

**THE PROPOSED NETWORK RAIL (SUFFOLK LEVEL CROSSING REDUCTION)**  
**ORDER**

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**CLOSING SUBMISSIONS**  
**ON BEHALF OF NETWORK RAIL**

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1. By this application, Network Rail seeks powers to close or downgrade rights over 23 level crossings within Suffolk, together with associated powers, (including the acquisition of rights over land, and, to the extent necessary, deemed planning permission) to allow for the provision of diversionary routes for existing users of those crossings.
  
2. These closing submissions are structured as follows:
  - a. Part 1: Overarching issues
    - i. The case for the Order: Network Rail's 'strategic case';
    - ii. The development of the Order proposals, including alternatives;
    - iii. The position of objectors on strategic issues, including the use of the TWAO procedure;
    - iv. The general approach to public rights of way;
    - v. Planning policy;
    - vi. Road safety issues;
    - vii. Environmental appraisal;
    - viii. The general approach to matters relating to land acquisition
    - ix. Funding
  
  - b. Part 2: Considerations relating to individual crossings
  
  - c. Part 3: The Order, planning conditions, and other consequential matters;
  
  - d. Part 4: Conclusion

## **Part 1: Overarching issues**

### **(i) Network Rail's 'strategic case'**

3. As set out in Opening, the case for pursuing this Order is a strategic one. Through the Order, Network Rail is looking to reduce and rationalise level crossings across the Anglia route.
4. The strategic case for seeking this Order (and rationalising the at-grade crossing points on the railway) is, essentially, threefold:
  - a. Operational efficiency of the network (including increasing resilience of the current railway, and removing constraints with a view to future enhancements);
  - b. Safety of rail users and of those interacting with the railway by reason of the crossing points over the railway; and
  - c. Efficient use of public funds in accordance with the obligations imposed on Network Rail, as arms-length Government Body, under "Managing Public Money".
5. The benefits sought to be achieved, through the Order, are more set out in more detail in the Statement of Aims (NR04), namely:
  - a. Creating a more efficient and reliable railway;
  - b. Facilitating capacity and line speed increases on the network in the future;
  - c. Improving the safety of level crossing users, railway staff and passengers;
  - d. Reducing delays to trains, pedestrians and other highway users; and
  - e. Reducing the ongoing operating and maintenance costs of the railway;
6. The case for the Order – or for closure of individual crossings contained within it – is not based on any one of those objectives individually, but on a combination of those factors. It is critical to understand that level crossings are but one part of the wider

railway system. The proposals contained within the Order must be considered in that context. As Dr Algaard stressed in XIC,<sup>1</sup> Network Rail “do[es] not consider crossings in singularity but at a systemic level ... The railway is a system. Looking at operating a safe, reliable railway, need to look at how it will impact the system, not an individual level crossing.”

7. The crossings included within the Order have not been selected based on the specific risk associated with that crossing;<sup>2</sup> a specific enhancement scheme being ‘held back’ by the presence of that crossing; or the costs associated with maintaining that crossing. The case for this Order turns on benefits to the railway which will result from reducing the number of at-grade level crossings across the Anglia route:
  - a. enabling Network Rail to focus its resources on those at-grade crossings which cannot be closed by diversion;<sup>3</sup>
  - b. reducing constraints on future enhancement schemes which could impact negatively on the business case for that enhancement (and thus render it less likely to come forward);<sup>4</sup> and
  - c. improving the reliability, and resilience, of the network,
8. As Dr Algaard confirmed in XXC,<sup>5</sup> the removal of each and every level crossing will provide a safety benefit, remove a maintenance obligation, reduce costs, will make the route safer and more reliable, and facilitate future enhancement.
9. Network Rail acknowledges that that analysis applies to the removal of any level crossing on the network – not just those included within the Order - and that the consideration of whether the Order, as drafted, should be recommended for approval is not limited to those matters alone. It is acknowledged that there is a need for a ‘balancing act’.<sup>6</sup> That is where consideration of whether the proposed alternative

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<sup>1</sup> Day 2 of the Inquiry

<sup>2</sup> As set out at para 8.24 of Mark Brunnen’s PoE, ALCRM was not used to select or prioritise crossings for inclusion in the Order.

<sup>3</sup> As MB explained in XIC on Day 1, NR must take the opportunity to close crossings where opportunities exist to rationalise the crossing, which “allows us to direct resources at level crossings that most need them because there is no opportunity” for closure, and “instead of spending money on crossings which could reasonably be rationalised we can spend on those which cannot”

<sup>4</sup> As discussed by Dr Algaard in XIC (Day 2)

<sup>5</sup> Days 2 and 3, in response to questions from Ms Golden

<sup>6</sup> Dr Algaard in XXC, Day 2

route is “suitable and convenient” comes into play (i.e. the test in s.5(6) TWA 1992). Network Rail does not have to establish a ‘case’ for closure of an individual crossing: that is inextricably part and parcel of the strategic case for the Order as a whole.

10. Network Rail’s position remains, as set out at para 48 of its Opening Submissions that, if the Inspector (and, subsequently, the Secretary of State) is satisfied that Network Rail has made out its strategic case for the Order, then it follows that the only basis on which the Order could either not be confirmed, or confirmed with modifications (removing specific crossings from the Order) is if the Inspector considers either that an alternative route has not been provided but is required (s.5(6)(b)) or that the alternative route is not “suitable and convenient”.

### Risk & safety

11. All level crossings carry risk. Level crossings are the largest single contributor to train accident risk on the railway network.<sup>7</sup> They present a risk to those traversing the crossing, and those driving or riding on trains. Mr Brunnen’s evidence illustrates these risks in detail, setting out (inter alia) details of fatalities at level crossings from 2005-2017;<sup>8</sup> a ‘worsening trend’ of near-miss incidents;<sup>9</sup> and risks arising from user-behaviour, with particular reference to the risks arising from familiarity and distractions.<sup>10</sup>
12. It goes without saying that when those risks materialise, they have appalling consequences. Dr Algaard<sup>11</sup> and Mr Prest<sup>12</sup> both discussed the impacts that arise from such events for those unfortunate enough to be involved in, or witnessing, them (echoed by Supp/2, a representation from a resident of Newmarket). Whilst it is important to avoid too emotive an argument on these issues, neither Network Rail –

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<sup>7</sup> MB PoE para 7.2

<sup>8</sup> Revised Appendix 2 to his Proof of Evidence (NR-INQ-46)

<sup>9</sup> MB PoE para 7.8

<sup>10</sup> MB PoE Section 9. NR would also highlight that a number of the fatal incidents recorded in the table on pages 2-8 of MB’s replacement Appendix 2 refer to the user of the crossing being distracted/potentially distracted.

<sup>11</sup> PoE paras 2.3.6 & 2.3.7

<sup>12</sup> In XIC on Day 9 discussing the fatality at S01 Sea Wall

nor, it is submitted, the Secretary of State – can disregard the human reality of these risks.

13. Network Rail must carefully manage those risks.

14. Whilst risk can be *managed* at any particular crossing, the only way to eliminate risk at the crossing is through closure.<sup>13</sup> As Mr Brunnen explained in XXC, “*closure is always the best way to manage safety*”.

15. That approach is supported by the ORR – the body principally responsible (with the Secretary of State and Scottish Ministers) for the regulation of the railway industry in Great Britain, and (so far as relevant to this inquiry), the Health and Safety regulator for the rail industry. As is clear from its ‘Strategy for regulation of health and safety risks – 4: Level crossings’, it wants to “**encourage crossing closure**”<sup>14</sup> and advises that “the removal of crossings is always the first option to be considered in a risk control strategy by the duty holder, in line with the general principles of prevention in European and UK law”.<sup>15</sup>

16. Various duties imposed are on Network Rail, both through its regulatory framework, its Licence conditions and the general law.<sup>16</sup> Ultimately, Network Rail is under an overarching duty to operate a safe railway, and where opportunities exist for making it safer – such as through removal of level crossings – that is what it should strive to achieve.

17. A number of objectors have suggested during the inquiry that a particular crossing has an ‘excellent safety record’<sup>17</sup> or that the view of those using it (or the ‘majority’ thereof) is that the crossing “is sufficiently safe as it is”.<sup>18</sup> Issue has been taken with the ALCRM score for a particular crossing – usually by reference to a lack (or relative lack) of historic incidents at the crossing in question. A line of questioning was also

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<sup>13</sup> MB XXC in response to MG questions, Day 2

<sup>14</sup> Core Document NR14, page 1. Bold as emphasis in original.

<sup>15</sup> NR14 para 6. NR would also highlight, in this regard, the obligations set out in the EU Rail Safety Directive, discussed at MB PoE para 5.5, specifically that in Article 4.1 “Member States shall ensure that railway safety is generally maintained and, where reasonably practicable, continuously improved”

<sup>16</sup> Discussed in Sections 4 and 4 of Mr Brunnen’s PoE

<sup>17</sup> Cllr Hirst on behalf of Newmarket Town Council (Obj 3) re S22 (PoE page 2)

<sup>18</sup> Mr Hodson (Obj 13) (PoE – ‘Prepared Statement’ 17.01.18 – page 4)

pursued in XXC of Mr Brunnen to the effect that where a crossing was currently open, it was ‘safe enough’ to be used.

18. With respect, that is simply the wrong approach to looking at the risks posed by level crossings, and the very real benefits that would be achieved by this Order:

- a. If a level crossing is open, it means that Network Rail considers it is “fit for use today”. It does not mean that Network Rail “*doesn’t have concerns about them*”, and “*wouldn’t seek to improve for change in the longer term*”.<sup>19</sup> Mr Brunnen chose his words very carefully in this regard.<sup>20</sup> He notably did not accept the question put in XXC which was, essentially, that if a level crossing was open it was “safe enough to be used” or “deemed safe enough”;<sup>21</sup>
- b. The fact that a crossing is currently considered by Network Rail to be “fit for use today” does not mean that it does not carry risk. It obviously does. The risk is quantified, by means of its ALCRM score, and assessed qualitatively, as explained by Mr Brunnen in Section 8 of his Proof. All level crossings carry risk;
- c. The lack of previous incidents at a crossing cannot be used as a proxy for current risk at a crossing. As Mr Brunnen explained in XIC, in the previous 2 years, there had been 7 fatalities at pedestrian level crossings, none of which had a history of fatalities in the previous 20 years.<sup>22</sup> As Mr Brunnen stated, the suggestion that Network Rail should have to wait for an incident before deciding something needed to be done about a crossing “is surely not the right approach”;
- d. History of incidents “is a consideration, but one component of a multi-faceted risk assessment”<sup>23</sup>, including within ALCRM itself. Mr Brunnen explains in paras 8.7 – 8.10 of his Proof the principles used by ALCRM for modelling risk

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<sup>19</sup> MB XXC in response to MG questions, Day 2

<sup>20</sup> As did Mr Kenning when a similar line of questioning was put to him in XXC by MG on Day 4

<sup>21</sup> XXC in response to MG questions, Day 2

<sup>22</sup> The details of those incidents are provided in the revised Appendix 2 to Mr Brunnen’s proof (NR-INQ-46), as he explained before XXC on Day 2.

<sup>23</sup> MB XIC Day 1

at each type of crossing, and the asset specific information required in respect of an individual crossing (which includes historic incidents at that crossing<sup>24</sup>), and that ALCRM has been calibrated using data from the Rail Industry's Safety Management Intelligence System (SMIS) and from the RSSB's Safety Risk Model (SRM) which uses incident data (or precursors) from the safety events within SMIS<sup>25</sup> to calculate the actual levels of risk for each type of level crossing;

- e. As to criticisms of ALCRM or its reliability,<sup>26</sup> Network Rail would stress that ALCRM is recognised by the ORR as *the* level crossing risk ranking tool for all level crossings under Network Rail's management, and it is acknowledged to provide a good overview of risk priorities.<sup>27</sup> The suggestion that "*ALCRM is entirely misleading and worth noting*" is wholly unfounded.<sup>28</sup> Further, ALCRM forms only part of Network Rail's risk assessment work.<sup>29</sup> Whilst a statistical model, the inquiry will recall Dr Algaard's evidence in XXC,<sup>30</sup> "*ALCRM – it is a tool at a statistical level. Anglia [FWI<sup>31</sup>] is 2.79. I experienced 3 deaths. It is real*".
- f. Nor can Network Rail rely on 'perception' of safety on the part of users of a level crossing. Mr Brunnen explained in evidence the risks which can arise from 'familiarity' with a crossing, including a perception of risk being low<sup>32</sup> (a risk, illustrated, by the evidence of one objector to the S22 proposals which was to the effect that 'people know what time the trains are'.) Mr Brunnen also gave the example, in XIC, of a level crossing at Tide Mills where a proposed replacement bridge was objected to, one of the main reasons being

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<sup>24</sup> John Prest PoE para 3.9

<sup>25</sup> As Mr Brunnen explains in para 8.7 of his Proof, SMIS is accessible to all rail companies managing infrastructure or operating trains and that they report data into the system. In relation to level crossings, SMIS records detailed information related to these accidents and incidents (including near-miss incidents).

<sup>26</sup> For example, by Mr Hodson on Day 20 of the Inquiry, and again in closings.

<sup>27</sup> MB PoE para 8.3.

<sup>28</sup> Mr Hodson in Closings (pg 6)

<sup>29</sup> An approach supported by the ORR – see NR-INQ-04 8.21 (Letter from Ian Prosser) & MB PoE para 8.6

<sup>30</sup> XXC by MG, Day 2

<sup>31</sup> FWI is explained at para 8.13 of MB's PoE. A FWI of '1' equates (inter alia) to '1 fatality or 10 major injuries' a year. Further details can be found in NR-INQ-34

<sup>32</sup> MB PoE para 9.2

‘no one had ever died there’, and where, tragically, less than a week later a member of the public was killed at the crossing.<sup>33</sup>

19. In reality, there is little challenge to the safety case for closure. There is no challenge to Network Rail’s evidence that the Order will achieve a reduction in risk at every crossing and, cumulatively, across the Anglia route, which reduction is material.<sup>34</sup>
20. As set out above, there was some suggestion at risk at a particular crossing was low, and that risk on the road network was either comparable or greater.<sup>35</sup> This issue of ‘comparative risk’ is addressed below, but it should be noted at the outset that such a contention misses the point of the Order. Network Rail is responsible for safety on the rail network – both to those using train services and those interacting with it (here, at level crossings). It cannot excuse its responsibilities by noting that more people die on the roads per year than on level crossings.

#### Operational issues and costs

21. The risks carried by level crossings, and Network Rail’s responsibilities in respect of the same, mean that resources must be expended in assessing, maintaining and, where necessary, upgrading each of the crossing on the network.
22. This is no small undertaking. There are 771 level crossings on the Anglia Route alone, 188 of them within Suffolk.<sup>36</sup>
23. In practical terms, that imposes a significant operational cost on Network Rail which is ultimately borne by railway users and taxpayers. It is self-evident that reducing the number of level crossings reduces the number of locations where those resources must be deployed, and thus resources can be prioritised where they are needed most.<sup>37</sup>

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<sup>33</sup> MB XIC Day 1. See also NR-INQ-7 & NR-INQ-46 (MB’s revised Appendix 2) which sets out details of the incident.

<sup>34</sup> The Order would provide a cumulative risk reduction (FWI) saving of 0.018, from a total Anglia risk of 2.95 (Dr Algaard PoE para 2.3.2). Mr Prest sets out the FWI score (and thus saving if closed) for each crossing in sections 6 to 28 of his Proof.

<sup>35</sup> For example, John Russell’s PoE paras 2.1-2.5 (for the Ramblers) (Obj/036/W10/1) and para 28 of Andrew Woodin’s PoE (SCC) re S23 Higham (Obj/29/W2/S23)s

<sup>36</sup> Dr Algaard PoE para 2.1.1

<sup>37</sup> See MB’s evidence in XIC and XXC, fn 3 above



24. Dr Algaard explained in evidence the costs associated with managing level crossings, and the savings which would be realised from this Order.<sup>38</sup> Her evidence (which was not seriously challenged by any party) was that:

- a. Closure of crossings within the Order would provide a saving of £4,777,920 in asset inspections and general maintenance over a 30 year period;<sup>39</sup>
- b. In addition, the reduction in the number of level crossings would allow for a reduction in Level Crossing Managers, from 14 to 13, representing a further saving of around £40,000 per annum;<sup>40</sup>
- c. It would represent of £1,960,200 saving over a 30 year period on renewals which would otherwise be required to the level crossings in the Order<sup>41</sup>; and
- d. If the crossings in the Order were to remain open, Network Rail would be looking at a minimum capital cost of £8,884,000 over a 30 year period to ‘eliminate’ those passive crossing (by upgrading them to ‘active’ crossings) in line with Network Rail’s ‘Transforming Level Crossings’ strategy.<sup>42</sup> As Dr Algaard explained in XIC, this is a “very conservative figure”.<sup>43</sup>

25. As an arms-length Government body, Network Rail is required to adhere to ‘*Managing Public Money*’<sup>44</sup>. As Mr Brunnen explained in his evidence,<sup>45</sup> any money that is used unnecessarily or inefficiently directly impacts upon Network Rail’s ability to deliver other improvements elsewhere across the network. As Dr Algaard explained in XXC,<sup>46</sup> as route director for Anglia, it is her responsibility to make sure

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<sup>38</sup> Dr Algaard PoE Section 2.2. A more detailed breakdown of how those savings had been calculated was given in XIC (Day 2) and is set out in NR-INQ-21.

<sup>39</sup> Dr Algaard PoE para 2.2.4

<sup>40</sup> Dr Algaard PoE para 2.2.5

<sup>41</sup> Dr Algaard PoE para 2.2.6

<sup>42</sup> Dr Algaard PoE para 2.2.8. The ‘Transforming Level Crossings’ strategy is core document NR14

<sup>43</sup> It was suggested in XXC (MG Day 2) that there was an element of ‘double counting’ in that NR would not, in practice, both ‘renew’ and ‘enhance’. Dr Algaard explained that she may well have to do both if, for example, it was necessary to renew infrastructure at a level crossing and thereafter have to upgrade if, for example, a train company wished to change the timetable.

<sup>44</sup> An extract of which can be found at NR-INQ-04 5.15

<sup>45</sup> PoE para 5.16

<sup>46</sup> In response to MG questions, Day 3

she spends the money allocated to Anglia route “*wisely across all assets to achieve a safe, reliable, cost effective railway*”. It goes without saying that money which has to be used to ensure maintenance and management of level crossings cannot be used elsewhere, even if that would represent a ‘better’ use of public money in terms of achieving Network Rail’s Licence objectives.

26. Part of the challenge to this element of the strategic case was that a costs liability is simply shifted from Network Rail (in terms of maintenance etc of a level crossing) to another public body, Suffolk County Council (in terms of maintenance of new PROW). There is no such shifting of burden as Network Rail has agreed to pay commuted sums to SCC.<sup>47</sup>

27. Cost is, however, only one part of the equation. Level crossings pose a very real constraint on the operational efficiency and reliability of the current network – even leaving aside future improvement or enhancements schemes (discussed below). Level crossings are a part of the railway system, and clearly the railway must therefore account for the presence, and use, of those crossings. As set out in the evidence of Mr Brunnen, Dr Algaard, and Mr Kenning, they can affect the speed at which trains can operate; they can interfere with potential upgrades to the network;<sup>48</sup> and can affect signalling operations.

28. As Dr Algaard explained in evidence,<sup>49</sup> an incident at a level crossing (for example, a collision, or reported ‘near-miss’) has implications going beyond the crossing itself. A reported incident can result in trains on the line being ‘stopped’ or ‘cautioned’ (ie reducing speed), which impacts on performance and reliability of the railway. If speed has to be reduced, all trains behind that train will have to be slowed too. An incident in one part “can quickly ripple across the rest of the network”. Mr Brunnen’s evidence was to the same effect.<sup>50</sup> Similarly, if the only way to manage risk at a level

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<sup>47</sup> Paras 2.7 – 2.9 of the Statement of Common Ground between NR and SCC (NR-INQ-30)

<sup>48</sup> As Dr Algaard explained in XIC, where a train operator wishes to run more trains, or faster trains, NR must assess the risk at each crossing on the line and, where risk would materially increase, take steps to reduce it back to its previous level, in order for that ‘enhancement’ to go ahead.

<sup>49</sup> XIC, Day 2. PoE paras 2.4.1 & 2.4.2.

<sup>50</sup> MB PoE para 10.18: “...slowing a train at a level crossing can have a knock-on effect on the efficiency of the network. Each train runs in its allocated time slot according to the railway’s working timetable and all train movements are meticulously planned to run without causing undue delay to other services. Where a train runs late due to incident or temporary speed restriction, it can have a knock-on effect across the network, causing

crossing with insufficient sighting is through imposition of a temporary speed restriction, this can also impact more widely on the operational efficiency, safety and reliability of the network, as:

- a. A temporary speed restriction may have an adverse effect on the operation of active level crossings, which are calibrated to be triggered when a train passes a certain point (potentially increasing risk at those crossings);
- b. Trains may become out of sequence, causing network congestion and increasing signaller workload, increasing the risk of mistakes being made.<sup>51</sup>

29. Temporary speed restrictions are also at odds with the objectives under Network Rail's Licence conditions.<sup>52</sup>

30. Again, none of these matters were seriously challenged by those objecting to the Order. Indeed, it appeared to be accepted (at least by/on behalf of SCC, FHDC & StEBC) that closure would reduce maintenance and enhancement costs, and that having fewer level crossings would lead to greater operational efficiency.<sup>53</sup>

31. It is clear beyond doubt that, as Dr Algaard states at para 2.4.23 of her Proof, level crossings present a "significant risk to timetable resilience", where any asset failures or incidents can lead to train delays. Only by removing these interface points can Network Rail "entirely remove this risk to the efficient and effective timetabled service". Reducing the number of level crossings through this Order will clearly, and materially, assist in reducing this risk.

