provide this as soon as possible thereafter. The Applicant alerted the Examining Authority to the fact that its response to Examining Authority's Written Question 14.1.10 had been omitted from submission at Deadline 2 on 15 June 2023 and submitted in **Errata Sheet to Applicant responses to Written Question 14.1.10 (Document Reference 8.5.1)** at Deadline 4.

Appendix A Further information regarding alternatives

Appendix A – Further information regarding alternatives

Subject: Further information regarding alternatives
BIM Document Reference: HE551511-VFK-HGN-XXXX_XX-TN-ZL-40001
Revision: P01
Date: 18 August 2023
Author: M3 Junction 9 Improvement Team, National Highways

1.1 Introduction

1.1.1 The Applicant was asked to confirm in writing the relevance of the specific judgment of *R (on the application of Save Stonehenge World Heritage Site Ltd) v Secretary of State for Transport* (“*Stonehenge*”) and its application of common law principles relating to the consideration of alternatives. It is the Applicant’s view that whilst the principles of assessment of alternatives that have been held in case law could be of relevance to this Scheme, *Stonehenge* and its analysis of assessment of alternatives is highly specific and as noted in the judgment of Mr Justice Holgate at paragraph 277, the circumstances of that case were wholly exceptional. However, there are a number of relevant areas in relation to general common law principles that were discussed in that case that might be of assistance to the Examining Authority (ExA) in this instance.

1.1.2 The Applicant was also asked to provide additional information relating to the consideration of modal alternatives and this position paper sets out the extent to which modal alternatives have been considered.

1.2 Summary of relevant case law principles established in *Stonehenge*

1.2.1 The relevant section of the National Policy Statement for National Networks (NPS NN) which requires an assessment of alternatives is paragraph 4.27. This states:

‘All projects should be subject to an options appraisal. The appraisal should consider viable modal alternatives and may also consider other options (in light of the paragraphs 3.23 to 3.27 of this NPS). Where projects have been subject to full options appraisal in achieving their status within Road or Rail Investment Strategies or other appropriate policies or investment plans, option testing need not be considered by the examining authority or the decision maker. For national road and rail schemes, proportionate option consideration of alternatives will have been undertaken as part of the investment decision making process.⁶¹ It is not necessary for the Examining Authority and the

decision maker to reconsider this process, but they should be satisfied that this assessment has been undertaken.'

1.2.2 Justice Holgate referenced a number of cases that were material to his decision making in *Stonehenge* which contribute to the assessment of alternatives. Not all are immediately relevant but the Applicant has set out those which might be useful for the ExA to revisit in the context of this Scheme.

- At paragraph 269, *Trusthouse Forte v Secretary of State for the Environment* (1987) 53 P & CR 293 at 299-300 was referenced which found that whilst it may be relevant and indeed necessary to consider alternative sites for a scheme, this is particularly so where the development is bound to have significant adverse effects and where the major argument advanced in support of the application is that the need for the development outweighs the planning disadvantages inherent in it. This judgment explicitly includes national infrastructure projects in its applicability of this principle. In this case, there does not appear to be any contention from the local planning authorities that the Scheme would be best sited elsewhere. This Scheme is clearly not in the same situation as the A303 at *Stonehenge*, this Scheme seeks to alleviate congestion at the M3 Junction and introduce free flowing links between the M3, A34 and A33 all of which are major roads carrying freight traffic from the Southampton Docks. The Scheme cannot realistically be moved without moving the existing strategic road network either further within the national park to the east, or bypassing Winchester to the west both of which would be disproportionate to the aims of the Scheme. It is noted that in Issue Specific Hearing 3, that the South Downs National Park Authority in discussing the need for the Scheme acknowledged the need for the junction improvements and acknowledged that these junction improvements would have to be where they are currently placed.
- Paragraph 270, *R (Mount Cook Land Limited) v Westminster City Council* [2017] PTSR 116 at [30], stated that in the absence of conflict with planning policy and/or planning harm the relative advantages of alternative uses of the application site of the same use on alternative sites are normally irrelevant. Crucially, Justice Holgate draws out the following paragraph of that judgment;

'in those exceptional circumstances where alternatives might be relevant, vague or inchoate schemes, or which have no real possibility of coming about are either irrelevant or where relevant should be given little or no weight.'

