

# M4 Corridor around Newport

## PUBLIC INQUIRY QUESTION

REFERENCE NO. : **ID/03**

RAISED BY: The Inspectors

DATE: 28/2/2017

RESPONDED BY: Matthew Jones

DATE: 03/03/2017

SUBJECT: Handing over of the Opening Statement on behalf of the Welsh Government

1. The Inspectors stated that the Opening Statement should be registered as an Inquiry Document.

**RESPONSE:**

Please find attached the Opening Statement on Behalf of the Welsh Government.

CVJV/Q/0030

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**OPENING STATEMENT ON BEHALF THE WELSH GOVERNMENT  
M4CAN INQUIRY**

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**1 Introduction**

1.1 This public inquiry is being held to examine whether or not the Welsh Government's ("WG") Scheme for the M4 Corridor around Newport should be put into effect. Over the next few months, the Inspectors will hear and read evidence, some of it extremely detailed, on a wide range of topics from many people. The rigour of the process befits the importance of the subject. The outcome of this inquiry really matters for Wales.

1.2 There is a large measure of consensus amongst participants that something needs to be done to address the current problems on the M4 to which residents, businesses and visitors in this part of Wales are subjected on a regular basis. WG has formulated a Plan to respond to these problems by means of a stretch of modern new motorway, as part of an integrated programme of transport measures to meet the present and foreseeable future needs of this modern nation. The M4 CaN team has worked long and hard to give the best possible expression to this Plan within the legislative and wider policy framework under which the Scheme will now be independently examined by the Inspectors. The team's work continues as discussions take place in parallel with the inquiry to resolve objections where possible.

1.3 Wales is a progressive nation. It has, for many years now, led the world in terms of its commitment to the sustainable development principle. That principle involves balancing interests and objectives, seeking to arrive at sound answers to difficult questions such as how to deliver a modern, efficient and integrated transport network in a complex and constrained physical environment. It is the mark of a mature democracy that people will have – and be entitled to express - many different opinions about how to strike the necessary balance. It is essential to bear in mind, however, that the legislative framework, including recent enactments of the Welsh Assembly, require balanced decision making, rather than dictate a particular result. This is why, once the inquiry has heard from WG’s witnesses the details of the Scheme - its history, design and environmental assessment - John Davies MBE will give his evaluation of its overall sustainability. He has undertaken a thorough, evidence-based review of the Scheme in the context of relevant legislation and policy, including the Well-being of Future Generations (Wales) Act 2015. His conclusion is that the Scheme is essential to the well-being of the people of Wales and should proceed. That is also the submission of the WG to this inquiry.

## **2 The Scheme**

2.1 WG has published a number of draft orders and draft schemes which, if made, would enable it to construct a new section of motorway to the south of Newport as well as carrying out complementary reclassification works in respect of the extant M4. The new section of motorway would relieve the existing road between Magor and Castleton.

2.2 The first set of draft orders and schemes was published in March 2016 and accompanied by an Environmental Statement and sundry reports dealing with traffic forecasting, economic appraisal, scheme assessment and so on. Since the publication of the first set of orders further changes have been made to the proposed Scheme, including raising the height of the bridge over the Usk, resulting in supplemental orders. As indicated at the second PIM on 27 January 2017 WG is minded to make further changes - the introduction of bridge protection measures where the proposed bridge crosses above the junction cut in Newport docks and an eastbound off-slip to improve access to Magor Services. Should those changes be pursued by WG, and in respect of the bridge protection measures a change is inevitable, then supplemental draft orders will be published around the end of March.

2.3 The draft orders involve the compulsory acquisition of land and rights. WG is mindful of its obligation to seek to resolve objections by negotiation. Accordingly, it has been in discussion with objectors and those discussions will continue during the course of the public inquiry. WG will keep the programme officer informed in respect of any objections which are resolved; as things stand 34 of the objections have been withdrawn.

2.4 The proposed new motorway is approximately 23 km long and consists of three lanes in each direction. It departs from the existing motorway north of Magor at junction 23A, passing to the south of Newport across a new River Usk bridge to connect with the existing junction at Castleton, junction 29,

which would be modified. Approximately two thirds of the new road crosses four Sites of Special Scientific Interest (SSSI) which form part of the Caldicot and Wentlooge Levels commonly called the Gwent Levels. The Gwent Levels are a man-made habitat with land reclamation thought to have started in Roman times. A central feature of the Levels is the system of reens and smaller ditches which drain the land and control the level of water within the Levels and the discharge of freshwater to the sea. The Gwent Levels are a valuable and sensitive landscape. They are designated as SSSIs primarily because of the reen and ditch habitats, the insect and invertebrate species supported by the reens and ditches and for the Shrill carder bee. Much of the opposition to the Scheme is based on the impact upon the Gwent Levels. I shall return to WG's duties in respect of the Levels and the ways in which it proposes to respond to the challenges of traversing this habitat below.

2.5 As well as carrying out modifications to the junctions at either end, the Scheme involves the provision of two intermediate junctions, the Glan Llyn junction south of Tata and, further west, a junction at Newport Docks. The Glan Llyn junction provides access to new development land as well as to the proposed park and ride facility at Llanwern while the junction at Newport Docks provides valuable access to the south of Newport. New or diverted lengths of highway, public rights of way and private means of access would be provided to replace those affected by the new motorway.

2.6 The existing M4 between Magor and Castleton would be reclassified as a trunk road and, as well as changes to traffic signs and road markings, junction

25 would be reconfigured to reopen access to the existing M4 at Caerleon. The reclassification works to the existing M4 would be carried out after the construction of the new motorway and the detail of their design is at a less advanced stage than those in respect of the new road.

2.7 The Scheme is proposed because of the manifest inadequacies of the existing M4 between Magor and Castleton. The road was designed and built as the Newport by-pass in the mid to late 1960s and does not meet modern motorway design standards. It has many lane drops and lane gains, resulting in some two lane sections, an intermittent hard shoulder and frequent junctions. Congestion arises with monotonous regularity during peak hours with Brynglas Tunnels presenting a particular bottle neck<sup>1</sup>. That bottleneck is aggravated by the proximity of junctions which can lead to vehicles queuing to leave and access the motorway. As well as the regular and predictable fact of congestion, there are frequent but unpredictable incidents which can give rise to very lengthy delays causing widespread congestion on the broader network. In short, the M4 is neither a reliable nor a resilient network. As the heavily trafficked section skirts urban areas in the north of Newport it is also associated with levels of air pollution and noise inimical to human health. That something ought to be done in respect of this problem is a long-standing policy of WG and, before it, the Welsh Office. It is WG's case that the problems will get worse as is apparent from the modelling work set out in Mr Whittaker's evidence. There is a broad degree of agreement as to the current problems afflicting the existing M4. Those objecting to the Scheme,

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<sup>1</sup> See Figures 3.9 to 3.13 in Whittaker proof, pages 16 to 18

notwithstanding the acknowledged problems, adduce a number of different arguments. For example, it is said that congestion is something which simply has to be tolerated, or that the provision of a new road is not a solution and that steps ought to be taken to effect large scale modal shift towards public transport, or that the impact on the Gwent Levels is such that the Scheme is unjustifiable and inconsistent with the obligations placed on WG by recent Welsh legislation and other EU and UK law. Those objectors who do not oppose the principle of a new road suggest alternative routes and configurations. Most alternatives are local. But Cycling UK and its witness Professor Stuart Cole advance the Blue Route as a comprehensive alternative to the Scheme. I shall set out in brief form the WG's case in respect of all of these arguments against the Scheme when dealing, in section 4, with the relevant law and policy. First, however, it is necessary to say something about the history of the proposal.

