

NETWORK RAIL INFRASTRUCTURE LIMITED

TRANSPORT AND WORKS ACT 1992

THE NETWORK RAIL (HITCHIN (CAMBRIDGE JUNCTION)) ORDER

**TOWN AND COUNTRY PLANNING ACT 1990: REQUEST FOR DEEMED PLANNING
PERMISSION**

TRANSPORT AND WORKS (INQUIRIES PROCEDURE) RULES 2004

DfT Ref: TWA/09/APP/05

CLOSING SUBMISSIONS ON BEHALF OF THE APPLICANT,

NETWORK RAIL INFRASTRUCTURE LIMITED

INTRODUCTION

1. These closing submissions follow the format of the SS Statement of Matters. Before embarking on the exercise, however, it is worth reviewing the position now reached with respect to the objections which made the inquiry necessary.
2. All the landowners (freeholders and those with rights in land) whose interests would be compulsorily acquired under the Order have either withdrawn their objections or are imminently expected to (NHDC, EDF, AWA, NG, Prime Estates, the farm interests etc.); or have not appeared to pursue them (SITA) content, presumably, to rely on their rights under the Compensation Code. AWA are now satisfied that their interests can be secured by the Schedule 12 protective provisions; as are the other statutory utility providers EDF and NG.
3. The objections of the statutory authorities have also been withdrawn. Natural England (who did not object) are content that ecological interests affected by the Order Works, particularly in the Burymead Springs area, can be adequately conserved and protected by conditions (DM Appendix 7: Minutes of the 11th March 2010 Area

Planning Officer's advice to Committee). The Environment Agency have withdrawn their objection having reached common ground with NR on the protective provisions in Schedule 13 (EA email 6th May and 'Statement of Common Ground').

4. In addition, as a result of continuing discussions with NR, NHDC no longer seek to maintain some of the matters raised in their original objections. They accept that the Order scheme amounts to 'very special circumstances' for inappropriate development in the Green Belt; and, following the settlement of the EA's objections, they no longer pursue their environmental/ecological objections to the construction of the attenuation basin in the Burymead Springs area.
5. Despite the protestations of their Counsel to the contrary, the HCC/NHDC have also narrowed the scope of their highway objections. HCC wrote (on behalf of themselves and NHDC) to NR on the 4th May 2010 (NR 13) *In preparation for the forthcoming inquiry on the current position of both authorities on the construction traffic matters*. The letter makes it clear, as Geoffrey Burrows xx agreed, that *The objections of the two authorities are set out in the relevant Statements of Case*. And that *Following the meeting on the 11 March, the remaining objections relate to*
 - *the impact of construction traffic on local residents and the local highway network*
 - *and that further consideration should be given to bringing construction building materials in by rail rather than by road*. (Emphasis supplied)

As Geoffrey Burrows xx accepted, the letter was an important update of the Councils' position and it raises no issues in respect of 'borrow pits', sustainability, adequacy of the ES or on-road parking.

6. The dialogue then continued after the date of the letter and delivery by rail is now longer being advocated by the Councils; it being accepted by them that Mr Morris' suggestion (para. 5.3) that a conveyor system in the Hitchin North Yard was *worth considering further* has proved not to be the case.
7. The HCC letter (NR13) makes it perfectly clear, as Geoffrey Burrows xx agreed, that the only remaining objections of the Councils relate to the widening of Wilbury Hills

Road and the provision of a controlled pedestrian crossing at Hillcrest Park. These, of course, are the principal objections that are pursued by the Wilbury Hill residents, whom, it may be guessed, the Councils are seeking to stand behind.

8. In short, considerable progress has been made by NR in settling or narrowing objections to the Order so that, in these closing submissions, it is possible to concentrate largely on the two principal matters remaining in issue: highway widening in Wilbury Hills Road and the specification of the pedestrian crossing at Hillcrest Park; neither of which represent fundamental objections to the Order being confirmed by the Secretary of State.

MATTER 1

9. The starting point is the Government's national strategic railway policy contained in Delivering a Sustainable Railway including the High Level Output Strategy (HLOS) in Appendix A of [CD C2]. As stated in the Executive Summary (p.7), Government is committed to significant investment in the railway with the long term ambition of, among other things, creating an *even safer, more reliable and more efficient* railway. Chapter 3 of C2 '*Reliability*' spells out the Government's determination to improve reliability on the railway because *it matters to the railways customers and to the economy as a whole* (summary p.30). It identifies causes of delay as including *an infrastructure problem* (p.33:3.8). With regard to the East Coast Main Line (ECML), Government noted the ECML Route Utilisation Strategy (RUS) 2007 draft demonstrated that additional train paths were available and concluded that;

Around 70 per cent additional peak capacity could be provided from the new Intercity Express train deployment; timetable simplification; and other major works to address the bottlenecks along the route (p.65:6.22)

Mr Manning's insistence that this sentence in the policy should be read disjunctively doesn't bear scrutiny applying the ordinary meaning of the language used. Nor was he able to support his construction by reference to any other part of the document or any other authority.