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other trains to be delayed too. This is especially common when train services of different speed and stopping patterns share the use of a line, and when lines merge at junctions around the network. Each delayed train can then further compound the situation, causing delays across the network."

<sup>51</sup> Dr Algaard PoE para 2.4.20

<sup>52</sup> Specifically, the Network Management obligations set out at A.1 of Part III of the Licence (extracted at ara 4.9 of MB PoE)

<sup>53</sup> From the questions put to Dr Algaard by MG on Day 2 of the inquiry. "Not just about safety – also that all level crossings are safety risk" "any only way to eliminate is to close", "and any closure will reduce maintenance and enhancement cost" "and having less will have greater operational efficiency".

## Level crossings are a constraint to enhancement of the network

32. Outside of London, Anglia has the fastest growing employment in England.<sup>54</sup> Network Rail is seeking to improve services within the area – an objective shared (inter alia) by SCC.<sup>55</sup> As Mr Kerr agreed in XXC, SCC’s ‘Rail Prospectus’<sup>56</sup> recognises that level crossings are a constraint on the railway/railway services in this area.
33. Mr Kenning discussed, in XIC, the prospective enhancement schemes of most relevance to the level crossings included within the Order,<sup>57</sup> namely:
- a. Norwich in 90: a currently unfunded project, the concept of which is to transport passengers from Norwich to London Liverpool Street (on the Great Eastern Main Line) within 90 minutes.<sup>58</sup> This will involve running trains at speeds exceeding 100mph, at which speed the ‘decision point’ at Stop Look Listen crossings increases from 2m to 3m, with implications for the sighting distances required to enable safe crossing;
  - b. Bury Headway Improvements (SFN)<sup>59</sup>: enhancements to the strategic freight network using the cross country route from Felixstowe via Ely to Peterborough. The line through S25 Cattishall, S27 Barrells and S31 Moreton Hall<sup>60</sup> requires signalling and headway improvements to accommodate longer freight trains (750m) coming out of Felixstowe;
  - c. East-West Rail: this project would utilise a cross country route yet to be fully confirmed, but with the potential for increase in passenger services between Cambridge and Ipswich.<sup>61</sup>

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<sup>54</sup> Dr Algaard PoE para 2.5.2

<sup>55</sup> See, eg, Suffolk’s Local Transport Plan 2011-2031 : Part 1 – Transport Strategy (Obj-29-C11), especially page 605, & the Suffolk Rail Prospectus (Obj-29-C12), especially pages 613 & 614, 617-620, 623-624, and 658

<sup>56</sup> Obj-29-C12 pg 658

<sup>57</sup> By reference to the schematic at page 31 of NR24 – the Anglia Route Study (March 2016)

<sup>58</sup> Crossings S01, S02, S03, S04, S07, S08, S11, S12, S13, S69, S16, S17 S18 & S21 are situated on this line (see NR-INQ-61)

<sup>59</sup> Strategic Freight Network

<sup>60</sup> Crossings S23, S24, S25, S27, S28, S29, S30 and S31 are situated on this line (see NR-INQ-61)

<sup>61</sup> Crossing S22 is situated on this section of line (see NR-INQ-61)

34. Level crossings are a constraint which must be addressed in order for an enhancement or improvement scheme to come forward.
35. As Dr Algaard explained in evidence,<sup>62</sup> if a future line speed or service improvement scheme is to be progressed, then a new risk assessment at each of the affected level crossings within the enhancement area must be undertaken. If the risk would materially increase, then Network Rail must take steps to bring that risk back down. That may require upgrades to level crossings, with the implementation of costly and complex technology or through costly closures with the provision of new bridges or underpasses.
36. That can have a material, adverse, effect on the business case for that enhancement or improvement scheme coming forward. The cost of necessary upgrades (or other mitigation) at level crossings could, in fact, be such as to turn a positive business case into a negative one – the cost of dealing with level crossings on a line making a scheme too expensive, such that it would not be progressed.<sup>63</sup>
37. Dr Algaard explained in XIC that, *“when we put business case for enhancement, if we have too many level crossings it reduces the cost benefit ratio of that investment. It is a big motivation to rationalise so that when putting forwards a growth plan on our patch we have the best business case we can.”* This can render investment in Anglia, rather than another area, less attractive. As Dr Algaard explained<sup>64</sup>, *“often we will be competing with other regions for funding – and Government are looking for the best cba<sup>65</sup>”*. Dr Algaard emphasised in XXC<sup>66</sup> that *“I am keen to position Anglia as best I can that funding is available so when 3<sup>rd</sup> party approaches, the Anglia route is as attractive as possible – so if I can pre-empt this so that future enhancement is more attractive I will try to do it”*.
38. Nor is the concern about constraints just a costs issue. As both Dr Algaard and Mr Kenning explained in XXC, an important point to bear in mind is timing.

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<sup>62</sup> PoE para 2.5.3 & XIC

<sup>63</sup> Dr Algaard XIC Day 2

<sup>64</sup> In XIC, Day 2

<sup>65</sup> Cost benefit analysis

<sup>66</sup> In response to questions from MG, Day 3

39. As Dr Algaard stated in XXC,<sup>67</sup> *“the speed at which we can enact enhancement is very important. A third party likes to see benefit as soon as possible. This order is about [NR] doing the prep work early. Business case could be disregarded in favour of enhancement delivered much faster”*. As Mr Kenning explained, using ‘Norwich in 90’ by way of example, it is unlikely that NR would be afforded the luxury of 2-3 years<sup>68</sup> to effect closure of a level crossing as by then NR should be “delivering the project”. NR *“would need to know if going to be able to alter the footpath, for instance, before start doing the signalling plan / re-signalling to get trains [over] 100mph because at that point need to know crossing there and deal with it, or crossing gone”*.

40. Mr Kenning also made clear in XXC<sup>69</sup> that dealing with a crossing at the time a scheme came forward (as opposed to the pro-active, pre-emptive approach NR seeks to take through this Order) could lead to NR having to put in technology rather than closing the crossing which might not be the best solution for the network as a whole: specifically, when considering the railway as a system.<sup>70</sup> As he explained, this presents problems when looking to run a safe, reliable and efficient railway: *“if you’ve got a lot of level crossings, that seriously impacts on where you can position your signals. For an efficient railway to operate at, throughput, a high level of trains, signals not only where need to be but equally spaced so all signals change at the same time and everything flows at the same rate. With level crossings it makes an irregular system that yes technology can solve and come around some of the problems if it needs to but not system we would ideally want and not system wish to provide”*. He also reiterated that introducing technology at level crossings, rather than closing them, has an impact on NR’s ability to deliver a safe and reliable infrastructure, as the problem of at-grade crossings remains (i.e. in terms of a point of public access to the operational railway) but adding new additional layers of complexity to the system.

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<sup>67</sup> In response to questions from MG, Day 3

<sup>68</sup> That period being taken by reference to the current project, on the basis of it having taken around 2 years to get to inquiry from the initial CRD, and allowing another year for completion

<sup>69</sup> In response to questions from MG, day

<sup>70</sup> AK response to MG on Day 4: *“We would be given a timeline to deliver and we would end up with technology with are less than perfect. Level crossings do give us some problems and I know it seems unimportant but it is very difficult to get signals in the right place and it is technical”*

41. Such a reactive approach is thus, clearly, sub-optimal when compared with the proactive, pre-emptive approach NR is seeking to take through this Order.
42. To be clear: Network Rail is not suggesting that any of the crossings in this Order is preventing a specific enhancement scheme from coming forward. Rather, that removing these crossings would remove constraints which would otherwise have to be addressed when (or if – business case depending) a proposed enhancement was to come forward.
43. Questions were put to both Dr Algaard and Mr Kenning as to why closure of level crossings could not just be dealt with when the enhancement scheme comes forward<sup>71</sup> – potentially as part of the TWAO for the scheme itself. Even assuming a TWAO or other consent would be required for an improvement scheme (which would be highly scheme dependent<sup>72</sup>), it simply does not address the issue explained by Dr Algaard or Mr Kenning, outlined above. It would not provide the certainty NR needed as to which assets it needed to deal with by, e.g, technology or infrastructure at the outset of the scheme (with consequences for delivery timescales). It would not remove the assets and/or potential costs from the scheme (with consequences for the business case and attractiveness of the scheme). It would not assist Dr Algaard in “*position[ing] Anglia as best I can*” so that “*the Anglia route is as attractive as possible*” to investment.
44. It would simply not meet the strategic objectives which, together with safety and operational efficiency/resilience, which NR seeks to realise through this Order. Nor would it be consistent with the specific conditions set out in Part III of Network Rail’s Licence conditions, specifically those regarding ‘planning’ as to how it will secure the improvement, enhancement and development of the network, and promoting the ‘long term planning objective’ of ‘the efficient and effective use and development of the capacity available on the network’.<sup>73</sup>
45. Alternatives to the proposed diversion routes – both those considered by Network Rail during development of the Order scheme and those advanced by others before or

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<sup>71</sup> For example, by MG on behalf of FDHC to EA with regard, specifically, to S22 Weatherby

<sup>72</sup> Mr Kenning explained in XXC that, eg Norwich in 90, would probably not need a TWAO but could be done within permitted development rights within the railway corridor.

<sup>73</sup> Discussed at paras 4.8-4.9 of MB’s PoE, and extracted at NR-INQ-4, 4.5-4.8

during the application process – have been considered and appraised by NR. Ms Tilbrook has addressed those alternatives in her evidence.<sup>74</sup>

**(ii) The development of the Order proposals, including alternatives**

National strategy

46. Network Rail has adopted a strategy for level crossings which includes a process of reducing the number of crossings. A copy of that strategy – ‘Transforming Level Crossings 2015-2040’ – can be found at Core Document NR17. The national strategy is “a vision-led long term strategy to improve safety at level crossings on Great Britain’s railways”, extending over several control periods, which sets out that “*To achieve our safety vision for level crossings, we will move away from reactive management of emerging single issues in isolation, in favour of a targeted strategic plan to improve safety. This transition benefits all and will help to avoid a management culture of constant fire-fighting, waste, duplication of effort and sub-optimal solutions not aligned to a wider business strategy.*”<sup>75</sup>

47. The national strategy reflects the requirement which the ORR has placed on NR to seek significant reductions in level crossing risk: a further 25% reduction in risk at level crossings during Control Period 5 (CP5) (2014–2019).<sup>76</sup> The ORR has made a specific, ring-fenced fund, of £99m available to NR for that purpose.

48. Network Rail proposes, through this Order, to reduce the number of level crossings through co-ordinated multiple closures and diversions. This is distinct from, and in addition to, the process of individual closures for safety reasons, and continued focus upon closure of the highest risk crossings.<sup>77</sup> It is also distinct from ongoing work to improve the safety of retained crossings – both through the measures discussed in NR17 and in Section 6 of Mr Brunnen’s PoE, and through the wider objective of phasing out passive crossings by 2040.<sup>78</sup>

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<sup>74</sup> In the crossing specific sections of her Proof, in Tab 7 of her Appendices (NR32-1) and orally

<sup>75</sup> Page 6 of the strategy

<sup>76</sup> As confirmed in MB PoE para 6.5

<sup>77</sup> As confirmed by Dr Algaard in XIC (Day 2)

<sup>78</sup> As MB explains at para 6.12 of his Proof regarding the national strategy, “*In accordance with the level crossing strategy, Network Rail will invest in additional risk controls at those level crossings across the network that cannot be closed. By rationalising the asset base Network Rail will be able to direct resources efficiently to*



49. ORR is aware of, and supportive of, the approach being taken by NR through this Order (and the 2 related TWAO applications). It has expressly approved the use of part of the £99m ring-fenced fund for the Order proposals: see NR-INQ-19.<sup>79</sup> It has further confirmed that funds can continue to be used towards the Order during CP5, even though the associated benefits may not be achieved during the CP5 control period.<sup>80</sup> Network Rail's approach to seeking to reduce risk across the network, by means of reducing its at grade level crossings where opportunities exist to do so, is thus expressly endorsed by ORR, even though those crossings are not the 'highest risk' crossings on the network.

### The Anglia Strategy

50. The Anglia CP5 Level Crossing Risk Reduction Strategy ("the Strategy")<sup>81</sup> sets out a phased approach to removing level crossings from the Anglia Route. It was authored by Mr Kenning, and endorsed, and adopted, by Dr Algaard (then Director Route Asset Management).

51. The Strategy is clear and unambiguous in its terms. Its purpose is "*to set out the CP5 level crossing reduction strategy for the Anglia Route, to provide the high level thought process and show the framework to deliver further reductions in the number of level crossings.*"<sup>82</sup> It identifies the difficulties which exist in utilising other processes for seeking to remove level crossings from the network,<sup>83</sup> and identifies that the TWAO process enables the wider strategic benefits which result from removing level crossings from the network to be brought into the picture.

52. It articulates a clear strategy which includes a phased approach to level crossing closure. Phases 1 (mainline) and 2 (branchline) seek closure of crossings that "*clearly*

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*those level crossings most in need of enhancement. It is anticipated that allocated funding, resource and deliverability challenges, and technology constraints will combine to make the implementation complex and a long-term objective. The vision-led safety is accordingly estimated to last into Control Period 9 (2040) or beyond"*

<sup>79</sup> Specifically, paras 5 & 6 and Appendix 3

<sup>80</sup> NR-INQ-19 para 8 and Appendices 4 & 5.

<sup>81</sup> Core Document NR18

<sup>82</sup> Page 5

<sup>83</sup> Pages 5-6

are unused or have extremely little use”, and “those that have a nearby alternative route utilising existing bridges as a means of crossing the railway”.<sup>84</sup> Phase 4 of the strategy included the downgrading of roads and “UWCs<sup>85</sup> where an alternative means of access has been identified and needs powers to enforce the provision of access”. Phases 3 (non-vehicular) and 5 (road crossings) concern crossings where a new bridge is likely to be required. The Strategy also recognises that there are many level crossings “where it is not feasible to extinguish or divert the right of way” and where technology would be required (‘No change’).<sup>86</sup>

53. The Strategy goes on to address the “Scheme Definition”. It notes that if a crossing is not assessed as suitable for one phase, it will be moved into a later phase, and that “[e]ach phase provides a greater level of investment and infrastructure than the previous stage. As the Anglia Route builds up a picture of crossing works that will lead to a reduction in crossings it will allow the Anglia Route to focus its efforts on the remaining crossings, thus driving the development of solutions for these crossings”.<sup>87</sup> NR would highlight that this reflects the evidence of MB and EA that closing the crossings in this Order will enable NR to divert its resources to those other crossings requiring greater, or more complicated, interventions.

54. Section 2.2.1 of the Strategy sets out the “Scheme Definition” for Phases 1 and 2. It sets out a number of assessments to be carried out – including diversity impact assessments. It is clear, from a fair reading of the Strategy, that NR was keenly aware of the need to consider those using the crossings, and was not purely the needs of the railway.<sup>88</sup>

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<sup>84</sup> Page 9

<sup>85</sup> User-worked crossings

<sup>86</sup> Mr Kenning explained in XIC that this ‘6<sup>th</sup> phase’ was included in a revision of the CRD following significant public outcry in Stowmarket when it was believed, erroneously, that NR was intending to close the level crossings in the town carrying public roads across the railway and acknowledging that there were a number of level crossings in Anglia where NR was unable to be likely to effect closure – primarily where the crossings carried significant public roads.

<sup>87</sup> Page 11

<sup>88</sup> See, inter alia, the need for (and benefit of the TWAO process providing for) consultation on the proposed changes (eg at page 5) and the identification of some crossing points (Motts Lane, Ingatestone Hall) a bridge was thought likely to be required (page 5).

55. Appendix B to the Strategy<sup>89</sup> sought to provide an overview of where the crossings within Anglia might fit into the phased approach. As Mr Kenning explained in XIC,<sup>90</sup> this was a desk-based exercise, listing all the level crossings, and highlighting where it was thought crossings might fall into a certain phase. It represents the state of play as at March 2015.
56. It was not, however, determinative of which crossings fell into which phase. Nor was it intended to be.
57. Whilst the Strategy is helpful in setting the Order scheme in context, this is not an inquiry into, nor judicial review of, the Strategy – cf the submissions (and line of questioning in XXC<sup>91</sup>) on behalf of the Ramblers Association which appear to be treating it as such. It was but the first stage in a detailed and involved process which resulted in the Order proposals – which proposals must be considered against the whole of the evidence currently before this inquiry. It is simply wrong to seek to ‘stop the clock’ as at February 2016 when the Strategy was finalised and to try to impugn the Order proposal by references to inferences drawn from language used in that document, or from matters which are not canvassed within it (for example, an express reference to the test in s.5(6)TWA 1992 or consideration of national/local plan policy).
58. Nor it is relevant to consider whether, and if so, how or when, later phases of the Strategy will be implemented. The Order scheme is not NR’s final position in respect of level crossings in Suffolk, but it is the Order proposals which are currently before this inquiry for consideration. The crossings proposed for closure in this Order will achieve the strategic objectives discussed earlier in and of themselves: those benefits are not dependent upon future phases being implemented.
59. As is clear from the CRD, the availability of an alternative route is at the heart of the strategy for phase 1.<sup>92</sup> By definition, the proposed crossing closures in the Order are those where NR considers that a suitable and convenient alternative route is available.

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<sup>89</sup> Which can be found at Tab 6 of Andrew Kenning’s Appendices (NR30-2)

<sup>90</sup> Day 3 of the Inquiry

<sup>91</sup> SR questions of AK on Day 5 of the inquiry

<sup>92</sup> As Mr Kenning explained at para 3.19 of his Proof, crossings falling within Phase 2 (branch lines) for Suffolk were ‘paused’, along with proposals in Phases 1 and 2 for Norfolk, in February 2016 due to funding constraints.

That is the issue which falls to be considered at this inquiry, based on all the evidence presented to date: not whether NR was correct to take the view, when the Strategy was drafted, that there was a ‘nearby’ crossing point to which users could be diverted (cf the questions put to AK in XXC<sup>93</sup>).

### The Order Scheme

60. The Order scheme originates from the Route Requirements Document (“the RRD”) for Suffolk which was developed to give effect to Phases 1 and 2 of the Strategy.<sup>94</sup> The RRD was written in tandem with the Strategy. It was a desk-based exercise, preceding engagement with the external stakeholders (such as SCC) and the appointment of Mott MacDonald to take forward assessment of the proposals. Mr Kenning explains the nature of that initial desk-based exercise, and what it entailed, in paras 3.3 – 3.7 of his Proof.
61. Discussions began with SCC in April 2015. It is accepted by SCC,<sup>95</sup> that NR had consulted with SCC during all phases of the Order through to the TWAO application, which had both informed SCC of NR’s proposals, as well as providing NR an opportunity to consider concerns raised by SCC. Mr Kerr fairly accepted in XXC that NR has been keen to work with SCC, and receptive to its input, in developing proposals in this Order, S24 being an example of a crossing where SCC had suggested an alternative route to the east which NR had taken up and provided.
62. Mott MacDonald were appointed in June 2015. Mr Kenning sets out in Section 3 of his Proof the work which Mott MacDonald was asked to undertake which included, at GRIP stage 1, a ‘sense check’ of the proposed diversion routes tentatively identified by NR, and then more detailed assessment work at GRIP Stage 2. NR would highlight, in particular, that Mott MacDonald’s work was not limited to appraising NR’s initial proposals, but included them identifying whether they considered the alternative route identified by NR was not acceptable or not viable, noting any other

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<sup>93</sup> By MG on Day [4] of the inquiry

<sup>94</sup> Tab 1 of Mr Kenning’s Appendices (NR30-2)

<sup>95</sup> Statement of Common Ground para 2.1, (NR-INQ-30)

routes that might be more suitable, and/or any ‘better’ route which they might have identified.<sup>96</sup>

63. The first of two rounds of public consultation began in June 2016. Examples of the round 1 and 2 consultation materials – including questionnaires – are appended to Mr Kenning’s Proof at Tabs 4 & 5.<sup>97</sup> As Mr Kenning explained, for a number of crossings, NR was considering more than one option for the diversionary route at round 1, and responses were sought as to consultees’ preferred route.<sup>98</sup> By round 2, NR had identified its preferred diversionary route for each proposal.<sup>99</sup> For a small number of crossings, further changes were made following the second round of public consultation, and further engagement was undertaken by way of letters to affected landowners, and notices at crossings for the wider public, as opposed to consultation events held at rounds 1 and 2.<sup>100</sup> These rounds of consultation served a number of purposes. Not only did it enable NR to inform the public of its proposals, and seek their views to inform development of the Order proposals, but holding two rounds of consultation was also seen as important to make clear that NR had been listening to the information and feedback received and that it had informed the development of the proposals.<sup>101</sup> In some cases, feedback received through the consultation events led to proposals being removed from the Order, NR not being satisfied it had found the right solution, or amendments being made to better meet the needs of users of the crossing.<sup>102</sup>

64. As Mr Kenning explained in evidence, at various stages of the project, crossings proposed for closure were removed from the Order scheme, following more detailed assessment work and public consultation: one example, provided in XIC, being the removal of S06 Daynes Mayhew, where NR was not satisfied that the proposed diversion route was suitable in light of issues raised in the Road Safety Audit carried out.<sup>103</sup> As Mr Kenning emphasises at para 3.45 of his Proof, “[i]t has never been

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<sup>96</sup> See paras 3.13 and 3.18 of Mr Kenning’s Proof of Evidence

<sup>97</sup> Copies of the consultation material for each crossing can be found in Tabs 2 and 3 of Susan Tilbrook’s Appendices [NR-32-2]

<sup>98</sup> AK PoE para 3.34

<sup>99</sup> AK PoE para 3.39

<sup>100</sup> AK para 3.48

<sup>101</sup> AK PoE para 3.42

<sup>102</sup> Ibid

<sup>103</sup> AK in XIC, Day 3

*Network Rail's position that it would not alter its proposals or remove a level crossing from the Draft Order if it became apparent that that was the right course of action, as a better alternative had been identified, or it became apparent that the diversionary route proposed was not satisfactory."*

## Alternatives

65. As set out at para 48 of these submissions, the Order scheme is not being pursued instead of other measures to reduce level crossings and/or to improve safety at those crossings. It is being pursued alongside measures both within Anglia and nationally, as discussed by Dr Algaard and Mr Brunnen in evidence.
66. The Strategy itself identifies the difficulties which NR has experienced in seeking to close level crossings through other processes (specifically, proceedings under the Highways Act 1980) – see para 51 above. I set out in Opening and below why proceedings under the Highways Act 1980 are not, in fact, a process which NR could use to achieve the strategic objectives which are the basis for this Order in any event.
67. It is right to say that NR did not actively consider, in developing the Order scheme, whether instead of closure of the 24 crossings within it, it should instead install technology and/or provide infrastructure under or over the operational railway. That would have been wholly contrary to the purposes of phase 1 of the Strategy which was to seek opportunities to rationalise the level crossing estate by diverting users to an alternative crossing point where that diversion could be carried out without the need for infrastructure to be provided. Whilst installation of technology may have assisted in reducing, or managing, risk at the crossings, it would not have removed it entirely – which would be the case with closure. Nor would it have accorded with the objectives of improving the operational efficiency, reliability and resilience of the network (for the reasons explained by Mr Kenning in evidence) or NR's obligations under 'Managing Public Money'.
68. That is not to say that alternatives to closure on a crossing by crossing basis have not been considered by Network Rail. They have: albeit as part of the optioneering exercises carried out by the level crossing manager responsible for a particular

crossing as part of NR's risk assessment process, and not as part of the Order scheme. The 'cba' score for each option, set out in the crossing specific sections of Mr Prest's PoE,<sup>104</sup> did not inform the development of the Order scheme proposals. Nor are those 'cba' scores relied on by NR in support of its application for the Order.<sup>105</sup> This information has been provided, however, partly by way of completeness of account of the risk assessment process carried out by LCMs in respect of an individual crossing, and partly to demonstrate that whilst NR has not looked at alternatives to closure as part of development of the Order scheme per se, that does not mean that it has simply ignored the possibilities which may exist for taking other steps to mitigate or otherwise manage risk, at the level crossings contained within the Order.