### **3 History**

3.1 The detail is set out in Mr Matthew Jones's proof of evidence. The original M4 was built in the 1960s with two lanes in each direction. Over time the existing M4 has been widened and re-configured<sup>2</sup>. The first assessment of a new road was undertaken in 1990 as part of the South Wales Area Traffic Study (4.1.1). The authors of that Study accurately foresaw that, in the absence of a comprehensive solution in the form of a new road, the conditions which have become all too familiar to road users in this part of Wales would simply continue and worsen. Whilst the details of recent assessments underpinning

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<sup>2</sup> The existing M4 was widened to three lanes, save for the Tunnels in the early 1980s (4.1.17, para 1.5), junctions 29 to 32 to the west were widened between 2007 and 2010.

the Scheme are different from those in that early Study, the basic problems and choices identified are similar.

3.2 In June 1993 (4.1.11) and July 1994 (4.1.17) documents were published by the Welsh Office stating that routes to the north of Newport and along the coast or near to the coast had been assessed and rejected as options for reasons set out in the reports. There was a consultation in 1993 in respect of three routes to the south of Newport which, unlike this Scheme, ran to the south of Magor. As a result of that consultation, the Welsh Office decided to consult on a route to the north of Magor<sup>3</sup>. Following a second consultation the Welsh Office published a report in July 1995 expressing a preference for a route passing to the north and not the south of Magor (4.1.19).

3.3 Little progress was made after 1995, save for modifying the route in 1997 to cater for the LG development, until the WG undertook a comprehensive route review which led in 2006 to the preferred route being aligned further to the north to reduce the impact upon the Gwent Levels SSSIs (4.2.4-4.2.7). Consultations were conducted as to strategic objectives in 2006 and 2007 but in 2009 the Deputy First Minister announced that the plans for a new motorway to the south of Newport were not to be progressed as a motorway would be unaffordable. Significant roadworks were undertaken between 2009 and 2011 on the existing road between junctions 24 and 28 which consisted of resurfacing, the installation of a concrete central barrier and the necessary

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<sup>3</sup> (4.1.17, paras 8.1 and 8.3)

infrastructure to implement the Variable Speed Limit (VSL) system<sup>4</sup>. The VSL and associated works alleviated some of the difficulties experienced but they were not a substitute for a comprehensive solution to the problems of the M4. Therefore, in September 2010, WG launched a comprehensive engagement programme relating to the M4 Corridor Enhancement Measures (M4 CEM). There was a public consultation (4.3.5) opening in March 2012 on four options including a dual carriageway in broadly the same corridor as this Scheme (option A), options involving the enhancement of the SDR<sup>5</sup> (options B and C) and widening of the existing M4 (option D). These various options were considered in the context of a package of measures consisting of public transport improvements and complementary measures called Common Measures e.g. to encourage the use of public transport, active travel etc. The upshot of the consultation and the appraisals undertaken in light of the consultation was that a dual carriageway to the south of Newport along what became known as the red route provided the best solution.

- 3.4 In 2013, however, discussions between WG and UK government with regard to finance meant that motorway options became financially feasible. Accordingly, a WeITAG appraisal was undertaken comparing the red route dual carriageway with the black route and purple route motorways and published in the WeITAG report of June 2013 (4.3.15). The main differences between the purple and black routes pertained to the path over the Usk and Newport docks. The purple route went to the north of the Docks and across

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<sup>4</sup> It is for this reason that we do not have traffic flow data for the M4 between 2009 and 2011, Whittaker Figure 3.1, page 6

<sup>5</sup> But not the steelworks road which is the other component of the Blue Route

the Docks Way Landfill site. The WelTAG report recommended progressing with the black route as the preferred route. In due course WG announced and published a draft Plan which, following a period of consultation and Strategic Environmental Assessment (“SEA”), was adopted in July 2014.

3.5 The adoption of the Plan was judicially reviewed by the Friends of the Earth on three grounds. The first ground claimed that the decision was flawed because the WG had failed to assess reasonable alternatives in accordance with the Strategic Environmental Directive (SEA) and in particular had failed to consider the Blue Route which did not impact upon the Gwent Levels. Secondly, it was claimed that the WG had not complied with its duties under s 28G of the Wildlife and Countryside Act 1981 in respect of conservation and enhancement of the SSSIs. The third ground was that WG had failed to take into account its own policies including those relating to the reduction of carbon emissions. The claim came before Mr Justice Hickinbottom who dismissed it in March 2015 (4.5.15). The court found that there was ample evidence to justify WG’s decision that the Blue Route would not satisfy the TPOs observing that the decision was ‘not only rational but all but inevitable’ [para 117]. As for section 28G the court held that the Minister ‘clearly paid the SSSIs and the desirability of preserving and protecting them the regard required of her’ [135]. The third ground (carbon) was not pursued by Friends of the Earth.

3.6 The National Transport Finance Plan (5.1.7) published in July 2015 identifies new road schemes to be constructed including: “Improvements to the M4

Corridor around Newport – a new section of motorway south of Newport and complementary measures including: reclassification of the existing M4 between Magor and Castleton, a M48-B4245 link and cycling and walking friendly infrastructure.”

- 3.7 Upon publication of the draft orders in March 2016 there was a period of consultation and as a result of the statutory objections WG announced that a local public inquiry and a pre inquiry meeting (PIM) would be held. The inquiry was due to commence on 1 November 2016 but the Minister announced a postponement due to the need to assess the implications of the new traffic growth factors published by the Department for Transport (“DfT”). The Environmental Statement and reports published at the same time as the draft orders had been based on the DfT’s traffic forecasts as set out in the software known as Tempro 6.2. The updated traffic growth forecast in Tempro 7 contained lower estimates of future growth. It was necessary therefore to reassess the justification for the Scheme in light of those different forecasts. In carrying out that re-assessment it became apparent that there were certain anomalies in the planning and population assumptions underpinning Tempro 7. Those were brought to the attention of DfT who decided that there was a need to refine Tempro 7 and therefore announced Tempro 7.1 Interim for Wales in December 2016. These growth forecasts were used by WG in the updated reporting published in December 2016 as well as in the second supplemental ES.

