

# **RE THE NETWORK RAIL (SUFFOLK LEVEL CROSSING REDUCTION) ORDER**

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## **CLOSING SUBMISSIONS ON BEHALF OF SUFFOLK COUNTY COUNCIL**

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### **Introduction**

1. The purpose of this public inquiry is to assess Network Rail's application for the Network Rail (Suffolk Level Crossing Reduction) Order (the "Order") to be made under the Transport and Works Act 1992 ("TWA").
2. Through this Order, Network Rail is seeking to close 22 level crossings and to downgrade the status of one level crossing<sup>1</sup> on mainline routes across the county of Suffolk. As drafted, the Order will confer statutory powers on Network Rail, including powers to enable it to remove the crossings, to stop-up and divert multiple public rights of way which currently traverse the crossings to create new rights of way for purposes of providing acceptable alternative routes, and to compulsorily acquire land interests necessary for carrying out the authorised works.

### **Structure of Closing Submissions**

3. Suffolk County Council ("SCC") is the relevant highway authority, streets authority and surveying authority in relation to the local highway networks that will be affected by this Order. SCC is, therefore, responsible for ensuring that all public rights of way included in its network are fit for use and appropriately maintained. It must also ensure that any changes to the rights of way network are reflected in the definitive map and statement, which it must keep up-to-date.<sup>2</sup> SCC is a statutory objector, as defined by

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<sup>1</sup> S18 Cowpasture Lane.

<sup>2</sup> Wildlife and Countryside Act 1981, s53.

rule 2(1) of the Transport and Works (Inquiries Procedure) Rules 2004 and section 11(4) of the TWA.

4. SCC objects to eight of the proposed crossing closures:
  - S01 (Brantham Sea Wall);
  - S02 (Brantham High Bridge);
  - S22 (Weatherby);
  - S23 (Higham);
  - S25 (Cattishall);
  - S27 (Barrells);
  - S31 (Mutton Hall); and,
  - S69 (Bacton).
5. There is a clear overlap in the objections of SCC and West Suffolk Councils in relation to S22 and S25. For ease of reference, and to avoid unnecessary duplication, these closing submissions will, therefore, cross-refer to submissions made on behalf of West Suffolk Councils, making clear any points that are adopted by SCC.

### Background Context

6. SCC is aware that this Order is being pursued by Network Rail simultaneously with two other Transport and Works Act Order (“TWAO”) applications of similar import: the proposed Network Rail (Essex and Others Level Crossing Reduction) Order and the proposed Network Rail (Cambridgeshire Level Crossing Reduction Order). It is understood that all three order applications rely on the same underlying strategic case and documentation, in particular the Anglia CP5 Level Crossing Reduction Strategy (NR18).
7. These three order applications are also the first time that a TWAO has been sought, on such a county-wide scale, for a project which has the sole purpose of closing and downgrading level crossings (with no other proposed “works” to which such closures

are ancillary to).<sup>3</sup> SCC note that the Ramblers have submitted legal submissions to the Inquiry questioning the appropriateness of the use of a TWAO for these purposes. In light of this, SCC submit that the Inspector must be satisfied that the use of a TWAO is lawful and appropriate for the purposes of this Order.

#### Network Rail's "Strategic Case"

8. The Inspector must also determine whether Network Rail has justified the need for this Order, including the need to close individual crossings included in the Order.<sup>4</sup> Network Rail is relying on a three-fold strategic case to justify the general need to rationalise at-grade crossing points on the railway, namely to: (i) improve operational efficiency of the Network; (ii) increase the safety of those using and interacting with the railway; and, (iii) to save costs and ensure the efficient use of public funds.<sup>5</sup>
9. It is clear that Network Rail accepts that those three "strategic benefits" are not enough, simply taken by themselves, to justify the closure of a level crossing, but that a further "balancing exercise" will need to be carried out to factor in other interests in the level crossing, including the local community.<sup>6</sup> Network Rail's position is that an appropriate balance will be struck where a "suitable and convenient" alternative route can be found as a replacement for existing users of the level crossing.<sup>7</sup>
10. The requirement for a "suitable and convenient replacement for existing users" uses the wording set out in Annex 2 (p.105) of the Department for Transport's guidance to the TWA Procedure,<sup>8</sup> which elaborates on the statutory test, set down in section 5(6) of the TWA.<sup>9</sup> SCC has previously made submissions in relation to the interpretation and

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<sup>3</sup> Mr Brunnen, who gave evidence in the position of Network Rail's Head of Level Crossing Strategy, agreed in XX that this is the first time Network Rail has used a TWAO to address the strategic need to close level crossings.

<sup>4</sup> Statement of Matters, matter 1.

<sup>5</sup> Mr Brunen's Proof of Evidence, para 8.24 and as confirmed through XX of Dr Algaard and Mr Kenning.

<sup>6</sup> Dr Algaard and Mr Kenning XX of strategic evidence.

<sup>7</sup> Mr Kenning XX.

<sup>8</sup> *A TWA Guide to Procedures – Guidance on the procedures for obtaining orders under the Transport and Works Act 1992, relating to transport systems, inland waterways and works interfering with rights of navigation* (June 2006). Legal bundle tab 23.

<sup>9</sup> This requires that any TWAO "shall not extinguish any public right of way over land unless the Secretary of State is satisfied – (a) that an alternative right of way has been or will be provided, or (b) that the provision of an alternative right of way is not required."

application of the section 5(6) test (NR-INQ-26 and OP-INQ-24) which will not be unduly repeated here.<sup>10</sup>

11. It is worth noting at the outset of these submissions, that SCC accept, in principle, that level crossings may need to be closed to achieve the three-fold strategic aims and SCC is not raising an “in principle” objection to Network Rail’s “strategic case” or to the Order as a whole. Indeed, SCC supports, in general, better rail services in Suffolk. SCC does, however, note that the Ramblers have made “in principle” objections to the strategic approach taken by Network Rail<sup>11</sup> and requests that the Inspector only recommend that the Order be made if he is satisfied that Network Rail’s strategic case has been adequately justified.

12. In addition, SCC is cognisant that there is a potential for a precedent to be set by this Order and that, if the Secretary of State were to make this Order, then Network Rail may pursue similar projects in other parts of the country.<sup>12</sup> There is even a risk of precedent-setting in Suffolk itself, as this Order only addresses mainline crossings, with branchline level crossings expected to be pursued by a similar strategy at a later stage. It is, therefore, particularly important, bearing in mind the potential precedential effect of this Order, that the Inspector only recommend that the Order should be made if he is satisfied that Network Rail’s strategy is justified and robust, or otherwise makes clear his conclusions on the merits of Network Rail’s underlying strategic case.

### Crossing-specific objections

#### **S01 BRANTHAM SEA WALL**

13. SCC has two key points of objection in relation to S01. Firstly, SCC is not satisfied that the alternative route can be delivered and, particularly, questions whether Network Rail has sufficiently assessed the flood risk and accessibility constraints associated with the proposed diversion. Secondly, SCC objects to what it considers to be an

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<sup>10</sup> The Councils would, however, highlight paragraphs 20-21 of OP-INQ-24 which highlights the limitations of what the section 5(6) test applies to under the TWA.

<sup>11</sup> Closing submissions on behalf of the Ramblers’ Association, paras 3-31.

<sup>12</sup> Indeed, when the point was put to Mr Brunnen in XX that, if the Order is made, it will be of interests to Network Rail on a national scale, his response was that “everyone is interested in this”.

unnecessary extinguishment of the footpath running along the sea wall, which has highly valued views and amenity for users.

*Deliverability concerns*

14. Put shortly, SCC's concerns over the deliverability of the alternative route boil down to a lack of information. Mrs Robinson is the Area Rights of Way Manager for the East of the County and has worked in that role for 16 years. She has considerable experience of maintaining the rights of way network across Suffolk and is, therefore, well-versed in the local conditions on the ground. She has also been on site to review the proposals.<sup>13</sup> When asked if she had enough information to assess if the proposed alternative route will be a suitable and convenient replacement for existing users, her answer was a clear "no".<sup>14</sup>

15. Mrs Robinson raised concerns over the flood risk associated with the stretch of proposed footpath that runs beside the reed bed, including photographic evidence of this part of the field with pools of water that have accumulated.<sup>15</sup> She explained that she was "not sure the root causes have been dealt with" and highlighted that the flooding was not due to the sea coming over, but rather relates to a drainage issue.<sup>16</sup> She was unclear what Network Rail were proposing as a solution and whether raising the level of the path would, for example, solve the issue.

16. Furthermore, Mrs Robinson explained that the stretch of new footpath running alongside the south side of the railway is at a gradient on what is currently uncultivated land that has shown signs of poor growing conditions for grass. The Order proposals suggest an unsurfaced path would be put in place here and she is, therefore, concerned that the new path will be slippery and potentially hazardous. Again, she provided photographic evidence to illustrate her concerns. She noted that any sign off from the Highways Authority that the new route was to its satisfaction would require sufficient

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<sup>13</sup> Mrs Robinson S01 XIC.

<sup>14</sup> Mrs Robinson S01 XIC.

<sup>15</sup> Mrs Robinson's proof of evidence, p. 166.