¹ £10 billion in the period 2009-2014 p.7

10. The HLOS is a formal communication to the Office of Rail Regulation (ORR) to ensure the Governments' high level strategic ambitions for the railway are achieved by NR (C2:p.8, Appendix Ap.140 A1). It sets out for the ORR what the SS wants to achieve by railway activities during the review period 04/2009-03/2014 (Control Period 4) (CP4). The SS wants to see improvements nationally in reliability to 92% on long distance services including the ECML and 93% on London and South East services (p.141:A5). Both types of services operate through Hitchin.
11. HLOS guidance on the improvement of reliability is *high level* (p.141). It does not specify reliability down to the level of individual routes or services. NR is regulated by the ORR (RT Sum para. 5.1) by means of its network licence (CD C) which requires NR, among other things, to establish and maintain the ECML RUS.
12. The RUS (CD C6) was published in 02/2008 following consultation with stakeholders including HCC (RT in chief on Sum 5.3) and approval by the ORR (RT Sum 5.4). Its aim is *to identify a strategy for the ECML to meet expected future requirements in a way that is deliverable, affordable and consistent with performance and safety improvements* (p.5 Scope). On p.6 of the RUS is explained how NR's Strategic Business Plan for CP4 (CD C7) identifies the schemes required to meet HLOS outputs, drawing on the conclusions of the RUS. In Chapter 6 of the Plan (CD C7 p.119) NR set out the expenditure and income projections for CP4 *based on the delivering the safety, capacity and reliability outputs specified in the HLOS*. Among the schemes for the improvement of junction capacity (p.150) is *Hitchin grade separation*.
13. As noted, the NR Strategic Business Plan containing schemes to meet the aspirations of, and to be funded by, Government (RT xx 19/05/2010), is based on the strategic analysis in the RUS (CD C6). It identifies Hitchin flat junction as a *main constraint* to increased capacity on the ECML and the Cambridge Line (CL) (CD C6: 3.10.2/3 p.60, 61). It is a hindrance to improved performance on the these lines being one of a large number of *complex junctions and crossings that are usually on the level with train movements conflicting with one another, which is only worsened when trains are running out of sequence as a result of an incident* (p.63).

14. In his evidence in chief on the 19 May (responding to new points made by Mr Hinchliffe in Rex - 'only 46 secs saved,' and similar observations made by Mr Manning during the inquiry), RT showed how the RUS (CD C6) on p.154 identifies *Performance improvement* as the primary or *key driver* of the Hitchin grade separation; and where (pp. 179-180), in the context of achieving HLOS outputs, it is identified as a change to be made in the period to 2014 as enabling infrastructure 'F' delivering improved journey times and a reduction in adverse performance impact and journey safety risk (see also Appendix 4 p.203).
15. These are the aims and objectives of, and the need for, the Hitchin grade separation, that are met by the Order scheme; and there has been no informed challenge to that proposition. In particular, HCC/NHDC do not dispute that the Order scheme accords with Government policy and is of national importance (DL xx).
16. As recorded in NR CP4 Delivery Plan 2009 Enhancements programme: statement of scope, outputs and milestones June 2009 update (CD C21) p. 106:

Our [NR] obligation is to deliver those projects specified by the ORR...The schemes identified by the ORR to be delivered are:...Hitchin grade separation

In simple terms the Government has bought the Hitchin grade separation from NR subject to confirmation of the Order.

MATTER 2

(a) Policy consistency

17. The consistency of the Order scheme with national, regional and local planning, transport and environmental policies is set out in David Moss's proof of evidence and not repeated here. There was no challenge to his evidence in this regard by the two planning authorities HCC and NHDC; nor did Mr Lane condescend to deal with such issues in his evidence (David Lane xx). He did not dissent from the proposition that the Order scheme was, in principle, in accordance with national, regional and local policy promoting sustainable public transport on the railways.

² The legal / policy test set out in PPG2: 3.2 is as follows: *It is for the applicant to show why permission should be granted.. Very special circumstances to justify inappropriate development will not exist unless the harm by reason of inappropriateness and any other harm is clearly outweighed by other considerations.*

³ He gave the example of RSS policy T5.

18. Policy matters put to David Moss in xx by the Councils related to Green Belt policy in PPG 2 and its application to potential local supply of fill material. It must be doubted whether Mr Lane's policy evidence also related to this discrete issue; such policy conflicts as he did allege related to highway safety in Wilbury Hills Road (more of which is below) and an undefined 'sustainability' case he was seeking to make. It is submitted that for the reasons set out in RT/OBJ45/R1 and RT/OBJ52/R1 section 5 and explored in xx Mr Lane's proof of evidence (said to be 'based on' Geoffrey Burrow's evidence) does not demonstrate that the Order scheme conflicts with any relevant planning or transport policy.

19. Mr Lane xx did not deal with local sourcing of material or the application of the Minerals Local Plan in his proof; nor did he demonstrate how they could be acceptable in planning terms in the Green Belt.

20. As regards his citation of the St Austell sea wall case, no national, regional or local need was proved there and the Secretary of State found that there was conflict with planning policy. The case, accordingly, is not only readily distinguishable on its facts, it helps point up the accord with policy of the Order scheme.