- 3.8 Upon reassessing the Scheme in light of Tempro 7.1 Interim for Wales, WG considered that it ought to be progressed and on 14 December 2016 the Minister announced that the public inquiry would commence on 28 February 2017. The reports released in December included an assessment of the Blue Route (6.2.25) and an updated overview of public transport (2.4.19)
- 3.9 As mentioned at the second PIM, WG is minded to make two further supplemental orders, one in respect of bridge protection measures at Newport docks and the other for an eastbound off slip at Magor.
- 3.10 Alternatives routes were raised at both PIMs and objectors were required to provide sufficient detail two weeks before the commencement of the inquiry. WG has received details of 22 alternative routes and is preparing a report on the alternatives which will be published around the end of March 2017. Since receipt of the evidence from objectors, work on the preparation of rebuttal evidence, where required, has commenced. It is not WG's intention, however, to reiterate evidence already provided and rebuttals will be limited to new evidential matters<sup>6</sup>.

## **4 Law and Policy**

### **Highways Act 1980, Acquisition of Land Act 1981 and the CPO Circular**

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<sup>6</sup> Where rebuttal evidence is necessary it will be submitted in sufficient time for relevant objectors to digest its contents. At the second PIM, inspectors asked objectors to specify in advance which of WG's witnesses they wished to attend for cross examination and it is clearly essential to the running of the inquiry that they do so.

4.1 The published draft orders and schemes are made pursuant to powers under the Highways Act 1980<sup>7</sup> (“HA 1980”) and are subject to the provisions of the Acquisition of Land Act 1981 (“ALA 1981”). The HA 1980 and the ALA 1981 provide for inquiries to be held and Schedule 1 of the 1981 Act prescribes the circumstances where an inquiry is required in relation to a CPO.

4.2 Circular 14/2004 “Revised Circular on Compulsory Purchase Orders” sets out the principles to be applied when considering a CPO. In order to confirm a CPO the decision maker has to be satisfied that:

- there is a compelling case for acquisition in the public interest;
- this justifies interfering with the human rights of those with an interest in the land affected;
- the acquiring authority has a clear idea of how it is intending to use the land it seeks to acquire;
- the acquiring authority can show that all necessary resources to carry out its plans are likely to be available within a reasonable timescale; and
- the scheme is unlikely to be blocked by an impediment to implementation

4.3 The ALA 1981, however, makes specific provision for land which is used by statutory undertakers and also for common land and allotment land. In respect

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<sup>7</sup> Sections 10, 12, 14, 16, 17, 19, 41, 106 (bridges), 125 and 246 (purchase of mitigation land), 268 and 326 of the 1980 Act. .

of land used by statutory undertakers the relevant provision is section 16 which provides:

***“16.— Statutory undertakers’ land excluded from compulsory purchase.***

*(1) This section applies where the land comprised in a compulsory purchase order includes land which has been acquired by statutory undertakers for the purposes of their undertaking and on a representation made to the appropriate Minister before the expiration of the time within which objections to the order can be made he is satisfied that—*

*(a) any of the said land is used for the purposes of the carrying on of their undertaking, or (b) an interest in any of the said land is held for those purposes and the representation is not withdrawn.*

*(2) The compulsory purchase order shall not be confirmed or made so as to authorise the compulsory purchase of any land as to which the appropriate Minister is satisfied as aforesaid except land as to which he is satisfied that its nature and situation are such—*

*(a) that it can be purchased and not replaced without serious detriment to the carrying on of the undertaking, or*

*(b) that if purchased it can be replaced by other land belonging to, or available for acquisition by, the undertakers without serious detriment to the carrying on thereof, and certifies accordingly.”*

4.4 There are a number of statutory undertakers who are affected by the Scheme and who have made representations to the appropriate Minister within the requisite time. The most prominent is ABP and the Inspectors have been instructed to write a separate report for the Secretary of State for Transport as to whether the Scheme would cause serious detriment to the carrying on of ABP’s undertaking. Their undertaking is defined by sections 9 and 14(3) of the Transport Act 1981 and consists of the provision of ‘port facilities’. WG submit

that the Scheme would not cause serious detriment to the carrying on of ABP's undertaking or to any of the other statutory undertakers who have made s 16 representations.

4.5 Common land and allotments are subject to section 19 of the ALA 1981.

Section 19 provides:

***“19.— Commons, open spaces etc.***

*(1) In so far as a compulsory purchase order authorises the purchase of any land forming part of a common, open space or fuel or field garden allotment, the order shall be subject to special parliamentary procedure unless the Secretary of State is satisfied—*

*(a) that there has been or will be given in exchange for such land, other land, not being less in area and being equally advantageous to the persons, if any, entitled to rights of common or other rights, and to the public, and that the land given in exchange has been or will be vested in the persons in whom the land purchased was vested, and subject to the like rights, trusts and incidents as attach to the land purchased, or*

*[(aa)... ]*

*[(b)... ]*

*and certifies accordingly.*

*(2) Where it is proposed to give a certificate under this section, the Secretary of State shall direct the acquiring authority to give public notice of his intention so to do, and—*

*(a) after affording opportunity to all persons interested to make representations and objections in relation thereto, and*

*(b) after causing a public local inquiry to be held in any case where it appears to him to be expedient so to do, having regard to any representations or objections made,*

*the Secretary of State may, after considering any representations and objections made and, if an inquiry has*

*been held, the report of the person who held the inquiry, give the certificate.”*

4.6 In this case the common land and the allotment land is to be replaced and the draft order includes a draft section 19 certificate so the inquiry will consider the statutory questions under subsection (1)(a) set out above<sup>8</sup>.

4.7 As well as conferring the power on WG to acquire land to construct roads the HA 1980 directs the decision maker to have regard to certain matters. Section 16(8) of the Act provides:

*“(8) Before making or confirming a scheme under this section, the Minister shall give due consideration to the requirements of local and national planning, including the requirements of agriculture.”*

4.8 WG adduce evidence from John Davies MBE as to local and national planning policies, including those relating to agriculture. Planning policy is relevant but, as is apparent from s 16(8), there is no presumption that compliance or non-compliance with planning policies is determinative of whether or not the published orders ought to be made and it is important to remember that this is not an inquiry under the Planning Acts.

