

Applicant’s response to the Secretary of State’s request for comments on the Findings and Recommendations in the Final Report on the joint World Heritage Centre, ICOMOS, ICCROM Advisory Mission to Stonehenge, Avebury and Associated Sites

Comments of the Council for British Archaeology

Summary and Conclusions

We have examined the report on the joint World Heritage Centre, ICOMOS, ICCROM Advisory Mission and the Applicant’s comments on it. In general, we concur with the Mission’s report, and the very serious problems that it raises with respect to the proposed DCO scheme.

We support the Mission’s view, coinciding with the World Heritage Committee’s (WHC) recommendation, that the Scheme should not proceed in its current form, also noting in particular the WHC’s 2021 Decision warning that if the scheme were to be approved and go ahead, the WHS might be placed on the List of World Heritage in Danger and ultimately delisted.

We agree with the Mission’s support of the WHC recommendation that alternatives that better meet the primary goal of avoiding and minimising harm to the WHS – and potentially offer important opportunities for remediation of past harm – warrant far closer consideration.

We support the Mission’s concerns that archaeological remains that contribute to the OUV of the WHS should not be harmed by temporary construction facilities, but would stress that this must apply to the setting of the WHS and areas over which it could extend, not just within the present WHS boundary. Thus, we highlight in particular the failure to evaluate the main construction compound fully and the inexplicable assumption that any remains could be preserved unharmed when that seems legally impossible under the mitigation requirements for soil conservation.

We agree with the Mission that archaeological remains that would be lost or damaged must be covered by a mitigation strategy that is comprehensive, thorough and effective. But we question their seemingly uncritical acceptance of assurances offered by the Applicant and State Party, apparently without the benefit of considering expert representations that are highly critical of the approach.

We disagree with the Applicant’s dismissal of the Mission’s most critical findings and recommendations, which reflect concerns and issues repeatedly raised by the CBA since the beginning of the Examination.

We believe the Sec of St should also take in to account the following general considerations:

- Although the Mission had access to some material from bodies opposing the scheme, the overwhelming bulk of material was provided by the Applicant and State Party as proponents and supporters of the DCO scheme.
- The Applicant’s response does not fully acknowledge or consider the fact that the Advisory Mission report was prepared before the Applicant’s additional assessment of a westward tunnel extension, or representations made about that by interested parties.
- Despite the High Court’s rulings about the inadequate consideration of alternatives by the ExA and Sec of St, and inappropriate over-reliance on the optioneering stages of scheme development to fulfil the Sec of St’s fundamental obligation to balance competing high-level

national and international public interest needs and obligations, there has been no consideration of other alternatives that the WH Committee has identified in its Decisions.

- There appears to have been no consideration by the Mission of the implications of the High Court's other (and not entirely unrelated) reason for quashing the original decisions of the Sec of St, which concerned shortcomings in the approach to heritage impact assessments.
- The Secretary of State should consider the UNESCO Mission report within the wider context of how far other representations of interested parties reinforce or build on the concerns raised by the Mission (as well as their complimentary comments).
- The Applicant's response is formulated in a way that seeks to isolate and then comment on specific points raised by the Advisory Mission, mostly focussing on legalistic and procedural points, not the underlying substance or the interrelatedness of all the Mission's findings and recommendations, which is what the Sec of St is obliged to consider.

We set out below why and how the Sec of St should weigh all these matters with great care.

Detailed Comments

A The Applicant's Response to the Mission Report Findings

The primary test of avoiding impacts on OUV.