21. The Order scheme is 'inappropriate' development in the Green Belt (CD C10 - PPG2:3.1). Very special circumstances exist, however, that *clearly outweigh* the harm caused by inappropriateness and any other harm associated with the Order scheme (PPG2:3.2).² Those circumstances are spelt out in David Moss's proof 7.1.1-7.1.33 and were not challenged by HCC/NHDC.

22. In xx by Mr Manning, David Moss explained that while the policies did not all mention the Hitchin flyover, their objectives³ by implication, could not be achieved without the implementation of such essential railway infrastructure projects.

(b) Benefits

23. The outputs specified in the CP4 HLOS cover improvements in safety, capacity and performance (RT 4.10). There are two types of metric specified in the Schedule to the HLOS (pp.150-152 CD C2); enhanced capacity to allow an increase in passenger numbers arriving in London and other cities during the morning high peak hour and three peak hours, and a target for an increase in passenger kilometres on each part of the network. In this context it is notable that the ECML handles inter city services, cross-country services, commuter flows principally to/from the north side of London, local passenger services and heavy tonnages of freight traffic.
24. As outlined in chapters 3 and 5 of the RUS (CD C6), continued passenger growth is expected on the ECML particularly on long distance services to/from London and on London commuter services (RT 6.2.1). There is a continued increase in demand for long distance high speed (LDHS) inter city services and other services including freight on the route (RT 6.2.2 – 6.2.12).
25. In particular, the Train Operating Companies have steadily increased service levels for the LDHS markets into Kings Cross and this is reflected in the DfT's requirements, subject to funding, for a higher level of service on the ECML than is operated by the current East Coast franchise (RT 6.2.10).
26. The ECML today operates at or just below capacity for much of the day. The route has capacity constraints including the Hitchin flat junction (RT 6.3.1). The capacity constraints cause performance problems when LDHS services are running out of course. In addition, the mix of trains on the route make it difficult to contain delays on the two track sections of the ECML. Two constraints arise close together at Hitchin flat junction and the two track section across Welwyn viaduct and tunnels. These cause time tabling optimisation problems (RT6.3.3).
27. The rail industry is consulting on a new ECML timetable to be introduced in May 2011. It will accommodate the Government's ambitions for the current East Coast franchise including an increase from 4+ trains from London per hour (RT 6.2.2) to 6 trains per hour each way (RT 7.3.2). The introduction of this timetable is inhibited by current infrastructure constraints on the route. These constraints require additional

⁴ New signalling technology is not yet available to address timetabling problems (RT 8.1.5) journey time to be put into the timetable (pathing time) to avoid conflicts between trains which are running on time. Performance under the new timetable is also likely to be adversely affected by more trains being operated by TOCs without changes being made to the flexibility of the existing infrastructure (RT 7.3.2). The RUS points the way forward to increased passenger and freight service levels with reductions in journey times and improvements in performance through a programme of infrastructure enhancements.

28. As noted in the NR CP4 Delivery Plan 2009 update (CD C21) p.106, 117, the Hitchin grade separation:

will eliminate conflicting movements between down Cambridge line services and Up trains from the Peterborough direction. This removes a major constraint in developing timetables on the ECML thereby allowing an increase in Long Distance High Speed (LDHS) and freight services as part of a programme of ECML schemes as identified in the Route Utilisation Strategy. This programme will allow an increase in services with an improvement in performance even though more trains will be operating. (CD C21 p.117) (NR emphasis).

Timetabling solutions⁴ to the existing infrastructure constraints on the ECML were considered (RUS Section 6 (CD C6)) but the Order scheme is required to enable the expansion of timetabling options in terms of providing improved performance of train services and a consequential reduction in the pathing time that is required to be built into the timetable; a necessary prerequisite to accommodate the forecast growth of rail traffic on the ECML (RT 8.1.4).

29. Exiting long distance train journey times decrease with the scheme. In the May 2011 emerging timetable an aggregate 20 minutes of pathing time will be saved for 20 long distance ECML services with trains saving half a minute to 2 minutes (RT xx Mr Manning 11th May). These savings generate £800k per annum of benefits using the DfT appraisal guidance.

⁵ RT 19/05/2010² Embankments and viaducts had a long asset life, hence the 60 year appraisal period.

