

## **OPENING REMARKS ON BEHALF OF LINCOLNSHIRE COUNTY COUNCIL.**

### **Introduction.**

1. The Inspector has, as part of the formal opening of the Inquiry, identified the orders that are being considered at this inquiry. Accordingly, in opening I do not need to describe those Orders in detail but rather I will seek to identify the purpose of each element and the statutory powers by reference to which they must be justified so as to assist objectors to direct their objections to the relevant orders and to relevant grounds of objection.
  
2. At the time the Inquiry was arranged there were three such matters identified for consideration; two of them related to Orders and the third arose from an objection made by the Canal and Rivers Trust. Those three matters consisted of the following:-
  - (i) The Lincolnshire County Council (A15 Lincoln Eastern Bypass) (Classified Road) (Side Roads) Order 2013; the “SRO”;
  - (ii) The Lincolnshire County Council (A15 Lincoln Eastern Bypass) Compulsory Purchase Order 2013; the “CPO”;
  - (iii) An application in Relation to the proposed Compulsory Purchase of Land held by The Canal and Rivers Trust.
  
3. The first two matters, namely the SRO and the CPO, with their specific titles are drafted in the appropriate technical language required to meet the provisions of the applicable forms and Statutes. In respect of both orders there are specific technical steps that have to be complied with and specific forms to be followed. The Inspectors request, which is made in relation to all such orders, for confirmation that all necessary statutory procedures and formalities have been complied with is to ensure that the Council has complied with the relevant

requirements. In respect of these orders I respond, on behalf of the Council, by indicating that they have been to the best of our knowledge and belief.

4. The third matter arises from an objection following the publication of the CPO. If the Canal and Rivers Trust had not felt it necessary to object to the acquisition of the land held by them, as was the case in respect of the CPO published in 2013 which was considered at inquiry in early 2014, then that matter would not have arisen for consideration. I can report however that following discussions between the Council and the Trust the matter has been resolved to the satisfaction of both parties. There is therefore no longer any need for the Inquiry to consider that application and in reality the Inquiry is being asked to consider only the SRO and the CPO published to enable the scheme for which planning permission exists to be brought forward. Subject to two considerations I will therefore from this point concentrate on those two Orders.
5. The first of the other considerations is to identify formally that there are no other matters before the Inquiry that need to be considered. At one stage there were objections from the relevant gas and electrical power authorities; consisting of both National Grid and also Western Power Distribution as affected landowners and occupiers. Objections from such bodies, if maintained may well have required a further report to be made to the Energy Secretary as part of the overall assessment. Once again given the withdrawal of both of those parties, as their interests have been protected, there will be no requirement that I am aware of for that matter to be considered separately.
6. The second of the other considerations relates specifically to the crossing of the River Witham. At the Inquiry held in 2014 there was a third order being considered, which related to a Scheme to allow for the new road to cross the River itself. A Bridge Scheme is required under section 106 of the 1980 Highways Act because the route of the road as proposed to be built crosses a navigable river, namely the River Witham. As such there are essential requirements that seek to

ensure that the status of that river and its ability to carry traffic as a navigable river are retained with the scheme in place. In short the space under the new road has to be adequate to cater for the existing usage. That matter was fully considered as part of the 2014 Inquiry and the Inspector indicated that the Bridge Scheme before that Inquiry was acceptable and it was granted consent. There is therefore no equivalent Scheme before this Inquiry as that consent will endure for a period which enables the road proposal to be constructed if the current SRO and CPO's are made. I will not therefore make any further reference to that Scheme other than to note that the requirements arising from Section 107 of the Highways Act 1980 are met and as there is no objection there is no need for the special Parliamentary procedure to be used.

7. At this Inquiry we are therefore concerned only with the two remaining Orders. Given the necessary formal nature of the two Orders and the way they are required to be drafted, they sound complicated and potentially difficult to comprehend. The position can, however be easily understood, and any objection can be properly targeted, if we look at the two orders in the following way.
  
8. 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. That statement of the position cannot be stressed highly enough. The SRO does not enjoy a "life of its own" to carry out any works the Council or for that matter any objector may desire to undertake. It is limited in both its terms and its effect to that which is required to meet the needs of the planning permission granted. The SRO provides the means by which rights are removed and new rights created sufficient to cater for the effects of the LEB, including the re provision of the Hawthorn Road as an NMU pursuant to the planning consent to do that. It would appear, especially given the withdrawal of much if not all of the objections from the Statutory Objectors, that the remaining objections to the Scheme arise in respect of this Order and in particular the

treatment of the Hawthorn Road. That will be considered at the inquiry but in doing so it will have to be examined in the light of the existence of planning permission for the Scheme which I will deal with in more detail below. 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. 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 access is available or will be available.