### **(iii) The position of objectors on 'strategic' issues, including process concerns**

#### SCC

69. SCC's position, as set out in its original objection letter,<sup>106</sup> was that it objected to 9 of the proposed closures within the Order,<sup>107</sup> would be seeking commuted sums to offset future maintenance costs of the resultant network, would be providing a list of works it considered necessary to bring the new routes into being and capable of being maintained at public expense, and requesting modification of the Order to include Ordnance Survey grid reference. By subsequent letter dated 5<sup>th</sup> December 2017,<sup>108</sup> SCC requested that it be permitted to 'add' to its statement of case to (i) maintain a "holding objection" to all level crossing closures dependent upon provision of an alternative route until it had had chance to walk those routes (this "holding objection"

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<sup>104</sup> A number of criticisms, or queries, have been raised about the results of the 'optioneering' exercises set out in the crossing specific sections of Mr Prest's PoE. As he explained in evidence, these exercises are carried out by the LCM responsible for that crossing, using 'generic' figures which the LCM may adjust, given his or her knowledge of that crossing and its surroundings. To the extent they provide a 'comparative' cba, that 'comparison' is between the different options being appraised for that crossing – not a comparison as against other crossings. They are also only intended to give an 'idea' of whether there may be a cba case for that option – as he made clear in evidence, if an option were to be progressed, the specific costs of the option would be considered and appraised at that stage

<sup>105</sup> Not least, as those 'cba' scores are limited, essentially, to safety benefits v cost and do not reflect the wider strategic objectives sought to be achieved through this Order.

<sup>106</sup> Which it requested stand as its Statement of Case, by letter dated 4<sup>th</sup> July 2017

<sup>107</sup> S01, S02, S05 (now withdrawn from the Order), S22, S23, S25, S27, S31 and S69

<sup>108</sup> NR-INQ-5, page 4

was withdrawn in SCC's Opening<sup>109</sup> on Day 1 of the Inquiry); and (ii) maintain a "holding objection" to the whole Order unless and until amendments were made to the Order to (a) address SCC's concerns regarding the certification process; (b) provide an appropriate mechanism for agreeing commuted sums; and (c) to specify relevant information on widths and grid references to enable SCC to make a Legal Event Modification Order.

70. Ms Golden confirmed on Day 24 of the Inquiry that those concerns have now been resolved through the side agreement agreed between NR and SCC, and that those 'holding objections' were therefore withdrawn.

71. Mr Kerr made clear in XXC<sup>110</sup> that SCC was not taking issue with NR's strategic case (it was confirmed in Closing that SCC was not raising an 'in principle' objection to the Order) , and agreed that if the Secretary of State considered the strategic case was made out, what had to be looked at was whether there should be modifications to the Order – and that was on a crossing by crossing basis. It was also clear from closings on behalf of Forest Heath District Council and St Edmundsbury Borough Council that they also did not take issue with the strategic case for the Order: FHDC's concerns as to the strategic case were limited to how it had been applied to S22.

### The Ramblers' Association

72. As set out in their closing submissions, the Ramblers object to the proposed Order, "both on grounds that Network Rail's strategic case for the Order is flawed and on grounds that, even if its strategic case were found not to be flawed, Network Rail has failed to appropriately implement it when preparing the Order."

73. With respect to the Ramblers, it is clear that their objections on this point turn on (i) their objection to the use of the TWAO procedure rather than individual applications for closure under the Highways Act 1980; (ii) an erroneous focus on the Strategy<sup>111</sup> as the be-all and end-all of NR's 'strategic case'; and (ii) a failure to recognise that what has driven the selection of crossings for inclusion in this Order is whether (and where)

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<sup>109</sup> OP-INQ-01

<sup>110</sup> Day 8.

<sup>111</sup> ie NR18



opportunities exist to rationalise the network by diverting users to an alternative crossing point of the railway in order to meet NR's strategic objectives – as evident from the complaints as to the “struggle” to find a ‘case’ for closure of each individual crossing.

74. Points (ii) and (iii) are addressed earlier in these submissions. NR would also note that, despite their opposition to the Order generally, the evidence called by the Ramblers on ‘strategic’ issues (i.e. that of Mr de Moor) was much more limited.

75. The Secretary of State will no doubt wish to bear this in mind, when considering the weight to be given to the more general opposition to the Order advanced on behalf of this national campaign group.

76. Point (i) is essentially a legal issue which I addressed in Opening, and I indicated during inquiry would be addressed further as required during Closings. In fact, the Ramblers’ case on this issue went no further in closing than it did in opening (reliance being placed in closing, as in opening, on the Legal Submissions prepared by Counsel for the Ramblers’ Association at the inquiry into the Cambridgeshire Order<sup>112</sup>). In these closings, therefore, I simply repeat that the Ramblers’ case in this regard is without merit, for the following reasons:

- a. This Order falls squarely within s.1(1) of the TWA 1992: “an order relating to, or matters ancillary to, the construction or operation of a railway”. The rationalisation (through reduction) of the level crossing estate on the Anglia Route is clearly and undisputably a matter ancillary to the operation of a transport network: specifically, the efficient and safe operation of the railway network within the Anglia region;
- b. To the extent that it is argued that proceeding under the Highways Act 1980 would be ‘better’ that is simply irrelevant. If (as is the case here), the TWAO procedure is one which may lawfully be used, the fact that objectors might prefer a different process to have been followed is nothing to the point – the application must be determined on its merits;

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<sup>112</sup> OP-INQ-06

- c. Nor is it correct to say, in any event, that proceedings under the Highways Act 1980 would be ‘better’ or ‘preferable’. To achieve closure of 23 level crossings through Highways Act proceedings would involve 23 separate applications, potentially leading to 23 separate inquiries;
- d. In any event, those proceedings would only be available – and thus this objection engaged – where public rights of way across the railway are affected. Not all of the crossings in this Order are subject to public rights of way;<sup>113</sup>
- e. Further, the objects of this Order are one which the relevant provisions under the Highways Act simply do not take into account.<sup>114</sup> The sole basis for closure under s.118A/s.119A is safety of users of the crossing. That is only part of the objectives sought to be achieved through this Order. The safety of users of the railway (as opposed to the PROW), its operational efficiency, reliability, resilience and future capacity are all elements of the strategic case advanced through this Order. S.118A/s.119A simply do not provide for closure for those wider reasons. S.116 provides for closure only on the basis that the right of way is ‘unnecessary’ or the diversion would be ‘more commodious’ for users of the public right of way: again, not on the grounds advanced as justification for this Order. The proposals contained within this Order are simply not proposals which could be dealt with under existing, statutory procedures;
- f. The ‘high point’ of the Ramblers’ legal case appears to be that s.13(2) of the TWA provides that where the Secretary of State considers “that any of the objects of the order applied for could be achieved by other means, he may on that ground determine not to make the order”;

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<sup>113</sup> Not just S22 Weatherby, in respect of which NR has set out its position in 2 notes to the Inquiry (NR-*INQ-59* & NR-*INQ-65*) but also S21 Abbotts. In respect of S18 Cowpasture Lane, NR seeks a downgrading of rights, not closure.

<sup>114</sup> See paras 33-40 of NR’s Opening Submissions [NR-*INQ-02*]

g. The starting point here is “the order applied for” – i.e that which NR is seeking through this application (not that which objectors say NR should have). This is highly material, because the order applied for includes:

- i. Compulsory acquisition of rights over land;
- ii. Temporary possession of land;
- iii. Disapplication of legislation;
- iv. A request for deemed planning permission;
- v. Extinguishment of private rights;
- vi. Dedication of new public rights of way; and
- vii. Closure (and associated alteration of rights of way across multiple crossings).

Those matters simply could not be achieved under Highways Act processes. That is a complete answer to this point.

h. NR would note, in any event, that s.13(2) is a discretionary power. The Secretary of State is not *required* to refuse the Order even if (contrary to the submissions above) the objects of the Order could have been met by other means. If and to the extent necessary the Secretary of State considers it necessary to consider exercising his discretion under s.13(2), no doubt he would wish to have regard to the fact that TWAOs to close level crossings have been made on at least 5 occasions in the past – two during 2017.<sup>115</sup>

77. There is, in NR’s submission, simply no basis for concluding that a TWAO is not an appropriate, and lawful, means of seeking to effect the objects of this Order.

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<sup>115</sup> Eg Ammanford Level Crossing Order 1996; Northumberland Park and Coppermill Lane Closure Order 2017; Abbots Ripton Level Crossing Order 2017. Another relevant example is the recent Chiltern Railways (Bicester to Oxford Improvements) Order 2010/2679 which authorised the closure of 3 road level crossings, 13 footpath level crossings and 11 accommodation level crossings. Copies are in the Legal Bundle [NR-INV-63]

## The NFU (Obj/32)

78. NFU's Statement of Case raised issues both of general concern to its members and, specifically, with regards to 3 of its members: (i) D & D Caldwell (S03); (ii) Messrs E Hudson Baker (S12, S13, S69); and (iii) Mr Finbow (S13). However, the Proof of Evidence of Ms Staples addressed only NFU's general concerns. It was confirmed, on Day 1 of the inquiry, that the NFU would only be presenting a case on its general concerns, but otherwise supporting its members who were appearing before the inquiry.

79. When examined critically, it was clear that NFU's 'general concerns' were, in fact, just that: general concerns about level crossing closures and what that might mean for its members – and concerns about replacement PROWs being provided on their members land. Ms Staples very fairly agreed in XXC that the concerns identified in her proof as to the impacts on agricultural operations of the closure of level crossings<sup>116</sup> were general concerns for the NFU and were not specific to this Order. Ms Staples also accepted that a number of concerns identified as regards new PROW were also 'general' concerns as opposed to concerns related to specific proposals in the Order.<sup>117</sup>

80. Ms Staples also agreed in XXC that when looking at the provision of new PROWs as replacement routes, it was necessary to look a number of matters: it is apparent that NFU's key concern was that the Secretary of State must have regard to the affected landowner, not just users of the PROW. That is common ground.

81. As was put to Ms Staples in XXC,<sup>118</sup> what the issue really comes down to as between NR and NFU is not that NR has not looked at the needs of farmers, but that the NFU takes a different view as to where the balance falls. Ultimately this will be a question for the Secretary of State to consider when assessing the proposals at individual crossings.

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<sup>116</sup> Detailed at section 4 of her Proof. There are, for example, no proposed closures of vehicular or occupation crossings within this Order, providing access to farmland (cf the concern expressed at para 4.2)

<sup>117</sup> For example, the Order scheme does not promote any new PROWs near poultry sheds (cf para 5.11 of Ms Staples' Proof) Nor is NR proposing any new footpath route adjacent to an Internal Drainage Board drain (cf para 5.17 of Ms Staples' Proof) See Nigel Billingsley's Rebuttal Proof of Evidence to the NFU (NR/29/4/1) paras 3.2 and 3.4

<sup>118</sup> On Day 8 of the Inquiry

82. The NFU's complaints as to consultation are also not accepted by Network Rail. It relies on the evidence of Mr Kenning and Mr Billingsley in this regard.

### Royal Mail (Obj/52)

83. Royal Mail objected to the proposed Order by letter dated 4<sup>th</sup> May 2017. The concerns raised in its objections were that “*the operational and statutory duties to collect and deliver mail may be adversely affected*”. The letter stated that based on the information provided, RMG was unable to determine the impact of the Suffolk Order on its ability to perform its statutory duties. RMG were particularly concerned about the proposed temporary stopping of roads at six sites. NR responded by letter dated 29<sup>th</sup> December 2017, and has sought to contact Royal Mail on a number of occasions, offering to discuss its concerns further. No substantive response has been received to the same – see NR-INQ-36. Nor has Royal Mail sought to put any further material before this inquiry: it has neither filed a statement or case nor proof(s) of evidence, nor sought to rely on any further written representations. NR's response to the objection is therefore as set out in its letter of 29<sup>th</sup> December 2017 (appended to its Note on Royal Mail – NR-INQ-36).

### Consultation

84. Consultation concerns can be dealt with shortly. It is common for those opposed to infrastructure schemes to say that there has been inadequate consultation when in fact, what is meant, is that the promoter of the scheme has not made the changes they would wish to have seen made.

85. As the consultation report<sup>119</sup> makes clear, there has been meaningful, thorough and repeated consultation on the Order proposals – more than is required by the law or as a matter of policy. Mr Kenning and Ms Tilbrook have explained how those consultation exercises have informed development of the Order proposals, and how they have changed as a result of consultation. The Ramblers' suggestion that pre-application was flawed is simply not accepted. It is clear from the consultation

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<sup>119</sup> Core Document NR5

materials that safety was not the only objective sought to be achieved through the Order proposals.

86. NR has acknowledged that, in a couple of cases, out of date material was provided to landowners prior to the Order application was deposited.<sup>120</sup> It has acknowledged that that was likely to have caused confusion, and has apologised for the same.

87. It is not understood to be seriously disputed by any party that NR has not complied with the statutory requirements for consultation under the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006.<sup>121</sup> Nor could such a contention be sustained.

### Equalities

88. There has been some discussion, during the course of the inquiry, as to how NR has looked at the potential ‘equalities’ impacts of the proposed closures, by reference to the Public Sector Equality Duty under s.149 of the Equality Act 2010.

89. Any suggestion that there has been a failing on the part of NR to comply with its duties under that section is without merit.

90. The evidence is clear: NR has considered equalities issues at each stage of the process. The need for diversity impact assessments is identified in the Strategy. A DIA scoping exercise was carried out by specialists within Mott MacDonald during 2016.<sup>122</sup> DIAs for S20 (Beecroft – subsequently removed from the Order), S21 (Abbotts), S22 (Weatherby) and S69 (Bacton) were prepared by equality specialists during 2016: the first versions being provided in December 2016.<sup>123</sup> DIAs for S16 (Gislingham) and S24 (Higham Ground Frame) were prepared during 2017. A DIA for S25 (Cattishall) was prepared separately within NR, covering both the proposed

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<sup>120</sup> Specifically, Mr Baker (Obj/26) and Mr & Mrs Brace (48)

<sup>121</sup> It is expressly agreed by SCC that those requirements have been complied with – see para 2.2 of the Statement of Common Ground (NR-INQ-30)

<sup>122</sup> NR-INQ-38

<sup>123</sup> See para 2 of NR-INQ-80 (the Note provided by NR earlier in the inquiry outlining the procedures surrounding production of the DIAs in light of questions raised as to who had authored them / NR’s involvement in the same)

bridge scheme and the Order proposals.<sup>124</sup> Ms Tilbrook explained in evidence how that work has informed the consideration, and assessment, of the Order proposals.<sup>125</sup> It is simply unarguable that there has been a failure to “have regard” – which is the duty in s.149.

91. In any event, the duty to “have regard” in fact rests with the decision-maker in this context: namely, the Secretary of State. No doubt in discharging that duty, the Secretary of State will wish to have regard to the totality of the evidence – including, for example, the evidence as to equalities issues arising from the crossing proposed for closure, and PROW leading to and from the same<sup>126</sup> - and any points raised by objectors as to matters they say were not or should have been considered will be looked at in that light. It goes without saying that NR does not accept there were ‘deficiencies’ in its assessment, or the criticisms made of the same.

***(iv) The general approach to public rights of way***

92. Network Rail’s position on this issue was set out in 3 notes submitted to this inquiry: (i) NR-INQ-13 (“S.5(6) TWA 1992 – the approach taken by Network Rail to whether an alternative route is “required to be provided”); (ii) NR-INQ-45 (a supplementary note on ‘required’); and (iii) NR-INQ-26 (agreed note between NR, SCC and the Ramblers Association on the approach to “suitable and convenient”).

93. Network Rail’s position is summarised here.

94. The starting point is the statute. S.5(6) TWA 1992 provides that an order shall not extinguish a public right of way over land unless the Secretary of State is satisfied that (a) an alternative right of way has been or will be provided, or that (b) the provision of an alternative right of way is not required.

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<sup>124</sup> Copies of the DIAs can be found at Tab M of Ms Tilbrook’s Supplementary Appendices (NR-INQ-16) A copy of the ‘Equality and Diversity Overview Report’ (also prepared by Mott MacDonald) can be found at Tab L of those Supplementary Appendices.

<sup>125</sup> In section 1.16 of her PoE & in XIC

<sup>126</sup> As discussed in the Overview Report, the DIAs, at paras 63 – 72 of the Statement of Case (NR26) and in Mr Brunnen’s PoE at paras 7.4 – 7.6 and 9.8-9.13

95. That is, in reality, a simple test that does not require glossing.<sup>127</sup> If an alternative right of way is required, it must be provided – and provided through this Order. If it is not required – for example, because the existing network is sufficient – then it need not be provided through this Order.

96. NR has, however, set out its approach to whether the provision of a new (alternative) right of way is required in NR-INQ-13 and NR-INQ-26. In brief:

- a. Provision of a new (alternative) right of way is not “required” where no public rights of way exist over the crossing (s.5(6) is concerned only with public rights of way);
- b. When considering whether an alternative right of way needs to be provided, Network Rail has looked at whether a suitable diversionary route would be provided by the existing PROW or highway network. If so, it has determined that provision of an alternative route is not required to be provided;
- c. In reaching that determination it has not limited its consideration to whether a diversionary route already exists on the ground, but whether that diversionary route is (or could be made) “suitable and convenient” (having regard to the policy test in the TWA Guidance – discussed below). It has also been informed by the views of the highway authority;
- d. Where the existing PROW/highway network does not provide a potential diversionary route or it was considered that a diversion provided by the existing PROW/highway network would not be suitable and convenient, an alternative right of way has been provided for within the Order proposals.

97. In reality, the submissions made by SCC on the question of whether an alternative right of way is ‘required’ are matters of form not substance.<sup>128</sup> NR and SCC essentially reach the same conclusion through different approaches. SCC argue (inter alia) that if a diversionary route exists on the existing network that should be regarded as a case where an alternative right of way ‘has been provided’ under s.5(6)(a). NR

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<sup>127</sup> Cf the rather tautological approach taken by SCC in its submissions on ‘required’: OP-INQ-24. ,

<sup>128</sup> OP-INQ-24



regards that as a situation where ‘provision of an alternative right of way is not required’. It is, essentially, a distinction without a difference, albeit NR maintains that its approach to s.5(6) is the legally correct approach.

98. The main debate between the main parties to the inquiry turns on the guidance provided in Annex 2 to the DfT Guide to TWA Procedures. The Guidance provides (pg 105) that:

*“If an alternative is to be provided, the Secretary of State would wish to be satisfied that it will be a convenient and suitable replacement for existing users.”*

99. It is common ground<sup>129</sup> between NR, SCC and the Ramblers Association that those words are being used in the context of guidance and should not be construed as if they were a statute. The words should be given their ordinary, common sense meaning having regard to the statutory scheme and policy guidance of which they form part.