30. There will in the future, however, be more trains in the timetable, as a result of growth in passenger and freight services, requiring pathways in timetables beyond that for May 2011. In the absence of the scheme, it will become increasingly difficult to accommodate these trains reliably (ibid). Whilst the May 2011 timetable modelling is not yet complete, it is reasonably expected that more trains on the ECML will mean more delay unless capacity constraints are addressed.
31. As Richard Thompson explained (19th May xx by Mr Manning), while the saving is 20 minutes in relation to pathing time for current inter city services in the timetable, every southbound train from Peterborough (around 60 long distance trains together with outer suburban and freight services) on any day of operation has the potential to be delayed by the flat junction. This can arise if it or any of the five trains per hour crossing onto the Cambridge Line is running late. The performance improvement enabled by the grade separation, eliminates that potential. Based on current service levels, train performance modelling shows that the scheme provides annual benefits of £3M using DfT appraisal methodology. As part of the package of improvements sought by Government on the ECML, accordingly, the Order scheme contributes to the objective of maximising timetable options by making journey times quicker by avoiding the need to build in pathing time to account for infrastructure constraints on the line and by improving the reliability of services.
32. The Hitchin grade separation is included in the Option C package of schemes on p. 166 of the RUS (CD C6) that overall, have a Benefit to Cost Ratio (BCR) of 2.9, which the DfT consider high value for money (RT x 19/05/2010). The BCR of the flyover alone is not shown, but Richard Thompson said this has been calculated at 5.5 over 60 years.⁵
33. While the Welwyn two track section will remain (RT 8.1.7) the removal of the Hitchin flat junction will make it easier to present trains at that bottleneck to avoid delay and disruption to the timetable (Richard Thompson xx by Mr Manning).

34. NR/OBJ30/R1 2.1-2.3 addresses the issue of the saving of 45 seconds on the London to Cambridge Line. The current running time between Hitchin and Letchworth will be increased by 30 seconds for some trains and 45 seconds for others; but the average journey time increase will be offset by removal of the pathing time at Hitchin in Cambridge Line services (28 services affected per day in the May 2011 timetable for a total of 45 minutes).
35. Whilst the flyover will not accommodate the heaviest freight trains (in excess of 2000 tonnes trailing load), freight traffic on the Cambridge Line is minimal and is forecast to stay so (Richard Thompson xx 11th May), and the flat junction will be left in for exceptional train movements which would be timetabled in quiet periods.
36. It is submitted, on the evidence, that the benefits of the Order scheme in terms of improved performance and flexibility in present and future timetabling of services on the ECML and Cambridge Line are readily apparent; and are confirmed by its positive BCR both on its own and as part of the package of schemes required to be implemented on the route by the Government.

(c) main alternatives

37. The main alternatives to the Order scheme that were considered and the reasons for their rejection are reported in the ES Vol:4 (CD CA13 4/4). DM 8.3 addresses the alternative H3 preferred by Mrs Slaney Parker and Paul Parker. His Appendix B shows the very damaging effect this would have on Redoubt Close and Riverside Court. Neither of the objectors sought to challenge his evidence in this regard.
38. There is no substantial evidence that there is a preferred alternative, whether by routeing or other means (timetabling/signalling), to the Order scheme to achieve the aims of Government railway policy set out in the HLOS on the ECML.

MATTER 3

(a) Noise and vibration

39. The effects of the Order scheme on noise and vibration relating to its construction and operation are set out in Chapter 3 of the ES (CD A13 3/4). No issues have been raised in the inquiry regarding operational noise. NR have given an undertaking to

Prime Estates that squeal noise will be addressed by 'Top-of rail friction modification.' NR accordingly, commend the conclusion of the ES (CD A13 3/4:3.6.5) that operational noise and vibration will not result in a significant impact.

40. Construction noise and vibration was proving controversial prior to the commencement of the inquiry. HCC/NHDC instructed Rick Method of Southdowns to look into noise and vibration effects of construction traffic on Wilbury Hill Road (WHR) residents. That evidence has since been withdrawn. For the reasons set out in section 2 of NR/OBJ45/R1, it did not prove that demonstrable harm would be caused to residents by noise and vibration caused by passing construction traffic on WHR during the 27 month construction period. Whilst various mitigation measures have been agreed in the Statement of Common Ground – Noise, NR's agreement to these is not based on any acceptance of Mr Method's evidence but is given to allieviate the lay concerns of residents living on the road.
41. NR invite considerable weight to be attached to the withdrawal of Mr Method's evidence and Colin Cobbing's unchallenged critique of it in NR/OBJ45/R1. Local residents can be assured that if there was any significant evidence arising from the application of the methodology in the DMRB, regarding the impact of noise and vibration from construction traffic on their properties the matter would have been addressed by the Councils in detail in the inquiry. They have not done so and no informed expert evidence has been put before the inquiry to challenge the construction noise assessment in the ES (3.4.2, 3.5.1-3.6.3) and its conclusion that it will not result in a significant impact at properties located close to existing roads.

(b) Air quality

42. The impact of the Order scheme on Air Quality (A/Q) is also dealt with in the ES, Chapter 8. The conclusion drawn at 8.7.2 that the Order scheme in operation will have negligible impacts on air quality has not been disputed by HCC/NHDC or by any informed party.
43. Nor do HCC/NHDC challenge the ES A/Q assessment in relation to the construction phase (CD A13 3/4 8.7.1.2 p. 132 - with mitigation 'medium to low risk'). As regards Predicted Pollution Concentrations due to Construction traffic in 2012 ES Table 8.9 p.

131, Ms Read in OBJ/12/... produced plans showing that Receptor 1 and 2 were not the closest properties to WHR. Accepting that to be true, Colin Cobbing carried out additional calculations which showed that quantities of NO₂ and PM₁₀ at the properties identified by Ms Read would remain well below Annual Mean limit levels (NR 38).

