

## A303 Amesbury to Berwick Down

**Statement of Matters issued 30 November 2021:**  
Applicant's response to the matters on which the Secretary of  
State invites further representations (Paragraph 2)

Response to Bullet Point Five – Any Other Matters

Document reference: Redetermination-1.5

Planning Act 2008

The Infrastructure Planning (Examination Procedure) Rules 2010

January 2022



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# 1 Introduction

## 1.1 Purpose of this document

The Secretary of State for Transport (SoS) has requested further representations from National Highways (the Applicant) on certain matters for the purposes of his re-determination of the application. This document deals with the request for further representations on the following: *“any other matters arising since 12 November 2020 which Interested Parties consider are material for the Secretary of State to take into account in his re-determination of the application”*

1.1.1 This document deals with:

- a) The decision of the 44<sup>th</sup> session of the World Heritage Committee (WHC) in July 2021; and
- b) Biodiversity Net Gain in terms of the Environment Act 2021.

## 1.2 World Heritage Committee Decision 44 COM 7.B.61

*State of Conservation Report 2020 (and updated information 2021)*

1.2.1 The UK Government submitted a State of Conservation Report (SoCR) (HM Government, 2020) relating to the Stonehenge, Avebury and Associated Sites World Heritage Site (WHS) to UNESCO’s World Heritage Committee (WHC) on 4 February 2020. This SoCR noted that the statutory process for examination of the Development Consent Order (DCO) had concluded and a decision by the SoS was expected by 2 April 2020, which was the original determination date for the A303 Amesbury to Berwick Down (Stonehenge) scheme (the Scheme).

1.2.2 Updated information was subsequently provided to UNESCO by the UK in February 2021 in relation to the statutory decision-making process for the Scheme. The updated information letter noted that the DCO for the Scheme had been granted on 12 November 2020 and provided a summary of activity in relation to the Scheme since submission of the SoCR in February 2020, including amendments made to the Scheme documents and additional SoS consultations. These are summarised here, with commentary added to reflect the Applicant’s position:

- 04 May 2020 – The SoS set a new deadline of 17 July 2020 for the decision on the application for the Scheme. This replaced the original deadline of 2 April 2020 established from the Examining Authority’s recommendation report of 2 January 2020. The SoS requested comments from Interested Parties on a series of proposed amendments to the Outline Environmental Management Plan (OEMP) and Detailed Archaeological Mitigation Strategy (DAMS). On 18 May 2020, in response to this consultation, the Applicant submitted an updated DAMS, including in particular additional explanation of the Scientific Committee’s involvement in the

remaining stages of the project, and an updated OEMP to address points raised in the same consultation.

- 16 July 2020 – The SoS extended further the deadline for the decision to 13 November 2020. This was to enable consideration including consultation relating to the results of fieldwork conducted by the Stonehenge Hidden Landscapes Project (SHLP) around Durrington Walls within the WHS. In August 2020 the Applicant submitted a response to the SoS's 16 July 2020 letter. This response included addenda to the Environmental Statement and Heritage Impact Assessment.
- 20 August 2020 – SoS request for final comments on those representations relating to the preceding consultation, including responses to the additional environmental information submitted by the Applicant, by 28 September 2020.

1.2.3 The updated information letter also outlined ongoing consultations by the Applicant in relation to Scheme documents, continuing engagement with the Heritage Monitoring Advisory Group (HMAG) and Scientific Committee, and proposals for commencement of monthly meetings of the Stakeholder Design Consultation Group (SDCG). The announcement by the Applicant on 21 October 2020 of the appointment of an archaeological contractor for the Scheme was also noted.

1.2.4 The updated information letter also noted that in the week beginning 21 December 2020, and following the SoS's granting of the DCO on 12 November 2020, a claim for permission to seek a judicial review of the DCO decision was lodged with the High Court.

*44th session of the World Heritage Committee (WHC)*

1.2.5 The 44<sup>th</sup> session of the WHC due to take place in July 2020 was postponed due to the Covid-19 pandemic and subsequently sat in extended session online in July 2021. The 44<sup>th</sup> session considered the 2020 SoCR and subsequent additional information, noting the SoS's decision to grant the DCO and the then pending judicial review. The relevant section of the WHC Decision is set out in full below (WHC/21/44.COM/18, p. 152) (UNESCO, 2021).