100. NR’s position is that in considering whether an alternative route is suitable and convenient, this needs to take account of the purpose and use of the existing route, its local environment, and relationship with the wider PROW network. It has looked at the function served by the existing PROW, having regard to the origin and destination points, desire lines, and whether the route is (eg) a utility route or a leisure route.

101. SCC and the Ramblers’ Association agree that those are all matters to be taken into account. They consider, however, that the factors to be considered should also include the quality of experience of using the route (ie enjoyment of the route).

102. That distinction – function v quality of experience – encapsulates the primary point of disagreement between Network Rail and SCC / the Ramblers Association when considering the application of the statutory test to the Order proposals.

103. When considering whether a proposed alternative route is “suitable and convenient” it is critical to bear in mind the statutory context in which that test falls to be applied, and the consequences of the test not being met. This Order is pursued

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<sup>129</sup> NR-INQ-26 para 3

under the TWA 1992, not the Highways Act 1980. That is an important distinction. The focus, on applications under s.118A/s.119A/s.116 of the Highways Act is very clearly – one might say, almost solely – on the interests of those using a specific PROW. That is a wholly different statutory context to the TWA 1992. The guidance is notably silent on any requirement to consider enjoyment of the route as a whole.<sup>130</sup> Nor does it invite a comparative exercise between the established PROW and its replacement: the suggestion that the use of the word “replacement” in Annex 2 of the TWA Guidance imports such an exercise<sup>131</sup> is simply unsustainable.

104. The TWA 1992 provides an authorising regime for transport projects, which schemes “can have a very important role to play in improving the country’s infrastructure”.<sup>132</sup> S.5(6) provides an important protection for public rights of way, which need to be disturbed or diverted in order for the scheme to be implemented. Understood in that context, it is, in NR’s submission clear, that the focus on ‘function’ as opposed to more subjective consideration of ‘enjoyment’ is correct. It would, for example, be clearly unreasonable if a transport scheme which would realise significant public benefits were to be precluded from coming forwards, because the alternative route for users of a PROW was not considered suitable and convenient because it did not offer the same ‘views’ or ‘aesthetic enjoyment’ as that which needed to be displaced for the scheme.

105. That is not to say that ‘journey quality’ has been ignored by NR in developing, and appraising, the proposed diversionary routes. Ms Tilbrook confirmed in XXC that that had been considered. It is simply not part of the ‘test’ which falls to be applied under s.5(6).

106. Similarly, a common sense approach needs to be taken when considering who are the ‘existing users’ of the crossing.

107. NR maintains that the correct approach is to look at existing use and users of the PROW, PROW having regard (inter alia) to the characteristics of and constraints which exist on the existing PROW, and purposes it serves. It acknowledges that

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<sup>130</sup> Cf the test in s.119A of the Highway Act 1980

<sup>131</sup> As submitted by SCC and the Ramblers’ Association: NR-INQ-26 para 11.

<sup>132</sup> DfT ‘Transport and Works Act Orders: a brief guide’ para 3.

future occupants of consented developments in the vicinity of the crossing can be included within that group: as, for example, at S25 Cattishall. It does not agree, however, that “existing users” requires the decision maker to have regard to any person who might be legally entitled to use the route (but for whom the route is not usable due to, e.g., accessibility constraints), or who might, theoretically, do so in the future (e.g. following construction of a new development not yet consented in the wider area – as discussed in respect of S27/28 and the recently consented housing developments in Thurston<sup>133</sup>). It is important to bear in mind in this regard that the language used by the Secretary of State, focussing as it does not *existing* users of the public right of way, indicates, also, that the Secretary of State is not seeking *enhancements* to the PROW network under s.5(6) TWA 1992.

**(v) Policy**

108. Consideration of PROW policy does not end with the TWA Guidance. There is a wider policy context to consider.

109. National and local policy supports the provision of a good public rights of way network – and understandably so. As recognised in the Government’s ‘Cycling and Walking Investment Strategy’,<sup>134</sup> for instance, walking and cycling should be encouraged. There are clear health and social benefits which arise from walking, which have been emphasised during this inquiry.<sup>135</sup> Those benefits, and the importance of maintaining the PROW network, are not in dispute, and are wholly accepted by NR. Similarly, Network Rail recognises the need to ensure that its Order proposals do not undermine the objectives sought to be achieved by Suffolk’s ROWIP<sup>136</sup>: this was confirmed by Ms Tilbrook (inter alia) in XXC on Day 23 of the Inquiry,<sup>137</sup> and her evidence throughout the inquiry was to the effect that she considered the proposals advanced in the Order were consistent with those objectives.

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<sup>133</sup> NR-INQ-105

<sup>134</sup> Appendix 2 to Mr De Moor’s PoE

<sup>135</sup> For example, by Mr De Moor for the Ramblers’ Association

<sup>136</sup> Mr Kerr confirmed in XXC (Day 8) that the draft ROWIP 2 was not a document that NR would have had in developing the Order proposals and it was not suggested that NR should, but had not, had regard to the same.

<sup>137</sup> In response to questions from Mr Farthing on S24

110. However, those high level policies<sup>138</sup> and aspirations cannot be seen in isolation. Non-motorised journeys are part of a wider system of sustainable travel, which includes rail travel.
111. The National Policy Statement for National Networks identifies a “*critical need to improve the national networks to address... crowding on the railways to provide safe, expeditious and resilient networks that better support social and economic activity; and to provide a transport network that is capable of stimulating and supporting economic growth*”.<sup>139</sup> The NPS also acknowledges (in Section 5 ‘Generic impacts’ and under the heading ‘The Suffolk Local Transport Plan 2011-2031 Part 1- Transport Strategy highlights the importance of seeking improvements to (inter alia) the rail network, identifying that “*Transport has a key role to play in delivering Suffolk’s economic strategy*”.<sup>140</sup> Similarly, the Suffolk Rail Prospectus<sup>141</sup> highlights that “*A decent rail service is vital to growing our county’s economy, attracting investment, creating jobs and supporting a growing population. It is our ambition to improve rail services and infrastructure, and we will use the priorities contained within this document to make our case to Government and the wider rail industry.*”
112. All of those high-level policy documents also recognise the importance of access to local routes for non-motorised users.
113. It is simply wrong, therefore, to attempt to set walking and cycling against train travel, as if they are in competition or conflict. The issue is about striking the right balance.
114. Network Rail considers that for each of the proposals in the Order, it has struck the right balance by providing a suitable and convenient alternative route. SCC and the Ramblers’ Association have objected to those crossings where they consider the proposed diversionary route is not suitable and convenient.

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<sup>138</sup> As Mr Kerr agreed in XXC (Day 8) the policies referred to in his PoE relevant to these issues were “high level”, and did not contain “criteria” – eg that policy not satisfied unless x, y or z were satisfied.

<sup>139</sup> Para 2.2., extracted at para 5.2 of Mark Brunnen’s PoE (A copy of the NPS is at NR-INQ-5.1)

<sup>140</sup> Obj/29/C11 pg 580 (internal page 11)

<sup>141</sup>

115. There is, in reality, no dispute as to the relevant policy framework and the extent to which the objectives of the Order scheme complies with national and local policy. Mr Brunnen, Dr Algaard and Ms Tilbrook set out in their Proofs how they consider the Order proposals comply with relevant policy, including the objectives of the Suffolk ROWIP. In respect of local plan policies, as Ms Tilbrook explained in XXC, in developing the Order proposals, Mott MacDonald has worked on the basis that policies relating to walking, cycling (etc) will be consistent with national policies, and thus does not see any reason why the Order proposals would not be compliant with such local plan policies.

116. In reality, the dispute as to whether the Order proposals comply with relevant policies has to be considered on a crossing by crossing basis, and depends on whether the proposed diversionary route is or is not “suitable and convenient”.<sup>142</sup>

117. There is one final point which needs to be considered in the context of policy, which is the approach to be taken to Network Rail’s request for deemed planning permission. Network Rail has set out its position in a Note submitted earlier in the inquiry – NR-INQ-55 – the contents of which are not repeated here. In brief, the request for deemed planning permission does not fall to be determined in accordance with section 38(6) of the Planning and Compulsory Purchase Act 2004: i.e. in accordance with local development plan policies unless material considerations indicate otherwise. Network Rail notes the position set out in the TWA Guidance, that *“In line with the plan led system for determining planning applications, projects that conflict with relevant policies in the development plan are unlikely to be authorised, unless material considerations indicate otherwise”* and whilst that is clearly recognised as the Secretary of State’s stated position as to how applications will be considered, NR submits that it would be wrong for this statement of policy to be elevated to, in effect, a statutory test by another name.<sup>143</sup> NR would highlight in

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<sup>142</sup> This was agreed by Mr Kerr in XXC and is believed to be common ground

<sup>143</sup> Cf the approach seemingly taken to this issue by SCC and SEBC at paras 11 & 14 of their Note in response: OP-INQ-60

this regard para 25 of the Guide to TWA Procedures,<sup>144</sup> which makes clear the status of that document, stating as follows:

*“The guidance given in this booklet on the TWA procedures and on how they are intended to be applied is based on DfT’s understanding of the statutory provisions and the principles underlying them, and on experience of best practice. It is intended to help applicants and others with an interest. However, no reliance should be placed on any legal interpretation given in this guidance, as only the courts can give an authoritative interpretation of the law. Applicants and other interested parties should seek their own independent legal advice where necessary. Should there be any inconsistency between the guidance in this booklet and the provisions in the TWA or relevant SIs (such as might arise from a subsequent change in the legislation) the latter must prevail.*”

#### **(vi) Road safety issues**

118. A number of objectors have criticised the lack of a comparative assessment of the ‘risks’ at a particular level crossings and the ‘risks’ of pedestrians using the rural road network proposed as part of a diversionary route following closure of the crossing.

119. There is no established methodology for comparing risk at level crossings with risks on rural roads.<sup>145</sup> Such attempts as have been made in the past, specifically for the House of Commons Transport Select Committee,<sup>146</sup> led to the conclusion that:

*“Analysis of Network Rail and Department for Transport data (see Annex) shows that if an average walking trip includes a level crossing, the fatality risk to a pedestrian is about double the risk of an average walking trip without a level crossing. Overall, there is an increase of around 8% in the risk of a fatality during*

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<sup>144</sup> A copy of which can be found at Tab 23 of the Legal Bundle [NR-INQ-63]

<sup>145</sup> This appears to be common ground: Mr Russell stated in XIC, for example, that it was his understanding that rail and road assessment follow different paths so no agreed common methodology

<sup>146</sup> NR-INQ-12 2.6.18. ‘House of Commons Transport Committee Safety at Level Crossings Eleventh Report of Session 2013-14’

*an average car journey that includes a level crossing, compared with one that does not*".<sup>147</sup>

120. Ms Tilbrook has provided a Note to the inquiry – NR-INQ-62 – which seeks to provide some clarity as to how that conclusion was arrived at, from the data set out in Appendix 1 to the Select Committee report, and confirming (at para 10) that she considers that that Report cannot be read as supporting the suggestion that removing a level crossing from a walking trip and replacing it with an additional length of walking would equate (in risk terms) to a walk that includes a level crossing.

121. Ms Tilbrook explained in evidence how road safety issues have been considered in assessing proposed diversionary routes.<sup>148</sup> The inquiry has before it RSAs carried out by an independent RSA team within Mott MacDonald, and the independent RSAs carried out by Capita Transport commissioned by SCC. It is common ground (Ms Tilbrook, Mr Russell, and Mr Haughton all agreed) that both should be considered in looking at the Order proposals: neither ‘trumps’ the other. It is also common ground that different road safety auditors can reach different conclusions as to the nature (or extent) of an issue and recommendations in respect of the same<sup>149</sup>: and that does not mean that one of the audits is somehow deficient or defective. Mr Russell agreed in XXC that his evidence should not be regarded as a further RSA.<sup>150</sup>

122. There is no basis, in NR’s submission, for suggesting that the RSAs commissioned by SCC should be afforded ‘greater weight’ than those commissioned by NR to the extent that views on potential issues, or recommendations, differ. That NR, rather than SCC, was identified as the ‘Overseeing Authority’<sup>151</sup> did not affect the substance of the RSAs themselves – or the way the auditors carried out their work. Nor is there merit whatsoever in the suggestion – which was, rather astonishingly, pursued by Mr Russell despite the clear evidence from Ms Tilbrook on this matter<sup>152</sup> –

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<sup>147</sup> Para 15 of NR-INQ-12 2.6.18.

<sup>148</sup> Section 1.5 of her PoE

<sup>149</sup> JR in XXC (Day 6), AH in XXC (Day 14)

<sup>150</sup> Day 6

<sup>151</sup> Which it should have been, in accordance with HD 19/15, as ST acknowledged in XXC (in response to questions from SR, Day 6)

<sup>152</sup> ST PoE para 1.15.11; ST Appendices Tab 16,

that the NR commissioned RSAs were not sufficiently ‘independent’ by reason of correction of a minor typographical error in the report being ‘signed off’ by Ms Tilbrook.<sup>153</sup>

123. Nor, with respect, is there any merit in the criticisms made by Mr Russell of the NR commissioned RSA by reference to information he says should have been provided to the auditors but which did not form part of the Audit Brief. Firstly, the information which Mr Russell considers should have been provided,<sup>154</sup> is not a “mandatory requirement” of HD 19/15<sup>155</sup>. What is mandatory, however, is for the road safety audit team to request further information if they consider the Road Safety Audit Brief to be insufficient for their purpose.<sup>156</sup> They did not do so – and thus clearly regarded the information they had to be sufficient. Secondly, that information was not included within the Road Safety Audit Brief provided to Capita Traffic who clearly also did not regard the information they were provided with as not sufficient.

124. The suggestion<sup>157</sup> that the Secretary of State should reject the application or defer a decision until a further stage 1 audit has been carried out is thus wholly without merit – and was notably not pursued in the Ramblers’ Closing Submissions.

125. It was common ground that in respect of proposed diversions utilising the existing road network which had had issues identified on the Stage 1 RSA and/or which would involve some works to the highway, would need to be subject to a Stage 2 RSA. It was common ground between Ms Tilbrook and Mr Russell<sup>158</sup> that not only could the stage 2 auditors go back and look at how stage 1 issues had been dealt with, “it is require to go back – stage 2 auditor is required to look at stage 1 and designer response”.<sup>159</sup> This is in line with HD 19/15<sup>160</sup>, para 2.34 of which provides that “*The Stage 2 Road Safety Audit should include a review of the issues raised in the Stage 1 Road Safety Audit Report. Any issues that have not been satisfactorily resolved from the Stage 1 Road Safety Audit either by an element of the scheme being redesigned, as*

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<sup>153</sup> As explained in NR-INV-44

<sup>154</sup> At paras 3.5 – 3.10 of his Proof (Obj/036/W10-1)

<sup>155</sup> Specifically, it is not included in a square box – see para 1.9 of HD 19/15.

<sup>156</sup> Para 2.90 of HD 19/15

<sup>157</sup> At para 3.11 of Mr Russell’s Proof

<sup>158</sup> Mr Haughton appeared to take a different view in response to questions from the Inspector on Day [XX]

<sup>159</sup> JR in XXC on Day 6.

<sup>160</sup> Extracts from which are at Tab F of ST’s Supplementary Appendices (NR-INV-15)



*a result of clarification given by the provision of further information or by an approved Exception Report, should be reiterated in the Stage 2 Road Safety Audit Report.”*

126. In reality, the concern about RSA stage 2 audits turned on the wider issues relating to how works to the existing highway forming part of a diversionary route was linked in with the procedures for certification and closure of crossings. This issue has now been addressed through the side-agreement between NR and SCC.

**(vii) *Environmental appraisal***

127. An Environmental Screening Request Report was prepared by Mott MacDonald and submitted to the Secretary of State in January 2017, with a request for a direction as to whether an EIA was required. That report assesses the potential effects of the Order scheme on a crossing-by-crossing basis (as well as considering its cumulative effects) on:

- a. Ecology;
- b. Landscape;
- c. Historic Environment;
- d. Air Quality;
- e. Noise;
- f. Ground Conditions;
- g. Water Resources (including consideration of flood risk);
- h. Traffic and Transport; and
- i. Socio-economics and Community

128. The report concluded that there would be no potentially significant effects, either at individual crossings or from the Order scheme as a project. By letter dated 3<sup>rd</sup> March 2017,<sup>161</sup> the Secretary of State notified NR of his decision that an environmental impact assessment was not required.

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<sup>161</sup> NR11. The decision followed consultation with Suffolk County Council, Babergh and Mid Suffolk District Councils, Ipswich District Council, West Suffolk District Council, the Environment Agency, Natural England and Historic England (Historic England did not respond)

129. In a Technical Note appended to Ms Tilbrook's Proof<sup>162</sup>, Mott MacDonald confirmed that whilst the screening assessment was carried out under the requirements of Schedule 1 to the TWA Applications Rules which did not include 'health' as a topic,<sup>163</sup> due to the limited size, nature and location of the works, it was unlikely that the proposed works would give rise to adverse significant effects to human health. The Note also confirmed that the removal of S05 Pannington Hall from the Order scheme (post the EIA screening request and application) did not affect Mott MacDonald's assessment or conclusions.

130. Network Rail has also provided 2 Notes to the inquiry – NR-INK-81 & NR-INK –82 - setting out how the approach it has adopted to its environmental assessment work, including surveys for protected species, accords with the guidance set out in ODPM Circular 6/2005 / Defra Circular 1/2005. This was discussed further at the 'Modifications' session on Day 24.

*(viii) Approach to acquisition of rights / powers over private land*

131. Mr Billingsley sets out in some detail in his Proof the nature of the rights and powers sought by this Order,<sup>164</sup> and the compensation provisions for landowners affected by the exercise of those powers.

132. The essential point is this: those landowners whose interests in land area adversely affected by the Order scheme will receive compensation. That compensation will include (where established) disturbance losses resulting from temporary use of land (for example, for loss of crops whilst a PROW is constructed, or an inability to use the land for shoots during such works<sup>165</sup>); diminution in value and/or disturbance losses a result of dedication of a new PROW on the land over which it passes – “and land held therewith” – under s.28 of the Highways Act 1980 (which could include, for example, costs associated with managing impacts/effects

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<sup>162</sup> NR-32-1, Tab 8

<sup>163</sup> Health having been identified as an issue on which the Secretary of State wished to be informed in the Statement of Matters

<sup>164</sup> The Order does not include any compulsory acquisition of land.

<sup>165</sup> NB XIC Day 23 (in the context of S24)

arising from the new PROW with activities on the land)<sup>166</sup> and reasonable fees associated with such a claim.<sup>167</sup>

133. Where rights are to be acquired by the Order, Network Rail submits that a compelling case for that compulsory acquisition has been made. The strategic case for closure of these crossings is summarised above. The acquisition of rights (or powers) over land is required to implement the Order scheme – specifically, through the creation of alternative rights of way, as required by s.5(6) of the TWA 1992. The acquisition of those rights is thus both necessary and justified by a compelling case in the public interest. Moreover, Network Rail maintains that it has taken a proportionate approach in identifying the powers and rights which it seeks to achieve those public benefits: it has limited its powers to acquiring rights – both to create new PROW and to access land – and powers to temporarily use land, rather than seeking acquisition of the land *per se*. Compensation is available to those landowners for losses suffered as result of exercise of those powers.

134. Mr Billingsley made clear in evidence his view that both the domestic and ECHR ‘tests’ for compulsory acquisition were met in respect of this Order. That conclusion has not been challenged by any part. Nor is there any reason for concluding to the contrary.

### ***(ix) Funding***

135. NR’s proposals for funding the Order scheme are set out in its Funding Statement (NR 20). Dr Algaard confirmed that this remained the position in XIC. NR has also provided confirmation from ORR that it is content for monies allocated to the Order scheme in CP5 to continue to be used during CP5 despite the possibility that its benefits may not be achieved during the same control period – see NR-INV-19 paras 8-9 & Appendices 4 & 5. NR has also provided a Note setting out the funding sought in respect of CP6; the level of funding likely to be available (by reference to HC 448 ‘Statement of Funds Available’ for CP6); and the significant commitment made by NR towards continuing its level crossing risk reduction work during CP6 –

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<sup>166</sup> NB XIC / XIC Day 23 (in the context of S24)

<sup>167</sup> NB XIC/XIC Day 7

NR-INC-25. Dr Algaard made clear, in Re-IX, that following the granting of funds to Anglia Route, it would be down to the Anglia Route- including Dr Algaard – to decide how to direct the funding. Her commitment to the Order scheme, and the objectives it seeks to achieve, cannot be doubted.

## **B INDIVIDUAL CROSSINGS**

136. For the purposes of these submissions, it is not intended to repeat the detailed evidence in respect of each crossing; nor to go over crossings which have not been the subject of evidence at the Inquiry (including those where witnesses were ‘called’ only in response to questions from the Inspector). Network Rail’s written evidence in respect of each crossing (i) describes the crossing including assessments of the risk at the crossing;<sup>168</sup> (ii) sets out the proposals for the crossing, including development of the same and changes made through that process;<sup>169</sup> and (iii) assesses the impact of the proposals, specifically with regard to the suitability and convenience of the alternative route.<sup>170</sup> Nor do these submissions address each and every points raised by objectors during the inquiry: no disrespect is intended to those objectors in that regard.

