

**CABINET MEMBER FOR HIGHWAYS AND TRANSPORT – CLLR R TONGE**

**DEPARTMENT OF NEIGHBOURHOOD AND PLANNING**

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**REFERENCE:** HT-

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**STONEHENGE – TRAFFIC REGULATION ORDER**

**Purpose of Report**

1. To:

- (i) Consider the Inspector's Report and Recommendation dated 16 November 2011 (attached as **Appendix 1**) following the non statutory Inquiry which took place on 20 September 2011 and was closed on 4 October 2011, along with all the objections received by the Council under Regulation 8 of the Local Authorities Traffic Orders (Procedure) Regulations 1996 ('The Regulations') and not withdrawn and to consider whether or not to make a Traffic Regulation Order ('TRO') as advertised on 21 January 2010 or whether to make an Order in part either as modified as recommended by the Inspector or modified in some other way.

**Background**

2. The Council, as a key stakeholder, endorsed the World Heritage Site Management Plan ('The Management Plan') as supplementary guidance and a material consideration in determining planning applications that affect the Stonehenge World Heritage Site (WHS) in Cabinet on 15 July 2009. Under policies 5b and 5c of the Management Plan, the Council agreed to take steps to reduce the impact of roads and traffic within the WHS. The Council sought to make a TRO under Section 1 of the Road Traffic Regulation Act 1984 ('the Act') on part of the A344 and on all the byways open to all traffic situated within the Stonehenge WHS on the grounds that a TRO would improve the amenity of the area in which the A344 (part) and byways open to all traffic are situated. Section 1 (f) of the Act is set out below:

- (i) '*The traffic authority for a road outside Greater London may make an order under this section (referred to in this Act as a "traffic regulation order") in respect of the road]* where it appears to the authority making the order that it is expedient to make it—
- (ii) – (e) .....
- (iii) *(f) for preserving or improving the amenities of the area through which the road runs'*

3. In deciding whether or not to make a TRO and in exercise of any of their powers under the Act , local authorities are also required to have regard to the matters set out in Section 122 (1) of the Act which is set out below:

- (1) *'It shall be the duty of every local authority upon whom functions are conferred by or under this Act, so to exercise the functions conferred on them by this Act as (so far as practicable having regard to the matters specified in subsection (2) below) to secure the expeditious, convenient and safe movement of vehicular and other traffic (including pedestrians) and the provision of suitable and adequate parking facilities on and off the highway.'*

(2) *The matters referred to in subsection (1) above as being specified in this subsection are:-*

- (a) *the desirability of securing and maintaining reasonable access to premises;*
- (b) *the effect on the amenities of any locality affected and (without prejudice to the generality of this paragraph) the importance of regulating and restricting the use of roads by heavy commercial vehicles, so as to preserve or improve the amenities of the areas through which the roads run;*
- (bb) *the strategy prepared under Section 80 of the Environment Act 1985 (national air quality strategy);*
- (c) *the importance of facilitating the passage of public service vehicles and of securing the safety and convenience of persons using or desiring to use such vehicles; and*
- (d) *any other matters appearing to the local authority to be relevant.*

(3) *The duty imposed by subsection (1) is subject to the provisions of Part II of the Road Traffic Act 1991 (Traffic Regulation in special cases).*

4. The Council prepared a draft TRO for consultation together with reasons for proposing the TRO. The Council undertook two consultations with the first 'pre consultation' taking place during autumn 2009. The Council agreed to forward any responses to the pre consultation to the responses to the formal consultation which took place following the advertisement of the TRO order on 21 January 2010 (the objections are attached as **Appendix 2**). Following the removal of the neutral responses and resolved queries, the Council received a total of 487 responses, of these there were 161 were in support of the TRO and 326 objected to the proposed TRO. As at the date of the inquiry none of these objections were withdrawn.
5. A report (reference HT-013-10) dated 1 March 2010 and attached as **Appendix 3** was considered by the Cabinet Member for Highways and Transport on 24 May 2010 and he decided the Council should hold a non-statutory Public Inquiry and this took place at the Salisbury Rugby and Football Club as referred to in the Inspector's Report and Recommendation dated 16 November 2011.
6. The Council received the Inspector's Report and Recommendation on 16 November 2011. The Inspector recommended in paragraph 8.1 of his report that 'the proposed Traffic Regulation Order be made, subject to modification so as to apply to the A344 only'.