- 1 In giving most weight to the need to avoid and minimise harm to the WHS, the Mission report applies general principles that are enshrined in NPSNN policies. These are not restricted just to the balancing of harm and benefit but the much broader principles of safeguarding irreplaceable heritage for future generations that are also reflected in the WH Convention.
- 2 The fundamental rationale for the proposed tunnel is to reduce the impact of a surface dualling across the WHS which almost all interested parties – and WHC – agree would be unacceptable. In trying to make the case for the tunnel the Applicant and other proponents of the DCO Scheme have over-stated the significance of the benefits for the WHS in terms of reducing current visual and noise intrusion and severance in its central core: these issues have no discernible impact in many thousands of negative comments left by visitors in online feedback ratings; other issues are of much greater concern ([\[REP6-084\]](#) pp. 65-6).
- 3 This is compounded by the failure of the Applicant to consider how the proposals would harm key aspects of OUV by changing the landform of the WHS to a far greater degree than ever before, and introduce earthworks and structures of utterly unprecedented scale in highly sensitive locations. These effects, in line with the Mission's and WHC's concerns, were the principal reasons for the ExA recommending refusal, and were accepted by the Sec of St.
- 4 The Applicant's response on this issue misses the point: the Sec of St is obliged to consider very thoroughly the substance of how harm to the WHS OUV might best be avoided and minimised – or how it might be enhanced in relation to statutory, legal and policy tests. The CBA has already made submissions concerning this ([\[CBA 2002b\]](#) and references therein), which highlight how the Mission's basic concern to avoid harm to the WHS OUV could – on the face of it – be far better be achieved, including one option raised by the WHC and Mission that could be delivered at far less cost to the taxpayer.

- 5 NH's comments about the Mission's and WHC's input being only advisory with no executive authority are unduly dismissive: they fail to point out that this is formal advice within the context of the UK adhering to international legal obligations. Just as the WH Committee has no executive authority to intervene in UK domestic decisions, the UK has no more than an advisory role in the power of the WH Committee to delist a WHS that it considers to be subject to excessive harm – as the Committee has warned could happen with Stonehenge if this DCO were to be approved in its current form.

The need to explore fully the available opportunities to avoid impacts on OUV.

- 6 The Applicant has not referred to the alternatives cited by successive WHC Decisions and the Mission report as needing to be considered; nor have they examined this in relation to the full implications of all the reasons why the Sec of St's original decision to grant the DCO was quashed on this issue. These go well beyond the very limited additional work done in response to the Sec of St's letter of 20th June 2022. The Applicant merely outlines the approach taken without considering either the full implications of the reasoning of the High Court on this matter, or what the WHC and the Mission have said should be considered. Nor do they refer to representations made by interested parties (eg [[CBA 2002b](#)]) who do address this matter – clearly concluding that it is very far from resolved.
- 7 In respect of a westward tunnel extension, the Mission and WHC have clearly advised that any solution to meet UK obligations to safeguard OUV under Articles 4 and 5 of the Convention adequately would need to be a bored tunnel extending far enough beyond the W boundary of the WHS, including a relocated A360 junction, to make a substantive improvement (anything less being ineffective).
- 8 Crucially, the Applicant has failed to apply a clear logic to this issue in relation to the primary concern of the Mission's report and why alternative options that they and the WHC have been identified should be properly considered.
- 9 This has wider implications because when the High Court judgment is taken into account with WHC's and the Mission's concerns along with those of other parties, it becomes clear that the consideration of alternatives should not be limited to a minimalistic consideration of an extension of the tunnel westwards to just outside the WHS. The case law cited and reasons given make it clear that other viable alternatives that might better avoid or minimise impacts or allow for enhancements of OUV must also be considered properly.

Relevance of WH Committee Decisions and Recommendations

- 10 The Applicant's response concerning what weight should be given to the WHC's view and that of the Mission is unhelpful: the Mission report is not claiming a status that it does not have. But there are other factors that also bear on weight should be given to the Mission Report in the context of the role of the WHC:
- The Advisory Mission does not just offer opinions as an independent consultee, but have a formal role to give advice to both the WHC and the State Party, about a case of global significance. As such it has a bearing not just UK decision-making, but also decisions of the

WHC and World Heritage Centre at UNESCO may take within the framework of an international treaty.