4.9 Julia Tindale explains the practical implications of the Scheme for agriculture and Ben Sibert details how the design of the Scheme has taken these into account. Several of the Proposed Modifications to the draft Orders are the

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<sup>8</sup> See Tindale’s proof page 15, paragraphs 5.8 and 5.9

result of detailed discussions with farmers with a view to accommodating their practical requirements<sup>9</sup>.

4.10 Paul Canning and Michael Vaughan give detailed assessments in relation to flood risk and John Davies sets the technical evidence in the policy context. There has been a great deal of engagement with NRW on the technical detail for which WG is grateful. Whilst the proposed new route would cross an area of flood plain, national planning policy recognizes that there will need to be exceptions to its general policy of restraint in such areas including for essential transport infrastructure. A further important policy consideration is the WG's commitment to a policy of "Holding the Line" of existing flood defences to which considerable weight must be given.

4.11 Section 107(1) HA 1980 states that regard must be had to the reasonable rights of navigation:

***"107.— Provisions supplementary to section 106.***

*(1) Before making or confirming an order or scheme which provides for the construction of a bridge over or a tunnel under navigable waters, the Minister shall take into consideration the reasonable requirements of navigation over the waters affected by the order or scheme."*

4.12 As the Scheme includes the construction of a bridge over the navigable waters of the Usk, Ebbw and Newport docks section 107(1) is relevant. As with agriculture and planning, the Act prescribes no precise standard to be

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<sup>9</sup> Matthew Jones proof Appx B lists Proposed Modifications at date of writing. Discussions continue.

met or criterion to be applied, nor is there a statutory weighting. The requirement is to take the reasonable requirements of navigation into consideration, along with the other matters specified in the HA 1980 and, by implication, all other material considerations, including other legislation. The WG adduces evidence from Jonathan Vine as to the impact of the Usk bridge on navigation rights at Newport docks which is relevant to section 107 as well as to the issue of serious detriment<sup>10</sup>.

### **EU legislation**

4.13 In term of EU legislation, the scoping exercise conducted pursuant to the Conservation of Habitats and Species Regulations 2010 (“Habitats Regulations”) (3.1.22) identified that significant effects could not be ruled out in respect of five European sites: the River Usk SAC; Severn Estuary SAC; Severn Estuary SPA; Severn Estuary Ramsar and the Wye Valley and Forest of Dean Bat Sites SAC. Accordingly, a Statement to Inform an Appropriate Assessment has been prepared (2.3.4) in respect of the Scheme and the five European sites which concluded that there are no adverse effects on the integrity of the sites as a result of the Scheme. It is understood that NRW are in agreement that there is no adverse effect on the SAC<sup>11</sup>.

4.14 The Habitats Regulations also confer significant protection to European protected species<sup>12</sup>. These species are also subject to similar but not identical protection under Part 1 of the Wildlife and Countryside Act 1981 (“WCA

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<sup>10</sup> If an objection under s 107 is maintained then it gives rise to Special Assembly Procedure - s 107(4)

<sup>11</sup> Ireland proof page 46, para 7.26

<sup>12</sup> See offences under regulation 41 and the licence derogating from regulation 41 which can be given by NRW provided certain conditions are met.

1981”). Despite the fact that the Scheme is only at inquiry stage and that any threat to the protected species would not arise until the commencement of construction NRW have requested detailed mitigation strategies in respect of a number of protected species. Draft mitigation strategies for bats, great crested newt, water vole and dormouse were appended to the December 2016 ES Supplement<sup>13</sup>. In view of the detailed work which has been carried out in respect of these protected species, it is submitted that the Inspectors can be satisfied that the requirements of the WCA 1981 and the Habitats Regulations will not be impediments to the implementation of the Scheme<sup>14</sup>.

#### **UK and Welsh legislation relating to the SSSIs and biodiversity**

- 4.15 As already mentioned, much of the opposition to the Scheme is due to the fact that it crosses the Gwent Levels SSSIs.
- 4.16 There is a raft of UK and Welsh legislation relevant to the SSSIs as well as planning policy protection in Planning Policy for Wales and TAN 5. In this section I shall note the relevant UK legislation without setting out the detail in respect of each provision.
- 4.17 Section 40 of the Natural Environment and Rural Communities Act 2006 (NERC) (3.1.13) imposes a duty on every public authority to have regard to the purpose of conserving biodiversity. Section 42(1) imposes a duty on WG to maintain and publish a list of living organisms and types of habitat of principal importance for the purpose of conserving biodiversity. Pursuant to s.

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<sup>13</sup> See Keith Jones proof page 20, para 2.5.10

<sup>14</sup> One of the matters relevant under the CPO Circular

42(3), WG has a duty to take reasonably practicable steps to further the conservation of those organisms and habitats on the list.

4.18 Section 28G of the Wildlife and Countryside Act 1981 (“WCA 1981”) provides:

**“28G.— Statutory undertakers, etc.: general duty.**

*(1) An authority to which this section applies (referred to in this section and in sections 28H and 28I as “a section 28G authority”) shall have the duty set out in subsection (2) in exercising its functions so far as their exercise is likely to affect the flora, fauna or geological or physiographical features by reason of which a site of special scientific interest is of special interest.*

*(2) The duty is to take reasonable steps, consistent with the proper exercise of the authority's functions, to further the conservation and enhancement of the flora, fauna or geological or physiographical features by reason of which the site is of special scientific interest.”*

4.19 The WG is a section 28G authority<sup>15</sup>. This duty was introduced by the Countryside and Rights of Way Act 2000 and was one of the reasons for moving the preferred route some 400 metres to the north in 2006 so as to lessen the impact on the SSSIs. The nature of the statutory requirement is not absolute: the duty to further the conservation and enhancement of the relevant features for which a site is of special scientific interest is to take ‘reasonable steps’ and those steps also have to be consistent with the proper exercise of the authority’s other functions. WG’s witnesses explain how section 28G considerations have played a prominent role in the design and development of the Scheme.