<sup>16</sup> Mrs Robinson S01 XX.

time for her to properly assess what has been done – including, where necessary, sufficient time to allow the grass to grow.<sup>17</sup>

17. The response of Ms Tilbrook was, essentially, that these were all solvable problems that could be addressed at the detailed design stage.<sup>18</sup> She noted in respect of flooding, there “would need to be a quite detailed scheduled works” but that she was satisfied this could be dealt with at this point.<sup>19</sup> She noted that it would “clearly not be suitable as it stands” in photo 2 of Mrs Robinson’s proof assuming that this reflects the position of the path.
18. In relation to the new route, Network Rail’s case is that “clearly what is on the ground now is not what we are proposing”<sup>20</sup> - there would need to be a further stage of assessments to work up detailed designs.
19. The problem is that the detailed design stage post-dates the Order. It is simply not possible for SCC to accept that a suitable and convenient route can be delivered on the basis of the information before the Inspector. If further details are needed to show that this is possible, then these should have been provided by Network Rail in advance of the Inquiry. Whilst it is true that the detailed design stage usually follows the making of a TWAO, in the specific circumstances of this Order – where Network Rail is *relying* on there being a deliverable suitable and convenient route to the existing use of the level crossing – such details need to be provided. Without them, SCC has had to object to this proposal.
20. Furthermore, it was of serious concern, in the context, that Ms Tilbrook had not even walked the route and, therefore, had a distinct lack of first-hand experience of site conditions.<sup>21</sup> SCC submit that this limits the weight which can be placed on any assurances she has made.<sup>22</sup>

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<sup>17</sup> Mrs Robinson S01 XX.

<sup>18</sup> Ms Tilbrook S01 XX.

<sup>19</sup> Ms Tilbrook S01 XX.

<sup>20</sup> Ms Tilbrook S01 XX and that it was “important to realise that what is on the ground now is not the final [product]”.

<sup>21</sup> Ms Tilbrook S01 XX.

<sup>22</sup> As it does for any of the routes Ms Tilbrook as not walked. As an aside, Ms Tilbrook stated, in response to the question of whether she had walked the route (during cross-examination of S01) that it would have been unreasonable to put every member of the team on the stand. This appears to relate to the fact that the Mott

21. SCC has highlighted a site visit which took place on 14 September 2017 during which SCC Rights of Way Officers accompanied Network Rail bridge engineers. SCC maintains that the engineers were dependent on the Area Rights of Way Officer to estimate where the alternative routes and bridges in question would be. This emphasises the concerning lack of detail that has been provided by Network Rail with regards the proposed alternative route.

22. On the basis of the above submissions, SCC request that the Inspector recommend removal of S01 from the Order.

### *Proposed Extinguishment of the Sea Wall Footpath*

23. Notwithstanding its concerns about deliverability, SCC objects to the proposed extinguishment of the stretch of Footpath 13 running along the sea wall. SCC have requested that the Inspector recommend the retention of this stretch of footpath,<sup>23</sup> regardless of whether the level crossing should be closed. SCC maintains this position on the basis that the extinguishment of this stretch of footpath is not necessary for Network Rail to achieve closure of the level crossing.

24. Mrs Robinson explained that this is a highly valued stretch of footpath with “amazing views”<sup>24</sup> of the salt marsh and surrounding wildlife, noting that even a cul de sac path has value.<sup>25</sup>

25. In response, Network Rail relied on the alleged concerns raised by Natural England. The distinct impression from Network Rail’s written evidence and initial evidence provided at the Inquiry on Days 8 and 9 was that Natural England had raised specific

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MacDonald team has assessed the alternative routes through a mixture of different teams going out on site for various reasons at various times (eg. ecologists and engineers). When asked, during cross-examination of strategic/overview matters, whether one person had “walked the route” of the existing and alternative route at each crossing in order to compare the experience from the perspective of a user, Ms Tilbrook was unable to confirm that this had occurred. SCC submit that if that had been the case, it would have been simpler to have one person called to the stand with direct experience of each crossing.

<sup>23</sup> As marked on the design freeze and order plans in the updated modifications submitted by SCC on 9 May 2018.

<sup>24</sup> Mrs Robinson S01 XIC.

<sup>25</sup> Mrs Robinson’s proof of evidence para 12.

concerns<sup>26</sup> relating to this stretch of footpath and that Network Rail had, as a result of these concerns (and having had regard to Natural England's position as a statutory consultee and potential statutory objector) altered the proposals. No evidence had, however, been provided by Network Rail to support this assertion or to clarify the specifics of Natural England's concern. Nor was it clear why the concern of Natural England had been held to overrule the contrasting concerns raised by SCC.

26. Indeed, it appeared from the evidence heard on Days 8 and 9,<sup>27</sup> that there were two different alleged issues relating to this stretch of footpath:

- (i) The need to manage increased footfall, having regard to the proposed developments in the area, including developments under planning application B/15/00263/FUL/SMC<sup>28</sup> and B/17/00441.<sup>29</sup> This appeared to be a concern raised by Natural England.
- (ii) The potential added disturbance caused to ground nesting birds if there were paths either side of the reed bed area.<sup>30</sup> This appeared to be a concern raised by Mott MacDonald's own team of ecologists.

The Inspector sought clarification on the specifics of these issues and, in particular, evidence of Natural England's concerns.

### ***Natural England's position***

27. Network Rail provided further information during the adjournment of the Inquiry in April 2018. To SCC's surprise, this information made clear that at no stage during the preparation of this Order has Natural England ever raised a concern,<sup>31</sup> or threatened to object, to the proposal at S01. Natural England clarified that there would be no impacts

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<sup>26</sup> Mr Kenning's proof of evidence at 5.4L Ms Tilbrook's proof of evidence at 2.1.24 and see Ms Tilbrook's rebuttal for S01 at 2.2.3.

<sup>27</sup> As well as the written evidence, see Mr Kenning's proof of evidence at 5.4L Ms Tilbrook's proof of evidence at 2.1.24 and see Ms Tilbrook's rebuttal for S01 at 2.2.3.

<sup>28</sup> NR-INQ-16, Referenced documents in Ms Tilbrook's evidence, Tab Q.

<sup>29</sup> NR-INQ-16, Referenced documents in Ms Tilbrook's evidence, Tab R.

<sup>30</sup> Which appears to be marked as predominantly "F1 – Swamp" and "B2.1 – Neutral grassland- unimproved" in Plan 2 of the Constraint Plans in Appendix A of Ms Tilbrook's Rebuttal on S01.

<sup>31</sup> This was agreed to by Ms Tilbrook in XX on S01 on Day 16.



on the relevant designated sites,<sup>32</sup> nor were the proposed closures considered likely to significantly affect the interest features for which the sites were notified.<sup>33</sup> A technical note, dated 9 April 2018<sup>34</sup> clarified that far from Natural England ever “raising” concerns, what actually occurred was a discussion, in passing, during a telecon on 17 November 2016 (which appeared to be focussed on the other proposed TWAOs in Essex and Cambridgeshire), during which Natural England:

“commented that there were happy to see the proposal to extinguish the section of footpath south of the level crossing at Sea Wall as they had concerns that future development, north of the crossing could lead to increased footfall adjacent to the SSSI if the public right of way south of the crossing were to be retained”<sup>35</sup>

28. The development in question, B/15/00263/OUT appears to relate to the same development site as the B/15/00263/FUL/SMC, the decision notice and conditions for which have been provided to the Inquiry.<sup>36</sup>

29. The first thing to note about any potential increased footfall arising from this development is that it is entirely irrelevant to any consideration of this Order. The impacts caused by that development are separate to, and completely unrelated to, Network Rail’s proposals in relation to S01.<sup>37</sup> Any concerns that Natural England have with regards to it are, therefore, irrelevant considerations.

30. Secondly, even leaving aside its irrelevance, it is abundantly clear from the documentation provided that this development has its own planning conditions that are specifically designed to address any impacts caused by the development on the local footpath network and on the protected sites.<sup>38</sup>

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<sup>32</sup> NR-INQ-82, Appendix A (briefing note dated 15.11.2016).

<sup>33</sup> NR-INQ-82, Appendix B (letter dated 10 February 2017).

<sup>34</sup> NR-INQ-83.

<sup>35</sup> NR-INQ-83 p.2.

<sup>36</sup> NR-INQ-16, Referenced documents in Ms Tilbrook’s evidence, Tab Q.

<sup>37</sup> Ms Tilbrook accepted that Natural England’s concerns related to matters outside Network Rail’s proposals during XX on S01 on Day 16.

<sup>38</sup> For example, condition 27, relating to the outline permission, requires work to public footpath 13 (the very footpath in question) prior to commencement of the first residential development and condition 47, relating to the full permission, requires a number of specific “highway works” prior to occupation, including various changes to the footpath and cycleway network. What is more, various conditions demonstrate that the planning authority was alive to the presence of nearby protected sites and relevant ecological receptors (for example, condition 40, 46 and 61).

31. Ms Tilbrook had to accept during cross-examination<sup>39</sup> that Natural England would have been consulted on this planning application. That was the appropriate opportunity for any related concerns of Natural England to be addressed. Not years later in relation to a separate TWAO. Particularly as Network Rail's proposals would, if anything, cause a decrease in footfall on this stretch of footpath through creating a cul-de-sac route.