9. They are therefore the tests to be applied in seeking to make objections to the SRO. In respect of Hawthorn Road, which I mention as that is the issue that has raised most objection the Council’s case summarised to its most succinct is that the test has been complied with. Accordingly there is therefore no reason for the objections which relate to it to be accepted. In addition to that there are also significant advantages of the proposals to close Hawthorn Road to through vehicular traffic when compared with the option of maintaining it. Included within those advantages are matters relating to reduction of traffic and therefore better environmental conditions and also the question of cost. As the evidence makes clear the Scheme had to be reassessed following the Governments spending review, which put an end to any current aspiration for a dual carriageway provision, and cost became a significant consideration. Accordingly every aspect of the Scheme had to be looked at afresh and had to be justified to be included. The Council view, supported by the Department to the extent that the business case was accepted is that the costing is right and the Scheme provision through the SRO is correct.
10. Objectors have mistakenly formed a view that cost was the only consideration. It is correct that it was a most important factor because if the cost had not been

reduced then no LEB type scheme would have been forthcoming at all which would have had dire consequences for both the current conditions in Lincoln and also for future growth ambitions. It was not however the only factor. The existence of reasonably convenient alternatives was also given weight as well as the use of the road itself. The decision to close Hawthorn Road along with the various other decisions taken in respect of the Scheme including changing it from a dual carriageway to a single carriageway and removing the enhanced access arrangements towards Lincoln on the Greetwell Road ensured a much needed scheme could proceed.

11. Although I will say more about the previous Inspectors decision below it should be noted in the context of the approach to the SRO that not only did the previous Inspector apply that test as the correct approach her findings support the conclusion that it has been met. In applying that test the previous Inspector was satisfied that it was met but for the single safety concern she raised about crossing Hawthorn Road. That concern has been remedied by the relocation of the crossing point along with the additional crossing of Hawthorn Road.
  
12. The CPO provides the means by which the land can be acquired to allow the Scheme to be provided. That CPO had been drawn to reflect the position as shown in the planning permission that has been granted for the Scheme, including as it does all aspects of the Scheme including the land required to allow for the storage of spoil and for the construction compounds. 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. Without that land acquisition the Scheme could not proceed and that is what provides the justification. Since the last inquiry the position has been reviewed in the light of further detail that is now available when compared with the earlier position. That has enabled the Council to identify that some land shown in the CPO can be removed and the current state of play is described in Mr Rowley's evidence.

13. The principles that apply in relation to the use of compulsory purchase powers are set out most clearly in the guidance that is contained within Circular 06/2004; although that guidance is being reviewed the published guidance remains extant for the purposes of this inquiry. 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 to help objectors in the following way.

-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.

- 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 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.
- 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, subject to the outcome of this Inquiry, in order to ensure that it falls within the funding arrangement that are in place and apply.

- 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 that has had to be acknowledged with the withdrawal of the Core Strategy. 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 has interrupted 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 explains the policy position and Mr Rowley explains 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
  
- 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.

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 6<sup>th</sup> 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.
18. In order to assist objectors to understand that more completely reference can be made to the current guidance in respect of such matters. The Planning Inspectorate has published the document Notes for the Guidance of Inspectors Holding Inquiries into Orders and Special Roads Schemes, which are intended to guide the approach to the consideration of relevant matters. Although that is advice to Inspectors it is publicly available to ensure that everyone can familiarise themselves with the relevant approach.
19. In opening I would draw attention to two particular elements of that guidance to assist the Inquiry. The first is what it says in respect of the existence of planning permission in the context of a CPO objection (see paragraphs 2.35) and secondly the situation in respect of Alternatives (see paragraph 2.45).
20. The guidance makes it clear that in situations where planning permission has been granted the effect of that will depend on the circumstances that apply. The simple grant of permission is regarded as being no more than an indication that in land use terms the proposal is acceptable. In doing so, however, it does provide the

basis against which decisions in respect of all matters within the SRO and the CPO need to be justified. The guidance continues by indicating the following. In circumstances where permission has been granted to reflect a proposal that has been identified through the Development Plan system and the detail is included in the relevant planning document then questions of need for the proposal are in effect already decided.

21. There are two important considerations which apply in that respect. The first is the historical development of the Scheme including the aspect of alternative options. The second is the fact that we already have a decision of the Secretary of State in respect of similar Orders for this Scheme.
  
22. In this case the history of the development of the LEB is extensive and it is set out in detail in the Statement of Reasons. In essence a route for the LEB, which was endorsed by the relevant Development Plan documents, was granted permission in 2005. That route was not pursued as the need to accommodate further growth arising from the fact that Lincoln was given growth status meant that the line of the bypass would in part be better moved further from the urban edge. The Development Plan documents did not catch up with that movement of the line of the route but sought to protect the original line; which only in part coincided with the line subsequently adopted. The need for such a proposal was not however questioned. In fact the need for and benefits arising from an eastern bypass has been accepted since that time.
  