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<sup>15</sup> See s 28G(3)

## **Welsh Legislation relating to biodiversity**

4.20 The Environment (Wales) Act 2016 has developed the obligations imposed on WG and other public authorities by NERC. Section 6 of the 2016 Act provides:

### ***“6 Biodiversity and resilience of ecosystems duty***

*(1) A public authority must seek to maintain and enhance biodiversity in the exercise of functions in relation to Wales, and in so doing promote the resilience of ecosystems, so far as consistent with the proper exercise of those functions.*

*(2) In complying with subsection (1), a public authority must take account of the resilience of ecosystems, in particular the following aspects—*

*(a) diversity between and within ecosystems;*

*(b) the connections between and within ecosystems;*

*(c) the scale of ecosystems;*

*(d) the condition of ecosystems (including their structure and functioning);*

*(e) the adaptability of ecosystems.*

*(3) Subsection (1) does not apply to— (a) the exercise of a function by Her Majesty's Revenue and Customs, or (b) the exercise of a judicial function of a court or tribunal.*

*(4) In complying with subsection (1)—*

*(a) the Welsh Ministers, the First Minister for Wales, the Counsel General to the Welsh Government, a Minister of the Crown and a government department must have regard to the United Nations Environmental Programme Convention on Biological Diversity of 1992, and*

*(b) any other public authority must have regard to any guidance given to it by the Welsh Ministers.*

*(5) In complying with subsection (1), a public authority other than a Minister of the Crown or government department must have regard to—*

*(a) the list published under section 7;*

*(b) the state of natural resources report published under section 8;*

*(c) any area statement published under section 11 for an area that includes all or part of an area in relation to which the authority exercises functions.*

*(6) A public authority other than a Minister of the Crown or government department must prepare and publish a plan setting out what it proposes to do to comply with subsection (1).*

*(7) A public authority must, before the end of 2019 and before the end of every third year after 2019, publish a report on what it has done to comply with subsection (1).*

*(8) A public authority that has published a plan under subsection (6)— (a) must review the plan in the light of each report that it publishes under subsection (7), and*

*(b) may revise the plan at any time.*

4.21 The duty under s 6(1) is to seek to maintain and enhance diversity and not, as in s 40 of NERC, to have regard to the purpose of conserving biodiversity. It is, therefore, more onerous. Section 7 of 2016 of the Act is the equivalent of section 42 of NERC but again the provisions for the protection of biodiversity are stronger under the Welsh legislation. Section 7 provides:

***“7 Biodiversity lists and duty to take steps to maintain and enhance biodiversity***

*(1) The Welsh Ministers must prepare and publish a list of the living organisms and types of habitat which in their opinion are of principal importance for the purpose of maintaining and enhancing biodiversity in relation to Wales.*

*(2) Before publishing a list under this section the Welsh Ministers must consult the Natural Resources Body for Wales (“NRW”) as to the living organisms or types of habitat to be included in the list.*

*(3) Without prejudice to section 6, the Welsh Ministers*

*must—*

*(a) take all reasonable steps to maintain and enhance the living organisms and types of habitat included in any list published under this section, and*

*(b) encourage others to take such steps.*

*(4) The Welsh Ministers must, in consultation with NRW—*

*(a) keep under review any list published by them under this section,*

*(b) make such revisions of any such list as appear to them appropriate, and*

*(c) publish any list so revised as soon as is reasonably practicable after revising it.*

*(5) In exercising their functions under this section, the Welsh Ministers must apply the principles of sustainable management of natural resources.”*

4.22 The main developments compared to NERC are that the duty under s 7(3)(a) is to take ‘all reasonable steps’ to maintain and enhance the listed organisms and habitats and not ‘reasonably practicable steps’ as under NERC. There is, in addition, an obligation to apply the principles of sustainable management<sup>16</sup> which has no equivalent in NERC.

## **Carbon**

4.23 Under the Climate Change Act 2008 (3.1.14) there is an obligation on the relevant UK Secretary of State to ensure that the net UK carbon account for the year 2050 is at least 80% lower than the 1990 baseline<sup>17</sup>. The Act also requires the Secretary of State to set carbon budgets for successive five year

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<sup>16</sup> S 7(5) of the 2016 Act.

<sup>17</sup> Section 1 of the 2008 Act.

periods<sup>18</sup>, to prepare proposals and policies for meeting carbon budgets<sup>19</sup> and to make an annual statement as to the level of emissions<sup>20</sup>. There are only very limited duties imposed on WG by the 2008 Act<sup>21</sup> which also confers a limited number of powers on WG<sup>22</sup>.

4.24 Part II of the Environment (Wales) Act 2016 sets out a comprehensive regime whereby there are duties on WG in respect of Welsh emissions which largely reflect the obligations on the UK Secretary of State under the 2008 Act in respect of UK carbon emissions. Section 29 obliges WG to ensure that the emissions in 2050 are at least 80% lower than the baseline. By the end of 2018 interim emissions targets for 2020, 2030 and 2040 must be set<sup>23</sup>. There is an obligation to set carbon budgets for five year periods and the budgets for 2016-2020 and 2021-2025 must be set by the end of 2018<sup>24</sup>.

4.25 It is important to note that, like the Climate Change Act 2008, the Environment (Wales) Act 2016 does not require carbon savings to be made in individual schemes as they come forward. Rather it requires overall carbon savings over time, over all sectors in Wales.

4.26 The WG has undertaken a carbon assessment of the Scheme. The methodology is explained in the evidence of Tim Chapman. In May 2016 the

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<sup>18</sup> Section 4

<sup>19</sup> Section 13

<sup>20</sup> Section 16

<sup>21</sup> Duties to report under sections 68, 80 and 81

<sup>22</sup> Power to give guidance to reporting authorities under section 66, power to direct a reporting authority to produce a report under section 67.

<sup>23</sup> Section 30

<sup>24</sup> Section 31

first British Standard on Carbon Management in Infrastructure, PAS2080:2016 (8.2.10) was published. In accordance with the Standard an assessment has been made of the Capital Carbon, Operational Carbon and User Carbon implications of the Scheme. Capital Carbon concerns the emissions associated with the construction of the Scheme and the materials which are used. Though steps have been taken during the design of the Scheme to minimise Capital Carbon by, for example, minimising imported materials, maximising the use of material generated on site and so on, there is an inescapable Capital Carbon cost associated with a large infrastructure project. Operational Carbon relates to the emissions associated with the lighting of the Scheme, its maintenance etc. and is a minor component, though unlike Capital Carbon, Operational Carbon continues to be expended after the completion of the Scheme. The largest component relates to the User Carbon. This has been assessed for the South Wales network using the SATURN traffic model and also in respect of the Scheme and the existing M4 (the narrow study area) using a more sensitive VISSIM-PHEM model. The SATURN model assesses emissions from vehicles based on their average speed. VISSIM-PHEM is able to assess the carbon implications of accelerations and decelerations. Both models take into account the fact that the Scheme will give rise to induced traffic. Despite the greater volume of traffic under the Do Something scenario, there is a modest but not negligible saving in User Carbon both along the narrow study area and in the wider South Wales network beyond the new road and the old M4.