### *Conclusion on Natural England's position*

32. Network Rail's case in relation to the position of Natural England was inherently flawed and the information provided to SCC in evidence leading up to, and during, the Inquiry was confusing and has led to a significant waste of resource on the part of SCC. During cross-examination, Mr Kenning agreed that the statement in his proof at 5.4 was "false or misleading at best" and could only apologise to the extent that information was misleading or the situation had been misconstrued.<sup>40</sup>

### *Potential "disturbance" to ground-nesting birds*

33. In relation to the issue specified in point (ii) above, there was scant, if any, evidence to support this point. The only evidence appears to be a short statement at the bottom of p. 2-3 of the technical note<sup>41</sup> that there would "clearly be a positive effect on the existing disturbance to birds" if this stretch of footpath was extinguished, referring to a one-line sentence in the Habitats Regulations Assessment, dated 20 January 2017.<sup>42</sup> Ms Tilbrook accepted that there was no further documentary evidence on what the likely effect would be.<sup>43</sup> We do, however, know that if this stretch of footpath were retained (as requested by SCC) there would be no change to the ecological screening reports' conclusions that there would be no likely significant effects caused by the proposals.<sup>44</sup>

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<sup>39</sup> Ms Tilbrook S01 XX Day 16.

<sup>40</sup> Furthermore, Ms Tilbrook agreed that the Inspector should strike out the sentence starting with "Therefore, taking cognisance of the comments from the Natural England who wished to seek to ensure that the footfall to the ecologically sensitive area was managed..." in para 2.1.24 of her proof.

<sup>41</sup> NR-INQ-83.

<sup>42</sup> NR-INQ-82, Appendix E, p. 4 (the second 'p.4' in the document).

<sup>43</sup> Ms Tilbrook S01 XX, Day 16.

<sup>44</sup> NR-INQ-83, bottom of p. 2.

### ***Overall case for retention of the Sea Wall Footpath***

34. SCC submits that on the basis of the evidence now before the Inquiry it is clear that the section of footpath running alongside the Sea Wall should be retained, regardless of whether the level crossing is closed. Mrs Robinson, on behalf of SCC, has explained the significant value of the path to users in the local area which must weigh heavily in favour of retention, particularly bearing in mind her evidence has been tested through cross-examination. By contrast, the only evidence provided by Network Rail are mere assertions that retaining the footpath will cause some (unspecified) disturbance to ground nesting birds (outside the protected areas). The retention of this stretch of footpath is entirely unrelated to, and unnecessary for, Network Rail's proposals at S01.
35. What is more Network Rail has now confirmed that Natural England would not object to S01 if this stretch of footpath were to be retained.<sup>45</sup> This confirmation is documented in NR-INQ-108 by way of an e-mail, written by a legal adviser at Natural England, dated 24 April 2018. Pertinently, that e-mail notes the following:
- (i) that "closure of the level crossing and footpath section shown in blue to the north of the railway line will reduce recreational disturbance from current levels..."; and,
  - (ii) that "the proposed housing development at Brantham (B/15/002623/FUL) secured recreational disturbance mitigation as part of the scheme design based on the current access situation (i.e. with the whole blue section and level crossing remaining open).

These are both points that were made by SCC and put to the Network Rail witnesses in cross-examination. Again, SCC emphasises that considerable time has been wasted at this Inquiry trying to boil down what exactly Network Rail's case was. And when it was boiled down, it appeared misleading at best.

### **S02 BRANTHAM HIGH BRIDGE**

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<sup>45</sup> Confirmed by Counsel for Network Rail on Day 22.

36. SCC also object to the closure of S02 due to concerns relating to the deliverability of the alternative route. More specifically, SCC are concerned about evidence of ground instability and soil erosion in the location where the proposed new stretch of footpath will run alongside the eastern side of the railway line and are not in favour of the additional stretch of footpath requiring walkers to navigate a cross-fall along the southern side of the field east of the railway line.
37. Mrs Robinson again gave evidence that there was insufficient information to properly assess whether the new route could be delivered. In relation to the cross-fall, she was unclear as to where exactly the path would run on the slope, explained how walking up a slope on a cross-fall would be “awkward to walk” and SCC “wouldn’t put a path on a side slope” in this way.<sup>46</sup>
38. In relation to her concerns over ground instability, Mrs Robinson illustrated using photographs that she had taken that there were demonstrable changes of level between two fences currently on site and erosion indicated at the edge, as well as evidence of rabbit burrows.<sup>47</sup>
39. Overall, she made clear, during cross-examination, that her concerns related to a lack of certainty over “where the route is to go and the land over which it is proposed to go”. She recognised that there would be a detailed design stage after the Order is made but highlighted that the stability issues are already known to SCC and the landowner, noting that it did not seem prudent to propose a route where such stability issues exist and suggesting that geotechnical surveys should have been done.
40. Network Rail’s response to these concerns was of a similar nature to S01, that there will be a further stage for the approval of detailed designs. SCC reiterates the submissions already made in relation to S01 as to why such details are necessary at this stage of the process in the context of this TWAO.

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<sup>46</sup> Mrs Robinson S02 XIC.

<sup>47</sup> Mrs Robinson S02 XIC.

41. It is particularly surprising that Network Rail has not carried out any assessments of the relevant ground conditions at S02. Ms Tilbrook simply asserted that she did not consider loading to increase as a result of the proposals.<sup>48</sup> She seemed to base this on her understanding of footways and her assessment that a low number of people were using the field. Network Rail's proposals will, however, be actively directing people to use this stretch of land as a new right of way, which is designed to exist in perpetuity. That footpath will be used by the public and will need to be maintained by the Highway Authority. It did not appear from Ms Tilbrook's evidence that the impact of these factors had been properly considered by Network Rail.
42. Furthermore, as Mrs Robinson clarified, it is clear this stretch of land already has a stability issue, the causes of which are unknown. It may be that the ground instability has nothing to do with loading.<sup>49</sup> Mrs Robinson noted that she has experience of addressing landslides in other parts of the county which can be difficult to deal with and may require very large works and re-profiling.<sup>50</sup> The key point is, however, that SCC simply does not have enough information to determine whether a footpath can be delivered here.
43. Regarding the cross-fall, the LIDAR data relied upon by Ms Tilbrook fails to properly account for the walked experience due to the interaction of the gradient and direction of travel.
44. Similar to S01, it also appears that Network Rail was unaware of conditions on the ground (and had failed to provide its own engineers with appropriate information) prior to a site visit on 14 September 2017 (6 months after the Order was deposited). As can be seen from the design freeze proposal for S02, a footbridge is proposed in a location in which Network Rail now agree no bridge is needed.<sup>51</sup>
45. SCC submits that even a cursory site visit would have shown the inappropriateness of the proposed footbridge. Mrs Robinson was clear that she would have "absolutely"

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<sup>48</sup> Ms Tilbrook's proof, para 2.2.33.

<sup>49</sup> Mrs Robinson stated that she was "not sure that it is a loading issue that is causing [the] instability issue", S02 XIC

<sup>50</sup> Mrs Robinson S02 XIC.

<sup>51</sup> Ms Tilbrook S02 XX.

expected Network Rail to have assessed whether or not a bridge was necessary before depositing the Order and SCC submits that this failing undermines the confidence which the Inspector can have in Network Rail's assessment procedures. Furthermore, this is a very good example of why joint site visits, early on in the preparations for the TWAO – between SCC rights of way officers and the Network Rail team – would have saved a lot of unnecessary expenditure incurred by SCC.

46. On the basis of the above submissions, SCC request that the Inspector recommend removal of S02 from the Order.

## **S22 WEATHERBY**

47. S22 Weatherby has distinctive characteristics. The crossing is located in the heart of Newmarket and is a vital connection point between the southern and northern parts of the town. The 9-day census picked up a total of 3597 pedestrian users and 442 cyclists, with an average of 412 pedestrian users and 55 cyclists using the crossing per day.<sup>52</sup> During cross-examination, Mr Prest noted that this was “one of the top footpaths re use” that he’s seen. It is clear that S22, located right next door to the local football ground<sup>53</sup> and a field of allotments, is used by local residents for everyday utility purposes – to connect to shops, schools, neighbours and general amenities.

48. Network Rail's proposal to close this crossing has caused considerable upset to the community of Newmarket and widespread opposition by local residents. Forest Heath DC made clear, from the outset of the Inquiry, that it did not consider the case for closure to be justified. SCC stated in opening that it was not persuaded that Network Rail had explained persuasively why the crossing needed to be closed.<sup>54</sup> It sought further clarification on this matter through the Inquiry process.

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<sup>52</sup> Ms Tilbrook's proof of evidence at 2.13.5 and Mr Prest's proof of evidence at 19.7.

<sup>53</sup> It is notable that Newmark Town FC has also objected to the closure of S22, see further the e-mail from Mr Edwards, the Secretary of Newmarket Town FC, dated Monday 19 March 2018 (OP-INQ-54).

<sup>54</sup> Mr Woodin's proof of evidence on S22 at para 12.

49. It is abundantly clear, having now heard Network Rail's evidence at the Inquiry on S22, that it has failed to justify closure of this crossing. SCC, therefore, refers to, and adopts, the closing submissions made in this regard on behalf of Forest Heath DC.

*Lack of a suitable and convenient alternative route*

50. Notwithstanding the above conclusion, SCC submits that even if Network Rail could justify the need to close S22, it has not provided a suitable and convenient replacement route for existing users for the following reasons.

**(i) Length and gradient**

51. For many users of the crossing, the alternative route will cause considerable increases in journey times, due to its additional length. Mr Woodin had provided time estimates for additional journey time of 6 minutes one way for users travelling from the junction of New Chieveley Road and Cricket Field Road to the Rookery Health Centre on Fred Archer Way.<sup>55</sup> Ms Tilbrook provided a number of suggested routes which users may walk, concluding that additional journey time would vary from less than one minute to approximately 8.75 minutes on way.<sup>56</sup> Of course, the additional time will depend on users' origins and destinations.

