

**Highways England: A303 Amesbury to Berwick Down  
Project, Development Consent Order Application**

**Scheme Reference: TR010025**

**Written Representation on Principal Issue 3  
Alternatives**

**for**

**The Stonehenge Alliance Ref. No. 2001870**

**by Kate Fielden and George McDonic**

## Summary

In addressing the points outlined in the Examining Authority's principal issue of Alternatives, this Written Representation has been presented in four parts.

1. Investigation of a range of alternative route options as set out in the Environmental Statement is shown to have been prejudiced, without evident justification, towards provision of a tunnel through part of the WHS. It is shown that a tunnelling option had been decided upon possibly before the preliminary feasibility study, certainly before the formal December 2014 announcement to dual the A303 between Amesbury and Berwick Down with a tunnel, and well before any public consultation took place. This apparently pre-determined choice has implications for the validity of public consultation on options for the scheme; it would conflict with EIA Regulations and Government Consultation Principles. ES examination of rejected routes was insufficient to make informed comparisons with the chosen option on environmental considerations at any consultation stage.

The advice of the first joint UNESCO World Heritage Centre/ICOMOS advisory mission on choosing an optimal route was disregarded; as was its reminder of the State Party's obligations under the World Heritage Convention.

2. The advice of the third Advisory Mission to seek longer tunnel or WHS bypass alternatives in order to protect the WHS and sustain its OUV was not followed despite the feasibility of a longer tunnel and the lower cost of a bypass. Also not followed was the mission's advice to seek a further heritage contingency valuation to consult the public on the value they would place on alternatives that would not impact on the WHS.

3. Comparative information is lacking in the ES to assess whether the choice of the preferred route vis-a-vis rejected options is proportionate in terms of policy and legal requirements. This is reviewed in the light of a raft of policy and legal considerations with which the chosen scheme appears to be strongly in conflict and are largely related to the sensitivity of the designated WHS and designated sites and species associated with it. No convincing evidence has been put forward by Highways England to suggest that there are no reasonable, viable and more appropriate alternatives to the preferred route in view of NPSNN decision-making requirements. Discussion of viable modal alternatives is covered in the Stonehenge Alliance's Written Representation on Transport and Economics.

4. For convenience, we list international obligations and legal considerations which indicate that the Scheme may be considered unlawful. We also point to legal precedents in cases relating to WHSs and to more recent relevant decisions on call-in or Appeal to the Planning Inspectorate.

## Introduction

**Kate Fielden**, BA, D.Phil., is Honorary Secretary to the Stonehenge Alliance, Vice Chairman of RESCUE, The British Archaeological Trust and a Trustee of CPRE Wiltshire Branch. Her degree qualifications are in archaeology. She worked for 28 years as curator of a country house open to the public with varied responsibilities including care of the collections, archive research and working with visitors; and was Editor of the *Wiltshire Archaeological & Natural History Magazine* during part of that time (1988–98).

A member of the Avebury and Stonehenge Archaeological and Historical Research Group, Dr Fielden also represents the Avebury Society on the Avebury WHS Steering Committee. She has worked as a volunteer for CPRE Wiltshire for some 30 years and taken the case at Public Inquiries into planning proposals at Avebury and Stonehenge. She has worked on the production and at public examination of planning documents, including relevant Local Plans, since the late 1980s, appearing for CPRE and the Avebury Society at the Wiltshire Core Strategy EIP, helping to achieve stronger policies and texts for the WHS and the historic and natural environments. She has taken part in production of all the relevant WHS Management Plans to date as representative for CPRE and/or the Avebury Society. She attended the DfT's A303/A30/A358 Corridor Feasibility Study Group meetings in 2014 for CPRE Wiltshire Branch.

**George Ferguson McDonic**, MBE, BL, DIPLTP, DPA, FFB is Chairman of the Stonehenge Alliance. He is a Fellow and Past President of the RTPI. He was County Planning Officer and Director of Environmental Services for Wiltshire County Council 1967–1987, having previously been Deputy County Planning Officer for Leicestershire for three years and Deputy County Planning Officer for Fife Council for six years. Mr McDonic was a member of the DoE Working Party on Stonehenge (the Sheaf Committee) that sat in the late 1970s; and also a member of the English Heritage Working Group (the Golding Group) which reported in 1985. He was Chairman of CPRE Wiltshire Branch for twenty years, retiring in 2015.

The Examining Authority has asked for the following matters to be addressed under the Principal Issue of Alternatives

- *The Environment Statement (ES) approach to alternatives including consideration of various route, scheme and design development options for the project such as tunnel length and routing outside the World Heritage Site (WHS) such as Route F010 referred to by UNESCO/ ICOMOS in their Final Report and Decisions on the joint World Heritage Centre/ ICOMOS Advisory mission to Stonehenge, Avebury and Associated Sites.*
- *Whether a proportionate option consideration of alternatives that reflects all the relevant policy and legal requirements has been undertaken including the consideration of viable modal alternatives and other options.*
- *Whether the scheme would comply with all specific legal requirements in relation to the consideration of alternatives such as the Habitats Regulations and the Water Framework Directives.*

## 1. *The ES approach to alternatives*

1.1. Notwithstanding the range of alternatives set out in the ES Ch.3: “Assessment of alternatives”,<sup>1</sup> notably in Table 3.1, the actual circumstances surrounding the choice of the Preferred Route indicate that a single option – that of a short tunnel through the WHS – had been decided upon from the start and well before the public consultation process began.

1.2. Following the June 2013 Spending Review, Government announced plans for upgrading the strategic national roads network. As part of that investment programme, it would identify and fund solutions, initially through feasibility studies to look at problems and identify potential solutions “to tackle some of the most notorious and longstanding road hot spots in the country”, the A303/A30/A358 corridor being one of them. The aim of the corridor study was “to identify the opportunities and understand the case for future investment solutions on the A303/A30/A358 corridor that are deliverable, affordable and offer value for money.”<sup>2</sup>

1.3. An email from Charles Wagner, English Heritage’s Head of Planning and Urban Advice, to Shane Gould, English Heritage’s Senior Local Government & National Infrastructure Adviser, on 3 October 2013 indicates that English Heritage (now Historic England) was already considering campaigning for the tunnel:

*“How should we frame for Andrew [presumably Andrew Vines, English Heritage Planning Director, South West Region] our potential engagement with HA on the A303? At the meeting they said we should pursue our interests in the A303 with Somerset CC who are leading the A303 study on behalf of other local authorities. Which is the response I got when I contacted the senior DfT official looking at roads major infrastructure projects earlier in the year. If we are going to campaign for the tunnel, then we’ll need to revisit the work John Davies [Economist at English Heritage] did previously to develop the case for a tunnel in cost-benefit terms. I don’t know if Duncan Melville [Economist at English Heritage] has found it yet.”*<sup>3</sup>

1.4. In February 2014 the Stonehenge Alliance responded to consultation on the Highways Agency’s Draft Route-based Strategy Evidence Report for the South West Peninsula<sup>4</sup> which was flawed in a number of respects, notably in lack of appropriate stakeholder participation in early discussion, lack of sound evidence, an unconvincing case for many of its conclusions, and the marked omission of the Stonehenge WHS in sections on cultural heritage and landscape even though the Blackdown Hills AONB was singled out for protection.

1.5. CPRE representatives attended subsequent A303/A30/A358 Corridor Feasibility Study Group meetings in 2014. The attendees at these meetings were predominantly MPs and

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<sup>1</sup> Highways England, APP-041. 6.1 Environmental statement Chapter 3 - Assessment of alternatives [https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/projects/TR010025/TR010025-000194-6-1\\_ES\\_Chapters\\_03\\_Alternatives.pdf](https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/projects/TR010025/TR010025-000194-6-1_ES_Chapters_03_Alternatives.pdf)

<sup>2</sup> HA/DfT A303/A30/A358 Corridor Feasibility Study Scope Document (July 2013), paras. 2.1–2 and 4.1. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/345569/a303-feasibility-study-scope.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/345569/a303-feasibility-study-scope.pdf)

<sup>3</sup> Email “Stonehenge and the A303” from Charles Wagner to Shane Gould, copied to Duncan McCullum, Director of Policy, English Heritage, and Christopher Young, Head of International Advice, English Heritage, 3 October 2013. Obtained via FoI.

<sup>4</sup> Highways Agency, “Draft Route-based Strategy Evidence Report for the South West Peninsula, February 2014”. Internet link no longer available

representatives of the Department of Transport, Highways England, LPAs and LEAs who supported or promoted the aim to create an expressway to the South West. The minutes of the first meeting (May 2014) show that the “study team” (membership unknown but included Highways England) looking at the Stonehenge section was asked to “*consider new tunnelling techniques*”.

1.6. The minutes of the second Study Group meeting (August 2014) record that the “*option assessment work for the Amesbury to Berwick Down section had been conducted on the basis of a 2.1km tunnel*”. The Corridor Feasibility Study Group was informed that a “technical group” had been established

“*to fully determine the views and aspirations of [unspecified] primary stakeholders in the World Heritage Site at Stonehenge with regard to potential highway improvements to the A303*”.

The members of the technical group were not listed or apparently chosen by members of the Study Group, but it appears that they included English Heritage, National Trust and Highways Agency personnel – but, oddly, not the Study Group representative from ICOMOS-UK. Notes of technical group meetings were not supplied to the Study Group. Joint work, apparently for the technical group and commissioned by English Heritage and the National Trust, found that

“*a tunnel of between 2.5 and 2.9km was thought to have a positive impact on the OUV of the WHS and that English Heritage and the National Trust had given their in-principle support to a tunnel between 2.5 and 2.9km pending agreement on detailed design.*”

1.7. The minutes of the final meeting (5 November 2014) record that: “*The Project Team explained the range of options considered for this section of the route [A303 Stonehenge] including:*

- *a part on-line, part off-line dual carriageway with 2.5km tunnel*
- *a part on-line, part off-line dual carriageway with 2.9km tunnel*
- *an off-line dualling to the north of the existing route*”

The last suggestion had been discarded as unacceptable for its impact on the WHS. Please see short addendum by Mike Birkin at end of this Representation.