*Decision: 44 COM 7B.61*

*The World Heritage Committee,*

*Having examined Document WHC/21/44.COM/7B.Add,*

*Recalling Decisions 42 COM 7B.32 and 43 COM 7B.95, adopted at its 42nd (Manama, 2018) and 43rd (Baku, 2019) sessions respectively,*

*Notes the progress made with the new management and governance arrangements, and implementation of the 2015*

*Transport Strategy, as well as the initiative to introduce Traffic Regulation Order on roads where traffic has an adverse impact on attributes of the property, and urges the State Party to continue finding solutions to address these negative impacts;*

*Also notes the forthcoming setting study and related boundary review of the property and requests the State Party to submit the draft setting study to the World Heritage Centre for review by ICOMOS;*

*Further notes the small-scale design refinements, which have been made to the A303 improvement scheme within the property;*

*Recalls that the Committee has previously noted that the 2018 joint World Heritage Centre/ICOMOS Advisory mission and the State Party's own Heritage Impact Assessment (HIA) highlight that the current overall proposal would impact the integrity of the intended spatial relationships between monuments, a key part of the prehistoric 'landscape without parallel' as inscribed;*

*Reiterates its concern that, as previously advised by the Committee and identified in the 2018 mission report, the part of the A303 improvement scheme within the property retains substantial exposed dual carriageway sections, particularly those at the western end of the property, which would impact adversely the Outstanding Universal Value (OUV) of the property, especially affecting its integrity;*

*Notes with concern that, although consideration was given to extending the bored tunnel and to greater covering of the cutting, as requested by the Committee, it was determined by the State Party that the additional benefits of a longer tunnel would not justify the additional costs;*

*Reiterates its previous request that the State Party should not proceed with the A303 route upgrade for the section between Amesbury and Berwick Down in its current form, and considers that the scheme should be modified to deliver the best available outcome for the OUV of the property;*

*Notes furthermore the State Party's commitment to ongoing engagement with the Committee, the World Heritage Centre, and ICOMOS, but also considers that it is unclear what might be achieved by further engagement unless and until the design is fundamentally amended;*

*Regrets that the Development Consent Order (DCO) has been granted for the scheme;*

*and therefore, further considers in conformity with Paragraph 179 of the Operational Guidelines that the approved A303 improvement scheme is a potential threat to the property, which - if implemented - could have deleterious effects on its inherent characteristics, notably to its integrity;*

*Notes moreover that in the event that DCO consent was confirmed by the High Court, the property warrants the inscription on the List of World Heritage in Danger;*

*Finally requests the State Party to submit to the World Heritage Centre, by 1 February 2022, an updated report on the state of conservation of the property and the implementation of the above, for examination by the World Heritage Committee at its 45th session, with a view to considering the inscription of the property on the List of World Heritage in Danger if the A303 route upgrade scheme is not modified to deliver the best available outcome for the OUV of the property*

- 1.2.6 In relation to the weight that should be placed on the WHC's view, the Applicant's position remains as stated in its closing submissions [\[TR010025-001775-8.70, AS-146, paragraph 2.3.11\]](#), that the WHC is not a decision-making body set up to determine whether developments around the world are acceptable or not. Consequently, the views of the WHC should be treated as the views of a consultee, to be given appropriate weight by a decision maker. Any approach which treats the views of the WHC as determinative would be legally flawed and should be rejected.
- 1.2.7 Regarding the impact of the Scheme on, "*the integrity of the intended spatial relationships between monuments, a key part of the prehistoric 'landscape without parallel' as inscribed*", the Applicant's position remains that the Application has engaged with the WHS as a whole, its landscape, and the fundamental spatial and visual aspects of the landscapes and monuments and sites within it, as detailed in submissions to Examination (see for example [\[REP5-003\]](#), response 34.1.35, [\[REP8-013\]](#) response 10.2.12). The Scheme seeks to avoid and minimise adverse impacts on the Attributes that convey the OUV of the WHS, its Integrity and Authenticity, wherever possible, and to sustain the OUV of the WHS.
- 1.2.8 Regarding impacts on the OUV of the property, and especially its Integrity, the Applicant's HIA [\[APP-195\]](#) considers the implications of the Scheme in the context of the protection of OUV and the Authenticity and Integrity of the WHS. The Scheme conceals the new infrastructure in key views agreed with HMAG [\[APP-195, para. 5.3.38-40\]](#). The Scheme design has optimised the positions of the tunnel portals within the landscape at the head of dry valleys, and the road (and traffic on it) has been designed to be hidden within deep retained cuttings that minimise landtake, views, reduces noise and improves the tranquillity of the WHS. The retained cutting in the western approaches allows visual connectivity to be maintained between the Winterbourne Stoke Crossroads Barrows, the Diamond Group and the Normanton Down Barrows that contribute to the OUV of the WHS. The

addition of Green Bridge No. 4 maintains physical and visual connectivity between the Winterbourne Stoke Crossroads Barrows and the Diamond Group and, in particular, the two upstanding long barrows in each group in this western part of the WHS (see [REP5-003], response 34.1.35). The Applicant's position is that the OUV of the WHS would be sustained as set out in Section 12.4 of the HIA.

