

**FINAL SUBMISSIONS ON BEHALF OF THE LINCOLNSHIRE COUNTY COUNCIL INTO THE:-**

- (i) The Lincolnshire County Council (A15 Lincoln Eastern Bypass) (Classified Road) (Side Roads) Order 2014; the “SRO”
- (ii) The Lincolnshire County Council (A15 Lincoln Eastern Bypass) Compulsory Purchase Order 2014; the “CPO”.
- (iii) Application in Relation to Proposed Compulsory Purchase of Land Held by the Canal & River Trust.

**Purpose of Final Submissions.**

1. The purpose of this Inquiry has been to hear evidence in respect of the three matters described above, namely the two Orders and the Application. I sought to describe and explain the effect and nature of those three matters in my opening on behalf of the County Council. As I made clear in opening the planning permission which provides the basis for bringing forward those various Orders is not before the Inquiry. Planning permission was granted having complied with all the relevant statutory requirements in July 2013, with the NMU Hawthorn Road provision following in October 2014 in so far as it is before this Inquiry. The grant of those relevant planning permissions then lead to the identification of what had to be brought forward through the use of other powers to provide the means by which that permission could be implemented. What had to be brought forward fell within the two Orders and as we know an objection to the CPO has lead to the third application.

2. Before I turn, therefore to deal with those three matters in closing there are a number of initial points which I would wish to make which are relevant to the overall approach and once stated will not need to be repeated in detail later.
3. This is not an inquiry into the planning permissions but it is an inquiry into the SRO and the CPO along with a consideration of the Application from the Trust. As such the test to apply to the SRO is the one set out in the statute, which we will look at below. From the outset I would however wish to acknowledge that it is inevitable in respect of any set of proposals that some will receive a benefit whereas other will endure a disbenefit. It is not part of the test to avoid all impact altogether and in fact it is inconceivable that such a state of affairs will exist. It is therefore inherent within any set of circumstances that there will be, to use Mr Lakes words although I would not use them myself “winners and losers”. Such a position will arise, as it does here and whilst there should be sympathy with anyone adversely affected that consequence has to be put into the overall balance.
4. That balance, in this case seems to be the almost universal desire, I say almost because I cannot be certain everyone agrees but clearly most do, that not only should the LEB proceed but that it should do so without delay. It is a scheme that is very highly valued by all and the need for it is widely recognised. Lincoln simply cannot progress without it. The consequence of that it that the Council had to get that scheme out of the starting blocks and get it running.
5. The Council would clearly desire to see a dual carriageway scheme provided to do that and no doubt it would also desire that it be brought forward on the same basis as the 2010 scheme was originally intended; full dual, access into Lincoln along Greetwell Road and perhaps even a more enhanced provision at Hawthorn Road, although that should not be assumed due to the consequences of that provision travelling towards Lincoln itself as identified in the evidence.

6. The reality is, even given the huge desire by all to see it provided; it will not come forward unless it is in a form that can be funded. We know when sought from Government that funding was rejected, huge savings had to be made to enable it to be entertained by the DfT and the Council was faced with a very difficult decision to make. It was clearly not made lightly but it had to be made if the scheme was to have any chance of proceeding. When the Council resubmitted its best and final bid arrangements there were no guarantees of success. The Council had pared down the costs to the bone shaving over £40million from the costs and part of that was to meet the DfT aims, which did not include a desire to see the radial routes into Lincoln being improved as part of the LEB proposal to provide a bypass to Lincoln.
7. It may well therefore be correct to refer to winners and losers, as Mr Lake did and it will always be unfortunate for those that do lose out but the effect of that has to be balanced by what should be achieved and what can be achieved within the budget available.
8. In looking therefore at the proper test to apply I would urge that the words of the applicable statutory test are the words to apply and in seeking to do that we should be guided by all the appropriate information. That would include a careful examination of that which objectors claim as well as the findings of the previous inquiry and the reality of the situation.
9. This proposal is desperately needed. The future for Lincoln rests, at least in part upon it, and unfortunately there will be consequences as a result. One of the inevitable consequences which arises from that is the proposals have to be affordable. The fact that there is no more government money. The facts that the Council is already underwriting the costs in part and that planning permission was obtained on that basis are vitally important considerations in the overall assessment.

10. It is easy to dismiss additional costs, especially if they look small in the context of an overall bill, but that is not and cannot be the correct approach. All costs, however large and small have to be met. The money available in the context of this scheme has been identified and Mr Rowley has made it clear that there is no further money available.
11. Finally by way of introduction I would refer to the planning permission. In making these final remarks I rely on what I described in opening in respect of the two relevant planning permissions. I do this not only to remind the Inquiry of what I set out but also to reiterate the significance of it and in so doing to help to understand the purpose of these final remarks.
12. I set it out in the following terms:-

*“14. Collectively the two Orders form the Scheme in respect of which objections and representations are being considered by the Inquiry. There is a very significant matter that arises from what has been set out so far and that is that neither of the Orders actually provides for the Scheme itself. In highway terms there are two ways in which a scheme can be brought forward, the first is through the promotion of a Line Order which gives consent for the line of a road and is usually used by central Government when promoting schemes and the second is through the use of planning powers under the Town and Country Planning Act 1990. The more applicable of those two options in this situation is the use of the planning powers.*

*15. Accordingly, the reason why the Orders do not provide for the Scheme itself is that planning permission exists for the Scheme and there is no application for that before this inquiry. That planning permission was granted for the proposals on the 10<sup>th</sup> June 2013 and that consent provides for the Scheme and identifies the purpose to which all the land to be acquired is to be put. Then on the 6th October 2014 a second planning permission was granted*

*in respect of an additional provision at the Hawthorn Road to provide an enhancement to the NMU provision in that location; that October permission was for a proposal to replace that considered at the previous inquiry and allowed for an NMU bridge on the line of Hawthorn Road. The reason why it was decided to provide that arose initially from the advertisement of the original 2013 Orders and the response that pointed out the level of NMU use that was made of that road in getting to and from the villages and more particularly the schools that existed. A consideration of that by the Council found that the provision was therefore advantageous without incurring any significant disadvantage to the Scheme itself.*

*16. Accordingly, taking into account the original 2013 and also the October 2014 consents, all the required planning permission necessary to provide the Scheme is in place. The Orders before this inquiry that are presented for examination are, in effect to provide the means that the planning permission is to be brought into effect.*

### ***The Planning Permission***

*17. The grant of planning permission is the starting point for the consideration of matters before this Inquiry, but it is important to note that the planning permission, consisting as it does of both the original and the October 2014 consent, itself is not before the Inquiry. Accordingly objections made that ultimately seek to strike at the planning permission are not matters that should require too much consideration at the inquiry. The matters that are before the inquiry are those that relate to the orders listed above which provide the means by which the Scheme can be provided.”*

13. I reiterate that as it demonstrates that the inquiry is in respect of the SRO and CPO only (now that the Application has in effect been removed). Many people

may have difficulties in following that not being familiar with the process and procedures we are concerned with. However that is important as it provides the locus for the consideration of the matter by the Inspector. Mr Lake, given his expertise and experience would have been aware of that and when bringing forward his alternatives I would have expected him to acknowledge that they were in reality alternatives to the planning permission and not the matters before the inquiry.