1.8. It was therefore evident, from the start of route investigation, that a tunnel under part of the Stonehenge WHS landscape was intended. A tunnel scheme was confirmed by the Secretary of State for Transport in a letter to George McDonic, Chairman of the Stonehenge Alliance, on 23 October 2014, *before* the announcement of a tunnel scheme was made in Parliament, in which the Secretary of State stated that both organisations (National Trust and English Heritage)

“*consider that a twin-bored tunnel of somewhere between 2.5km and 2.9km, if designed well, would have a transformational impact on the landscape of the Stonehenge World Heritage Site, removing the surface road and minimizing the harmful impacts of any tunnel scheme which lies within the boundaries of the World Heritage Site. I welcome this joined-up stance from English Heritage and the National Trust and it very much represents an important milestone in reaching a successful outcome from the study work.*<sup>5</sup>

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<sup>5</sup> McLoughlin, P., letter to Stonehenge Alliance, 23.10.14. <http://stonehengealliance.org.uk/wp-content/uploads/2015/04/SoS-DfT-response-to-SA-23Oct2014.pdf>

1.9. The Secretary of State for Transport announced the Government's £15bn investment to improve the UK's strategic road network, along with the intention to dual the A303 with a 1.8 mile (2.9km) tunnel at Stonehenge, on 1 December 2014.<sup>6</sup> A tunnel past Stonehenge was announced in the Conservative manifesto launched on 14 April 2015.<sup>7</sup>

1.10. The first of three joint UNESCO World Heritage Centre/ICOMOS advisory missions was invited to Stonehenge (27–30 October 2015) to advise on the A303 scheme. The mission was informed that no firm options were on the table but was invited to comment on a study of tunnelling options of different lengths drawn up for the National Trust and English Heritage (now Historic England).<sup>8</sup> The mission reminded HMG, in its "critical recommendation no.2", of its World Heritage Convention obligations; and that a solution should be sought that does not negatively impact on OUV and the surrounding Archaeological Priority Area.<sup>9</sup>

1.11. Pre-statutory consultation in January–March 2017, termed in the January 2018 Statement of Community Consultation as an "options consultation" for the A303 improvement,<sup>10</sup> supplied a single option for the WHS, much as had been presented to the first advisory mission as the optimum choice in view of the DfT's financial and other constraints: a 2.9km 'offline' tunnel within the WHS, with its western portal SW of Normanton Gorse as shown in Snashall and Young<sup>11</sup> and a northern or a southern bypass for Winterbourne Stoke. This, or an earlier version was presumably the study that informed the Corridor Feasibility Study Group mentioned in paras. 1.6 and 1.7, above. It is significant that this study concluded that a longer, 4.5km tunnel would be of greater benefit to the OUV of the WHS.<sup>12</sup>

1.12. Highways England says that it had considered many alternative routes for the A303 Stonehenge Improvement and these are set out in its ES.<sup>13</sup> Nevertheless, we have seen no detailed examination of any of these routes sufficient to make informed comparisons at any consultation stage with the chosen option. The account of alternatives considered appears to be an overview of an exercise that did not involve any serious exploration of options, an impression all the more obvious in view of the process of decision-making on the tunnel

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<sup>6</sup> *Hansard*, 1.12.14, cols. 25–26:

<http://www.publications.parliament.uk/pa/cm201415/cmhansrd/cm141201/debtext/141201-0001.htm>

<sup>7</sup> Conservative Party Manifesto 2015, p.41.

<http://ucrel.lancs.ac.uk/wmatrix/ukmanifestos2015/localpdf/Conservatives.pdf>

<sup>8</sup> Snashall, N. & C. Young, "Preliminary Outline Assessment of the impact of A303 improvements on the Outstanding Universal Value of the Stonehenge Avebury and Associated Sites World Heritage property", December 2014. <http://stonehengealliance.org.uk/wp-content/uploads/2017/03/Prelim-Outline-OUV-Assessment-report-Dec-14-FINAL.pdf>

<sup>9</sup> Barker, C., N. Schlanger and M.-N. Tournoux, "Report on the joint World Heritage Centre/ICOMOS Advisory mission to Stonehenge, Avebury and Associated Sites World Heritage Site 27–30 October 2015", p.22: <https://whc.unesco.org/en/documents/141037/>.

<sup>10</sup> Highways England, DCO APP-029. 5.1 Consultation Report - Appendix C8 (SoCC), 31.1.18, (pp.50ff.), p.3. <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010025/TR010025-000182-5-1-Consultation-Report-Appendix-C.pdf>.

<sup>11</sup> Snashall & Young, *op. cit.*, Fig 7, p.34.

<sup>12</sup> *Ibid.*, Table on p.78

<sup>13</sup> Highways England, DCO APP-041, ES 6.1, Assessment of alternatives, Ch.3.

[https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010025/TR010025-000194-6-1\\_ES\\_Chapters\\_03\\_Alternatives.pdf](https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010025/TR010025-000194-6-1_ES_Chapters_03_Alternatives.pdf)

outlined above and the reluctance of Highways England to change its approach by adopting a bypass or longer tunnel solution as recommended by international specialists and others.

1.13. A southern bypass of the WHS (F10), although estimated to cost less than the tunnel route, was rejected before consultation, again without detailed survey information presented to the public, apparently on the principal grounds that it would be a longer route, passing through scenically and environmentally sensitive countryside.<sup>14</sup> Prior to the pre-statutory consultation, archaeological evaluation work for a tunnel route within the WHS was undertaken but apparently no such investigations were conducted along the F10 (southern bypass) corridor.

1.14. It appears that Highways England agreed in early 2016 to examine a Salisbury southern bypass option.<sup>15</sup> By this time, however, a tunnel scheme had already been decided and helpful detail on any potential southern Salisbury bypass has not been supplied.

1.15. A Highways England representative, at a local pre-statutory consultation exhibition of the scheme, informed a member of the Stonehenge Alliance that the west tunnel portal would be substantially moved from the location shown on the consultation maps, since it was already apparent that the portals would be in line with an important solstitial alignment. It is perhaps significant that the Preferred Route is more or less on the line of the A303 widening proposals brought to Public Inquiry in 2004.

1.16. The NPSNN, para. 4.26, on alternatives, says:

*“The EIA Directive requires projects with significant environmental effects to include an outline of the main alternatives studied by the applicant and an indication of the main reasons for the applicant’s choice, taking into account the environmental effects.”*

In our view, the environmental effects of alternatives apparently considered and rejected have not been sufficiently explained to enable the public either to compare data on potential alternatives and the chosen option or to understand the reasons for deciding on a tunnel through the WHS which would be more expensive than a bypass and irreparably damaging to the fabric and environment of a heritage asset of the highest significance.<sup>16</sup> The tunnel option would also be damaging to internationally important natural environment matters, as explained in our Written Representation on Biodiversity.

1.17. Highways England’s approach to identifying options and consulting on them appears not to have met webTAG “key principles” to be followed through the appraisal process:

- *“There must be consideration of genuine, discrete options, and not an assessment of a previously selected option against some clearly inferior alternatives. A range of solutions should be considered across networks and modes.*
- *There should be an appropriate level of public and stakeholder participation and engagement at suitable points in the process. In most cases this should inform the evidence-base which establishes the ‘need’ for an intervention, guide the option*

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<sup>14</sup> *Ibid.*, “Stage 4 - Recommended Route Options for Consultation”, p.3-5

<sup>15</sup> BBC News online report, 20 January 2016: [https://www.bbc.co.uk/news/uk-england-wiltshire-35322444?fbclid=IwAR22D5pLDYWjgXrMfkMrra53-TFQFm40\\_ICLCE7GDhVnn0YnDI0MSDK0mO0](https://www.bbc.co.uk/news/uk-england-wiltshire-35322444?fbclid=IwAR22D5pLDYWjgXrMfkMrra53-TFQFm40_ICLCE7GDhVnn0YnDI0MSDK0mO0)

<sup>16</sup> cf. NPPF, paras. 184–85; 193–94; NPSNN, para. 131

*generation, sifting and assessment steps, as well as informing further appraisal in Stage 2.*"<sup>17</sup>

1.18. The proposed scheme therefore does not meet the requirements of the EIA Regulations 2017 No. 14(2)(d):

*“a description of the reasonable alternatives studied by the applicant, which are relevant to the proposed development and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the development on the environment”*

1.19. It appears to us that consultation on the A303 scheme was based on a pre-determined outcome and not on any serious consideration of alternatives. Consultation therefore also conflicted with Government’s own Consultation Principles 2018:

*“B. Consultations should have a purpose. Do not consult for the sake of it. Ask departmental lawyers whether you have a legal duty to consult. Take consultation responses into account when taking policy forward. Consult about policies or implementation plans when the development of the policies or plans is at a formative stage. Do not ask questions about issues on which you already have a final view”.*<sup>18</sup>

## **2. Advice on options/alternatives given by the joint UNESCO WHCentre/ICOMOS Advisory Missions**

2.1. UNESCO’s World Heritage Centre and ICOMOS have, by UK Government invitation, sent three joint Advisory Missions to Stonehenge to advise on the A303 scheme. The first mission, in 2015, advised on heritage impact assessment as a tool for making an appropriate choice of route. The second and third missions, in 2017 and 2018, like the first, reminded the UK Government of its obligations under the World Heritage Convention and advised exploration of options that would not damage the WHS or its OUV. The public consultation process, with a pre-determined option, was not adjusted to allow the missions’ advice to be taken into account, nor was that advice made known to consultees.