4.27 As for the narrow study area, there are savings because the new road is shorter and because the traffic is able to travel with fewer accelerations and decelerations due to the reduction in congestion. User Carbon on the wider network is reduced because vehicles are attracted on to the new road. Accordingly, contrary to the argument adduced by many opponents of the Scheme, the analysis shows that the Scheme would lead to a reduction in aggregate levels of tail-pipe emissions. It is also worth noting that there is a basis for supposing that the User Carbon analysis underestimates the probable real life carbon savings. That is because it depends upon the M4CaN traffic model which assesses typical travel conditions i.e. those where there are no incidents or accidents leading to severe congestion and delays. There is a positive correlation between incidents and congestion. It is likely that there will be fewer incidents under the Do Something scenario due to a reduction in congestion. Incidents lead to more stop start journeys and higher tail-pipe emissions. The carbon assessment cannot quantify these additional tail-pipe emissions under the Do Minimum scenario and thus is a conservative assessment of the User Carbon savings associated with the Scheme.

**4.28** In order to understand the overall carbon implications of the Scheme, there is a need to balance the Capital Carbon and on-going Operational Carbon expenditure against the User Carbon savings. Over time the User Carbon savings will counterbalance the initial Capital Carbon expenditure and that fact gives rise to the concept of carbon neutrality i.e. the point in time when User Carbon savings match the expenditure on Capital and Operational Carbon. The extent of User Carbon savings in future is difficult to predict.

User Carbon savings are a product of future traffic growth, which can be modelled and is subject to the DfT's traffic forecasts, and technological advances in relation to vehicles. Beyond 2030 there is no assessment of the rate or nature of technological change relating to motor vehicles. There is, therefore, an inherent uncertainty associated with any assessment of the concept of carbon neutrality. Nevertheless, the detailed analysis suggests that carbon neutrality may well be reached in the foreseeable future. As set out above the Act does not require carbon neutrality or better for any particular project or scheme. The Scheme performs very well in terms of reducing emissions per kilometer and is consistent with and does not contradict the aims of Part II of the Environment (Wales) Act 2016.

### **The Bushell principle**

- 4.29 Some opponents of the Scheme take issue with the traffic growth forecasts underpinning WG's traffic forecasting and economic appraisal, others take issue with the balance of public expenditure between different modes of transport and between transport generally and other desirable forms of public expenditure e.g. on education and training. It is, of course, legitimate and desirable for citizens to debate such matters in a democratic society. They are matters, however, for debate and discussion at a national level and not issues to be determined at local public inquiries. The merits of policies and methodologies adopted by WG or UK government are not in issue. This principle was confirmed in the case of *Bushell and Another v Secretary of State for Environment* [1980] 2 All ER 608. Guidance as to the application of

the Bushell principle is provided in the Planning Inspectorate's Guide on Transport Orders<sup>25</sup>. Paragraph 2.28 of the Guide states:

*"2.28 In general terms, the policy issues which are not matters for debate at inquiries are:*

- the allocation of resources to each of the different transport modes;*
- the combination of investment, subsidy, taxation and regulation by means of which the Government seeks to create the most efficient transport system;*
- the general assumptions that Government makes about the availability and price of fuels and other economic factors which influence traffic growth;*
- the objectives of the Government Road Programme; and*
  
- the general methodologies and the adoption of design standards used in the preparation of schemes and orders - as opposed to their application to particular schemes and orders."*

4.30 The Bushell principle is always important in an inquiry and this is no exception. Questions as to the proper application of policies and methodologies are matters for the inquiry; the merits of the policies and methodologies are not.

### **The Well-being of Future Generations Act and its precursors**

4.31 The Well-being of Future Generations Act 2015 ("FG Act") is an important and innovative piece of legislation which has pervasive implications for WG and all other Welsh public authorities. Many of the objectors contend that the Scheme is contrary to the FG Act and point to the fact that proposals similar to the Scheme were adopted by WG long before the passing of the Act. It is said that where WG has engaged with the Act in its published reports the Act

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<sup>25</sup> Advice for Inspectors – Transport Orders May 2012

has been retrofitted. In a trite sense that observation is correct but in a more meaningful sense the critique is not made out and is unfair.

4.32 Despite the clear importance of the FG Act, it needs to be put in its historic context. It is an evolution of the commitment in Wales's constitutional and legal framework to sustainable development which began with the Government of Wales Act 1998. That commitment has also been reflected in policies and methodologies which lie at the heart of the analysis and appraisals carried out prior to the adoption of the Plan for the Scheme in 2014. The detailed evidence in this regard is given by John Davies MBE. I shall provide a brief summary of the evolution of the sustainable development principle.

4.33 The National Assembly for Wales was established by the Government of Wales Act 1998. Section 121 of the 1998 Act obliged the Assembly to make a scheme setting out how it proposed, in the exercise of its functions, to promote sustainable development. The scheme had to be published and reviewed, and the National Assembly was obliged to produce an annual report stating how its proposals had been implemented.

4.34 The constitutional settlement was revised by the Government of Wales Act 2006. Section 79 of the 2006 Act contained a similar provision to s 121 obliging the Welsh Ministers to make a scheme setting out their proposals for promoting sustainable development.

4.35 The longstanding legal obligation to promote sustainable development was, as one would expect, reflected in policy. In June 2008 WG formally published the Welsh Transport Planning and Appraisal Guidance (“WelTAG”) (6.1.4). WelTAG was developed with the intention that it be applied to all transport strategies, plans and schemes being promoted or requiring funding from WG<sup>26</sup>. It remains the Guidance applied by WG. It expressly refers to WG’s duty to promote sustainable development and the detailed appraisal criteria are related to the three pillars of sustainable development or Welsh Impact Areas: the economy, the environment and society<sup>27</sup>. Insofar as the environment is concerned, improving the impact of transport on biodiversity, reducing the contribution of transport to greenhouse gas emissions and adapting to climate change are expressly identified as outcomes to be pursued under the Wales Transport Strategy<sup>28</sup>. The Scheme and all other proposals with regard to the relief of the M4 around Newport have been assessed using WelTAG. It is incorrect, therefore, to assert that the sustainable development principle has not played a prominent role in the decision making leading to the promotion of the Scheme. It is acknowledged, however, that the sustainable development principle has been evolved by the FG Act to which I now turn.