52. As Mr Woodin makes clear, an addition of just 6 minutes can be significant in a context of short utilitarian journeys.<sup>57</sup> In circumstances where people are using S22 to access local schools and basic services, an additional 10-15 minutes can be enough to put somebody of walking the route altogether. Dr Wood highlighted the example of Mrs Khan who can access her children's school in five minutes via the level crossing but for whom it will take 15-20 minutes via the alternative route.<sup>58</sup>

53. Furthermore, the added length must also be considered in combination with the gradient of the proposed route. Ms Tilbrook responded to the Councils' concerns over added

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<sup>55</sup> Mr Woodin's proof of evidence at paras 15-16.

<sup>56</sup> Ms Tilbrook's rebuttal on S22 at para 2.2.30, with time estimates updated in XIC.

<sup>57</sup> Ms Tilbrook agreed that "time will be more of an issue" for users accessing the route for utility purposes (Ms Tilbrook S22 XX).

<sup>58</sup> Dr Wood's proof of evidence at para 10 and appendix 1.3, Q6.

gradient by citing to technical LIDAR data comparing various gradients on both the existing and alternative routes. However, this appears to miss the point. As Mr Woodin explained, during cross-examination, this LIDAR data fails to show the walked experience and users' perception of steepness. And, it is users' perception of the route that will determine if they will use it.

**(ii) Quality**

54. Furthermore, Mr Woodin gave persuasive evidence on the difference in quality of the walking routes, noting the "less attractive urban walking environment" on the alternative route, compared to the more interesting streetscape on the existing route which has a "feel of being quicker".<sup>59</sup> The difference in quality between the routes is evident from the photos in Appendix A to the DIA.<sup>60</sup>

**(iii) Increase in car journeys**

55. Mr Woodin stated in evidence that he considered that users will choose to do one of three things if the crossing is closed:

- (i) continue to walk for their journey but put up with the inconvenience;
- (ii) use a car, or other mode of transport, to carry out their journey; or,
- (iii) not carry out the journey at all.

56. The fact that Network Rail's proposals are likely to put people off walking is of serious concern in a context in which both the Department for Transport and SCC are seeking to encourage walking for shorter journeys and to support a more active public.<sup>61</sup>

57. Mr Razaq, the Director of Public Health for SCC, has also raised concerns over the negative public health implications of Network Rail's proposal for S22 stating that, in his professional opinion, the detour involved will "deter people from walking and

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<sup>59</sup> Mr Woodin S22 XIC.

<sup>60</sup> Appendix C to Ms Tilbrook's rebuttal on S22.

<sup>61</sup> See, for example, the Department for Transport's Cycling and Walking Investment Strategy 2017, extracts of which are appended to Mr De Moor's proof of evidence (see for example p. 7 of the strategy) and the Suffolk Walking Strategy 2015-2020 (OBJ-29-C13), both of which seek to make walking the natural or "default" choice for shorter journeys.



cycling forcing some to use motorised transport which, in turn, is likely to have a negative impact on activity levels”.<sup>62</sup> Mr Razaq highlights the risk of isolation to individuals,<sup>63</sup> particularly (but not exclusively) older members of the community.<sup>64</sup>

58. What is more, both Forest Heath DC<sup>65</sup> and Cambridgeshire County Council both echo these points.<sup>66</sup>

59. Ms Tilbrook accepted that there is a risk that people would use a car as a result of the proposal<sup>67</sup> but considered this to be at an acceptable level, noting in response to a question put by Dr Wood, “we accept there may be some transference to cars – but not to the level that would cause a significant impact in terms of air quality or traffic”.

60. However, Mott MacDonald have not carried out any traffic modelling<sup>68</sup> or, indeed, *any* further assessment of the likely increase in car use (by, for example, asking users of the crossing whether they are likely to use their car instead of the alternative route). As a result, it remains unclear on exactly what basis Ms Tilbrook reaches this conclusion.

61. There is, of course, a simple answer to Ms Tilbrook’s response. If people are choosing to use their cars instead of walk the alternative route, then the alternative simply cannot be a “suitable and convenient replacement” for them.

### Diversity Impact Assessments

62. Network Rail accepts that it must discharge its public sector equality duty, under section 149 of the Equality Act 2010, in relation to its proposals and has thereby carried out a Diversity Impact Assessment – Scoping Report<sup>69</sup> in relation to the project as a whole and, more specifically, diversity impact assessments (“DIA”) in relation to particular

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<sup>62</sup> Mr Razaq’s proof of evidence, included as appendix 1 to Mr Woodin’s proof of evidence, at para (f).

<sup>63</sup> At para (l).

<sup>64</sup> Cf Ms Tilbrook’s rebuttal on S22 at 2.9.2.

<sup>65</sup> Ms Noonan’s proof at para 23.

<sup>66</sup> See e-mail dated 9 May 2017, included as appendix 1 to Mr Woodin’s proof of evidence.

<sup>67</sup> Ms Tilbrook S22 XIC and XX.

<sup>68</sup> Ms Tilbrook S22 XX.

<sup>69</sup> NR-INQ-38.

level crossings. S22 is one of the level crossings for which a DIA was held to be required.<sup>70</sup>

63. Yet, it was only following a request by Mr Woodin,<sup>71</sup> on behalf of SCC, that the DIA for S22 was disclosed as an appendix to Ms Tilbrook's rebuttal.<sup>72</sup> The first thing to note about this DIA is that it is lacking almost any verification information. There is no author and no date for when the document was produced. In the table under "Step 7: Sign off", the "DIA Owner" is left blank, as is the "Senior Manager" notwithstanding that the document itself notes that "[s]ign-off should be by someone who can approve policy, programme or budget changes". The only person who has signed the document is Mr Day, a Liability Negotiation Manager for Network Rail (designated as the "Superuser" for quality assurance purposes) and he did so the day before rebuttals were due to be exchanged (29 January 2018).

64. Ms Tilbrook could not explain why the DIA was not signed off by the Mott MacDonald team, noting that she was not a DIA specialist.<sup>73</sup> When asked by the Inspector how she could be confident in the document if she does not know who has produced it, her response was vague, noting that she was aware of the work done by the team and pointing to the past tense used in the DIA Overview Report<sup>74</sup> as indicating that a DIA had already been done when that overview document was published.<sup>75</sup>

65. Network Rail subsequently submitted a note,<sup>76</sup> setting out how the DIAs for the Order were prepared by the Mott MacDonald team and the dates when all of these DIAs would have been first issued to Network Rail. No explanation was given for the lack of information included in the DIA for S22 and continued reliance was placed on the past tense used in the Diversity Overview report.<sup>77</sup>

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<sup>70</sup> NR-INQ-38, p. 94 and para 2.3.

<sup>71</sup> Mr Woodin's proof of evidence, paras 19-26.

<sup>72</sup> Ms Tilbrook's rebuttal, appendix C.

<sup>73</sup> Ms Tilbrook S22 XX.

<sup>74</sup> NR-INQ-16, Referenced documents to Ms Tilbrook's evidence, appendix L.

<sup>75</sup> Ms Tilbrook S22 XX and response to the Inspector's questions.

<sup>76</sup> NR-INQ-80.

<sup>77</sup> NR-INQ-80 para 9.

66. In light of the above submissions, the Councils maintain that the DIA is an unreliable document that the Inspector cannot have confidence in.

67. Notwithstanding the above, the content of the DIA is also cause for concern. It is clear that the “evidence base” in Step 2 relies heavily on the census data which, as noted above, would fail to reflect any non-visible disabilities. The only further evidence appears to be highly-generalised population statistics for the entire district of Forest Heath and what appears to be a desk-based assessment of the location of local amenities.<sup>78</sup> It goes without saying that the section on consultation, which relies on the two rounds of public consultations suffers from the same defects as have been highlighted by Forest Heath DC. The point was put to Ms Tilbrook that the section on “impact” (Step 3) does not read as an objective assessment, but rather as a document clearly written from Network Rail’s perspective. Indeed, much of the argument reflects Network Rail’s own evidence at the Inquiry.

68. Whilst it is accepted that the document is a Network Rail document, the public sector equality duty must be carried out objectively, “exercised in substance, with rigour and with an open mind”.<sup>79</sup> This is particularly important in the context of a TWAO, for purposes of which the Secretary of State, as the decision-maker, will also need to satisfy his own PSED which is non-delegable.<sup>80</sup> SCC submit that Network Rail has not provided the Secretary of State with adequate means by which to do so.

69. Due to the above inadequacies in the DIA process, the SCC submits that the Inspector cannot be confident that the potential impact of Network Rail’s proposals on users with disabilities and more elderly users has been adequately assessed.

### *The Status of rights of way*

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<sup>78</sup> “The presumed desire lines are based on the identified location of residential areas and community facilities within the immediate vicinity of the crossing. The development of a more substantive picture of local desire lines for the crossing and associated routes could be achieved through cordon survey interviews with users at fixed locations and times.” (DIA on S22, p. 8) It does not appear that any such cordon surveys have been undertaken.

<sup>79</sup> *Haque v Hackney LBC* [2017] PTSR 769 at [12].

<sup>80</sup> *R (Brown) v SSWP* [2008] EWHC 3158 (Admin) at [94].