2.2. The third Advisory Mission to Stonehenge in March 2018 was briefed on a Highways England’s report *A303 Stonehenge Technical Note on Tunnel Length* which apparently showed that longer tunnel options with portals outside the WHS were feasible but that financial constraints precluded their consideration. Furthermore, the mission’s report says Highways England considered that

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<sup>17</sup> Department for Transport, Transport Analysis Guidance: The Transport Appraisal Process, May 2018, para. 1.1.5, p.3. <https://www.gov.uk/government/publications/webtag-transport-appraisal-process-may-2018>.

<sup>18</sup> HMG Consultation Principles 2018, B. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/691383/Consultation\\_Principles\\_1.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691383/Consultation_Principles_1.pdf)



*“There is no evidence that extending the tunnel length and the additional investment required delivers meaningful additional benefits to the WHS that would justify [sic] the additional cost.”*<sup>19</sup>

2.3. However, concerning Highways England’s ‘willingness to pay’ survey to assess the ‘value’ individuals place on reducing the impact of the A303 on the WHS, the Mission noted that consultees surveyed were only asked for their views on the partial removal of the A303 through the WHS, *“not the difference in impact between different tunnel options, nor a complete by-pass.”* The Mission not surprisingly considered that

*“economic modelling of the benefit-cost of the project should be refined to recognise that, insofar as the public is willing to support the construction of a tunnel, the public would presumably be willing to pay more to remove the pay to remove [sic] the A303 impact on the WHS completely through longer tunnel options or complete by-passing.”*<sup>20</sup>

This recommendation was not followed, although the Mission had pointed out that

*“Economic modelling of route options, and particularly the ‘willingness to pay’ approach, should recognise that options which reduce impact on OUV (such as a longer tunnel or a complete by-pass of the WHS) may have greater community benefit than options which partially remove the surface road but have other adverse impacts on OUV”*<sup>21</sup>

2.4. In the Mission’s opinion

*“A longer tunnel which avoids or significantly reduces the proposed length of dual carriageway is necessary to reduce the impact on the integrity, authenticity and OUV of the WHS.”*<sup>22</sup>

2.5. Concerning a bypass route, the Mission’s report acknowledged Highways England’s reservations about the rejected southern bypass route (F10) set out in a document not seen by us: *A303 Stonehenge Summary of the Detailed Assessment of F10 (the southern surface route)* which lists constraints not presented to the public during the public consultation process.<sup>23</sup>

Nevertheless, the Mission pointed out that

*“the State Party has determined that the F10 route will not proceed as it cannot deliver a key project objective. However, a surface route, which re-routes an improved A303 road completely around the WHS, and enables the closure (or even downgrading) of the existing section of the A303 within the WHS, remains the best option in relation to impact on the OUV of the WHS. Therefore it would be appropriate for potential surface routes for the proposed dual carriageway sections of the A303 to be reconsidered, on the basis that the OUV of the*

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<sup>19</sup> UNESCO World Heritage Centre/ICOMOS: Final Report on the joint World Heritage Centre / ICOMOS Advisory mission to Stonehenge, Avebury and Associated Sites 5 – 7 March 2018, p.22. <https://whc.unesco.org/en/documents/168265/>.

<sup>20</sup> *Ibid.*, p. 31

<sup>21</sup> *Ibid.*, “Recommendation” 3, p. 8

<sup>22</sup> *Ibid.*, p.29

<sup>23</sup> *Ibid.*, p. 20

*WHS should be given greater weight in the evaluation process and that any surface route must include closure of the section of the A303 which runs through the WHS.*"<sup>24</sup>

2.6. International advisers clearly consider that not enough has been done or time taken to explore alternatives to the preferred route, bearing in mind the obligation of the State Party to protect the WHS property and sustain its OUV.

2.7. The Government has not, to our knowledge, seriously explored or fully costed bypass options or a tunnel long enough to avoid the WHS; nor does it appear to have made efforts to seek funding from elsewhere for a scheme that would protect the WHS and meet its World Heritage Convention obligations.

### **3. Whether a proportionate option consideration of alternatives that reflects all the relevant policy and legal requirements has been undertaken, including the consideration of viable modal alternatives and other options.**

3.1. We have been given no detail of relevant policy or legal requirements considered by Highways England in relation to rejected alternatives and only very general comments concerning why they were considered environmentally unsuitable. Table 3.1 "Development of the Preferred Route" in Highways England's "Assessment of alternatives" lists routes initially sought for their suitability as "better performing corridors".<sup>25</sup>

3.2. Five corridors rejected for "environmental reasons" include a northern bypass with impacts on areas of settlement and surface routes within or skirting the WHS to the north whose impacts on the character/cultural heritage/OUV of the WHS would apparently not be acceptable. No assessment of the policy and legal implications of these routes was produced for comparative purposes. A southern Salisbury bypass was rejected since it would "substantially increase habitat loss" (unspecified) and increase journey times.

3.3. Corridors D (with a tunnel through the WHS) and F (southern bypass) were taken forward for further consideration. Bypass Route F10 was rejected because it was longer, passing through fine countryside (like the WHS, a Special Landscape Area) with unspecified "potential adverse environmental effects" which would need to be balanced against the benefits of corridor D. Despite causing adverse environmental effects on the WHS, corridor D was said to reduce severance within it and meet the scheme requirements. Again, no analysis was produced of the impacts of F10 compared with those of the two corridor D routes (1N and 1S) presented at pre-statutory consultation, let alone in terms of planning policy and legal requirements.

3.4. An account of policy and legal considerations which Highways England cites appears in Highways England's "Case for the scheme"<sup>26</sup> and is notable for lack of correct incorporation of

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<sup>24</sup> *Ibid.*, pp.21–22

<sup>25</sup> Highways England, APP-041. 6.1 Environmental statement Chapter 3 - Assessment of alternatives, pp.3-2ff. [https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010025/TR010025-000194-6-1\\_ES\\_Chapters\\_03\\_Alternatives.pdf](https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010025/TR010025-000194-6-1_ES_Chapters_03_Alternatives.pdf)

<sup>26</sup> Highways England, Case for the Scheme and NPS Accordance, ES 7.1, DCO APP-294, App.B.1 for local policy and legal; App. A for NPSNN; also p.7-36. <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010025/TR010025-000447-7-1-Case-for-the-Scheme.pdf>.

the requirements of those overriding policies, objectives, and planning and legal considerations which obviously conflict with the scheme.

3.5. The choice of the preferred route is supported by a minority of consultees; while Highways England's case for the scheme is largely on grounds of deliverability, affordability and value for money.

3.6. The current scheme proposal does not comply with relevant policy and legal requirements for the WHS and the natural environment. No case has been made by Highways England on policy or legal grounds for the presentation of this option as proportionately more appropriate in such terms than any potentially viable option rejected, apart, perhaps, from journey time saving.

3.7. Given the policy and legal constraints relevant to the preferred route, however, we believe there is an overwhelming case for considering that they would exceed those for a carefully chosen WHS bypass route or a longer tunnel. This is primarily owing to the raft of safeguards for the WHS and internationally important natural environment considerations, along with non-compliance with the NPSNN. The relevant policy and legal requirements which are not met by the Preferred Route are as follows.

### **3.8. The World Heritage Convention (1972)<sup>27</sup>**

3.8.1. The Government's obligations under the World Heritage Convention are encapsulated in UK planning policy. Convention Articles 1 and 2 list the criteria for nomination of WHSs, while Article 3 states that

*"It is for each State Party to this Convention to identify and delineate the different **properties** situated on its territory mentioned in Articles 1 and 2"* (Our emphasis)

UNESCO's *Operational Guidelines for the Implementation of the World Heritage Convention* explain that the clearly delineated boundaries of WHSs are for their **effective protection**.<sup>28</sup> (Our emphasis)

3.8.2. The Convention obligation of States Party is to protect the designated WH *property*, not specifically its OUV. It is therefore not acceptable to suggest, as Highways England frequently does in its consultation and application documents, that the OUV of the WH property can be protected or sustained and the WHS conserved, when serious damage is proposed to the WHS property. Highways England has incorrectly stated, for example:

*"Highways England has worked closely with the heritage stakeholders (Historic England, English Heritage, the National Trust and Wiltshire Council) to develop a scheme which **will conserve and enhance the WHS and maintain its Outstanding Universal Value for future generations**"*.<sup>29</sup> (Our emphasis)

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<sup>27</sup>UNESCO, *Convention Concerning the Protection of the World Cultural and Natural Heritage*, Paris, 1972. <https://whc.unesco.org/archive/convention-en.pdf>

<sup>28</sup> UNESCO, *Operational Guidelines for the Implementation of the World Heritage Convention*, World Heritage Centre, July 2017, 99–100. <http://whc.unesco.org/en/guidelines/>

<sup>29</sup> Highways England, DCO APP-294, 7.1 Case for the Scheme and NPS Accordance, Executive Summary, p.VI. <https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/projects/TR010025/TR010025-000447-7-1-Case-for-the-Scheme.pdf>

3.8.3. The Convention commits States Party to specific obligations, most notably under Article 4,

*“ . . . the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations ”* of its WHSs.