4.36 The Future Generations Act defines sustainable development in section 2:

***“2. Sustainable development***

*In this Act, “sustainable development” means the process of*

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<sup>26</sup> WelTAG page 1, para 1.1.1 (6.1.4)

<sup>27</sup> ibid pages 10 – 14, para 2.4

<sup>28</sup> ibid page 12, table 2.1

*improving the economic, social, environmental and cultural well-being of Wales by taking action, in accordance with the sustainable development principle (see section 5), aimed at achieving the well-being goals (see section 4).”*

4.37 Section 3 imposes a duty on WG, and other Welsh public bodies, to carry out sustainable development. There are 7 well-being goals under section 4 and the sustainable development principle is defined as follows by section 5:

**“5.— The sustainable development principle**

*(1) In this Act, any reference to a public body doing something “in accordance with the sustainable development principle” means that the body must act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs.*

*(2) In order to act in that manner, a public body must take account of the following things—(a) the importance of balancing short term needs with the need to safeguard the ability to meet long term needs, especially where things done to meet short term needs may have detrimental long term effect;*

*(b) the need to take an integrated approach, by considering how—*

*(i) the body's well-being objectives may impact upon each of the well-being goals; (ii) the body's well-being objectives impact upon each other or upon other public bodies' objectives, in particular where steps taken by the body may contribute to meeting one objective but may be detrimental to meeting another;*

*(c) the importance of involving other persons with an interest in achieving the well-being goals and of ensuring those persons reflect the diversity of the population of—*

*(i) Wales (where the body exercises functions in relation to the whole of Wales), or (ii) the part of Wales in relation to which the body exercises functions;*

*(d) how acting in collaboration with any other person (or how different parts of the body acting together) could assist the body to meet its well-being objectives, or assist another body*

*to meet its objectives;*

*(e) how deploying resources to prevent problems occurring or getting worse may contribute to meeting the body's well-being objectives, or another body's objectives.”*

4.38 The sustainable development principle, therefore, precludes decision makers from taking a short-termist approach at the expense of future generations. The 5 ways of working are complementary to and subject to the imperative under s 5(1) to avoid compromising the interests of future generations. The ways of working acknowledge the fact that there may be trade-offs between desirable objectives and goals. The sustainable development principle therefore involves striking a balance between different desiderata.

4.39 The Act requires WG to publish well-being objectives<sup>29</sup>. The well-being objectives were published in November 2016<sup>30</sup>. The foreword described how the well-being objectives were developed to guide the delivery of the Programme for Government, *Taking Wales Forward*, which was announced in September 2016 and contains WG's four cross-cutting strategies for 2016 to 2021. The strategy *Prosperous and Secure* states amongst other things:

*“We will build infrastructure to keep Wales moving and connect people with jobs, housing and leisure.....*

*Building on record levels of inward investment we will constantly seek new markets and investors from around the world, and promote Wales as an active international partner”<sup>31</sup>*

4.40 In the strategy *United and Connected* it is stated that:

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<sup>29</sup> Section 8

<sup>30</sup> Taking Wales Forward, Welsh Government's Well-being Objectives (2016)

<sup>31</sup> Taking Wales Forward, page 4

*“The UK withdrawal from the European Union means we must work harder and more actively to give substance to our outward-looking character....*

*We will continue to invest in infrastructure to boost the economy and communities of Wales and to connect all parts of Wales...”<sup>32</sup>*

4.41 In more specific terms it is stated under the Transport heading:

*“Deliver an M4 relief road, and improvements to the A55, the A40 in West Wales and other trunk roads.*

*Create a South Wales Metro and advance the development of a North Wales Metro system”<sup>33</sup>*

4.42 Accordingly, the policy commitment by WG to deliver an M4 relief road has been maintained following the commencement of the Future Generations Act and the formulation of the well-being objectives<sup>34</sup>. Allied to the Bushell principle this has important implications for the inquiry. It is WG policy that there ought to be an M4 relief road. The merits of that policy commitment are not a matter for the Inquiry. The application of that policy is, of course, a matter for the Inquiry as is apparent from the time which will be spent in assessing the merits and demerits of the alternative routes which have been advanced by objectors. As noted above, the Government’s National Transport Finance Plan, although not a policy document, makes provision for the relief road to be in the form of a motorway south of Newport with associated complementary measures. It also provides for the delivery of Active Travel

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<sup>32</sup> Taking Wales Forward, page 12

<sup>33</sup> Ibid, page 13

<sup>34</sup> The M4 relief road was also identified in the National Transport Plan of July 2015 (5.1.7). Most provisions of the Future Generations Act, including the obligation to carry out sustainable development, came into force in April 2016.

measures including Metro 1 for Newport and Cardiff and, more widely, Metro 2 . This Plan remains extant.

### **Brief submissions as to how the legal and policy tests are met**

4.43 The existing M4 around Newport is not fit for purpose. That has been the conclusion of WG for a long-time. Piecemeal and useful improvements have been undertaken over time which have ameliorated the position e.g. the Brynglas Tunnels and Malpas Relief Road<sup>35</sup>, the introduction of VSL<sup>36</sup> and, further west, the widening of the road between junctions 29 and 32<sup>37</sup>. As is apparent, however, from Bryan Whittaker's proof, traffic flows have been increasing steadily since the end of the recession and congestion is a regular feature - in particular on the approach to the Brynglas Tunnels bottleneck during peak hours. When there are incidents above and beyond normal peak hour congestion, the impacts on travel times and journey reliability are more serious. Though these problems are real they are not captured by the modelling. The existing road and the wider network lacks resilience because when there is a serious obstruction to traffic on the M4 the alternative routes are incapable of handling the traffic which is diverted. The consequence of a serious incident on the M4 is that the wider road network, in particular in Newport, becomes at best clogged up, at worst gridlocked.

4.44 The traffic flow forecasts for the opening year, the design year of 2037 and 2051 show that in the long run the problems will become worse; that is from a

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<sup>35</sup> The mid 1990s  
<sup>36</sup> 2009 to 2011  
<sup>37</sup> 2007 to 2010

starting point which is already unacceptable. The economic appraisal shows that the Scheme provides good value for money. The initial Benefit Cost Ratio (“BCR”) under the core traffic scenario is greater than 1.5 and the adjusted BCR which captures benefits from increased economic density, greater competition and enhanced labour market access is greater than 2. That means that over the 60 year appraisal period there is more than £2 of benefit for each pound spent on the Scheme. Some of the economic benefits which are likely to flow from the Scheme, a better perception of Wales as place in which to invest for example, cannot be captured by this analysis. There is, in short, a significant problem which is only going to get worse and the Scheme provides a solution which provides good value for money.

4.45 There are four Air Quality Management Areas in the vicinity of the existing M4 due to nitrogen dioxide air pollution. With the Scheme, the air quality in all of these Areas would improve significantly. In certain places there would be increases in the relevant concentrations but nowhere would the levels be taken outside air quality objectives. The position is similar in relation to noise. In the opening year, 2022, over 12,000 residential properties would experience non-negligible noise reductions compared to just over 2,000 properties who would experience non-negligible noise increases<sup>38</sup>.