(c) Landscape and visual impacts

44. NR rely on the assessment of landscape and visual effects of the Order Scheme carried out by Arup and reported in the ES Chapter 4; which has been endorsed and supported in evidence by Sarah Reynolds. During construction there would be, not unnaturally perhaps, locally moderate landscape effects and high adverse visual effects. After completion of the works and in operation, the scheme would have low and moderately adverse effects on the Arleseey – Great Wymondley Landscape Character Area and moderate adverse visual effects on the Centre 3 Building, the Ickneild Way national trail and the foot path along the CL corridor (ES 4.6-4.7 p.67 (CD A13 3/4)).
45. Sarah Reynolds in her further appendices NR /Landscape/P illustrative Dwg No. B10004.11 Sheets 1&2 and B10004.12A (NR25) has addressed the landscaping and visual concerns of Prime Estates and at the same time shown how the amount of calcareous grassland can be increased from 2.1ha (ES p.83) to 2.75ha. NR also commend her revised montages 03 and 04 which demonstrate the advantageous opportunity for the screening of the industrial area in views from the Ickneild Way; and in the view from Fearnhill School (montage 05) on the Letchworth Greenway. NR 27 shows how the changes to the landscaping proposals can be accommodated within the Order scheme budget.
46. The fencing of the railway by post and rail (NR 26) can be secured by a planning condition. The proposed compound on the west side of Stotfold Road is an integral part of the Order scheme for which very special circumstances exist for its construction in the Green Belt. As regards Mrs Kitching Ward's concerns, on completion of the works the compound would reduce to a relatively small area close to the existing hedge (planning dwg UT-004) that would provide for the maintenance

⁶ Art 12 Directive 92/43

of the railway and which can be assimilated in its rural setting at the foot of the new embankment by landscaping (Sarah Reynolds xx by Mrs KW).

(d) Ecological impacts

47. The ecological and nature conservation impacts of the Order scheme are addressed in Chapter 5 of the ES Vol 3 (CD A13 3/4:p.79). The residual effects of the Order scheme are either positive or not significant for the reasons set out in the ES 5.12 on page 98.
48. NHDC originally had concerns regarding the ecological impact of the Order scheme in the Burymead Springs area. The matter, however, was considered by the EA, the Hertfordshire Biological Records Centre and Natural England; and they advised the Council that *there would appear to be no substantial case that the Council could raise against the proposals in environmental terms* (David Moss Appendix 7 Minutes of the 11th March 2010 Area Planning Officer's advice to Committee).
49. Colin Cobbing NR/EIA/P p.15 summarises the ES report on ecological impacts including reference to the carrying out of the Phase 1 habitat survey. As regards European Protected Species, no material deliberate destruction or disturbance of the species or their habitats⁶ is considered likely during the construction of the Order scheme. At best, bats only 'may' be

disturbed by works on top of the ECML bridge over the river Hiz. For the reasons Mr Cobbing sets out in paragraph 4.1.14 the effects on bats are not considered significant.

50. Mr Cobbing lists at 4.1.15 of his evidence the proposed ecological mitigation measures proposed to be secured by condition. These mitigation measures will result in either neutral or positive effects on the ecological features affected by the Order scheme. Mr Manning has his doubts about the maintenance of reed beds in the basin; but Stuart Jarvis xx has explained how the membrane will be secured by an appropriate growing medium that will be kept permanently wet by controlled discharge of the drainage flow.

(e) Cultural heritage and archaeological remains

51. These are not matters that have been in issue at the inquiry. For these reasons NR commend to the Secretary of State the unchallenged evidence of Sarah Reynolds and Davis Moss which demonstrates that no material harm will be caused to these interests. Satisfactory control can be exercised by a planning condition requiring the recording of archaeological remains.

(f) Water resources and flood risk

52. Stuart Jarvis produced the Flood Risk Assessment and dealt with issues of contamination. Both these matters have been the subject of lengthy discussions with the EA who wrote to the inquiry withdrawing any objections they had to the Order scheme (letter 6th May). The Agency is content that the protective provisions in Schedule 13 address all relevant issues as stated in their Statement of Common Ground 6th May (*sufficient work in terms of ground investigations and risk assessments has been carried out to date in order to properly inform the Environmental Statement and to allow a programme of future work to be developed*).

53. There is no evidence that NR are planning to use contaminated material to construct the embankment (see WRA xx of Stewart Jarvis) or would be allowed to do so by the EA. Contaminated fill material by definition would be waste material and its movement from source would be subject to the waste management licensing regime operated by the EA under powers in the Environmental Protection Act (Stewart Jarvis Rx). It is submitted that it is highly unlikely that any contaminated waste would be authorised to be transported to the site of the Order works for the construction of the embankment.

54. The spread of dust can be controlled as Stewart Jarvis xx said by well tried means of wetting and the covering of loads. Dust from on-site operations could normally be expected to fall to the ground within 60-90 metres; i.e. well short of Wilbury Hills Road (Colin Cobbing xx'd by Lynne Read). It lends itself to control and presents a very low environmental risk (ibid).