3.8.4. Article 5 (d) commits signatories to

*“take the appropriate legal, scientific, technical, administrative and financial measures necessary for the identification, protection, conservation, presentation and **rehabilitation** of this heritage.”* (Our emphasis)

3.8.5. Article 11.4 gives reasons why WHSs might be placed on the List of WH in Danger; these include the WHS being

*“threatened by serious and specific dangers, such as the threat of . . . large-scale public or private projects or rapid urban or tourist development projects . . .”*

3.8.6. Article 27.2 commits States Party to *“keep the public broadly informed of the dangers threatening this heritage and of the activities carried on in pursuance of this Convention.”*

3.8.7. Clearly, the A303 Preferred Route scheme, with its major and permanently damaging engineering works impacting on the WHS and its setting, would not protect the WHS property, and thus would neither protect nor sustain its OUV – as international advisers have repeatedly pointed out. Implementation of the road scheme would not conserve, present or transmit the designated property as it is to future generations. The State Party proposes to take deliberate measures to damage the WHS physically with a large-scale public project and it has not even broadly informed the public of the danger: arguably, Highways England has done the opposite. Thus, the scheme clearly conflicts with the above articles of the World Heritage Convention, most notably Article 4.

### **3.9. The National Planning Policy Framework (NPPF)<sup>30</sup>**

3.9.1. Highways England, in referring to the NPPF in its “Case for the Scheme” emphasises the NPPF’s requirement for sustainable development but fails to make a convincing case for the sustainability of the proposed scheme. No mention is made of the NPPF’s emphatic requirement for the protection of the WHS and its setting which the scheme would clearly not meet; nor, by avoidance of the subject, is any clear and convincing justification given for the harm proposed to their significance.<sup>31</sup>

3.9.2. The NPPF para.184 states that WHSs (i.e., the designated *properties*) are classed as heritage assets of the highest significance in UK planning policy and guidance.

*“Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing*

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<sup>30</sup> The National Planning Policy Framework (NPPF), MHCLG, 2019

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/779764/NPPF\\_Feb\\_2019\\_web.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779764/NPPF_Feb_2019_web.pdf)

<sup>31</sup> Highways England, DCO APP-294. 7.1 Case for the Scheme and NPS Accordance, p.7-38–39, paras. 7.3.6–7.3.13. <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010025/TR010025-000447-7-1-Case-for-the-Scheme.pdf>

*justification. . . . Substantial harm to or loss of assets of the highest significance, notably . . . World Heritage Sites, should be wholly exceptional”* (NPPF para.194; our emphasis)

3.9.3. NPPF paragraph 184 emphasises that WHSs are an irreplaceable resource and should be appropriately preserved so that they can be enjoyed by existing and future generations (*cf.* WH Convention Article 4). NPPF para. 193 underlines the “great weight” to be given to the conservation of WHSs, irrespective of the level of potential harm from proposed development.

3.9.4. The physical and visual harm to the WHS and its setting proposed by the A303 scheme, by the scale of the proposed engineering works and their permanently damaging impacts on an “irreplaceable resource”, would be such that the WHS would no longer be enjoyed as it is now or by future generations. The scheme would therefore not satisfy requirements of the NPPF.

### **3.10. Online Government Planning Guidance**

3.10.1. The MHCLG’s online Guidance, “Conserving and enhancing the historic environment”,<sup>32</sup> reiterates the NPPF guidance on WHSs, also pointing out that

*“the significance of the designated heritage asset derives not only from its physical presence, but also from its setting.”* (para. 031 Ref. ID: 18a-031-20140306)

*“. . . policy frameworks at all levels should conserve the Outstanding Universal Value, integrity and authenticity . . . of each World Heritage Site and its setting, including any buffer zone or equivalent. . . . policies should take account of international and national requirements as well as specific local circumstances.”* LPAs are expected to develop “*Local Plan policies to protect and enhance World Heritage Sites and their Outstanding Universal Value.*” (para. 032 Ref. ID: 2a-032-20140306).

*“The UNESCO Operational Guidelines seek protection of “the immediate setting” of each World Heritage Site, of “important views and other areas or attributes that are functionally important as a support to the Property” and suggest designation of a buffer zone wherever this may be necessary. A buffer zone is defined as an area surrounding the World Heritage Site which has complementary legal restrictions placed on its use and development to give an added layer of protection to the World Heritage Site. The buffer zone forms part of the setting of the World Heritage Site.”* (Para. 033 Ref. ID: 2a-033-20140306).

The Stonehenge, Avebury and Associated Sites WHS has no buffer zone, having been designated before they were mandatory. Nevertheless, adverse impacts on the WHS’ setting would not be avoided by the proposed scheme.

### **3.11. Historic England’s Advice Note on *The Setting of Heritage Assets***<sup>33</sup>

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<sup>32</sup> MHCLG, *Conserving and enhancing the historic environment*, online Government planning guidance, updated February 2018. <https://www.gov.uk/guidance/conserving-and-enhancing-the-historic-environment#World-Heritage-Sites>

<sup>33</sup> Historic England, Advice Note on *The Setting of Heritage Assets*: Historic Environment Good Practice Advice in Planning Note 3 (Second Edition), December 2017. <https://historicengland.org.uk/images-books/publications/gpa3-setting-of-heritage-assets/heag180-gpa3-setting-heritage-assets/>

3.11.1. The advice note endorses NPPF policy and MHCLG online guidance on setting and the historic environment. Bearing in mind that the Stonehenge WHS is a heritage asset of the highest significance, it also points out that

*“... a new road scheme affecting the setting of a heritage asset, while in some cases increasing the public’s ability or inclination to visit and/or use it, thereby boosting its economic viability and enhancing the options for the marketing or adaptive re-use of a building, may in other cases have the opposite effect.” (p.6)*

### **3.12. Wiltshire Core Strategy<sup>34</sup>**

3.12.1. Wiltshire’s Core Strategy (CS) meets current NPPF policy in respect of the WHS.

3.12.2. A “key outcome” of CS “Strategic Objective 5: protecting and enhancing the natural, historic and built environment” is that:

*“The Stonehenge and Avebury World Heritage Site and its setting will have been protected from inappropriate development in order to sustain its outstanding universal value.” (CS p.33)*

3.12.3. Listed under the Amesbury Area Strategy “Issues and considerations” are

- *“Wiltshire Council will work collaboratively with agencies, such as the Highways Agency, the Department of Transport and English Heritage to try to achieve an acceptable solution to the dualling of the A303 that does not adversely affect the Stonehenge World Heritage Site and its setting; and*
- *The World Heritage Site will be protected from inappropriate development both within the Site and in its setting so as to sustain its outstanding universal value (OUV) in accordance with Core Policy 59” (CS pp.71–2)*

The latter aim is repeated almost verbatim at the outset of Core Policy 6: “Stonehenge” (CS p.69).

3.12.4. Core Policy 51 “Landscape” requires proposals for development in the WHS to *“demonstrate that they have taken account of the objectives, policies and actions”* set out in the WHS Management Plan (CS pp. 268–69); while

*“The primary aim of the [Management] plan is to sustain the outstanding universal value of the World Heritage Site by protection, conservation and presentation of the archaeological landscape.” (CS para.5.2.7, pp. 78–9).*

3.12.5. Core Policy 58, “Ensuring the conservation of the historic environment” includes the requirement: that

*“Designated heritage assets and their settings will be conserved, and where appropriate enhanced in a manner appropriate to their significance, including:*

- i. nationally significant archaeological remains*
- ii. World Heritage Sites within and adjacent to Wiltshire “(CS p.290)*

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<sup>34</sup> *Wiltshire Core Strategy*, Wiltshire Council, adopted 2015.

<http://www.wiltshire.gov.uk/adopted-local-plan-jan16-low-res.pdf>

3.12.6. Critically relevant for the WHS is Core Policy 59: “The Stonehenge, Avebury and Associated Sites World Heritage Site and its setting”. The text accompanying this policy mentions the State Party’s obligation under the WH Convention which “*should therefore be given precedence in decisions concerning development management in the WHS.*” And “*The World Heritage Site requires protection and, where appropriate, enhancement in order to sustain its OUV.*” (CS p.291, paras. 6.144 and 6.145).

3.12.7. Core Strategy paragraph 6.147 reminds us that

*“The setting of the World Heritage Site beyond its designated boundary also requires protection as inappropriate development here can have an adverse impact on the site and its attributes of OUV. The setting is the surrounding in which the World Heritage Site is experienced. It includes a range of elements such as views and historical, landscape and cultural relationships. The setting of the World Heritage Site is not precisely defined and will vary depending on the nature and visibility of the proposal.”* (CS p.292)

3.12.8. The wording of Core Policy 59 consolidates the constraints listed above concerning development within the WHS and its setting:

*“The Outstanding Universal Value (OUV) of the World Heritage Site will be sustained by:*

- i. giving precedence to the protection of the World Heritage Site and its setting*
- ii. development not adversely affecting the World Heritage Site and its attributes of OUV. This includes the physical fabric, character, appearance, setting or views into or out of the World Heritage Site*
- iii. seeking opportunities to support and maintain the positive management of the World Heritage Site through development that delivers improved conservation, presentation and interpretation and reduces the negative impacts of roads, traffic and visitor pressure*
- iv. requiring developments to demonstrate that full account has been taken of their impact upon the World Heritage Site and its setting. Proposals will need to demonstrate that the development will have no individual, cumulative or consequential adverse effect upon the site and its OUV. Consideration of opportunities for enhancing the World Heritage Site and sustaining its OUV should also be demonstrated. . . .”* (CS pp.293–94)

3.12.9. The proposed A303 Stonehenge scheme does not meet the full and obvious CS requirement that any development, and specifically any solution to the negative impact of the A303, must protect the WHS, its attributes of OUV, and its setting, in line with Government policy and guidance.