### **Main Considerations for the Council**

7. The Council is required under Regulation 13 of the Regulations to consider the Inspector's report and recommendation together with all objections duly made under Regulation 8 and not withdrawn. Regulation 13 is set out below;

*'Before making an order, the order making authority shall consider—*

*(a) all objections duly made under regulation 8 and not withdrawn; and*

*(b) if a public inquiry was held, the inspector's report and any recommendations he made'.*

8. The Council may decide to make a modified Order or Order in part either as recommended by the Inspector or an alternative Order and if so paragraph 19 of the regulations would then apply. Paragraph 19 is set out below;

*'Subject to the provisions of this regulation and of regulation 24, where an Order making authority has, in relation to an Order, complied with Regulations 6 (consultation), 7 (publication of proposals) and 13 (consideration of objections and inspector's report), they may make the Order in part by making an Order giving effect to some of the proposals to which the order relates whilst deferring a decision on the remainder.*

*(2) Where an Order has been made in part in accordance with paragraph (1), the Order making authority may subsequently deal with the remaining proposals to which the order relates in any, or any combination, of the following ways—*  
*(a) abandon them; (b) defer a decision on them; (c) make an order or orders giving effect to them in whole or in part.*

*(3) where, pursuant to paragraph (2), an authority has deferred a decision on any proposals, it may subsequently deal with those proposals in any way permitted by that paragraph.*

*(4) Where an Order is made or proposed to be made in part by virtue of this regulation, Parts II and III of these Regulations shall apply to it as if the procedural steps previously taken under these Regulations, and any notices published or instruments prepared under them, in connection with the order as originally proposed had related only to the provisions of the order as made or proposed to be made in part.*

*(5) The notice of making published, or any notification under Regulation 17(3) given, on the making of an Order by virtue of this regulation shall—*  
*(a) indicate briefly the proposals (if any) to be given effect in the order as originally proposed which have been abandoned or in relation to which the decision of the Order making authority has been deferred; and*

*(b) where the Order is made by virtue of paragraph (3), give particulars of the title and date of every previous order made by virtue of this regulation in relation to the same order as originally proposed.*

*(6) In the application of regulation 14 to an Order made by virtue of paragraph (1), (2) or (3) of this regulation, such an order shall be regarded for the purposes of regulation 14(3) as an order made with modifications.'*

9. If the Council is minded to make the Order in part it is then required to consider under Regulation 14 (3) whether it, as the Order making authority, considers the proposed changes to the Order to make a substantial change in the order or not. Regulation 14 (3) is set out below;

*'Before an Order is made with modifications which appear to the order making authority or, in a consent case, to the Secretary of State to make a substantial change in the order, the order making authority shall take the steps required by paragraph (4).*

10. The regulations give no formal definition of 'a substantial change', there is no guidance given in the regulations and there is no recent case law that would assist the Council. Therefore taking this into account as the order making authority, the Council may decide it is appropriate to take into account any of the following matters as set out in the paragraphs below:

- (i) If the Order is modified to adopt the Inspector's recommendation, it would be necessary to delete the routes described in the Order as byways open to all traffic and using this approach the modification may be considered to be a substantial change to the wording of the Order.

- (ii) In terms of the geographical area affected by a modification if the Inspector's recommendation is adopted, the geographical area affected by the Order may be considered in pure geographical terms to be a substantial change.
- (iii) In terms of the impact on the user groups, and amenities of the area being affected and the practical effect of the modifications on the ground, there will be a change if the modification is made to adopt the Inspector's report and recommendation. However, the Council may decide it is reasonable to conclude that any change would not be substantial despite the apparent effect on a wide geographical area and that an entire class of traffic remains unaffected by the modifications because:
  - (a) There is no evidence that the amenities of the area would be substantially harmed by allowing mechanically propelled vehicles (MPV) use of the byways open to all traffic (BOATs);
  - (b) There would be no substantial impact on non MPV user's of the BOAT's;
  - (c) There would be no substantial or no substantial adverse impact on any MPV use of the BOATs especially as the change would produce a lesser order in terms of its impact;
  - (d) There is no evidence of a substantial change or impact with regard to the matters to be considered under Section 122 (1) and (2) of the Act.

11. If the Council considers that the modifications will make a 'substantial change in the order' under Regulation 14 (3) then the Council would be required to carry out a further consultation under Regulation 14 (4) (a – c) and inform those people likely to be affected by the modifications, allowing those persons to make representations and to ensure those representations are considered by the Council before a decision is made.
12. If the Council considers that the changes are not considered to be substantial it may decide to make the Order in part as modified.
13. If the Council decides to make an Order whether in full or modified in part, the Order must be made within two years of publication by 21 January 2012.

#### **Parking and Potential Danger Arising From Right Turns (A303)**

14. The Inspector dealt with the matter of danger arising from potential right turns across the A303. The Inspector in his paragraph 7.19 stated that 'this particular problem could be mitigated by imposition of a restriction on right turns here'. It would be for the Highways Agency to impose any such restrictions.
15. The Inspector dealt with parking in paragraph 7.63 of his report and found that there is no right to park and 'hence no such right would be negated by the TRO'.