70. As is noted in the submissions of Forest Heath DC, during the course of the Inquiry a dispute arose about the existence of rights of way at S22. SCC's position is that whilst there are no recorded rights of way at S22 on the Definitive Map and Statement, this public record is not conclusive on the matter.
71. What is more, SCC has maintained throughout these proceedings that this Inquiry procedure is not the appropriate forum in which to determine the matter.<sup>81</sup> SCC submits that the procedures established under section 53(3)(c) and (6) of the Wildlife and Countryside Act 1981 provide the appropriate forum to determine whether or not a public right of way exists at S22. This involves the making of a Definitive Map Modification Order by the surveying authority and, if required, a rights of way inquiry.<sup>82</sup>
72. SCC welcomes the Inspector's ruling on this issue, dated 27 April 2018, which SCC understands to accord with the approach suggested by SCC's in its Supplementary Submissions on the Rights of Way Status of S22 Weatherby (OP-INQ-33). Following this ruling, SCC understands that S22 will be treated in the same way as the other level crossings in the Order which do have recorded public rights of way. If the Inspector does not consider Network Rail's strategic case for closure of the level crossing to be justified on the evidence,<sup>83</sup> then the Inspector must recommend removal of this proposal from the Order.
73. For the avoidance of doubt, and in response to a question posed by the Inspector on 23 May 2018, SCC does not consider that the undetermined status of rights at S22 prevents the Inspector from recommending closure of the crossing. But the Inspector can only recommend closure if he is satisfied that he would reach the same conclusion if public rights of way do exist at S22.

### Conclusion on S22

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<sup>81</sup> OP-INQ-20 at para 6 and OP-INQ-33.

<sup>82</sup> In April 2018, SCC received an application, made under section 53(5) of the Wildlife and Countryside Act 1981, to modify the Definitive Map and Statement so as to register rights of way at S22.

<sup>83</sup> This will include an assessment of whether a suitable and convenient route has been provided.

74. In light of all the above, including the adopted submissions made on behalf of Forest Heath DC, SCC submits that Network Rail has failed to justify the need to close S22 and to close S22 via diversion. In any event, the diversionary route is not a suitable or convenient replacement for existing users. SCC, therefore, requests that the Inspector recommend removal of this proposal from the Order.

## **S23 HIGHAM**

75. SCC objects to this proposal on grounds of pedestrian safety, most notably relating to:

- (i) the proposed road-side walking along Higham Road;
- (ii) lack of visibility at the junction of Footpath 5 and Coalpit Lane; and,
- (iii) insufficient assessment of the appropriate positioning of a crossing point at the junction of the A14 Westbound on-slip road with Coalpit Lane.

### *Unsafe roadside walking on Higham Road*

76. Network Rail's proposed alternative route directs users along a stretch of Higham Road that is unsafe<sup>84</sup> and, therefore, unsuitable as a replacement route. Mr Woodin, the Rights of Way and Access Manager for SCC responsible for the public rights of way and open access network in Suffolk gave clear evidence, during examination in chief, that this stretch was "not safe to walk on" and, furthermore, "many users of [SCC's] network will not perceive it to be safe either".<sup>85</sup> He explained that the available verges were so narrow to be "of little use to a pedestrian" and noted the blind bend at the War Memorial. The photos he had taken whilst on site clearly demonstrated the issue. Mr Woodin asked the Inspector to question where a pedestrian would fit in the second photo on p. 123 of his proof of evidence, showing two vehicles passing along the route. To ask the question is to make the point.

77. Mr Woodin's concerns are supported by the independent Road Safety Audit carried out by Capital Traffic at the request of SCC, recommending that "pedestrian facilities along Higham Road should be improved..." It is unfortunately unclear whether this section

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<sup>84</sup> Mr Woodin S23 XIC, Higham Road is "not safe to walk on".

<sup>85</sup> Network Rail has accepted throughout the Inquiry that perceptions of safety are relevant to considering whether an alternative route is suitable and convenient (Ms Tilbrook XX on overview matters).

of the proposed alternative route has been assessed by Network Rail's RSAs. The GRIP Stage 1 RSA appears to have used a plan that does not indicate the alternative route and no further assessment of S23 appears to have been undertaken by subsequent Mott MacDonald RSAs.<sup>86</sup>

78. Network Rail is not proposing any measures on this stretch of route according to its design freeze proposals, albeit Ms Tilbrook did subsequently accept in evidence that "there will be some work to do" referring to possible vegetation cut back.<sup>87</sup> This vague admission cannot, however, allay SCC's concerns.

79. It is, perhaps, more concerning that Network Rail was prepared to rely on the fact that the existing verges are currently being used as linkages between the rights of way network in the area.<sup>88</sup> The fact that a stretch of highway may currently be being used by pedestrians<sup>89</sup> does not mean it is a safe stretch of highway to actively divert users to. SCC has made this position clear throughout the Inquiry. Network Rail must assure the Inspector that the diverted routes are safe when considered as routes that users are being actively encouraged to use.

80. Ms Tilbrook also noted that users would only be on this stretch of road for 7.5 minutes during which time they could expect to be passed by 9 vehicles based on the Network Rail traffic count data. However, the time users are expected to spend on this stretch of highway is irrelevant. If the highway in question is unsafe then it is unsafe whether users are there for 1 minute or 10 minutes. A collision on the road will occur in a matter of seconds.

81. The question is simply whether the route is adequately safe for pedestrians to use. Ultimately, the Inspector will need to exercise his judgment on the matter but SCC submit he should have regard both Mr Woodin's evidence, the Capital Traffic

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<sup>86</sup> When the point was put to Ms Tilbrook during cross-examination, she asserted that she had had conversations with the RSA team leader which confirmed there had been an assessment. There is, however, no documentary evidence that SCC is aware of which can show a RSA that assessed the alternative route.

<sup>87</sup> Ms Tilbrook S23 XX.

<sup>88</sup> Ms Tilbrook's rebuttal on S23 and S24 at 2.1.5.

<sup>89</sup> Particularly in circumstances when Ms Tilbrook confirmed that no census had been undertaken to record how many people presently use the highway (in response to questions put by the Inspector).

recommendation and the fact that this is a stretch of rural road operating under the national speed limit on which drivers will not expect to see pedestrians.

### ***Diversion of Footpath 1***

82. SCC consider it would have been preferable to divert Footpath 1 leading up to S23 to within the field side boundary as documented in the proposed modifications submitted by SCC on 9 May 2018. Mr Woodin explained that this would avoid a significant stretch of roadside walking which would remove his objection in this regard. SCC highlight that there would be no need for the “compelling case to take rights over private land”<sup>90</sup> to create this path if the matter were to be agreed with the landowner (thereby, avoiding the need to compulsorily acquire rights over land). Ms Tilbrook considered that an attempt to purchase the land by agreement would not have happened as Network Rail has never proposed diverting the path in this way.<sup>91</sup>

83. SCC submit that an opportunity here has been lost.

### **Lack of visibility**

84. SCC are also concerned over the lack of visibility for pedestrians on Footpath 5 crossing Coalpit Lane to reach the connecting footpath proposed as part of the alternative route for S24. Mr Woodin explained that this is a well-trafficked stretch of road and visibility, particularly when facing south towards Barrow, is very poor.<sup>92</sup> Mr Woodin suggested the need for vegetation cut back and a pedestrian refuge created in the verge to allow pedestrians to assess when it is safe to cross the road.<sup>93</sup> The Capital Traffic RSA similarly highlighted visibility as an issue at this location and recommended that visibility, which complies with LTN 2/95 Table 1 is ensured.

85. Network Rail are not suggesting any mitigation. In fact, Ms Tilbrook accepted that visibility would be at a distance two steps below the standard and that this would require

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<sup>90</sup> Ms Tilbrook’s rebuttal on S23 para 2.1.8. In any event, SCC further queries why the avoidance of an unsafe stretch of road for diverted users could not constitute such a compelling need.

<sup>91</sup> Ms Tilbrook S23 XX.

<sup>92</sup> Mr Woodin S23 XIC, as demonstrated in photographs supplied by Mr Woodin in his proof on p. 124.

<sup>93</sup> Mr Woodin proof of evidence on S23, para 33.

a “departure” (as a further step below a “relaxation” of the guidance requirement).<sup>94</sup> Although Ms Tilbrook did not consider there to be any issue with the creation of a pedestrian refuge on the verge,<sup>95</sup> Network Rail are, nevertheless, not proposing any such mitigation formally as part of their proposals. As currently proposed, the junction between the footpath and Coalpit Lane is not acceptable.

*Further assessment necessary at the junction of the A14 Westbound on-slip road*

86. The Capital Traffic RSA recommended that a collision/conflict study should be carried out to understand how/why collisions are occurring at the junction of the A14 Westbound on-slip road and Coalpit Lane. Ms Tilbrook agreed that Mott MacDonald could have factored such information in a Stage 1 RSA but that was not done. Mr Haunton, who carried out the Capital Traffic RSA explained that the proposed alternative route is asking people to cross at a point where there appears to be vehicle conflicts taking place (mentioning tyre tracks noticed on site that did not correspond to layout of the junction and the fact that crashmap data indicated incidents had been occurring there over a number of years).
87. In response to the Inspector’s questions he confirmed that the outcome of such a study could be to make significant changes to the layout of the slip road or to relocate the crossing point or look for an alternative footway diversion. In short, it could question the acceptability of the diversion route being proposed by Network Rail.<sup>96</sup> Mr Russell, on behalf of the Ramblers, confirmed that he did not disagree with anything Mr Haunton said in relation to the collision study.
88. SCC submit that the Inspector will be unable to recommend Network Rail’s proposal in relation to S23 in the face of such uncertainties.
89. Finally, SCC further notes the recognition by Network Rail that it failed to apply for, and obtain, an extension to the Suffolk County Council (Parish of Higham) (Footpath

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<sup>94</sup> Ms Tilbrook S23 XX.