The Applicant acknowledges that the Scheme has a planning harm which must be weighed in the balance of its benefits and has set out its case for this in its Need for the Scheme. Its assessment of alternatives has considered viable alternatives that would deliver the benefits to traffic flow

through that junction and has concluded that the Scheme in its current form is the preferred layout.

- At paragraph 271, Justice Holgate referenced in *R (Jones) v North Warwickshire Borough Council* [2001] PLCR 31 at [22] to [30] which clarified that the consideration of alternative sites would be a relevant planning consideration where the site proposed would have such conspicuous adverse effects that the possibility of an alternative site lacking such drawbacks itself becomes in the mind of a reasonable local authority a relevant planning consideration.
- Lastly, at paragraph 272 Justice Holgate referenced *Derbyshire Dales District Council v Secretary of State for Communities and Local Government* [2010] 1 P&CR 19 which found that there are two categories of error in relation to an assessment of alternatives, firstly where an alternative is taken into account where it should not have been, and secondly where an alternative was not taken into account when it should have been. In this second category, Carnwarth LJ in that case held that such omission to consider an alternative would be an error of law only where there was a legal or policy requirement to take the alternatives into account or that there were such alternatives which were an “obviously material” consideration in the case so that it was irrational not to take them into account.

1.2.3 The above cases that Justice Holgate chose to bring to the fore in his judgment of *Stonehenge* were clearly relevant to the issues of *Stonehenge* where the alternatives being considered were two different alignments / lengths of tunnels of the A303. In the discussions had between relevant interested parties and local planning authorities, the Applicant understands that the micro-siting of the Scheme or the alternatives assessment of the Scheme in the context of a road based scheme has not been challenged to date and has been considered adequate by the local planning authorities. The challenge that some interested parties have made is whether there has been an assessment of modal alternatives. As such, the relevance of the *Stonehenge* judgment to the discussions had to date regarding modal alternatives is of limited relevance. There is, however, relevance in the cases given above, and how they might be applied to the modal assessment and options carried out by the Applicant.

1.3 Model alternatives assessment

Applicant’s assessment of viable modal alternatives

1.3.1 As stated above, the Applicant is required under paragraph 4.27 to carry out an options approach which is to consider viable modal alternatives. The test of paragraph 4.27 can be set out as such:

- All projects should be subject to an options appraisal that should consider viable modal alternatives;
- Where projects have had a full options appraisal in achieving their status in RIS, option testing is not needed to be considered by the ExA;
- For road schemes, proportionate option consideration of alternatives will have been undertaken as part of the investment decision making process and it is not necessary for the ExA to reconsider this, but they should be satisfied that this assessed has been undertaken.

1.3.2 The Applicant confirmed in **4.1.2 of Applicant responses to Written Questions (8.5, REP2-051)** that other modal alternatives were considered and appraised during National Highways Project Control Framework (PCF) 'Options Phase' which comprises Stage 0 (Strategy, shaping and prioritisation), Stage 1 (Options identification) and Stage 2 (Option selection). The conclusion of which was the preferred scheme of the M3 Junction 9 to be taken to PCF Stage 3 'Preliminary design' and did not include modal alternatives. **Chapter 3 (Assessment of Alternatives)** of the **Environmental Statement (ES) (6.1, Rev 1)** also confirms the assessment undertaken in achieving the Scheme's status in RIS.