- For the UK it is a formal advisory process that directly bears on an aspect of infrastructure planning to which the Sec of St is obliged under UK policy to give great weight in respect of any harm caused to the OUV of the WHS.
- For the WHC and World Heritage Centre, it is a formal advisory process that has a real bearing on whether or not the WHS is formally considered to be ‘at risk’ and therefore potentially subject to delisting – as has already been warned. That decision is not in the hands of the UK Government.¹
- The advice of the Mission is also very relevant to how the High Court judgment should be understood in respect of alternatives. The Mission has highlighted – just as other interested parties such as the CBA have – that in view of the status of the WHS and its component parts, several alternatives that might avoid or minimise harm to a greater extent need to be considered objectively making a full comparison of the main direct, indirect and cumulative effects, both harmful and beneficial (see also comments on Recommendation 2 below). For reasons already explained by the CBA [[CBA 2002b](#)] paras. 18-42] and others, this is not restricted to a westward tunnel extension.

B Applicant’s Response to the Advisory Mission’s Recommendations to the State Party

Recommendation 1: Should do all in its power to comply with Decisions of the World Heritage Committee

- 11 The Applicant’s response does not identify the Decisions of the WH Committee that the State Party is advised to comply with, and thus makes no comments on the substance of this recommendation. We note that ICOMOS UK has summarised these in more detail, explaining their implications. Those Decisions are reflected in recommendations of the Mission report and are given added weight because the WHC Decisions themselves ‘*request the State Party to address the findings and implement the recommendations of the ... Advisory mission.*’

Recommendation 2: Revisit alternative surface road options to consider whether one of them might be adapted to remove through traffic from the WHS

- 12 The Applicant reiterates their position derived from the technical Appraisal Report of 2017 and other documentation presented to the Examination and response to the Sec of St Statement of Matters (January 2022) and subsequent documents.
- 13 The WHC Decisions and Mission report have consistently stressed the need to resolve issues across the whole of the WHS: previous recommendations to re-examine option F010 in particular still stand: they were never withdrawn and each set of Decisions refer back to previous ones as part of their context. The CBA has highlighted the inadequacy of the assessment approach to

¹ Having already had the Liverpool Docks WHS designation delisted because of inappropriate over-development it would be extraordinary if Britain were to lose another because of a development allowed by the State Party itself against an independent panel of inspectors’ recommendation of refusal. The Liverpool development was opposed by key UK heritage bodies such as HE, who unlike their role at Stonehenge did not have key vested interests (management, financial and property responsibilities) that would benefit from the development.

cumulative effects with the existing A303 ([\[CBA 2002b\]](#) paras 34 to 42 and references therein) which amount to serious harm to OUV and nationally designated assets that would be exacerbated by the DCO scheme but could be reversed by removal of the A303, whether by tunnel or a surface route outside the WHS) – a key consideration in relation to this Recommendation.

- 14 None of the documents cited by NH addresses the full implications of the High Court judgment on this issue ([\[2021\] EWHC 2161 \(Admin\)](#)).para 265) including the case law that it referred to (paras 268-76) or the reasons why alternatives that might materially avoid or minimise harm the WHS should have been considered more fully (paras 278-90). Nor are the specific criticisms made by the CBA and others of the shortcomings of the options appraisal process addressed.
- 15 So far, only an extension just beyond the boundary of the WHS has been examined in more detail. For all other alternatives/ options the Applicant continues to rely on the approach that the High Court has ruled inadequate ([\[\[2021\] EWHC 2161 \(Admin\)\]](#) paras 246-67; 278-84). There remains a requirement to give much more careful consideration to the southern surface route alternative route, as the WHC and Mission continue to recommend.

Recommendation 3: The proposed western [end] of the current Scheme... should not proceed without substantial amendment to avoid adverse impacts on the WHS and the OUV of the World Heritage property, to the fullest extent that is reasonably practicable.