(g) Traffic and transportation impacts

55. It is common ground between HCC/NHDC and NR that route 1, the A1(M) – A507 – C109, is the optimum route for construction traffic to the site (HCC letter 4th May). It substantially avoids the urban area. It is submitted that the WRA suggestion of using the A505 and Grove Road through residential areas of Letchworth and Hitchin on the basis of ‘sharing the pain’ is completely unrealistic for the reasons set out in the SDG report (CD B12). It seems a strange that the Alliance should come forward with such a routing when they claim to be wanting to protect residential amenity.
56. The traffic and transportation impacts debated in the inquiry have focussed on two principal matters; first, whether it is necessary to widen WHR to accommodate the construction traffic over the construction period of 27 months; and secondly whether a controlled crossing is required at Hillcrest Park.
57. In xx Geoffrey Burrows said he did not challenge Roy McGowan’s traffic figures in section 4 of NR/Traffic/P. The following factual matters are, accordingly, agreed between NR and the Highway Authority:
- a. WHR today carries a flow of 7000+ vehicles a day;
 - b. The temporary increase in traffic flow on the road during the construction period would be in the order of 7%.
 - c. WHR today carries 17 HGV’s in the AM peak hour or one every 3.5 minutes;
 - d. For 70% of the 27 month construction period 10 HGVs would be added in the peak hour (one every 6 minutes);
 - e. During 70% of the construction period therefore the total number of HGV’s in the AM peak hour would be 17+10= 27 or one every two minutes;
 - f. During 15 weeks only of the construction period, the total number of HGVs on WHR in the AM peak Hour could rise to one a minute *and this is only likely to occur once or twice a week during this period of exceptional flows* (RMcG 4.16).

Widening Wilbury Hills Road

58. It is common ground that WHR narrows in places such that two 30 Tonne OGV2 4 wheelers (the HGV that will be pre-dominantly used by NR (Roy McGowan / Steve Poole xx by HCC/NHDC)) cannot pass without their wing mirrors overriding the pavement and colliding on the driver’s side.

⁷ Counsel for the HCC on 20th May informed the inquiry that GB’s Appendix E plans showed the extent of the highway.

59. This current state of affairs, however, has not led to HCC placing any restrictions on the C109, which is a ‘secondary distributor’ suitable for linking HGV generators with the national road network; the very purpose that NR would use it for. It is submitted that the probability is that today HGV drivers either give way or where it is possible pass by pulling in their wing mirrors to avoid them being broken.
60. Nor has the presence of residential properties fronting WHR led to HCC restricting the speed limit below 40mph; or any concern on the authority’s part to maintain visibility. The over

growing vegetation south of the entrance to Hillcrest Park shown on Geoffrey Burrows Appendix E plan E2136/2 is within the highway⁷ and can be cut back by the highway authority.

61. While there have been accidents in WHR, the SDG report (CD B12: 3.46) found no pattern and concluded that: *There is therefore no overall prevailing cause of PIAs or contributory factor that would be affected by an increase in vehicular volumes.* Geoffrey Burrows has not sought to challenge this analysis.

62. In cross examination, Geoffrey Burrows agreed that it was not uncommon to find roads which, for historic reasons, were not to standard; and he made the observation that *You cant go round widening every road for vehicles under all conditions.* That response, of course, invites the question whether the 'conditions' that would arise at WHR during the construction period would be 'conditions' such as to make widening essential.

63. Geoffrey Burrows xx considered there was no necessity at the present time to widen the road. He thought that the chance of vehicles meeting in the 845ms were few and far between. WHR, however, not only carries HGVs but also a bus service and the refuse lorry and has on-street parking. Geoffrey Burrows xx accepted that there is, at present, an element of giving way; and Mr Pearson xx independently painted a picture of how the road works with drivers flashing their lights to bring opposing traffic on.

NR contends that there is every reason to think that the same practical procedures would obtain during the construction period particularly with a 30mph speed limit in operation.

64. In addition to the criterion 'frequency of vehicles meeting', Geoffrey Burrows xx agreed that the duration of the change in flows would be relevant in deciding whether widening was required. He said 'local measures' including the presence of passing bays, temporary speed limits and the usage of road signs (Roy McGowan Appendix L) can be all that is required depending on the circumstances (Geoffrey Burrows 5.1.1, xx). All of these measures would be available in WHR during the 27 month construction period.

65. Subsequent to giving his evidence Geoffrey Burrows has produced OBJ/45/12 and 13 on HGV movements and stopping sight distances. NR's observations on these exercises are provided in NR... OBJ/45/12 overestimates the amount of space required for passing in the road and excludes the area of the cemetery gates as a waiting area. It is submitted that for the reasons given by Roy McGowan x, NR 21 demonstrates that there is adequate passing opportunities both on-road and provided by local widening at the bell mouths of connecting roads and entrances not to require road widening of WHR to accommodate 27 months of construction traffic when, for 70% of that time, the increase in HGV traffic would amount to a total flow of one HGV every 2 minutes.