14. The Inspector described the effect of the position both at the PIM and in the note which followed it. In that note the Inspector indicated at paragraph 15 “that the forthcoming Inquiry is not an investigation into the planning permission which has already been granted for the scheme and neither will it examine the historical events which led to the planning permission being granted”.. The importance of that indication is that we should be concentrating on the SRO and CPO considerations which are limited in their effect.
15. This inquiry has, however provided the opportunity to identify and inform the Inspector of all relevant factors which have a bearing on the acceptability of the Scheme including alternatives to or variations of the published proposals. That has been done most successfully and we can all be confident that all relevant factors are known and that an informed judgment can be reached. That judgment will be reached on the basis of a consideration of the evidence called and relied upon by the various parties and not as a result of any gloss put upon the information by any particular party.
16. As each objection has been presented, I have tried to confine any questions that I have put, except in the case of witnesses bringing some particular expertise to their case or being a representative of a body or group, to clarifying the scope and basis for the objection to ensure that it was properly understood. Usually I have not taken the Inquiry’s time to seek to change the view being put forward by any particular objector but I have attempted to ensure that it has been properly

explained so that it can be understood as well as ensuring that the underlying knowledge of the Objector is known where it is relevant to do so; Cllr Darcel is perhaps an example of that approach in respect of his Councils stated and continuing support for the Scheme as indicated by the formal resolution. I have not however taken Inquiry time in seeking to test the soundness of the reasons for the objection, in the hope, by so doing, of persuading the Inspector to reject it. I have relied on the evidence, including that introduced by way of response to objectors, produced by the County Council to deal with the various matters raised, notwithstanding each particular objection.

17. This is therefore my opportunity to seek to persuade the Inspector to recommend that the Orders be made subject to the minor modifications considered at the inquiry. I do not intend to undertake that task, either by reviewing all the objections comprehensively or by addressing each objection in turn. I hope that it will be more helpful and I know that it will be much shorter, if I seek to identify particular issues which the Inspector will have to consider, which, if resolved in the way in which I submit they should be resolved will lead to the conclusion that a positive recommendation should be made in relation to the applications made.
  
18. Accordingly in these concluding remarks I intend to identify the approach that should govern the assessment of the proposals in respect of the three elements contained within the Orders. Before I turn to those aspects, having set out the fact that the planning permission is not before us for consideration, there are four particular matters that I would wish to speak about by way of preliminary comment, which will mean that I do not need to return to them in the body of these closing comments. The first is to draw particular attention to what this Inquiry has achieved; the second is to draw attention to the Scheme objectives which underlie the grant of planning permission and which need to be given considerable weight when looking at what the objections are; the third is to identify the huge support that exists for the Scheme; the fourth is the position

which arises as there is a previous decision in respect of a very similar application for a very similar proposal in a virtually identical location.

### **Achievements of the Inquiry.**

19. If the outcome of this Inquiry is that the Orders are made it will be to the huge satisfaction, no doubt of the many supporters of the proposals. That is not to say that the inquiry will not have achieved much. The inquiry presents the opportunity to all and anyone taking part the chance to understand the proposals, to question them and to have their say in respect of them. This Inquiry has been conducted in such a manner that no one should go away feeling that they have not been able to put forward the view they hold in a full and complete form.
20. As part of that it allows for the Scheme to be improved, for matters to be clarified and for those elements of clarification to remove concerns and to permit objections to be removed. Given the changes since the last Inquiry, especially the relocation of the NMU bridge to the South that has enabled complaints and criticism raised in respect of the scheme before the first inquiry to be removed. We know, for example that Reepham PC whilst still seeking a full movement bridge accepts the safety of the new proposal. Similarly, others are in the same position. Mr Lake and Mr Walton both confirmed that despite raising matters of objection were content with the arrangements as now disclosed.
21. In fact with the sole exception of the Cherry Willingham PC there has been no representation presented to the Inquiry suggesting that the scheme as promoted by the Council is in any way unsafe. That is an important consideration as it identifies a significant and important distinction between this inquiry and the earlier one. On the last occasion there were a great many voices suggesting the proposed NMU crossing was itself unsafe and the Inspector ultimately accepted that in rejecting the Scheme and making the recommendation she did. On this occasion there is no such glamour. Perhaps that marks an advantage of the



Scheme but it certainly suggests that the inquiry which has enabled that to be revealed has been worthwhile.

22. In respect of the one remaining and somewhat isolated voice about the safety of the proposals it is not at all clear if the PC has had regard to the detail of the scheme in making the suggestion it has. The proposals, for which planning permission have been granted, include an element which insofar as it can be guaranteed will provide the safe crossing of the Hawthorn Road to the east of the Scheme. Those, potentially very few users of the NMU route coming from the north, will arrive at the edge of the Hawthorn Road and will be guided to the east a distance of 100 metres and provided with the safe means to cross. It is a shame that Mrs Scott on behalf of the PC could not confirm that such an arrangement had been taken on board by the authors of the objection but there is no doubt that the arrangement would be safe and acceptable. In fact it might be seen, given the nature and usage of both Hawthorn Road and the NMU at that point, as well as the visibility between the LILO and the crossing point to be a generous provision. It is hard to see how any informed person would question the safety of that arrangement; which perhaps explains why no one else has done so including both Mr Walton and Mr Lake who were both concerned with such matters.

23. Of course, the inquiry has not resolved all issues but it has permitted them to be brought forward for examination where the facts and supporting opinions can be put into a context. An essential part of that context being the importance that underlies the Scheme itself.

### **The Scheme Objectives**

24. In circumstances where only parts of an overall development are brought before an inquiry for examination, the significance underlying the overall approach may be given less weight than they should be. In this case we are only concerned with the the SRO and the CPO but it is essential when looking at those matters that full

weight is given in the overall assessment process to the reason why we are bringing those elements forward.

25. If the planning permission had not been granted then the Council would be leading evidence to describe the need for the proposals, the advantage they offer, the planning policy support and compliance with policy and the huge advantage the Scheme offers. That description would be put into the context where, for example the NPPF requires that applications that meet the development plan should be approved without delay and further the approach is as set out in paragraphs 186 and 187 in the following terms. Local Planning Authorities are required to take a positive approach to foster delivery of sustainable development and there is a requirement on them to seek to approve applications for sustainable development where possible and they should be looking to secure developments that improve the economic, social and environmental conditions in the area.

26. These final remarks, relating as they do to the three identified matters rather than the grant of planning permission, do not require me to review all the planning information but it is vitally important when looking at objections made to the Orders that are before the Inquiry that due weight is given to the significance of the proposals. Set out in the supporting information (including in both the Statement of Reasons and the Statement of Case) are the Objectives underlying the promotion of the LEB as part of the overall LITS strategy. Those Objectives remain even following the withdrawal of the Core Strategy and they will be brought forward through other means. They are:-

- Objective 1: to support the delivery of sustainable economic growth and the Growth Point agenda within the Lincoln Policy Area (the LPA) through the provision of reliable and efficient transport infrastructure;

- Objective 2: to improve the attractiveness and liveability of central Lincoln for residents, workers and visitors by creating a safe, attractive

and accessible environment through the removal of strategic through traffic (particularly HGVs);

- Objective 3: to reduce congestion, carbon emissions, improve air and noise quality within the LPA, especially in the Air Quality Management Area in central Lincoln, by the removal of strategic through traffic (particularly HGVs)

27. The importance and significance arising from meeting those three is clear to see and the basis on which planning permission was granted was that the Scheme contributed significantly to all three.
28. The LEB is essential to the delivery of the local policy and strategy objectives. It will seek to deal with current transport related problems and issues within Lincoln as part of the overall Lincoln Integrated Transport Strategy. Lincoln, as a result of the foresight of the various Councils responsible for the area, is moving efficiently towards a position where it seeks to address known problems and allows for what will be extensive growth into the future. To be able to do that the responsible authorities following extensive consultation with and input from those living and working in the area has devised an approach which utilises a full range of measures from road construction all the way through to traffic restraint through appropriate measures.
29. The role of the LEB in that, as part of the road provision is critical. A major restriction on traffic wishing to travel through Lincoln arises from the lack of options for crossing the river. At present that means that traffic wishing to get from one side to the other has to travel through the middle, including making use of the historic core of the City. By providing the means to bypass that core significant advantages arise. That is, no doubt part of the reason why planning permission has been granted for the Scheme and why there is such a significant level of support for it; an examination of the Committee report at DD30 shows

how little opposition there was to the grant of that consent which is remarkable for a scheme of this sort.