<sup>95</sup> Ms Tilbrook S23 response to the Inspector’s questions.

<sup>96</sup> Mr Haunton S23, response to the Inspector’s questions.



1) (Temporary Closure) Order 2016,<sup>97</sup> which expired on 19 July 2017. The footpath over the level crossing is currently unlawfully obstructed which is unacceptable. Mr Woodin made clear that “under no circumstances” would SCC accept the diversion authorised by this Temporary Closure Order as a permanent route.<sup>98</sup>

90. On the basis of the above submissions, SCC request that the Inspector recommend removal of S23 from the Order.

## **S25 CATTISHALL**

91. SCC objects to this proposals on the basis that the alternative route is not suitable and convenient and on the basis that the proposal to closure the crossing conflicts with relevant local transport and planning policies.

92. In relation to planning policy, SCC refers to, and adopts, the submissions made on behalf of St Edmundsbury BC.

### *Lack of a suitable and convenient alternative route*

93. SCC considers that the alternative route proposed by Network Rail at S25 is not a suitable and convenient replacement for existing users due to its length. Mr Woodin explained that the diversion would result in a significant detour which would add an extra 30 minutes on a round-trip which would be enough, in his view, to deter people from walking.<sup>99</sup>

94. During cross-examination, Mr Woodin stated “I still say that there will be inconvenience in these proposals and that that level of inconvenience will be enough to stop people - [there is] no science to this - but we know as professionals that there are tipping points where an additional length and the nature of the diversion is enough to cause people to consider alternative means of making their journeys.”<sup>100</sup>

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<sup>97</sup> OP-INQ-83.

<sup>98</sup> Mr Woodin S23 XIC.

<sup>99</sup> Mr Woodin S25 XIC.

<sup>100</sup> Mr Wooding S25 XX.

95. Mr Woodin’s concerns over the increase in length to the alternative route are echoed by Mr White on behalf of the local planning authority. It is submitted that their evidence, collectively, should be afforded significant weight, having regard to their combined experience in assessing how the rights of way network is used. What is more, Mr Razaq has also raised concerns, from a public health perspective, of closure of S25.<sup>101</sup>
96. In terms of Network Rail’s assessment of the alternative route’s suitability, Ms Tilbrook agreed that the data she relied on supported Mr Woodin’s view that the crossing is used for mixed purposes – both for leisure and utility purposes. Her evidence places great reliance on the census undertaken in 2016 and consultation responses to determine who was using the crossing and what they were using it for,<sup>102</sup> and to thereby conclude on the suitability and convenience of the alternative route.
97. Yet this data fails to reflect the planned strategic growth in the vicinity of the crossing and the expected increase in users who will be using the crossing to access other parts of Bury St Edmunds. To take a snapshot view of use of the crossing in the summer of 2016, prior to occupation of the Taylor Wimpey site (as well as prior to the opening of the Sybil Andrew Academy) runs the risk of severely misinterpreting how the crossing fits into the local community. When considering “existing users”, SCC submits that regard must be had to the future development of the surrounding area and the additional users that this will bring.
98. It appears from the combined evidence of Mr Kenning and Ms Tilbrook that Network Rail agree that occupiers of the Taylor Wimpey site, to the south of the crossing need to be considered but not the expected occupiers of the North-East site. SCC considers that the planned changes to this location, including the expected use from both sites, should have been factored in. Once the development to the North-East is brought forward, S25 will no longer link to countryside immediately to the north,<sup>103</sup> but to part

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<sup>101</sup> Mr Woodin’s proof of evidence on S25, Appendix 1.

<sup>102</sup> Ms Tilbrook S25 XX.

<sup>103</sup> Ms Tilbrook confirmed that you reach the countryside “just to the north of the railway” in response to questions by the Inspector.

of the urban environment of Bury St Edmunds. It is likely that in such circumstances, the crossing will be used – to a much greater extent – for utility purposes, in which case, an extra 30 minutes to a round trip will be even more significant.<sup>104</sup>

99. As Mr Woodin put it, during cross-examination “...this area is developing so rapidly and in such a dynamic way that what is true today won’t necessary be true next year or the year after.”

100. On the basis of the above submissions, SCC request that the Inspector recommend removal of S25 from the Order.

## **S27 BARRELLS**

### *Safety concerns*

101. SCC object to this proposal on safety grounds, specifically in relation to the proposed roadside walking along Barrells Road, including Barrells Road bridge. Mr French, a rights of way officer for SCC, gave evidence illustrating why he considered that this route was not suitable, highlighting the gradient on approach to the bridge which restricted visibility of oncoming vehicles which combined with limited stretches of uneven grass verge on either side. He provided photographic evidence to the Inquiry, including photos demonstrating the impact of sun glare on driver visibility in these conditions.

102. The Capital Traffic RSA documented this visibility problem across both the Barrells Bridge Road bridge and the bridge to the west. Mr Haunton explained that the RSA recommended that one of the level crossings should be retained with an appropriate section of linking footpath created to avoid the need for this roadside walking. In short, Mr Haunton considered the visibility to be “so lacking over both bridges” that no practicable solution could be found.<sup>105</sup>

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<sup>104</sup> Ms Tilbrook noted that generally speaking leisure walks are considered to be less time critical, S25 XX.

<sup>105</sup> Mr Haunton S27 XIC. During his evidence, Mr Haunton further noted that the stopping distances over the humpback bridges would increase on the downhill gradient, along with an increase in speed when applying the same throttle.

103. Network Rail are proposing mitigation measures at Barrells Bridge Road, through which they propose to clear vegetation from the road and provide a new white lining edge marking to delineate a safe space for pedestrians, as well as provide a safe standing area for pedestrians on approaches to the bridge. Network Rail are not proposing any mitigation measures for the unnamed bridge to the west. SCC does not consider the proposed mitigation to address its safety concerns. In particular, Mr Haunton noted that any road markings would likely be worn away quite quickly by the wheels of passing vehicles. Low sun would also lessen drivers' ability to see any such markings.

### ***Proposed improvements – lack of information***

104. During evidence in chief, Ms Tilbrook accepted, in relation to Barrells Bridge Road, that “there is some further work to do at detailed design stage here”, mentioning a potential for re-profiling the verges. She also mentioned the potential for advanced warning signs, as something “that could be considered”. However, no further details have been provided to either SCC or the Inspector on what exactly Network Rail is proposing to do at this crossing. It is, unfortunately, too little too late.

105. Without such information, or an indication of how safety concerns could satisfactorily be addressed, SCC, as the Highway Authority, must object to this proposal. Mr French stated that he was still unclear whether the verges would be replaced with at grade or kerbed area.<sup>106</sup> When asked by the Inspector if the mitigation now being proposed is something he would say lay outside the types of solutions he considered when he did the audit, Mr Haunton stated that he preferred not to comment “until I have actually seen a plan of what is proposed”.

### ***85<sup>th</sup> Percentile Speed***

106. The Ramblers highlighted, during cross-examination, that no 85<sup>th</sup> percentile speed figure had been provided by Network Rail to assess safety on this stretch of road.

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<sup>106</sup> Mr French S27 XIC.

The 85<sup>th</sup> percentile speed referred to in para 2.3.7 of Ms Tilbrook’s rebuttal proof was, in fact, the 50<sup>th</sup> percentile speed (which equated to the mean speed). Ms Tilbrook was unable to explain why the 85<sup>th</sup> percentile speed was missing, but a note from Network Rail (NR-INQ-96) alleged this was caused by there “not being enough traffic to establish a statistically reliable 85<sup>th</sup> percentile figure”.

107. Network Rail’s response does not make any sense, having regard to Mr Russell’s explanation of how such percentile figures are calculated.<sup>107</sup> Mr Russell explained that an 85<sup>th</sup> percentile figure can always be calculated, from any data set, but the question will be the level of confidence that can be given to it. Put shortly, the greater the sample size, the greater the level of confidence. What is more, Mr Haunton thought that an ATC carried out over the course of a week would give enough data to give 85<sup>th</sup> percentile, bearing in mind there were around 80 vehicles a day.

108. SCC submits that the lack of an 85<sup>th</sup> percentile figure is unexplained and undermines the reliability of Network Rail’s assessments, particularly bearing in mind Mr Russell’s comments that he would never submit a highway design that did not use the 85<sup>th</sup> percentile speeds “for the simple reasons that the Highway Authority would reject it because the guidance requires 85<sup>th</sup> percentile speeds”.<sup>108</sup>

### ***Perceptions of safety***

109. SCC again emphasize that the Inspector will need to consider not only if the proposed alternative is safe but also whether it will be perceived as safe. Mr Haunton’s account of his experience at Barrell Road Bridge was telling. He was wary of approaching traffic and felt there was a certain reliance on drivers to take appropriate action, noting “we didn’t dwell in the area, [we] took photos and moved on”.<sup>109</sup>

110. On the basis of the above submissions, SCC request that the Inspector recommend removal of S27 from the Order.

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<sup>107</sup> Mr Russell S27 XIC.

<sup>108</sup> Mr Russell S27 XIC.

<sup>109</sup> Mr Haunton S27 XIC.