66. For the following reasons Roy McGowan's evidence makes a convincing case for 'local measures' being sufficient during the 27 month construction period without the necessity for widening.
 - a. WHR is less than a kilometre long;
 - b. it is, for the most part , straight with good forward visibility;
 - c. there are passing opportunities;
 - d. there is no substantial evidence that OVG 2 lorries have difficulty passing today;
 - e. there is no accident record suggesting that the width of the road is a hazard despite the presence of parked cars and a 40 mph speed limit;
 - f. there is evidence of practice of 'giving way' in the road;

- g. HCC can improve visibility to Hillcrest from the south by cutting back vegetation in the highway;
 - h. the frequency of HGVs would be for 70% of the 27 month construction period, one every two minutes or thereabouts;
 - i. the speed limit would be reduced to 30mph;
 - j. there will be clear signage (Roy McGowan Appx L) warning of the narrowing, the speed limit and the need to proceed with caution;
 - k. the COCPT which has operated well at Wembley and on Thameslink (Roy McGowan x), would inform HGV drivers of the need to proceed slowly (20mph) through the short stretch of WHR with the risk of penalties if they did not do so.
67. It is submitted that these factors considered in the light of the frequency of HGVs passing in WHR and the short duration of the construction period, point clearly to the 'local measures' proposed by NR being adequate to meet any concerns regarding highway safety. HGV drivers could have no interest in risking their vehicles; and the simple expedient of pulling in their wing mirrors, would, in any event, always be available. (Roy McGowan xx).
65. GB 5.1.10 is sure that widening works *would certainly change the semi rural character of the road*. His view is shared by local residents who do not wish to see the road widened. David Lane, although the planner, typically, did not deal with this issue in his proof. He was, nevertheless, persuaded in x to say that such a change would not come about and this has been followed up by a note seemingly setting out the Councils' position for the first time (OBJ/45/...).
66. No doubt the Secretary of State will have his own view; however, Geoffrey Burrows and the residents' concern should add weight, NR say, to the balance against widening in the absence of compelling evidence that any material harm to highway safety would be caused by increasing the number of HGVs on the road from one every 3.5 minutes to one every 2 minutes for a period of two years or thereabouts.

Pedestrian crossing

67. Geoffrey Burrows xx accepted that every road causes severance to a degree: the question was whether WHR, during the construction period, would cause *an unacceptable level of severance* (GB 7.1.4) at Hillcrest Park. He conceded, however, that he had not carried a pedestrian survey in WHR as he should have done (Answers to Inspector's questions).
68. The facts are that WHR today carries 7000+ vehicles a day. Geoffrey Burrows xx agreed that this was the starting point with regard to establishing the need or not, for a controlled crossing. His OBJ/45/11, however, does not advance matters much further (NR/39)
69. Geoffrey Burrows has, even now, not carried out a pedestrian survey at Hillcrest Park but contents himself by criticising Roy McGowan's survey reported in 4.29 and following, of his evidence.
70. NR rely on the exercise carries out by Roy McGowan reported in paragraphs 4.41 to 4.44 of his evidence which has been supplemented by NR20. While the exercise was only a short snap shot it covered the period after 9am and recorded crossing of movements after that time. The sensitivity test in NR20 indicates that there would have to be a significant hourly flow of crossing activity at Hillcrest Park to warrant a controlled crossing. Not only is there no evidence of any such significant flow but also, there is anecdotal evidence (Mr Pearson x) that HCC are not persuaded today that any crossing facility is needed for the Hillcrest Residents despite there being 7000 vehicles AAWT and a speed limit of 40mph in WHR.
71. For the reason set out in NR... 1.5, it is submitted that the dropped kerb marked crossing proposed by Roy McGowan Appendix J is an appropriate response to any need for the crossing of WHR from Hillcrest Park. While it may not be all that Mr Hinchliffe would want, he and the residents did not actually show that there was any significant pedestrian crossing activity at Hillcrest Park (do residents actually use their cars to get to the shops etc?) and he accepted that what would be provided would be an improvement.

72. As noted above, HCC/NHDC do not pursue objections in relation to highway matters other than widening and the provision of a pedestrian crossing. By way of completeness, however, it is submitted that:

- Parking: there are opportunities for parking up on the A507 (Roy McGowan xx); and for parking on site (Steve Poole xx 20th May) areas shown on Order Plan 004); and COCPT can provide for scheduling of traffic flows to avoid parking up on the highway (See draft condition...);
- Stotfold Road / Bedford Road junction: the junction is over capacity today in the peak with queuing; it is not made materially worse by the temporary construction traffic (CD B12: SDG Appx G Table 8); there is no evidence that school children have difficulty crossing the road now or would do in the construction period.

(h) Open space

72. NR rely on the note to the inspector NR 10. A dialogue is continuing with the Secretary of State. NR is no longer seeking to acquire the relevant land, only rights over it. In any event, NHDC have resolved to sell the land to NR. If there is a need to resort to SPP, there is a reasonable prospect of that being achieved within relevant timescales (NR23). While discussions and procedural processes will continue after the inquiry in relation to this matter, on all the available evidence it is submitted that it should not prove an impediment to the implementation of the Order if confirmed.