30. The stated reason for granting planning permission as set out on page 70 of that same committee report explains why.

*“The Lincoln Eastern Bypass (LEB) is a major highway scheme which is considered to be of strategic importance and would improve the effectiveness of the transport network in and around Lincoln. ... this revised LEB would help to remove traffic from the centre of Lincoln and therefore reduce congestion and traffic levels within the City to the benefit of local residents and the impacts on the city’s heritage and historic core. The LEB would also have wider environmental and social benefits such as improving air quality in the City, reducing social exclusion by providing better links between communities, providing new and extended cycle and pedestrian facilities as well as creating a more attractive living and working environment within the city. All of those would assist in creating improved investment conditions within the city resulting in future development and regeneration opportunities which would attract activities and people back into the urban area. The LEB is therefore not only an important infrastructure project but would also have wider economic, environmental and social benefits which would help to support future economic success and growth in Lincoln.”*

31. Given that the traffic figures show that the Scheme can provide traffic relief on parts of the network up to a figure of 26% of the current usage it is easy to understand not only why permission was given but the significant advantages that flow from the Scheme.

32. In looking at the objections brought before this Inquiry and in particular those suggestions that have the potential to delay the Scheme, whether they intend to or

not, the importance of the proposals and the potential for it going ahead cannot be ignored.

### **The Support for the Proposals**

33. It is tempting to simply say that the LEB enjoys a virtually unique position. Everyone appearing at the inquiry has expressed the consistent view that they support the LEB, they do not want to see it prevented and in many cases they do not wish to see it delayed. Even the majority of written representations make essentially the same comment; I cannot claim all as the position is not that certain due to the comments in some letters not being clear. What can be said however is that the support for the proposals is extremely extensive, it may be universal and it is consistent. It desires, in just the same way that the Council does to see the proposal moved forward to completion as soon as it can reasonably be done.
34. That support is for an immediate movement forward, for no further delay so that the advantages can be captured as soon as it is possible to do so. West Lindsey DC want that to happen as described by Mr Sturgess, as do the LEP as described by Ms Lidbetter, as well as by local business and the business group. When asked if they would prefer a higher provision in the form of a dual carriageway a very revealing comment was made by all. The suggestion was not a simple yes, which one might have anticipated but rather a very determined expression that we need to get on with what we have got.
35. Even the more limited provision of a single carriageway when compared with a dual carriageway would not shift their resolve to support the proposal and the determination with which they expressed the need for it to move forward rapidly.
36. The only contrary expression was that made in the written comments from the CTC and that too was removed when Mr Jelfs stepped in to represent them at short notice. The CTC comments, consistent with their opposition at the time the

planning application was being considered, suggested that there was a deficiency for cyclists and further the bypass would cut off Lincoln from the villages to the east. That changed with Mr Jelfs presentation. Mr Jelfs when appearing as a replacement witness for CTC expressed satisfaction with the overall proposals and said that he “was happy to see a bypass” coming forward.

37. In fact an examination of the Council’s committee report, an examination of the representations made to this Inquiry as well as the evidence we have heard all tends to point one way. There is significant and consistent support for the bypass. The major land owners, by which I mean Jesus College and the Church Commissioners all support the LEB, the relevant local authorities responsible for the City and the adjacent areas in West Lindsey and North Kesteven support the Scheme as presented as do all the Parish Councils, although Reepham and Cherry Willingham both require the overbridge as opposed to the NMU provision. I still include West Lindsey in that list despite the obvious difficulties that some members of that authority are currently experiencing. I do not need to comment on the position further or try to work out the mental gymnastics involved because the official Council view remains consistent with the resolution passed in 2013. That Council supports the proposals as presented and despite there being opportunities for a different approach to be debated and decided by that authority the position remains as described by Mr Sturgess. The Council supports the proposals; it remains neutral on the Hawthorn Road closure to vehicular traffic given that the Inquiry is available for residents to express their own views. Some individual members are clearly opposed to such closure despite supporting the scheme itself.
38. In addition there is huge support from large sections of the community and the principle is welcomed. Much of that support relates to the Scheme as presented through the planning process, which as I indicated followed the relevant statutory procedures, and the opposition is to specific elements of the proposals. This inquiry provides the opportunity for those matters to be examined.

39. In looking at those matters it is of fundamental importance that we do not lose sight of the fact that planning permission exists and it exists as a reflection of the considerable support there is for the proposals as presented.

**The Previous Inspectors decision.**

40. As part of the Opening Remarks made on behalf of the Council the following comments were made; which I include for ease of reference.

41. I set out :-

*“30. Turning to the second aspect we have the helpful and informative comments following the previous inquiry. An inquiry was held very recently into an earlier set of such Orders. That inquiry sat in February 2014 with the decision being issued on the 9<sup>th</sup> July 2014. That Inspector considered those Orders and found that in most respects; including the availability and acceptability of alternative vehicular routes, they were acceptable but recommended that they were not made for a specific reason.*

42. *Both the Inspectors report and the Secretary of States decision in respect of the Orders then promoted are before the Inquiry. In the Councils view the decision made in respect of those earlier Orders is a material consideration of great weight in the consideration of the acceptability of the new Orders being considered by the new Inquiry.*

43. *The reason for that is set out in considerable detail in the Statement of Reasons at paragraphs 1.1 to 1.21 inclusive and accordingly I do not repeat that here. To put it in a nutshell the reason why it is so significant and has such weight arises from the fact that it is a very recent decision, which was made following a thorough examination of all the relevant considerations in respect of a near identical*

*scheme; albeit with a different solution at Hawthorn Road adopted to meet the previous Inspectors concern. The decision at this Inquiry should, unless there has been a material change to any of the relevant circumstance be the same as was made before subject to the change adopted to meet the Inspectors concern. That is a significant consideration in the context of this inquiry and it affects the scope of this inquiry as there is no requirement to re-examine at length those matters where the inspector expressed a clear view and the position remains the same.*

44. *Accordingly, based on the legal principle of consistency in decision making in the context of planning decisions which arises from case law the various matters taken into account by the previous Inspector leading to that decision would have to be materially different to cause a subsequent Inspector to adopt a different approach. It is well established that a previous appeal decision is capable of being a material consideration and that before departing from a relevant previous decision the decision maker should have regard to the merits of consistency and should give reasons for departing from it; see North Wiltshire District Council V Secretary of State for the Environment [1993] 65 P&CR. In addition in the case of R (Rank) v East Cambridgeshire District Council [2003] JPL 454 the High Court held that a consideration was material if it might make a difference in the way in which the authority dealt with the application. A previous appeal decision was capable of being a material consideration, because it was desirable as a matter of policy that there should be consistency in the appellate process; so too a previous decision of the Secretary of State as informed by an Inspector. It was held to be relevant, not because there was a duty to decide similar cases in the same way, but because consistency was desirable and inconsistency might occur if the authority failed to have regard to a previous decision; see also Oxford City Council v The First Secretary of State and J A Pye (Oxford) Ltd CO/2767/2004.*
45. *The reason I set that out in detail now, which is actually repeating what I set out in the Councils note to the Pre-Inquiry Meeting, and further why I give the Legal Authorities with their references is to enable all present to understand the*