23. During 2008 public consultation was undertaken into the alignment of the route and following extensive work the route that ultimately was granted planning permission in 2013 was chosen. Accordingly, although that route was not recognised by the Development Plan it was because the development plan was out of date to that extent. In 2010 that route was confirmed following the grant of planning permission for a proposal for a dual carriageway although that proposal had to be shelved for financial reasons following the spending review. In bringing

forward the single carriageway on the same alignment the grant of planning permission confirms the position that has been known about and supported widely since about 2008.

24. There has been no challenge in relation to the need for the Scheme as I understand the position and further no suggestion that the route itself should be changed; in fact it appears to be almost universally agreed that the Scheme should come forward and the alignment is the correct one. There is no alternative before this inquiry suggesting the route should follow a different alignment. Accordingly the planning permission can be accepted and the only question amounts to the promotion of Alternatives not to the alignment but to aspects of it. The Council has taken the view that the sensible approach in looking at objections before this inquiry that suggest some different approach to part of the Scheme is not to consider whether the alternatives being suggested are proper, in that to be proper they need to provide the basis for allowing the planning permission to come forward, but given the time constraints have identified all those matters capable of being treated as alternatives to the proposals. In doing that I would make it clear that there are other matters that have been suggested but they are clearly not capable of being treated as alternatives, for example dualling, which have been identified and which the Council will not comment on.

25. In respect of Alternatives, the normal approach would be that what was being suggested was an alternative to that which is proposed in the planning permission itself. Paragraph 2.45 indicates that the requirement applies where “*an objector (is) intending to submit that the proposed road should follow an alternative route (and that he) should submit sufficient information about the proposed alternative to enable its route to be identified.*”

26. The guidance suggests that Alternatives being brought forward are alternatives to the Scheme being proposed, which in this case would be the bypass that enjoys the planning consent already or to elements of it. In this case the Alternatives

direction has been given and what has emerged are a number of suggestions to address specific matters. Those Alternatives can be considered before the Inquiry and the Council has put together short assessments of them sufficient to meet the required test.

27. In looking at those alternatives all I would seek to make clear in opening, in an attempt to assist objectors, is that the appropriate approach is to be able to conclude that the alternative has sufficient merit to require the Scheme itself to be reassessed in the light of them. That is an important test that will have to be met. Further in looking to meet that test the approach has to be the extent to which the promotion of the alternative arises from the permission that exists. The authority to act to provide the Bridge scheme, to justify the SRO as well as the CPO originates with what is required to meet the needs of the planning permission granted. The legitimacy of the SRO and the CPO arises from the requirements to provide for the Scheme that has planning permission.
28. Accordingly, the test to apply is to see how the alternative that is being brought forward meets the requirements of the planning permission as granted. In respect of the Hawthorn Road that is particularly important. The planning permission which was pursued through the appropriate process and which met all the statutory requirements identified the proposals for Hawthorn Road in full.
29. The committee report into the Scheme refers at paragraph 5 to *“the stopping up and construction of a turning head on the western side of Hawthorn Road where it meets the proposed LEB route. A new entry/exit junction to the LEB would be constructed on the eastern side of Hawthorn Road.”* The Scheme therefore dealt with that specifically and granted planning permission to do that. The alternatives therefore will need to demonstrate how they comply with that planning permission which provides the basis for the SRO and CPO before this inquiry.

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.
31. 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.
32. 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.
33. 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.

34. 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.
  
35. 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.

36. 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.
37. Certain objectors have raised matters that suggest the position has changed and seek therefore for a different decision to be made when compared with the previous Inquiry. The reference to schools is made repeatedly. Unfortunately that is not new given that those opposed to the scheme made their views known at the last inquiry either in a written form or some, such as Mr Snee actually appearing. In any event that does not alter the assessment being made as visitors to the school would have been examined by the previous Inspector as some of the users of the road which is clear from the report issued. Others have suggested that the historical importance of the route was not recognised. Given the nature of the route, which is common and not subject to any particular designation or indication of importance, that matter carries no weight? Perversely if it did then the removal of the vehicular traffic from part would actually support the Councils proposals.
38. There is one matter where the position has changed and that is that the NMU itself has been relocated to the south. Again perversely that actually supports the confirmation of the orders rather than the objector's position. The reason being that not only does it meet the Inspectors concern as supported by the Secretary of State but further the option itself does not seem to have drawn criticism.
39. The previous Inspectors decision found the Councils proposal to be unacceptable on safety grounds. In so doing she relied at least in part on the objections of those residents who described those dangers. Despite the fact that could have been dealt with the proposals were rejected. On this occasion I have not detected any similar

concern about the nature of what is now proposed. It appears to be accepted that the proposals can be regarded as a safe provision which would therefore meet the previous inspectors concern but now the argument has changed.