### **3.13. Wiltshire Local Transport Plan 2011–2026<sup>35</sup>**

3.13.1. The Plan acknowledges that “*The Stonehenge and Avebury World Heritage Site presents a specific challenge in the county where the integrity of the site needs to be protected.*” (p.38, para. 3.75)

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<sup>35</sup> *Wiltshire Local Transport Plan 2011–2026*, Wiltshire Council, March 2011.  
<http://www.wiltshire.gov.uk/ltp3-strategy.pdf>

### 3.14. The Stonehenge, Avebury and Associated Sites WHS Management Plan (MP)<sup>36</sup>

3.14.1. The WHS MP has been agreed by the UK Government, property managers and stakeholders and is a key material consideration in planning. The Plan

*“sets the overarching strategy for achieving the correct balance between conservation, access, the interests of the local community and the sustainable use of the Site . . . . The primary aim of the strategy is to protect the Site to sustain its OUV as agreed by UNESCO . . .”* (MP p.10).

3.14.2. The agreed Plan “Vision” for the WHS includes the following words:

*“We will work together to care for and safeguard this special area and provide a tranquil, rural and ecologically diverse setting for it and its archaeology. This will allow present and future generations to explore and enjoy the monuments and their landscape setting more fully. We will also ensure that the special qualities of the World Heritage Site are presented, interpreted and enhanced where appropriate, so that visitors, the local community and the whole world can better understand and value the extraordinary achievements of the prehistoric people who left us this rich legacy.”* (MP p.10)

3.14.3. In its section entitled “Priorities for 2015–2021” the MP starts with a caveat, reminding us of the Plan vision:

*“The primary purpose of this Management Plan is to guide all interested parties on the care and management of the World Heritage Site to sustain its Outstanding Universal Value. This will ensure the effective protection, conservation and presentation of the World Heritage Site for present and future generations. It will also ensure that all decisions affecting the World Heritage Site move towards the achievement of the Vision.”* (MP p.11)

3.14.4. Highways England, in its “Case for the Scheme”, points to only two of the eight MP priorities for 2015–2021:

*“reducing the dominance and negative impact of roads and traffic and ensuring any A303 improvements support this”* and

*“improving the interpretation and enhancing the visitor experience of the wider landscape.”*<sup>37</sup>

But omits to mention that another of the MP’s priorities is to

*“Ensure **any** development is consistent with the protection and, where appropriate, enhancement of the monuments and their settings and the wider WHS landscape and its setting”.* (MP p.11; our emphasis)

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<sup>36</sup> Simmonds, S. and Thomas, B., *The Stonehenge, Avebury and Associated Sites WHS Management Plan*, 2015. [http://www.stonehengeandaveburywhs.org/assets/2015-MANAGEMENT-PLAN\\_LOW-RES.pdf](http://www.stonehengeandaveburywhs.org/assets/2015-MANAGEMENT-PLAN_LOW-RES.pdf)

<sup>37</sup> Highways England, DCO APP-294, 7.1 Case for the Scheme and NPS Accordance, 5.4 Cultural heritage - benefits and opportunities, para. 5.4.2, p.5-25. <https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/projects/TR010025/TR010025-000447-7-1-Case-for-the-Scheme.pdf>



3.14.5. It is axiomatic that MP priorities need to be considered and implemented holistically, within the context of the overall framework of the Plan’s Vision, primary aim and/or purpose, and objectives (cf. MP, para.1.1.5). As the MP states,

*“It is essential that all change is carefully planned and that competing uses are reconciled without compromising the **overriding commitment to protect the Site and maintain its OUV.**”* (MP para. 1.1.7, p.12; our emphasis)

3.14.6. The MP takes into account the wider framework of the World Heritage Convention and planning policy and advice, pointing out, for example,

*“The Wiltshire Core Strategy recognises the need to work collaboratively with agencies to achieve an acceptable solution to the dualling of the A303 that **does not adversely affect the Stonehenge World Heritage Site and its setting**’.* (MP p.160, para. 11.1.16; our emphasis; cf. CS p.71)

3.14.7. The MP’s Aims, Policies and Actions Table (MP pp. 201–244) includes the objective of finding a solution to the negative impact of the A303 under *“Aim 6: Reduce significantly the negative impacts of roads and traffic on the WHS and its attributes of OUV and increase sustainable access to the WHS”*. Action 133 aims to

*“Seek a solution to the negative impact of the A303 on the WHS, its attributes of OUV and its setting in order to sustain its OUV and enhance the Site’s integrity. Work with partners to identify such a solution that also addresses current and predicted traffic problems and assists in delivery of social and economic growth.”* (MP p. 236)

MP Policies related to this action are listed as:

Policy 3c: *“Maintain and enhance the setting of monuments and sites in the landscape and their interrelationships and astronomical alignments with particular attention given to achieving an appropriate landscape setting for the monuments and the WHS itself.”* (cf. MP p.193) And

Policy 6a: *“identify and implement measures to reduce the negative impacts of roads, traffic and parking on the WHS and to improve road safety and the ease and confidence with which residents and visitors can explore the WHS.”* (cf. MP p.194)

Action 133 is given a high priority (“1”) but careful attention should be given to its wording (and that of Policy 3c) in relation to the WHS and its setting, as well as to the wording of the “Introduction to Aims, Policies and Actions table” which reads:

*“The level of priority is indicated in the column on timescales. This ranges from 1 to 3 with 1 being the highest priority for the protection and presentation of the WHS and its attributes of OUV”.* (MP p.198, section 15.5, para. 15.5.7)

3.14.8. Bearing in mind these intentionally protective constraints, the Management Plan’s statement that *“Some key outstanding priorities are the minor extension to the Stonehenge WHS boundary and the reduction of the impact of the A303”* (MP para.3.3.2, p.50) serves again as a significant reminder that the WHS has no buffer zone and that any development within its setting could have impacts on the WHS itself and any extended boundary in future. The A303 Stonehenge scheme would logically preclude otherwise sensible extension of the WHS boundary in an archaeologically important area affected at Longbarrow junction.

3.14.11. It is clearly the case that the proposed A303 scheme would not protect the WHS and its setting to sustain its OUV. The scheme would very obviously damage the fabric, character, setting and views in and out of the WHS. The proposals conflict with the primary aim of the Management Plan “to sustain the outstanding universal value of the World Heritage Site by protection, conservation and presentation of the archaeological landscape”.

### **3.15. National Policy Statement for National Networks (NPSNN)<sup>38</sup>**

3.15.1. The NPSNN has specific guidance on decision-making for the historic environment in paragraphs 5.129–133, including:

*“In considering the impact of a proposed development on any heritage assets, the Secretary of State should take into account the particular nature of the significance of the heritage asset and the value that they hold for this and future generations. This understanding should be used to avoid or minimise conflict between their conservation and any aspect of the proposal”* (para. 5.129)

*“the desirability of sustaining and, where appropriate, enhancing the significance of heritage assets, the contribution of their settings. . . [also] the desirability of new development making a positive contribution to the character and local distinctiveness of the historic environment.”* (para. 5.130)

*“The more important the asset, the greater the weight [given to an asset’s conservation] should be. Once lost, heritage assets cannot be replaced and their loss has a cultural, environmental, economic and social impact. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. Given that heritage assets are irreplaceable, harm or loss affecting any designated heritage asset should require clear and convincing justification. . . . Substantial harm to or loss of designated assets of the highest significance, including World Heritage Sites . . . should be wholly exceptional.* (para. 5.131)

*“Where the proposed development will 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.”* (para.5.133)

3.15.2. In respect of alternatives to the preferred route, we submit that Highways England has failed to comply with the policy requirements of the NPSNN paras. 4.26–27.

### **3.16. The Culture White Paper<sup>39</sup>**

3.16.1. The Culture White Paper sets out proposals for future legislation. Section 3.3 on p.46 states Government policy on WHSs and includes the following commitments:

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<sup>38</sup> Department for Transport, National Policy Statement for National Networks, December 2014.

[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)

<sup>39</sup> DCMS, The Culture White Paper, March 2016

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/510798/DCMS\\_The\\_Culture\\_White\\_Paper\\_3\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/510798/DCMS_The_Culture_White_Paper_3_.pdf)

*“Cultural heritage is fundamental to a nation’s identity and its people, underpinning education and research and offering long-term economic and social benefits. We should continue to be at the forefront of cultural protection at home and abroad.*

*We want to set a global standard in the stewardship of World Heritage Sites. By working with the World Heritage Centre, the governing bodies for World Heritage Sites, Historic England and others, we will promote sustainable development while ensuring our sites are protected.”*

3.16.2. The UK WHS of Liverpool Maritime Mercantile City is on the List of World Heritage in Danger and the WH Committee has expressed concern about other UK WHSs, such as the Forth Bridge and the Palace of Westminster as well as the Stonehenge and Avebury WHS. It is therefore a matter of concern that Government is neglecting to work with relevant bodies to ensure all its WHSs are protected. The proposed A303 Stonehenge scheme appears to be an unfortunately prominent example of Government’s lowering of its ‘global standard’, bringing its care for UK WHSs into international disrepute.

### **3.17. The EIA Directive<sup>40</sup>**

3.17.1. The proposed scheme is in breach of EIA Directive Consideration 16 for failing to take into account the strict safeguards that exist for the protection and conservation of the WHS, a property of acknowledged archaeological and heritage importance according to: the *European Convention on the Protection of the Archaeological Heritage (Revised)*:<sup>41</sup> preamble, paras. 8–9, and Articles 1, 2ii, 4i–ii; and the *European Landscape Convention*,<sup>42</sup> Articles 1d, 2, 3, 5b. Similarly, concerning the historic environment, we consider that the scheme would conflict with Article 3.1(d) of the EIA Directive.

3.17.2. In respect of potential damage to the environment and biodiversity (the latter covered under our Written Representation on Biodiversity), we submit that the A303 preferred route does not meet the Government’s obligations under the requirements of the EIA Directive, Consideration 37: notably Directive 92/43/EEC (Habitats); Directive 2009/147/EC (Birds) and Directive 2001/42/EC (SEA; please see also under our Section 3.21, below).