137. There are a few points of general application to make at the outset.

138. Firstly, it is not accepted that SCC’s witnesses any better placed to make these assessments of whether the proposed alternative route is “suitable and convenient” than Ms Tilbrook, or that their evidence should be preferred in default. It is Ms Tilbrook who has made the more thorough assessment, informed by a wide team of specialists at Mott MacDonald. Nor is there any basis for suggesting that the weight to be afforded to Ms Tilbrook’s evidence should be reduced as a result of her not having, personally, walked every route; or it not being confirmed that the same person within the Mott MacDonald team had walked both the existing and the ‘full’ diversionary route; or the Mott MacDonald team not having included a person with experience as a PROW Officer.

139. Ms Tilbrook an experienced highways engineer with very extensive experience of dealing with public rights of way. As she explained in XXC,<sup>171</sup> the team she works with is an experienced one, which has diverted and created PROWs in many schemes, understands the issues which need to be considered, and in liaison with local authorities. As she identified, there had been no suggestion from the

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<sup>168</sup> Mr Prest’s evidence

<sup>169</sup> Mr Kenning & Ms Tilbrook

<sup>170</sup> Ms Tilbrook

<sup>171</sup> In response to MG questions Days 5 & 6

PROW team with SCC that Motts were not looking at the right elements or issues in developing the proposals.<sup>172</sup>

140. More importantly, her evidence should be assessed on its substance. It is detailed and careful in writing. Orally, her evidence was clearly fair and balanced; she did not seek to diminish or avoid the concerns of objectors. She gave full and thoughtful answers. Network Rail submits that Ms Tilbrook very obviously is suitably qualified to give her evidence. Once satisfied as to that, her evidence should be assessed on its merits.

141. Secondly, there was some considerable discussion during the inquiry as to the availability (or otherwise) of highway verges where use of rural roads was included within a proposed diversionary route and as to the ‘width’ of the pedestrian facilities which needed to be available (or provided). In respect of highway verges generally, there is a rebuttable presumption that in respect of an ordinary highway running between fences (or hedges), the highway extends to the whole of that space between fences/hedges (also known as the ‘hedge-to-hedge’ presumption).<sup>173</sup> Ms Tilbrook confirmed repeatedly in evidence that nothing had been put forward to rebut that presumption in respect of the various verges being discussed during the inquiry.<sup>174</sup> Similarly, she confirmed that SCC had not raised any concerns that routes were not part of the highway.<sup>175</sup> To the extent this point is relied on by the Ramblers’ Association as demonstrating that a proposed diversionary route is not suitable and convenient, it is thus wholly without merit.

142. As regards widths of footways / pedestrian facilities, it was common ground between Ms Tilbrook and Mr Russell that there is no specific guidance on widths for rural areas.<sup>176</sup> As Ms Tilbrook explained in evidence, Mott MacDonald has drawn on a number of guidance documents in considering the suitability of a route<sup>177</sup> – and no one has seriously suggested that it has failed to have regard to a standard or guidance which should have been considered.

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<sup>172</sup> XXC in response to MG questions Day 5

<sup>173</sup> See, eg, paras 15-15 of the Open Spaces Society Information Sheet C10 ‘Highway Verges’, at Tab 12 of Ms Tilbrook’s Appendices (NR-32-2);

<sup>174</sup> Eg in Re-IX on Days 6 and [S23?]

<sup>175</sup> In Re-IX on Day 6

<sup>176</sup> JR in XXC, Day 6.

<sup>177</sup> ST PoE para 1.11.6. See also NR’s response to Mr Crosby on this matter: NR-INQ-110

143. The difference between Ms Tilbrook and Mr Russell appears to come down to two main points. Firstly, Ms Tilbrook considers that 700mm is the guidance in Manual for Streets (MfS)<sup>178</sup> as to the minimum width required for a pedestrian to walk upon. Mr Russell states it is 750mm. It is clear, however, from the page referred to by Mr Russell (pg 68), when read with ‘Inclusive Mobility’ which is where these indicative minimum distances are taken from,<sup>179</sup> that this is the minimum width for a person who is mobility impaired. As set out in section 2.2 of ‘Inclusive Mobility’<sup>180</sup> “*Someone who does not use a walking aid can manage to walk along a passage way less than **700mm** wide, but just using a walking stick requires greater width than this; a minimum of **750mm**” (bold in original). Ms Tilbrook’s position is thus clearly the correct one. Secondly, Mr Russell contends that pedestrian facilities of a minimum of 1.2 m should be provided, by reference (inter alia) to a 450mm allowance to avoid street furniture being clipped by passing vehicles. Ms Tilbrook has explained why she does not consider that to be necessary – or indeed, the analogy appropriate – in the context of the sort of roads being proposed for use as part of the Order proposals.*

144. Thirdly, a number of criticisms have been made (by a number of objectors) as to use of the census data collected during the development of Order proposals and of ‘origin and destination’ surveys not having been undertaken. Those criticisms are without merit.

145. Ms Tilbrook explained on a number of occasions that the census data only provided a ‘snapshot’ of a point in time and was not determinative, nor treated as determinative, of levels of use. It had not been relied upon to justify a decision as to whether a proposed alternative route was suitable and convenient, and decisions were not based solely on that data. It was but one information source drawn on when Motts was considering the purpose of the current route, who was using it, and the purpose(s) which the replacement route needed to fulfil. She drew attention, inter alia, to the information received through the consultation process – noting, in particular, the

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<sup>178</sup> Tab J of ST’s Supplementary Appendices NR-INQ-15

<sup>179</sup> See para 6.3.22 on pg 68 of MfS

<sup>180</sup> Tab H of ST’s Supplementary Appendices NR-INQ-15

questions asked on the round 1 consultation questionnaire,<sup>181</sup> which included “*For what purpose do you use the crossing?*” and “*For what purpose do you most often use the crossing?*”

146. She explained, again on a number of occasions, why she did not consider that origin and destination surveys undertaken at the crossings would have materially contributed to Mott’s understanding of how the crossing was used and for what purposes. It is notable that – save, potentially with the exception of Mr Smy who stressed the use of Newmarket Town Football Club as the local polling station – no one identified any purposes for which a particular crossing was used which had not been considered by Motts in developing the Order proposals.

147. Fourthly, and critically, what appeared to underpin many of the concerns raised as to whether a particular route was ‘suitable and convenient’ was based on the ‘route’ or conditions of that route as they stand on the ground today.

148. That is not the right basis on which to assess the proposals. S.5(6) is clear – in order to justify extinguishment of a PROW, the Secretary of State must be satisfied that a (suitable and convenient) alternative right of way has been or will be provided.

149. It is common ground that detailed design is yet to be undertaken. At that which stage, any concerns relating to usability of verges and/or need for vegetation cut-back or profiling; to the profiling, cross-fall, and/or surfacing of proposed new footpaths; and any associated matters (such as drainage and/or additional signage) can and will be addressed. The new PROWs created under the Order are required to be constructed to the reasonable satisfaction of the highway authority; failing which they the highway authority can refuse to certify the PROW which, in turn, would preclude the crossing being closed. Any works in the highway will be subject to the oversight of the highway authority. It is agreed between NR and SCC that any works required to a highway forming part of a diversionary route must be carried out before the crossing is closed.<sup>182</sup>

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<sup>181</sup> Appendix 4 to Mr Kenning’s PoE (NR30-2)

<sup>182</sup> In the side agreement



150. Ms Tilbrook’s evidence was to the effect that she is satisfied that appropriate solutions can be found for the issues which had been identified by objectors to particular proposals through that detailed design process.<sup>183</sup> No one has seriously suggested that solutions to those issues cannot be provided. The complaint, in reality, is that the detail to be provided through the detailed design process, has not been provided yet. For the reasons set out above, that is clearly not a valid basis to conclude that a suitable and convenient alternative ‘will not be provided’ for the purposes of s.5(6).

*(i) S01 – Sea Wall*

151. At S01 Sea Wall, NR’s proposal is to divert users of the crossing on the northern side of the crossing to an existing footbridge to the east using the existing PROW network. Once over the railway, users could continue south then east on existing Footpath 12 Brantham, or turn west along a new PROW which then turns south to connect into existing Footpath 13 Brantham running east along the sea wall. The Order proposals would extinguish a section of footpath 13, Brantham to the north of the railway and a section to the south of the railway, running along the sea wall. The diversion route would use parts of, but does not affect, a section of the Stour and Orwell Walk (a Long Distance Path).<sup>184</sup>

152. The Order proposals are adjacent to, and at points within, the Stour & Orwell Estuary SSS1, which is largely coincident with an SPA/Ramsar Site.<sup>185</sup> The Order proposals have been the subject of an HRA Stage 1 Screening Report<sup>186</sup> which concluded that “no direct impact in terms of habitat loss is anticipated on any European site from the proposed Project. No likely significant effect alone or in combination can be concluded during the construction and operational phase of the new footpath.”<sup>187</sup> It is common ground between NR and SCC that the recent CJEU

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<sup>183</sup> Mr Kenning explained in evidence how NR anticipated that process would proceed: this is encapsulated in NR-INQ-20

<sup>184</sup> ST PoE para 2.1.19. A plan of the Stour and Orwell Walk is at NR-INQ-48

<sup>185</sup> An ecological constraints plan is at NR-INQ-40

<sup>186</sup> NR-INQ-82(e)

<sup>187</sup> Executive Summary, 4<sup>th</sup> para

decision in *C-323 People Over Wind v Coillte Teoranta* does not affect the reliability of the screening assessment.

153. Natural England were consulted on the Order proposals and did not raise any concerns about the impact of works being carried out within or adjacent to the SSSI.<sup>188</sup> NE did, however, welcome the proposal to extinguish the section of Footpath 13 running south from the level crossing, due to concerns that a proposed housing development to the north could result in increased footfall adjacent to the SSSI if the section of footpath were to be retained.<sup>189</sup> Mott MacDonald's ecologists had also raised concerns regarding the proximity of the footpath (specifically, potential for dogs to encroach) into reed bed habitat area to the south west of the proposed new section of footpath running south to join footpath 13 Brantham on the sea wall.<sup>190</sup> Fencing has been provided for in the proposal to mitigate this concern. Removal of the section of footpath 13 running south from the level crossing would also reduce the potential for disturbance of birds in this reed bed habitat area through having a PROW on each side – a concern which Mr Kenning fairly acknowledged in XXC on Day 16 he had erroneously attributed to NE in his earlier evidence.<sup>191</sup>

154. The objections at inquiry to the Order proposals were two-fold. The Ramblers Association<sup>192</sup> and SCC<sup>193</sup> both objected to the proposed extinguishment of the section of footpath 13 running south from the level crossing to the sea wall. SCC were also not satisfied that the proposed new footpath to the south of the railway would be suitable and convenient, by reference to concerns over ground conditions, including standing water. Ms Robinson confirmed in XXC<sup>194</sup> that her concerns as to whether the route was suitable and convenient was limited to those matters, and SCC was not saying the 'route' would not be suitable for any other reason. Mr Knight (for the Ramblers Association) raised similar concerns.

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<sup>188</sup> See, inter alia, NR-INQ-82 Appendix 1 (A NE briefing note) and NR-INQ-112 which confirms that it was clear from the material provided to NE that the Order proposals fell within (and not merely adjacent or proximate to) the SSSI and that NE were aware of the same.

<sup>189</sup> ST PoE para 2.1.24. See also para 26.3 of the Technical Note on Environmental Assessment at S01 and S02 (NR-INQ-82)

<sup>190</sup> ST PoE 2.1.24, and XXC in response to questions from MG (Day 9)

<sup>191</sup> On Day 9

<sup>192</sup> Mr Knight – Obj/036/W6/1

<sup>193</sup> Annette Robinson – Obj/29/W3/S01

<sup>194</sup> Day 9

155. As regards the proposed extinguishment of footpath 13 south of the level crossing, that proposal took cognisance of the response received from NE that it welcomed that proposed extinguishment, due to concerns as to increased footfall on that area adjacent to the SSSI.<sup>195</sup> Ms Tilbrook explained in evidence<sup>196</sup> that such increased footfall could arise from that section of footpath 13 effectively becoming a ‘there and back route’, as opposed to the opportunity for a circular walk that exists using S01 at present. It is notable in this respect that the HRA Screening Report identified that “*during operation the impacts of human disturbance will be reduced as users are diverted away the SPA.*”<sup>197</sup> It was clearly appropriate for NR to give substantial weight to the views of NE: the statutory body responsible for SSSIs, SPAs and Ramsar Sites in England<sup>198</sup> when considering the proposals to take through to the Order.

156. Following discussion during the inquiry as to whether the Order could (or should) be modified to retain the section of footpath 13 to the south of the level crossing, NR again sought the views of NE: specifically, whether it would object to the retention of footpath 13 if the Order were to be so modified. By email dated 24 April 2018, NE responded that they would not object to the footpath remaining open.<sup>199</sup>

157. Mott MacDonald has also appraised whether retention of the footpath would result in any different or significant effects, which might affect the conclusions of the HRA or EIA Screening Report. In a Technical Note dated 9 April 2018,<sup>200</sup> Motts confirmed that the change would not give rise to “*a different (ie significant), or in combination effect and therefore the outcome of the HRA/Ecological Constraints Assessment would not change.*”. It was noted, however, that the benefit of the order proposals – regarding the positive effect on disturbance to birds referred to in the HRA Screening Report, would not be achieved if this section of footpath were to be retained.”

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<sup>195</sup> See eg ST PoE para 2.1.24

<sup>196</sup> XXC in response to questions from MG on Day 9

<sup>197</sup> The second page 4 of the Report

<sup>198</sup> Ms Robinson accepted in XXC that NE had a particular status in the context of designated sites, SPAs and Ramsar sites, and that as statutory consultee that their views should be taken into account by the Inspector

<sup>199</sup> NR-INQ-108

<sup>200</sup> NR-INQ-83

158. In light of those developments, NR confirmed, on Day 24 of the Inquiry, that it is content for the Order to be modified as proposed by SCC,<sup>201</sup> and has provided (1) a revised filled Order and (2) amended Order plans to the Secretary of State reflecting this position.

159. A number of criticisms were made of NR's approach to, and case for, the proposed extinguishment of footpath 13 during SCC's closings. It goes without saying that NR does not accept that its case "appeared misleading at best". The time line of events is set out above. When the proposals were being developed, the advice received by NR was that NE would welcome the extinguishment of the southern section of footpath 13. As the statutory body responsible for SSSIs (etc), it was clearly reasonable for NR to give significant weight to those views. It appears that NE's view has changed. That position has been communicated to the inquiry, and acted on by NR.

160. As to the concerns regarding ground conditions, and whether the alternative PROW to the south of the railway will be 'suitable and convenient', Ms Tilbrook addressed this in detail in her evidence.<sup>202</sup> She explained how the route had been adjusted to address some of those concerns; how this would be considered further during detailed design; and the scope within the Order for eg different surfacing solutions if that were considered to be required at that detailed design stage. As she made clear in XXC,<sup>203</sup> she considered the proposals were feasible, there would be an engineering solution to any water/drainage issues,<sup>204</sup> and that the proposed route was in the right location, although there might be a few issues to overcome in detailed design. She was "confident" those issues could be resolved at detailed design state, and that the path could be made suitable.<sup>205</sup> It should also be noted that NR would

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<sup>201</sup> As shown on OP-INQ-96

<sup>202</sup> PoE 2.1.30, Rebuttal Proof of Evidence for S01 Sea Wall (NR32-4-3) paras 2.1.1-2.1.7, XIC & XXC on Day 9

<sup>203</sup> In response to MG questions on Day 9

<sup>204</sup> ST explained in XXC that she did expect to need any formal drainage here (having regard to where the route had been located in relation to the swamp/reed beds) and that if there were areas where it was needed to remove water, they had the ability to adjust levels to raise the level of the path so it would sit outside any standing water.

<sup>205</sup> XXC in response to MG questions

also not be able to close S01 until the new PROW was completed to the reasonable satisfaction of SCC as highways authority.<sup>206</sup>

161. Ms Robinson accepted in XXC that in looking at whether the alternative route was ‘suitable and convenient’, what had to be looked at was whether such a route would be provided, not just the situation on the ground today. She accepted that the TWAO process was qualitatively different from a diversion under the Highways Act in that regard (which, once confirmed, would bring the PROW into existence); and that there was a detailed design process which would pick up on specifics. She confirmed that she was not putting forward a positive case that issues she had raised regarding ground conditions / saturation could not be overcome – “*I’m not saying they can’t be, I am just not satisfied at the moment*”. Mr Knight’s similarly did not suggest that it was not possible for those issues to be overcome.<sup>207</sup>

162. NR maintains, therefore, that the Secretary of State can be satisfied that a suitable and convenient alternative route will be provided for users of the crossing. Closure of S01 may properly be confirmed within the Order – with or without the modification to retain the section of footpath 13 to the south of the crossing.<sup>208</sup>

#### ***(ii) S02 – Brantham High Bridge***

163. The crossing at S02 is currently closed under a TTRO due to safety concerns. Those concerns relate to the sighting at this crossing – there is very limited sighting on the western side – and concerns that the crossing was at a point at which trains cross in very close vicinity, with the potential for a train horn to be sounded at a whistle board as another train was passing, leading to a user potentially proceeding to cross after the first train had passed.<sup>209</sup>

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<sup>206</sup> Pursuant to the certification process in Article 16 of the Order

<sup>207</sup> Q in XXC “You have heard [ST] say it will be looked at carefully in detailed design if the order is confirmed – and I don’t understand from you you don’t think it is possible to create the path” A: “I am not in a position to judge – I am a bit gung ho – I will just go through”.

<sup>208</sup> The modification to retain footpath 13 would constitute an amendment to the extent of PROW to be extinguished under the Order: its retention would not affect –at least negatively – the assessment of the alternative route for existing users as being suitable and convenient.

<sup>209</sup> AK in XIC Day 9

164. The concerns raised by SCC at S02 were not dissimilar to those at issue on S01. Specifically, Ms Robinson's concerns focussed on where, precisely, the route running north towards S02 was proposed to be located (there being some concern about the apparent width of land between two existing fences) and the suitability of the path to be provided, by reference to ground conditions, the stability of the existing railway cutting adjacent to the proposed new PROW, and crossfall.
165. Mr Kenning confirmed in XIC where the footpath was proposed to be located in terms of the fencing, noting that the 'second fence' (i.e. that not on NR's boundary - 1.5m from the proposed centre line of the new footpath) had been erected by the landowner slightly within his own land boundary, which would be moved to enable the footpath to be provided (ie the footpath was not proposed to be located within the narrow width between them). Mr Kenning also confirmed, in XIC, that the proposed route only entered NR land in the vicinity of the level crossing: *"not where there is any instability on embankment or cutting or anything like that."*
166. Ms Tilbrook again provided detailed evidence as to why she was satisfied that the alternative PROW to be provided under the Order proposals would be suitable and convenient.<sup>210</sup> She addressed, specifically, concerns about the stability of the railway cutting to the west; and the gradient, cross fall and long fall of the proposed route, by reference to the conditions of the network of which it formed part. She confirmed, in XXC, that she was *"satisfied that the new footpath in that location is not going to put any additional loading in that embankment. Works will be done to ensure the footpath is in suitable condition so SCC are happy to certify and [for the] level crossing [to be] closed. ... In terms of installing a footpath, that will not increase erosion on top of that embankment, it won't add to the cause of that at the moment. I am satisfied that it can be suitable to the satisfaction of SCC"*.
167. That evidence was, again, not seriously challenged. Ms Robinson maintained her concerns, but acknowledged, in XXC<sup>211</sup> that she did not have a highway engineering background and her evidence on loading was *"not a technical opinion – I just know ground is unstable"*.

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<sup>210</sup> PoE section 2.2; Rebuttal PoE for S02 Brantham High Bridge (NR/32/4/4) paras 2.2.1 - 2.3.5, XIC (Day 9) XXC (Day 10)

<sup>211</sup> On Day

168. Mrs Robinson also confirmed, in XXC, that she believed practical issues, relating to cross fall and surfacing; “*can be overcome*” and again agreed that this was a different process to that under the Highways Act and that the new PROW would not come into (legal) existence until certified by the highways authority.

169. In terms of whether a suitable and convenient route can be delivered in this area, NR submits that the evidence of Ms Tilbrook and Mr Kenning should clearly be preferred: particularly when considering the issues relating to land stability and erosion. Those concerns must, in particular, be considered against the correct factual background: NR is not proposing the creation of a footpath on the top (or at the edge) of an unstable embankment: it is proposing creation of a footpath set back from, and separated by fencing, the ‘edge’ of a cutting accommodating the operational railway.

170. Mr Knight’s concerns were directed primarily to the proposed use of the footway along the A137 as part of the east – west diversion route. He agreed, in XXC, that the A137 had a footway along it, that Mr Russell had not identified any issues in respect of the same,<sup>212</sup> and that in order to reach Footpath 6 Brantham from the south today<sup>213</sup> it was necessary to interact with the A137, and to use some elements of the road to reach its southern end from the wider PROW network. He fairly accepted that there would be some improvement to the route between Footpath 6 Brantham and Footpath 001 Bentley (to the north east of the crossing) through the provision of a new tarmac footway along that section of the A137. He also agreed, having expressed reservations about the new PROW to the west of the railway creating a route around “the third side of a rectangle”<sup>214</sup> that users would have a choice of using this route or the A137 – so if taking a scenic route, a walker could go around the wood, or if taking a quicker route, take the A137.