*Councils position on that important matter and to provide the basis for the comment that flows from that.*

*46. In the Councils view this Inquiry is properly entitled to look at all relevant matters in the context of the new Orders as they are new and stand alone Orders published and promoted for a particular purpose. However, if that consideration entails examining matters which were fully considered by the previous Inspector and taken into account in reaching her decision and recommendation then unless there is something which is materially different the decision should be the same and the inquiry should not need to spend time considering that matter again.*

*47. In that context LCC would indicate that the relevant policy remains the same, the proposal is essentially the same in its location and effects and the road network feeding into it has not altered materially so as to change those various conclusions. The only change is the treatment of the Hawthorn Road crossing itself to meet the previous Inspectors concern. The new planning permission provides the scheme which resolves the previous Inspectors concern and in all other respects the position remains the same.”*

31. The Inspector made the position perfectly clear in paragraph 8.64 of her report. The Inspector found that the required alternative routes available for users were perfectly acceptable and met the statutory test in respect of all potential users, including those in motor vehicles. The only reason for making the recommendation she did was due to a concern about safety for users crossing the Hawthorn Road. That could potentially have been remedied by providing a crossing in the same way as is now envisaged which everyone (except perhaps CWPC) accepts as being safe.

32. In any event we are now considering matters at this inquiry and we need to do so on the basis of the objections now being made.

33. I intend dealing with each of the three matters but I will start with the Application as that is the shortest.

### **The Application.**

34. In reality this has been dealt with given the formal withdrawal of the objection from the Canal and Rivers Trust. The fact that the Trust had not objected to the earlier set of Orders considered before the previous Inquiry gave the Council confidence that would be the position but it took a little time to get to that final solution. Accordingly as the Application has been formally identified as being before the Inquiry for consideration and the withdrawal came too late to remove it, it will need to be addressed. That will not need to take too long as all that is required in my submission is to record the facts and to indicate that the matter has been resolved.

### **The SRO.**

35. There is a very significant and important consideration to take into account in respect of the SRO. It is a position which is markedly different to the position as it existed before the previous Inspector but it is a change that assists the Council in the consideration of the proposal and adds significantly to the weight that can be given to the previous Inspectors consideration of the matter.

36. It is the matter I identified at the start of these final remarks. The previous arrangement in respect of the NMU route was, of itself unsafe and objectionable in the eyes of many objectors and it was a view, despite the Council expressing the contrary view, which the Inspector accepted. With the exception of the written representation of the Cherry Willingham PC no such criticism has been made this time. The proposal is widely accepted as being safe and it is accepted that it can be brought forward in an acceptable way. Even the CWPC view should have been

modified given the explanation that a safe crossing point of Hawthorn Road is now included within the proposals.

37. The position is therefore that there is no safety case being made against the proposals which strike at the SRO, or the CPO for that matter, and accordingly the case is limited in what is required to be assessed.

38. Mr Lake, drawing upon his expert knowledge agreed with me that the question before the SRO related to whether a reasonably convenient alternative exists as set out in the relevant statute. I welcome his recognition of that in response to a direct question. It is perhaps unfortunate that such recognition did not find its way into his evidence when given.

39. The SRO is the single most contentious issue before the inquiry and it has generated the most representation, unfortunately it has not all been consistent in its approach. The Hawthorn Road for example is described as being a straight lower trafficked road ideal for elderly or nervous drivers to use to access Lincoln culminating at Bunkers Hill in a 30mph zone, before moving on to use the A road into the City. However, elsewhere it is referred to as a road in need of traffic calming even with its current use to benefit those who live there. It is hard to see how such comments can sit together.

40. What the descriptions demonstrate is not so much the situation that exists now or will exist in the future but rather the fears and concerns honestly and strongly held by those giving evidence. What we must do through the inquiry is to separate those fears and to concentrate on the actual information that is available and on which decisions need to be made. Every person driving the roads will have their own view of them reflective of what they feel and how they drive, including in part whether they enjoy the experience or not. What the assessment should seek to do, which is achieved by following appropriate techniques and applying consistent guidance is to provide a more objective approach to the situation.

Unfortunately, some of the views expressed such as that inferred by Mr Lakes evidence that local residents and local drivers know when a road is unsafe does not allow for an objective view where one set of circumstances can be related to another.

41. That is why there is a clear requirement in carrying out assessments for a set approach to be followed to ensure a consistency of approach and to allow results to be compared. In this case that required approach has been followed, the results are robust and as Mr Smith and Dr Billington have made clear we can have great confidence in the results. It is indeed correct that some of that information is recent and post dates the grant of planning permission.
42. That is not however something that should be criticised but rather applauded as being a willingness on the part of the Council as the scheme promoter to make sure that the information is available, that it is fit for purpose (using Mr Smiths words) and perhaps even more importantly is capable of doing the job that is asked of it. We have the benefit, at this inquiry of expertise being available which enables relevant matters to be tested including the adequacy of the modelling work. It is correct that the modelling work is different to that which was before the previous Inspector and which was relied on by the Council in promoting that scheme and further relied on by the Inspector in accepting that reasonably convenient alternatives exist.
43. I have said previously that the earlier Inspectors decision is a material consideration of great weight and should be followed unless there is information material to the decision being made that says otherwise. Some objectors have alighted upon the fact that additional traffic work was undertaken as an indication that indicates of itself that the situation has changed and a different decision should be reached.

44. That is not the correct approach. What is required when it is claimed that something has changed is to examine the information and decide if there has been a change and then decide if it is material to the decision being made. In the context of the additions to the traffic information which Mr Moore accepted was a refinement of that which previously existed it was not claimed that the situation was materially different in a way that should lead to a different conclusion. On the contrary the information that has been produced adds greater weight to the situation. It adds confidence to what it shows. Not all the modelled numbers and surveyed numbers match, which would be a remarkable position to be in but they are within acceptable limits and what's more the overall effect as demonstrated by a comparison of screen line flows indicates that the right amount of traffic is in the area.
45. I accept therefore that the numbers have been changed since the previous inquiry but that change has been for a reason, namely to ensure that the model built and accepted as being perfectly adequate as a strategic model could also be used acceptably in more local conditions.
46. Given that position we need to examine what the objectors are seeking to suggest. Very helpfully the objectors have presented their case on a combined front with individual witnesses picking up specific roles. Other supporting objectors thereafter have adopted much of what has been said to describe the opposition to the scheme. I will therefore concentrate on the main witnesses called for the objectors in closing and I start with Mr Moore.
47. I welcome the fact that without exception those giving evidence have confirmed a desire to see the LEB come forward and further most are not willing to countenance a delay to the process. The strong desire is however to see the LILO junction arrangement dropped and it replaced by an Alternative 1 type arrangement which provides an all movements bridge; that in reality allows for a return of the current position. The essential requirement is therefore to have

regard to the evidence that is available and judge whether the Orders and in this respect the SRO in particular should be made.