3.17.3. We submit that Highways England, in its choice of the preferred route breaches Article 5.1(d) of the EIA Directive in not supplying adequate information on the effects on the environment of alternative options vis-à-vis those of the chosen scheme.

### **3.18. Infrastructure Planning (EIA) Regulations SI 2017 No. 572<sup>43</sup>**

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<sup>40</sup> EU Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU (“the EIA Directive”) on the assessment of the effects of certain public and private projects on the environment. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0052&from=FR>

<sup>41</sup> *European Convention on the Protection of the Archaeological Heritage (Revised)*, Valetta, 1992: Preamble, paras. 8–9, and Articles 1, 2ii and 4i–ii.

<https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007bd25>;

<sup>42</sup> *European Landscape Convention*, Florence, 2000, Articles 1d, 2, 3 and 5b.

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/236096/8413.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/236096/8413.pdf)

<sup>43</sup> Infrastructure Planning (EIA) Regulations SI 2017 No.572

[http://www.legislation.gov.uk/uksi/2017/572/pdfs/uksi\\_20170572\\_en.pdf](http://www.legislation.gov.uk/uksi/2017/572/pdfs/uksi_20170572_en.pdf)

3.18.1. We submit that Highways England's EIA has failed adequately to meet the requirements of Regulations 5(2)(b) concerning information on significant effects on biodiversity and 5(2)(d) on the cultural heritage and landscape. We also submit that the EIA for the scheme fails to provide a description of the reasonable alternatives studied and an indication of the main reasons for the option chosen taking into account the effects of the development on the environment, as required under Regulation 14(2)(d).

### **3.19. The Conservation of Habitats and Species Regulations SI 2017 No.1012<sup>44</sup>**

3.19.1. The Alliance presents evidence in its Written Representation on Biodiversity that the scheme would not comply with Regulation 24, since there is no certainty that it would result in no adverse effects on the integrity of the River Avon SAC, the Salisbury Plain SPA and Annex I bird species. Should it be considered that there is overriding public interest in this instance, Regulation 64 requires that there are no alternative solutions to the preferred route – which is not the case.

### **3.20. The Habitats Directive<sup>45</sup> and the Birds Directive<sup>46</sup>**

3.20.1 As mentioned above, we show in our Written Representation on Biodiversity, that the construction and operation of the scheme would not ensure no adverse effects on the integrity of the Salisbury Plain SPA and River Avon SAC under the requirements of the Habitats Directive 92/43/EEC, notably Article 6, and the Birds Directive 2009/147/EC, Article 4.

### **3.21. The SEA Directive<sup>47</sup>**

3.21.1. In view of the scale and extent of the planned programme of road improvements along the A303/A30/A358 corridor we believe that a Strategic Environmental Assessment should have been undertaken and consulted upon prior to announcement of the A303 Stonehenge scheme and that in the absence of an SEA, Highways England has breached the SEA Directive.

3.21.2. We asked Highways England why it had not undertaken an SEA and received the following reply by email on 12 December 2018:

*“In response to your queries about a Strategic Environmental Assessment for the A303/A358 corridor, I can confirm that this hasn't been carried out by Highways England. The A303 improvement past Stonehenge is being pursued in accordance with the Government's Road Investment Strategy.”*

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<sup>44</sup> The Conservation of Habitats and Species Regulations SI 2017 No.1012.

<http://www.legislation.gov.uk/ukxi/2017/1012/regulation/64/made>

<sup>45</sup> Council Directive 92/43/EEC of 21 May 1992 on the Conservation of Natural Habitats and of Wild Fauna and Flora.

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/200285/Annex-A-Habitats-Directive.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/200285/Annex-A-Habitats-Directive.pdf)

<sup>46</sup> Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32009L0147>

<sup>47</sup> Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment (SEA Directive). <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001L0042&from=EN>

3.21.3. The EIA undertaken for the A303 Stonehenge scheme has taken for granted that two further improvements are planned within the current Road Investment Strategy (A303 Sparkford-Ilchester and A303 Taunton to Southfields) without considering the full environmental effects and sustainability of the A303 Stonehenge scheme in combination with these projects or indeed in combination with all of the remaining planned corridor improvements. It is to be expected that there would be widespread effects as a result of this extensive planned programme which are at present unquantified and ought to have been identified via an SEA or its equivalent and consulted upon as a preliminary to advancing any individual scheme within the road corridor.

### **3.22. The Planning Act 2008<sup>48</sup>**

3.22.1. Under Section 104 of the Act, the decision-maker on the A303 Stonehenge scheme needs to have regard to the NPSNN – with which the scheme is not compliant in a number of respects (please see list under Section 5, NPSNN Compliance, below).

## **4. Conclusion**

4.1. The selection of a route for the improved A303 between Amesbury and Berwick Down should be proportionate to the importance of the landscape through which it would be taken and the designated biodiversity sites and species affected; also in its compliance with the decision-making requirements set out in the NPSNN. The WHS is an extensive heritage asset of the highest significance and protection of it and its setting takes precedence over other considerations in planning policy, primarily owing to the government's obligations under the World Heritage Convention. Alternatives, avoiding the WHS, even if more expensive or involving slightly longer journey times, could be found compliant with the NPSNN.

4.2. It must be pointed out that the preferred route evidently does not meet at least two of the DfT's four objectives for the scheme which could be met by viable alternatives:

*“Cultural Heritage - To help conserve and enhance the World Heritage Site and to make it easier to reach and explore”*. The scheme would not help to conserve and enhance the WHS: it would permanently damage it and make it less easy for people to reach by largely preventing access by car, except via the visitor centre and at some expense. Exploration of the southern part of the WHS would be largely restricted to byways currently open to the public.

*“Environment and Community - To improve biodiversity and provide a positive legacy for nearby communities.”* On information currently available, there is no evidence that biodiversity would be improved; indeed, it appears that biodiversity would be compromised.

**4.3. No convincing reasons have been put forward for choosing the preferred route above any other viable alternative that is also proportionately more compliant with policy and legal requirements.**

## **5. NPSNN Compliance**

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<sup>48</sup> Planning Act 2008. <https://www.legislation.gov.uk/ukpga/2008/29/section/104>

5.1. For the convenience of the Examining Authority, we list below non-compliances with the NPSNN in respect of International Conventions, European Directives and UK Acts and Regulations that we have identified in relation to aspects of the A303 scheme.

5.2. It is understood that the DCO application will be decided in accordance with the NPSNN para. 1.2 (p.5) unless the Secretary of State is satisfied that a decision in favour would

• ***lead to the UK being in breach of its international obligations***

We submit that the scheme would breach terms of the:

- UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage, Paris, 1972: notably Articles 4 and 5.  
<https://whc.unesco.org/archive/convention-en.pdf>
- European Convention on the Protection of the Archaeological Heritage (Revised Valetta Convention) 1992: Preamble, paras. 8–9, and Articles 1; 2ii; and 4i–ii.  
<https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007bd25>
- European Landscape Convention, Florence, 2000, Articles 1d; 2; 3 and 5b.  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/236096/8413.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/236096/8413.pdf)
- Convention on access to information, public participation in decision-making and access to justice in environmental matters, Aarhus, 1998 (Aarhus Convention): Considerations, Article 1; General Provisions and Definitions under Articles 2–3; and Articles 6 and 7. <https://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf>
- Convention on the Conservation of European Wildlife and Natural Habitats, Bern, 1979 (Bern Convention): Preamble, Articles 1.2; 2; 3.2; 4.1 (Appendix 2, Strictly protected fauna species: *Burhinus oedicanus* and *Salmo salar*), 6b and c; 10.1.  
<https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680078aff>

• ***be unlawful***

We submit that the scheme would breach:

- Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU (EIA Directive) <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0052&from=FR>;
  - concerning alternatives: Article 5.1. (d)
  - concerning consultation: Consideration (24)
  - concerning biodiversity: Consideration 11
  - concerning the historic environment: Consideration (16); Article 3, para.1(d); Annex III, para.2(viii)
  - concerning coordination with other European Directives and Conventions: Consideration (37)

- concerning objectivity of assessment and conflict of interest: Consideration (25). (Please see our Written Representation on Consultation.)
- Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment (SEA Directive): Articles 3, 5 and 6. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001L0042&from=EN>
- Environmental Assessment of Plans and Programmes Regulations 2004 (SI 2004/1633): Regulations. <http://www.legislation.gov.uk/uksi/2004/1633/regulation/5/made>
- Infrastructure Planning (EIA) Regulations SI 2017 No.572 [http://www.legislation.gov.uk/uksi/2017/572/pdfs/uksi\\_20170572\\_en.pdf](http://www.legislation.gov.uk/uksi/2017/572/pdfs/uksi_20170572_en.pdf)
  - Regulation 35 concerning objectivity and bias;
  - Regulation 14(2)(d) concerning alternatives.;
  - Regulation 12(1)(b) concerning the Statement of Community Consultation
- Council Directive 92/43/EEC of 21 May 1992 on the Conservation of Natural Habitats and of Wild Fauna and Flora (Habitats Directive): Articles 6(3) and (4). <https://eur-lex.europa.eu/legalcontent/EN/TXT/?uri=celex%3A31992L0043>
- Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (Birds Directive): proviso (8); Articles 4.1; 4.4; 5(d) and 13. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32009L0147>
- Conservation of Habitats and Species Regulations SI 2017 No.1012 (Habitats Regulations): Regulations 9 (1); 9 (2)(1); 10(1)–(4); 10(8); 13; 15; 24(2); 63(5); 64 (consideration of alternatives); 68 (in the event that permission is granted); and 105. <http://www.legislation.gov.uk/uksi/2017/1012/regulation/64/made>
- Planning Act 2008: Section 7(6) on decision-making; Section 47(1) concerning the SoCC; <https://www.legislation.gov.uk/ukpga/2008/29/section/104>
- Planning (Listed Buildings and Conservation Areas) Act 1990, Section 72(1) in respect of Amesbury Conservation Area, and Section 66 in respect of the setting of Listed buildings. <http://www.legislation.gov.uk/ukpga/1990/9/section/72>

**• lead to the Secretary of State being in breach of any duty imposed by or under any legislation**

Please see above, under ‘*be unlawful*’

**• result in adverse impacts of the development outweighing its benefits**

We submit that this would be the case, also according to the advice of, among others, ICOMOS-UK, the Advisory Missions and the World Heritage Committee. In this respect, we also submit that the scheme would conflict with the NPSNN in matters relating to the historic environment, notably concerning WHSs.