171. NR maintains that the Order may properly be confirmed without modification.

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<sup>212</sup> The stage 1 RSA commissioned by NR also did not identify any issues with the use of this part of the A137 – ST PoE para 2.2.30

<sup>213</sup> The section to the west of the crossing

<sup>214</sup> Mr Knight’s PoE para 6

**(iii)S03 – Buxtons Wood**

172. NR's proposals at this crossing are to extinguish the section of Footpath 022 Bentley passing over the crossing from Footpath 021 Bentley to the north west of a field edge south east of the crossing, and to create a new PROW on the eastern side of the railway from the point where Footpath 021 Bentley is extinguished up to Footpath 019 Bentley in the north, where an existing footpath level crossing (Falstaff) can be used to cross the crossing.

173. The proposed new footpath is located within land known as 'Eleven Acres' owned by Mr Caldwell.

174. Ms Caldwell, giving evidence in support of her father's objection, questioned the need for closing S03, given the proximity of Bentley Station and the Falstaff crossing; raised concerns as to impact of the new footpath on the landholding, and put forward two alternative routes: both along the eastern side of the railway, one wholly within NR's land, the other within Mr Caldwell's landholding.

175. Mr Kenning explained, in XIC,<sup>215</sup> how S03 would need to be removed in order for any improvement at Bentley Station (for example, as a result of 'Norwich in 90') to go ahead. He explained, specifically, if a full barrier were installed at Bentley Station, locating the signals for that barrier at the optimum position (about 200m from the crossing) would put the signal between Bentley Station and Buxton Wood, with the result that passenger trains would end up 'parked' over S03, with freight trains possibly 'parked' over Falstaff as well. He also explained that Falstaff level crossing, due to its location, and its connection with the wider east west links, is "very unlikely" to be diverted anywhere, and that NR "couldn't divert Falstaff to Buxton Wood as not the same level of connectivity".

176. Mr Kenning also explained, in XIC, NR's concerns with the suggestion that the new PROW instead be located within NR's land (Ms Caldwell's 'Alternative A'). He highlighted as particularly undesirable the effective creation of a 'corridor' between the operational railway and the railway embankment which NR would need to

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<sup>215</sup> Day 10



maintain. It was also considered likely to require some ‘cutting’ into the railway embankment at the northern end. Ms Tilbrook also addressed this in her evidence.<sup>216</sup>

177. ‘Alternative B’ is the ‘green route’ which had been considered at the round 1 consultation<sup>217</sup> but discounted before the round 2 consultation due to concerns resulting from standing water.<sup>218</sup> As Mr Kenning explained in XXC,<sup>219</sup> *“there were concerns about ability to provide a solution all year round because of the wet spot. Unlike other area where occasional water pooling where we believe we can engineer to deal with standing water, the problem we have here is origin we were unable to identify, and the fact it is wet even at high summer suggested spring, and ramifications of dealing with that, which is why the September plan changes from the original green route”*.

178. Ms Tilbrook confirmed, in evidence,<sup>220</sup> her concerns with the proposed alternative resulting from the lack of certainty as to the cause of the issue; that it was thus unknown what solution might be satisfactory; and the consequent uncertainty of delivering the solution. She explained why, absent evidence of what was causing the issue, she could not be confident that measures proposed by Les Cotton Contractors Ltd<sup>221</sup> (specifically, using a geotextile membrane patch) would solve the issues which were impacting on the suitability of the Alternative B route. NR certainly does not share the confidence expressed at paras 3.2.5.8 of Mr Caldwell’s closings.

179. The challenge to Ms Tilbrook’s evidence that the alternative right of way proposed in the Order was suitable and convenient was essentially limited to the contentions advanced in paragraph 3.2.5.11 of the closing submissions. It is notable that those submission are advanced by way of comparison with the proposed Alternatives.

180. An issue as to the location of the proposed footpath was identified on site, based on a measurement taken from the electricity pylon, at the north western section

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<sup>216</sup> Appendices Tab 7, page 196-7

<sup>217</sup> The round 1 consultation materials can be found at Appendix 2 pages 62-63 of Ms Tilbrook’s Appendices

<sup>218</sup> ST PoE para 2.3.19.

<sup>219</sup> Day 10

<sup>220</sup> XIC Day 10

<sup>221</sup> Page 6 of Ms Caldwell’s Appendices

of the proposed new route. Mr Kenning has revisited site to investigate this point, and identified a discrepancy between the dimensions and orientation of the pylon as shown on the Order plans (taken from OS mapping) and that on the ground: in particular, the width of the pylon is shown on the OS as 6m, whereas the width, on site, is 4.5m. This is set out in the Note provided to the Inquiry on Day 24,<sup>222</sup> as amplified orally by Mr Kenning. As set out in that Note, NR remains confident that a suitable and convenient footpath can be provided on the alignment of the proposed route, as shown on sheet 33 of the Order plans.

181. It was clear, from Ms Caldwell's evidence, that the objectors' frustrations stemmed, at least in part, from a long-held belief that the wet spots were as a result of drainage problems which had been caused when the railway was electrified during the early 1980s.<sup>223</sup> This was reiterated in Closing (para 3.2.5.7). There is an indication in the evidence submitted by Mr Caldwell that this is the subject of ongoing (or pending) litigation.<sup>224</sup> It is clearly a long-standing issue from which it is submitted it may be inferred that there is not a simple solution.

182. It was clear that there was also frustration that they had not been consulted by NR earlier in the process. Mr Kenning acknowledged that Mr Caldwell (an unregistered landowner) had not been identified at the round 1 consultation stage. He noted, however, that a response had been provided on Mr Caldwell's behalf during the round 2 consultation. Ms Caldwell accepted, very fairly, in XXC that NR had clearly been aware of the issues relating to the landholding before it lodged its application in March 2017. Mr Billingsley explained in evidence the processes which had been followed by NR's land agents to identify affected landowners. The submission, made in Closings, that NR was "negligent" in failing to identify him as owner of the land is roundly rejected.

183. Whilst the wish to have been consulted earlier is clearly understandable, this is not a case where there can be any certainty that earlier engagement would have resulted in either of the Alternatives having been promoted by Network Rail. As Ms Caldwell acknowledged in XXC, the drainage issues on this land are clearly of long-

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<sup>222</sup> NR-INQ-

<sup>223</sup> Para 5 of Mr Caldwell's Statement (Appendix 1 to Ms Caldwell's Proof)

<sup>224</sup> Pages 15-18 of the Appendices to Mr Caldwell's Statement of Case (Obj/SoC/60)

standing duration. In response to the question that “*if there was a clear and obvious cause, we might have expected to have found that by now*” she acknowledged that it was “*an unresolved matter, we have instead devoted our efforts to this*”. She also acknowledged that even with earlier engagement, the parties might not have been any further along with the cause of the problem. As set out above, NR has significant concerns in respect of both Alternatives, and thus would not support the modification to the Order sought by Mr Caldwell in closing,

184. Mr Billingsley explained in evidence what he understood the potential impacts to be on Mr Caldwell’s landholding (as did Mr Kenning), and how those impacts might be compensated through the compensation provisions in the Order. Ms Tilbrook acknowledged, in XXC, that the impact of the Order route would be greater on the landholding than the Alternative B proposal (the green route),<sup>225</sup> and that the impact on landowners had to be – and had been – taken into account. However, that had had to be balanced against the need for certainty as to deliverability of the alternative route. Network Rail considers that the balance has been struck correctly.

185. NR maintains, therefore, that the Order may properly be confirmed without modification.

***(iv) S04 - Island***

186. No evidence was heard on this at the Inquiry.

***(v) S07 - Broomfields***

187. This proposal has now been withdrawn from the Order.

***(vi) S08 – Stacpool***

188. Mr Crosby was the sole objector who appeared for this crossing.

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<sup>225</sup> It would clearly be greater than ‘Alternative A’ which would move the footpath from Mr Caldwell’s land onto NR land.

189. He did not take issue with NR’s assessment of the proposed diversionary route as suitable and convenient replacement for the users assessed in para 2.16.4 of Ms Tilbrook’s PoE (which identified the level crossing as providing generally east-west route, the proposed replacement maintaining that east-west connectivity). His concern was that it did not provide a suitable and convenient alternative for people, like himself, who parked in the layby to the south of the level crossing, and used (or might in future use) the level crossing to access the nature reserve being developed on the quarrying site(s) to the west of the railway. Mr Crosby was concerned, in particular, as to the need to walk along the B113 to access the bridge which would take users to the eastern side of the railway, and proposed that a new footpath be provided along the western side of the railway corridor (along an existing haul road) to provide an off-road route for those parking in the layby.

190. Mr Kenning explained in XXC that the possibility of a ‘there and back’ route, with PROWs provided on both sides of the railway, had been discussed with the highway authority and was not considered the most appropriate solution here. Ms Tilbrook confirmed in Re-IX that provision of the route suggested by Mr Crosby “*would have served no purpose in linking to the PRWO network*”, and that “*it was considered that making use of the existing right of way to the north was far more logical, and very difficult to justify taking private rights when we would not have been able to explain this alternative as convenient in terms of overall journey people are trying to make.*”

191. NR confirmed, following the hearing, that the whole of the length of the B113 about which Mr Crosby was considered by the NR commissioned road safety auditors, who did not identify any issues.<sup>226</sup>

192. Mr Crosby’s concerns as to the safety of walking along this longer stretch of the B113, including as to widths of the pedestrian facilities alongside the carriageway, were reiterated in his Closings. NR has provided a response to Mr Crosby’s earlier concerns on footway widths and the need (or otherwise) for a separation distance

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<sup>226</sup> NR-INQ-63

between pedestrians and the carriageway by way of a Note: NR-INQ-111, and does not repeat its contents here. It would reiterate, however, that the concerns expressed by Mr Crosby relate to a section of the B113 which is not included in the Order proposals as the alternative route for users of the level crossing. They are not, therefore, matters which undermine the suitability of the replacement route proposed under the Order.

193. NR does not support the modification proposed by Mr Crosby for the reasons explained in evidence and at the ‘Modifications session’.<sup>227</sup> The Order may properly be confirmed without modification.

*(vii) S11 - Leggetts*

194. No evidence was heard on this at the Inquiry

*(viii) S12 (Gooderhams), S13 (Ford Green); S69 (Bacton)*

195. These three crossings were considered together at the inquiry. The design solutions are, to a degree linked, and the closures, taken together, would have the effect of closing 3 of 4 level crossing in relative proximity in this area.

196. The proposal for S12, Gooderhams, is to extinguish the PROW passing over the crossing but to leave the private vehicular rights unaffected. Users of the PROW network would be diverted via to Cow Creek level crossing to the north, via existing footpaths/highway. NR confirmed by way of Note<sup>228</sup> that the closure of S12 and S13, and diversion of those users to Cow Creek, would not result in a change in its ALCRM score (albeit with a slight increase in its FWI). Mr Baker subsequently made a ‘conditional withdrawal’ of his objection in respect of Cow Creek: conditional upon the proposals being implemented as per the Order plans.

197. In respect of S13, users would be diverted either south to Cow Creek level crossing via new PROW created to the west of the railway, connecting with Foopath

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<sup>227</sup> Day 24

<sup>228</sup> NR-INQ-41

014 at S13 and Footpath 18 at Cow Creek, or north towards Bacton via a new PROW created to the east of the railway, connecting with Footpath 14 Bacton at Cow Creek and Footpath 13 Bacton at S69. As Ms Tilbrook explained in evidence, the new PROWs would provide access for users wish to travel east – west across the railway, greater options for pedestrian movement to the north and south, and maintain opportunities for circular walking<sup>229</sup> Mr Kerr confirmed during his evidence<sup>230</sup> that the proposed PROWs were ones which SCC had wanted to see provided.<sup>231</sup>

198. Ms Tilbrook has appraised the various alternative proposals advanced by Mr Baker, and others objecting to the proposals in this location, and explained why she does not consider they would provide the connectivity achieved through the order proposals.<sup>232</sup> Other difficulties with the alternatives advanced were discussed during the Modifications session; not least, that reorganisation of the PROW network not required as a consequence of level crossing closure is simply not within the remit of this Order.<sup>233</sup> Mr Kenning confirmed in evidence<sup>234</sup> that keeping S69 open would not remove the need to provide the new PROW to the eastern side of the railway between S13 and S69.

199. Mr Baker was also concerned about the proposal to create a short length of footpath to the west of Bacton, providing a link from Footpath 14 Bacton to the residential development at the south west of Bacton. This proposal would require the creation of a footbridge over a ditch to enable users to pass onto Pulham Lane: Mr Baker was concerned that this would prevent his using that lane for access with outsize agricultural vehicles. Ms Tilbrook confirmed in evidence that the footbridge would not obstruct the lane (save there would potentially be some restrictions during its construction) by reference to the Order plans,<sup>235</sup> and that, having looked at the LIDAR data for this location, she was “confident” that the footbridge could be put to

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<sup>229</sup> ST PoE para 2.8.27, ST Rebuttal for S12, S13, S69 (NR32-4-5 ) at 2.3.8, XIC Day 14

<sup>230</sup> In response to a question from the Inspector

<sup>231</sup> The proposals were amended between rounds 1 and 2 of consultation in light of feedback received from SCC: ST PoE 2.8.42 – 2.8.48

<sup>232</sup> Tab 7, pages 194, 185 & 199,

<sup>233</sup> Specifically, in relation to Mr Baker’s proposal that the proposed footpath running north from Cow Creek to S13 on the west side of the railway be removed, and a link instead provided by ‘moving’ Footpath 020 Bacton to run alongside the eastern boundary of the railway.

<sup>234</sup> Mr Kenning’s Rebuttal for S12, S13, S69 (NR30-4-6) para 7

<sup>235</sup> Specifically, the works inset on Sheet 21

the side of the land and would not obstruct it.<sup>236</sup> Ms Tilbrook also explained in evidence that the proposed footpath would provide access to/from the housing development within Bacton to the PROW network to the south – reflecting that currently provided by footpath 13 Bacton to the east – and why she did not consider the use of the existing street network to provide a suitable alternative.

200. Mr Baker’s primary concern was, understandably, the impact which creation of the new PROWs would have on land in which he had an interest and/or which he used for the purpose of his farming operations. However, when considering the impacts which would arise from the scheme, it is important to bear in mind that the Order would not be introducing PROWs into a landholding which had previously not been subject to rights of public access. Mr Baker stated in XIC that he took steps in respect of existing PROWs to manage the risk of neosporosis. He accepted in XXC that he could apply the steps he applied to mitigate or manage risks to other sections of footpath. As set out earlier in these Closings, compensation is available under the Order for losses resulting from creation of a new PROW on land not limited to the strip of land over which it passes but also “land held therewith”. This could include losses incurred as a result of managing or mitigating the impact of the PROW on the activities carried out on that land.

201. Against that background, NR maintains that it has properly struck the balance here between finding the right solution for rationalising level crossings in this area, and the interests of the landowners affected by the same.

202. In respect of the S69, objections primarily focussed on the proposed use of Pound Hill underbridge as a crossing point of the railway and a short section of road walking along Broad Road.

203. In terms of Pound Hill underbridge, it is proposed<sup>237</sup> to remove verge from both approaches to the bridge (eastbound side) and install a new footway to provide safe standing area for pedestrians; to cut back vegetation; and to clear vegetation from the road through the bridge and reinforce the pedestrian space at the side of the carriageway.

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<sup>236</sup> In response to Inspector’s questions, Day 14

<sup>237</sup> The proposals are detailed in Section 3.4 of the Design Guide (NR12) pgs 32-33

204. This route is used by pedestrians as present. The level of increased use resulting from the closure of S69 is not such as to warrant more extensive measures being implemented here – specifically, it would not justify the provision of a dedicated new footway and ‘give and take’ arrangements, proposed as part of a consented housing development on Broad Road.<sup>238</sup>

205. The recommendation of the RSA commissioned by SCC (whose auditors were not provided with copies of plans showing NR’s proposals through the underbridge<sup>239</sup>) was the “pedestrian facilities in the vicinity of Pound Hill railway bridge should be improved, within the constraints posed by the arch”<sup>240</sup> Mr Russell’s view was that physical separation of the pedestrian space through the underbridge should be provided, for example by way of kerb.<sup>241</sup> He agreed, in XXC, that his recommendation was ‘not a showstopper’<sup>242</sup> and it could be taken forward. It is clear, therefore, that measures can be put in place to ensure that the underbridge may safely be used by pedestrians diverted from S69.

206. As regards the issue of drainage, this is an existing problem affecting Pound Hill underbridge today (both carriageway and the pedestrian space<sup>243</sup>). Clearly, and regardless of whose land or infrastructure is causing the issue,<sup>244</sup> it will have to be resolved – and indeed, would have to be resolved if the improvement works required as part of the housing development on Broad Road come forward. Ms Tilbrook is confident that the issue can be resolved at detailed design stage.<sup>245</sup> No one has suggested it could not be.

207. In terms of the use of Broad Road, the concerns again related to the facilities available for pedestrians along the carriageway. Ms Tilbrook confirmed in XXC that

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<sup>238</sup> ST PoE 2.8.50. It was stressed in evidence that that development would result in increased vehicular traffic through the bridge, and not just increased pedestrian use – cf the proposals to close the level crossing

<sup>239</sup> Confirmed by Mr Haunton in XXC

<sup>240</sup> Stage 1 RSA for S69, Appendix 4 to Mr Haunton’s Proof, page 226

<sup>241</sup> Para 4.107 of Mr Russell’s PoE

<sup>242</sup> Q “So your first recommendation not a showstopper – it could be taken forward” A “Yes from my perspective it could be taken forward and a scheme submitted”. Day 14.

<sup>243</sup> AK in Re-IX

<sup>244</sup> For the avoidance of doubt, NR does not accept that it is an issue resulting or arising from NR land or infrastructure (see eg NR-INQ87) However, this question simply does not need to be resolved for the purposes of this inquiry.

<sup>245</sup> ST PoE para 2.8.55



whilst there were areas where the verges were overgrown, and could benefit from some cut-back, she was satisfied that there was a sufficient width of verge available to provide appropriate pedestrian facilities: “*I am confident we do not go below 700mm – I think the minimum is 900mm on relatively short section*”.<sup>246</sup> She remained of the view that a ‘formal footway’ was not required.<sup>247</sup> That was in line with the recommendation of the SCC commissioned RSA whose recommendation, again, was pedestrian facilities should be improved. Mr Russell confirmed in XXC that he was not suggesting there needed to be a metalled footway, but that “*if [ST] is saying there is a 900mm path then I would be satisfied*”.

208. NR maintains, therefore, that the Secretary of State can be satisfied that suitable and convenient alternative routes will be provided for users of crossings S12, S13 and 69 and that the Order may properly be made without modification.

***(ix) S16 Gislingham***

209. No evidence was heard on this at the Inquiry.

***(x) S17 Paynes***

210. No evidence was heard on this at the Inquiry

***(xi) S18 Cowpasture Lane***

211. It is proposed to downgrade the rights enjoyed over this crossing from BOAT to bridleway. No evidence was heard on this at the Inquiry.

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<sup>246</sup> XXC in response to questions from SR

<sup>247</sup> In response to questions from MG

*(xii) S21 Abbotts (Mellis)*

212. Private rights only would be extinguished over this crossing (there are no recorded public rights of way at this crossing). No evidence was heard on this crossing at the Inquiry.

*(xiii) S22 Weatherby*

213. The case for and against the closure of S22 Weatherby was canvassed over a number of days at the inquiry. There is no doubt that it is a well-used crossing which is highly valued by those who use it, and the community more widely.

214. It is also, however, one of the 6<sup>th</sup> highest risk passive footpath crossings on the Anglia route. Its FWI – 0.0128 – is 10 times higher than that of the average footpath level crossing.<sup>248</sup> It accounts for 0.4% of the total FWI across the Anglia Route, and would account for 71.1% of the FWI saving within the Order, if approved. There were 4 near misses in less than 6 months during 2017: 1 involving a child.

215. Again, it is important not to be too emotive about these issues. But the risks are real and tangible and cannot be ignored.

216. As set out earlier in these submissions, NR does not pursue this Order on the basis of the ‘risk’ posed at a specific crossing per se. Nor is safety the only – or even the most important – aspect of its strategic case. However, the real and tangible risks which exist at this crossing cannot – and must not – be forgotten amidst the many, and strongly felt, calls for it to be kept open for the community.

217. On that point, a number of objectors have suggested that the crossing is ‘safe enough’ or ‘considered safe’. As set out at above, NR cannot rely on users considering a crossing to be safe; and familiarity can bring its own risks. Nor is there merit in the contention that this is “only” a high-risk crossing (D2) because of the number of people using it.<sup>249</sup> Clearly, the greater the number of people using a crossing, the greater the likelihood that an incident will occur: hence a greater risk and

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<sup>248</sup> Para 3 of Mr Prest’s evidence note on additional information on S22 Weatherby (NR-INQ-70)

<sup>249</sup> As appeared to be being suggested in XXC by MG of AK

a 'higher' ALCRM score.<sup>250</sup> That a crossing is only "high risk" because it is a well-used crossing does not lend weight to the contention that it should therefore be kept open. Far from it being "bizarre" for NR to consider that a high level of use could justify its closure,<sup>251</sup> it would be 'bizarre' to suggest that a high level of use of a crossing – with it corresponding high risk - should be kept open because of that use where there was a suitable and convenient alternative available.