- 16 This recommendation does not conflict with the policies and caselaw cited by the Applicant. Indeed, it is the implications of the Articles of the WH Convention referred to, together with UK domestic legal and policy requirements that underpin the reasons the High Court’s gave for quashing of the original approval of the scheme on the basis of heritage impacts and alternative ways of avoiding them not having been adequately considered ([\[\[2021\] EWHC 2161 \(Admin\)\]](#) paras 278-84). They impose particular obligations on the Sec of St to give very careful consideration to alternative ways of progressing towards the basic transport and socio-economic objectives of the project that would be less harmful and more beneficial.
- 17 Furthermore, there is also an obligation to weigh the overall public benefits to be achieved – whether the perceived public benefits for transport must be met in full (which seems to be the Applicant’s underlying assumption), or could they reasonably be met in part by making some much more modest beneficial changes in traffic management? That is a further approach that has not been fully considered ([\[CBA 2002b\]](#) paras 43-5 and references therein), but would cause less harm to international heritage, while also not compromising the need for rail capacity to be improved to help meet longer term transport and climate objectives.

Recommendation 4: If the Scheme proceeds, the underground section of the western approach ... should be extended, to at least to the western edge of the WHS boundary.

- 18 This Recommendation should clearly be read in conjunction with the previous one: the Mission makes it clear that the primary objective should be ‘to avoid adverse impacts on the WHS and the OUV of the World Heritage property, to the fullest extent that is reasonably practicable.’ This recommendation only indicates that anything less than an extension at least to the western edge of the WHS would not achieve this, not that this could or would be sufficient.

Recommendation 5: The western portal should be re-located as far to the west as reasonably practical, thereby reducing the length of the cut-and-cover section and minimising the extent of archaeological resources which must be removed.

- 19 To avoid archaeological resources this clearly refers to where the western portal of the bored tunnel is located. The Mission report predates the Applicant's consideration of a western extension to the tunnel at the request of the Sec of St. Nonetheless, the Applicant submitted a cut-and-cover option that does not accord with this recommendation.
- 20 In accordance with NPSNN, the Sec of St should give great weight to the issue that the Mission has highlighted as the need to avoid disturbance of archaeological remains affected by the tunnel approach – as highlighted by the Consortium of Archaeologists, the CBA and others who have drawn attention to their likely significance as predicted from the limited work done to date and the policy considerations that demand a precautionary approach ([[CBA 2002b](#)] paras 4-15).
- 21 This consideration also applies to the eastern tunnel approach for which there are other substantial issues of exacerbating past harm to key assets contributing to OUV. The CBA has shown ([[CBA 2002b](#)] paras 4-15, 18-33; 34-42) how the Applicant's approach is flawed and why the harm would still be serious and would not 'avoid adverse impacts on the WHS and the OUV of the World Heritage property, to the fullest extent that is reasonably practicable'.
- 22 Recommendations 2-3 are interdependent: lengthier extensions to the west would be 'reasonably practical' in terms of construction could make a much greater difference, albeit at great cost. The logic of rejecting longer tunnel options is not that the DCO scheme becomes 'acceptable', but that viable surface options which are less costly and more likely to achieve must be considered (see Recommendation 2)

Recommendation 6: There should be a comprehensive archaeological salvage and mitigation programme....

- 23 The Applicant has simply outlined the procedural provisions proposed. The Mission is correct in continuing to emphasise this issue, which is also a long-standing concern of the CBA ([[REP2a-005](#)]; [[REP8-037](#)]; [[SofS Consult 2](#)] p.3 paras 3a to 3d 1) and other experts. The Sec of St is obliged to give those concerns proper consideration as to whether the proposed programme of work would be a) adequate and b) effective. The Applicant has not demonstrated either, not least because the baseline forecast of the archaeological resources is deeply flawed and the risks of what could be lost without record have not been adequately assessed ([[CBA 2002b](#)] paras 50-53, Appendix, and references therein; [[SofS Consult 3](#)] pp. 9-10). In relation to Recommendation 14 below we use the example of the main compound area to further demonstrate in more detail another example of these shortcomings.

Recommendation 7: In the event that unexpected archaeological finds were to occur during the course of the comprehensive archaeological salvage and mitigation program, provision should be made to stop work and evaluate options for improved conservation outcomes, including public communication of discoveries.