## Missed Opportunity – Footpath 5

111. In a similar vein to the lost opportunity to divert Footpath 1 at S23, SCC submits that there was a lost opportunity in relation to S27 and Footpath 5. As clarified during evidence, Network Rail changed its proposals to the north of S27 by moving Footpath 5 to the east (to run alongside the boundary between Mr Le Mar's and the Braces' properties). Mr Kenning explained<sup>110</sup> that Mr Le Mar had raised concerns that walkers may cut through diagonally across his field if an additional stretch of footpath ran along the southern boundary (as had been suggested as part of the Round 2 consultation proposals). Mr Kenning added that Network Rail also considered there to be potential long-term management issues associated with the south-running footpath, due to the limited space available for it on Network Rail's land.<sup>111</sup>

112. Mrs Brace, however, gave evidence on a number of concerns she and her husband had about the new proposals which would create a new footpath running alongside their property. Mr Kenning also accepted, in cross-examination, that there was still enough room for a 1.5m footpath within Network Rail land along the southern boundary.

113. SCC were unaware of the changes to the proposal until deposition of the Order.<sup>112</sup> SCC considers that a workable solution to the S27/S28 crossings would have been to retain Footpath 5 in situ, to keep one of the crossings open and to add in a new stretch of linking footpath along Network Rail land to the south of Mr Le Mar's property. This would have avoided any need for any roadside walking along Barrells Road.

114. Mr French explained that this would have further avoided the need to erect a footbridge and fencing to cater for the proposed footpath on the eastern side of Mr Le Mar's field. Mr French clarified that whilst SCC does not usually like fenced in

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<sup>110</sup> Mr Kenning S27 XIC and XX.

<sup>111</sup> Mr Kenning S27 XIC and XX.

<sup>112</sup> Mr French S27 XIC, noting that this was the reason for paragraph 15 of his proof of evidence which notes the inconsistencies between the Round 2 consultation materials and the Order proposals.

footpaths of 1.5m,<sup>113</sup> these will be acceptable where expedient.<sup>114</sup> And Mr French would have considered it expedient to allow a fenced in footpath in these circumstances.<sup>115</sup>

115. It is unfortunate that this opportunity for a workable solution was missed.

### **S31 MUTTON HALL**

116. SCC objects to this proposal on safety grounds associated with diverting users onto the road bridge on U4622. Mr French explained that he did not consider visibility at the bridge to be sufficient due to the bends in the road on both approaches.<sup>116</sup> This problem is clear from the photographs provided in his proof and is evident on site.

117. SCC is concerned that Network Rail's proposals will not reduce safety risks for users but, instead, merely shift the risk from the railway to the road. There has been no attempt by Network Rail to compare the safety risks between the two modes of access in order to assess this.<sup>117</sup>

118. Mr Prest confirmed that S31 is not a high risk crossing, has an ALCRM score of C6 and has had no reported incidents.<sup>118</sup> Mr Prest agree that the sightlines at the crossing were very good,<sup>119</sup> indeed in normal conditions the downside sightlines are five or six times over the required minimum.<sup>120</sup>

119. While it is certainly true that there is a safety risk associated with all level crossings, Mr Brunnen accepted in cross-examination that "any level crossing open to

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<sup>113</sup> Responding to an assertion by Mr Kenning that the Highway Authority was "not really supportive of having fenced corridors that are 1.5m wide as a footpath".

<sup>114</sup> Mr French S27 XIC.

<sup>115</sup> Mr French S27 XIC.

<sup>116</sup> Mr French S31 XIC.

<sup>117</sup> Mr Kenning S31 XX; Ms Tilbrook S31 XX.

<sup>118</sup> Mr Prest S31 XX.

<sup>119</sup> Mr Prest S31 XX

<sup>120</sup> Mr Prest's proof of evidence at 27.9.

the public today is fit for use today”.<sup>121</sup> In light of the above facts, there would appear to be limited safety concerns associated with S31.

120. By contrast, SCC considers the proposed diversion requires users to navigate a fast-moving rural road over a bridge with limited visibility on which drivers would not be expecting to see pedestrian users. SCC recognises that Network Rail has proposed some mitigation measures,<sup>122</sup> but these do not alleviate SCC’s concerns.

121. SCC reiterates that perception of safety is key when considering replacement rights of way for pedestrian users. If a route is perceived as unsafe it can put pedestrian users off using it. Network Rail accepts that the crossing at S31 is being used regularly by a small number of people to access the wider footpath network,<sup>123</sup> as is demonstrated by the high proportion of users that were documented as using the crossing on a Saturday.<sup>124</sup> S31 acts as a connection to the wider footpath network and means of access for users seeking leisure and recreational walks. There is a real risk that users will not perceive the connection point at the road bridge as safe enough for use.

122. On the basis of the above submissions, SCC request that the Inspector recommend removal of S31 from the Order.

## **S69 BACTON**

123. SCC objects to this proposal principally on safety grounds; namely, that the proposed stretch of road-side walking along B1113 Broad Road and use of the Pound Hill underpass are not safe to divert walkers to.

### **B1113 – Broad Road**

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<sup>121</sup> Mr Brunnen XX noting, however, that this does not mean Network Rail does not have concerns about the crossing or want to improve/change them in the longer term.

<sup>122</sup> NR12 at 3.3.

<sup>123</sup> Ms Tilbrook proof of evidence at 2.19.7.

<sup>124</sup> 14 users on Saturday 2 July 2016 (out of a total of 38 users over 9 days) see Ms Tilbrook’s proof of evidence at 2.19.5.



124. SCC considers that it is not safe to divert users along the stretch of Broad Road on the alternative route unless a suitable footway is provided. Mott MacDonald's RSA agrees, having highlighted a risk of collisions here due to the variable standard of verge and the likelihood of pedestrians walking within the carriageway.<sup>125</sup> The RSA recommends "that a suitable footway is provided to enable pedestrians to continue along Broad Road without walking within the carriageway". The plan attached in Appendix B to this RSA, clearly marks that this recommendation applies to the entirety of Broad Road in between Footpath 14 and Pound Hill. The designer's response to the problem raised was:

*"Agreed – Further consideration of footway provision will be given."*<sup>126</sup>

125. In light of this, it is surprising to say the least that Network Rail is not suggesting any footway provision on this stretch of route. It is even more surprising having regard to the Capital Traffic RSA which also documented the risk posed to diverted walkers being struck by vehicular traffic on this stretch of the route with an even more specific plan attached as appendix B, marking the area in question as the northern part of B1113 Broad Road. Mr Russell, on behalf of the Ramblers, was in complete agreement that a footway be provided with an absolute minimum width of 750mm, but ideally of 900mm.

126. Ms Tilbrook nevertheless maintained that a formal footway was not required,<sup>127</sup> although she recognised that some works would be needed to be done to the verge. As no specific details were given, however, it is not possible for SCC to respond in any meaningful way to this suggestion.

127. Ms Tilbrook noted in her rebuttal that it was considered that the RSA issues "pertained to the southern section of the Broad Road route shown" and that the length of verge walking retained had since been reduced.<sup>128</sup> SCC disputes that the reduction in length of roadside walking mitigates the safety concerns associated with this route.

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<sup>125</sup> NR16, Suffolk Stage 1 Road Safety Audit (GRIP 2 Review), p. 9 at 2.12.1.

<sup>126</sup> NR16, Suffolk Stage 1 Road Safety Audit Response Report, p. 16 at 2.31.1.

<sup>127</sup> Ms Tilbrook S69 XX.

<sup>128</sup> Ms Tilbrook rebuttal on S69 at 2.2.6-2.2.7.

128. Ms Tilbrook also appeared to rely on the fact that this stretch of Broad Road was already being used to connect from Footpath 13 to Footpath 4.<sup>129</sup> SCC repeats the submissions already made above: it is not acceptable for Network Rail to rely on the existing use of a stretch of road to demonstrate that it is a safe diversion.

129. Ms Tilbrook noted that the Capital Traffic RSA had not explicitly said a footway needs to be provided.<sup>130</sup> Whilst this is true, Mr Haunton was clear in his evidence that this recommendation had been couched in general terms in part because he had not done an assessment of how much verge was available and did not know if a footway would be feasible in capacity terms. Notably, when asked by the Inspector if he had undertaken any appraisal of how much verge there might be available, his response was that they had not done so because he did not think it would have been particularly safe in some locations to undertake such measurements. Indeed, Mr Haunton explained that he had elected to drive a lot of this route and did not think it was an appropriate place to stop and walk along the carriageway, which explains why there are no photos in the RSA.<sup>131</sup> On this basis, it cannot be assumed that the Capital Traffic recommendation does not support the provision of a footway, in fact Mr Haunton noted that it “would [have been] nice to recommend putting a footway through...”<sup>132</sup>

### Pound Hill Underpass

130. It was clarified during the Inquiry that Network Rail is not proposing to provide a footway under the underpass itself, but rather to replace the approaching verges on both sides of the eastbound side with new footway (with kerbing) so as to allow a safe standing area for pedestrians.<sup>133</sup>

131. The Capital Traffic RSA illustrates the safety risks associated with the underpass, having raised a risk to diverted walkers of being struck by vehicular traffic

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<sup>129</sup> Ms Tilbrook rebuttal on s69 at 2.2.8.

<sup>130</sup> Ms Tilbrook S69 XX by the Ramblers.

<sup>131</sup> Mr Haunton S69 XIC.

<sup>132</sup> Mr Haunton S69 XIC.