(i) Agriculture and public footpaths

73. Agricultural impacts including the provision of access to severed land are dealt with in the evidence of Martin Herbert. His conclusion that no farm would go out of business were the scheme to proceed has not been challenged, and the farming interests have withdrawn their objections having reached agreement with NR. By condition rabbit proof fencing will be provided and the monitoring of water quality. Agricultural accesses will be provided at Wilbury Way and through the embankment.

74. FP026 and FP089 are diverted by the Order scheme as shown on Order Plan 010. While the FP089 diversion will be longer than the present route, there are no objections to these diversions from HCC, NHDC, the Ramblers or any local ROW

groups. As David Moss explained in xx by HCC/NHDC the diversion follows the railway embankment to avoid walkers traversing farmland.

75. The Letchworth Garden City Heritage Foundation have not pursued their concerns regarding impacts on the Greenway. For the reasons explained by Sarah Reynolds x by reference to her revised montages 03 and 04, the screening of views of the Hitchin Industrial Estate in views from Icknield Way would improve the rural experience of walking that route Sarah Reynolds 9.23-9.25).

76. In summary, it is submitted that for the reasons set out in Sarah Reynolds proof of evidence there would no material harm caused to the enjoyment of rights of way by the implementation of the Order scheme.

MATTER 4

77. The effects of the Order scheme on statutory utilities is described in NR/ENGINEER/P in section 4 and 9.8. Powers to carry out Works (Nos 2-3, 5-8,10, 12) are sought in the Order (NR 33) to provide for the diversion and re-provision of relevant apparatus and equipment. Schedule 12 gives the relevant Statutory Undertakers protective provisions. On the strength of these provisions the Statutory Undertakers have withdrawn their objections. In short, it is submitted that the Secretary of State can conclude that the interests of Statutory Undertakers are protected by the Order scheme.

MATTER 5

78. The issues included under Matter 5 have been dealt with in evidence by Colin Cobbing in NR/EIA/P. Measures proposed by NR to mitigate the environmental impacts of the Order scheme are found described under each relevant topic in the ES (CD A13 3/4). Residual effects are also described. Apart from the issue of construction noise and vibration (dealt with above) there has been no substantial challenge to the contents of the ES.

79. PEMS is set out in NR/EIA/A5. NR commends its inclusion in a planning condition. It has proved successful in controlling the environmental effects of railway schemes

including Thameslink by imposing obligations on contractors to conform to an environmental management plan (Colin Cobbing x).

80. To the extent that PEMS is not sufficiently specific as to matters such as working hours, NR have indicated their willingness to see conditions attached to any deemed planning direction. Control over noise and working hours can be dealt with by as section 61 COPA consent which NR are committed to apply for.

MATTER 6

81. This matter is dealt with in the Annex to this closing statement.

MATTER 7

82. The issues relating to Green Belt are dealt with in the evidence of David Moss NR/Planning /P. It is common ground between HCC/NHDC and NR that the Order scheme constitutes inappropriate development that is justified by the very special circumstances set out in section 7 of NR /Planning/P.

MATTER 8

83. Conditions and planning and transport obligations are provided for the Secretary of State's consideration.

84. As regards the 5 year condition, NR would take this opportunity to expand on its understanding of the justification for 5 years. 5 years (rather than the usual 3 years with ordinary planning applications) is the normal deemed planning condition imposed in respect of TWOs. It is linked to the duration of the power (5 years) to compulsorily acquire land which is provided for in the model conditions. The rationale for this is understood by NR to be the recognition that, if you have to exercise powers of compulsory purchase before you can commence your development, 5 years is not much different to 3 years in the 'ordinary' case where you do not need to exercise such powers because you already own the land. In addition, the Promoter of a scheme may well have to go through a public procurement exercise before any powers granted can be exercised. Lastly, having to promote a fresh Transport and Works Act Order because the powers have expired is much more

burdensome than having to make another ordinary planning application. It is appropriate therefore that a realistic time period is given to implement the scheme.

MATTER 9

85. NR contends that on all the evidence there is a compelling case in the public interest for the confirmation of the Order scheme. It is a sustainable public transport scheme that accords with national, regional and local railway policy and would cause minimal harm to the environment. Only the land required is proposed to be compulsorily acquired. Landowners affected have withdrawn their objections or been content to rely on the Compensation Code. For the reasons stated above the evidence relating to the acquisition of open space demonstrates that while the matter is unresolved, it is unlikely to be any impediment to the scheme going forward.

MATTER 10

86. Funding was addressed in NR's opening and is dealt with in RT's evidence. There has been no challenge to his evidence that funding is provided for the scheme in CP4 if the Order is confirmed.

MATTER 11

87. The changes to the draft Order are addressed in NR 31, 32 and 33.

CONCLUSION

88. On the strength of all the evidence the Secretary of State is urged to conclude that the Order scheme is in the public interests; and that the human rights of the owners of land affected and others are adequately and proportionately addressed by the mitigation measures proposed and or the Compensation Code. For all these reasons the Secretary of State is asked to confirm the Order.

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