- 24 The Applicant has simply stated what is proposed. While the Mission may not to have considered the expert concerns of the CBA and others ([[CBA 2002b](#)] and references therein), the Sec of St is

obliged to give them proper consideration. As the CBA has explained, whether *unexpected archaeological finds* would occur is not in question: experience of all infrastructure projects is that such discoveries will occur. Most major infrastructure projects, even in far less sensitive areas than Stonehenge (eg A14, HS1, HS2), reveal nationally important assets that cannot be preserved *in situ*.

- 25 This is especially relevant to the kind of remains that are relevant to OUV and how likely it is that they have been identified in the survey work to date. The CBA and others have made it very clear that massive uncertainties abound in the way that this has been approached ([CBA 2002b] paras 52-3, Appendix pp. 14-15). This has substantial implications relative to the policy considerations and tests that the Sec of St's must consider in balancing of harm versus the need for the development. This is exemplified by the substantial harm that would be caused to highly significant sites in the approaches to the tunnel raised by the Consortium of Archaeologists (see [CBA 2002b] paras 4-15), and the potential impact of the 31.5ha main compound area, for which the mitigation proposed appears to be undeliverable ([CBA 2022a] para 18 *archaeology* item c) and references therein)- see Recommendation 14 below.

Recommendation 8: The proposed Longbarrow junction should be re-located further to the west, insofar as this is practically possible.

- 26 The Applicant's response relies on their previous assessments of impacts on the setting of assets. The ExA gave much more weight to the physical changes involved in the junction (the scale of new infrastructure and the impact on landform) which the Applicant's approach has systematically omitted despite their obvious relevance to key aspects of OUV.
- 27 The Sec of St accepted the ExA view of the seriousness of the effects of the scheme in this matter which was the basis of the ExA's finding of substantial harm ([2021] EWHC 2161 (Admin)] para 267). But the Applicant has persisted in its account, and has taken no notice of the High Court's finding that the Heritage Impact Assessment did not sufficiently discriminate the effects on different assets.
- 28 The CBA has repeatedly shown how the Applicant's approach is deeply and systematically flawed in this respect – most recently in relation to our comments on their response on possible westward tunnel extensions ([CBA 2002b] paras 23-33).

Recommendation 9: If the Scheme proceeds, a monitoring regime should be established to identify any changes to the water table which affect Blick Mead, and any such changes should be addressed through a process of adaptive management.

- 29 The Applicant refers to measures that have been put in place. But these take no account of representations made by SA, CoA and others about the remaining uncertainties.
- 30 The CBA has raised concerns about fundamental flaws in the approach that have failed to take proper account of the nature of paeo-environmental preservation, factual errors in baseline reports and the complexities of three-dimensional modelling across the area ([CBA 2002b] paras 15-17; [CBA 2022a] para 18 item d and references therein).
- 31 These issues remain unanswered and the Mission's advice needs to be considered in the light of these technical issues on a precautionary basis.

Recommendation 10: Appropriate community access

- 32 We agree with the Mission Report's concerns. They emphasise the significance of Vespasian's Camp and Amesbury Park.
- 33 The cumulative physical effect of the existing A303 and the scheme on the setting of these key assets has not been properly recognised or assessed ([[CBA 2002b](#)] paras 34-42). There is potential for Vespasian's Camp and Amesbury Park to be greatly enhanced if there were an eastward extension to the tunnel or a southern route allowing the current A303 cutting across the entrance to Vespasian's Camp to be restored to the original landform. This would be in accord with NPPF para 5.137, local policies and the WH Management Plan to reverse adverse effects of roads in the WHS ([[Wilts. Core Policy](#)] policy 59iii p. 293); [[WHS MP Policy](#)] policy 6a p 172]).

Recommendation 11: If the Scheme proceeds, the Scientific Committee should be requested and empowered to facilitate ongoing discussions and consideration of the most appropriate methods to achieve comprehensive archaeological salvage and mitigation.