- *be contrary to legislation about how the decisions are to be taken.*

No decision has been taken yet but any decision in favour of the application would need to fulfil the requirements of the above bullet points in NPSNN para. 1.2 which, as indicated by us above, would not be the case.

## 6. Case law

6.1. There are few legal judgements on planning appeals relating to UK WHSs, especially cases comparable with the Stonehenge WHS in terms of landscape and the historic environment.

### 6.2. *Coal Contractors Limited v Secretary of State for the Environment and Another*

6.2.1. Following an Appeal against refusal of permission for opencast Coal extraction at Former Stagshaw Colliery, about 0.5km north of Hadrian's Wall for a limited period of 18 months, the Inspector recommended (in 1992) that the proposal should be acceptable in distant views and that its impact on the setting of the Wall would be "slight". But the Secretary of State, in dismissing the appeal<sup>49</sup> considered "*that the Inspector has given insufficient weight to the impact of the proposals on the setting of Hadrian's Wall and the World Heritage Site*". The Secretary of State considered that "*despite the relatively short duration of the development, the proposals would nevertheless be an alien and visually intrusive feature damaging to the setting of Hadrian's Wall and the World Heritage Site*".

6.2.2. A subsequent attempt by the developer to have the decision overturned in the High Court failed. The Court ruled that the fact that the Secretary of State '*had elevated the world heritage site factor to the main consideration in the planning decision did not have the effect of rendering his reasoning obscure.*' (Our emphasis)

6.2.3. This judgement<sup>50</sup> has particular relevance for the Stonehenge WHS, not only because the proposed A303 works would be permanently visually intrusive within the WHS and its setting, but also because the (temporary) construction compound and works in the setting would also be visually intrusive over a period of some five years.

### 6.3. Australian Case law

6.3.1. In view of the relationship between the UK and Australia, a Commonwealth country, we submit that legal decisions at three Australian World Heritage Sites are relevant for present purposes to the Stonehenge scheme. Australia is the only Sate Party to the WH Convention which has legal status for its WHSs. The Australian ICOMOS Charter for places of cultural significance (The Burra Charter, revised 2013) is influential internationally in providing guidance for the conservation and management of places of cultural significance, based on the knowledge and experience of Australia ICOMOS members.

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<sup>49</sup> Decision, DoE, 18 February 1993; Ref. APP/R2900/A/91/190575.

<sup>50</sup> Coal Contractors Ltd v. S. of S. for Environment and Northumberland County Council, QBD 9 December 1993.



6.3.2. The three cases we refer to are discussed in a 1997 paper by Julia Simmonds of Wild Sapte, Solicitors<sup>51</sup> in which she considers the World Heritage Convention and the nature of the legal obligations imposed by it and their enforcement in practice, focussing particularly on the Convention's implementation in Australia and the UK. The work includes a short case study on Stonehenge. The legal framework for protecting Australian WH Sites is seen in stark contrast to the 'lackadaisical approach' of the UK Government. Ms Simmonds points out that the Australian High Court is the only court to have examined the nature of Convention Articles 4 and 5.

6.3.3. *Commonwealth of Australia v. State of Tasmania* (1983) ('The Franklin Dam case'; 46 A.L.R. 625) concerned a dispute arising over proposals for a constructing a dam on the Gordon River in the Western Tasmania Wilderness National Parks (of the Tasmania Wilderness WHS). It was concluded that "*there is a clear [legal] obligation upon Australia to act under Articles 4 and 5*", and that discretion in respect of resources must be exercised "in good faith". Construction of the dam was prevented.

6.3.4. *Richardson v. The Forestry Commission* (1987 to 1988, 164 C.L.R. 261). This case, successful in establishing the obligation to protect, concerned the setting of the Tasmanian Wilderness WHS in which logging was taking place and was stopped.

6.3.5. *The State of Queensland v. Commonwealth of Australia* (1989) (167 C.L.R. 232) involved the Wet Tropics of Queensland WHS. The property was nominated in 1987 and designated in 1988 despite opposition from the Queensland State Government. A joint judgement by six of the seven judges concluded that a property's listing is "*conclusive of Australia's international duty to protect and conserve it*".

6.3.6. Ms Simmonds concludes (p.267):

*"The cumulative effect of the three cases is to confirm that the Convention imposes weighty obligations on its parties, not only in respect of listed sites but also those they have identified as of World heritage significance (or even tentatively identified whilst a decision pends)."*

## **7. Some relevant Planning Inquiry decisions following call-ins or Appeal relating to WHSs**

### **7.1. Avebury**

A number of planning proposals at Avebury have been subject of decisions by Secretaries of State or Planning Inspectors from 1988 to 1989.

#### **7.1.1. Hotel/hostel on the site of a café on Overton Hill, Avebury**

An application for re-development in a visually prominent location some 2.5km distant from and out of sight of the henge was subject of a Public Inquiry in September 1988. Inspector Mr M.M. Cross, in his Report, placed a very high value on the setting of the archaeological landscape of the WHS, noting that "the wider surroundings are all part of the archaeological scene". The Secretary of State for the Environment's Decision Letter (21 April 1989; File No. SW/P/5407/21/67), accepted the Inspector's recommendation and refused the application.

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<sup>51</sup> Simmonds, J., "UNESCO World Heritage Convention" in *Art Antiquity and Law*, Vol.2.3 (September 1997), pp.251–282.

Dr Wainwright, Principal Inspector of Ancient Monuments for the HBMCE (now Historic England), gave prominence to the WHS in his proof of evidence. He described the principal scheduled monuments and pointed to the importance of the spatial relationships between them, stating of the WHS that “*Any attrition to that area detracts from the value of the Site as a whole*” He objected to the scale of the development and, despite the absence of planning guidance for the protection of WHSs at that time, specifically objected to

*“the adverse impact [the proposed development] will have on the archaeological setting and context of a World Heritage Site of international importance associated with the Avebury stone circles.”*

### **7.1.2. Hotel at West Kennett Farm, Avebury**

A Public Inquiry in August 1989 was held into an outline planning application for a multi-purpose complex for visitors to the WHS, including business personnel, involving new buildings and conversion of redundant Listed farm buildings.

The Secretary of State, in his decision letter (refusal; 19 December 1990; Ref. SW/P5407/21/74 & 270/199; HSD/9/2/1517 Pt 3 & 2004), recognised the importance of the WHS designation and did not agree with either the Inspector or English Heritage, that Scheduled Monument Consent should be granted for works affecting the West Kennet Avenue and the recently-Scheduled section of a late Neolithic palisaded enclosure trench, for which ‘mitigation’ measures had been proposed. He did

*“not accept that an archaeological watching brief over the proposed works as recommended would adequately protect any remains from an archaeological point of view. . . . In the particular circumstances of the case the Secretary of State believes that the preference must be for physical preservation of any remains where they lie as opposed to preservation by record.”*

### **7.1.3. Avebury Manor Inquiry into Appeals against Enforcement Orders**

Appeals against Enforcement Notices and Listed Building Enforcement Notices, in relation to the setting up and operation of an “Elizabethan” theme park at Grade I Listed Avebury Manor, largely in the absence of planning permission, were heard at a Public Inquiry in September to November 1989.

In dismissing the majority of the Appeals and refusing planning permission, the Secretary of State referred to the Conservation Area, AONB, Area of Special Archaeological Significance and WHS designations (Decision letter, 26 July 1991; Ref. APP/E3905/F/89/4 & 5; &/C/89/4–30).

He recognized that “*the unique and sensitive quality of Avebury is especially vulnerable to unsympathetic and intrusive development*” and expressed the view that a wider area than the immediate setting of the Manor would be affected by the development that had been undertaken/proposed.

## **7.2. Stonehenge**

7.2.1. Public Inquiries in 2004 and 2006 into the Highways Agency’s A303 road widening scheme (with a 2.1km tunnel) and English Heritage’s visitor-centre scheme at Countess East, respectively, were recommended for approval by Planning Inspectors. Neither scheme went

ahead, principally owing to rising costs of the former upon implementation of which the latter depended. The hydrogeology of the WHS had been found to be more complicated than expected.

7.2.2. Supporting the road scheme, English Heritage argued that the central part of the WHS was more important; and that only the legally-protected scheduled monuments, as well as other nationally important archaeological features, were to be considered predominantly significant in terms of the physical and visual impacts of the road scheme.

7.2.3. The Highways Agency's cultural heritage assessment followed that prescribed by the *Design Manual for Roads and Bridges*. Individual monuments and sites were graded according to their importance and the potential impacts of the scheme upon them. The total "benefits" were then measured against the total "dis-benefits" to demonstrate that the benefits of the scheme to some parts of the WHS would "outweigh" its dis-benefits to others. This was accepted by the Inspector in his Report<sup>52</sup> (para. 10.14). By reducing the significance of the WHS to isolated individual elements, the OUV of the WHS was disregarded – as was the potential for future archaeological research findings.