48. As part of that I do not intend addressing any challenge made in respect of the planning permission. I do not have to because that is in place, no one has provided any basis for demonstrating that it has been conducted in a way that does not meet the statutory requirements and it is not before this inquiry. Further time has long since passed that would have allowed for any legal challenge to the permission and that matter is now closed.

49. The essential need therefore is to take the relevant objection and to assess it against the available and relevant information in the context of the test that has to be applied. The Inspector has taken time to explain to the objectors where to concentrate their efforts and to direct their efforts at the relevant matters before the inquiry. Not all have heeded that advice but have rather raised a number of other matters that have had to be dealt with.

50. However before turning to the suggestion made I remind the inquiry about the status of the planning permission and I do by reference to the fact that the planning permission went through a full assessment by the County Planning Authority and further the business case, which included a full assessment of the scheme against the traffic, safety and many other considerations by the Department. We have not reached this stage without the Scheme being fully exposed to the full rigours of a thorough examination by people skilled in the process and whose job it is to find out problems.

51. I do not say that to be disparaging but to put it into a proper context. Both Mr Smith and Dr Billington are highly skilled in such matters and they have, between them the benefit of having spent many years dealing with the project. The

Department for Transport personnel charged with examining the information are similarly well skilled and took the time necessary to consider matters.

52. On behalf of the objectors Mr Moore is skilled in an element of the traffic approach, which he explained fully to the Inquiry. His expertise was related to detailed junction arrangements with a special expertise in signal controlled junctions. That is important when taking into account the evidence that was given and it is not in any way meant to be disparaging of Mr Moore's efforts and the considerable time he will have spent on the matter.
53. The necessary approach is as follows. The purpose of the SRO is to maintain access to all land and property directly affected by the LEB and it makes the necessary changes to the highway network. Necessary in that context means that required to meet those requirements arising from the planning permission granted and not in respect of some other scheme where a new planning permission would be required. The suggestion of a new overbridge is such an example and that would entail a whole new application that would have to go through its own assessment procedure and the matter could not be predetermined as that would amount to a breach of the relevant discretion.
54. The planning permission before this inquiry does not incorporate the over bridge and accordingly the SRO cannot approach it as though it did. The SRO provides the means by which rights are removed and new rights created sufficient to cater for the effects of the LEB. The essential test in looking at the SRO is whether the power given by Section 14 to deal with roads crossing the classified road or Section 125 dealing with private means of access to premises have been dealt with appropriately. The first point to note therefore is that as an objection to the SRO the promotion of the overbridge is not required to comply with the planning permission.

55. In respect of section 14 the order stopping up the highway cannot be made unless *“the Minister is satisfied that another reasonably convenient route is available or will be provided before the highway is stopped up”* and in respect of section 125 the order can only be made if no access is reasonably required or another reasonably convenient route to access where they would wish to go is available or will be available. They are therefore the tests to be applied in seeking to make objections to the SRO.

56. Given that the objections largely relate to Hawthorn Road I will deal with that first and specifically in respect of Mr Moore’s evidence. His evidence can perhaps best be described as a journey. Having established an initial contact with the Council in June 2015, which was somewhat later than the Council had hoped to achieve as they asked to meet much earlier than that, Mr Moore has produced his evidence through a series of documents. His initial proof came out in July and thereafter he produced a rebuttal, written question in early August and finally his reply on the 16<sup>th</sup> August. The procession through the documents shows Mr Moore to be reconsidering his position as the evidence was examined and he took more and more into account. Within those various documents he had raised concerns about the Councils work related to modelling, collection of survey data, strategic modelling, the subsequent application of the information to localised operations factors such as junctions and adjacent links.

57. Mr Moore’s original proof, on the back of his original assessment raised a whole series of suggested deficiencies with the Councils approach, including:-

- the match between the traffic model and observed counts which provided insufficient relationship to be used for localised assessment;
- the potential conflict between the 2015 Hawthorn Road data with other traffic data;



- the inadequacy of the modelling to draw robust conclusions as to the level of traffic relief provided to Hawthorn Road west of LEB and the potential for it to incorrectly forecast increases;
- the high level of queuing on Greetwell Road showing some 300 vehicles with a wait time of 30 minutes (subsequently used by objectors as part of their own case, for example Mr Robinson);
- modelling of Kennel Lane with the junction of A158 and whether it was robust;
- speed surveys on the Carlton Estate and the reliability of them;
- suggesting the SRO be made conditional on to the effect of Wickes roundabout despite that being outside the Scheme envelope.

58. It was apparent that Mr Moore had raised a significant number of issues focusing on specific levels of detail within the model at locations which were important for his case on behalf of the objectors. His approach was to focus on micro level of analysis of individual junction operations which were not relevant to the determination of the effectiveness of the strategic traffic scheme which is what the Council is seeking to achieve on key routes within the City and which the traffic modelling demonstrates is effective; subsequently Mr Moore accepted this to be the case when indicating he did not question the applicability of the model to achieve that task.

59. In the Council's view Mr Moore's approach of micro challenge whilst accepting strategic effectiveness was not an entirely compatible argument. It is not possible to maintain the stance that the model works in one way but is unreliable in another. Given that the Council's work, carried out by Mouchel had been exposed to and had survived the rigours of the DfT case officer examination prior to agreeing to any funding being made available the Council felt confident with its approach. When challenged on the matter, Mr Moore did make a number of relevant points in respect of modelled accuracy in the context of specified local detail as opposed to overall scheme assessment.

60. The effect of that being whether the accuracy of isolated individual turn flows over relatively lightly trafficked roads could be seen as compromising a strategic case for investment. As it transpired those issues were not materially important to the case before the inquiry. Both Mr Moore and Mr Smith agree that modellers do not expect all flows to match perfectly but rather the modelling should seek to simplify and distil the issues into those most critical to the scheme in question.
61. Accordingly as part of the process Mr Smith recognised some weaknesses in the model and so he set about sorting that out. He undertook additional work and rather than sitting back and criticising the results he carried out a Sensitivity Test to examine the effect of that. No doubt if the sensitivity test had proved unsatisfactory he would have been in difficulties. Fortunately for him but unhelpfully for the objectors the results of that test were very helpful. The application of the sensitivity test, which Mr Moore did not refer to in his original evidence but which he accepted dealt with at least some of his difficulties in his later proof, demonstrated a greater similarity with recent established traffic flow observations and most importantly did not result in differing conclusions in respect of the economic or operational performance of the scheme. The Council welcomes Mr Moore's recognition of how that sensitivity test moved matters forward.
62. The subsequent proof supplied by Mr Moore reduced further the matters in dispute as he reacted to the sensitivity test results. He covered the following matters:-
- He did not dispute the wider applicability of the Greater Lincoln Traffic Model and the assessment of the LEB although some junction reservations remained;

- He continued to have concerns about the HR through the Carlton Estate and he questioned some of the traffic surveys suggesting they had been carried out on the wrong day when the queuing varied from the norm;
- He wanted to add in additional development, even though the model had been built to take into account the development contained within the development plan as emerging;
- Flows were inaccurate on the HR and also in other locations on alternative routs which the sensitivity test did not address;
- The manual intercept corrections were questioned on the Wragby Road LEB roundabout but this was subsequently addressed.
- He focused on relief to the west of LEB on HR and questioned the accuracy of the traffic flows but in so doing he relied on the core model flows.