1.3.3 For context, this sequencing of when modal alternatives are assessed by the Applicant post Schemes being assigned status with the RIS, is comparable to *Stonehenge* where modal alternatives were considered at PCF Stage 1. Although, it is noted that given the exceptional circumstances of the siting of that scheme in an area of universal significance, the modal alternatives and degree to which they were considered would have been scheme specific. The position of the Applicant also mirrors that of the A417 Missing Link Scheme, where the ExA were satisfied that viable modal alternatives had been considered pre-appointment to RIS.

1.3.4 The Applicant stated at Issue Specific Hearing 3 that requests would be made of Department for Transport for the modal assessment undertaken for the Scheme prior to its assignment to RIS. The Applicant again confirms that the Department for Transport would have considered alternative modes of transport before including the Scheme within RIS. RIS 1 was informed by a robust body of evidence including the Route Based Strategy (RBS) studies and was underpinned by the DfT's National Transport Model (NTM). The NTM is a multi-modal traffic model that forecasts travel demand bottom up using highly disaggregated input data. The NTM was used to examine the Strategic Road Network's response to numerous traffic forecast scenarios and took into account modal shift and alternative modes including rail. Data from the NTM model and the findings of the Route Based Strategy evidence reports informed the schemes that were included in RIS 1. The assessment determined that existing congestion at M3 Junction 9 required a highway intervention, as

opposed to any other modal intervention, and specifically the provision of free flow links between the M3 and A34. In drawing this conclusion, the capacity at the Port of Southampton and expected growth in rail and road freight was taken into consideration. A key finding from the M25 to Solent RBS study was that congestion at M3 Junction 9 was hindering freight movements and could block further economic growth at the Port of Southampton. This assessment has subsequently been validated in the 2021 Solent to Midlands Multi-Modal Freight Strategy which highlights congestion at Junction 9 as a problem and supports its improvement.

- 1.3.5 The Applicant had also considered modal alternatives post RIS at PCF Stage 0. That report following internal policy of National Highways (then Highways England). For Stage 0, this was a high level overview of potential alternative options to identify whether there was a viable alternative option to consider in further detail.
- 1.3.6 The report identified that the local highway authority, Hampshire County Council, had identified in their studies that infrastructure improvement was necessary to reduce congestion levels and assist strategic movement of traffic at key arterial intersections in order that economic growth is not compromised.
- 1.3.7 The report found that freight traffic to and from the Port of Southampton is a main source of strategic movement and reducing congestion across the junction is an integral requirement to ensure that growth is not compromised.
- 1.3.8 It was explicitly stated that rail as an alternative modal option would not be able to address either the additional freight traffic demand expected from the growth of the Port of Southampton or the existing safety issues that are likely to worsen. The report acknowledged that there was a reasonable case that rail as a modal alternative could represent a viable alternative to road travel for some other growth elements, for example new housing development but this growth would be factored into the highways design made necessary by the existing safety concerns and increase in freight movement.
- 1.3.9 The report assessed whether rail would provide a modal alternative to achieving the Scheme’s objectives. The assessment is included in **Table 2-1**: which is set out below:

Table 2-1 Alternative mode’s assessment against strategic outcomes

Strategic outcome	Assessment against strategic outcomes
1. Supporting economic growth	Rail improvements would have very little impact on the local/regional economic growth as the journey time through junction 9 for freight movements between the strategic ports and airports would not be addressed.

Strategic outcome	Assessment against strategic outcomes
2. A safe and serviceable network	Rail improvements would not address the safety issues caused at the junction as without direct intervention, safety at the interchange is likely to deteriorate as congestion worsens.
3. A more free flowing network	Rail options would not significantly benefit the operation or performance of the junction and the congestion would be exacerbated without direct intervention at the junction.
4. An improved environment	Although rail options may represent a more sustainable mass transport alternative, failure to address congestion issues at the junction would mean cars continue to flow through the interchange at speeds that are inefficient for fuel consumption, and result in increased vehicle emissions due to the start/stop nature of traffic caused by the congestion at the junction. In this regard, this alternative would not <i>'improve the environment'</i> .
5. A more accessible and integrated network	Whilst rail options would represent an alternate transport option for some non-motorised users, the choice of destinations would be limited. Moreover, rail options would not improve accessibility for pedestrians, and cyclists. Rail would also not eliminate severance for the users of the bridleways and National Cycle Network Routes running east/west through the junction. Moreover, an alternative rail intervention would not <i>'create a more accessible and integrated network for all road users, including NMUs'</i>

1.3.10 As such rail as a modal alternative was not considered a viable option and was not taken forward through the subsequent alternative considerations of the Scheme.