#### **Environmental Impact of the Proposal**

16. If a modified Order is made there will be a significant reduction in vehicular traffic on the A344 (part) within the WHS.

#### **Equalities Impact of the Proposal**

17. The Council is under a duty to consider the needs of those members of the public with disabilities in particular its duties under the Disability Discrimination Act and Disability and Equality Act. It is proposed that the Visitor's Centre and Visitor's Transit System will provide access to the WHS for members of the public with disabilities.

## **Risk Assessment**

18. If the Council does not make the Order as recommended by the Inspector in his report and recommendation there is a high risk of that decision being challenged by the objectors to the TRO in the High Court. If the Council does not make an Order at all it is likely that the proposed development would not be able to be completed in its present form and there would be a potential reputational risk to the Council.

## **Financial Implications**

19. Under the legal agreement dated 23 June 2010 the Council agreed to contribute both the internal officer costs and a sum not exceeding £5,000 towards the external costs of the making of the TRO.

## **Legal Implications**

20. There are a number of ways in which a group or individual who is opposed to the making of the Order may seek to challenge the Order:
- (a) An individual or one of the user groups who objected to the making of the TRO may challenge the making of the TRO under Schedule 9 of the Road Traffic Regulation Act 1984, if the Council does not follow the correct procedure as set out in the regulations, when making the Order. There is a period of six weeks from the date of making of the Order in which such a challenge may be made.
  - (b) If the Council decided to make the Order as advertised and not as recommended in the Inspector's report there would be a very high risk of objectors to the TRO seeking to challenge the Council's decision by way of judicial review in the High Court. Should this occur, the Council would incur significant expense in defending those proceedings in the High Court.
  - (c) If the Council decided to make the Order but not as recommended by the Inspector but modified in a different way, there would be a high risk of the objectors to the TRO seeking to challenge the Council's decision by way of judicial review proceedings in the High Court.
  - (d) Should the Council decide not to make a TRO at all there would be a high risk of supporters of the TRO either formally challenging that decision in the High Court or bringing a complaint against the Council. There would be a risk of both objectors and supporters potentially seeking to claim reimbursement of their inquiry costs from the Council.

## **Conclusions**

21. There is a high risk of the Council's decision being challenged in the High Court by the organisations or individuals who objected to the making of the TRO if the Council does not follow the Inspector's recommendations contained in his report. If the Council is minded to make a modified TRO in part the Council must ensure that it complies in full with the Regulations otherwise there will be a risk that a party may seek to challenge the making of the TRO under Schedule 9 of the Act.

## **Options Considered**

22. To:
- (i) Not make any TRO.
  - (ii) Make the TRO as originally advertised on 21 January 2010.

- (iii) Consider making a modified Order by either adopting the Inspector's recommendations as set out in his report dated 16 November 2011 or making other changes to the Order and
- (iv) If minded to make a modified Order, to consider whether it appeared that there would be a substantial change in the Order in making the modifications and
- (v) If it is considered that there would be no substantial change in the Order, to make the modified Order, or
- (vi) If it appeared that there would be a substantial change in the Order, to defer the decision to allow the Council to carry out the steps required by Regulation 14(4).

### **Reason for Proposal**

23. The Council, as a key stakeholder to the WHS Management Plan, proposed that a Traffic Regulation Order be made to reduce vehicular traffic within the WHS and an Order was sought on the grounds that an Order would improve the amenities of the area in which the highways were situated and known as the Stonehenge WHS. Objections were received and an independent Inspector was appointed to hear and evaluate the evidence of supporters, objectors and the Council as the Order making authority at a non-statutory Inquiry. The Inspector recommended that a modified Order should be made to apply in part to the A344 (part) only. If the Order making authority make the Order in part, the vehicular traffic on the A344 will be significantly reduced and the amenities of the area through which the A344 (part) runs will be significantly improved.

### **Proposal**

24. The Council having considered:

- (i) the Inspector's report and recommendations and the objections received and not withdrawn and having consulted with officers is minded to make a modified Order in part;
- (ii) that in its opinion there would be no substantial change in the Order if the Inspector's recommendations as contained in his report and recommendation are adopted.

The Council therefore proposes to make the Order in part to apply to the A344 (part) from the Airman's Corner junction eastwards for a distance of approximately 130 metres (Schedule 1) and from a point approximately 130 metres east of the Airman's corner junction to its junction with Amesbury (BOAT) 12 (Schedule 2).

### **The following unpublished documents have been relied on in the preparation of this Report:**

None