218. NR's position remains that there are no public rights of way over the crossing. Nor could any such rights be acquired by prescription. Its position on the status of the crossing remains unaltered. That position is not, however, repeated here, having been set out at some length in documents already submitted to this inquiry.<sup>252</sup>

219. However, for the purposes of this inquiry, it has been agreed that the proposals should be considered in the same way as crossings which are subject to public rights of way in the Order. That is, if the Secretary of State considers (1) that Network Rail has made out its strategic case; and (2) that the proposed alternative route is suitable and convenient, that the Order may properly be confirmed without modification. If, on the other hand, the Secretary of State is not satisfied either (1) that Network Rail has made out its strategic case or (2) that the proposed alternative route is suitable and convenient, then S22 should be removed from the Order.

220. In terms of the 'case' for closure, NR has set out its position on the strategic case earlier in these submissions. The strategic case applies to each of the crossings within the Order if made out at all: the benefits sought to be achieved through this Order are cumulative, in terms of benefit to the Anglia route as a result of reducing and rationalising its level crossing estate, rather than crossing specific. NR does not, therefore, need to establish a 'strategic case' for closure of each crossing – or to demonstrate how, specifically, the strategic objectives which underpin this Order application, apply in respect of each crossing in isolation.

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<sup>250</sup> As Mr Kenning confirmed to the Inspector on Day [XX] when asked what the effect on risk score would be if higher numbers of people were using a crossing during football season (noting concerns raised that the censuses at S22/S29 had been carried out in the summer, outside the football season)

<sup>251</sup> Forest Heath DC Closing Submissions para 7

<sup>252</sup> Specifically, its Statement on Crossing S22 (NR-INQ-59), Note of Crossing S22 (with appendices) (NR-INQ-59a-o) and Supplementary Note on S22 (NR-INQ-78)

221. NR has acknowledged that the different ‘objectives’ may carry different weight vis a vis the others if looked at one level crossing basis and it does not shy away from the fact that safety is clearly of greater relevance in respect of S22 than (for example) enhancements to the network – although it is . What must not be forgotten, however, are the cumulative benefits sought to be achieved through the multiple closures proposed under this Order.

222. In terms of the balancing act, what needs to be considered is whether the proposed alternative route is suitable and convenient. That test properly reflects, and protects, the interests of users of the crossing. The crossing is not a valued asset in and of itself. It is of value or benefit insofar as it provides a route for people to use to cross the railway as part of a wider journey. If the Secretary of State is satisfied that the proposed alternative route is suitable and convenient, he may therefore be satisfied that the balancing act weighs in favour of closure.

223. Ms Tilbrook has explained, in detail, why she considers the proposed alternative route for users, via the existing highway network, to be suitable and convenient. She has considered, and explained, the various purposes for which journeys over the crossing are made, and the people making those journeys. She has considered, and assessed, the proposed alternative route in terms of additional lengths, gradients and ‘usability’ (widths of footways, street furniture, ability of the route to accommodate the number of users)<sup>253</sup> She has considered, and assessed, what the proposed diversion route would mean in terms of journey times – including those making the journey several times a day.<sup>254</sup> She has fairly acknowledged that the impact on some users will be greater than others – specifically, those living closest to the crossing on the southern side, particularly if accessing schools to the north. She has considered the risk of ‘modal shift’, and explained why she does not consider that is likely to be significant. She has confirmed that she considers the use of the highway network to be suitable for cyclists who might otherwise use the crossing.<sup>255</sup> Her evidence was considered, thorough and compelling. Having considered all of

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<sup>253</sup> For example,

<sup>254</sup> For example, Mrs Khan, who lives in Willow Crescent and whose children attend All Saints Primary School, discussed with Dr Wood in XXC (of ST)

<sup>255</sup> In response to SR’s submission (which is not accepted by NR – see NR-INK-78) that greater PROW may exist over the crossing than footpath rights

those matters, she remains of the view that the proposed diversionary route is suitable and convenient.

224. Others disagree. That is unsurprising. That does not, however, render Ms Tilbrook's assessment any less valid or of any less weight.

225. The question of whether the proposed diversion route is suitable and convenient ultimately comes down to a matter of judgement. That judgment, in turn, will ultimately be one for the Secretary of State.

226. Much has been made during the course of the inquiry, and particularly in relation to S22, as to NR's decision making processes. In particular, it has been suggested (or at least implied) that the fact NR approached S22 on the basis that it did not enjoy any public rights of way tells against the Order being confirmed in this regard.

227. That suggestion is, with respect, misconceived.

228. The proposal before this inquiry, and the one which the Secretary of State must consider, is a proposal to close S22 by means of diversion. It is not a consideration of whether some other solution should be found for closure – or which of a number of different options should be preferred. Nor is it a judicial review of NR's decision-making processes. The Order proposals fall to be considered on their merits as against the relevant 'tests': (1) is the strategic case made out; (2) is the proposed alternative 'suitable and convenient'. That is what must be considered on this application. Not how NR got to this point.

229. Mr Kenning has explained, in any event, that other options have been looked at for this crossing. He explained in his PoE,<sup>256</sup> and in XIC,<sup>257</sup> the options considered and issues arising from the same; in particular with provision of a bridge.<sup>258</sup> It is simply not the case that NR has simply sought to close the crossing on the basis of

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<sup>256</sup> Para 19.4

<sup>257</sup> Day 19

<sup>258</sup> Mr Kenning refers, in para 19.4.2, to a "fully accessible" bridge with "1:20 ramps" Given the users of this crossing – which include people with mobility aids (or mobility scooters) and those with pushchairs – it is difficult to see that it would be suggested NR could – or should – provide a bridge which was not accessible to those users.

there being no PROW across it. Nor was the assessment of suitability and convenience carried out any differently for S22 than for any other crossing in the Order.<sup>259</sup>

230. Nor are the criticisms of NR's consultation on its proposals for S22 justified. Mr Kenning sets out the consultation processes undertaken as part of the Order development in some detail in his Proof. Further details are provided in the Consultation Statement.<sup>260</sup> NR has provided a plan, setting out the indicative area within which the leafletting exercise was undertaken in respect of the round 1 and round 2 consultations.<sup>261</sup> Mr Kenning explained in evidence why a specific consultation event was not undertaken in Newmarket: Bury St Edmunds was considered a more suitable venue, overall, for the crossings subject to the consultation event in this area, and to hold a specific consultation event in respect of a single crossing would not have reflected the nature, and purpose, of the Order scheme. Whilst attendance might have been higher if held in Newmarket, there can be no doubt that NR was well aware of the strength of feeling within the community against a proposal to close this crossing.<sup>262</sup> The suggestion that an alleged deficiency in public consultation somehow invalidated the ALCRM assessment is, with respect, misconceived.<sup>263</sup>

231. For all the reasons explained in its evidence before the inquiry therefore, NR maintains that the Secretary of State may properly confirm the Order without modification.

*(xiv) S23 (Higham) and S24 (Ground Frame)*

232. These crossings are considered together in closings as, although considered disjunctively (and indeed, a little disjointedly!) at inquiry, the crossings share a common locality and the proposed replacement routes developed together.

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<sup>259</sup> Confirmed by ST in XXC, Day XX

<sup>260</sup> NR5

<sup>261</sup> NR-INQ-94

<sup>262</sup> Not least, as it was clearly communicated to NR by FHDC in its consultation response: see NR5

<sup>263</sup> Submission made by Mr Hodson in closings, para

233. S23 is currently closed due to safety concerns albeit without a currently valid TTRO, as explained by Mr Prest<sup>264</sup>. An application has been lodged with SCC and is pending determination.

234. The issues arising in respect of these crossings can be divided into three, broadly geographical, areas: (1) Higham Road east from S23 to the A14 slip road; (2) the interface of the diversionary routes with Coalpit Lane; (3) the proposed easterly diversion routes for S24.

### *Higham Road*

235. SCC and the Ramblers Association are concerned about the proposed use of Higham Road to the point where it reaches the existing bridge over the A14 slip road (no issue is raised with the use of this bridge). SCC consider that if the crossing is to be closed, a field-edge footpath should be provided to the west of footpath 01 Higham, running behind the residential properties on Higham Road.

236. This route and its verges are currently used as linkages between the PROW network in the area.<sup>265</sup> The NR commissioned RSA did not identify any issues with this section of Higham Road. It was Ms Tilbrook's evidence that there is verge available along the full route, although she acknowledged that it may be necessary to cross the road to make use of the opposite verge in some locations.<sup>266</sup> She made clear in her oral evidence that due to the level of traffic flows and speeds in this location, crossing the road to make use of verges was not, in her view, problematic. In XIC,<sup>267</sup> she confirmed that pedestrian facilities along Higham Road could be improved (a recommendation of the SCC commissioned RSA<sup>268</sup>), that verges may benefit from vegetation cut back and mowing and more regular maintenance,<sup>269</sup> and that it would be achieved with the widths available on the ground. She did not consider that a separate facility needed to be provided within the verge. Mr Haunton confirmed, in

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<sup>264</sup> XIC/XXC Day 20. Mr Prest also explained the concerns which led to the crossing being closed in June 2016, and what would need to be done for the crossing to be safely reopened.

<sup>265</sup> ST Rebuttal for S24 (NR) para 2.1.5

<sup>266</sup> ST Rebuttal for S24 para 2.1.6

<sup>267</sup> On Day 17 of the Inquiry

<sup>268</sup> Appendix 1 to Mr Haunton's PoE pg 4 (Obj29/29/W5/AP1 pg 196)

<sup>269</sup> As set out in para 2.1.9 of ST Rebuttal Proof for S23 & S24 (NR32/4/7)

XXC,<sup>270</sup> that the proposals in para 2.1.9 of Ms Tilbrook’s Rebuttal Proof were broadly aligned with the recommendation in the Capita Traffic RSA. Mr Russell confirmed in XXC<sup>271</sup> that he would be content with a re-profiled verge, rather than metalled footway, and acknowledged that if both S23 and S24 were to be closed, then users of Higham Road would have to cross Higham Road at some point.

237. Mr Woodin is concerned with the proposal for road walking in this area and considers, as stated in XXC, that “*an opportunity has been lost*” not to, in effect, divert the southern section of Footpath 001 Higham to run along the eastern side of the field (behind the houses on Higham Road) rather than on the west side at present.

238. Ms Tilbrook explained in evidence why, as the proposed route using Higham Road was considered suitable and convenient – not least, having regard to traffic flow, speeds, the fact this road was already a linkage in the wider PROW network, and the number of users of the crossing being low<sup>272</sup> – there was not considered to be a compelling case to use private land to provide an alternative route.

239. Nor is it as simple as suggesting that this could be something ‘done by agreement’, or that it was effectively a matter of diverting the footpath from one side of the field to the other. As Ms Tilbrook explained, it is likely that some works would be required to bring users out onto Higham Road bridge (with consequent implications for powers in the Order / new plots having to be included within Order limits). The need for something to be done to provide a connection to Higham Road/the overbridge was not understood to be seriously disputed by Mr Woodin in XXC.<sup>273</sup> Mr Woodin also accepted in XXC that in looking at an alternative route, it was necessary to look at other interests, not just the interests of users of the right of way, and acknowledged that the footpath route advocated by SCC would run along the back of residential properties which already had frontages to Higham Road.

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<sup>270</sup> On Day 21 of the Inquiry

<sup>271</sup> Day 17

<sup>272</sup> See eg para 2.1.8 of

<sup>273</sup> Day 21



## *Coalpit Lane*

240. Two issues arose in respect of Coalpit Lane and its interface with the proposed diversionary routes for S23 and S24. The first was the proposed crossing point of the A14 slip road to enable users of the new footway proposed along the southern side of the A14 slip to continue north on the existing overbridge. The second related to the point at which the proposed diversionary route from the east (S24) came out onto Coalpit Lane: specifically, in terms of whether users heading from the east would in fact turn south to the proposed exit point, and issues relating to visibility where the existing Footpath 5 Higham from the west emerges onto Coalpit Lane.

241. The debate as to the proposed crossing point focussed as to where exactly it should be located: close to the junction with Coalpit Lane, which is the NR proposal, or further west along the A14 slip. No party suggested that a safe crossing point could not be provided: it really came down to a question as to where that crossing point should be.<sup>274</sup> Ms Tilbrook's evidence as to why the crossing point should be located close to the junction was clear and compelling. However, the exact details of the crossing point will need to be a matter for detailed design, which Ms Tilbrook would require thought to be given to the cause of any recent accidents – albeit she did not consider a formal collision conflict study. It goes without saying that the junction would, in any event, require the approval of the highways authority.

242. Continuing south on Coalpit Lane, 2 further issues arose. The first related to visibility for users emerging from Footpath 5 Higham from the west. It should be noted, firstly, that this is an existing issue: NR is not creating this new interface with Coalpit Lane. Ms Tilbrook confirmed in her rebuttal proof that visibility had been calculated and met the desirable minimum set out in LTN 2/95 Table 1 – the recommendation made by the SCC commissioned RSA.<sup>275</sup> Mr Russell attempted to suggest during XXC that forward visibility would represent a departure from standards in TD 9/93<sup>276</sup> on the basis that para 1.26 of TD9/93 provided that

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<sup>274</sup> See eg Mr Russell's PoE para 4.27 "this crossing closure could be made acceptable in terms of pedestrian safety were NR to include...."; AH in XXC on Day 21 Q "You're not saying can't be suitable solution at that crossing just needs to be looked at very carefully" A "It's not for road safety audit to recommend need for scheme but to make proposals as safe as possible."

<sup>275</sup> Section 4.1.2 of the RSA for S23 (Appendix 1 to Mr Haunton's PoE)

<sup>276</sup> Tab B to ST's Supplementary Appendices, (NR-INQ-15)

relaxations below desirable minimum for stopping sight distances were not permitted “on the immediate approaches to junctions” and sought to suggest that the interface between footpath 5 and Coalpit Lane should be seen as such a junction. That suggestion is wholly unsustainable on a proper reading of TD 9/93 – not least, as para 1.26 itself defines what is meant by “the immediate approaches to a junction” for the purposes of the Standard. No weight whatsoever can be placed on Mr Russell’s evidence in this regard.

243. A second concern raised by Mr Russell related to the potential use of Coalpit Lane heading north by walkers travelling from the east. That is not part of NR’s proposals: NR has provided for a field edge footpath bringing users south on Coalpit Lane to the point where they can cross and can continue westwards along Footpath 005 Higham. Mr Russell’s concern appeared to be that instead of following the dedicated on field footpath, walkers would effectively force their entry out onto Coalpit Lane and continue north instead. Ms Tilbrook explained in her evidence why she thought that was unlikely – noting in particular the physical features on the ground separating the proposed new footpath from Coalpit Lane. It was indeed a surprising statement from a witness called on behalf of the Ramblers’ Association, given the emphasis the Ramblers have placed on the comparative demerits of the use of rural roads rather than an in-field footpath at other points during this inquiry. It is submitted that Ms Tilbrook’s evidence is clearly to be preferred.

#### *Footpaths east of S24 Higham*

244. No issues were raised with the proposed diversionary routes east of S24 Higham by either SCC or the Ramblers Association. Indeed, it would be surprising if SCC had objected, as the eastern proposals developed by NR at the round 1 public consultation stage were subsequently amended following receipt of a proposal from SCC suggesting a route east via Needles Eye underpass.

245. The objectors, Mairi Johnston and Alistair Fish (as trustees and landowners), objected to two of the proposed new PROW to be provided on their landholding: those marked B-C (the proposed bridleway to the north of Needles Eye underpass running east) and D-E, a PROW running east-west between Footpath 006 Barrow and

Bridleway 018 Barrow.<sup>277</sup> Their concerns arise, in particular, from the impacts they say the PROW will have on their use of the land, specifically in relation to shooting activities which take place, and they query why these routes are “required” to provide a suitable and convenient alternative for the closure of S24.

246. Ms Tilbrook explained, clearly and compellingly, why it was considered that the new PROWs were required to provide a suitable and convenient replacement for users of S24. She highlighted that the proposals in the Order would result in the loss of two N-S routes over the railway, through the closure of both S23 and S24. She identified that whilst Order proposals would allow users of both S23 and S24 to cross the railway via the Coalpit Lane overbridge, this was rather closer to S23 than to S24, and the Needles Eye underpass route was considered the suitable point to provide a north-south connection to the east of S24. It would also preserve the ability for circular walking in the area.

247. It was confirmed that Mr Lloyd was not providing evidence as to whether, from a PROW perspective, that the proposed PROWs were ‘required’ or ‘suitable and convenient’. The challenge in this regard was therefore limited to the assertions made in Mr Lloyd’s proof, which it was acknowledged fell to be read against the background just referred to, and clearly must be seen as driven by the landowners’ concerns as to impact on their land. The only ‘assessment’ of these matters before this inquiry is therefore that of Ms Tilbrook.

248. Ms Tilbrook acknowledged that the Order proposals would result in some degree of improvement or enhancement to the network. However, that is not precluded under s.5(6). Whilst it is not disputed that s.5(6) cannot be used to provide enhancements to the PROW network in and of itself, if an element of improvement or enhancement results from providing a suitable and convenient alternative for users of the existing right of way, that is clearly not precluded. Nor, with respect, is it accepted that the word ‘alternative’ in s.5(6) TWA 1992 opposes any further limitations or restrictions over and above those set out in Annex 2 to the TWA Guidance that *“If an alternative is to be provided, the Secretary of State would wish to be satisfied that it will be a convenient and suitable replacement for existing*

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<sup>277</sup> It was clarified, following delivery of Closing submissions on their behalf, that those are the two routes formally objected to, despite the position having appeared to have changed in closings.

users”. It is not disputed by NR, for example, that a proposed new PROW which served a wholly different purpose to that to be extinguished would not be an ‘alternative’.

249. In reality, what this issue comes down to is whether or not the Secretary of State considers that the Order proposals have struck the right balance. In considering that, he will no doubt wish to have regard to the compensation which would be available to the affected landowners under the Order provisions,<sup>278</sup> and will note that Mr Farthing had to ‘temper’ the language used in his written submissions in light of Mr Lloyd’s oral evidence. (Mr Lloyd fairly acknowledged in XXC that it was of course possible to take measures to manage risks – but drew attention to the restrictions that imposed which the landowner would not otherwise have to deal with).

250. For all the reasons explained in its evidence before the inquiry therefore, NR maintains that the Secretary of State may properly confirm the Order without modification.

*(xv) S25 Cattishall*

251. The main concerns raised in respect of these proposals centred on the proposed closure of the level crossing prior to the provision of a bridge over the railway. As set out in Mr Kenning’s evidence,<sup>279</sup> NR has been working closely with Berkeley Group, who are looking to develop a site to the northwest of the level crossing (‘the Berkeley site’), as part of which it is anticipated that a bridge will be provided over the railway at the location of the level crossing. It is understood that the bridge would be required to be included as part of an application for planning permission for the site, in order to provide connections to the Moreton Hall site (also referred to at inquiry as the ‘Taylor Wimpey’ site) currently under construction to the south of the level crossing, and the wider facilities to the south of the railway. As Mr Kenning made clear in his evidence, nothing in the Order would preclude any

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<sup>278</sup> Mr Billingsley explained in XIC what a claim under those provisions might, in principle, include in a case such as present, highlighting that ‘shooting rights’ are expressly referred to in s.28 of the Highways Act 1980.

<sup>279</sup> PoE para 22.4

development of this area, and Network Rail is not doing anything that would jeopardise the construction of a bridge in the future.<sup>280</sup>

252. The concerns raised by objectors were, essentially, three-fold. Firstly, that closure of the level crossing prior to provision of the bridge was premature. Secondly, that closure of the level crossing was contrary to local and national planning policies. Thirdly, that the proposed alternative route - providing a dedicated footway and cycle route through an underpass to the west (currently closed and not subject to any public rights of way, albeit with a footway/cyclepath built up to it on the southern side) and a new footpath/cycleway from the northern side of to join up with the unnamed road (a dedicated National Cycle Network route) to the north of the crossing – was not suitable and convenient for existing users.

253. As to prematurity, if the Secretary of State is satisfied that NR's strategic case for the Order is made out, and that the proposed alternative route is suitable and convenient, there is no basis for requiring NR to forego, or defer, the strategic benefits which would be achieved through this Order until such time a bridge is provided as part of the proposed development to the north, whose consent and funding rests in the hands of third parties, is brought forward. As Mr Kenning explained in XIC,<sup>281</sup> "*NR simply wishes to progress closure of the level crossing by provision of a diversion without having a dependency on third party developments, not least as these can (sometimes) be put on hold for years (especially in uncertain financial times)*".

254. In this context, it should be borne in mind that the construction of the Moreton Hall development to the south, has the potential to increase the number of users of the crossing as it is built out and occupied – and hence risk. The Inspector will also recall Ms Bradin's view<sup>282</sup> that the crossing should be closed now (albeit, through provision of a bridge by Network Rail). Mr Kenning also outlined, in XIC, the enhancements identified as needed to the line on which this crossing is located, and how continued presence of the crossing on the network would interact with that.

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<sup>280</sup> NR-INV-93

<sup>281</sup> NR-INV-93

<sup>282</sup> For the Ramblers Association

255. Further, it should also be borne in mind that planning permission for development to the north, including planning permission for a bridge, would not, in and of itself, authorise closure of the level crossing, and extinguishment of the PROW across it. It was suggested by the Ramblers in Closings that s.275 TCPA 1990 could be relied upon in that regard. S.257(1) permits a ‘competent authority’ by order to authorise the stopping up or diversion of any footpath, bridleway or restricted byway if they are satisfied “that it is necessary to do so in order to enable development to be carried out: - “. Reliance on this section would therefore depend on the test of “necessity” (as it has been developed by the Courts in the context of applications under s.247 & s.257 TCPA 1990 being met). It is not necessary to consider this further: merely to note that closure of the crossing under s.257 TCPA 1990 it not an automatic, and certain, consequence of planning permission being granted for development to the north.