7.2.4. In recommending approval of the A303 Preferred Scheme, the Inspector admitted that it did not comply with Structure and Local Plan policies for the WHS and its setting (Report, paras. 10.78, 10.80 and 10.82): an extraordinary departure, given that the scheme was "*designed to bring major benefits to the cultural heritage of the WHS*" and not brought forward on road transport grounds.<sup>53</sup> He further agreed with English Heritage that it was only those sites and monuments it had so defined that were of OUV (Report, paras. 10.18 and 10.27), despite objector ICOMOS-UK's reminder that under the Convention the whole WHS is of OUV and is to be protected.

7.2.5. It was later agreed, by a consortium of conservation organisations, including supporter-organisations of the Stonehenge Alliance, that had permission been granted for the scheme, there would have been grounds for Judicial Review.<sup>54</sup>

7.2.6. Some significant parallels may be seen in approaches to the former and the present A303 schemes.

### **7.3. Other UK World Heritage Sites**

#### **7.3.1. Ladywood Bridge, Ironbridge Gorge**

Following an Inquiry into proposals for a new bridge and approach roads, the Secretary of State's Decision,<sup>55</sup> despite obvious traffic needs, was to refuse planning consent for a

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<sup>52</sup> Ellison, M., Report to the First Secretary of State and the Secretary of State for Transport, the Planning Inspectorate, 31 January 2005.

<https://www.whatdotheyknow.com/request/199283/response/488193/attach/3/Public%20Enquiry.pdf>

<sup>53</sup> Highways Agency, Stonehenge Improvement, ES, Vol.1 (2003), para. 5.1.2.

<sup>54</sup> Stonehenge WHS, Joint response by conservation organizations, 30 March 2006.

<http://stonehengealliance.org.uk/wp-content/uploads/2015/11/STONEHENGE-WHS-JOINT-PR-30-03-2006.pdf>

<sup>55</sup> Decision letter, 12 December 1990; Ref. WMR/P/5072/223/6

development that would create an adverse visual impact on the WHS. The Inspector (Report 1990) had noted that this was not the only suitable location for a replacement bridge. He had pointed out:

*“There is more to the Gorge than its World Heritage status however, it is the living environment for local residents and needs of the communities of Broseley and Jackfield are legitimate and pressing. It would be an extraordinarily difficult balance to strike if Ladywood were the only possible location for a bridge. But it is not.”*

The Secretary of State considered that

*“there is a need to bring forward, as a matter of urgency, proposals that will meet the traffic needs of the area but which are compatible with the Conservation Area and the World Heritage Status of the Gorge.”*

These words have resonance in relation to the A303 Scheme.

### **7.3.2. Proposed Navitus Bay Wind Park**

The proposed development off the Dorset and East Devon Coast (Jurassic Coast) WHS has particular relevance for the Stonehenge Scheme, since it was examined under the Infrastructure Planning Process and recommended for refusal by the Examining Authority. The (temporary) development for 25 years, at a minimum distance of 15km offshore from the WHS, was not granted permission by the Secretary of State for the Department for Energy and Climate Change, despite compliance with the need case in the NPS for Energy (EN-1).

Of particular significance was the Secretary of State’s view<sup>56</sup> that EN-1, para. 5.8.14 (closely similar to NPSNN para. 5.131), is

*“a high hurdle for a project to cross where it is engaged. . . . The ExA considered that the offshore elements of the project would bring about changes in the way the WHS would be experienced or enjoyed in its surroundings and would have adverse implications for the Site’s significance and its Outstanding Universal Value (“OUV” – the test of “exceptionability” for World Heritage Sites). The ExA considered there was a risk that the Site would be presented and transmitted to future generations in a form significantly different from what was there from the time of inscription until today.”* And that

*“even with mitigation measures in place, the harm to the setting, significance and OUV of the Site carries significant weight against a decision to grant consent.”*

The Secretary of State accepted that *“the ExA’s arguments must carry significant weight as to the potential for harm to the setting of the WHS”* and concluded that

*“the development . . . though not damaging to the protected feature of the World Heritage Site, would adversely affect the use and enjoyment of that Site . . . irrespective of the fact that the effects are essentially temporary.”*

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<sup>56</sup>DECC, Decision Letter and statement of reasons, 11 September 2015 (Ref. EN010024), para.24 *et seq.*

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/460324/navitus\\_decision.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/460324/navitus_decision.pdf)

### **7.3.3. Land off North Avenue, Darley Abbey, Derby.**

Appeals against refusal to grant outline planning permission for up to 49 dwellings and associated works mainly within the buffer zone of the Derwent Valley Mills WHS, and failure to give a decision on the application within the prescribed period, were dismissed.<sup>57</sup> Although the development would have involved only a small part of the landscape and be screened by a hedge, there would be changes to the land form and open landscape associated with the WHS which would conflict with NPPF policy on WHSs. This was one of the reasons for dismissing the Appeals.

### **7.3.4. Land south of St George's Road, Hayle.**

An Appeal against failure to give notice within the prescribed period on a planning application for development of 222 houses and associated works mainly within the setting of the Cornwall and West Devon Mining Landscape WHS was dismissed.<sup>58</sup> The Inspector, in his Decision Letter, agreed that there would be less than substantial harm to the setting of the WHS but that the public benefits of the development would not outweigh the harm identified with respect to the settings of the WHS, attributes of OUV, and Listed buildings. The proposal would not meet policy for conservation of the WHS' setting in the NPPF and the WHS Management Plan; it would

*“introduce a scale of development that would be incompatible with this part of the WHS” and “Legibility would however be compromised . . . Whilst the important story would remain, it would be significantly modified in terms of changes to its immediate setting. . . The loss would affect the ability to appreciate the significance of the part of the WHS and have an adverse impact on its OUV.”*

*The “considerable changes to the setting would affect the archaeological character of the WHS. I therefore consider that the scale of change would be moderate. When combined with the very high significance of these WHS attributes, this moderate scale of change would result in an overall adverse impact in the large to very large ICOMOS category.”*

### **7.3.5. Hyndford Quarry, Lanark, South Lanarkshire**

Extension was applied for, by Cemex UK, for mineral extraction (aggregates) and associated restoration and enhancement works at Hyndford Quarry in two areas for a period of up to 8 years. Extension into the southern area was granted by Scottish Ministers in December 2016; but extension into the western area, within the buffer Zone of the New Lanark WHS (and other designated areas with Listed buildings), was refused. An appeal (judicial review) in the Court of Session was not contested by Scottish Ministers and their first decision was quashed. Ministers referred the case back to a Reporter for review who recommended that both parts of the application be granted. Following this review, however, Ministers' intentions letter of 18 February 2019 repeated their earlier decision to refuse the western extension, principally on the

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<sup>57</sup>Decision letter, 22 July 2016, on Appeals A: Ref: APP/C1055/W/15/3137935 and B: Ref: APP/C1055/W/15/3141117.

<https://info.ambervalley.gov.uk/docarc/docviewer.aspx?docguid=f2d96ece2a5f4f3a9ff4d84ace934f1c>

<sup>58</sup> Decision letter, 4 May 2016, Appeal Ref. App/D0840/W/15/3006077.

<https://www.richboroughstates.co.uk/live/appeals/1102a.pdf>.

grounds of non-compliance with the development plan along with supplementary guidance on the protection of the WHS and its buffer zone.<sup>59</sup>

The need for mineral extraction did not outweigh the balance against the requirement for protection of the sensitive environment including protection, conservation and enhancement of the WHS and its setting.

The case has been referred back by Scottish Ministers to the Planning and Environmental Appeals Division (DPEA) of the Scottish Government to advise them on what conditions or legal agreements would be appropriate in respect of a permission granted on that basis.

**Addendum** to para. 1.7, above, by Mike Birkin (Friends of the Earth South West)

***A note on the offline dualling route to the north of the existing route option considered by the Project Team***

The exact design of the northern offline route rejected in November 2014 is unclear. We are not aware of any published maps of it. It is more fully described in the corridor feasibility study Stage 3 Report of February 2015.<sup>60</sup> The consultants' opinions as to the relative merits of the offline route and the tunnel options are selectively reported, and it is by no means clear what actual route was being considered: the report states that "This offline option removes the A303 from its existing close proximity to the WHS" and then two paragraphs later that "The creation of an offline route to the north route would dissect [*sic*] the WHS".

This corridor feasibility study is of some significance in the appraisal of alternative options since it appears to have been the business case developed therein that led to the inclusion of the A303 Stonehenge Tunnel scheme in the Road Investment Strategy. The scoping document for the study states that its purpose is "to inform future investment decisions".<sup>61</sup>

The corridor feasibility study can clearly be considered to be one which "*sets the framework for future development consent of projects listed in Annex I or II to Council Directive 85/337/EEC [Annex I includes: "Construction of motorways, express roads"]*" and under The Environmental Assessment of Plans and Programmes Regulations 2004 should therefore have been subject to SEA. The potential projects were, however, appraised against a treasury framework which was a long way from meeting the requirements of the SEA directive. In particular, the effects of various schemes on environmental features are given only summary treatment, amounting to little more than a desk top study.

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<sup>59</sup> Scottish Government, Local Government and Communities Directorate, Notice of Intention letter, NOD-SLS-001-1, 18 February 2019.

<sup>60</sup> A303/A30/A358 Corridor Feasibility Study, Stage 3 Report, Prepared for The Highways Agency, February 2015, CH2MHill  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/410459/a303-stage-3-report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/410459/a303-stage-3-report.pdf)

<sup>61</sup> HA/DfT A303/A30/A358 Corridor Feasibility Study Scope Document (July 2013), paras. 2.1–2 and 4.1.  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/345569/a303-feasibility-study-scope.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/345569/a303-feasibility-study-scope.pdf)