Interaction with National Networks National Policy Statement (NPS NN)

1.3.11 The conclusion of the Applicant at PCF Stage 0 was that there were no viable modal alternatives to the Scheme. The Applicant underwent an appraisal of rail in achieving the Scheme's objectives and found that it would not be able to materially improve the performance and safety of the existing junction layout.

- 1.3.12 The Applicant considers that an appropriate assessment of the viable modal alternatives to the Scheme in accordance with paragraph 4.27 of the NPS NN has been carried out. This would have been done as part of the RIS appraisal process, and was also done post RIS to ensure a robust assessment. These did not find that there were any viable modal alternatives. The Applicant's choice to continue past RIS to consider modal alternatives was prudent bearing in mind the *Stonehenge* judgment, which came out several years later, and which held at paragraph 260 that the application of 4.27 which "which states that where a project has been subject to full options testing for the purposes of inclusion in a RIS under the IA 2015 it is not necessary for the Panel or the decision-maker to reconsider this process; instead, they should be satisfied that the assessment has been carried out" does not mean "the applicant does not need to meet any requirements arising from paragraph 4.26." The Applicant considers that 4.26 has been satisfied by its **Chapter 3 (Assessment of Alternatives)** of the **Environment Statement (ES) (6.1, Rev 1)**, **Consultation Report (5.1, APP-025)**, **Habitats Regulations Assessment (7.5, Rev 1)**, **Water Framework Directive Assessment (7.7, APP-160)**, **Flood Risk Assessment (7.4, APP-157)**, and **Case for the Scheme (7.1, Rev 1)**.
- 1.3.13 When considering the NPS more widely, the Applicant would point out that Table 1 of the NPS NN states that if rail freight would be increased by 50% this would only be equivalent to a 7% reduction in goods carried by road, and were rail use by passengers increased by 50%, this would only result in 5% reduction in all road use. This should be read in conjunction with the anticipated rise in Southampton Port freight traffic of 100% against 2015 levels due to the expansion of the Port. Demonstrating the issue that a modal shift to rail would not achieve Scheme objections considering the issues the junction faces with current and anticipated freight numbers.
- 1.3.14 There are a number of policies in the NN NPS which discuss modal shift to rail (see paragraphs Table 4, 2.37, 4.84, 4.84), but the Applicant considers that these should be read in the context of adding planning weight to rail applications rather than developing a requirement for road schemes to justify why they are not a rail scheme.
- 1.3.15 It should be noted that the Solent to the Midlands Multimodal Freight Strategy, June 2021 already considered the Scheme among those necessary to address road congestion for the transport of freight in this Solent to Midlands corridor and finds that both the road and rail network are required to be more efficient to meet current and future demands of freight. The M3 Junction 9 is noted in that strategy as being a particular node with poor journey time reliability and concludes that the road network can do more to support the freight industry by ensuring a solution to congestion issues.
- 1.3.16 To bring in the relevance of the *Stonehenge* judgment, and specifically the range of case law identified by Justice Holgate the Applicant does not consider that modal alternatives should be considered an "obvious material

consideration” due to their nature as being vague, inchoate, and having little possibility of coming about. It could not be considered *irrational* to find that the Applicant has undertaken the policy tests in NPS NN regarding modal shift and had reasonably concluded that there were no *viable modal alternatives* to achieving the Scheme objectives.