<sup>133</sup> NR12 at 3.4.1.2. It was not clear from the Design Freeze whether the footway would be provided under the underpass as well.

at Pound Hill. SCC does not consider that Network Rail's proposed mitigation adequately addresses the level of risk. Mr Kerr, a Definitive Map Manager within the Rights of Way and Access Service, highlighted that a nearby development for 47 dwellings was granted planning permission subject to a series of conditions requiring improvement works to be carried out to the Pound Hill underpass. These specifically required a traffic management system to be put in place.<sup>134</sup>

132. Clearly, the expected increase in use of Pound Hill by those associated with the new development required there to be much more significant improvement measures than what Network Rail has proposed, notwithstanding that Network Rail's proposal is expected to, similarly, result in an increase in use of this highway.<sup>135</sup> Ms Tilbrook, again, relied upon the census data<sup>136</sup> to conclude that the numbers of people being diverted did not justify traffic management measures.<sup>137</sup> She did not, however, have a figure in mind as to how many additional users justified such a scheme.<sup>138</sup>

133. SCC consider that, in order to divert users to the Pound Hill underpass as part of a permanent diversion, better mitigation measures are required.

### Flood risk

134. SCC has also raised concerns that the Pound Hill underpass is prone to flooding and that the cause of the flooding originates on Network Rail land.<sup>139</sup> Mr Kenning appeared to accept, during cross-examination, that further investigation was needed to consider this issue but took the view that such investigation should be carried out by the Highway Authority.<sup>140</sup> This is not acceptable. Network Rail are proposing to divert pedestrians away from a recorded public right of way at the crossing and towards the Pound Hill underpass. Network Rail accepts that it must show that the proposed diversion will be suitable for pedestrian use as a replacement for the existing right of

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<sup>134</sup> Further details can be found in OP-INQ-51.

<sup>135</sup> For the avoidance of doubt, SCC is not concerned with any perceived cumulative effect as a result of both the development and closure of the level crossing, as the development has been conditioned so that it will only be occupied after the mitigation measures have been put in place.

<sup>136</sup> Ms Tilbrook accepted that the census was carried out outside the football seasons (XX by the Ramblers).

<sup>137</sup> Ms Tilbrook S69 XX.

<sup>138</sup> Ms Tilbrook in response to questions by the Inspector.

<sup>139</sup> See further OP-INQ-59 at paras 1-2.

<sup>140</sup> Mr Kenning S69 XX.

way. It is, therefore, up to Network Rail to investigate any potential impediments to the proposed route. The burden and cost of doing so should not rest with the Highway Authority.

135. Three notes have now been submitted setting out the parties' positions on the cause of flooding at Pound Hill (OP-INQ-59, NR-INQ-87 and OP-INQ-87). SCC maintains its position that the cause of flooding originates from Network Rail land. In any event, it is not convinced that Network Rail have properly investigated the matter or suggested any appropriate mitigation to address the issue. Ms Tilbrook has agreed that flooding is a relevant consideration when determining if a route is a suitable and convenient replacement<sup>141</sup> and that flooding was an issue at Pound Hill.<sup>142</sup>

136. On the basis of the above submissions, SCC request that the Inspector recommend removal of S69 from the Order.

#### Common grounds of objection

#### ***Policy conflicts***

137. In addition to the above submissions it is worth noting that SCC has maintained the position that it does not consider the above 8 proposals to comply with a number of relevant local transport policies and its Rights of Way Improvement Plan. This is on the basis that suitable and convenient alternative routes have not been demonstrated to exist for any of the above-mentioned proposals. In summary, SCC is consequently concerned that the proposals will reduce use of the rights of way network, access to the countryside and use of sustainable transport.

138. The key policies are set out at paragraphs 64 to 85 of Mr Kerr's proof of evidence.

#### ***Safety risks of level crossings vs safety risks of roads***

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<sup>141</sup> Ms Tilbrook XX on strategic matters.

<sup>142</sup> Ms Tilbrook S69 XX.

139. SCC has raised objections on safety grounds to four of the proposals: S23, S27, S31 and S69. SCC notes that there is a significant degree of overlap between its concerns in this regard and the position of the Ramblers. SCC has a general concern that it was not designated as the overseeing authority in Mott MacDonald's RSAs as opposed to Network Rail.<sup>143</sup>

140. It is clear from the evidence heard at the Inquiry that Network Rail has not carried out any kind of comparative assessment between the safety risk associated with using a level crossing against the safety risks associated with the diverted route.<sup>144</sup> SCC has highlighted, in relation to S23, S27 and S31, comparative features indicating that the safety risks are greater on the diverted route than on the individual crossing in question. Whilst SCC accepts there is no recognised model or algorithm for comparing this risk, it does seem that in relation to these particular crossings, there was a lack of any kind of comparative assessment.

141. It also appears that Network Rail's approach to assessing the safety risks associated of the diverted routes is a world away from the approach it takes to assessing safety risks associated with its level crossings. For example, on multiple occasions, Ms Tilbrook relied on the fact that routes were already being used by pedestrians to indicate that they were safe to use, or referred to the limited time which users would need to be present on a particular stretch of road. The point was put to Mr Kenning<sup>145</sup> that in these scenarios, it appears that Network Rail is applying a much lower threshold to what is considered to be an acceptable safety risk on the road as opposed to on a level crossing. Whilst SCC appreciates that there is no standard formula to compare the

142. In relation to the crossings which SCC has objected to on safety grounds there is, therefore, a concern that Network Rail's proposals for these crossings are simply "shifting the risk" from the crossing and onto the road. It is understandable that Network Rail is particularly concerned about safety on its level crossings and that it

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<sup>143</sup> Ms Tilbrook agreed in XX on strategic matters that SCC, as the highway authority, should have been the overseeing authority.

<sup>144</sup> Mr Kenning XX on strategic matters; Ms Tilbrook XX on strategic matters; Mr Kenning XX on S23 and on S31; Ms Tilbrook XX on S31.

<sup>145</sup> In cross-examination on S23.

seeks to minimise this risk to the greatest extent reasonably practicable. But SCC, as the Highways Authority, is similarly concerned about the safety of its road network and public rights of way. It is important that in relation to these three crossings, the overall impacts of the proposals on safety is considered.

#### Holding objections, proposed modifications to the Order and planning conditions

143. In its statement of case,<sup>146</sup> SCC set out four “holding objections” to the Order as a whole. Following a side agreement entered into on 23 May 2018, SCC is pleased to clarify that it has withdrawn all of these holding objections. SCC is satisfied that the side agreement sets out a satisfactory procedure by which – in the event that the Order is made – further details of the works to be carried out at each crossing will be submitted for the approval by SCC prior to implementation. Furthermore, the side agreement has addressed SCC’s remaining concerns in relation to the certification procedure under Article 16 of the Order, the principles for agreeing commuted sums and a mechanism for recording information on new and amended highway that will be necessary to allow SCC to make any necessary Legal Event Modification Orders under section 53 of the Wildlife and Countryside Act 1981.

144. SCC also welcomes a new section 16A that will be added to the Order. As a result of these developments, SCC no longer pursues any further modification to the Order, apart from those modifications relating to specific crossings.<sup>147</sup>

145. Mr Andrew Murray-Wood, Senior Ecologist at SCC, had submitted a proof of evidence documenting a few outstanding issues in relation to the proposed ecology condition. Following a joint site visit on 22 May 2018 and further work between the parties, SCC is pleased to confirm that Mr Murray-Wood is now satisfied with the revised condition to be submitted to the Inquiry in due course.

#### Inquiry Process

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<sup>146</sup> See OP-INQ-05 which was added to SCC’s statement of case following the Inspector’s approval on 5 January 2018.

<sup>147</sup> As set out on p. 8 of the Explanatory Text table included in OP-INQ-91.

146. Finally, SCC does wish to highlight the considerable resources that it has had to expend in terms of officer time and money both in the years leading up to and during this Inquiry process. As Mr Kerr stated in evidence, it has “taken up an extraordinary amount of time” and indeed has become almost a full-time job for some SCC officers.<sup>148</sup>

147. SCC maintains that a significant amount of the resources expended could have been avoided if there had been better engagement earlier on in the process between Network Rail and the highways and rights of way teams. Unfortunately, there are numerous examples, including the following two:

- (i) Joint site visits between representatives of SCC and Network Rail early on in the process would have addressed a number of unknowns at a much earlier stage, preventing SCC officers from trying to decipher how things might work on the ground and providing an opportunity for further solutions to be worked out prior to the Inquiry. Officers have remained unclear about exactly where new stretches of footpath were intended to go or why certain infrastructure was being offered. The ecology site visit occurred just one day before the scheduled session on conditions.
- (ii) Mr Kerr’s proof of evidence contains an entire section on a number of discrepancies between the Order plans and the Definitive Map. As Mr Kerr states,<sup>149</sup> despite SCC having provided Network Rail with its rights of way record in digital form in October 2015, the draft Order plans were not provided to SCC for checking. The inconsistencies in this documentation required Mr Kerr to give evidence on the issues.

148. SCC wishes to make clear, however, that it echoes the sentiments raised by another objector during the Inquiry, in relation to the considerable work that Network Rail has had to do in relation to this Order. SCC is aware that this has been no small feat. Nevertheless, SCC raises these concerns with the hope that lessons may be learnt

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<sup>148</sup> Mr Kerr XIC on overview matters.

<sup>149</sup> Mr Kerr’s proof of evidence at para 33.

from this Inquiry experience, particularly if Network Rail seeks to pursue similar Orders in the future.

### Conclusion

149. For the reasons provided above, SCC considers that eight of the proposed crossing closures are not acceptable and do not provide suitable and convenient alternative routes for users. It therefore requests that these eight crossing closures are removed from the Order.

**MERROW GOLDEN**

**24 MAY 2018**

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