63. Once again these, albeit a shorter list than before, were matters of detailed points of analysis which are suited to traffic impact assessment but are largely unsuitable and not applicable for highway assignment modelling where the focus is of equal importance to model flow accuracy. That is not to say that flow and delay accuracy are not important but the emphasis placed on this must be proportionate.

64. In all cases the model presented is compliant with the DfT guidance on models used to forecast highway schemes and as Mr Smith explained the model performs well and the sensitivity test indicates an even better fit. In circumstances where Mr Moore did make criticism the approach was investigated and the conclusions remained the same and were consistent with the original assessment.

65. In his final document and more particularly when he gave evidence the list of issues was reduced further still. My recollection of the position we reached was as follows:-

- The level of model accuracy was sufficient. Further for city bound traffic modelled flows exceed validation towards Wragby Road. This accorded with the opinion that egress from the Carlton Estate is biased toward the north. It also provided comfort that the impact of additional sites in Cherry Willingham, which were too small or uncertain to be incorporated into the model, could be accounted for;
- The level of queuing at Greetwell Road Roundabout was not markedly different between LCC's method and Mr Moore's assessment despite differences in the measurement of the roundabout.
- The Wragby Road/OCR junction evaluation remains a minor traffic issue with the Council's view being it will work with the scheme but fail against the alternatives to varying degrees.
- The LEB/Wragby Road Junction movement N to S did not result in queuing due to a previous modification to the egress lane and provided some minor matters are dealt with the junction will work.
- The Kennel Lane junction access does not have a capacity issue but platooning of traffic on the A158 may disrupt joining traffic.

66. In short the case has moved from a major challenge to the Council's position to a much lesser effect. In the Council's view although not all matters were resolved those that remain are not considered significant or sufficiently important to impact the validity of the questions before the inquiry prior to implementing the SRO.

67. Mr Moore was also good enough to confirm that his Wickes argument was confined to the AM peak, west bound for part of the peak hour only which also needs to be taken into account as part of the assessment.

68. Mr Walton was called to deal with safety and he had clearly carried out a significant task in compiling a huge amount of data. Unfortunately it had not been carried out on the proper basis which is unfortunate given the fact that Mr Lake

confirmed that he was aware of what was required. The position put shortly is therefore the acceptance by both Mr Walton and Mr Lake that Dr Billington's assessment had been carried out on the proper basis set against the work undertaken by Mr Walton which was not. In the case of any conflict Dr Billington's evidence should be preferred.

69. Further in respect of that information Mr Walton based his approach on the Carlton Estate and for some reasons chose to relate all his measurements on the Hospice some considerable distance away. Once again Dr Billington's evidence should be preferred but I can go further. Mr Walton's assessment does not relate the accidents to usage in a way that can be compared with Dr Billington's figures. Dr Billington's figures show a remarkable similarity between the available alternative routes and the equivalent safety record of them. Also he produced a full and complete assessment (table 3.3) of journey times which have not been challenged at any point of the inquiry and therefore stand as presented. He also describes how the reliability of the network will be improved, again an unchallenged piece of evidence.

70. At the inquiry the essential case being made was that the inconvenience to users was severe and should not be accepted. That is not the test to be applied. What is required is an assessment of whether there are or will be reasonably convenient alternative routes in place prior to closure. The inevitability that some will be inconvenience is built into that test. That is why the test to apply relates to the route itself.

71. Dr Billington demonstrates that it is safe, he demonstrates the nature of the "diversions" in terms of distance and time between various locations and a feel for the overall effect of that emerges for other information. Through Mr Chetwynd's evidence a geometric assessment of the alternative routes gave a clear indication of the similarity between the alternative routes. Mr Smith presents figures for the current and future usage of the roads themselves and Dr Billington

in response to a question from Mr Walton has put a monetary value on the effect of the inconvenience. That is not a figure that would normally be given but it is illuminating as it has been presented.

72. The direct effect on the villages is a negative figure in the region of £1.5m. However with the scheme in place a number of journeys will be made from those same villages which will be beneficial and the figure given is £50m. Those numbers are in the context of an overall benefit of £900 m or so. The simple request being made therefore is to spend £3.12m (taking Alternative 1) to deal with dis-benefits of £1.5m, providing an incremental BCR of 0.5 which DfT would regard as very poor Value for Money.
73. I have no doubt that comes as no comfort to those affected but it does indicate the true effect of the closure of the road as part of the scheme, which will of course still permit movements through the LILO.
74. The position in respect of the school concerns can be stated shortly. Mrs Lidbury appears to have overstated the effect of what is a reducing consideration. I say reducing as the children affected will reduce year on year as they move through the age groups. In any event the numbers likely to fall within the assessment are not as great as once was thought given that some of Mrs Lidbury's figures had to be changed and in the Council's view they reduced further when the location from which they travelled was taken into account. I rely on the figures produced from the official council records which are likely to be more reliable than the anecdotal evidence of others however well intentioned. As part of that I do include the information about sibling entry.
75. I turn to Mr Lake and his assessment of alternatives. His approach was to prove something could be done and in engineering terms I do not believe that the Council has ever suggested that it could not, but the concern was always what the effects and costs are likely to be. Mr Lake has constrained his proposal in a way

that appears to be forced into the planning and highway boundaries. Unfortunately any reasonable assessment of what he proposes demonstrates that he has failed in that respect. The Public Open Space is clearly in need of use adjacent to the bridge and if that is to be avoided then land to the south is required.

76. In addition the costs, albeit indicative and presented on a top down benchmark basis are not reliable when compared with the costs calculated on a consistent basis to the published scheme. It is tempting to say that even Mr Lake's base cost of £534k (Alt 1) or just under a million for Alt 2 are not affordable as there is no money but I would point out more than that.
77. Mr Lakes costings, however well intentioned are simply not believable and I rely on two points to demonstrate it. The difference between his first Alt 1 cost and the second is a mere £60k. That is despite the fact that to provide the second version he accepts he will have to move nearly 20000cubic metres of material and dispose of it albeit somewhere on site. Taking that point alone it would mean that if it has only cost more than £3 per cubic metre to move that material he has used up the cost differential. The second point is that despite accepting in Alt 2 the bridge would have to be wider to accommodate the extended taper his bridge structure costs remains the same which can only be achieved if something has been missed off.
78. The Council has presented the Alt 1 and 2 assessments in sufficient detail to be able to conclude that they will both be very costly, they have difficulties in their own right and they will need land outside the planning permission and the CPO.
79. A significant number of objectors have appeared and presented evidence in respect of Hawthorn Road. Most of them have been clear in their desire to see the planning permission changed and for an overbridge to be incorporated into the Scheme. That will not happen as a consequence of these Orders and the only way it can occur if it is found that the alternatives that exist do not meet the statutory

test and therefore the SRO should not be made. If that were to happen the whole Scheme would be delayed; which I address below.

80. The consequence of the refusal of the SRO is that the Scheme would have to be looked at again. The only basis that decision could be made is that no reasonably convenient alternative exists. The Council's evidence on this is largely accepted. All parties agree that with the Scheme there will be alternative routes. The argument is that when looking at those alternatives they are unsafe, not reasonable to the particular user or not convenient. Those conclusions were originally based on a series of criticisms aimed at the traffic work that had been done. As the inquiry closes and having heard from Mr Lake and others the criticisms are now more related to an approach which says that the local users of the roads know best and greater weight should be given to them.

81. The criticisms are no longer based on questions aimed at the assessments carried out and reported on in evidence by Dr Billington. They are based on a reliance on local knowledge which claims that the alternatives are not acceptable or are safe.