4.46 An acknowledged disadvantage is the adverse impact which the Scheme would have on the Gwent Levels. The design of the Scheme, however, has been informed by the WG’s duties in respect of the Gwent Levels pursuant to

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<sup>38</sup> Philip Evans proof, pages 74-75 Table 8.4. The figures given are for those experiencing a positive or negative change of 1dB or more.

section 28G of the WCA 1981 and the duties imposed by other environmental legislation. Similarly, the ways of working have been consistent with the sustainable development principle. The following examples illustrate how the Scheme has responded to the environmental considerations:

- a. The route was moved north in 2006 to reduce fragmentation of the Levels;
- b. The contractor has been engaged at an early stage under an Early Contractor Involvement (“ECI”) contract;
- c. The ecological team were appointed at the same time as those tasked with designing and building the Scheme; ecological work and assessment has thus informed the design. Environmental concerns were not, therefore, left to be addressed once the road had been designed. For that reason much of the mitigation is embedded in the design;
- d. Examples of embedded mitigation include:
  - i. the rationalisation of the water treatment areas (“WTAs”) to reduce SSSI land take and their movement where practicable to the north of the road;
  - ii. low embankment to reduce SSSI land-take and to reduce the transportation of materials;
  - iii. highway fence moved to within 1 metre of the toe of the embankment rather than the 3 metres suggested by DMRB thereby reducing land take in the Levels by 3 hectares;
  - iv. no construction in the wetted channel of the Usk and the Ebbw;

- e. There is a commitment to employ an Environmental Co-ordinator supported by Ecological Clerks of Works for the construction period and the 5 year aftercare period;
- f. Reens and ditches will be replaced at a ratio of just over 1:1 in accordance with NRW recommendation.

4.47 Common criticisms of the Scheme and allegations that it contravenes the Future Generations Act and other legislation and policy are unfair and unfounded. I shall summarise these criticisms (*italicised/bold*) and explain why they are misconceived.

***It is said that the Scheme relies on traffic projection growths which are unrealistically high***

The Scheme has been assessed in line with the most up to date forecasts provided by the DfT. The start of the inquiry was adjourned in order to re-assess the Scheme in light of Tempro 7.1 Interim for Wales. This criticism is subject to the Bushell principle.

***Objectors say the case for the Scheme ignores changes in trip rates and travel patterns which arise from changes in car ownership patterns, home working, online shopping, socialising via social media etc***

This too is subject to the Bushell principle. But in fact these changes in patterns of behaviour have been incorporated in the DfT's forecasts and the fall in certain types of trip rates underpins the lower traffic growth forecasts in Tempro 7.1 Interim for Wales<sup>39</sup>.

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<sup>39</sup> See Whittaker proof pages 56-57, paras 9.3.2 – 9.35

***It is claimed that there has been insufficient attention paid to public transport alternatives and the impact of Metro.***

The M4CaN traffic model already makes provision for electrification of the Cardiff- London mainline and of the Valley Lines<sup>40</sup>. But the potential to take traffic away from the existing M4 as a result of modal shift consequent upon further public transport developments has been analysed in detail on several occasions. The latest assessment is contained in the Updated Public Transport Overview (2.4.19) published in December 2016. The WG is committed to the development of Metro<sup>41</sup> and the Scheme has been designed to complement the Metro. For example, the Glan Llyn junction provides access to the Llanwern Park & Ride scheme and the junction strategy provides better access to the Severn Tunnel railway station<sup>42</sup>. The Metro's greatest positive impact will be on north-south patterns of travel and not the east-west journeys catered for by the M4. The Public Transport Overview has assessed the impact of all the rail elements of Metro up to 2037 and of the proposed Llanwern Park & Ride station and found that less than 4% of traffic on the M4 would be extracted from the road even on the set of assumptions most favourable for modal shift<sup>43</sup>. It is WG's policy to encourage modal shift. Its analysis over a long period of time has shown, however, that the quantum of modal shift required to relieve congestion along the M4 is not practicable. It is for that reason that it has adopted a policy that there needs to be an M4 relief road.

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<sup>40</sup> The public transport assumptions in the M4CaN model are set out in the Traffic Forecasting Report (2.4.13) page 46, section 8.2. In essence Metro Phase 1 is included in the M4CaN model with some elements of Metro 2.

<sup>41</sup> See the extract from *United and Connected* cited above

<sup>42</sup> See Matthew Jones's proof page 43, para 9.5

<sup>43</sup> Updated Public Transport Overview (2.4.19) page 36, para 10.1.3

## 5 Alternatives

- 5.1 At the first and second PIM a direction was given for objectors who intended to suggest alternative routes to provide details of the same 2 weeks before the start of the inquiry<sup>44</sup>. The relevance of alternatives and the approach which the Inspectors should take to their assessment is set out in the Transport Order Guidance of May 2012<sup>45</sup>. It is not the function of Inspectors to recommend an alternative. Rather the focus ought to be on whether it is worthy of further investigation having regard to how it performs compared to the promoted Scheme against the aims and objectives set for the Scheme<sup>46</sup>.
- 5.2 WG will set out its assessment of the alternatives in the report which will be published next month. Most of the alternatives are local and it would not, in general, be useful or proper to pre-empt the report. Nevertheless, WG has already carried out and published its assessment of the Blue Route. That report shows that the Blue Route performs poorly against the Transport Planning Objectives (“TPO”). Its BCR is poor in comparison to the Scheme but more fundamentally, it would not achieve the basic objective of solving the problem of congestion along the corridor. At very substantial cost Newport would be traversed by two strategic routes which together would be incapable of facilitating a free flow of traffic across the region. Nothing in Professor Cole’s proof suggests that WG’s assessment of the utility of the Blue Route is too pessimistic. The Blue Route is the antithesis of the long term thinking prescribed by the FC Act. There is, in short, a compelling evidential case for

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<sup>44</sup> Pursuant to the power under s 258 of the Highways Act.

<sup>45</sup> In particular paragraphs 2.50 and 2.51.

<sup>46</sup> In this case the 15 TPOs.

the Inspectors to conclude that the Blue Route is not worthy of further investigation.

## **6 Conclusions**

- 6.1 We are setting out today on a journey. At times, no doubt, the journey will feel arduous as we explore detailed evidence spanning many different disciplines. As set out above, however, the subject matter of this inquiry is of profound importance for Wales and it is the culmination of years of very hard work to bring forward a major piece of nationally significant infrastructure. We do have a map to assist us in our endeavour. The policy framework is clear and up to date: the need is recognised in the knowledge of the environmental and practical challenges. WG will demonstrate in this public arena that the Scheme responds appropriately to the challenges and represents sustainable development.
- 6.2 Wales needs the M4CaN Scheme. We seek the Inspectors' positive recommendations in relation to all the Orders and Certificates required to make it happen.

**MORAG ELLIS QC**

**EMYR JONES**