- 34 We note this recommendation, and the Applicant's response. We remain concerned (see [[SofS Consult 2](#)] footnote pp 4-5) that the Scientific Committee does not yet seem to have considered technical issues concerned with sampling, the reliability of assessment and significant implications for mitigation as outlined above (Recommendations 6 and 8).

Recommendation 12: The current representation on the HMAG should be augmented with addition of further expertise in cultural landscape conservation, management and interpretation.

- 35 We agree with the Mission's recommendation. The Applicant's response fails to appreciate concerns raised about the lack of true independence of the HMAG which is composed of proponents of the scheme, with little or no representation of critics whose expertise has largely been ignored to date.

Recommendation 13: If the Scheme proceeds, the rights of private farmers within the WHS should be pro-actively protected, including careful attention to new visitor opportunities and circulation patterns, and minimising ancillary impacts.

- 36 We note that an issue of landuse rights that the Applicant has not considered is the risk that where land is restored to agriculture after use as a construction compound, farmers may well see a need to de-compact the ground (if only on a precautionary basis). This would not arise without the scheme, but could cause damage to archaeological remains.

Recommendation 14: If the Scheme proceeds, the WHS should not be used for substantial temporary activities such as construction compounds, to the fullest extent practicable.

- 37 This Recommendation is somewhat ambiguous as it can be read as relating only to areas within the present WHS boundary. But logically, it should be considered in relation to the WHS more broadly, including areas over which there have been suggestions that the WHS might be extended or within which archaeological remains exist that are part of its setting because they contribute to the significance of the WHS and various aspects of its OUV.

38 This is especially pertinent outside the Western side of the WHS where both the potential extension and setting issues apply. The CBA has consistently highlighted a substantial problem that the very large (31.5ha) main construction compound for building the tunnel is situated within this sensitive area west of the WHS, for which the survey work and assessment of impacts and effectiveness of proposed mitigation are wholly inadequate ([CBA 2022a] para 18 *archaeology* item c)):

- Proposals that were agreed for trenching or topsoil survey to test geophysics results for inclusion in the ES, were not carried out (nor was this fact reported to the Examination ([SofS Consult 3] pp. 9-10).²
- But for almost 60% of the area (18.3ha) the geophysics results have not been presented as part of the baseline archaeological record
- The whole area is covered by one ‘asset’ (no. 2144) described as ‘*large numbers of discrete pit-like features throughout this landscape ... at least some of which could also relate to archaeological features of Early to Middle Neolithic (or later) date. However, excavation would be required to confirm this,*’ without relating it to the areas of demonstrable potential along the adjacent link road that were evaluated (REP 1-042 & REP 1-043; REP 1-052 & REP 1-053).
- There is no explicit assessment of likely effects on assets *within* the compound area rather than adjacent to it.
- It is not demonstrated that preservation *in situ* as proposed beneath a hardcore blanket placed on the present topsoil will be effective in preventing compaction or disturbance
- The legal requirement in the Draft DCO Overall Management Plan for all topsoil to be managed in accordance with DEFRA standards, is not compatible with the mitigation proposed which is thus undeliverable

39 The Sec of St is still obliged to consider the likely archaeological effects within that area, but these fundamental unresolved shortcomings make it impossible to meet the decision-making requirements of NPSNN para 5.129 for this very extensive and sensitive area. The compound will be an early and critical requirement of the scheme and a mere watching brief would be inadequate to address likely impacts – which if anomalies did prove to be of *archaeological features of Early to Middle Neolithic (or later) date* could mean substantial harm to OUV

Recommendation 15: If the Scheme proceeds, all lighting arrangements for the tunnel and the surface of the WHS following the closure of the surface road of A303 should be carefully designed

40 We share this concern. It is inconceivable that any lighting will not have an appreciable effect in terms of glow if not direct spillage. The Applicant’s response is aspirational, while the ES reported effects in terms of reducing light from traffic and current roundabout, it is not clear how noticeable new effects would be – or how those might be avoided or further reduced by alternatives such as those highlighted in the Mission report.