1.2.9 Regarding consideration of extending the bored tunnel and to greater covering of the cutting, the Applicant's conclusions were detailed in the response to the Examining Authority's written question AL.1.29 [REP2-024, pages 4-65 – 4.73]. The response to AL.1.29 discusses the benefits and disbenefits, in comparison with the Scheme, of each extended tunnel option in terms of:

- Traffic and Operational issues
- Construction and Civil Engineering Issues
- Mechanical and Electrical Issues
- Heritage Issues
- Environmental Issues
- Programme and Cost

1.2.10 The extended tunnel options were rejected on the basis of a balanced appraisal of these issues: while increased cost was necessarily a factor, it was not the sole or primary consideration. Further detail regarding the assessment of alternatives and the Applicant's consideration of any changes to that assessment is provided in the Applicant's Response to Bullet Point One – Alternatives (Redetermination-1.1) of the SoS's Statement of Matters.

1.2.11 The conclusions by the WHC in relation to the longer tunnel and its view that the scheme should “*deliver the best available outcome*” were considered and addressed in the Applicant's closing submission [AS-146] at para 2.3.8 – 2.3.10 – those submissions remain applicable to the WHC's decision at its 44<sup>th</sup> session:

*2.3.8 The “Analysis and Conclusions of the World Heritage Centre, ICOMOS and ICCROM” suggests further consideration of a longer tunnel to the west should be undertaken, stating that the “justification [for the Scheme is] based on assessing whether the proposal is an improvement, rather than the best available outcome for the OUV of the property”.*

*2.3.9 The Applicant, as was explained at ISH8, considers that the objective of achieving the best available outcome does not reflect either the obligations contained within the World Heritage*

*Convention to protect and conserve the WHS or the approach set out in relevant ICOMOS published guidance.*

*2.3.10 The phrase “best available outcome” is not language that comes from the World Heritage Convention. It cannot be found within the NPSNN either. Indeed, it does not reflect the approach set out in ICOMOS’s own guidance (i.e. that of taking an overall view of OUV once benefits and harm have been assessed).*

- 1.2.12 With regard to ongoing engagement, the Applicant’s position is that there continues to be opportunity for engagement, consultation and collaboration with the WHC, the UNESCO World Heritage Centre and its advisory bodies in regard to the Scheme and its impact on the OUV of the WHS, taking account of the latest form of the Scheme and the modifications that have been made in response to UNESCO concerns since the last Advisory Mission took place in 2018. The Applicant expects that the detailed design process (subject to redetermination of the Scheme) will provide an opportunity to address as many of UNESCO’s concerns as possible.
- 1.2.13 With regard to the WHC’s comments about the potential for placing the WHS on the World Heritage in Danger List, the impact of the Scheme in terms of the inscription of the WHS is assessed in Section 12.5 of the HIA [APP195] and concludes that the Scheme would not impact upon the continuing relevance and application of the WHS inscription criteria. The Applicant’s position is that the Scheme addresses a longstanding threat to the integrity of the WHS by placing a substantial length of the existing A303 in a tunnel and removing the current Longbarrow roundabout, and delivers substantive benefits to the OUV of the WHS by removing or reducing adverse impacts on multiple monuments that convey the OUV of the WHS.
- 1.2.14 The Applicant’s position remains that the Scheme would have a slight beneficial effect on the OUV of the WHS as a whole, and would lead to less than substantial harm to some designated heritage assets; the comprehensive and robust assessment that has been carried out to reach the Applicant’s conclusion is summarised in the Applicant’s closing submission [AS-146 paragraphs 5.2.6 and 5.2.7]. Notwithstanding a finding by the SoS that there would be less than substantial harm, the Applicant’s position remains that, given the clear substantive benefits of the Scheme to OUV of the WHS and the opportunities for ongoing engagement with UNESCO to maximise protection and enhancement of the Property’s OUV as outlined above, the Scheme would not impact upon the continuing relevance and application of the WHS inscription criteria, as set out in the preceding paragraph (1.2.14 above). Therefore consenting of the Scheme would not justify inscription of the WHS on the List of World Heritage in Danger.
- 1.2.15 The Applicant’s position remains that granting the DCO in accordance with the NPSNN would not put the UK in breach of the World Heritage Convention, as set out in the response to the Examining Authority’s Written Question G1.1. [REP2-021] and summarised in closing submissions [TR010025-001775-8.70, para. 5.2.20]. This conclusion was adopted by