82. The unfortunate thing for the Objectors of course is that the information supplied by the model does not support the objection being made and that is why the essential case being made is that local users know best with their local knowledge. With respect that can not be allowed to determine the outcome of this inquiry.

83. The model construction is explained in simple straight forward terms in the LMVR Addendum Report and the transport assessment made as part of the planning application. The way that it took into account housing as well as other growth, the way that it built the network and then used the information to inform the results is very clear.

84. The results demonstrate that the Scheme is perfectly acceptable. The Scheme will reduce flows on the Hawthorn Road and that will achieve all the advantages that



are identified for those residential roads west of the bypass that should not be carrying any more traffic than is necessary. It will improve the noise and air quality implications, it will reduce severance and it will allow for easier movements. Those advantages do not stop at the junction with Bunkers Hill. The Scheme will reduce traffic flows on Bunkers Hill which will make the journey to exit Hawthorn Road easier and more efficient. It should remove some of the anguish presently experienced at that junction. The flows consistently reduce by up to about 40% west of the Hawthorn Road/Bunkers Hill junction with smaller reductions shown else where. To dismiss those advantages by saying that was bound to happen with the Scheme is hardly justified.

85. When that is compared with the objectors preferred alternative the extra attraction associated with keeping the road open that benefit is actually reduced. Given that part of the concern in the minds of the objectors relates to the horrors associated with that junction such support seems strange. On Hawthorn Road itself east of the bypass the traffic figures once again show the advantage offered by the Scheme. Flows are consistently lower which should make the road more attractive to users on foot, by bicycle or other non motorised means. The advantage offered by the Scheme speaks for itself and the Alternative as promoted does not offer any advantage in that respect.

86. Safety is often raised as a consideration and when faced with the available evidence then the answer which is often given is that the evidence does not comply with the local knowledge. That, at least in part explains why there are set rules to follow and set assessments to make in circumstances such as this. Given that there has been no challenge that the proper assessment in accordance with the applicable standards has been made I can move on from that point to address the concerns raised.

87. It is not claimed that there is no alternative. The plans submitted by Mr Rowley show a variety of means by which access can be maintained. Going east there are

three with one of them using the left in left out arrangement, another Wragby Road and the third the Greetwell Road. Heading west the reverse is available although use of Hawthorn Road would necessitate a short detour to the south. Those routes therefore exist.

88. In order to meet the required test those various options do not have to be the same as being changed, nor do they have to be the same length or the same level of convenience. If they did then no road would ever be capable of being changed. What is required is that they are reasonably convenient. Those words should be given their usual meaning and the judgement should be made on a sensible basis.

89. In the Councils judgment that test has been met here. That view is supported by the relevant emergency services and there is nothing from any of the emergency service raising a criticism of the Scheme or suggesting that their statutory functions are being interfered with, indeed they all express positive support for the scheme. In a similar manner all the bus operators have welcomed the scheme and expressed positive support. It is supported by the three Local Authorities and by the Parish Councils directly affected. It is of course opposed by the objectors and the two Parish Councils.

90. Part of their opposition to the proposals and the basis for saying that the routes are not acceptable is based on the safety concerns. In that respect we are presented with evidence from local residents describing what they see as happening and suggesting that it should be given the greater weight because they see it. Weighed against that is the information that has been gathered over a considerable period of time, the records kept by the Lincolnshire Road Safety Partnership as well as the view of the County Council that is responsible for the roads. It is often difficult to square that particular circle but that has to be done here.

91. The answer is probably in the perception and the reaction to a number of smaller incidents. The Council has carried out the required assessment. The Safety

Partnership has not identified any of these roads as being an accident hot spot and there is nothing about the road geometry, the flows or even the weather that would indicate a particular problem. I can understand the points being raised and I have no doubt that they are presented with the best of intentions reflecting genuinely held views; unfortunately all the objective information supports a different conclusion.

92. I know that it will not supply much consolation but the Council as Highway Authority does and will continue to keep such matters under review and if the Scheme is built if particular problems are found to occur they will fall to be dealt with in the appropriate way.

93. In the Council view these routes are available, are safe to use and do meet the required test necessary for the purposes of Section 14. The SRO should therefore be made as drafted including the modifications.

94. Before turning to the CPO there is a final comment to make about the Alternatives in the context of the SRO. Cost is also a relevant factor. That cannot be dismissed with a wave of the hand and the claim that it is only a little bit more. Those little bit mores all add up and the argument could be too often repeated. The Department has made it perfectly clear that it will not make any further money available and whether the bridge costs the figure set out by the Council in the Alternative assessments or £1M or £500,000 more the simple fact is that the money is not available. All costs have been subject to rigorous scrutiny but in the present climate that is even more closely examined. Costs increases are not something that can be tolerated and accordingly it would have to be demonstrated that the additional cost and any delay were sufficient to merit risking the Scheme to accommodate. Mr Rowley has explained the process he had to go through to reduce the costs down to a level where the Scheme could proceed. He has explained the difficult decisions made. The Scheme is the means by which the

advantages can be secured and the additional cost in the context of what the Scheme achieves cannot be justified.

### **The CPO.**

95. I deal with this last for two reasons. First, because the other two elements when considered alongside the planning permission provide the justification for the acquisition of the land and therefore if they are justified then the land acquisition to provide for them is justified. Secondly because there is remarkably little, if any remaining objection to the CPO. All the Statutory Objectors have removed their objection made largely as a consequence of the Council meeting with or discussing how their concerns could be addressed. That position is not at all surprising given the fact that this inquiry follows so closely on the heels of the earlier inquiry where similar concerns were raised, they were similarly discussed and in many occasions resulted in objections either being withdrawn or at least substantially modified.

96. On this occasion the Council has been similarly proactive and has actually achieved more than it did earlier. At the last inquiry some statutory objectors appeared and were heard. At this inquiry there has been no similar request and we have not heard from any statutory objector at all. If such a position had been reached at an earlier stage prior to the inquiry being arranged there may not have been any need for the inquiry to be held at all. It has however been held and has heard from the various witnesses giving evidence.

97. In opening I sought to identify the relevant tests, I identified the relevant guidance and I tried to provide the answers to the questions that have to be addressed. I made it clear that the CPO provides the means by which the land can be acquired to allow the Scheme to be provided. That CPO has been drawn to reflect the position as shown in the planning permission (I refer to planning permission as

the second permission for the NMU bridge does not change the land acquisition requirements) that has been granted for the Scheme. The planning permission includes all the land required to permit the Scheme to be constructed, including that land required to store soils in the appropriate location and in the right form to permit for appropriate reuse and for all aspects of the construction including that required for matters such as the construction compounds.

98. The CPO therefore allows for the land required for the Scheme. As such it does contain areas of land that although needed to allow the Scheme to proceed and therefore the acquisition is essential are not required permanently into the future. That approach had to be explained to objectors but once it was understood it seems to have been accepted as being a valid and lawful use of the powers and is necessary to guarantee the scheme can proceed; guarantee in that context meaning the removal of any known impediment to the proposals going ahead. Accordingly what I would make clear is that without that land acquisition the Scheme, as shown in the planning permission could not be provided and the planning permission could never be implemented and that is what provides the justification for the compulsory acquisition.