Recommendation 17: The State Party should ensure that this report is provided in a timely manner to all parties and individuals who may be involved in decision-making or implementation.

41 Noted.

² See [https://assets.highwaysengland.co.uk/roads/road-projects/A303+Stonehenge/A303 Archaeological Strategy1.pdf](https://assets.highwaysengland.co.uk/roads/road-projects/A303+Stonehenge/A303%20Archaeological%20Strategy1.pdf)

Recommendation 18: Revised plans for the Scheme, the rationale for specific changes, and details of the comprehensive archaeological salvage and mitigation program should be submitted...

- 42 As we noted above, the Mission report predates much recent consideration of issues that are highly pertinent to the concerns of the World Heritage Centre and its Advisory Bodies, and they should be kept informed of these developments, including the concerns of those who not only share but re-emphasise the severe misgivings of the Mission and those to whom it has reported.
- 43 The Applicant's assertion that the matters raised do not affect the case for the scheme is demonstrably wrong: part of the case for the scheme is that it is supposedly 'heritage-led' but as we have shown, the issues raised by the Mission involve numerous heritage matters that affect how the scheme should be considered against policy and caselaw (including how they relate to the grounds on which the Sec of St's original decision was quashed).

Recommendation 19: As a decision-maker within the State Party, which has ratified the World Heritage Convention, the responsible State Party authority should address obligations arising under the World Heritage Convention and Decisions of the Committee, in exercising the role of consent authority for the Scheme.

- 44 The suggestion that *'the points raised by the WHC do not affect the case for the DCO Scheme'* is again untenable.
- 45 It is not disputed that UK law is consistent with the WH Convention, and that the Convention does not prescribe an absolute requirement of protection which can never be outweighed by other factors in a particular case (see [\[2021\] EWHC 2161 \(Admin\)](#) para 220). But that makes no difference to the weight to be given to WH Committee decisions and recommendations of the Advisory Mission – the Sec of St is still subject to international obligations that must be *'addressed'* in exercising the role of consent authority and, under UK policy, that means giving *'great weight'* to the issues – the more significant the assets affected and the scale of impact upon them, the greater the weight to be given to their conservation and enhancement. The international status of the WHS sets a very high bar.
- 46 Nobody suggests that this is not a matter for the Sec of St to decide. But just as the WH Committee has no veto on consenting or refusing a development in the jurisdiction of a State Party, State Parties have no veto on decisions of the WH Committee should they decide that the effects of development on a WHS property are so harmful that it should be delisted.
- 47 The case repeatedly put forward by the Applicant is that *'The SoS is expected to ... either grant consent for the DCO Scheme (with requirements to ensure the DCO Scheme is acceptable [sic] in terms of its impacts and that appropriate mitigation is in place) or refuse consent.'* The High Court made it plain ([\[\[2021\] EWHC 2161 \(Admin\)\]](#) para 283) that it is not adequate to claim that the scheme is *'acceptable'*: it must be shown that the need for the DCO scheme rather than a less harmful alternative is so great that it overrides the serious harm it would cause to internationally and nationally designated heritage of the highest importance.
- 48 The two grounds on which the original decision of the Sec of St to approve the scheme was quashed are interlinked. In our comments on the Applicant's response to the Sec of St's request to consider western extensions to the proposed tunnel ([\[CBA 2002b\]](#) paras 23-33), we have

explicitly shown how the Applicant's approach and case for the scheme has been deeply flawed. These matters are directly relevant to the Mission report and WH Committee Decisions expressing concern about harm to the WHS OUV and the need to give much greater consideration to less harmful alternatives.