256. Nor is there merit in the suggestion that if the Order is confirmed, NR may no longer be willing to grant the necessary rights to enable construction of a bridge at this location, or that the financial considerations would be different. Mr Kenning was not authorised to give any ‘commitment’<sup>283</sup> on behalf of NR in this regard,<sup>284</sup> but NR has provided a note<sup>285</sup> to the inquiry on its approach to ‘shared value’, where a developer is seeking rights over railway land to enable development, which makes clear that a ‘price’ has been agreed with Berkeley Group which has taken into account the ‘railway enhancement work’ associated with the closure of the crossing in applying NR’s shared value policy.

257. There is simply no merit in the suggestion, therefore, that if the Order powers are granted, this would jeopardise the bridge solution being brought forward by the developer to the north.

258. As regards planning policy, Mr White, for St Edmundsbury BC, referred to a number of national and local policies in his PoE which he suggested the closure of the level crossing was in conflict with. In XXC, Mr White accepted that when looking at

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<sup>283</sup> It being outside his authority as opposed to his ‘expertise’ – cf para of SCC’s closings

<sup>284</sup> AK in response to questioning by SR, Day [X]

<sup>285</sup> NR-INQ-104

policy compliance/conflict it was necessary to look at the relevant policies for the development in issue, and that you cannot identify a policy which might be made to fit a particular development but have to look at the policy terms and context to see if it does in fact apply to that development. He further agreed that in construing a policy, it was permissible to have regard to the explanatory text – “*sets helpful context*”.<sup>286</sup>

259. However, having agreed with those uncontroversial general principles as to the approach to planning policy, it was apparent when drilling down into the policies relied on in his Proof, that carefully scrutinising whether a policy in fact applied to the development at issue – as opposed to identifying a policy that could be made to fit – was exactly what he had not done.

260. In terms of the NPPF, for example, the 3 paragraphs relied on (paras 34, 37, 61) were, in reality, nothing to do with diversions of PROW. Para 34 was concerned with ‘plans and decision-making’ ensuring that “developments that generate significant movement are located where the need to travel will be minimised and the use of sustainable transport modes can be maximised”. Para 37 provides that “Planning policies should aim for a balance of land uses in their area so that people can be encouraged to minimise journey lengths for employment, shopping, leisure, education and other activities”. Para 61 is situated in section 6 of the NPPF – ‘requiring good design’. The most that Mr White was able to take, in reality, from those policies was to highlight the policy directive of “maximising sustainable forms of transport”, and that “it’s relevant and adds a clear direction as to Government direction and NPPF generally.” That is manifestly insufficient to substantiate the conclusion he advanced in his PoE that the closure of the level crossing would be “contrary” to those provisions of the NPPF.<sup>287</sup>

261. Similarly, when the local plan policies relied on by Mr White was scrutinised it was again clear that they simply did not apply to what is sought under the Order. As appeared to be accepted in XXC, Core Strategy Policy CS11 is not an “allocation policy” for Moreton Hall (CS11(ii)) or the Berkeley site to the north of the railway (CS11(iv)). The Core Strategy sets high levels of growth around Bury St Edmunds. Core Strategy 11 relates to the ‘broad locations’ indicated by the yellow arrows on the

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<sup>286</sup> Mr White in XXC Day [XX]

<sup>287</sup> Mr White PoE para 7

Key Diagram at internal page 11 of the policy (Obj21/29/C10 pg 447). The introduction to the Core Strategy states in terms, at para 1.2,<sup>288</sup> that it “*does not include details of site specific allocations or policies for the management of new development.*” Even if those policies are looked at as policies specific to the Moreton Hall and Berkeley sites it is clear that they are directed at the developer looking to deliver housing (etc) on those sites and are solely concern with what the Council would expect to see the developer of the site bringing forward in order that development to be consented. That is not Network Rail, and these policies are thus simply not applicable when considering what Network Rail is seeking through this Order.

262. Mr White also agreed in XXC that CS8 (‘Strategic Transport Improvements’) was a high level policy tied to an ‘Infrastructure Delivery Plan’.

263. In respect of policies in the Forest Heath and St Edmundsbury Joint Development Management Policies Document, DM2 is a general, ‘good design’ policy.<sup>289</sup> DM3 is about provision of Masterplans and what they are expected to include. They are simply not relevant to the Order proposals. DM44 is directly concerned with rights of way. However, to the extent that it departs from (and goes beyond) the ‘policy’ test set out in the TWA Guidance (as discussed earlier in these Submissions) NR would respectfully submit that it clearly cannot ‘trump’ the same. Not can it require a different, or more onerous, test to be applied in considering the replacement PROW to be provided at Cattishall to that which applies to the other crossings within the Order. In any event, as Mr White accepted in XXC, the question of whether the proposed alternative route is “at least as attractive, safe and convenient for public use” will be a matter of judgment for the decision-maker. Clearly, a highly material consideration in that regard will be that the proposed new route would provide a dedicated footway/cycleway directly linking to a wider cycle/footway provision on the north and south sides of the railway, whereas the current route requires users to cross the railway at grade (with the associated risks and interruption to journey involved), and requires cyclists to dismount in any event, the PROW across the crossing being limited to footpath only.

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<sup>288</sup> Obj21/29/C10 pg 419

<sup>289</sup> A full copy of the policy and its explanatory text is at NR-INQ-91



264. As regards the Masterplans for the two development sites, it is again clear when they are considered that there is no conflict between the Order proposals and planning for those sites. As Mr Kenning made clear in evidence, closure of the level crossing does not preclude a bridge being provided as part of the Berkeley development. It was not seriously suggested by anyone that that additional ‘north-south link’ should be provided by way of the existing level crossing when that development comes forward. The Moreton Hall Masterplan<sup>290</sup> expressly identifies a safeguarded area which would enable the construction of a bridge over the railway in the future. It is also notable that the Moreton Hall landscaping scheme (Fig 9 of Mr White’s PoE) appears to show routes to the north of the site being directed west, not north over the level crossing. This is notably reflected in the application submitted by Taylor Wimpey for an Order under s.247 TCPA 1990 stopping up the length of U6318 Cattishall Lane which plans show the road being stopped up and replaced by a bridleway which does not connect to the level crossing but instead curves to the west.

265. Properly scrutinised, therefore, it is clear that the conflicts alleged with national and local planning policy in Mr White’s PoE simply cannot be substantiated.

266. In terms of suitability and convenience of the proposed route, this appeared to turn, to a large degree, on the comparative convenience for those living on the Moreton Hall development, i.e. immediately to the south of the crossing, with additional concerns as to the lack of the ‘linear route’ running from Green Lane in the north to the employment site and now Academy to the south.

267. NR accepts that occupants (or the future occupants) of the Moreton Hall can be considered as ‘existing users’ of the existing route, for the purpose of considering whether the proposed alternative is suitable and convenient. However, it is important not to lose sight of the wider group of existing users of the crossing noting in particular the significant housing development that is located to the west of the level crossing –for whom the underpass would clearly be a more obvious crossing point – and that the majority of facilities and services are located again in a westerly direction from the level crossing. Ms Tilbrook explained in some detail in her evidence why

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<sup>290</sup> NR-INQ-92

she is satisfied that the proposed route would be suitable and convenient, looking at (i) the wider network, (ii) the purposes for which journeys are likely to be made, (iii) the additional journey lengths/times likely to be involved (noting in XIC that additional distances are likely to be rather less for users from the north heading west towards Bury St Edmunds), and (iv) the dedicated footpath/cycleway being provided.

268. Mr Woodin (for SCC) takes a different view. Ms Bradin has concerns about the suitability of the underpass full stop, but it is noted that the use of the same is promoted by the local planning authority as a proposed n-s connection when the Berkeley development comes forward.

269. Ultimately, the question of whether the proposed route is suitable and convenient will be a matter of judgment for the Secretary of State. NR maintains that he can confidently be satisfied that it will be, and thus that the Order may properly be made without modification.

*(xvi) S27 (Barrell's) and S28 (Grove Farm)*

270. The proposals for these crossings have been developed together, seeking to provide suitable and convenient routes to the existing users displaced by the closure of two level crossings in relatively close proximity. As set out in NR's Note on S27 / S28 (NR-INC-107), as the Order is currently drafted, closure of both S27 and S28 (or indeed, of S27 or S28) is dependent upon the provision of the new PROWs detailed in the 4th column of Part 1 of Schedule 2: including that section of footpath objected to by Mr and Mrs Brace.<sup>291</sup>

271. The proposals are considered together in Ms Tilbrook's PoE.<sup>292</sup> She explained in evidence how the proposed alternative routes provide suitable and convenient routes for existing users by reference to the wider PROW network, together with the implications of the proposals for additional journey lengths and times from various points.<sup>293</sup> The connectivity provided by the routes was not understood to be questioned. The main issues as regards suitability and convenience turned on road

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<sup>291</sup> Obj/48

<sup>292</sup> Section 2.16

<sup>293</sup> XIC Day 21

safety concerns and the ‘experience’ provided by the proposed alternatives as compared with the existing routes.

272. In respect of road safety, the proposed use of Barrell’s Road, Birds Road, and the unnamed road to the east, were subject to RSAs commissioned by both NR and by SCC. The RSA commissioned by NR did not identify any issues.<sup>294</sup> Despite the RSA not having raised any issues, the design proposals for S27, detailed in the Design Guide, suggested a number of proposed works, designed to delineate a safe space for pedestrians over the Barrell’s Road bridge; removing a section of verge on the east and west approaches to the bridge to provide safe standing areas for pedestrians; and cutting back of overgrown hedges on approaches to the bridge.<sup>295</sup>

273. The RSA commissioned by SCC identified concerns due to lack of limited forward visibility over the Barrel’s Road bridge and the bridge on the unnamed road. However, as Mr Haunton confirmed in XXC, in carrying out its RSA, Capita Traffic did not have sight of NR’s proposals in respect of Barrell’s Road bridge – specifically, the proposed designation of safe spaces; information as to the level of users likely to be diverted from the crossings; or ATC data and speeds. Those matters, amongst others, - including the work done to understand forward visibility over Barrell’s Road bridge<sup>296</sup> – have all been considered by Ms Tilbrook in reaching her conclusion that the proposed route is suitable and convenient when considered in the context of the purposes and characteristics of the existing route and wider rural road and footpath network

274. Mr Russell has also considered the potential road safety issues on this route, again with reference to the use of the road bridges. His view was that the crossing closure could be made acceptable in terms of road safety: he just did not agree with the measures proposed by NR in the Design Guide.<sup>297</sup> Having considered Mr Russell’s evidence, Ms Tilbrook agreed, in XIC, that the points raised about removal of the verges on the bridge were fair points, and that there was further work to do at detailed design stage, possible around re-profiling rather than removing the current

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<sup>294</sup> ST PoE para 2.16.37, by reference to para 2.16.31.

<sup>295</sup> NR 12 Para 3.2.1.2 (pg 31)

<sup>296</sup> PoE para 2.16.38 as amended by NR-INQ-96, read with NR-INQ-103

<sup>297</sup> Mr Russell’s PoE para 4.66 (Obj/036/W10/1)

verge in their entirety, to discourage 2 cars from trying to cross. Mr Russell confirmed in *XXC*<sup>298</sup> that the issue was not one of whether a solution could be found, but how it was provided.

275. Mr French raised other concerns relating to road safety for SCC, relating to However, as he accepted in *XXC*, he did not have a road safety background or qualification, nor had the issue had not been raised by the NR or SCC RSAs or by Mr Russell<sup>299</sup>: these were simply his views. With respect, it is submitted that little weight should therefore be given to the views expressed in Mr French's PoE when considering the suitability and convenience of the proposed alternative routes.

276. Mr and Mrs Brace are objecting to the proposal to create a new PROW running within their neighbour's landholding to the west of their property. As Mr Kenning explained in evidence, the location of the footpath was changed, following round 2 consultation, in light of the concerns which had been raised by the directly affected landowner, Mr Le Mar.

277. Mr and Mrs Brace are concerned, in particular, as to the implications for security for their property, and risk of their horses being startled either by walkers using the route, or dogs escaping onto the property. NR has sought to identify and to agree a solution for mitigating those concerns with Mr and Mrs Brace: this is also demonstrated from the documents included within Mrs Braces' Appendices. The proposals advanced by NR have not been agreed to by Mr and Mrs Brace.<sup>300</sup> NR has therefore obtained the agreement of their neighbour, Mr Le Mar, to erect a 1.2m chain link fence within the boundary of his property in order to provide a physical demarcation of the PROW, with a view to addressing the security concerns expressed by Mr and Mrs Brace. As Mrs Brace fairly agreed in *XXC*, it would, in principle, be open for people on Mr Le Mar's land to access their land now, and if someone was determined to enter their property they could.

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<sup>298</sup> Day 22

<sup>299</sup> To the contrary: Mr Russell's evidence, at para 4.56 of his PoE, was that "I am satisfied with most of the proposed diversion route in terms of design for pedestrians" (Obj/036/W10/1)

<sup>300</sup> Mrs Brace confirmed, in *XXC*

278. In considering its proposals for these crossings, NR has had to consider a number of factors, including the impact on landowners. It considers it has struck that balance correctly.

279. As the Order proposals for S27 and S28 are linked, as set out in NR-*INQ-107*, if the Order were modified to remove closure of S27, this would not remove the need to create the proposed new PROW to the west of Mr & Mrs Brace's property. NR has set out its position why it would not support any other modifications to the Order in that Note, and during the Modifications session.

280. NR maintains that the Secretary of State can properly be satisfied that a suitable and convenient alternative will be provided, and the Order confirmed without modification.

*(xvii) S29 – Hawk's End Lane*

281. Taylor Wimpey's objection to this Order has been withdrawn,<sup>301</sup> the parties having reached agreement as to how NR will access the level crossing site. NR has requested modification of the Order to reflect this agreement<sup>302</sup> and has provided a revised Order and Order plans.

*(xviii) S30 – Lords No 29*

282. No evidence was heard on this at the Inquiry.

*(xix) S31 Mutton Hall*

283. Users of the level crossing will be diverted along a new footpath on the southern side of the railway and use an existing road bridge to cross the railway, before continuing north west along the road or turning west along Footpath 20 Wetherden. The RSA commissioned by NR did not identify any road safety issues.

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<sup>301</sup> NR-*INQ-100*

<sup>302</sup> NR-*INQ-101*

Despite the RSA not having raised any issues, measure are proposed at the bridge, detailed in section 3.3 of the Design Guide (NR12) to address any perception of safety issues which users may have.<sup>303</sup>

284. Neither the NR commissioned RSA nor the SCC commissioned RSA identified any issue with the proposed diversion route. Having considered evidence on traffic speeds submitted by NR, Mr Russell was “able to conclude that there was *“sufficient forward visibility for the observed traffic speed on the road to meet current highway design standards”*.”<sup>304</sup> He was not called to give evidence on this crossing.

285. Whilst safety concerns are the reason given by SCC for objecting to this proposal, the only evidence provided is that of Mr French. Mr French confirmed in XXC<sup>305</sup> that he does not have a highway safety or road safety qualification and was giving his “observations as a rights of way manager”. Similarly, Mr Boardman, for the Ramblers Association, confirmed in XXC that he was not giving evidence as a road safety expert, and that the views he expressed were his personal views.

286. With respect, it is submitted that little weight can therefore be given their evidence as to the suitability or convenience of the proposed diversion route. Ms Tilbrook sets out in some detail in her Proof why she considers the route is suitable and convenient. The Secretary of State can conclude with confidence that a suitable and convenient alternative will be provided, and the Order confirmed without modification.

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<sup>303</sup> ST XIC Day 15

<sup>304</sup> OP-INQ-17

<sup>305</sup> Day 15

## **C The Order, planning conditions, and other consequential matters**

287. Happily, substantial agreement has been reached on these matters. The Order itself is now essentially agreed between NR and SCC (save in respect of any changes which would need to be made to reflect SCC's objections to the closure of specific crossings) and SCC no longer pursues the proposed modifications set out in its 'Updated Modifications' (OP-INQ-91). NR has, however, provided a separate Note setting out its response to the modifications so pursued, and why they are not necessary, even though no longer pursued by SCC.

288. NR has provided a copy of the Order revised to reflect the modifications which the Secretary of State is asked to make, together with revised Plans. These include:

- a. Insertion of a new Article 16A, which provides that the highway authority and Network Rail may enter into agreement with respect to various matters (specific examples of what such agreements may include being included in Article 16A(2)). This provision is intended to provide transparency to the side agreement which has been agreed between NR and SCC, and to make clear the matters which may be the subject of such an agreement;
- b. Amendment to the proposals for S01 Sea Wall, altering the length of footpath 13 to be extinguished on the closure of the crossing (ie retention of the southern section of footpath 13);
- c. Removal of crossing S07 from the Order;
- d. Changes to temporary possession / access rights to reflect the agreements reached with landowners in respect of S69 (Bacton United '89 Football Club) and S29 (Taylor Wimpey UK Ltd).

289. The explanations for the proposed modifications have been set out in a number of Notes provided to the inquiry,<sup>306</sup> and are not repeated here.

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<sup>306</sup> NR-INQ-66, NR-INQ-86, NR-INQ-101,

290. To assist the Secretary of State, and at the Inspector's request, NR has also provided information as to the changes that would likely need to be made to Schedule 2 of the Order, and to Order plans, if modifications pursued by other objectors to the Order were to be recommended by the Secretary of State. To be absolutely clear: NR is not asking that those modifications be made. Nor should the information provided (specifically, where it has sought to identify which provisions in para 3.48 of the DfT Guide to TWA Procedures might be engaged in a particular case) be taken as NR suggesting that a particular modification can be made without issue. It will clearly be for the Secretary of State to decide in any particular case whether a modification could be made, consistent with that guidance. All NR has sought to do in the Note provided is to identify which paragraphs it appears to NR might need to be considered in a particular case to assist the Inspector.

291. In terms of NR's position on the proposed modifications, there are only two which NR would positively support if the Secretary of State were minded to make them: namely, the proposed amendments to the alignments of the new PROW to the west of S24 and to the new PROW to the south east of S28 (the change requested by Mr and Mrs Crack). Again, NR wishes to reiterate that any such modifications would again depend on the Secretary of State being satisfied that they could be made, consistent with the guidance in para 3.48 of the TWA Guidance, which is, ultimately, a decision for the Secretary of State and not for Network Rail.

292. Planning conditions were discussed on Day 24 of the Inquiry. Revised conditions were tendered to the inquiry at the conditions session which reflected the position as at that date: specifically, the agreement which had been reached between NR and SCC (or their respective ecologists / ecology consultants) as to an appropriate ecology condition (revised condition 7). NR and SCC were also agreed that the proposed condition 6 – relating to breeding birds – could be removed, on the basis that the measures contained within the condition were to be included in the (revised) Precautionary Method of Working. SCC confirmed that they were content that the proposed condition relating to archeology could be deleted.

293. NR identified at the conditions session the possibility that conditions 3 and 4, relating to landscaping, might not be necessary, given the modest scope of works



comprised in the implementation of the Order. In light of the responses received from at least two of the local planning authorities since the conditions session, NR does not pursue that point, and submits that the Secretary of State may proceed to consider the proposed conditions on the basis that the policy tests are met.

294. The Side Agreement between NR and SCC has been summarised in a Note provided to the inquiry. This addresses concerns raised by SCC (which were echoed by the Ramblers Association) as to the processes which would be followed by NR in exercising the powers conferred by the Order, leading up to the certification stage provided for by Article 16, and as to how SCC would be provided with the necessary information to enable it to make the LEMO which would follow on from closure of the crossings pursuant to the Order with consequent changes to the PROW network. NR's position throughout has been that these are matters which were properly for a separate agreement, rather than needing to be provided for within the Order itself,<sup>307</sup> however, NR has provided a separate note which sets out the extent to which (and how) the provisions of the side agreement have allayed concerns expressed by SCC which were in turn reflected in the modifications pursued in OP-INQ-91. The Secretary of State's decision may properly record that SCC's concerns have been dealt with.

## **D Conclusions**

295. There is a compelling case for this Order. It will deliver material safety benefits. It will deliver material operational efficiencies on the railway. It will allow for future enhancements of the railway network.

296. In order to operate a 21<sup>st</sup> century railway, capable of delivering the growth sought both nationally and within Anglia, NR needs to address the issues presented by level crossings. This is particularly the case within Anglia, which has 771 level crossings, with a total FWI of 2.95, which is 25% of the overall national level crossing risk.<sup>308</sup>

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<sup>307</sup> See, by way of example, Winkworth Sherwood's letters on this matter included within the clip of correspondence at NR-INQ-08

<sup>308</sup> Dr Algaard PoE paras 2.2.1 and 2.3.2

297. The details of the Order scheme has been carefully developed. The Order proposals have been carefully appraised, and subject to extensive consultation.

298. Clearly, there will be impacts arising from the Order, for users of the crossings and for those whose land is subject to new PROW or other exercise of Order powers. However, when considered against the very real strategic benefits which would be achieved by this Order, it is NR's position that any such impacts are very clearly outweighed.

299. All procedural requirements have been met.

300. The Inspector is invited to recommend to the Secretary of State that the Order be made in the form sought, and the Secretary of State is respectfully requested to agree.

JACQUELINE LEAN

25<sup>th</sup> May 2018

Landmark Chambers  
180 Fleet Street  
London, EC4A 2HG