both the Examining Authority (at paragraphs 7.3.1 to 7.3.43 of its Report) and the SoS (paragraphs 64-66 of the Decision Letter) despite their findings on harm in their recommendation / decision, and that conclusion was endorsed by the High Court in its decision on the judicial review of the SoS's granting of the DCO:

*217. I have no hesitation in concluding that the SST was entitled to decide that the policy approach in paragraphs 5.133 and 5.134 of the NPSNN (read together with the surrounding paragraphs) is compliant with the Convention . That is a tenable view. If I had to decide the point of construction for myself, I would still conclude that those policies are compliant with the Convention .*

...

*220. The broad language of these Articles [of the World Heritage Convention] is compatible with a State adopting a regime whereby a balance may be drawn between the protection against harm of a WHS or its assets and other objectives and benefits and, if judged appropriate, to give preference to the latter. The Convention does not prescribe an absolute requirement of protection which can never be outweighed by other factors in a particular case. Nor does the Convention use language which would limit such other factors to heritage benefits or benefits for the WHS in question. I also note that in its Guidance on Heritage Impact Assessments for Cultural World Heritage Properties, ICOMOS accepts that a balance may be drawn between the "public benefit" of a proposed change and adverse impacts on a WHS (para. 2-1-5).*

- 1.2.16 Accordingly, the ground for judicial review on this point (ground 4) was rejected by the High Court. The judicial review Claimant has not sought to appeal the rejection of that ground. There have been no changes in law or policy, to the World Heritage Convention, nor anything with respect to interpretation of the World Heritage Convention, that would justify or require the SoS to take a different approach in this respect on the redetermination of the application. The WHC decision from the 44th session, being effectively a representation from a consultee, would also not change that.
- 1.2.17 **In conclusion, while we expect that the SoS will take the World Heritage Committee Decision 44 COM 7.B.61 into account in his redetermination of the application for the Scheme, for all the reasons stated above the points raised in the Decision do not affect the case for the Scheme and development consent can and should be granted.**