40. It is no longer a criticism of what is proposed as a part of the Scheme but a criticism aimed at the fact that the road has been closed. The Inspectors previous conclusions in respect of that aspect were clear and she found that the relevant test was met. Nothing has changed in respect of that since that time and what has changed is an improvement to what is proposed to render it safe. A conclusion which seems to be accepted.
41. The final point to mention on the planning permission is that having been through all the relevant statutory procedures and permission having been granted the grant has not been challenged before the Courts and accordingly it exists as shown.
42. Having set that out there are a few matters that I would wish to address, albeit briefly in opening.

### **The Benefits of the Proposals**

43. I can deal with this shortly in opening especially as the position is clearly set out in the documentation starting with the application and it's supporting documents and continues through the various Statements (Reasons and Case) and into the evidence. It was accepted by the previous Inspector and appears to be accepted by most people making representations to the Inquiry, even those seeking some alternative provision.
44. The LEB is essential to the delivery of the local policy and strategic 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 have devised an approach which utilises a full range of measures from road construction all the way through to traffic restraint through appropriate action.

45. 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 of the City 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 shows how little opposition there was to the grant of that consent which is remarkable for a scheme of this sort.
46. 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.”*

47. 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.

48. 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 being prevented from going ahead cannot be ignored.

### **Future Proofing**

49. In opening it would be helpful to make the position clear in respect of what has been termed “future proofing”. That is a convenient shorthand to describe a situation but the use of it has the potential to confuse.

50. The term was used to describe a situation which recognises the continuing ambition to bring forward the LEB as a dual carriageway. Unfortunately reality dictates that will not happen at the present time. The option is therefore to wait until that time arises, which may not be for a long time if ever, or to do the very best we can now within the resources that are available to achieve the undoubted advantage we can. In that regard a 26% reduction in traffic on roads in the City with the Scheme as well as enabling future growth to take place cannot easily be disregarded.

51. Accordingly, the approach has been adopted to provide for the Scheme but to do so in a way that is mindful of the need not to prevent, in the sense of making sure something is not impossible or uneconomic, something further coming forward in the future.
52. In the context of the Scheme that has meant ensuring roundabouts are capable of catering for the traffic, but as has been explained they are needed now to enable a single carriageway link to be provided to cater for the flows anticipated and also to allow for land where necessary. No point of objection has been taken on the future proofing of the scheme and given the basis that it has been carried out and explained in the evidence it is a correct and lawful use of the available powers.

### **Modifications**

53. I add a short comment about modifications just to ensure that the process is understood and to enable any one with anything relevant to add to be able to address it.
54. The Orders before this inquiry are currently presented in draft. The opportunity exists, provided any change does not amount to a fundamental alteration of what is proposed to make changes to those orders to improve them. Improvement in that context means to make them clearer, more precise and perhaps more certain. The Council has noticed that some modifications should be made to some part of the orders and the Department has also indicated where some matters can be improved.
55. Mr Rowley will produce a note of all such changes for consideration at the inquiry and he has referred to some in his evidence already. The note will be kept open throughout the inquiry in case any additional matters arise.

### **Delay and the consequence of it.**

56. The Council would not wish to overemphasise this point but the fact is that we are living in times where money is very strictly controlled. The evidence describes the consequence for the dual carriageway scheme and the essential need to reassess what was proposed and to ensure that it could be brought forward on the basis that could be afforded. The Council has achieved that and the business case has been accepted and funding is available for the Scheme to go forward.
57. An essential advantage of obtaining planning permission for the Scheme in advance of any other step was to make sure that the Scheme could be defined and would receive support before it proceeded to land acquisition and the treatment of the side roads.
58. The intentions in respect of the whole scheme, including Hawthorn Road, were therefore broadcast widely in accordance with the statutory requirements and permission was granted on the basis that it was applied for. I do not believe that despite following all those statutory requirements any objection was made to the Scheme intentions in respect of Hawthorn Road.
59. Putting to one side what I set out above about objections to the SRO needing to be consistent with the permission that authorises and justifies the CPO another factor arises. If the objection now being raised, which should have been raised at the time the permission was being dealt with, has the potential to delay the Scheme and with it the loss of funding that needs to be taken into account.

### **Objections**

60. It is not the function of these opening remarks to seek to address in any detail the objections raised in respect of the Scheme. All I would wish to point out is that the Council will seek to place before the Inquiry all relevant material to allow the

objections to be considered properly and fairly. I have tried to assist in that by setting out the relevant tests to be applied to the orders and to indicate that the planning permission itself is not before this inquiry.

61. The Council will seek to present a fair assessment of any alternative that is suggested, it will seek to produce a response to any live witness who appears and will respond to all the written representations in writing in a form that is intended to help the inquiry.

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11<sup>th</sup> August 2015.