- 49 In the Applicant's assessments of groups of assets and individual ones, we have shown ([\[CBA 2002b\]](#) *passim*) that
- some aspects of significance were not identified and therefore effects on them were not considered
 - some aspects of significance were recognised but no effects on them were assessed
 - some effects were not identified and so were not assessed
 - some kinds of cumulative effect with the existing A303 were considered but not others, resulting in a biased assessment
- 50 The Applicant still does not recognise some types of physical effect that directly relate to central aspects of OUV³ that underpinned the ExA's assessment of harm. These were pithily summarised as the greatest physical change to the Stonehenge landscape in 6000 years and would be permanent and irreversible ([\[ExA Report\]](#) paras 5.7.224 to 5.7.225), a view accepted by the Sec of St ([\[\[2021\] EWHC 2161 \(Admin\)\]](#) para 267).
- 51 We have shown that these major flaws mean that the ES and other assessments by the Applicant mean the Sec of St cannot rely on those assessments to *'take into account the impacts on the significance of all designated heritage assets affected so that they were weighed,'* which is the basic failure on which the Court quashed the Sec of St's original decision in relation to Ground 1iv ([\[\[2021\] EWHC 2161 \(Admin\)\]](#) para 180). As the Court indicated, that issue is closely linked to the policy requirement to demonstrate a need to cause serious harm to deliver other public benefits, which in turn requires more careful examination of alternatives than the Applicant has carried out in Ch3 of the ES and subsequently (Ground 5iii [\[\[2021\] EWHC 2161 \(Admin\)\]](#) paras 265-7; 279, 284) This makes it all the more important to recognise the need to look at all the alternatives and improvements identified by the Mission and WH Committee Decisions, optimised to best safeguard the OUV of the WHS.
- 52 Again, the Sec of St cannot rely on the Applicant's assessments of the effectiveness of alternatives raised by the Mission and/or WH Committee ([\[CBA 2002b\]](#) paras 18-49).

Recommendation 20: The responsible State Party authority should await the Decision of the World Heritage Committee at its 45th session before re-determining the Scheme's DCO application.

- 53 The Applicant assumes that this Recommendation may delay the re-determination of the scheme, but this presupposes approval. There were sufficient grounds for refusal 2 years ago and those remain unchanged. It is the Applicant who has persisted in not looking at alternatives that, for the last 4 years, the WHC and Mission have consistently advised should be considered. It would therefore appear that the earlier warning that the WHS would be liable to delisting if the scheme were to proceed still stands (and is more likely to be repeated than withdrawn). In effect this has

³ Notably changes to landform and insertion of major structures and earthworks of a type and scale entirely out of keeping the WHS as an archaeological landscape

become the Applicant's preferred alternative to a scheme that would better conserve and enhance the WHS and its OUV. It is not the WH Committee delaying a decision.

Recommendation 21: The Development Consent Order should only be issued for the Scheme once the necessary funding to allow the Scheme to be modified in accordance with the Findings and Recommendations of this Mission report, has been identified and committed.

- 54 The Applicant notes correctly that this is a UK Government budgetary choice, but it still requires consideration within the terms of the UK's legal obligations under WH Convention and UK infrastructure planning policies in relation to possible alternatives and their cost.
- 55 This is further complicated the issue of whether alternatives to achieve the WH Committee and Mission recommendations about avoiding and minimising harm to OUV could best be achieved within the DCO limits of the present scheme (involving very substantial increase to an already exceptionally costly scheme); or by starting afresh with a scheme outside the DCO limits that might be significantly less costly and much more beneficial for the WHS.
- 56 As noted below, serious modification of the scheme after approval raises almost insuperable problems, even if contingency funding were in place.

Recommendation 22: If the Development Consent Order is issued for the Scheme, it should subsequently be modified in accordance with the Findings and Recommendations of this Mission report, including provision for the underground section of the western approach to be extended, to at least the western edge of the WHS boundary.

- 57 We consider the Mission to be unrealistic in this recommendation which would prevent other Recommendations being implemented. The DCO is a legal instrument that may allow modification but only within defined limits and the whole process is further regulated by contracts.⁴ In practice, budget, contract, programme and land ownership issues would make it undeliverable after approval. Any such changes would have to be made before approval.

⁴ See [REDACTED]