### 1.3 Biodiversity Net Gain

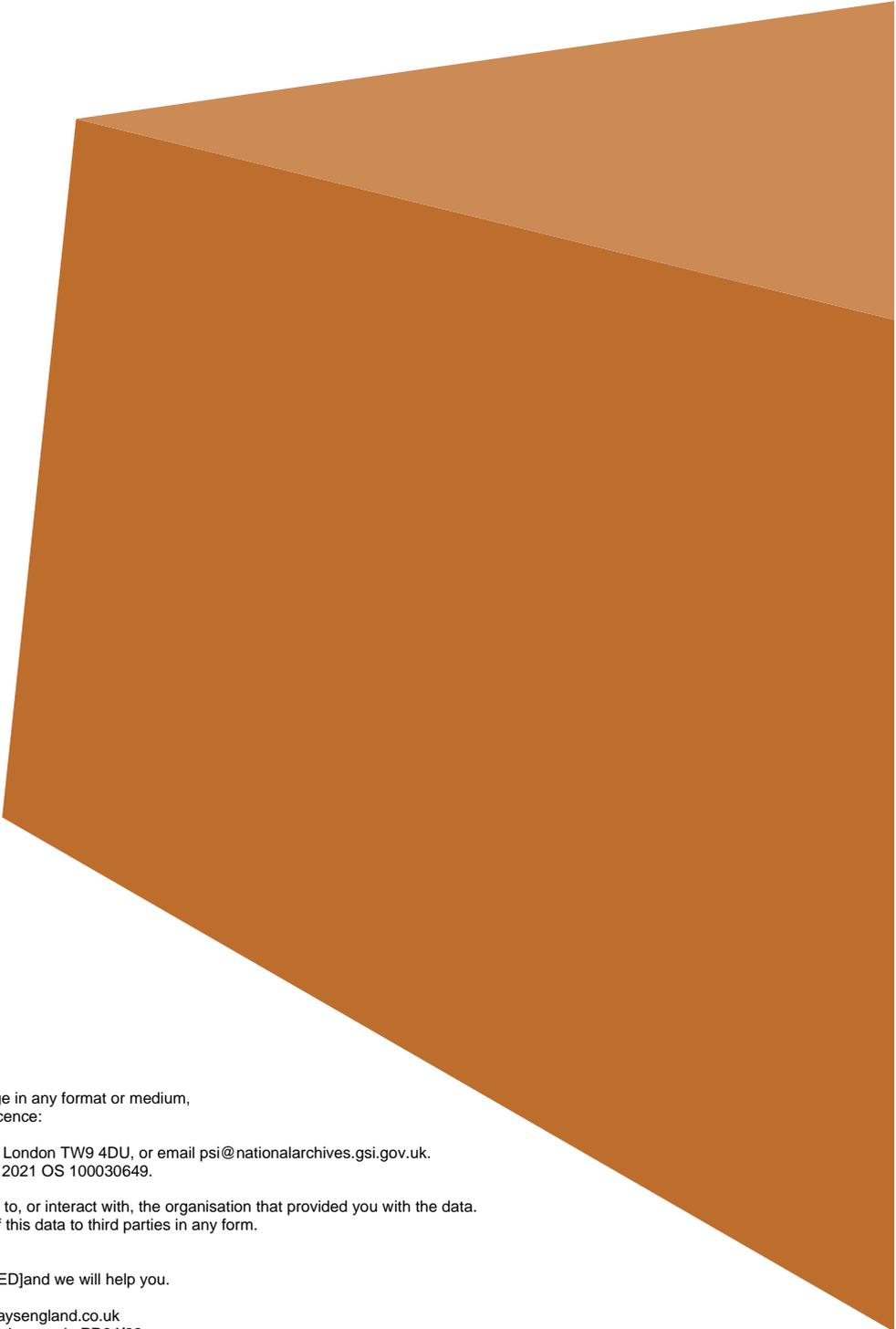
- 1.3.1 The Environment Act 2021 (the 2021 Act) received Royal Assent on 9 November 2021, bringing into UK law a number of measures which together are designed to deliver long-lasting action for the protection and recovery of nature. The 2021 Act makes it mandatory for certain types of development,

subject to some narrow exemptions, to achieve at least a 10% net gain in value for biodiversity – a requirement that habitats for wildlife must be left in a measurably better state than before the development.

- 1.3.2 The provisions of the 2021 Act relating to biodiversity net gain have not yet been brought into effect and it is anticipated that they will not be for several years. Once they are brought into effect, developers will be required to submit a 'biodiversity gain plan' alongside usual application documents. The relevant decision-maker must assess whether the 10% net gain requirement is met in order to approve the biodiversity gain plan. As set out in the 2021 Act Schedule 15 and 2A, where a project cannot achieve its target within the Order Limits, offsite projects / habitat creation can be added (and agreed) to achieve the target gain. Hence, in the event that a project did not meet the required target within Order Limits it could otherwise achieve compliance with the 2021 Act.
- 1.3.3 As Examination of the Scheme occurred prior to the passing of the 2021 Act, statutory biodiversity net gain was not included within the 2018 ES<sup>1</sup>. Furthermore, as noted above, the statutory provisions relating to biodiversity net gain are not yet in force and no date has been set for when the requirement will become effective. Accordingly, there remains no legal requirement for the Scheme to achieve a statutory biodiversity net gain target.
- 1.3.4 Notwithstanding that the 2021 Act biodiversity net gain provisions are not in force, in more general terms the Scheme has taken steps to enhance biodiversity. As stated in Chapter 8 Biodiversity of the 2018 ES [APP-047], the Scheme includes biodiversity enhancement measures such as the provision of extensive areas of calcareous grassland, which will improve the habitat connectivity between sites along the A303 corridor. The tunnel and conversion of the existing A303 to use by non-motorised users will reconnect habitats along an area more than 3 kilometres in length. Other enhancement measures include two underground hibernation sites for bats. In addition, a series of projects for offsite habitat creation and species-specific enhancement measures have also been secured with partnering stakeholders.
- 1.3.5 **In conclusion, statutory biodiversity net gain pursuant to the Environment Act 2021 is not required for the Scheme and so the developments relating to statutory biodiversity net gain do not affect the Secretary of State's ability to re-grant development consent for the Scheme.**

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<sup>1</sup> See the Applicant's Response to Bullet Point Four – Environmental Information Review (Redetermination-1.4) of the Statement of Matters for the definition of "2018 ES"



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