99. I identified in opening, as had the Inspector in his opening remarks that there are principles that apply in relation to the use of compulsory purchase powers and they are set out most clearly in the guidance that is contained within Circular 06/2004. A series of questions are set out in that Circular (see generally paragraphs 16 and following for the detailed contents) but they can be summarised in a fairly short way and I tried to do that in the opening remarks. In closing I can return to those various questions to confirm the answers I set out in the opening.

1. -Is there a compelling case in the public interest to justify the acquisition and the disturbance of the owner's rights? In this case given the overwhelming support for the LEB from a wide range

of stakeholders, which has existed for a significant period of time as demonstrated by the inclusion in the relevant Development Plan documents dating back ten years, the answer is yes. The inquiry has presented the opportunity to confirm the accuracy of that and the various landowners who have made their position known have not objected on that basis.

- a. Does the acquiring authority have a clear idea of how it is intending to use the land acquired? In respect of all the land within the CPO, following the modifications which the Inspector has been asked to consider, the answer is yes. The land acquisition justification relates exactly to the detail of the areas contained within the planning permission granted and as such the position could not be clearer. Once again the history of the development of the Scheme, following as it does from grants of planning consent for a route in 2005 and then the dual carriageway albeit on a different route in 2010 and the ongoing support for the Scheme are relevant in that respect. Once again the landowners have not raised any contrary view. In fact even in respect of an objection based on the “temporary use” there is no suggestion that the land is not required but rather that the means by which the Council should obtain that is through a subsequent agreement rather than through the use of the CPO. The undertakings given to the various parties will achieve what is required, namely access to the land but will also protect landowners as they will retain the land they own subject to a temporary arrangement to enter the land. Given that there is no power to acquire land “temporarily” such an approach is necessary.
  
- b. Can the acquiring authority demonstrate that the resources to carry out the plans within a reasonable timescale exist? Once again this

question is answered positively. Planning permission exists for the Scheme and the detailed design works for it are continuing to fine tune the proposals in order to meet the planning conditions on the permission. Further the Council is keen to progress the matter and has a target commencement date in mind of early next summer, subject to the outcome of this Inquiry, in order to ensure that it falls within the funding arrangement that are in place and meets the provisions of the planning permission. Once again no case is presented to convince the Inspector to take a contrary view.

- c. Are there any impediments which are likely to interfere with the progress of the Scheme? There are no known impediments to the Scheme progressing although there has been a change between the time of the grant of planning permission and this inquiry given the withdrawal of the Core Strategy and the subsequent change to the planning policy position. The policy base supplied by the Core Strategy would have introduced the CIL (community infrastructure levy) base for raising funds in respect of development proposals. The funding for the LEB is part from central Government, part from the Council and part from the development of the large areas within the strategic urban extensions as contributions. The removal of the Core Strategy did interrupt the policy development but it has not interrupted the anticipated funding stream. The planning permission that was granted was considered prior to the development of the Core Strategy and funding was anticipated in accordance with the policy approach that applied at the time. Since then policy has continued to develop and is now at a stage where there is no impediment to the Scheme going forward. Mr Willis explained that in his evidence and the subsequent note written in conjunction with Mr Gutherson explained the policy position and the relationship between CIL and the current section 106

arrangements that are in place in anticipation of CIL. In fact Mr Willis went further to give confidence in the arrangements by identifying that the first phase of the NEQ development had been brought forward and the detail supplied in the response to Cllr Darcel indicated that substantial sums of money will be forthcoming under the arrangements. The letter from the agents linked to the development of that phase of the NEQ indicates that just under £1m is likely to come forward for the LEB. The Council was happy to provide the Inspector with additional confirmation, following an expression of concern that the monies might take some time to roll in to cover the “underwritten” cost of the proposals. That was done through LCC22 and as was explained the Council is and always has been fully aware of the cost implications and over how long a period the payback may take. That in itself is an indication of not only the Council meeting the required test but also the faith the Council has in the overall project. Mr Rowley explained that the Council is intending to underwrite all the necessary costs to provide the Scheme confident that the funding will be in place. As such that clearly meets the Circular guidance as contained within Circular 06/2004 paragraph 20. This requirement is an important consideration in explaining why initial objections raised by the various landowners in respect of the “temporary use “of the land must be rejected and why presumably those affected landowners have subsequently withdrawn the objections. If a different approach was to be adopted then that would build in an impediment to the Scheme as the Council could not guarantee that it would have the land required to carry out the Scheme in accordance with the planning permission.

- d. There are other matters that fall to be considered relating to timescale (paragraph 18 C06/04), the existence of any physical or



legal factors to block the progress of the Scheme (paragraph 22) and the existence of planning permission (paragraph 23). None of these various considerations cast any doubt on the proposal going forward provided the land is available.

100. I do not believe any landowner or occupier actually opposes the LEB and given the existence of the planning permission, which has been through the relevant process prior to the consent being issued, it is clear that they would have been fully aware of it. All statutory objectors seem to accept that the land shown in the CPO arose from the need to provide for the planning permission.
101. The power that exists to acquire land as given by sections 239 and 240 of the Highways Act 1980 to be able to obtain the land that is required for the construction or improvement of the highway or to carry out the works authorised by section 14 or section 129.
102. As such the land within the CPO is required for the purpose of the construction or improvement of a highway or to carry out works authorised by section 14 or 129 of the 1980 Act. The statutory purposes are therefore met.
103. Given that the need for the land to enable the Scheme to proceed is accepted then the relevant provisions within the Highways Act 1980 apply and the use of CPO powers is lawful.
104. It is accepted that the Council has been open and honest in describing the purposes to which the land is needed as is required as part of the justification of the use of compulsory purchase powers. It is further accepted that the Council has described the position by which once the construction activity has been completed some of the land will no longer be required. It is further accepted that the Highways Act 1980 does not provide for the temporary acquisition of land, it only allows for the land to be acquired or not.

105. Accordingly any area of land that is required to enable the construction to take place has to be acquired using the powers that are available, which means the acquisition of the title to the land so that it can be used and retained for that purpose. Once that purpose has ended then the Council would be in a position to offer that land back should the previous owner want it, but that does not alter the fact that the land had to be acquired in the first place to enable the Scheme to proceed.

106. The planning permission which exists for the Scheme provides for the Scheme and ensures that all the land required to permit it to be constructed is identified so that the implications of the Scheme, its construction and subsequent operation were taken into account at the time planning permission was being considered.

107. That leaves me with one comment to make in respect of the CPO. The remedy to a dilemma faced by an affected landowner, with the dilemma being the desire to see the LEB proceed but to do so which reduces the impact as much as possible on the landholding, is to allow the CPO to proceed as drafted but then to take advantage of the undertaking being offered. All affected landowners seem to accept that position with the withdrawal of objections subject to such undertakings being given in appropriate circumstances.

108. In this case it is not appropriate given the limitations of various matters including knowing when such an agreement would start and how and when it would end to try to reach a firm and final agreement on all such matters. The Council has however given an undertaking as to how it will continue into the future but it is an undertaking that requires the CPO to be made to ensure that the Scheme can proceed.

#### **Other Matters.**

109. The only Alternative that I have referred to at any length is Alternative 1. In respect of all the other Alternatives I rely on the assessments made and do not wish to add any further comment.

## **Conclusion**

110. I have tried to set out all relevant matters. The SRO and CPO must be made to enable this much needed scheme to proceed. The Inspectors concerns from before have all been dealt with. The Alternatives are not required but they have enabled it to be demonstrated that the scheme is the correct one. The invitation I make is for the positive recommendation to be made in respect of both Orders and that the Scheme proceed with no further delay.